DECISION ON ADMISSIBILITY AND MERITS
(delivered on 13 January 2000)

Case no. CH/97/49

Vladan ĐURIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 9 December 1999, with the following members present:

Ms. Michèle PICARD, President
Mr. Rona AYBAY, Vice-President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
Mr. Želimir JUKA
Mr. Miodrag PAJIĆ
Mr. Andrew GROTRIAN

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

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

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

I. INTRODUCTION

1. The applicant, a citizen of Bosnia and Herzegovina, was an occupancy right holder of an apartment located in Sarajevo. In late 1992 the applicant, with the permission of the competent authorities, went abroad to receive medical treatment. In 1994 the holder of the allocation right over the apartment reallocated it to a temporary user. In 1996 the applicant returned to Bosnia and Herzegovina, expecting to live in the apartment. However, the temporary occupant was still there. After a period where the applicant lived with the temporary occupant and his family, the applicant was denied entrance to the apartment. Since his return to Bosnia and Herzegovina, the applicant has pursued various remedies to regain possession of the apartment which have not yielded the desired result.

2. The case raises issues under Article 6 paragraph 1 and Article 8 of the European Convention on Human Rights and Article 1 of Protocol No. 1 to the Convention.

II. PROCEEDINGS BEFORE THE CHAMBER

3. The application was introduced on 29 May 1997 and registered on 18 August 1997.

4. On 21 February 1998 the Chamber decided to transmit the application to the respondent Party for observations on the admissibility and merits thereof.

5. The respondent Party submitted its observations on 17 and 20 April 1998, stating, *inter alia*, that the case was inadmissible or, if the Chamber did find the application admissible, that the merits of the applicant's claims did not amount to a violation of the General Framework Agreement. In addition, if the Chamber found the case admissible, the respondent Party stated that it would pursue a friendly settlement. On 19 May 1998 the Chamber received the applicant's reply to these observations.

6. On 10 September 1998 the Chamber sent a letter to the respondent Party requesting more information on the possible terms of a friendly settlement. On 9 November 1998 the Chamber received a letter from the applicant, stating his interest as well in pursuing a settlement. No settlement was reached, however.

7. On 5 January 1999 the Chamber received a letter from the respondent Party which again stated that the case was inadmissible. Further, the respondent Party encouraged the applicant, through the Chamber, to initiate proceedings in accordance with the Law on the Cessation of the Application of the Law on Abandoned Apartments. This submission was forwarded to the applicant on 22 January 1999.

8. The applicant's representative gave the Chamber further information and documents regarding the applicant's case on 11 and 12 November 1999.

9. On 9 December 1999 the Chamber adopted this decision.

III. ESTABLISHMENT OF THE FACTS

A. Particular facts of the case

10. The applicant is a pensioner who was, since 1980, the occupancy right holder of an apartment located at Aleja lipa 51/XI in Sarajevo. In addition, the applicant had signed and completed a contract on use for the apartment with the appropriate housing authority.

11. In September 1992, because of increasingly severe medical problems, the applicant travelled to Italy to have surgery. The applicant received a permit to leave from the proper authorities.

12. As the applicant was supposed to stay in Italy for more than six months, he notified the allocation right holder, Energoinvest Birotehnika ("E.B."), which had assigned the apartment to him, that the house would be available for temporary use. On 27 April 1994 E.B. allocated the apartment to D.P., an employee of the company, as a temporary user.

13. In August 1996 the applicant returned to his home in Sarajevo. D.P. and his family were still living in the apartment. The applicant and D.P. proceeded to share the residence.

14. Shortly thereafter, E.B. requested that the Municipal Secretariat for Housing Affairs ("the Secretariat") declare the apartment abandoned and terminate the applicant's occupancy right. The applicant learned of this request and accordingly, on 20 September 1996, submitted arguments contesting it to the Secretariat.

15. By a decision of 26 September 1996 E.B.'s request was accepted; the applicant's occupancy right was suspended and the apartment was declared permanently abandoned, retroactive to 1 September 1996, under Article 10 of the Law on Abandoned Apartments. Neither the applicant nor his registered representative was given notice of these proceedings, nor were they invited to participate in the investigation. According to the applicant, an interim representative assigned by the Secretariat represented him in these proceedings, but failed to notify him of any developments.

16. On 1 November 1996 the applicant applied to the Ombudsmen for the Federation of Bosnia and Herzegovina regarding possible human rights violations. However, that office rejected his application as premature. At the time, the applicant did not know that the Secretariat had made a determination regarding E.B.'s request.

17. On 5 November 1996 the applicant returned to the apartment to find that the locks had been changed. On 8 November 1996 he instituted civil proceedings against D.P. in the Court of First Instance II in Sarajevo ("the Court") claiming interference with his right to use the property. Then on 7 January 1997 the applicant filed a second claim, this time to have D.P. evicted. Sometime later, D.P. moved from the apartment (the applicant's claims against D.P were subsequently withdrawn on 30 September 1998). Another employee of E.B., M.L., was allocated the right to use the apartment by a procedural decision of E.B. dated 23 January 1997.

18. The applicant alleges that only on 31 January 1997, at the preliminary hearing in the civil proceedings against D.P., did he learn of the Secretariat's decision declaring the apartment permanently abandoned. On 4 February 1997 the applicant appealed against that decision. He sent his appeal to the Secretariat and asked that it be forwarded to the appeals body, the Cantonal Ministry for Housing Affairs.

19. On 7 April 1997 the applicant complained directly to the Head of the Secretariat regarding the difficulties he had been experiencing in his efforts and stated that the costs of those efforts had to that point come to over 2,380 Convertible Marks (*Konvertibilnih Marka*; KM). There was no response to this letter.

20. On 12 March 1997 E.B. filed an action with the Court requesting that the applicant's contract on use regarding the apartment be terminated. On 27 August 1998 the applicant filed his reply. There have been at least eleven hearings scheduled in these proceedings. In each instance the claimant E.B. has failed to appear and the hearing has been rescheduled. These proceedings are still ongoing today.

21. On 20 February 1998 the applicant filed an action with the Court, requesting that M.L. be ordered to vacate the apartment and pay fees for the court costs. However, on 13 January 1999, that

court declared itself incompetent to hear the case, claiming that the municipal administrative bodies had exclusive jurisdiction.

22. On 17 April 1998 the Secretariat, considering that the applicant's letter of 4 February 1997 constituted a request for reopening of proceedings, decided that the proceedings regarding the decision of 26 September 1996 be reopened. However, on that same day the Secretariat terminated the proceedings because the Law on Abandoned Apartments had been repealed. The latter decision was not submitted to the applicant, who only came to know about it through correspondence with the Chamber. The applicant subsequently appealed against the decision. His appeal was received by the Secretariat on 28 August 1998. There has been no response to the appeal.

23. On 21 July 1998, with the legal assistance of the Swiss Disaster Relief Unit, the applicant lodged a request for reinstatement into the apartment to the Secretariat under the Law on the Cessation of the Application of the Law on Abandoned Apartments. The application was initially delayed because of procedural difficulties. There is no indication in the information before the Chamber of the further status of this effort.

24. On 8 January 1999 the applicant initiated a "silence of administration" complaint with the Federal Ministry of Justice regarding his appeal of 28 August 1998 against the decision to terminate the proceedings before the Secretariat. The applicant received a reply to this complaint dated 29 April 1999 which stated that the Federal Administrative Inspector which reviewed the case could not confirm that the appeal had been filed. Further, the Inspector stated that there was no violations as there was a hearing scheduled in those proceedings for May 1999.

25. In response, the applicant submitted a letter to the Federal Ministry of Justice on 17 May 1999, arguing that the appeal did exist, and including relevant documentation to prove his point. The applicant received a letter dated 20 September 1999 signed by the same Federal Administrative Inspector, who changed his finding and stated that the applicant was correct in his complaint that the administration had failed to meet its obligations. Further, the Inspector ordered the Secretariat to make a decision within thirty days regarding the applicant's appeal of 28 August 1998. However, there has been no decision regarding the applicant's appeal.

B. Relevant legislation

1. The Law on Abandoned Apartments

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

27. According to the old law, an occupancy right expired if the holder of the right and the members of his or her household had abandoned the apartment after 30 April 1991 (Article 1). An apartment was considered abandoned if, even temporarily, it was not used by the occupancy right holder or members of the household (Article 2). There were, however, certain exceptions to this definition. For example, an apartment was not to be considered abandoned if the occupancy right holder or members of the household had left for a private or business journey within the country or abroad for any of the following reasons: 1) to act as a representative of a state authority, company, institution or other organisation or association at the request or with the approval of the competent state authority; 2) to receive medical treatment in accordance with conditions approved by a medical institution; or 3) to join the armed forces of the Republic of Bosnia and Herzegovina (Article 3 paragraph 4).

28. Proceedings aimed at having an apartment declared abandoned could be initiated by a state

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

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

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

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

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

32. According to the new law, no further decisions declaring apartments abandoned are to be taken (Article 1). All administrative, judicial and other decisions terminating occupancy rights based on regulations issued under the old law are invalid. Nevertheless, decisions establishing a right of temporary occupancy shall remain effective until revoked in accordance with the new law. Until 14 April 1999, also all decisions which had created a new occupancy right pursuant to regulations issued under the old law were valid unless revoked. However, on that date, the High Representative decided that any occupancy right or contract on use made between 1 April 1992 and 7 February 1998 is cancelled. A person occupying an apartment on the basis of a cancelled occupancy right or decision on temporary occupancy is to be considered as a temporary user (Article 2). Also contracts and decisions made after 7 February 1998 on the use of apartments declared abandoned are invalid. Any person using an apartment on the basis of such a contract or decision is considered to be occupying the apartment without any legal basis (Article 16).

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

documented absence of available housing, as agreed upon with the Office of the High Representative. In such a case, the occupancy right holder must be notified of the decision to extend the deadline and the basis therefor 30 days before the original deadline expires (Article 3 paragraph 5 compared to Article 7 paragraphs 2 and 3).

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

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

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

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

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

3. The Law on Administrative Proceedings

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

4. The Law on Administrative Disputes

39. Article 1 of the Law on Administrative Disputes (OG FBiH no. 2/98) provides that the courts shall decide in administrative disputes on the lawfulness of second instance administrative acts concerning rights and obligations of citizens and legal persons.

40. Article 22 paragraph 3 provides that an administrative dispute may be instituted also if the administrative second instance organ fails to render a decision within the prescribed time-limit, whether the appeal to it was against a decision or against the first instance organ’s silence.

IV. COMPLAINTS

41. The applicant complains that his right to peaceful enjoyment of his possessions and his right to legal protection and equality before the law have been violated. These complaints appear to raise issues under Article 8 of the Convention and Article 1 of Protocol No. 1 to the Convention, and Article 6 paragraph 1 of the Convention, respectively.

V. SUBMISSIONS OF THE PARTIES

A. The respondent Party

42. The respondent Party argues that the applicant has failed to exhaust domestic remedies because he still has an appeal pending regarding the decision of 26 September 1996 and also has the opportunity to file a claim under the new law. Further, the respondent Party argues that the reopening of proceedings by the Secretariat (see paragraph 21 above) demonstrates that the proceedings are in progress. Therefore, the case is inadmissible.

43. As regards the merits of the case, the respondent Party has made observations only in relation to Article 1 of Protocol No. 1 to the Convention. It states that the measures taken in the applicant's case were justified under paragraph 2 of that Article as they were in the general interest, having regard to the consequences of the recent war, in particular the large number of refugees and returnees in need of housing. The applicant's right to peaceful enjoyment of his possessions could be temporarily limited as, allegedly, he had alternative accommodation.

B. The applicant

44. In response, the applicant maintains that domestic remedies have proved to be ineffective, for which reason they need not be exhausted.

VI. OPINION OF THE CHAMBER

A. Admissibility

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

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

47. In the present case, the applicant began proceedings in November 1996 when he first filed an eviction claim against D.P., the occupant at the time. As the facts section above reflects, the applicant has been party to innumerable hearings, procedures and complaints, before administrative authorities and courts, in an effort to determine his rights with respect to the apartment.

48. The respondent Party argues that the appeals that are still pending show that the applicant has not exhausted domestic remedies. It further asserts that, regardless of these proceedings, the

applicant has available the procedures set out in the new law. With respect to the former argument, the applicant has been through eleven rescheduled hearings in one of the proceedings. In another case, he has been waiting for a decision on his appeal for over a year despite the Federal Ministry of Justice admonishing the relevant authority to issue a decision. The Chamber finds, therefore, that further pursuit of these remedies would be futile.

49. As to the argument that the applicant has not begun proceedings under the new law, the applicant filed a claim under the new law which was registered with the Secretariat on 21 July 1998. Apparently, there has been no decision regarding this complaint, even though the new law sets a 30-day limit to make such determinations.

50. Therefore, the Chamber finds that while the pending remedies are possibly effective in theory, they have proved to be wholly ineffective in practice. In these circumstances, the Chamber finds that the applicant cannot be required to exhaust domestic remedies for the purposes of Article VIII(2)(a) of the Agreement.

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

B. Merits

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

1. Article 8 of the Convention

53. In his application to the Chamber, the applicant claimed to be victim of a violation of Article 8 owing to his inability to re-enter his home. Article 8 of the Convention reads, in relevant part, as follows:

> 1. Everyone has the right to respect for ... his home ...
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

54. The respondent Party did not submit any observations relating to this provision.

55. To find a violation under this article, it must first be established that the apartment in question could be considered as the applicant's "home" within the meaning of Article 8. As the applicant resided in the apartment for 12 years and has consistently demonstrated a desire to return to the apartment, it is clear that the apartment is indeed the applicant's home for the purposes of Article 8.

56. The applicant has been attempting to regain possession of his apartment since November 1996. It is therefore clear that there has been an interference with his right to respect for his home. In order to determine whether this interference has been justified under the terms of paragraph 2 of Article 8 of the Convention, the Chamber must examine whether it was "in accordance with the law", served a legitimate aim and was "necessary in a democratic society." There will be a violation of

Article 8 if any one of these conditions is not satisfied (see the above-mentioned *Onić* decision, paragraph 49).

57. In previous cases, the Chamber has found that the provisions of the old law, including those relevant to this case, failed to meet the standards of "law" as this expression is to be understood under Article 8 of the Convention (see case no. CH/97/46, *Kevešević*, decision on the merits delivered on 10 September 1998, paragraphs 50-58, Decisions and Reports 1998; and the above-mentioned *Onić* decision, paragraph 50). Correspondingly, it is clear that the declaration that the applicant's apartment was abandoned was not done "in accordance with the law", as required by Article 8.

58. Accordingly, the Chamber concludes that Article 8 of the Convention has been violated.

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

59. The applicant complains that his right to peaceful enjoyment of his possessions has been violated as a result of his inability to regain possession of his property. Article 1 of Protocol No. 1 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."

60. The respondent Party claims that the applicant had alternative accommodation and that the measures taken in the case were justified under paragraph 2 of Article 1 of Protocol No. 1 in view of the need of housing for refugees and returnees after the war.

61. In keeping with its conclusions in previous decisions, the Chamber finds that the applicant's occupancy right over the apartment in question constitutes a "possession" within the meaning of Article 1 of Protocol No. 1 (see the above-mentioned *Kevešević* and *Onić* decisions, paragraphs 73 and 55, respectively).

62. The Chamber has further found that a decision declaring abandoned an apartment over which someone enjoyed an occupancy right, and the allocation thereof to another person pursuant to the old law, amounted to a *de facto* expropriation which was not "subject to the conditions provided for by law" and thereby in violation of Article 1 of Protocol No. 1 (see the *Onić* decision, paragraph 56).

63. As to the respondent Party's observations, the Chamber finds that it has neither substantiated the claim that the applicant had alternative accommodation nor has it shown how having alternative accommodation would ameliorate its responsibility not to interfere with an individual's right to freely enjoy his possessions.

64. The Chamber therefore sees no reason to deviate from its case-law. Accordingly, Article 1 of Protocol No. 1 was violated already by virtue of the authorities' effective refusal to recognise the applicant's occupancy right upon his return to Sarajevo in August 1996.

65. Accordingly, the Chamber concludes that there has also been a violation of Article 1 of Protocol No. 1 to the Convention.

3. Article 6 paragraph 1 of the Convention

66. The applicant claims that his right to legal protection and equality before the law have been violated and, thereby, appears to complain that his procedural rights have been breached in the course of the proceedings relating to his property. The Chamber finds that this complaint should be examined under Article 6 paragraph 1 of the Convention. This provision reads, in relevant parts, as follows:

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

67. The respondent Party did not submit observations on this point.

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

69. The applicant has complained that he was not informed of proceedings and not notified of decisions taken. It appears that these complaints relate to the initial administrative proceedings before the Secretariat in which the applicant's apartment was declared abandoned. Noting that Article 6 guarantees certain rights in court proceedings and that the applicant has made no specific allegations regarding the proceedings that have taken place before the Court, the Chamber finds that the applicant's complaints do not show any violation of the applicant's rights under Article 6.

70. The Chamber considers, however, that the case raises the question whether the proceedings have been expedited with reasonable speed. When assessing the length of proceedings for the purposes of Article 6 paragraph 1, the first step is to determine the period to be taken into consideration. Administrative proceedings, in the absence of court proceedings, cannot be determinative in this respect. They may, however, be considered part of the proceedings as a whole in conjunction with court proceedings. Therefore, the proceedings in the applicant's case can be said to have been on-going since 20 September 1996 when the applicant first attempted to participate in the administrative hearing regarding his occupancy right filed by E.B.

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

72. The issue underlying the numerous proceedings over the last three years is who has the right to the property in question. The Chamber cannot find this issue to be so complex as to require more than three years to decide.

73. Secondly, although the applicant, apparently, filed his reply to E.B.'s action to have his contract on use terminated almost one and a half years after E.B. had lodged the action with the Court, the applicant's overall conduct in the various proceedings cannot be said to have caused the delays in question. Rather, he has, on numerous occasions, tried to speed up the proceedings and have decisions taken by the relevant bodies.

74. Instead, the authorities in this case have exacerbated the delays with their actions. For example, in the initial case declaring the apartment abandoned, the Secretariat neither notified the applicant of the proceedings nor submitted its decisions to him. Furthermore, it has failed to decide on the applicant's appeal of 28 August 1998, although the Federal Ministry of Justice later stated that the administration had failed to meet its obligations and ordered the Secretariat to make a decision within a short time-limit. Also the case before the Court concerning the termination of the

applicant's contract on use is still pending. Although this case has been partly delayed by E.B.'s failure to appear at eleven hearings scheduled by the Court, it is the Court's responsibility to ensure that the proceedings are expedited in a reasonable time. By constantly rescheduling the hearings in the case, it does not appear that the Court has made reasonable efforts to have the case determined. Clearly, therefore, the conduct of the authorities is the main cause of the delays in the various proceedings.

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

76. In view of the above, the Chamber finds a violation of Article 6 paragraph 1 of the Convention in that the proceedings in the applicant's case have not been determined within a reasonable time.

VII. REMEDIES

77. Under Article XI(1)(b) of the Agreement the Chamber must address the question what steps shall be taken by the respondent Party to remedy breaches of the Agreement which it has found, including orders to cease and desist, and monetary relief.

78. The Chamber notes that in accordance with its order for the proceedings in this case the applicant was afforded the possibility of claiming compensation within the time-limit fixed for any reply to observations submitted by a respondent Party. The applicant has not lodged any such claim but requests the Chamber to order that he be reinstated into his apartment.

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

VIII. CONCLUSIONS

80. For the above reasons, the Chamber decides:

1. unanimously, to declare the case admissible;

2. unanimously, that there has been a violation of the applicant's right to respect for his home within the meaning of Article 8 of the European Convention on Human Rights, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Human Rights Agreement;

3. unanimously, that there has been a violation of the applicant's right to peaceful enjoyment of his possessions within the meaning of Article 1 of Protocol No. 1 to the Convention, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Agreement;

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

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

6. unanimously, to order the Federation of Bosnia and Herzegovina to report to it within two

weeks of the expiry of the time-limit referred to in conclusion number five, on the steps it has taken to comply with the above order.

(signed)
Anders MÅNSSON
Registrar of the Chamber

(signed)
Michèle PICARD
President of the Chamber