DECISION ON ADMISSIBILITY AND MERITS
(delivered on 9 June 2000)

Cases nos. CH/97/48, CH/97/52, CH/97/105, and CH/97/108

Milovan POROPAT, Senija POROPAT, Muradifa ŠEREMET, and Muhamed HRELJA

against

BOSNIA AND HERZEGOVINA
and
THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 10 May 2000 with the following members present:

Ms. Michèle PICARD, President
Mr. Giovanni GRASSO, Vice-President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
Mr. Rona AYBAY
Mr. Želimir JUKA
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Manfred NOWAK
Mr. Miodrag PAJIĆ
Mr. Vitomir POPOVIĆ
Mr. Viktor MASENKO-MAVI
Mr. Andrew GROTRIAN
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 Article VIII(2) of the Agreement and Rules 52, 57 and 58 of its Rules of Procedure:

I. INTRODUCTION

1. The applicants are citizens of Bosnia and Herzegovina. Before the dissolution of the Socialist Federal Republic of Yugoslavia (SFRY) they deposited foreign currency with commercial banks in that country. Because of growing shortage of such currency and other economic problems, the withdrawal of money from these "old" foreign currency savings accounts was progressively restricted by legislation enacted during the 1980s and the early 1990s.

2. Before and during the war in Bosnia and Herzegovina the applicants were largely unable to withdraw money from their accounts. Their post-war withdrawal attempts were all rejected, either without reasons or with reference to legislation enacted by the SFRY, the Republic of Bosnia and Herzegovina and, later, the Federation of Bosnia and Herzegovina. The applicants have initiated court proceedings in this matter. However, their action has so far been unsuccessful and the proceedings are still pending.

3. According to legislation enacted by the Federation of Bosnia and Herzegovina in 1997 and 1998, in particular the Law on Determination and Settlement of Citizen's Claims in the Privatisation Process (hereinafter "the Citizens' Claims Law"), claims based on the old foreign currency savings accounts are to be resolved in the process of privatisation of socially and publicly owned property. Like the claims of pensioners, soldiers and workers in formerly socially owned companies, the balances of the savings are to be recorded in a "Unique Citizen's Account" maintained by the Federal Payment Bureau. Instead of payment of outstanding pensions, salaries or savings, the Bureau issues "certificates" in the commensurate amounts. According to the relevant legal provisions, these certificates can be used in the privatisation process to purchase apartments, municipal business premises and shares and assets of enterprises. This solution has been designed to settle the various claims and, thereby, prevent the public debt payment system and the banking system from collapse.

4. In May and June 1999 and January 2000 the applicants received statements from the Unique Citizen's Account. Ms. Šeremet's and Mr. Hrelja's statements recorded their foreign currency claims. Both unsuccessfully appealed against the registration in the unique account, stating that they wished to receive cash disbursement of their savings. The statements received by Mr. and Ms. Poropat did not record their foreign currency savings but only their so-called "general claims" as their claims against the banks had not been registered in the unique account.

5. None of the applicants has so far participated in the privatisation process. All of them are in difficult financial situations and, allegedly, would need additional money to support their daily needs. Using the above-mentioned certificates in the privatisation process is not an option for them as they already own private houses and cannot make use of the assets made available in the privatisation process or do not have the supplementary cash necessary for purchasing such assets. The applicants claim that they may soon be forced to sell their certificates on the secondary market where, according to advertisements in daily newspapers in February 2000, such certificates were being offered for sale at about 5 per cent of their nominal value.

6. The applications raise issues in regard to the applicants' right to peaceful enjoyment of their possessions under Article 1 of Protocol No. 1 to the European Convention on Human Rights and their right to a fair hearing within a reasonable time under Article 6 of that Convention.

II. PROCEEDINGS BEFORE THE CHAMBER

7. Mr. Milovan Poropat and Ms. Senija Poropat, who are a married couple, lodged their applications against Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina on 14 July 1997. The applications were registered on 18 August 1997. Ms. Muradifa Šeremet's application, directed against the Federation of Bosnia and Herzegovina, and Mr. Muhamed Hrelja's application, directed against Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina, were introduced on 2 and 12 December 1997, respectively, and registered on the latter date. The applicants are represented by the second applicant, Ms. Senija Poropat.

8. On 9 and 14 April 1998, finding that also the application of Ms. Šeremet might involve the responsibility of Bosnia and Herzegovina, the Chamber decided to transmit all of the applications to both respondent Parties under Rule 49(3)(b) of its Rules of Procedure and invite them to submit written observations.

9. The observations of the Federation were submitted on 14 and 26 May 1998. Bosnia and Herzegovina did not submit any observations at that stage of the proceedings. On 23 July 1998 the applicants' representative submitted observations in reply and claims for compensation. On 30 November 1998 the Chamber requested the parties to provide additional observations and answers to specific questions. Such observations were submitted by the applicants' representative and Bosnia and Herzegovina on 4 February 1999.

10. The Chamber invited the Human Rights Ombudsperson for Bosnia and Herzegovina and the Ombudsmen of the Federation of Bosnia and Herzegovina to participate in the proceedings as *amici curiae*. By a letter of 8 February 1999 the Ombudsperson notified the Chamber that she would not intervene in the proceedings. However, following their positive reply, the Chamber, on 11 February 1999, granted the Federation Ombudsmen standing as *amicus curiae* for the submission of written observations. They submitted such observations on 2 March 1999.

11. On 14 December 1998 the Chamber decided to hold a public hearing in the cases in February 1999. It was later postponed until 9 March 1999. On 25 February and 3 March 1999 the following persons were summoned to testify: Mr. Johan van Lemoen, Deputy High Representative in Bosnia and Herzegovina for Legal Affairs, as expert; Mr. Saumya Mitra, Deputy Director of the World Bank Resident Mission to Bosnia and Herzegovina, as expert; Mr. Kasim Omićević, member of the Board of the Central Bank of Bosnia and Herzegovina, as expert; Mr. Obrad Piljak, Associate Professor at the Faculty of Economic Sciences of the University of Sarajevo and Chief Inspector of the Central Bank of Bosnia and Herzegovina, as witness; and Mr. Adnan Mujagić, Director of the Privatisation Agency of the Federation of Bosnia and Herzegovina, as witness.

12. Bosnia and Herzegovina and the Federation submitted additional observations on 23 February and 4 March 1999, respectively.

13. By a letter of 3 March 1999 the World Bank informed the Chamber that, due to its diplomatic status and the immunity flowing from it, its official could not participate as expert either by appearing at the public hearing or by giving written answers to the Chamber's questions. The Office of the High Representative (OHR) also declined to appear at the hearing but sent written answers on 8 March 1999 to the questions sent by the Chamber in preparation for the hearing and requested that their reply be taken into account as observations submitted in its capacity as *amicus curiae*.

14. The Chamber held the public hearing in the Cantonal Court in Sarajevo on 9 March 1999. The applicants appeared in person with their representative. The respondent Parties were represented by Mr. Jusuf Halilagić for Bosnia and Herzegovina and Ms. Seada Palavrić for the Federation of Bosnia and Herzegovina. Of the persons summoned to testify appeared Messrs. Omičević, Piljak and Mujagić.

15. Following the public hearing, the Chamber, on 24 March and 22 June 1999, put additional questions to the parties. The applicants' representative sent additional observations on 6 April 1999 (containing the applicants' claims for compensation as of 10 March 1999) and 3 May and 30 June 1999. The Federation submitted additional observations and documents on 6 and 12 April, 20 May and 5 July 1999.

16. On 7 September 1999 the Chamber appointed Professor Dragoljub Stojanov of the Faculty of Economic Sciences at the University of Sarajevo as expert and requested him to prepare a written expert opinion on specific questions regarding the foreign currency savings accounts and the privatisation process. His written opinion, received on 8 October 1999, was transmitted for comments to the parties. The applicant's representative replied on 29 and 31 October 1999 and the Federation on 2 November 1999.

17. On 1 November 1999 the Chamber decided to schedule an additional public hearing. It invited the parties and Mr. Stojanov, and requested them to answer some further questions in writing prior to that hearing. They all submitted answers on 2 December 1999.

18. The Chamber held the additional public hearing in the Cantonal Court on 7 December 1999. Again, the applicants appeared in person with their representative. The respondent Parties were represented by the same persons as at the Chamber's first hearing. Mr. Stojanov was heard as expert.

19. The applicants' representative sent additional information in the cases on 24 January and 1 and 8 February 2000.

20. The Chamber deliberated on the admissibility and merits of the applications on 11 and 12 May, 1 November and 7 and 8 December 1999 and 12 February, 9 April and 8-10 May 2000. On 10 May 2000 it decided to join the applications and adopted the present decision.

III. ESTABLISHMENT OF THE FACTS

A. The facts of the individual cases

1. Case no. CH/97/48, Milovan Poropat

21. Mr. Poropat, who is unemployed, lives in Vogošća. He has a foreign currency savings book issued by the former Privredna Banka Sarajevo. His savings as of 31 March 1992 were recorded in the following amounts: 47.55 US dollars (USD), 171 Swiss francs (CHF), 1,880.18 German marks (DEM) and 2,401.72 French francs (FRF). The total amount is thus equivalent to approximately DEM 2,900. Deposits were made on the accounts on various occasions between 1975 and 1990. No withdrawal of CHF has been recorded. The most recent withdrawal from the DEM account was made on 31 May 1991. After 31 March 1992, Mr. Poropat withdrew FRF 68.91 on 18 July 1994 and a total of USD 35.86 on three occasions in 1994, the last one on 20 June 1994.

22. On 24 December 1996 Mr. Poropat commenced proceedings against Central Profit Banka (legal successor of Privredna Banka), Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina before the Municipal Court I in Sarajevo. He requested disbursement of the deposited foreign currency plus interest.

23. A hearing in the case was held on 4 March 1997. Central Profit Banka contested the claim. The other respondents did not appear. The bank took the position that, because of the legislation of the Republic of Bosnia and Herzegovina regarding foreign exchange transactions, earlier legal provisions had ceased to apply. Therefore, all previous relations between banks and their clients concerning foreign currency savings remained frozen until further notice. In another hearing held on 21 July 1998, the proceedings were adjourned by a procedural decision because Mr. Poropat did not appear. He received a copy of this decision on 6 August 1998. On 22 January 1999 the court issued another procedural decision, in which it considered that the action had been withdrawn as Mr. Poropat had not requested that the proceedings be continued. His appeal against this decision was rejected by the Cantonal Court on 30 June 1999, but his representative received the decision only on 5 January 2000. According to the representative, no further action has been taken either by the courts or by Mr. Poropat or his representative.

24. On 3 May 1999 Mr. Poropat received a statement from the Unique Citizen's Account which contained no entry of foreign currency savings but only recorded his "general claims". He had not registered his foreign currency savings in the unique account as he wishes to keep his claims against the bank and to have his savings disbursed in cash.

2. Case no. CH/97/52, Senija Poropat

25. Ms. Poropat, a lawyer, lives in Vogošća. She has a foreign currency savings book issued by Jugobanka Sarajevo. Her savings come to USD 558.31 and DEM 520.22, the total amount thus

being equivalent to approximately DEM 1,600. The DEM and USD amounts were recorded on 28 and 30 January 1992, respectively, when she made the most recent withdrawals. The last interest was added to the accounts in January 1992.

26. On 24 December 1996 Ms. Poropat initiated proceedings against Union Banka (legal successor of Jugobanka), Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina before the Municipal Court I in Sarajevo. She requested disbursement of the deposited foreign currency plus interest.

27. While Union Banka and the Federation of Bosnia and Herzegovina contested the claim, Bosnia and Herzegovina neither responded nor appeared at the hearings on 18 February, 1 April and 10 May 1997. Ms. Poropat requested a judgment by default against Bosnia and Herzegovina but the court rejected her request on 1 April 1997. Her appeal against this procedural decision was refused by the Cantonal Court on 12 May 1998. On 15 December 1999 the Municipal Court rendered a judgment on the merits, rejecting Ms. Poropat's claim. The court gave the following reasons:

> "...[The] court considers that the claim against the first respondent [Union Banka] is ill-founded due to its lack of standing to be sued and the fact that the State of Bosnia and Herzegovina, as legal successor of the former SFRY, took over the obligation to deal with the payment of old foreign currency savings to individuals. One must bear in mind, however, that [the Citizens' Claims Law] enabled individuals to use their funds by transferring them to the unique account and participating therewith in the privatisation process. [The Federation of Bosnia and Herzegovina] thereby provided a form of compensation to individuals for the foreign currency that they had deposited with banks before the war.
>
> However, neither this Law nor the applicable legislation concerning foreign exchange transactions [the court refers to the 1994 Decree; see paragraph 89 below] provides for the possibility to pay the whole amount of a foreign currency savings deposit if it concerns pre-war savings.
>
> In the opinion of the court, the claim is ill-founded with respect to the second respondent, the State of Bosnia and Herzegovina, although, having in mind provisions of the Constitution and [the General Framework Agreement], it is certainly the legal successor of the former SFRY. Until the moment of succession of the property of the former SFRY, the obligation to pay the foreign currency savings deposits, and consequently the claim of the plaintiff, must not be imposed on the second respondent. This is so because it did not succeed into all rights and obligations. This issue shall be regulated in the process of succession of the property of the former SFRY, in which one of the successors is the State of Bosnia and Herzegovina, represented by the State Directorate for the Succession of the Property of the Former SFRY. Having regard to the above, thus the fact that foreign currency savings deposits were deposited with the National Bank of the former SFRY and constituted a part of the total foreign currency reserve of the former SFRY, this court considers that the claim is ill-founded with respect to the third respondent [the Federation of Bosnia and Herzegovina], considering that the third respondent is not the legal successor of the former SFRY and cannot directly participate in the succession after this legal person ... .
>
> [The Citizens' Claims Law] regulates the participation of individuals in the privatisation process through their certificates, by which the Federation enables its citizens to use their funds for certain purposes in the course of privatisation. However, in the opinion of this court, Article 3 paragraph 1 cannot be regarded as taking over the obligations in whole since the Federation did not provide a guarantee for the foreign currency savings in question. It also follows from this Law that the individuals have the opportunity to choose freely whether to use the possibility of transferring their funds to the unique account, and it follows from the same Law that there is no possibility to pay the amounts which exceed DEM 100. Having regard to the above and the presently applicable legislation, there is no possibility to grant the applicant's claim ..."

Ms. Poropat appealed against this judgment to the Cantonal Court on 10 February 2000. The appeal is pending.

28. Ms. Poropat received a statement from the Unique Citizen's Account on 24 January 2000. It contained no entry of foreign currency savings but only recorded her "general claims". She had not requested her savings to be entered into the unique account as she wishes to have cash disbursements from her account.

3. Case no. CH/97/105, Muradifa Šeremet

29. Ms. Šeremet, a pensioner, lives in Bugojno. She has a foreign currency savings book issued by Privredna Banka Sarajevo. On 17 February 1992 her savings were recorded in the amounts of DEM 12,697 and 2,629.46 Austrian shillings, the total thus being equivalent to approximately DEM 13,100. The savings book records no transactions.

30. On 27 June 1997 Ms. Šeremet initiated proceedings against Central Profit Banka Sarajevo, Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina before the Municipal Court I in Sarajevo. She requested disbursement of the deposited foreign currency plus interest.

31. Hearings in the case were held on 18 June and 7 October 1998. By a letter of 28 October 1998 the court asked Ms. Šeremet's representative to submit the correct name and address of the second respondent (i.e. Bosnia and Herzegovina). At another hearing on 6 October 1999 the court decided to postpone further consideration of the case until 19 January 2000 as Bosnia and Herzegovina had not appointed a representative for the proceedings. The proceedings are still pending.

32. On 9 June 1999 Ms. Šeremet received a statement from the Unique Citizen's Account in which her claim based on her foreign currency savings was entered. She had had her claim registered in the unique account as she feared that she might lose her savings if she did not do so. She asserts that this fear was based on media reports, for instance comments made by Mr. Mujagić, the Director of the Federation Privatisation Agency. Upon receipt of the statement, she objected to the bank against the entry as she wished to have her foreign currency savings disbursed in cash. Her appeal was rejected with the argument that the bank had been instructed by the Agency not to make corrections of the statements in the unique account. She has not used her certificate as she owns a private house and, thus, has no need or opportunity to buy a socially owned apartment. Further, she does not have the cash necessary for purchasing items in the small-scale privatisation.

4. Case no. CH/97/108, Muhamed Hrelja

33. Mr. Hrelja, a former baker, lives in Vogošća. He has foreign currency savings books issued by Jugobanka and Privredna Banka Sarajevo. The latter book records his savings as of 31 March 1992 as follows: USD 692.32, CHF 786.11, DEM 9,474.12, 94.56 Danish kroner and 322.95 Swedish kronor. The total amount is thus equivalent to approximately DEM 11,900. No transactions are recorded.

34. On 4 September 1997 Mr. Hrelja initiated proceedings against Central Profit Banka Sarajevo, Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina before the Municipal Court I in Sarajevo. He requested disbursement of the above-mentioned foreign currency amounts plus interest.

35. By a letter of 18 September 1997 the Municipal Court asked him to complete his action. As he did not react, the court made a procedural decision on 26 March 1998, rejecting the action as incomplete. Upon appeal, the Cantonal Court reopened the case and referred it back to the Municipal Court. On 16 September 1999, at the request of Bosnia and Herzegovina, further examination of the case was postponed for an indefinite period due to the fact that it had not appointed a representative. However, a hearing in the case was later scheduled for 28 March 2000.

36. On 9 June 1999 Mr. Hrelja received a statement from the Unique Citizen's Account in which his claim based on his foreign currency savings was entered. Like Ms. Šeremet, he had had the claim registered in the unique account as, on account of reports in the media, he was afraid that he would otherwise lose his savings. By a letter of 15 June 1999 he objected to the bank against the entry, stating that he wished to have disbursement in cash. The bank has not replied. For the same reasons as Ms. Šeremet, he has not used his certificate.

B. Oral and written evidence by experts and witnesses

1. Mr. Kasim Omičević, expert

37. Mr. Omičević is a member of the Board of the Central Bank of Bosnia and Herzegovina. From 1993 until the end of 1997 he was the Governor of the former National Bank of Bosnia and Herzegovina, after having served as its Vice-Governor from 1982 to 1986 and after that as its Deputy Governor for one year. Between 1978 and 1982 he was the Vice-President of the Steering Committee of Privredna Banka Sarajevo. He was heard at the Chamber's public hearing on 9 March 1999.

38. Mr. Omičević stated that the banking system of the SFRY consisted of the National Bank of Yugoslavia in Belgrade, national banks in the respective republics and socially owned commercial banks. Because of depreciation of the Yugoslav dinar, people usually saved in foreign currencies (about 90 per cent of all private savings were in foreign currencies). The commercial banks, often funded and partly owned by companies (also socially or publicly owned), received deposits from individuals for which they would issue foreign currency savings books. There was no obligation to deposit such holdings with the banks. However, people normally trusted the banks; in 1978 the equivalent to 5.7 billion USD was deposited in foreign currency savings accounts in the SFRY, and at the end of 1990 that amount had increased to 13.6 billion USD. Based on 1989 figures, the foreign currency savings of people in the Bosnia and Herzegovina republic could be estimated at 1.7 billion USD.

39. The commercial banks would transfer their foreign currency to the National Bank of Yugoslavia. During the period 1978-1990 roughly 90 per cent of the entire foreign currency savings in the SFRY was deposited with the National Bank, according to Mr. Omičević. The savings of private individuals constituted the major part of the overall foreign currency reserve of the SFRY. This money was mostly used to credit companies for purchases abroad. Only a minor portion of it was exchanged into dinars.

40. The SFRY guaranteed the money deposited in foreign currency savings accounts. Over the years, however, it became more and more difficult for the commercial banks to withdraw foreign currency from the National Bank, and thus the banks often stopped paying out foreign currency to individual savers. Instead, withdrawals had to be made in dinars. In October 1988, through amendments to the Law on Foreign Exchange Transactions, the policy of transfers from the commercial banks to the National Bank was abolished. The SFRY took over, as internal debt, the individuals' claims for disbursement of their foreign currency savings. All savings should have been reimbursed by April 1992. However, these plans were never realised.

41. Mr. Omičević claimed that the foreign currency reserves of the SFRY declined from approximately 14 billion USD to a "trivial amount" in 1991, prior to the dissolution of the SFRY. It is widely suspected that part of the money that had disappeared was spent on buying arms for the later war and that the remainder was secretly deposited in foreign banks abroad. Slovenia might have succeeded in withdrawing some of its foreign money deposited with the National Bank of Yugoslavia. The Republic of Bosnia and Herzegovina did not, however, although it had a positive balance of payments in 1989-1991, that is, it had transferred more foreign currency to the National Bank than it had withdrawn. The balance sheets of the banks in Bosnia and Herzegovina still contain an item titled "claims against monetary authorities", i.e. claims against the National Bank.

42. Noting that the pre-war savings of people in Bosnia and Herzegovina were three times higher than the current budget of the Federation of Bosnia and Herzegovina, Mr. Omičević concluded that full reimbursement of foreign currency savings would lead to total economic collapse. However, he was not aware of any legislation cancelling claims related to such savings.

43. Because of numerous mergers and partitions over the years, Mr. Omičević claimed that it was not possible to fully determine who are now the owners of the former commercial banks. For example, at least six or seven banks are the successors of Privredna Banka, Central Profit Banka being one of them. He expressed the opinion that the Federation might have assumed some of the obligations of the former commercial banks by enacting the privatisation laws.

44. Today, there are banks functioning in Bosnia and Herzegovina and public confidence in these institutions is growing again. Some private individuals and many international institutions have made deposits on "new" foreign currency savings accounts and have been able to make withdrawals from these accounts.

2. Mr. Obrad Piljak, witness

45. Mr. Piljak is an associate professor at the Faculty of Economic Sciences of the University of Sarajevo and Chief Inspector of the Central Bank of Bosnia and Herzegovina. Formerly, he was the Director of Privredna Banka. He was also the Governor of the former National Bank of Bosnia and Herzegovina from 1987 to 1989 and its Vice-Governor from 1990 to 1997. Between April 1989 and November 1990 he served as the President of the Presidency of the Socialist Republic of Bosnia and Herzegovina. He was heard at the public hearing on 9 March 1999.

46. Mr. Piljak stated that it had been attractive for private individuals (even those living and working abroad) to deposit money on the foreign currency savings accounts as the holders of such accounts were offered loans for construction purposes without having to provide security. Further, the interest paid on the savings was about 10 per cent, which was 2-3 times higher than in other European countries. Therefore, the foreign currency savings increased very quickly.

47. Mr. Piljak expressed doubts as to whether the commercial banks had been under an obligation to deposit foreign currency with the National Bank of Yugoslavia. Rather, the commercial banks deposited part of their foreign currency because, in return, the National Bank was obliged to grant the banks interest-free loans in dinars according to the official exchange rate. The commercial banks used the dinars they received mainly for their own investments or to give loans to companies. The banks later experienced financial difficulties when, in 1992 and 1994, the dinar was devalued by the erasure of six zeros. The claims against companies for unpaid loans in dinars thus practically lost their value.

48. Only a smaller part of the foreign currency held by the commercial banks (probably one third of the total amount) was *de facto* transferred to the National Bank; the rest remained in the respective republics and was spent there. It was mainly used to pay for the import of equipment, food and other goods.

49. Mr. Piljak did not know of any legal provision that had blocked or cancelled the foreign currency savings accounts. There were, however, limitations on withdrawals from these accounts. Moreover, as from 1992 there was simply no inflow of foreign currency (e.g. export earnings or loans) which the banks could have used to make payments out of the accounts. He further believed that, as the successor states of the SFRY had taken over the assets on their respective territories, they had also become guarantors of the savings of its citizens.

50. The gradual reimbursement of the foreign currency savings by Bosnia and Herzegovina or its Entities, as part of payments on the public debt, was initially considered. That solution was later dismissed as unfair by the political institutions, as payments to other categories of persons (including military personnel, pensioners and former employees of socially owned companies) were still outstanding. Also, the public debt solution to the foreign currency deposits would have placed a very heavy burden on the public budgets. Mr. Piljak considered therefore that the privatisation scheme eventually agreed upon had been the only viable solution and he hoped that as many persons as possible would participate in the privatisation process.

51. Mr. Piljak further believed that, if in the process of privatisation a bank would go into liquidation due to its being insolvent, the holders of foreign currency savings accounts – both old and new – would be the first category to be compensated in the bankruptcy proceedings. However, it is very difficult to assess the capital of the banks, as they often have claims against insolvent companies as well as claims related to unsecured loans. The situation of Privredna Banka is allegedly very complex as it has been succeeded by several banks. It is not clear whether the legal successors will be able to realise claims against their debtors or whether any funds can be recovered by selling securities or other assets.

3. Mr. Adnan Mujagić, witness

52. Mr. Mujagić is the Director of the Privatisation Agency of the Federation of Bosnia and Herzegovina. He was heard at the public hearing on 9 March 1999.

53. He stated that the value of the foreign currency savings that could be converted into certificates and thus be used in the privatisation process is 2.3 billion DEM. At the time of the public hearing, 26 per cent of those savings had already been converted into certificates. In total, certificates worth 17 billion DEM had so far been issued to holders of foreign currency savings accounts and other people who had claims that were to be realised in the privatisation process. In comparison, the Privatisation Agency had identified state assets to be privatised in the nominal value of 26 billion DEM. The values of these assets had been established on the basis of data given by official institutions and with the assistance of international experts. The above figures show that there is a reserve in the state assets to be privatised. Thus, the claims made in the privatisation process are covered by the assets that will be available for purchase.

54. Referring to Article 3 of the Citizens' Claims Law, Mr. Mujagić expressed the view that the privatisation programme gave private savers the right to convert foreign currency savings into certificates by confirming their wish to do so with the Federal Payment Bureau. He alleged, however, that they were not under any obligation to convert their savings into certificates. He did not know what would happen to the savings which were not so converted and which, consequently, would not be used to purchase privatised assets.

55. Mr. Mujagić also stated that certificates and cash money are treated as equal means of payment in the privatisation programme. However, in buying an apartment with an occupancy right, the purchaser is given a discount if he or she pays in cash rather than with certificates. Further, when buying assets made available in the so-called "small-scale privatisation", i.e. mainly shares and assets of enterprises, 35 per cent of the purchase price has to be paid in cash. Moreover, the certificates can be used only for a period of two years after their issuance and have no value after the expiration of that period. The two-year time-limit was chosen to allow for a speedy privatisation process in Bosnia and Herzegovina. Experience drawn from other states whose economy and property regulations had gone through a similar transition indicated that a speedy privatisation process was important in achieving a speedy overall transition and recovery of the country.

4. Mr. Dragoljub Stojanov, expert

56. Mr. Stojanov is Professor at the Faculty of Economic Sciences of the University of Sarajevo. He was a member of the Government of the Republic of Bosnia and Herzegovina in 1993-1994 and of the Federation of Bosnia and Herzegovina in 1996-1997. Appointed as expert by the Chamber, he submitted a written opinion on 8 October 1999 and was heard at the public hearing on 7 December 1999.

(a) Written opinion

57. Mr. Stojanov confirmed that the interest of people in the SFRY to deposit money on foreign currency savings accounts – for which the government offered guarantees – was prompted by the continuing depreciation of the dinar. The government tried to stabilise the country's economy, and over the years – especially in 1991 – the right to dispose of these savings was increasingly restricted and limited to small amounts. However, they were not frozen entirely. As from 1990 it was possible to deposit and dispose of so-called "new" foreign currency savings without limitations.

58. The commercial banks in the Yugoslav republics deposited their foreign currency with the National Bank of Yugoslavia on a voluntary and contractual basis. In exchange they were granted interest-free credits in dinars which they could then lend, at interest, to their clients. The interest thereby drawn was higher than the profit that banks could make by depositing foreign currency in accounts abroad. The banks used their dinar credits within the territory of the respective republic with the direct knowledge and involvement of the national bank of the republic, which *de facto* provided the credits from its foreign exchange quota with the National Bank of Yugoslavia. The deposit of foreign currency with the National Bank was normally only a *pro forma* or ledger transaction. Thus, a

large part of the foreign currency remained with the commercial banks. Mr. Stojanov did not know what had happened to this money following the independence of the Republic of Bosnia and Herzegovina.

59. Mr. Stojanov was of the opinion that the commercial banks in the Federation have obligations towards the individuals who deposited money on the old foreign currency savings accounts. Furthermore, by enacting legislation concerning these savings, the Republic of Bosnia and Herzegovina, Bosnia and Herzegovina and the Federation had also assumed obligations towards the depositors. However, having regard to the amount of unpaid old foreign currency savings – equivalent to about 1.8 billion Convertible marks (*Konvertibilnih Maraka*; KM) in the banks of the Federation – neither the Federation nor the state of Bosnia and Herzegovina has the economic potential to pay the old savings to the depositors. Also, due to a lack of assets and the existence of other liabilities, the banks would go bankrupt if they were obliged to disburse the old savings. Even so, it would be impossible to cancel the depositors' claims as the resultant distrust in the banking system would have serious consequences for the overall national economy.

60. However, the solution chosen for the old foreign currency savings accounts, that is, their conversion into certificates to be used in the privatisation process, presents several problems: it transforms the secure currency savings, which enjoyed the public's confidence, into forms of property – first certificates and then possibly company shares – whose value is very uncertain, and it forces many savers to become investors, whether they want to or not. Also, people without an occupancy right will not be able to buy an apartment under the present rules. Further, those who are in a position to buy an apartment with certificates will not enjoy the discount given to those who pay in cash. This shows that certificates are not treated as equal means of payment with cash money. The limited, two-year, validity of the certificates poses another problem. Having regard to these and other difficulties and the disappointing results of similar programmes in other states in transition – for example Slovenia, where there is simply no market on which the certificates can be invested – Mr. Stojanov found it likely that holders of certificates will not be able to realise their nominal value. Rather, many people will have to sell their certificates on the secondary market at heavily discounted prices.

61. Mr. Stojanov concluded that it would have been more appropriate to adopt a combination of methods to solve the problem of the foreign currency savings accounts. He suggested that the individual savers should have the right to transform, of their own free will, part of their savings into privatisation certificates. The remainder would be kept in its old form, i.e. in the old accounts, and could be covered by the public debt of the Federation. Furthermore, noting that, in the Federation, there are about 470,000 savers whose individual foreign currency deposits equal KM 200 or less and that the total amount of these deposits corresponds to 25 million KM, he considered that the Federation should pay these "small" savings to the depositors. Due to its convertibility, payment in KM should be accepted. In Mr. Stojanov's opinion, these methods would help restore confidence in the banking system and public institutions.

(b) Evidence given at public hearing

62. Mr. Stojanov asserted that the issue of the foreign currency savings accounts must be addressed together with questions relating to the restitution of socialised property, the external debt of Bosnia and Herzegovina and the economic development of the country. Such concerted action is necessary as the solution chosen for one of the problems might affect the others.

63. He further stated that the risk of banks going bankrupt would not be the only problem if they were to disburse money to foreign currency savers. If payments were to be made in foreign currency, the additional result could be considerable insolvency and impairment of the functioning of the Currency Board in Bosnia and Herzegovina. In any event, it is difficult to assess to what extent individual savers would be able to realise their claims against the banks in bankruptcy proceedings. The balance sheets of banks often states the nominal value of assets and claims against, for example, companies. It cannot be predicted whether such claims of the banks against their debtors could be recovered and what could be gained by selling bank property.

64. Mr. Stojanov expressed considerable misgivings as to the chosen privatisation scheme. The experience of other countries in transition and the opinions of numerous experts suggested that the transition in Bosnia and Herzegovina is going to be a difficult long-term process. Also the problematic political situation in the country and the general post-war conditions are likely to delay and complicate that process. Furthermore, the value of the privatisation certificates and the assets made available in the privatisation process depend, to a large extent, on the economic development of the country. Different institutions and experts have made contradicting predictions in this respect. While the World Bank expects that the gross national product (GNP) will increase by 14 per cent in the years 2000 and 2001, others foresee a low growth rate or even a decrease of the GNP. Another factor that affects the value of certificates and assets is the public's confidence. The fact that certificates are sold on the secondary market at very low prices shows that people do not trust the system. For these reasons, it is very difficult to estimate the market value of the assets which are presently being offered or which are going to be offered in the privatisation process. In regard to the statement by Mr. Mujagić that the nominal value of these assets is 26 billion DEM, Mr. Stojanov stressed that nominal and real value should not be confused. The real value, i.e. the market value, will only be revealed in the privatisation process.

C. Other evidence obtained by the Chamber

1. Statements of the Federal Ministry of Finance and the Privatisation Agency

(a) Opinion of the Federal Ministry of Finance of 21 April 1998

65. At the request of the Privatisation Agency, the Federal Ministry of Finance gave the following interpretation on certain rules relating to the privatisation process:

> "1. All old foreign currency savings of individuals will be transferred from the banks to the Federal Ministry of Finance in accordance with the Law on Opening Balance Sheets of Enterprises and Banks.
> 2. Records of the individuals' claims based on the frozen bank accounts shall be transferred to a consolidated account at the organisational unit of [the Federal Payment Bureau] in accordance with [the Citizens' Claims Law] and the Instructions on Registration and Settlement of Citizens' Claims in the Unique Citizen's Account. In this way, the depositors may be compensated for their savings deposits through participation in the privatisation process by purchasing property managed or controlled by the Federation.
> ...
> 4. The depositors have discretion as to whether they will use their savings within the process of privatisation as compensation for their savings deposits. If a depositor decides not to participate in the privatisation process, and thus not to be compensated for his or her savings deposits through the consolidated account, the relevant claim shall not be cancelled for a period of two years.
> 5. However, as the Federation has only a limited budget and other property which could compensate depositors, it is very uncertain whether such depositors will be compensated at all and, if so, in what way."

(b) Statement of Mr. Mujagić of 14 May 1998

66. In reply to a letter from the Federation Government regarding one of the present applications, Mr. Mujagić, the Director of the Privatisation Agency, stated, *inter alia*, the following:

> "Having provided for the participation of individuals in the process of privatisation, the Federation of Bosnia and Herzegovina has established a possible way of settling its obligations towards citizens of the Federation of Bosnia and Herzegovina, but this shall not be seen as if it had assumed such an obligation in whole as it is not a full guarantee for the claims based on individuals' old foreign currency savings. The individuals have been given this possibility but it is open to them as to whether they will or will not use the possibility. As for those individuals who do not use the given possibility, there is an opinion of the Federal Ministry of Finance [see paragraph 65 above]."

(c) Newspaper interview with Mr. Mujagić published on 8 December 1998

67. In an article published in the newspaper *Oslobođenje*, brought to the Chamber's attention by the applicants' representative, it was stated that the Privatisation Agency was dissatisfied with the

percentage of holders of foreign currency savings accounts that had registered their claims. Mr. Mujagić was quoted as follows:

> "There are only 23 percent of these. When persons who did not do it get their statement of general paper assets, they will have 30 days to settle the account (to transfer assets from their savings accounts to the common certificate account). If they fail to do so even then, they can consider that their foreign currency savings are lost for good."

(d) Statement of Mr. Mujagić of 22 April 1999

68. At the request of the agent of the Federation, Mr. Mujagić gave the following information. According to 1997 figures, provided by the Federal Payment Bureau, the value of assets that will be offered in the privatisation process is 26 billion KM. These assets may be bought with certificates issued for the following categories of claims: (a) old foreign currency savings (total amount approximately 2.3 billion KM); (b) unpaid salaries of the members of the armed forces of Bosnia and Herzegovina (7.7 billion KM); (c) "general claims" (7 billion KM); and (d) unpaid pensions (700 million KM). The claims based on the old foreign currency savings are calculated in DEM in accordance with the exchange rate of the National Bank of Bosnia and Herzegovina on 31 March 1992 and registered in KM in the Unique Citizen's Account.

(e) Statement of Mr. Mujagić of 21 July 1999

69. In reply to the applicant in another case lodged with the Chamber (case no. CH/98/622, Mirza Kahvić), Mr. Mujagić stated, *inter alia*, the following (parts in bold type as in original letter):

> "Your consent to the transfer of claims to the Unique Citizen's Account was not needed as it has been established by Article 7 of [the Citizens' Claims Law] that **a bank shall transfer** claims under Article 3 of the Law to the Unique Citizen's Account of the saver (the issuance of an order or consent of the saver is not stipulated). Thus, it has been stipulated by the Law that a bank **ex lege** transfers the claims of the old foreign currency savings to [the Federal Payment Bureau] which then appear on the Unique Citizen's Account of the saver.
> ...
> Your request to stop the transfer of the claims to the Unique Citizen's Account and the return of the same to a foreign currency savings book at Union Banka Sarajevo has no basis in law because the Law does not provide for that possibility.
> ...
> Thus, from the above stated, it is evident that individuals do not give orders for the transfer of claims in respect of "the old foreign currency savings" to the Unique Citizen's Account but, by submission of their personal identification number, enable the claims (acquired by the Law) to be recorded in the account of [the Federal Payment Bureau]."

2. Other documents

70. The Chamber has received and reviewed the balance sheets of Union Banka for the years 1996-1998 and of Central Profit Banka (until 1997 called Central Banka) for the years 1994-1998. The Chamber has also had at its disposal a letter of 5 February 1999 sent, upon request, by Central Profit Banka to the agents of Bosnia and Herzegovina and giving information on the accounts of Messrs. Poropat and Hrelja, the bank's practice with regard to old foreign currency savings accounts in general and the legislation relevant to such accounts. In that letter, Central Profit Banka expressed the view that Article 150 of the 1992 Decree with Force of Law on Foreign Exchange Transactions (see paragraph 88 below), in stating that the SFRY Law on Foreign Exchange Transactions ceased to apply, practically froze the old foreign currency savings.

71. The Chamber has had further regard to the *Newsletter on Economic Reform and Reconstruction in Bosnia and Herzegovina*, issued monthly by the OHR and containing, *inter alia*, information on the privatisation programme. In the February 2000 issue it was stated that a non-navigable bureaucracy, legislative barriers, resistance from enterprise managers and political resistance had impeded a rapid privatisation and dissuaded investors.

3. Information on public sales in the privatisation process

72. On 17 February 2000, following a public tender, the sale of a building and the surrounding yard at Ulica Josipa Štadlera 15 in Sarajevo was concluded. The Commision of the Sarajevo Cantonal Privatisation Agency decided to accept the bid of KM 700,000 made by the Embassy of Switzerland. The asking price for the premises, owned by the company "Bosnafolklor", had been KM 1,200,000. The Commission gave the following reasons for its decision:

> "It was considered that the most favourable offer is the one made by the Embassy of Switzerland ..., compared to the others who offered less: the second-placed, Muamer Kalić, offered KM 1,200,000 but he would pay KM 470,000 in cash and the rest with certificates; the third-placed, Munib Bajrić, offered KM 940,000 but he would pay 35 per cent in cash and 65 per cent with certificates."

The Commission's decision was published in *Oslobođenje* on 24 February 2000 under the heading "Privatisation in practice – a certificate is just a worthless paper". It was accompanied by a letter from Mr. Kalić, who had made the second-placed bid. Mr. Kalić criticised the decision, claiming that it showed a practice of non-recognition of certificates in public sales and that, as a consequence, the certificates could be used only to buy insignificant items or be sold for a negligible percentage of their nominal value.

73. Another article, titled "Awaiting privatisation – end of illusions concerning certificates", was published in *Oslobođenje* on 24 April 2000. It stated that the Federal Privatisation Agency had, the week before, stopped the public tenders for 143 companies valued at a total of 591 million KM. The progress of the public registration for sale of shares in 1,016 companies, totalling 18.4 billion KM, was allegedly unknown. The article further referred to statements by Mr. Ejup Ganić, the President of the Federation of Bosnia and Herzegovina, who had allegedly suggested that companies should be sold in the privatisation process with a 75 per cent cash requirement, and by Mr. Nedim Lulo, the Deputy Director of the Privatisation Agency, who was reported as having stated that the more attractive companies should be offered to foreign investors and the remainder to domestic buyers, including owners of certificates. The article questioned whether certificates would remain a recognised means of payment in accordance with the Law on Privatisation of Enterprises or could be used only on a selective basis.

It was further stated that the value of certificates on the secondary market had fell to 3.5 per cent of their nominal value. Many people, in particular the unemployed, were forced to sell their certificates for a symbolic amount in cash. This opened the possibility for brokers to buy up certificates to use in the privatisation process. The article referred in this context to the sale of part of the Holiday Inn hotel in Sarajevo, the value of which had been estimated at 24 million KM but which had been sold for 15 million KM. According to the article, the purchasers had, in reality, paid less than 6 million KM, having paid 5 million in cash and the remainder in certificates bought for insignificant amounts.

4. Case-law of the domestic courts

74. In judgments issued on 19 and 26 June and 31 July 1997 (cases nos. Rev-23/97, Rev-24/97 and Rev-52/97), the Supreme Court of the Federation of Bosnia and Herzegovina rejected the respective plaintiffs' claims for disbursement from their foreign currency savings accounts. The lower instance courts had granted the claims, but the Supreme Court found that the plaintiffs did not intend to use their foreign currency for any of the purposes stated in Article 71 of the SFRY Law on Foreign Exchange Transactions and the 1991 Decision issued in accordance with that Article (see paragraphs 84 and 86 below). Thus, their claims could not be legally granted. By a judgment of 8 January 1999 (case no. Gž-622/98), the Cantonal Court in Sarajevo followed this reasoning in a similar case.

75. The Supreme Court's judgments were issued before the enactment of the Citizens' Claims Law and the various privatisation laws. While it appears that no case concerning foreign currency savings has been registered with the Supreme Court since the enactment of these laws, lower court judgments have been issued. On 25 September 1998 (no. P-604/98) the Municipal Court II in Sarajevo rejected a claim for disbursement of foreign currency savings, finding itself incompetent to

deal with the matter as the Citizens' Claims Law regulated "definitively" the claims related to old foreign currency savings. In a judgment of 26 November 1998 (no. P-509/98) the Municipal Court I in Sarajevo rejected a similar claim on the ground that the respondent bank lacked standing to be sued due to the provisions of the Citizens' Claims Law concerning the manner and procedure for the settlement of old foreign currency claims. However, by a procedural decision of 20 July 1999 (no. Gž-440/99), the Cantonal Court quashed the latter judgment and referred the case back to the Municipal Court for re-examination. The Cantonal Court found that the Citizens' Claims Law does not stipulate that all foreign currency claims shall be converted into claims against the Federation as, in the court's opinion, Article 7 of that Law provides that claims shall be transferred to the Unique Citizen's Account only when the individual depositor has made such a request to the relevant bank. Claims that have not been so transferred shall be considered as savings with the bank and the withdrawal of the savings shall be determined in accordance with the provisions of the Law on Foreign Exchange Transactions and other related regulations. The Cantonal Court apparently refers to the legislation enacted by the SFRY and the Republic of Bosnia and Herzegovina as the 1998 Federation Law on Foreign Exchange Transactions (see paragraph 105 below) only regulates the use of "new" foreign currency savings.

D. Submissions of *amici curiae*

1. The Ombudsmen of the Federation of Bosnia and Herzegovina

76. The Federation Ombudsmen stated that, following many requests from individuals for protection of their right to property in relation to the frozen bank accounts, the Ombudsmen had recommended that the Prime Minister and the Deputy Prime Minister of the Federation commence proceedings with a view to amending Articles 3, 15 and 18 of the Citizens' Claims Law or to have its constitutionality assessed by the Constitutional Court.

77. The Prime Minister, Mr. Bičakčić, replied to the Ombudsmen by a letter of 29 May 1998. He referred to an opinion of the Legislation Office of the Federation Government of 7 May 1998 to the effect that neither the State nor the Federation of Bosnia and Herzegovina would, in the near future, be in a position to refund the claims based on old foreign currency savings deposits. Thus, the conversion of these claims into privatisation certificates was made in the public interest and was, due to circumstances caused by the war, also the only realistic solution to the problem.

78. The Ombudsmen considered, however, that the above-mentioned legal provisions violate the property rights of the foreign currency depositors, as they have no right to choose how to use their old foreign currency savings but have to participate in the privatisation process within stipulated time-limits. Furthermore, the banks are liberated from their contractual obligations towards the depositors.

2. The Office of the High Representative

79. The OHR stated that is was not aware of any legislation by which the old foreign currency accounts had been blocked. Thus, no responsibility for the blocking of foreign savings accounts could be attached to either respondent Party. Rather, the blocking originated in events in the SFRY and, as a consequence of those events, the banks had stopped disbursements from the accounts of their own motion.

80. The transfer of account data of the persons eligible for registration in the Unique Citizen's Account is automatic. After registration the depositor will receive a certificate regardless of whether he or she has requested it. If the depositor chooses not to use or sell the certificate, his or her claims will be extinguished two years after the claims were registered in the unique account.

81. The OHR also stated that no order of priority applies to the settlement of the various claims enumerated in Article 2 of the Citizens' Claims Law. Further, in the privatisation process cash payment reductions are allegedly given only in regard to the purchase of apartments.

82. The OHR referred to data from the National Bank of Bosnia and Herzegovina according to which, as of 31 March 1991, the total number of foreign currency accounts was about 660,000 and

the number of accounts with deposits exceeding DEM 100 was 242,000. The total value of the foreign currency savings amounted to 2.36 billion DEM. The OHR further stated that, at the time when it submitted answers to the Chamber (8 March 1999), 75,077 depositors had registered their claims in the unique account, claiming a total of approximately 696 million DEM. However, none of the depositors had, at that time, been able to use their certificates.

E. Relevant domestic law

1. Legislation of the Socialist Federal Republic of Yugoslavia

83. The *Law on Contractual Relations* (Official Gazette of the SFRY – hereinafter "OG SFRY" – nos. 29/78 and 39/85) was taken over by the Republic of Bosnia and Herzegovina (Official Gazette of the Republic of Bosnia and Herzegovina – hereinafter "OG RBiH" – no. 2/92 and 13/94). The following provisions are relevant:

> Article 1035:
>
> "1. A contract on a monetary deposit is concluded when the bank obliges itself to accept and the depositor obliges himself or herself to deposit in the bank a certain amount of money.
> 2. By this contract the bank has the right to dispose of the deposited money and the obligation to return it in accordance with conditions determined in the contract."
>
> Article 1038 paragraph 2:
>
> "Unless otherwise agreed, ... the depositor has the right to dispose of the whole or a part of the balance [of the deposit] at any moment."

84. The *Law on Foreign Exchange Transactions* (OG SFRY no. 66/85; last amendment in OG SFRY no. 96/91) regulated the foreign currency deposits. The relevant provisions, as amended, stated:

> Article 14:
>
> "1. Domestic natural and legal persons may keep foreign currency on a foreign currency savings account or foreign currency savings deposit at an authorised bank and use it for making payments abroad, in accordance with the provisions of this Law.
> ...
> 3. The foreign currency on foreign currency savings accounts or foreign currency savings deposits are guaranteed for by [the SFRY]."
>
> Article 71:
>
> "1. Domestic natural persons may sell convertible currencies to an authorised bank or other authorised exchange office or they may deposit them in a foreign currency savings account or foreign currency savings deposit with an authorised bank.
> 2. Foreign currency kept in a foreign currency savings account or a foreign currency savings deposit may be used by domestic natural persons for payment of imported goods or services for his or her personal needs and the needs of close family members in accordance with the federal law governing foreign trade operations.
> ...
> 4. Foreign currency referred to in paragraph 2 of this Article may be used by domestic natural persons for the purchase of convertible bonds, for endowments for scientific and humanitarian purposes in Yugoslavia and for payment of a life insurance with an insurance company in Yugoslavia.
> 5. The National Bank of Yugoslavia shall regulate the operation of foreign currency savings accounts and foreign currency savings deposits of domestic and foreign natural persons."
>
> Article 103:
>
> "1. The National Bank of Yugoslavia is obliged, following a request of an authorised bank, to receive into deposit foreign currency funds which has effectively been deposited by domestic and foreign natural persons in foreign currency savings accounts or foreign currency savings deposits after the entry into force of this Law.

> 2. The methods and conditions for the deposition and withdrawal of foreign currency at the deposit of the National Bank of Yugoslavia shall be regulated by the Federal Executive Council on the proposal of the National Bank of Yugoslavia."

85. A *Decision on Methods and Conditions for the Deposition and Withdrawal of Citizens' Foreign Currency at the Deposit of the National Bank of Yugoslavia* (OG SFRY no. 73/85) was issued in accordance with Article 103. Paragraph 5 of the Decision provided:

> "1. On the basis of the deposited foreign currency ... the national banks shall authorise credits to banks in dinars in an amount equal to the deposited foreign currency, which shall be established on the basis of the average daily exchange rate applicable at the end of the respective month when the foreign currency is deposited.
> 2. When withdrawing foreign currency from the deposit, the bank is obliged to repay the national bank the used dinar credit in an amount equal to the amount of foreign currency withdrawn from the deposit, which shall be established on the basis of the exchange rate as applied when the same foreign currency was deposited."

86. On the basis of Article 71 of the Law on Foreign Exchange Transactions, a *Decision Regulating the Operation of Foreign Currency Savings Deposits of Domestic and Foreign Natural Persons* was promulgated on 25 January 1991 (OG SFRY no. 6/91). Paragraph 8 of the Decision confirmed the purposes for which foreign currency could be used, as prescribed in the amended Article 71. Paragraph 10 of the Decision added the following:

> "Domestic natural persons may withdraw from their accounts foreign money, cheques and letters of credit for travelling to a foreign country in accordance with applicable regulations."

The 1991 Decision was amended on 25 April and 16 May 1991 (OG SFRY nos. 30/91 and 36/91) by the addition of certain provisions, of which paragraph 17c established the following rules on advance announcement of withdrawals:

> "Authorised banks shall execute orders to pay to domestic natural persons foreign currency deposited in their foreign currency accounts ... if such persons previously announced to the authorised banks, within the following time-limits, that they will use foreign currency in the following amounts:
> (1) an amount not exceeding 500 German marks: within 15 days for the first withdrawal ... and within 30 days for any subsequent withdrawal ...;
> (2) an amount not exceeding 1,000 German marks: within 30 days for the first withdrawal ... and within 45 days for any subsequent withdrawal ...;
> (3) an amount not exceeding 3,000 German marks: within 90 days; and
> (4) an amount not exceeding 8,000 German marks: within 180 days."

87. The *Law on Banks and Other Financial Institutions*, published on 17 February 1989 (OG SFRY no. 10/89), provided, *inter alia*, the following:

> Article 1 paragraph 1:
>
> "A bank is an independent self-governing financial institution, which administers deposits, credits and other banking business in accordance with the law."
>
> Article 2:
>
> "1. A bank conducts its activities independently with a view to making profit based on the principles of liquidity, security and profitability.
> 2. Banks and other financial institutions are holders of all rights, obligations and responsibilities in legal payment operations with respect to both social and other funds at their disposal which they use in accordance with the nature and purpose of financial funds.
> 3. Banks and other financial institutions decide independently on the manner and form of organisation and association as well as on their activities in accordance with market conditions and profit-making, pursuant to the provisions of this and other laws."
>
> Article 61:
>
> "The liability of banks shall be settled out of the bankruptcy estate in the following order:

(1) claims of individuals;
(2) claims of the National Bank of Yugoslavia, [the SFRY] and other creditors who are not the founders of the bank;
(3) claims of the founders of the bank."

2. Legislation of the Republic of Bosnia and Herzegovina

88. On 11 April 1992, following the independence of the Republic of Bosnia and Herzegovina, the 1992 *Decree with Force of Law on Foreign Exchange Transactions* was issued (OG RBiH no. 2/92). The relevant provisions of this Decree provided:

> Article 9:
>
> "1. Domestic natural persons may keep foreign currency on a foreign currency savings account or foreign currency savings deposit at an authorised bank and use it for making payments abroad, in accordance with the provisions of this Decree.
> ...
> 3. The foreign currency on foreign currency savings accounts and foreign currency savings deposits is guaranteed for by the Republic.
> 4. The conditions and methods to honour the obligations based on the guarantee are regulated by a separate law."
>
> Article 144:
>
> "Conditions and methods for repayment of credits used by authorised banks on the basis of foreign currency of individuals deposited with the National Bank of Yugoslavia before the entry into force of this Decree and for reimbursement of foreign currency of individuals from deposits at the National Bank of Yugoslavia shall be determined by separate regulation."
>
> Article 150:
>
> "On the date of entry into force of this Decree, the SFRY Law on Foreign Exchange Transactions ceases to apply."

89. The 1992 Decree was later replaced by the 1994 *Decree with Force of Law on Foreign Exchange Transactions* (OG RBiH no. 10/94; later enacted as law, OG RBiH no. 13/94). The following provisions of the 1994 Decree are relevant:

> Article 3:
>
> "Foreign exchange [including foreign currency] may be used only for payments towards foreign countries unless determined otherwise by this Decree."
>
> Article 12:
>
> "Domestic and foreign natural persons may hold foreign exchange in accounts with banks and use them freely. ..."
>
> Article 44:
>
> "The foreign exchange reserves consist of claims on accounts in foreign countries and of foreign currency and securities issued in foreign countries ... [deposited] with the National Bank [of Bosnia and Herzegovina] and [authorised] banks."

The 1994 Decree also provided that the National Bank of Bosnia and Herzegovina should regulate the conduct of foreign exchange transactions (Article 19) and external payments (i.e. payments for exported and imported goods) (Article 25).

90. A *Decision on Aims and Objectives of the Monetary Credit Policy* was promulgated on 9 April 1995 (OG RBiH no. 11/95). Paragraph 12 of the Decision read:

> "Foreign currency savings of individuals deposited with the former National Bank of Yugoslavia shall be permanently resolved by the enactment of a law on the public debt of the Republic by the end of the first half of the year 1995."

This Decision was later amended with effect from 2 June 1995 (OG RBiH no. 19/95). The amended paragraph 12 provided that the law on public debt should be enacted before the end of September 1995. It further added that, pending the enactment of that law, the National Bank of Bosnia and Herzegovina could, with the consent of the Ministry of Finance, disburse foreign currency savings in the equivalent amount in dinars to members of the army of the Republic of Bosnia and Herzegovina for covering costs of medical treatment for them and members of their families.

91. On 10 April 1996 a *Decision on Aims and Objectives of the Foreign Exchange Policy* was issued (OG RBiH no. 13/96). Basically confirming the 1995 Decision, paragraph 7 of the 1996 Decision stipulated – without specifying a date – the following:

> "Foreign currency savings of individuals deposited with the former National Bank of Yugoslavia, together with the interest on these savings, shall be resolved by the enactment of a law on public debt of Bosnia and Herzegovina or in another way within the overall consolidation of the public debt of Bosnia and Herzegovina and in consultation with the international community."

3. The Constitution of Bosnia and Herzegovina

92. The *Constitution of Bosnia and Herzegovina*, set out in Annex 4 to the General Framework Agreement, provide, in so far as relevant to the present applications, the following:

> Article I – *Bosnia and Herzegovina*:
>
> "1. Continuation. The Republic of Bosnia and Herzegovina, the official name of which shall henceforth be 'Bosnia and Herzegovina', shall continue its legal existence under international law as a state …
> …"
>
> Article III – *Responsibilities of and Relations Between the Institutions of Bosnia and Herzegovina and the Entities*:
>
> "1. Responsibilities of the Institutions of Bosnia and Herzegovina. The following matters are the responsibility of the institutions of Bosnia and Herzegovina:
> …
> (d) Monetary policy as provided in Article VII.
> …
> 3. Law and Responsibilities of the Entities and the Institutions.
> (a) All governmental functions and powers not expressly assigned in this Constitution to the institutions of Bosnia and Herzegovina shall be those of the Entities.
> …"
>
> Article VII – *Central Bank*:
>
> "There shall be a Central Bank of Bosnia and Herzegovina, which shall be the sole authority for issuing currency and for monetary policy throughout Bosnia and Herzegovina.
> …"

4. Legislation of Bosnia and Herzegovina

93. On 22 July 1998 the High Representative in Bosnia and Herzegovina issued the *Framework Law on Privatisation of Enterprises and Banks in Bosnia and Herzegovina*. It entered into force the following day on an interim basis (Official Gazette of Bosnia and Herzegovina – hereinafter "OG BiH" – no. 14/98). It was finally adopted by the Parliamentary Assembly of Bosnia and Herzegovina on 19 July 1999 (OG BiH no. 12/99). The relevant provisions state:

> Article 1:
>
> "For the purpose of this Law:

BH natural persons means citizens of [Bosnia and Herzegovina], irrespective of their place of residence.
...
Citizens Claims means the right to compensation as part of the privatisation process in recognition of obligations as defined by Entity legislation.
..."

Article 2 paragraph 1:

"In accordance with the [General Framework Agreement], this Law expressly recognises the right of the Entities to privatise non-privately owned enterprises and banks located on their territory. ..."

Article 3:

"1. The Entity parliaments shall adopt legislation, which is non-discriminatory, ensures maximum transparency and public accountability in the privatisation process and is in conformity with [the General Framework Agreement].
2. The laws of the privatising Entity will cover only those assets and related liabilities located on its territory.
3. The laws of the Entities shall regulate on a non-discriminatory basis which BH or foreign natural and legal persons have the right to acquire shares and property in the privatisation process in accordance with Article 3.1 of this Law.
4. Criteria by which BH natural persons are entitled to Citizens Claims shall be based on the laws adopted by the Entities.

Such laws shall include BH natural persons who were citizens of the former Socialist Republic of [Bosnia and Herzegovina] and permanent residents on 31 March 1991 on the territory now falling within the privatising Entity. This includes refugees and displaced persons in accordance with Annex 7 to the [General Framework Agreement] as well as legal successors of dead and missing entitled persons."

Article 4 paragraph 2:

"Claims against enterprises and banks to be privatised shall be deemed as a liability of the privatising Entity."

5. Legislation of the Federation of Bosnia and Herzegovina

(a) Banks

94. On 11 February 1995 the *Law on Banks* was promulgated (OG FBiH no. 2/95). Article 4 provided:

"1. A bank conducts business independently, in accordance with market conditions, for purposes of making profit and based on the principles of liquidity, solvency and profitability.
2. A bank is a bearer of rights and obligations in legal operations in relation to the means at its disposal which it uses in accordance with the nature and purposes of financial means.

95. The 1995 Law was later replaced by a new *Law on Banks*, promulgated on 15 October 1998 (OG FBiH no. 39/98). Article 63 of the 1998 Law regulates the distribution of bank assets in bankruptcy proceedings:

"In the liquidation of a bank or part of a bank, the following priority of claims shall be observed:
(1) debts of the bank in liquidation which originates in advances of funds to the bank or other obligations created during the provisional administration of the bank or the liquidation pursuant to this Law;
(2) claims of secured creditors, up to the value of their security;
(3) deposits of natural persons, up to the equivalent to 5,000 KM per depositor;
(4) other deposits, including deposits of natural persons exceeding the equivalent of 5,000 KM per depositor;
(5) claims of other creditors;
(6) claims of shareholders."

(b) Citizens' claims

96. The *Law on Determination and Settlement of Citizens' Claims in the Privatisation Process* entered into force on 28 November 1997 and started to apply on 27 February 1998. Amendments took effect on 5 March 1999 (Official Gazette of the Federation of Bosnia and Herzegovina – hereinafter "OG FBiH" – nos. 27/97 and 8/99). The relevant provisions, as amended, provide:

> Article 1:
>
> "This Law establishes the determination and settlement of citizens' claims towards the Federation of Bosnia and Herzegovina ..., the method of registration and the procedure for the settlement of these claims in the process of privatisation."
>
> Article 2:
>
> "The citizens' claims settled in accordance with this law comprise claims based on old foreign currency savings, claims based on restitution of nationalised or confiscated property which cannot be returned into ownership and possession, claims based on unpaid salaries of members of the army of the Republic of Bosnia and Herzegovina, the Croatian Defence Council and the police force, and general claims determined by the Law on Privatisation of Enterprises."
>
> Article 3:
>
> "1. A person who has foreign currency savings in banks or bank business units located on the territory of the Federation of Bosnia and Herzegovina in an amount exceeding 100 KM, who was a citizen of the former Socialist Republic of Bosnia and Herzegovina and who, on 31 March 1991, was permanently residing in territory which is now the Federation of Bosnia and Herzegovina acquires a claim against the Federation equal to the balance of his or her savings on 31 March 1992.
> 2. The settlement of the claims of those individuals who were citizens of the former Socialist Republic of Bosnia and Herzegovina on 31 March 1991 but who are not permanently residing in the territory of the Federation, as well as other persons' claims against banks located on the territory of the Federation, shall be determined by a separate regulation in accordance with this Law.
> 3. Persons referred to in paragraph 1 of this Article whose foreign currency savings do not exceed 100 DEM will, upon their request, be reimbursed the amount of these savings by the bank.
> 4. The claims referred to in paragraph 3 of this Article are payable after the expiration of a period of three months from the date of application of this Law."
>
> Article 5:
>
> "The citizens' claims specified in Article 2 are registered in a Unique Citizen's Account (hereinafter 'the unique account') at the organisational unit of the Federal Payment Bureau (hereinafter 'the Bureau'), arranged according to the place of residence of the individual."
>
> Article 6:
>
> "Claims based on Article 21 of the Law on Privatisation of Enterprises [i.e. "general claims"] are registered in the unique account upon the order of the Privatisation Agency of the Federation of Bosnia and Herzegovina ... ."
> Article 7:
>
> "1. Claims specified in Article 3 of this Law are transferred by the bank to the unique account of the depositor.
> 2. The manner of transfer of claims ... of those individuals who have their accounts in banks whose organisational units on the territory of the Federation have ceased to operate will be determined by a separate regulation passed by the Federal Ministry of Finance."
>
> Article 8:
>
> "Claims pursuant to the Law on Restitution are registered in the unique account on the basis of a legally valid document which determines the right to restitution."

Article 9:

"Claims based on accrued but unpaid salaries of members of the army of the Republic of Bosnia and Herzegovina, the Croatian Defence Council and the police force are registered on the basis of a public document issued by the authorised body."

Article 10:

"The bodies authorised to determine the claims specified in Articles 6, 7 and 9 of this Law are obliged to submit to the Bureau, within 60 days from the date of application of this Law, the orders for registration of the claims in the Unique Citizen's Accounts."

Article 11:

"1. The opening of a unique account is done ex officio on the basis of the JMBG ['*jedinstveni matični broj građanina*' – the personal identification number] of the holder of a claim under this law."
2. The individual's certificate shall correspond to the respective unique account."

Article 12:

"1. The Bureau shall issue to individuals an account statement showing the balance of the unique account.
2. The unique account statement shall record the claims specified in Articles 7, 8 and 9 separately.
3. The Bureau is obliged to issue a new unique account statement following each change in the unique account."

Article 13:

"The Bureau is obliged to report on the total balance of the unique accounts to the Privatisation Agency of the Federation of Bosnia and Herzegovina and the cantonal agencies for privatisation on a daily basis ... ."

Article 14:

"1. An individual has the right, within 30 days from receipt of the account statement, to request from the body authorised to determine a particular claim that the amount of the claim be corrected.
2. If the body referred to in paragraph 1 of this Article finds that the request made by the individual is justified, it is obliged to promptly issue an order to the Bureau to correct the amount ..."

Article 15:

"Individuals may, in accordance with this Law, use the claims registered in the unique account for purchasing
- apartments with occupancy rights;
- enterprise shares;
- enterprise assets;
- business premises owned by municipalities; and
- other property that will be sold in the privatisation process."

Article 16:

"The claims registered in the unique account are transferable...."

Article 18:

"1. The claims registered in the unique account can be used in the privatisation process for a period of two years from the date of issuance of the unique account statement, and following the registration of a claim according to the specific categories.
2. Upon the expiration of the period in paragraph 1 of this Article, the claims in the unique account are extinguished."

97. Under the authority conferred upon him by Article 20 of the Citizens' Claims Law, the Director of the Privatisation Agency, on 29 December 1997, issued *Instructions on Registration and Settlement of Citizens' Claims in the Unique Citizen's Account* (OG FBiH no. 1/98). Amendments

were issued on 11 May and 6 July 1998 (OG FBiH nos. 18/98 and 27/98). Both the original instructions and the amendments entered into force on their respective dates of issuance. Articles 12 and 13 govern the registration of claims related to individual's foreign currency savings. These and other relevant Articles, as amended, provide as follows:

> Article 12:
>
> "1. The records of the persons referred to in Article 3 [paragraph 1 of the Citizens' Claims Law] ... are determined on the basis of data from the banks ...
> 2. The banks referred to in paragraph 1 of this Article are obliged to submit to the [Federal Payment] Bureau no later than 7 August 1998, by way of electronic media, information on the foreign currency savings of the persons referred to in paragraph 1 of this Article including the amount of interest accrued as of 31 March 1992, calculated in DEM and reduced by payments made until 31 December 1997.
> 3. The information ... shall include
> (1) surname, name of one parent, and first name;
> (2) the JMBG; and
> (3) the amount of the foreign currency savings on 31 December 1997, expressed in KM."
>
> Article 13:
>
> "On the basis of the data referred to in Article 12 of these Instructions, the Bureau enters into the unique account the amount of the claim based on the individual's foreign currency savings."
>
> Article 18:
>
> "On the basis of the amounts of the individual's claims under Articles 11, 13 and 17 of these Instructions [i.e. 'general claims', foreign currency savings and unpaid salaries], the Bureau establishes the total amount and the amounts of individual claims in the Unique Citizen's Account upon the [Privatisation] Agency's order [the original text of the Instructions stated 'at the latest on 12 May 1998']."
>
> Article 19 paragraph 1:
>
> "The Bureau shall issue to individuals a statement on the unique account regarding the amount of the claims under Article 18 of these Instructions ... at the latest 15 days after the issuance of the order mentioned in Article 18 ... [the original text of the Instructions stated 'at the latest on 27 May 1998']."
>
> Article 52:
>
> "1. The banks referred to in Article 12 of these Instructions are obliged, within 15 days from the date of entry into force of these Instructions, to publicly invite its depositors to submit to the banks, within 90 days from the date of the first announcement of the invitation, information on their JMBG and complete verifications of the amounts of foreign currency savings in their accounts.
> ...
> 3. The bank will mark the verified foreign currency savings amount, expressed in KM, in the savings book as the amount of claims that is transferred to the Unique Citizen's Account of the depositor.
> 4. Savings account holders who do not verify the amount on their foreign currency savings account in accordance with paragraph 1 of this Article and paragraph 2 of Article 12 can do so within an additional period of 30 days from receipt of the statement referred to in Article 19 of these Instructions."

98. In accordance with Article 7 paragraph 2 of the Citizens' Claims Law, the Federal Ministry of Finance, on 19 February 1998, issued an instruction relating to claims on foreign currency savings deposited with banks that had suspended their activities in the Federation (OG FBiH no. 6/98). It provides that the determination and transfer of those savings shall be made by the main office of the relevant bank. As regards savings deposited with banks presently located in the Republika Srpska, the Ministry of Finance will also take measures to verify such savings through the competent institutions of the Republika Srpska.

99. Article 3 paragraph 2 of the Citizens' Claims Law stipulates that the settlement of claims of people not resident in the territory of the Federation shall be regulated separately. This matter was

regulated by a Decree issued on 30 October 1999 (OG FBiH no. 44/99). Article 2 of the Decree reads:

> "A person who was a citizen of the former Socialist Republic of Bosnia and Herzegovina on 31 March 1991 without having a place of residence on the territory of the Federation of Bosnia and Herzegovina on that date and who has old foreign currency savings in banks or bank business units with head offices on the territory of the Federation of Bosnia and Herzegovina in an amount exceeding 100 DEM acquires a claim against the Federation of Bosnia and Herzegovina in an amount equal to the foreign currency savings on 31 March 1992, reduced by the amount of possible withdrawals since that date."

(c) Privatisation of enterprises and banks

100. The *Law on Privatisation of Enterprises* was promulgated on 28 November 1997 (OG FBiH no. 27/97), entered into force on 6 December 1997 and started to apply on 27 February 1998. It was amended on 5 March 1999 (OG FBiH no. 8/99). It regulates the privatisation of enterprises that, according to their opening balance sheets, are solvent. It also contains provisions on the determination of "general claims" of individuals. The relevant provisions, as amended, state the following:

> Article 4 paragraph 1:
>
> "As part of the privatisation preparations, enterprises shall prepare their privatisation programme and opening balance sheet and submit them for approval to the competent privatisation agency [normally the Privatisation Agency of the Federation of Bosnia and Herzegovina or the cantonal privatisation agencies]."
>
> Article 7 paragraph 2:
>
> "The privatisation opening balance sheet of an enterprise is expressed in DEM and forms the basis for establishing the value of the enterprise to be privatised."
>
> Article 12:
>
> "According to this Law, enterprises and enterprise assets can be purchased in the privatisation process by all domestic and foreign natural and legal persons ..."
>
> Article 20 paragraph 1:
>
> "The means of payment in the privatisation process are
> - certificates based on claims of natural persons towards the Federation, determined by this Law and separate regulations;
> - certificates based on claims of legal persons towards the Federation as compensation for property that is subject to restitution;
> - securities;
> - cash;
> - amounts from the Foreign Currency Military Books and certificates of the members of the armed forces of Bosnia and Herzegovina."
>
> Article 21:
>
> "1. Any person who was a citizen of the former Socialist Republic of Bosnia and Herzegovina, had his or her residence in the territory of the Federation of Bosnia and Herzegovina on 31 March 1991 and is 18 years of age on the date of entry into force of this Law is entitled to a general claim, or certificate, in the amount of 100 points due to his or her contribution in creating and managing socially owned property.
> 2. The amount of points for certificates based on general claims under paragraph 1 of this Article is increased by 10 points for each full year of work insurance.
> 3. The value of the points referred to in paragraphs 1 and 2 of this Article, expressed in DEM, is determined by the Government of the Federation following the determination of the value of social and state capital."

Article 23:

"Individuals with foreign currency savings accounts with a balance exceeding 100 DEM on 31 March 1992 are entitled to certificates based on the foreign currency savings."

Article 26 paragraph 1:

"In the procedure for small-scale privatisation established by this Law, it is compulsory to privatise
(a) enterprises whose value of assets recorded in the opening balance sheet is less than 500,000 DEM and which employ less than 50 employees;
(b) parts or assets of enterprises whose core activity is trade, catering, services or road transport;
(c) parts or assets of other enterprises which they do not need for the conduct of their core activity or which are not used."

Article 27 paragraph 1:

"The small-scale privatisation in the sense of Article 26 of this Law is conducted through a public sale, which the enterprise is obliged to prepare and register with the competent [privatisation] agency within twelve months from the date of entry into force of this Law."

Article 28:

"1. The sale referred to in Article 26 of this Law is realised with an obligatory cash payment of at least 35 per cent of the agreed sale price.
2. For any amount paid in cash in excess of 35 per cent of the sale price, a discount of 8 per cent may be given."

Article 29:

"The provisions in Articles 26, 27 and 28 of this Law also apply to the sale of municipal business premises which are being used for trade, catering, tourism and service activities."

101. The *Law on Privatisation of Banks*, which was promulgated and entered into force on 8 April 1998 (OG FBiH no. 12/98), governs the privatisation of state and socially owned capital in banks. The following provisions are relevant:

Article 3:

"1. A bank which has at least 50 per cent state or socially owned capital in the capital structure of its balance sheet is obliged to prepare its opening balance sheet.
...
3. The opening balance sheet shall be prepared upon an audit of the bank's performance, according to regulations issued by the Banking Agency of the Federation of Bosnia and Herzegovina (hereinafter 'the Agency')."

Article 5:

"1. A bank is obliged to prepare its opening balance sheet and deliver it to the Federal Ministry of Finance ...
2. The opening balance sheet of a bank will be approved by the Ministry ...
..."

Article 7:

"1. Based on the approved opening balance sheet, the Agency will determine whether the bank is solvent or not.
...
5. A solvent bank ... will prepare a preliminary privatisation programme. ...
..."

Article 8:

"1. If the bank is insolvent … the Agency will revoke the license and the bank will cease its operations.
2. The Ministry will sell all or part of the assets and liabilities of an insolvent bank to any other licensed bank …"

102. The *Law on Opening Balance Sheets of Enterprises and Banks* was promulgated and entered into force on 8 April 1998 (OG FBiH no. 12/98). It regulates the preparation of opening balance sheets for the purpose of privatisation and settlement of claims and liabilities between enterprises, banks and the Federation. The relevant provisions read as follows:

Article 2 paragraph 1:

"The opening balance sheet presents an overview of the assets, rights, liabilities and capital of the enterprises and banks … with which [they] enter the process of privatisation."

Article 4:

"1. The objects, rights, capital and liabilities of enterprises are presented in the opening balance sheet on the basis of their book value on the day of preparation of the opening balance sheet, defined by this Law.
2. The objects, rights, capital and liabilities of banks are presented in the opening balance sheet on the basis of their book value, that is the value determined by the privatisation audit in accordance with Article 3 of the Law on Privatisation of Banks."

Article 5 paragraph 1:

"The book value according to Article 4 of this Law is the value calculated in accordance with accounting regulations in force on the day of preparation of the opening balance sheet."

Article 22:

"In the passive sub-balance of the opening balance sheet, the bank shall present the value of
…
(3) liabilities for frozen foreign currency savings of individuals as of 31 March 1992, reduced by amounts paid by 31 December 1997 and in accordance with Article 3 of the Law on Determination and Settlement of Citizens' Claims in the Privatisation Process;
…"

Article 24:

"The value of liabilities based on frozen foreign currency savings of individuals, as described in item 3 of Article 22 of this Law, will be written off by the bank against foreign currency deposits at the National Bank of Yugoslavia or placements made from the same source."

Article 35 paragraph 1:

"Assets, rights, capital and liabilities presented in the passive sub-balance sheet are to be transferred to the Ministry [of Finance of the Federation] after completion of the approved privatisation programme, according to provisions of the Law on Foreign Debt of the Federation of Bosnia and Herzegovina."

103. The Federation *Law on Foreign Debt* (OG FBiH no. 41/98), referred to in Article 35 of the Law on Opening Balance Sheets of Enterprises and Banks, was adopted on 3 September 1998. However, it does not contain any provisions on old foreign currency savings or the banks' liabilities in respect of such savings.

(d) Sale of apartments

104. The *Law on Sale of Apartments with Occupancy Rights* was promulgated on 28 November 1997 (OG FBiH no. 27/97), entered into force on 6 December 1997 and started to apply on 27 February 1998. It was amended on 3 April 1998, 6 July 1999 and 5 March 2000 (OG FBiH nos.

11/98, 27/99 and 7/00). Articles 16-23 of the Law regulate the determination of the price of the apartments. The following provisions, as amended, stipulate conditions and methods of the sale:

> Article 7:
>
> "1. Any holder of an occupancy right ... may submit a written request to buy an apartment to the holder of the allocation right over the apartment (hereinafter 'the seller') and the seller is obliged to sell it.
> 2. A request under paragraph 1 of this Article shall be submitted within two years from the date of application of this Law, and a contract of sale of the apartment ... shall be concluded within three months from the date of submission of the request to buy the apartment.
> 3. If the seller does not conclude a contract upon the request of the occupancy right holder ... within the time-limit referred to in paragraph 2 of this Article, the buyer has the right to initiate judicial proceedings.
> 4. A court ruling replaces the contract in its entirety.
> ..."
>
> Article 8a paragraph 1:
>
> "The occupancy right holder over an apartment which was proclaimed as abandoned by special regulations applied on the territory of the Federation of Bosnia and Herzegovina during the period of 30 April 1991 to 4 April 1998 shall acquire the right to purchase the apartment in compliance with the provisions of this Law upon the expiration of a two-year deadline after his or her reinstatement into the apartment."
>
> Article 24:
>
> "1. The purchase prise of the apartment shall be paid by one of the following means of payment:
> (a) cash;
> (b) certificates based on citizens' claims, regulated by special regulations.
> 2. In case of cash payment the price of an apartment shall be reduced by 20 per cent of the determined purchase price."
> [The original wording of paragraph 2 stated that payments by certificates based on foreign currency savings or restitution also entitled the buyer to a price reduction. Further, the original reduction was 30 per cent.]

(e) Foreign exchange transactions

105. The *Law on Foreign Exchange Transactions* (OG FBiH no. 35/98) entered into force on 11 September 1998. It regulates, *inter alia*, the "new" foreign currency savings accounts. The relevant provisions of this Law state:

> Article 3 paragraph 1:
>
> "Domestic persons may acquire foreign currency in the country and abroad and dispose thereof in accordance with this Law."
> Article 5:
>
> "Foreign exchange transactions in the Federation as well as foreign exchange transactions abroad are liable to foreign exchange control pursuant to this Law."
>
> Article 28 paragraph 1:
>
> "Domestic and foreign natural persons may keep their convertible foreign currency in a foreign currency savings account or foreign currency savings deposit at a bank or they may sell [the currency] to the bank."
>
> Article 30:
>
> "Domestic natural persons may freely withdraw foreign currency from their foreign currency savings accounts and foreign currency savings deposits."

Article 65:

"Relevant provisions of laws and other regulations of Bosnia and Herzegovina shall be applied to issues which have not been regulated by this Law …"

Article 66:

"On the date of entry into force of this Law, laws and other regulations concerning foreign exchange transactions which were applicable on the territory of the Federation … cease to apply within the territory of the Federation."

IV. COMPLAINTS

106. The applicants complain that their right to peaceful enjoyment of their possessions, as guaranteed by Article 1 of Protocol No. 1 to the Convention, and their right to a fair hearing within a reasonable time before an independent and impartial tribunal, as guaranteed by Article 6 of the Convention, have been violated.

V. SUBMISSIONS OF THE PARTIES

A. Bosnia and Herzegovina

1. As to admissibility

107. Bosnia and Herzegovina objects to the admissibility of the present applications for several reasons. It submits that they are inadmissible *ratione temporis* as the applicants deposited their savings during the existence of the SFRY and that it was impossible to make withdrawals from the accounts already before the war. Moreover, Bosnia and Herzegovina has not inherited any assets from the SFRY. The old foreign currency savings is one of the issues to be settled in the negotiations regarding the succession of property of the SFRY by its successor states. Neither has Bosnia and Herzegovina taken over the SFRY guarantee for the savings. The 1992 Decree issued by the Republic of Bosnia and Herzegovina reserved the issue of the old foreign currency savings for future regulation. The Decree did not stipulate any obligation to repay the savings, nor has there been any other state laws or regulations to that effect. By the issuance of the Decree, the Republic only afforded a guarantee for the new savings to be deposited as of that moment.

108. Bosnia and Herzegovina also claims that domestic remedies have not been exhausted by the applicants. Allegedly, the pending court proceedings remain unresolved because of the conduct of the applicants' representative. Furthermore, the Chamber is allegedly prevented from examining the present applications as an identical application against Slovenia regarding frozen foreign currency savings, introduced by persons with deposits at Ljubljanska Banka, is pending before the European Court of Human Rights. Also, as Ms. Šeremet directed her application exclusively against the Federation, Bosnia and Herzegovina cannot be considered as respondent Party in that particular case. However, should the Chamber examine the present applications on the merits, the Republika Srpska should also be named as respondent Party because the possible consequences of the Chamber's decision would concern both Entities as well as the State of Bosnia and Herzegovina.

2. As to the merits

109. Bosnia and Herzegovina claims that the envisaged solution of privatising state property and compensating depositors through the privatisation process is the only feasible option and is in the public interest. The solution has been chosen in order to protect the foreign currency depositors from losing their possessions. The estimated value of the assets offered for sale in the privatisation process is considerably higher than the amount of old foreign currency savings and the depositors will thus be fully compensated.

110. Referring to official records, according to which the SFRY had foreign currency reserves in the amount of about 13 billion USD on 31 December 1990 but only 1.5 billion USD on 31 December 1991, Bosnia and Herzegovina claims that the SFRY intentionally removed the reserves that had been deposited with the National Bank of Yugoslavia. Thereby the SFRY prevented all former Yugoslav republics, including Bosnia and Herzegovina, from disposing of their foreign currency reserves which had been transferred from the territory of the respective republic.

111. Further reference is made to the fact that the problem of old foreign currency savings exists in all states created after the dissolution of the SFRY. Allegedly, none of these states have found appropriate solutions. The matter also concerns five banks with head offices outside of Bosnia and Herzegovina. None of the countries where these banks were located have issued legislation determining the fate of the deposits of citizens of Bosnia and Herzegovina.

B. The Federation of Bosnia and Herzegovina

1. As to admissibility

112. The Federation of Bosnia and Herzegovina considers that the applications are inadmissible for the following reasons. Firstly, the Chamber is not competent to examine them *ratione temporis*, as the savings accounts in question were blocked already before the dissolution of the SFRY and, thus, before the General Framework Agreement was signed. Secondly, the applicants have not exhausted domestic remedies, as the proceedings initiated by them before the domestic courts are still pending. Allegedly, the remedies cannot be considered inefficient, as the Supreme Court of the Federation has issued judgments in similar cases. Thirdly, the Federation cannot be held responsible for possible violations in the present cases, as it is not the owner of the banks in question and as neither the State nor the Federation of Bosnia and Herzegovina has received any of the property previously belonging to the SFRY. The latter issue is being dealt with in the succession negotiations, which have not been concluded. Finally, the Federation is also of the opinion that the Republika Srpska should participate as respondent Party if the Chamber examines the applications on the merits.

2. As to the merits

113. The Federation states that, at the time when the applicants deposited their foreign currency, the use of such savings was restricted by the old SFRY legislation. The restrictions, which increased over time, included limitations on the purposes for which the savings could be used and on the amounts that could be withdrawn from the accounts. Also, withdrawals could only be made if they had been announced in advance. The applicants were aware of these restrictions when they made their deposits in the banks. Although no legislation completely blocked the savings accounts, the accounts were blocked d*e facto* already in 1991 and 1992 as there were no assets at the disposal of the banks in Bosnia and Herzegovina. The assets were kept in the National Bank of Yugoslavia and were spent by the SFRY.

114. It is true that the Republic of Bosnia and Herzegovina, after its independence, issued the 1992 Decree with Force of Law on Foreign Exchange Transactions, replacing the SFRY Law on Foreign Exchange Transactions, and that, following the signing of the General Framework Agreement, it issued the 1996 Decision on Aims and Objectives of the Foreign Exchange Policy. However, these regulations did not in any way affect the foreign currency savings of individuals. Furthermore, the Citizens' Claims Law only provides the foreign currency depositors with the possibility to use their funds to buy formerly socially owned property in the privatisation process. The situation for those depositors who do not participate in that process remains unchanged, that is, it remains the same as it was at the time when the SFRY was dissolved and when the General Framework Agreement was signed.

115. The Federation further underlines that it would be practically impossible to reimburse the deposits as they total more than 2 billion DEM. In comparison, the entire annual budget of the Federation is less than 1 billion DEM. Therefore, the settlement of the issue through the privatisation process is in the public interest. It further strikes a fair balance between that interest and the private interests of the depositors. If the depositors were to claim full cash disbursement of their savings,

the banks involved would certainly go bankrupt, and neither the State nor the Federation would be able to compensate the depositors for their loss.

116. However, in the Federation's opinion, the Citizens' Claims Law does not release banks of their obligations towards the depositors. According to Article 3 of that Law, the depositor acquires a claim *ex lege* against the Federation. Still, the banks remain debtors of the holders of foreign currency accounts until the start of the bank privatisation programme. In this respect, the Federation refers to Article 22 of the Law on Opening Balance Sheets of Enterprises and Banks, according to which the banks, in the passive sub-balance of the opening balance sheets, shall state the value of liabilities for frozen foreign currency savings, allegedly without any reduction for the amounts that have been transferred to the unique account. Under Article 35, these liabilities are to be transferred to the Federal Ministry of Finance following the completion of the privatisation programme.

117. The Federation concedes, however, that the legal situation is unclear. The depositors who did not register their claims in the unique account will eventually have a claim against the Ministry of Finance whereas those who did so register will be given certificates which, according to Article 18 of the Citizens' Claims Law, will expire two years after their date of issuance. It is therefore necessary to find a legal solution whereby those who have registered their claims in the unique account but who, without their fault, fail to use them will not be in a less favourable position than other foreign currency depositors. The agent of the Federation stated, at the Chamber's hearing on 9 March 1999, that it should be suggested to the Federation Government that the holders of certificates based on old foreign currency savings be excluded from the two-year time-limit. The certificates could be returned and the original claims revalidated in case objective reasons had prevented the holders in question from using the certificates in the privatisation process. The Federation further asserts that the claims based on foreign currency savings, in practice, have been transferred to the unique account only with the consent of the depositor and not automatically, or *ex officio*, as foreseen by the legislation.

118. As regards savers with small amounts, the Federation states that they can purchase, for instance, tools, computers and other appliances in the small-scale privatisation. As of December 1999, assets were allegedly being made available on a large scale at public auctions, even if the start of the big privatisation had been delayed. Auctions are scheduled after the enterprises have prepared their opening balance sheets and privatisation programmes and these documents have been approved by the cantonal privatisation agencies. The auctions are then advertised in at least one daily newspaper covering the whole territory of the Federation. Referring to recent auctions, the Federation states that items have been sold for more than their asking price. Consequently, it may be concluded that the liabilities for which the certificates have been issued are covered by the value of assets made available and that, thus, the individual claimants will be able to obtain full compensation for their claims in the privatisation process.

119. Regarding the low value of certificates on the secondary market, the Federation submits that, if the certificates are used as intended, i.e. for the purchase of privatised property, they have their full nominal value. The sale of certificates on the secondary marked, albeit not illegal, is an "abuse" of the system and the Federation is not responsible for compensating the loss incurred by such "wrongful use of certificates".

120. As to the alleged violation of Article 6 of the Convention, the Federation claims that the courts have taken adequate action in the relevant proceedings. The delays that have occurred have been due to the conduct of the applicants' representative who has failed to comply with procedural requirements. Furthermore, in view of the complexity of the cases, the proceedings have been conducted with reasonable speed.

C. The applicants

1. As to admissibility

121. The applicants submit that responsibility for the alleged violations of their rights can be attached to both respondent Parties because of the principles of state succession of liabilities and

the ownership of the banks. Referring to the 1992 Decree and the 1996 Decision, the applicants argue that both the Republic and State of Bosnia and Herzegovina have recognised their responsibility for the repayment of foreign currency savings. As regards the Federation of Bosnia and Herzegovina, the Citizens' Claims Law allegedly recognises, through its provisions, that the Federation is the main debtor in respect of the "old" foreign currency savings.

122. The delay in the domestic proceedings initiated by the applicants and the judgments by the Supreme Court of the Federation in other cases prove, in the applicants' view, that no effective domestic remedies exist in their cases. The applicants' representative has been requested to fulfil unreasonable formal requirements such as specifying the address of the State and the value of the dispute.

2. As to the merits

123. The applicants claim that the refusal to disburse their foreign currency savings and the conversion of those savings into privatisation certificates violate their property rights. They state that none of the former commercial banks have gone bankrupt, so their claims have not been extinguished. There was no overriding public interest for the solution chosen by the public authorities in regard to the old foreign currency savings, and, allegedly, no measures of a similar nature have been taken by Bosnia and Herzegovina or the Federation in respect of other groups of people. They submit, therefore, that a fair balance between private and public interests has not been struck. Rather, the applicants have suffered unjustified and disproportionate hardship. In this respect, they also refer to the low value of the certificates on the secondary market and to the fact that Ms. Šeremet and Mr. Hrelja received such certificates although they wished to have cash disbursed from their accounts. Further, the Citizens' Claims Law should allegedly not be applied in the applicants' cases, as they initiated court proceedings before that Law entered into force.

124. The applicants also point to their personal difficulties. Mr. Poropat is unemployed and suffers from asthma. His wife, Ms. Poropat, supports him and their two children who are still at school age. Ms. Šeremet suffers from diabetes, and has a monthly pension of only KM 100. She would need her savings in order to allow her a decent living. Mr. Hrelja had a private bakery which was destroyed during the war. He has had to sell property to support himself. He would need his savings to rebuild his destroyed house and looted bakery in order to restart his business.

125. As to the domestic proceedings in their cases, the applicants argue that there have been unjustified delays. Moreover, the courts have been partial, especially when requesting that unreasonable formal requirements be fulfilled. Additionally, some of the lower instance courts and the Supreme Court are still applying the SFRY Law on Foreign Exchange Transactions which, the applicants submit, was revoked by legislation passed by the Republic of Bosnia and Herzegovina.

VI. OPINION OF THE CHAMBER

A. Admissibility

126. Before examining the merits of the applications, the Chamber shall decide whether to accept them, taking into account the admissibility criteria set out in Article VIII(2) of the Agreement. Under Article VIII(2)(a), the Chamber shall consider whether effective remedies exist and, if so, whether the applicants have demonstrated that they have been exhausted. According to Article VIII(2)(b), it shall not address any application which is substantially the same as a matter which has already been submitted to another procedure of international investigation or settlement. Under Article VIII(2)(c), the Chamber shall dismiss any application which it considers incompatible with the Agreement. Further, pursuant to Article VIII(2)(d), it may reject or defer consideration if the applications concern a matter currently pending before, *inter alia*, any other international human rights body responsible for the adjudication of applications or the decision of cases.

1. Competence *ratione temporis*

127. Both respondent Parties argue that it became impossible to make withdrawals from the old foreign currency savings accounts already during the existence of the SFRY and that, thus, the accounts were blocked at that time, i.e. before the entry into force of the Agreement. Allegedly, the legislation that has been enacted and in force after the dissolution of the SFRY neither stipulated any obligation on the respondent Parties to repay the savings in question nor affected the savings in any other way.

128. The Chamber recalls that, in accordance with generally accepted principles of international law, it cannot decide whether events occurring before the entry into force of the Agreement on 14 December 1995 involve violations of human rights (see, e.g., case no. CH/96/1, *Matanović*, decision on the merits delivered on 6 August 1997, paragraph 32, Decisions on Admissibility and Merits 1996-1997).

129. The Chamber observes that although, generally, the withdrawal of money from the old foreign currency savings accounts was increasingly restricted in the 1980s and the early 1990s and a substantial part of the money needed to repay the savings apparently disappeared before and during the war, the claims against the banks based on those savings were never extinguished. In this connection, it should be noted that one of the applicants, Mr. Poropat, was able to withdraw money from his accounts as late as mid-1994. Moreover, as is evident from legislation enacted by the Republic of Bosnia and Herzegovina between 1992 and 1996, the claims were considered valid and the issue was to be resolved by special regulation. Notably, the Decision on Aims and Objectives of the Foreign Exchange Policy (see paragraph 91 above), issued on 10 April 1996, stipulated that the claims should be settled as part of the consolidation of the public debt of Bosnia and Herzegovina. The Chamber further notes that none of the banks in which the applicants placed their savings have been declared bankrupt. Thus, the substance of the applicants' right, that is, their entitlement to the money placed on the accounts, has not been changed by economic realities or the legislation passed.

130. Having regard to the above, the Chamber finds that the applicants' claims against the banks in question remained valid at the entry into force of the Agreement. The Chamber is thus competent *ratione temporis* to examine whether, thereafter, any legislation enacted or applied or any other action taken by either respondent Party has affected these claims. The Chamber is also competent to examine whether a failure to act after the entry into force of the Agreement may involve the responsibility of either respondent Party.

2. Competence *ratione personae*

(a) Bosnia and Herzegovina's objection in regard to case no. CH/97/105

131. Bosnia and Herzegovina argues that it cannot be considered as respondent Party in regard to the application lodged by Ms. Šeremet as it was directed only against the Federation of Bosnia and Herzegovina.

132. The Chamber recalls that its jurisdiction, established by Article II(2) of the Agreement, extends to alleged or apparent human rights violations where such a violation is alleged or appears to have been committed by one or several of the Parties to the Agreement. Having regard to the complexity of the legal and constitutional arrangements of Bosnia and Herzegovina, the Chamber considers that it would be unreasonable to expect applicants to be able in all circumstances to address the correct respondent Party. For this reason, the Chamber has consistently held that it is not restricted by the applicant's choice of respondent Party. It has, on several occasions, examined applications in regard to a respondent Party designated by the Chamber itself (see, e.g., case no. CH/96/31, *Turčinović*, decision on admissibility of 9 May 1997, Decisions on Admissibility and Merits 1996-1997).

133. The Chamber therefore rejects the argument of Bosnia and Herzegovina that it is precluded from examining the potential responsibility of Bosnia and Herzegovina for the events complained of in the application lodged by Ms. Šeremet.

(b) The Republika Srpska as respondent Party

134. Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina are of the opinion that, if the present applications are examined on the merits, the Chamber should designate also the Republika Srpska as respondent Party because the possible consequences of the Chamber's decision would concern both Entities as well as the State of Bosnia and Herzegovina.

135. The Chamber notes, however, that the applicants, who live in the Federation, have claims against banks located on the territory of the Federation. They have not alleged that the Republika Srpska has violated any of their rights, nor can the Chamber, of its own motion, find that any events relating to their applications involve the responsibility of the Republika Srpska.

136. The Chamber therefore rejects the claim that the Republika Srpska should be designated as respondent Party in the present cases.

(c) General responsibility of the respondent Parties for the alleged violations

137. Both respondent Parties claim that they cannot be held responsible for possible violations in the present cases. Bosnia and Herzegovina states that the old foreign currency savings accounts were blocked already during the existence of the SFRY and that Bosnia and Herzegovina has not taken any action, enacted any legislation or afforded any guarantees which have affected the applicants' situation. The Federation of Bosnia and Herzegovina further points out that it is not the owner of the banks with which the applicants have deposited their savings. Both respondent Parties also stress that neither of them has inherited any assets from the SFRY and that the foreign currency savings is one of the issues to be resolved in the succession negotiations.

138. The Chamber first considers that that it is not determinative for the possible violations of the applicants' rights whether the State or the Federation of Bosnia and Herzegovina has inherited or will inherit, following the conclusion of the succession negotiations, any assets from the SFRY. This is so because the negotiations are conducted between the five successor states of the SFRY and will determine the distribution of rights and obligations between these states. Should Bosnia and Herzegovina be assigned any assets, the entitlement to and administration of those assets would have to be determined in accordance with the respective constitutional functions and responsibilities of Bosnia and Herzegovina and its Entities. However, whatever the outcome of the negotiations, the present applicants or any other depositors of foreign currency savings cannot claim any individual rights on the basis of agreements concluded between the successor states or between Bosnia and Herzegovina and its Entities.

139. As regards the Federation's argument that it is not the owner of the banks in question, the Chamber recalls that, although the banks, until their privatisation, are considered as socially or state owned, they are defined as independent legal persons performing business in accordance with market conditions with a view to making profit (see paragraphs 87 and 94 above). To this end, the banks enter into contractual relationships with individuals and other legal persons. The Chamber therefore considers that responsibility for the matters complained of in the present cases should not be imputed to either respondent Party on the basis of their possible involvement as owners of the banks in question. However, the operation of the banks in the Federation, or indeed in the whole of Bosnia and Herzegovina, is, like in other countries, regulated by legislation and subject to licensing and supervision. The State and the Federation of Bosnia and Herzegovina are responsible in the present cases for such measures and other action taken in so far as they have affected the applicants' position in regard to the banks and, in particular, to the savings deposited with the banks.

140. The question remains, however, whether and to what extent the regulation of the matters relevant to the present applications falls within the responsibility of the respective respondent Party, either because it has been given the relevant competence, by the Constitution of Bosnia and Herzegovina and other legislation or due to any special capacity, or because it has, *de facto*, taken action affecting the matters in question.

(i) *Responsibility of Bosnia and Herzegovina*

141. The Chamber recalls that, pursuant to Article I of the Constitution, Bosnia and Herzegovina has continued its legal existence under international law as a state and has thus inherited the status of the former Republic of Bosnia and Herzegovina. It is in this capacity that Bosnia and Herzegovina takes part in the negotiations regarding the succession to the assets of the SFRY. However, this status alone cannot be understood as creating a responsibility for the former internal obligations of the SFRY, including those stemming from the depositing of foreign currency with the National Bank of Yugoslavia and the guarantees afforded by the SFRY with respect to the savings.

142. However, the Republic of Bosnia and Herzegovina adopted laws and regulations addressing the issue of foreign currency savings (see paragraphs 88-91 above). Article 9 of the 1992 Decree provided that the Republic guaranteed for foreign currency savings, and Article 12 of the 1994 Decree stated that people could use their savings freely. Noting that Article 144 of the 1992 Decree specified that the reimbursement of individuals' foreign currency savings that had been deposited with the National Bank of Yugoslavia was to be determined by separate regulation, the Chamber finds it established that the express guarantee and the permission to use savings freely did not apply to the old foreign currency savings but only to those "new" savings that people had started to deposit at the time when the legislation of the Republic was enacted. Nevertheless, by reserving the settlement of the old foreign currency savings for separate regulation, the Republic implicitly recognised responsibility for these savings. The 1995 and 1996 Decisions not only reiterated this implicit recognition but specifically stated that the issue of the old savings was to be resolved by the enactment of a state law on public debt or in another way within the overall consolidation of the public debt of the state. In this connection, the Chamber recalls that, under Article III(1)(d) of the Constitution, the responsibility for monetary policy rests with the institutions of Bosnia and Herzegovina. As the 1995 Decision concerns issues relating to the monetary policy, it remained in effect as the law of Bosnia and Herzegovina according to the transitional arrangements contained in Annex II to the Constitution. The 1996 Decision, issued by the Republic after the entry into force of the Agreement, is to be considered as having been issued on behalf of the State of Bosnia and Herzegovina, and thus applied as State law.

143. Moreover, Article VII of the Constitution designates the Central Bank of Bosnia and Herzegovina as the sole authority for monetary policy throughout the country. It is true that the Central Bank has not been given the authority to regulate the operation of banks in general or the foreign currency savings in particular. However, the disbursement of savings from the bank accounts in question has repercussions on the circulation of foreign currency and thus affects the monetary policy, for which the Central Bank, as a State institution, is responsible.

144. The Chamber further notes that the Framework Law on Privatisation of Enterprises and Banks (see paragraph 93 above), which recognises the right of the Entities to privatise non-privately owned enterprises and banks located on their territory and provides that the Entities shall adopt legislation to that effect covering the assets and liabilities thus located, was adopted by the Parliamentary Assembly of Bosnia and Herzegovina on 19 July 1999 following the issuance of the law on an interim basis by the High Representative on 22 July 1998. In the Chamber's opinion, the fact that the Parliamentary Assembly adopted this legislation – which indirectly concerns also the old foreign currency savings – is an indication of the competence of the State to regulate these matters, at least in setting out the general principles to be applied.

145. The Chamber thus finds that it is competent *ratione personae* to consider the applications in regard to Bosnia and Herzegovina.

(ii) *Responsibility of the Federation of Bosnia and Herzegovina*

146. The Chamber recalls that the laws on banks, citizens' claims and privatisation applicable in the territory of the Federation of Bosnia and Herzegovina have all been enacted by the Federation and the authorities designated to implement the legislation are all institutions of the Federation. Further, the applicants' and other plaintiffs' legal actions in regard to foreign currency savings accounts have been examined by courts with jurisdiction only in the territory of the Federation.

147. The Chamber thus finds that it is competent *ratione personae* to consider the applications also in regard to the Federation of Bosnia and Herzegovina.

3. *Lis alibi pendens*

148. Bosnia and Herzegovina claims that the Chamber is prevented from examining the present cases on account of an identical application being pending before the European Court of Human Rights.

149. The Chamber recalls that Article 35 paragraph 2(b) of the Convention – on which Article VIII(2)(b) of the Agreement is modelled – prevents the European Court of Human Rights from dealing with a petition which is substantially the same as a matter which has already been submitted to another procedure of international investigation or settlement. The European Commission on Human Rights – which, before the reform of the Convention system on 1 November 1998, examined the admissibility of applications under the identical Article 27 paragraph 1(b) – applied the concept of "substantially same application" in a very restrictive manner and found itself prevented from dealing with a petition only if, *inter alia*, the applicant in the other international procedure was identical to the one that had introduced the petition to the Commission (see, e.g. application no. 11603/85, *Council of Civil Service Unions and others v. the United Kingdom*, decision of 20 January 1987, Decisions and Reports 50, p. 228 at pp. 236-237).

150. The Chamber notes that, whatever issue is the subject matter of the application lodged with the European Court, neither the applicants nor the respondent Parties in the present cases are identical to those concerned by that application. Further, the present applicants do not have accounts in Ljubljanska Banka to which reference is made.

151. It follows that it has not been shown that an application identical to or substantially the same as the present cases is pending before another international body. This objection is accordingly rejected.

4. Exhaustion of effective domestic remedies

152. The respondent Parties argue that domestic remedies have not been exhausted by the applicants. Allegedly, the proceedings initiated by them have been delayed due to the conduct of their representative. The Federation states that the remedies cannot be considered inefficient, as the Supreme Court of the Federation has issued judgments in similar cases.

153. The Chamber recalls that the applicants initiated court proceedings in 1996 and 1997 in an attempt to have cash disbursed from their savings accounts. None of the applicants have so far been successful. Only Ms. Poropat has received a judgment on the merits, in which the Municipal Court rejected the claim. Following her appeal, that case is now pending before the Cantonal Court. Ms. Šeremet's and Mr. Hrelja's cases are still pending before the Municipal Court. Only the case of Mr. Poropat has come to a conclusion. It was not examined on the merits, however, but was dismissed by a procedural decision which concluded that the action had been withdrawn as the applicant had failed to request the continuation of proceedings.

154. The Chamber notes that the Municipal Court rejected Ms. Poropat's claim with reference to the applicable legislation, in particular the Citizens' Claims Law, and the fact that neither the State nor the Federation of Bosnia and Herzegovina had succeeded into any assets of the SFRY, including the foreign currency deposited with the National Bank of Yugoslavia. In other judgments brought to the Chamber's attention (see paragraphs 74 and 75 above) which have been issued after the enactment of the Citizens' Claims Law, claims for disbursement of old foreign currency savings have been rejected either because they could not be legally granted under the SFRY Law on Foreign Currency Transactions or because the Citizens' Claims Law presented various procedural obstacles to the examination of the cases.

155. The legal position of the courts is thus not entirely clear. In any event, it appears that no court proceedings initiated in order to have cash disbursement of old foreign currency savings have

been successful. The Chamber also notes the particulars of the applicants' cases. In the proceedings concerning Ms. Šerement and Mr. Hrelja the Municipal Court has decided to postpone its examination on several occasions due to the failure of one of the respondents to appoint a representative. Further, in the former case, the court requested the applicant's representative to submit the correct name and address of that respondent. Considering that that respondent is the State of Bosnia and Herzegovina, the court's request is rather perplexing. The Chamber finally takes into account that, except for the case lodged by Mr. Poropat, the proceedings are still pending in the domestic courts after periods varying between two years and seven months and three years and four months (as of April 2000), in two of the cases without any decision on the merits of the claims having been taken.

156. Having regard to the above, the Chamber considers that there are no effective remedies available to the applicants which they should be required to exhaust. In these circumstances, the failure of Mr. Poropat to attend the Municipal Court's hearing and, later, to request the continuation of proceedings does not preclude the Chamber from examining also his application.

5. Conclusion as to admissibility

157. As no other ground for declaring the cases inadmissible has been established, the Chamber declares the applications admissible in respect of both respondent Parties.

B. Merits

158. Under Article XI of the Agreement the Chamber will next address the question whether the facts established above disclose a breach by 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 by the Convention and its Protocols.

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

159. The applicants complain that their property rights under Article 1 of Protocol No. 1 have been violated. This provision 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."

160. The applicants assert that their rights have been violated due to the refusal to disburse their foreign currency savings and the conversion of those savings into privatisation certificates. The respondent Parties assert, however, that the accounts in question were blocked *de facto* already before the war as there were no assets available to the banks and that subsequent legislation has not affected the applicants' and other foreign currency depositors' claims against the banks in any way. Rather, the legislation on the privatisation process allegedly protects the depositors from losing their possessions.

(a) The existence of "possessions" under Article 1 of Protocol No. 1

161. The Chamber first finds that, irrespective of the financial situation of the banks concerned and the general economy of the State and Federation of Bosnia and Herzegovina, the restrictions on withdrawals of old foreign currency savings or the *de facto* blocking of these savings, the money deposited on the applicants' accounts represents an economic value. The applicants' claims against the banks based on their foreign currency savings thus constitute "possessions" within the meaning of Article 1 of Protocol No. 1. It must therefore be determined whether their right to peacefully enjoy these possessions has been violated.

(b) General considerations

162. The Chamber recalls that the European Court of Human Rights has established the relationship between the different parts of Article 1 of Protocol No. 1. In *James and Others v. the United Kingdom* (judgment of 21 February 1986, Series A no. 98, pp. 29-30, paragraph 37), the Court stated:

> "Article 1 in substance guarantees the right of property ... . In its judgment of 23 September 1982 in the case of Sporrong and Lönnroth, the Court analysed Article 1 as comprising 'three distinct rules': the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers deprivation of possessions and subjects it to certain conditions; the third rule, stated in the second paragraph, recognises that the Contracting States are entitled, amongst other things, to control the use of property in accordance with the general interest (Series A no. 52, p. 24, paragraph 61). ... The three rules are not, however, 'distinct' in the sense of being unconnected. The second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule."

163. Whatever rule of Article 1 of Protocol No. 1 is deemed applicable in a particular case, it has to be determined whether a "fair balance" has been struck between the demands of the general interest of the community and the requirements of the protection of the individuals' fundamental rights. Thus, there must be a reasonable relationship of proportionality between the means employed and the aim sought to be realised. The requisite balance will not be found if the persons concerned have had to bear "an individual and excessive burden". The European Court has taken into account, *inter alia*, the possibility to obtain compensation, the existence of procedural safeguards and the length of proceedings in assessing whether a disproportionate burden has been imposed on the individuals (see, e.g., the *Sporrong and Lönnroth v. Sweden* judgment, pp. 26-28, paragraphs 70-73). It has, however, acknowledged that, in taking decisions interfering with the property rights of individuals, states enjoy a margin of appreciation which, in complex and difficult matters, is a wide one. In *Lithgow and Others v. the United Kingdom* (judgment of 8 July 1986, Series A no. 102, p. 51, paragraph 122), which concerned the nationalisation of property, the Court stated:

> "A decision to enact nationalisation legislation will commonly involve consideration of various issues on which opinions within a democratic society may reasonably differ widely. Because of their direct knowledge of their society and its needs and resources, the national authorities are in principle better placed than the international judge to appreciate what measures are appropriate in this area and consequently the margin of appreciation available to them should be a wide one."

The Chamber considers that this conclusion applies, *mutatis mutandis*, to the matters relevant to the present cases. The foreign currency savings have been considered in the context of the public debt of the State and Federation of Bosnia and Herzegovina and the privatisation of socially owned property in the Federation. These are issues of great economic importance for the State and the Federation and, consequently, they involve considerations of a complex nature which could reasonably be subject to differing opinions.

(c) Alleged violation by Bosnia and Herzegovina

(i) *Whether Bosnia and Herzegovina has interfered with the applicants' rights*

164. As the Chamber has noted above (paragraph 142), the Republic of Bosnia and Herzegovina, between 1992 and 1996, adopted legislation which provided that the issue of the old foreign currency savings was to be determined by special regulation. The 1995 and 1996 Decisions (see paragraphs 90 and 91 above), which were applicable as the law of Bosnia and Herzegovina, more specifically stated that the issue was to be resolved within the overall consolidation of the public debt of the state. As the Chamber has found, this legislation implicitly recognised responsibility of Bosnia and Herzegovina for these savings. Both from the wording of the Decisions and from evidence given at the Chamber's hearings (see the statement of Mr. Piljak, at paragraph 50 above), it is clear that the initial intention was to gradually reimburse the savings as payments on the public debt. However, save for the adoption of the Framework Law on Privatisation of Banks and Enterprises (see paragraph 93 above) – which only sets out certain general principles – Bosnia and Herzegovina failed to regulate the old foreign currency savings, whether by legislation on the public debt or otherwise.

165. The question is whether the failure of Bosnia and Herzegovina to take action in this regard amounts to an interference with the applicants' – and other foreign currency depositors' – property rights. The Chamber recalls, in this connection, Article I of the Agreement according to which the Parties are obliged to "secure" internationally recognised human rights to persons within their jurisdiction. This requirement involves a positive obligation to take action to guarantee human rights, including the right to peaceful enjoyment of possessions.

166. In determining to what extent Bosnia and Herzegovina was under such a positive obligation in the present cases, the Chamber considers that not only the implicit recognition of its responsibility of the old foreign currency savings is of importance. Regard must also be had to the factual situation of these savings following the entry into force of the Agreement and the issuance of the 1995 and 1996 Decisions. For several years, there had been considerable difficulties in having money withdrawn from the accounts in question. Furthermore, Article 150 of the 1992 Decree had stipulated that the SFRY Law on Foreign Exchange Transactions, which had regulated the operation of the old foreign currency savings accounts and the purposes for which these savings could legally be used, ceased to apply. However, no other law or regulation had been put in its place. Thus, there was an immediate need for Bosnia and Herzegovina to take action and honour its responsibility for the savings by regulating the issue. The Framework Law did not solve this situation. Thus, by its failure to take adequate action, Bosnia and Herzegovina left the depositors in a situation where there was no legal basis on which they could claim reimbursement of their savings, whether directly from the banks or indirectly from the State through payments on the public debt.

167. In these circumstances, the Chamber considers that Bosnia and Herzegovina has failed to secure to the depositors of old foreign currency savings their right to peacefully enjoy their possessions. This amounts to an interference of that right within the meaning of Article 1 of Protocol No. 1.

(ii) *Whether the interference has been justified*

168. The resolution of the problem of the old foreign currency savings clearly involves considerations of a complex nature. In deciding what measures to take in regard to this issue, the respondent Parties thus enjoy a wide margin of appreciation. However, the Chamber has found that Bosnia and Herzegovina failed to take adequate action in a timely and appropriate manner. The Chamber does not overlook the fact that Bosnia and Herzegovina has not had – and still does not have – the financial means to repay the totality of these savings. Nevertheless, having particular regard to the factual situation of the savings as described in paragraph 166 above, the Chamber cannot find that the failure of Bosnia and Herzegovina to take adequate action to regulate this issue has been in the general interest. Accordingly, the interference has not been justified.

169. In conclusion, there has been a violation by Bosnia and Herzegovina of the applicants' right to peaceful enjoyment of their possessions under Article 1 of Protocol No. 1 to the Convention.

(d) Alleged violation by the Federation of Bosnia and Herzegovina

(i) *Whether the Federation has interfered with the applicants' rights*

170. In determining whether the Federation of Bosnia and Herzegovina has interfered with the applicants' rights under Article 1 of Protocol No. 1, the crucial question is whether the situation as regards their right to withdraw money from their accounts has been changed by legislation enacted or other measures taken by the Federation. The provisions of the Citizens' Claims Law are clearly relevant in this respect as they aim at settling the claims of persons with old foreign currency savings as well as other recognised claims. Also the provisions of other laws regulating the privatisation of socially owned property are of importance. However, the Chamber will have regard not only to the wording of the legal provisions but also to their implementation in practice. Further, it has to be taken into account whether the applicants or other depositors of foreign currency savings have actually succeeded in their attempts to have money disbursed from their accounts.

171. The Federation of Bosnia and Herzegovina argues that the Citizens' Claims Law only provides the foreign currency savers with a possibility to use their funds in a certain manner and that the banks' obligation towards the savers remains unchanged. The same assertion has been made by the Federal Ministry of Finance (see paragraph 65 above). The Director of the Privatisation Agency has

made contradicting statements in this respect, on some occasions claiming that participation in the privatisation process is voluntary (paragraphs 54 and 66) and on other occasions stating that the transfer of funds from the banks to the Unique Citizen's Account is done *ex lege* without the individual saver's consent (paragraph 69). As is evident from the Municipal Court's judgment in Ms. Poropat's case (paragraph 27) and other judgments reviewed by the Chamber (paragraph 75), the position of the Federation courts is not very clear in this respect. The Federation Ombudsmen and the OHR have stated that the individual savers have no right to choose whether they wish to take part in the privatisation process or not (paragraphs 78 and 80).

172. The Chamber recalls that, under Article 3 of the Citizens' Claims Law, a person with old foreign currency savings exceeding DEM 100 acquires a claim against the Federation equal to the amount of his or her savings. Article 7 stipulates that such a claim shall be transferred by the relevant bank to a Unique Citizen's Account maintained by the Federal Payment Bureau. Article 10 establishes a time-limit within which the body authorised to determine the claim – apparently the bank in question – is obliged to submit an order for the registration of the claim in the unique account. According to Article 11, the unique account is opened *ex officio* and the individual is given a privatisation certificate in an amount corresponding to the registered claims. The possibility for an individual to make objections, provided for by Article 14, only concerns the amount of the claim and not the transfer and registration as such.

173. The Chamber thus notes that there are no provisions in the Citizens' Claims Law indicating that the individual is free to dispose of his or her savings in any other way than to have them converted into privatisation certificates. Instead, the Law provides for the compulsory transfer of foreign currency savings from the bank to the Unique Citizen's Account. This conclusion is reinforced by Articles 12 and 13 of the Instructions on Registration and Settlement of Citizens' Claims in the Unique Citizen's Account (see paragraph 97 above), which stipulate that the bank is obliged to submit information on the identity of the individual saver and the amount of savings to the Federal Payment Bureau which will then register the amount in the unique account.

174. In support of its contention that the banks remain debtors of the foreign currency account holders, the Federation of Bosnia and Herzegovina further refers to Articles 22 and 35 of the Law on Opening Balance Sheets of Enterprises and Banks (see paragraph 102 above). The Chamber notes that, under Article 22, the banks shall present the value of frozen foreign currency savings in their balance sheets. Except for savings that have actually been paid out, the banks may only make reductions for the amounts they are obliged to pay upon request under Article 3 of the Citizens' Claims Law, that is, savings which do not exceed DEM 100. The remaining foreign currency amounts are to be recorded in the balance sheets as liabilities of the banks. Article 24 of the Law on Opening Balance Sheets states, however, that these liabilities shall be written off against the banks' claims towards the National Bank of Yugoslavia. Furthermore, according to Article 35, the remaining liabilities are to be transferred to the Federal Ministry of Finance upon completion of the privatisation of the banks. It thus appears that, following the privatisation, the individual savers will no longer have any claims against the banks. This interpretation is supported by Article 52 paragraph 3 of the above-mentioned instructions on citizens' claims (see paragraph 97). The Chamber is therefore unable to agree with the Federation's contention that the Law on Opening Balance Sheets shows that the relationship between the banks and the individual savers remains unchanged.

175. It is true that, in practice, not all savings deposited on old foreign currency savings accounts have been transferred from the banks to the Unique Citizen's Account. At the Chamber's first hearing on 9 March 1999, Mr. Mujagić stated that 26 per cent of those savings had thus far been transferred and converted into privatisation certificates. Of the present applicants, the savings of Mr. and Ms. Poropat have not been transferred. It further occurs that the transfer of Ms. Šeremet's and Mr. Hrelja's savings were made at their request. They have stated, however, that they did so out of fear that they would otherwise lose their savings. Their fear was based on reports in the media. In this respect, the Chamber notes the statement made by Mr. Mujagić in *Oslobođenje* in December 1998 (see paragraph 67 above).

176. The Chamber considers that, on account of the wording of the relevant legal provisions and the contradicting statements made by public authorities, the individual savers have had good reasons to believe that the transfer of foreign currency savings from the banks to the Unique Citizen's Account is compulsory and that, if they did not facilitate the transfer by providing the banks with

verification on their identity and the amounts of their savings, they would lose their claims against the banks. More importantly, the savers have apparently been unable to have cash disbursed from their accounts. All the present applicants have initiated court proceedings to this end. So far, only Ms. Poropat has received a judgment on the merits, in which the Municipal Court rejected her claim for disbursement (see paragraph 27 above). Her claim against the bank was dismissed on the ground that it lacked standing to be sued. The court seemingly found that the bank had been relieved of its obligation to pay the deposited savings. In the court's opinion, however, that obligation had not been taken over by the other parties against which Ms. Poropat had directed her action, i.e. Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina. The court referred, *inter alia*, to Article 3 of the Citizens' Claims Law which, according to the court's interpretation, does not provide any guarantees for the foreign currency savings but specifies that payments of savings exceeding DEM 100 cannot be made. The Chamber further notes that Ms. Šeremet and Mr. Hrelja objected to their banks against the registration of their claims in the Unique Citizen's Account and stated that they wished to have cash disbursements of their savings. Ms. Šeremet's objection was rejected by the bank. In Mr. Hrelja's case, the bank did not respond.

177. While not overlooking the fact that the apparent compulsory nature of the provisions of the Citizens' Claims Law and related legislation has not been applied comprehensively in practice, the Chamber considers that the decisive factor is that the banks have refused to pay out the savings in question, finding themselves prevented from doing so under this legislation, and the courts have upheld the banks' decisions and thus confirmed their conclusions. It thus appears that, whether or not the individual savers will be able to claim any money from the Federal Ministry of Finance under Article 35 of the Law on Opening Balance Sheets of Enterprises and Banks, their savings are frozen at least until the privatisation of banks has been completed. The Citizens' Claims Law and the related privatisation laws not only relieve the banks from their contractual obligations towards their savers but, in fact, obliges them not to make any payments for an undetermined period of time. Having regard to the above, the Chamber concludes that the measures contained in the legislation enacted by the Federation of Bosnia and Herzegovina have interfered with the property rights of the individual savers, including the present applicants.

(ii) *Whether the interference has been justified*

178. The Chamber notes that the applicants' claims based on their foreign currency savings are still considered as valid. Their conversion into certificates which, according to the Citizens' Claims Law and the related privatisation laws, are to be used in the privatisation process does not purport to change that situation. The Chamber has noted above (paragraph 174) that, following the privatisation of banks, the individual savers will no longer have any claims against the banks. It is not clear whether, upon completion of the privatisation programme, the savers will be able to claim any money from the Federal Ministry of Finance (see paragraphs 177 above and 190 below). However, the Chamber does not deem it necessary to determine whether the applicants, so far, have been deprived of their possessions as, in any event, the Federation legislation has established measures of control of the use of the applicants' property. The Chamber recalls, in this respect, that the legislation prescribes that foreign currency savings that have been converted into certificates may be used to buy privatised property, whereas savings that have not been thus converted shall be transferred to the Ministry of Finance and may thus not be used at all for a period of time. The Chamber will therefore consider the measures established by the Federation legislation under the second paragraph of Article 1 of Protocol No. 1.

(α) Lawfulness and purpose of the interference

179. The Chamber has concluded that the basis for the interference in question is to be found in the provisions of the Citizens' Claims Law and the related privatisation laws. This is so irrespective of the fact, noted above, that the provisions have not been comprehensively applied in practice. Although the various laws, in several respects, are not entirely clear and the accessibility of the laws and the foreseeability of their consequences may thus be questioned, the Chamber accepts that the measures taken by the Federation could be considered as having been in accordance with the law. In so finding, the Chamber recalls that it is in the first place for the domestic authorities to interpret and apply domestic law.

180. Moreover, the measures have clearly been taken in the general interest. In this connection, the Chamber notes the economic difficulties of the Federation of Bosnia and Herzegovina in general and of the banks in particular. As stated by the Federation (see paragraph 115 above) and by Messrs. Omičević and Stojanov (paragraphs 42 and 59, respectively), the banks are likely to go bankrupt if they were to disburse the old foreign currency savings.

(β) Proportionality of the interference

181. As was pointed out by the European Court of Human Rights in the *James and Others v. the United Kingdom* judgment (see paragraph 162 above), the second paragraph of Article 1 of Protocol No. 1 has to be construed in the light of the general principle set out in the first sentence of this Article. This sentence has been interpreted by the Court as including the requirement that a measure of interference should strike a "fair balance" between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights.

182. The Federation of Bosnia and Herzegovina asserts that the settlement of the foreign currency savings through the privatisation process strikes a fair balance between the general interest and the interests of the individual savers. It refers, in particular, to the fact that neither the banks nor the State or Federation would be able to pay out the savings in question. Moreover, the liabilities for which certificates have been issued are allegedly covered by the value of assets made available in the privatisation process. Thus, the individual claimants will be able to obtain full compensation for their claims. The Federation accepts, however, that there is a discrepancy between the savers whose claims have been registered in the Unique Citizen's Account and the savers whose claims have not been so registered. To solve this situation, the agent of the Federation suggested, at the Chamber's first public hearing, that the holders of certificates based on old foreign currency savings could be excluded from the applicable two-year time-limit and that the certificates could be returned and the original claims revalidated in case objective reasons had prevented the holders in question from using the certificates in the privatisation process.

183. The applicants submit that a fair balance between general and private interests has not been struck. Rather, they have suffered unjustified and disproportionate hardship. They would allegedly need the money deposited on the accounts to support their daily needs.

184. The Chamber recalls that the Federation enjoys a wide margin of appreciation in determining what is in the general interest in a matter as complex as the present one, which involves the settlement of private bank savings and large-scale privatisation of socially owned property. Nevertheless, the measures opted for by the Federation must have a reasonable foundation and must not impose an excessive burden on the individuals concerned.

185. As regards the claims that have been registered in the Unique Citizen's Account and converted into certificates, including the claims of Ms. Šeremet and Mr. Hrelja, the Chamber recalls that they can be used to buy various kinds of privatised property, as specified in Article 15 of the Citizens' Claims Law. According to the applicants, they live in houses that they own and cannot buy any apartments that are offered for sale as they do not have occupancy rights over such apartments. As for the other property mentioned in Article 15, i.e. municipal business premises and shares and assets of enterprises, the Chamber considers that they are of use mainly for investors and entrepreneurs. It is further questionable whether individuals with small savings, like the applicants, could reasonably be expected to buy items offered in the privatisation process or would be able to afford these items. The Federation states that they can buy tools, computers and other appliances. It is, however, uncertain to what extent such items have been made available so far or will be made available in the future. In March 1999, the OHR claimed that none of the foreign currency savers had been able to use their certificates (see paragraph 82 above). Also, in February 2000, the OHR stated that a rapid privatisation had been impeded by a non-navigable bureaucracy, legislative barriers, resistance from enterprise managers and political resistance (paragraph 71 above). However, the Federation claims that, as of December 1999, assets were being made available on a large scale at public auctions. In any event, it appears that the start of the privatisation process has been slow.

186. In this connection, the Chamber recalls that, according to Article 18 of the Citizens' Claims Law, the certificates can be used for a period of only two years from the date when the Federal Payment Bureau issued a statement on the individual's balance on the Unique Citizens' Account.

After the expiration of that period, the claims on which the certificates have been issued are extinguished. The slow progress in the privatisation process thus clearly affects the individuals' possibility to realise the value of their claims. The solution to this problem suggested by the agent of the Federation (see paragraph 182 above) has apparently not been considered by the relevant authorities.

187. Furthermore, although the certificates issued to foreign currency savers are based on the amount of money they have deposited on the relevant accounts, the certificates are not treated as equal means of payment as cash money in the privatisation process. Article 28 of the Law on Privatisation of Enterprises not only stipulates that 35 per cent of the price of items offered for sale in the so-called small-scale privatisation shall be paid in cash; it also provides that a discount may be given if a larger proportion of the sale price is paid in cash. According to Article 29, these rules also apply to the sale of certain municipal business premises. Moreover, under Article 24 of the Law on Sale of Apartments with Occupancy Rights, cash payment entitles the buyer of such an apartment to a 20 per cent reduction of the price. This reduction originally applied also to payments by certificates based on foreign currency savings but that part of Article 24 was deleted when the Law was amended on 3 April 1998.

188. The Chamber recalls, in this respect, the public sale of the premises owned by the company "Bosnafolklor" in Sarajevo (see paragraph 72 above), in which a bidder offering KM 700,000 in cash was favoured over a bidder who offered the asking price of KM 1,200,000 but wished to pay only KM 470,000 in cash and the remainder with certificates.

189. The Chamber also takes into account that people in difficult economic circumstances may need their savings to meet their daily needs and may thus be forced to sell their certificates on the secondary market, where they are being sold for a fraction of their nominal value. This situation applies also in general to people with small amounts of savings, as they may have difficulties in finding reasonable items to buy in the privatisation process. While the Federation states that this is not the intended use of the certificates, the sale on the secondary market is clearly not illegal and, therefore, cannot be considered as an "abuse" or a "wrongful use" by the holders of the certificates. It should also be noted that the delay in making items available in the privatisation process and the unfavourable treatment of certificates in the sale of these items contribute to public distrust in the privatisation programme in general and a decrease in the actual value of the certificates.

190. As regards the claims that have not been registered in the Unique Citizen's Account and thus not converted into privatisation certificates, which is the case for Mr. and Ms. Poropat, the Chamber notes, as has been stated by the Federation, that, under Article 35 of the Law on Opening Balance Sheets of Enterprises and Banks, these claims are to be transferred to the Federal Ministry of Finance after the bank privatisation programme has been completed. It appears that they are to be regulated by the Law on Foreign Debt. However, it is highly doubtful whether these claims will actually be paid to the individual savers and, if so, to what extent. In this respect, reference is made to the opinion of 21 April 1998 given by the Ministry of Finance (see paragraph 65 above), i.e. the Ministry to which these claims will be transferred. The Ministry stated that, "as the Federation has only a limited budget and other property which could compensate depositors, it is very uncertain whether such depositors [i.e. depositors who do not participate in the privatisation process] will be compensated at all and, if so, in what way". In any event, the Chamber notes that the savings of these people will be frozen until the banks have been privatised. Accordingly, the savings may not be used at all for an undetermined period of time.

191. The Chamber also finds that people in the Federation have not been satisfactorily informed of the measures applied in regard to the old foreign currency savings and the privatisation process in general. Consequently, they have not been in a position to fully assess the consequences of their actions. The Chamber refers in this respect to the statement made by Mr. Mujagić in *Oslobođenje*, on which two of the present applicants apparently relied when they had their claims registered in the Unique Citizen's Account. It should also be noted that several experts and witnesses heard by the Chamber expressed uncertainty in regard to various aspects of the procedure set up by the Federation.

192. Having regard to the above circumstances, the Chamber considers that the measures applied by the Federation in respect of the old foreign currency savings, taken as a whole, place an individual

and excessive burden on many individual savers, including the present applicants. While not overlooking the general interest involved, including the need to regulate the settlement of these savings in the context of economic difficulties of the Federation and the banks, the Chamber finds that the measures do not strike a "fair balance" between that interest and the protection of the applicants' property rights and that they, thus, fall outside the Federation's margin of appreciation.

193. In conclusion, there has been a violation by the Federation of Bosnia and Herzegovina of the applicants' right to peaceful enjoyment of their possessions under Article 1 of Protocol No. 1 to the Convention.

2. Article 6 of the Convention

194. The applicants complain that they have not had a fair hearing under Article 6 of the Convention. Paragraph 1 of that Article reads, in so far as relevant, as follows:

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

195. The Chamber has noted above (paragraphs 155 and 156) that there have been certain delays in the domestic proceedings due, *inter alia*, to the Municipal Court's decisions to postpone the examination of the applicants' cases. Partly for this reason, the Chamber has concluded that the domestic remedies have not been effective. However, although the justification for some of the delays may be questioned, the Chamber considers, in view of its examination of the applications under Article 1 of Protocol No. 1 to the Convention and the findings of violations of that provision (paragraphs 169 and 193), that it is not necessary to examine the applicants' complaints under Article 6 of the Convention.

VII. REMEDIES

196. Under Article XI(1)(b) of the Agreement the Chamber shall address the question of what steps are to be taken by the respondent Party to remedy breaches of its obligations under the Agreement. In this respect, the Chamber may consider issuing orders to cease and desist, awarding monetary relief (including pecuniary and non-pecuniary injuries) and prescribing provisional measures.

197. All the applicants claim compensation for their foreign currency savings together with the interest accrued on those savings. They also request that they be awarded default interest as well as their legal costs and expenses for the preparation of the writs to the Municipal Court and the applications to the Chamber and the representation at the hearings of these institutions.

198. Mr. Poropat claims compensation of DEM 2,854.28 for the savings he had on 31 March 1992, apparently based on the exchange rates prevailing at the time when the compensation claim was calculated (10 March 1999) and without any reduction having been made for the money withdrawn in 1994. He further claims interest for the period from 31 March 1992 to 24 December 1996 in the amount of DEM 2,282.42 and default interest for the period from 24 December 1996 to 10 March 1999 in the amount of DEM 5,092.68. The total of these three items is thus DEM 10,229.38. For legal costs and expenses he claims a total of KM 462, of which KM 198 relate to the domestic court proceedings and KM 264 to the proceedings before the Chamber.

199. Ms. Poropat claims compensation of USD 558.31 and DEM 520 for the savings she had on 31 January 1992. She further claims interest for the period from 31 January 1992 to 24 December 1996 in the amounts of USD 642.06 and DEM 598 and default interest for the period from 24 December 1996 to 10 March 1999 in the amounts of USD 996.15 and DEM 927.79. The total of these claims is thus USD 2,196.52 and DEM 2,045.79. For legal costs and expenses she claims a total of KM 462, of which KM 198 relate to the domestic court proceedings and KM 264 to the proceedings before the Chamber.

200. Ms. Šeremet claims compensation of DEM 12,697 and ATS 2,629.46 for the savings she had on 17 February 1992. She further claims interest for the period from 17 February 1992 to 16 July 1997 in the amounts of DEM 14,728.52 and ATS 3,050.17 and default interest for the period from 16 July 1997 to 10 March 1999 in the amounts of DEM 20,914.49 and ATS 4,331.25. The total of these claims is thus DEM 48,340.01 and ATS 10,010.88. For legal costs and expenses

she claims a total of KM 990, of which KM 198 relate to the domestic court proceedings and KM 792 to the proceedings before the Chamber.

201. Mr. Hrelja claims compensation of DEM 11,586 for the savings he had on 31 March 1992, apparently calculated on the same basis as Mr. Poropat's compensation claim. He further claims interest for the period from 31 March 1992 to 4 September 1997 in the amount of DEM 13,555.62 and default interest for the period from 4 September 1997 to 10 March 1999 in the amount of DEM 18,344.82. The total of these three items is thus DEM 43,486.44. For legal costs and expenses he claims a total of KM 990, of which KM 198 relate to the domestic court proceedings and KM 792 to the proceedings before the Chamber.

202. The respondent Parties have not submitted any observations on the above claims.

203. The Chamber recalls that it has found both respondent Parties to have violated the applicants' right to peaceful enjoyment of their possessions under Article 1 of Protocol No. 1 to the Convention in regard to their old foreign currency savings (paragraphs 169 and 193 above). The Chamber notes that, under the Framework Law on Privatisation of Enterprises and Banks adopted in July 1999, the competence for the regulation of issues relating to these savings presently rests with the Entities. Moreover, the Federation of Bosnia and Herzegovina has, since November 1997, enacted various laws that directly affect these savings. In these circumstances, the Chamber finds it appropriate to order only the Federation to remedy its violation of the applicants' rights.

204. The violation for which the Federation has been found responsible relates to certain aspects of the privatisation programme. The Chamber has found above (paragraph 192) that some of the measures applied in that programme fail to strike a "fair balance" between the general interest and the protection of the property rights of the applicants as holders of old foreign currency accounts. The Federation should therefore be ordered to amend the privatisation programme so as to achieve that balance. The Chamber has pointed out several shortcomings in the programme, in particular the limited, two-year, validity of the privatisation certificates and the unequal treatment of cash and certificates (see paragraphs 186-188 above). It has also noted the uncertainty as to the future status of the foreign currency claims that have not been registered in the Unique Citizen's Account and the claims that have been so registered but are not used in the privatisation process (see paragraphs 185 and 189 above). These are issues that will have to be solved by the Federation in amending the privatisation programme. However, the Chamber considers that it is for the Federation to find, within its margin of appreciation, the appropriate means to achieve the required "fair balance" of interests.

205. With respect to the applicants' claims for compensation for their foreign currency savings, the Chamber recalls that its findings of violations under Article 1 of Protocol No. 1 to the Convention are not directly based on the applicants' inability to withdraw money from their savings accounts. Rather, the violations found concern the failure of Bosnia and Herzegovina to take adequate action in regard to the savings and the failure of the Federation of Bosnia and Herzegovina to strike a "fair balance" between the relevant interests in regulating this and related issues. Moreover, the Chamber recalls the above order that the Federation of Bosnia and Herzegovina shall amend the privatisation programme so as to achieve the required balance. For these reasons, the Chamber rejects the applicants' claims for compensation for their savings.

206. However, the Chamber finds that the applicants should be compensated for their legal expenses. It notes that the legal expenses have been calculated on the basis of the value of the respective applicants' savings. Having found above that the violations found in the present cases are not directly linked to the reimbursement of the savings and thus not to the value of the savings, the Chamber finds that such a differentiation of legal expenses is not relevant. Consequently, all of the applicants should be awarded the same amount. The Chamber considers that the lower amount claimed by Mr. and Ms. Poropat – KM 462 – is more reasonable, especially in view of the fact that the cases before the Chamber have been considered jointly and all of the applicants have been represented by the same representative. Mr. and Ms. Poropat have claimed KM 132 for the representation at the Chamber's first hearing; the same amount should be added for the representation at the second hearing which took place after they submitted their compensation claims. The Chamber therefore awards each applicant KM 594 as compensation for legal expenses. This amount should be divided equally between the respondent Parties. Accordingly, Bosnia and

Herzegovina and the Federation of Bosnia and Herzegovina should be ordered to pay to each applicant KM 297.

207. Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina should report to the Chamber on the steps taken by them to comply with the above orders within six months from the date of delivery of this decision.

VIII. CONCLUSIONS

208. For the above reasons, the Chamber decides,

1. unanimously, to declare the applications admissible;

2. by 8 votes to 6, that Bosnia and Herzegovina has violated the applicants' right to peaceful enjoyment of their possessions under Article 1 of Protocol No. 1 to the European Convention on Human Rights by failing to take adequate action in regard to the old foreign currency savings to secure the applicants' rights under that provision, Bosnia and Herzegovina thereby being in breach of Article I of the Human Rights Agreement;

3. unanimously, that the Federation of Bosnia and Herzegovina has violated the applicants' right to peaceful enjoyment of their possessions under Article 1 of Protocol No. 1 to the Convention by taking measures in regard to their old foreign currency savings which place an individual and excessive burden on the applicants, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Agreement;

4. by 10 votes to 4, that it is not necessary to examine the applicants' complaints under Article 6 of the Convention;

5. unanimously, to order the Federation of Bosnia and Herzegovina to amend the privatisation programme so as to achieve a fair balance between the general interest and the protection of the property rights of the applicants as holders of old foreign currency savings accounts;

6. by 8 votes to 6, to order Bosnia and Herzegovina to pay to each applicant, by 9 July 2000, 297 Convertible marks (*Konvertibilnih Maraka*) as compensation for legal expenses;

7. by 12 votes to 2, to order the Federation of Bosnia and Herzegovina to pay to each applicant, by 9 July 2000, 297 Convertible marks as compensation for legal expenses;

8. unanimously, to reject the remainder of the applicants' claims for compensation; and

9. unanimously, to order Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina to report to the Chamber, by 9 December 2000, on the steps taken by them to comply with the above orders.

(signed)	(signed)
Anders MÅNSSON	Michèle PICARD
Registrar of the Chamber	President of the Chamber

In accordance with Rule 61 of the Chamber's Rules of Procedure, the following separate opinions are annexed to this decision:

Annex I	Partly dissenting opinion of Ms. Michèle Picard
Annex II	Partly dissenting opinion of Messrs. Giovanni Grasso and Viktor Masenko-Mavi
Annex III	Partly dissenting opinion of Mr. Dietrich Rauschning
Annex IV	Partly dissenting opinion of Mr. Jakob Möller on the remedies, joined by Messrs. Hasan Balić, Želimir Juka, Viktor Masenko-Mavi and Mato Tadić
Annex V	Partly dissenting opinion of Messrs. Miodrag Pajić and Vitomir Popović
Annex VI	Partly dissenting opinion of Mr. Andrew Grotrian

ANNEX I

PARTLY DISSENTING OPINION OF MS. MICHÈLE PICARD

I agree with the majority of the Chamber in the admissibility part of the decision that the State of Bosnia and Herzegovina has some responsibility for the management of the old foreign currency savings although the problem started before the war. Thus, the new State inherited the situation but did not create it. The then Republic enacted some general provisions on this matter after the entry into force of the General Framework Agreement, stating that the problem would be solved either through the public debt or in another way (Decision of 10 April 1996). These provisions showed that the problem could be solved within the competence of the State.

However, I disagree with the finding of the majority of the Chamber that there has been a violation of Article 1 of Protocol No. 1 to the Convention by the State of Bosnia and Herzegovina. According to the majority of the members, the basis for the violation found is the failure of the State to take adequate action.

When assuming the responsibility to solve the issue in 1996, the Republic did not specify in which way it would be done. In the 1996 decision, it is provided that it could be solved either through the public debt or in another way "in consultation with the international community". Thereafter, it became clear that the transfer of the foreign currency claims to the public debt was not possible from a financial point of view and was not fair to other citizens of Bosnia and Herzegovina (see the opinion of M. Piljak, at paragraph 50 of the Chamber's decision). Considering the competencies of the State under the Constitution of Bosnia and Herzegovina, the only solution was then to solve the issue through the Entities which are responsible for the banking system.

According to the jurisprudence of the European Court of Human Rights, States enjoy a wide margin of appreciation in determining what is in the public interest. By deciding not to put the burden of the payment of the old foreign currency savings on the public debt, that is on the budget of the State of Bosnia and Herzegovina, the State took a decision which did not manifestly exceed its margin of appreciation. I would add that this decision was probably taken in cooperation with the international community which, at that time and still today, provides a large part of the budget of Bosnia and Herzegovina.

I think it is not within the competence of the Chamber to decide or even to appreciate what would have been the right solution in this context as long as the measure taken was not manifestly lacking any reasonable basis. On this point, the Chamber admits in paragraph 180 of the decision that "the measures have clearly been taken in the general interest" and notes the economic difficulties of the State and Federation of Bosnia and Herzegovina. Solving the problem through the privatisation process was one solution among others clearly within the margin of appreciation of the public authorities. It is only because the process of privatisation as applied does not strike a fair balance between the general interest and the protection of the applicants' rights that the Chamber has found a violation of Article 1 of Protocol No. 1 by the Federation. If the privatisation process had been rightly and fairly managed it is doubtful that the Chamber would have found a violation at all. Thus, it appears that it is only because the privatisation process has been badly conducted by the Federation that the State has violated the Convention. As I cannot accept this reasoning, I voted against the finding of a violation by the State.

(signed)
Michèle Picard

ANNEX II

PARTLY DISSENTING OPINION OF MESSRS. GIOVANNI GRASSO AND VIKTOR MASENKO-MAVI

1. We cannot agree with conclusion no. 4 of the decision. In our evaluation the allegation that the applicants were deprived of their right to a fair hearing within a reasonable time plays a crucial role in the cases under consideration and is furthermore relevant for the decision on the admissibility of the applications, as the Chamber has noted in paragraphs 152 ff of the decision.

2. In our opinion the relevant proceedings have been pending for considerable periods of time. The case of Ms. Poropat, which is the only one where a judgment on the merits has so far been issued, was lodged in December 1996. It took the Municipal Court three years to issue its judgment. Following the applicant's appeal, the case is now, three years and five months after it was lodged, pending before the Cantonal Court. The cases of Ms. Šeremet and Mr. Hrelja were lodged in June and September 1997, respectively. Still after close to three years they have not received any judgments.

3. The case of Mr. Poropat appears to be different from the other cases. In fact, the failure of the applicant to appear at the hearing held on 21 July 1998 and his later passivity led the Municipal Court to dismiss the case, considering that the action had been withdrawn. The appeal of Mr. Poropat against this decision was decided by the Cantonal Court in a reasonable period (five months).

4. In determining the reasonableness of the length of proceedings, regard should be given to 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/97/110, *Memić*, decision on admissibility and merits delivered on 11 February 2000, paragraph 76).

5. In the present cases, the courts have been called upon to determine whether the applicants, under the applicable law, are entitled to withdraw money from their savings accounts. While this issue could present a certain complexity from a legal point of view, it does not need a complex inquiry on the facts, which on the contrary were in the substance undisputed; in fact, the postponement of the decisions by the courts was never justified by reference to the need of obtaining evidence. It further appears that, except for the case of Mr. Poropat, the considerable delays in the proceedings cannot be imputed to the conduct of the applicants or their representative.

6. Taking into account these facts and the length of time the various proceedings have been pending, we cannot but conclude that the cases of the applicants Ms. Poropat, Ms. Šeremet and Mr. Hrelja have not been determined within a reasonable time, that, accordingly, Article 6 paragraph 1 of the Convention has been violated and that the Federation of Bosnia and Herzegovina is responsible for this violation.

(signed)
Giovanni Grasso

(signed)
Viktor Masenko-Mavi

ANNEX III

PARTLY DISSENTING OPINION OF MR. DIETRICH RAUSCHNING

I cannot share the conclusions in the Chamber's decision that the State of Bosnia and Herzegovina has violated the human rights of the applicants under Article 1 of Protocol No. 1 to the Convention. As to the reasons, I follow in substance those given by Mr. Grotrian in this respect (see Annex VI to this decision). There is no action to be found by which Bosnia and Herzegovina deprived the applicants of their rights against the banks where they deposited their savings. I accept that Bosnia and Herzegovina is not free from all responsibility to act in the matter of the old foreign currency accounts. But its responsibility results from the general duties as a State, from the Constitution and from the special situation connected with the reorganisation of statehood in former Yugoslavia. The claims of the applicants against Bosnia and Herzegovina cannot be considered to be assets protected under Article 1 of Protocol No. 1. The lack of action by Bosnia and Herzegovina to regulate the payment is neither a deprivation nor a control of use of the assets deposited with the banks. Further, as the responsibility of Bosnia and Herzegovina to act in this respect cannot be derived from Article 1 of Protocol No. 1, the limited scope of the action taken cannot be considered to be a violation of the human rights of the applicants.

(signed)
Dietrich Rauschning

ANNEX IV

PARTLY DISSENTING OPINION OF MR. JAKOB MÖLLER ON THE REMEDIES, JOINED BY MESSRS. HASAN BALIĆ, ŽELIMIR JUKA, VIKTOR MASENKO-MAVI AND MATO TADIĆ

I concur with the Chamber's conclusion that both respondent Parties, Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina, have failed to secure the applicants' right to peaceful enjoyment of their possessions in violation of Article I of the Agreement. I cannot agree, however, with the reasoning in paragraph 203 of the Chamber's decision that, in the circumstances, it is appropriate "to order only the Federation to remedy its violation of the applicant's rights".

I am of the opinion that it would have been appropriate also to order Bosnia and Herzegovina to recognise its shared responsibility for bringing about a just and equitable solution to the old foreign currency savings issue, such as contemplated in the Decisions of 1995 and 1996 (see paragraphs 90 and 91 of the Chamber's decision, cf. paragraphs 164-169).

(signed)
Jakob Möller

(signed)
Hasan Balić

(signed)
Želimir Juka

(signed)
Viktor Masenko-Mavi

(signed)
Mato Tadić

ANNEX V

PARTLY DISSENTING OPINION OF MESSRS. MIODRAG PAJIĆ AND VITOMIR POPOVIĆ

We do not agree with the conclusions in the Chamber's decision according to which the State of Bosnia and Herzegovina has violated the applicants' rights as guaranteed by Article 1 of Protocol No. 1 to the Convention, and that it is not necessary to examine the applicants' complaints under Article 6 of the Convention.

In conclusion no. 2 it has been, in our opinion, wrongly established that Bosnia and Herzegovina has violated Article 1 of Protocol No. 1. In this respect, the applications should have been declared inadmissible as incompatible with the Agreement *ratione temporis* and *ratione materiae*. The competencies of the common institutions of Bosnia and Herzegovina are clearly defined by Article 3 of the Constitution of Bosnia and Herzegovina and Annex 4 of the General Framework Agreement. The system of commercial banks, before which the applicants tried to realise their rights, and the legal system and means of protection of such rights, are within the exclusive competence of the Entities, in this case the Federation of Bosnia and Herzegovina. The Entities have passed the laws on privatisation which takes over the obligation to compensate the applicants for their old foreign currency savings through the privatisation process. The Framework Law on Privatisation provides that the privatisation shall be done pursuant to the legislation of the Entities. The generally known fact is that the payment of the public debt, created before the General Framework Agreement entered into force, is made in such a way that each Entity pays the debt created by economic subjects located on their territories. The 1996 Decision referring to the public debt was not enacted by the State of Bosnia and Herzegovina defined in the General Framework Agreement but by the Republic of Bosnia and Herzegovina. Therefore, it cannot be understood as a decision passed at the level of the State and cannot create any legal obligations. This is confirmed by the fact that a law on public debt on the level of Bosnia and Herzegovina has never been adopted.

In view of the above, the conclusion is that no responsibility attaches to Bosnia and Herzegovina. In the present cases only the Federation of Bosnia and Herzegovina is responsible for violations of human rights causing detriment to the applicants.

Moreover, we consider that the remedy decided by the Chamber is not effective. In our opinion, it is of a declaratory nature and, as such, will not remedy existing and future violations of the applicants' rights. This could be contrary to the legal nature and character of the decisions that the Chamber may issue pursuant to Annex 6 and its Rules of Procedure.

(signed)
Miodrag Pajić

(signed)
Vitomir Popović

ANNEX VI

PARTLY DISSENTING OPINION OF MR. ANDREW GROTRIAN

I do not agree with the conclusions in the Chamber's decision to the effect that the State of Bosnia and Herzegovina has violated the applicants' rights under Article 1 of Protocol No. 1 to the European Convention and to the effect that it is not necessary to examine the applicants' complaints under Article 6 of the Convention (conclusions nos. 2 and 4).

As to the position of Bosnia and Herzegovina, I voted in favour of declaring the applications admissible against Bosnia and Herzegovina since I considered that it could not be said that the matters at issue were clearly outside the scope of its responsibility. I did not therefore think it appropriate to declare the applications, so far as directed against Bosnia and Herzegovina, inadmissible as being incompatible with the Agreement *ratione personae* but preferred to reserve for consideration on the merits the question whether the facts of the cases disclosed any act or omission, within the responsibility of Bosnia and Herzegovina, which violated the applicants' rights.

The only relevant action taken by the State since the Agreement came into force appears to be the passage of two pieces of legislation. The first was the Decision of 10 April 1996 on Aims and Objectives of the Foreign Exchange Policy (paragraph 91 of the Chamber's decision). This provided that the foreign currency savings in question should be resolved "by the enactment of a law on public debt of Bosnia and Herzegovina or in another way within the overall consolidation of the public debt of Bosnia and Herzegovina and in consultation with the international community". The second relevant piece of legislation was the Framework Law on Privatisation, which was issued by the High Representative in July 1998 and adopted by the Parliamentary Assembly of Bosnia and Herzegovina in July 1999 (see paragraph 93 above). Under this Law, the State *inter alia* recognised the right of the Entitites to privatise banks located on their territory (Article 2 paragraph 1). The Law also provided that criteria by which natural persons should be entitled to citizens' claims (defined as compensation as part of the privatisation process in recognition of obligations defined by Entity legislation) should be based on the laws adopted by the Entities (Article 1 and Article 3 paragraph 4) and that claims against banks to be privatised "shall be deemed as a liability of the privatising Entity" (Article 4 paragraph 2).

In my opinion neither of these two laws involved any infringement of the applicants' rights under the Agreement. The 1996 Decision was little more than a statement of intent and did not affect the applicants' property rights as against the banks. The effect of the Framework Law on Privatisation was that the privatisation of the banks, and the settlement of claims as part of the privatisation process, were recognised by the State to be matters within the competence of the Entities rather than the State. In my view this attitude was compatible with the division of competencies between the State and the Entities provided for in the Constitution. The Framework Law did not directly affect the applicants' property rights as against the banks, although it recognised the competence of the Entitites to pass laws which did affect such rights.

The majority find, however, that Bosnia and Herzegovina was in breach of its positive obligation to secure the applicants' property rights in that it failed to take adequate action to regulate the issue of the applicants' claims. I do not see what further action Bosnia and Herzegovina should have taken. In my opinion Bosnia and Herzegovina was entitled, within the wide margin of appreciation available to it, to take the view that the applicants' claims should be dealt with in the context of the privatisation programmes of the Entities. I conclude therefore that Bosnia and Herzegovina has not violated the applicants' rights under Article 1 of Protocol No. 1.

As to Article 6 of the Convention, the Chamber ought, in my opinion, to have examined the applicants' complaints to the effect that they did not receive a hearing within a "reasonable time" in their civil proceedings. It is an important and regrettable feature of these cases that none of the applicants has been able to obtain a final decision from the domestic courts on the merits of their claims, despite having instituted proceedings in 1996 or 1997. In the case of the applicant Milovan Poropat the delay which occurred was largely the fault of the applicant. The remaining cases have been subject to substantial delays which have not been satisfactorily explained by the respondent Party concerned. I would therefore have found a violation by the Federation of Bosnia and

Herzegovina of Article 6 paragraph 1 of the Convention in the cases of Ms. Poropat, Ms. Šeremet and Mr. Hrelja.

As to the question of remedies, I voted against conclusion no. 6 in the decision, which awards the applicants compensation for legal expenses against Bosnia and Herzegovina. I would have favoured making an award against the Federation of Bosnia and Herzegovina of the full sum, KM 594, of legal expenses.

(signed)
Andrew Grotrian