DECISION ON THE ADMISSIBILITY AND MERITS

DELIVERED ON 11 JUNE 1999

CASE No. CH/97/51

Marija STANIVUK

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 13 May 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. Leif BERG, Registrar
Ms. Olga KAPIĆ, Deputy Registrar

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

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

I. INTRODUCTION

1. This case concerns an applicant who ran a barber shop in Sarajevo before the war but was unable to cross the front lines to reach her shop until after the war. Upon returning to the premises she discovered another woman running the shop. She requested the return of the shop from the Municipality of Novo Sarajevo and then initiated proceedings before the Court of First Instance. After two and a half years and ten hearings those proceedings remain pending. The applicant alleges violations of her right to property, of her right to a fair trial within a reasonable time before an impartial tribunal, and of her right not to be discriminated against.

II. PROCEEDINGS BEFORE THE CHAMBER

2. The application was introduced on 14 July 1997 and registered on 18 August 1997. The applicant is represented by Mrs. Senija Poropat, a lawyer in Vogošća.

3. The First Panel considered the case on 11 May 1998 and decided to transmit it to the respondent Party for observations pursuant to Rule 49(3)(b) of the Rules of Procedure. The Chamber received observations from the applicant between October 1997 and April 1999. The Chamber received observations from the respondent Party between June 1998 and May 1999.

4. On 29 June 1998 the Chamber received observations from the Federal Attorney's Office. On 2 July 1998, the Registrar informed the Agent of the Federation of Bosnia and Herzegovina, Ms. Seada Palavrić, that the Chamber had received the above observations and asked if the Agent wished the Chamber to consider them as official observations of the respondent Party. In a letter dated 4 July 1998, the Agent requested an extension of the time limit to allow her to submit observations in the case. In a letter dated 29 July 1998, the Registrar informed the Agent that the time limit had been extended until 21 August 1998. No further observations were received.

5. On 5 November 1998 the Registrar informed the Agent of the Federation that unless the Chamber was informed otherwise by 18 November 1998, the Chamber might consider the observations of the Federal Attorney as official observations of the respondent Party. The Agent did not respond to this letter.

6. On 14 January 1999 the First Panel decided to hold a public hearing. The hearing was held on 17 March 1999. The applicant was present and represented by Ms. Senija Poropat. The respondent Party was represented by its Agent, Ms. Seada Palavrić and Mr. Esmud Muhadžić, Counsellor in the Federation's Office for Cooperation With and Representation before the Human Rights Commission.

7. The Chamber deliberated on the admissibility and the merits of the case on 14 January 1999, 10 March 1999, 14 April 1999 and 13 May 1999. On the last-mentioned date the Chamber voted on the admissibility and the merits of the case. On 7 June 1999 the Chamber considered and adopted some amendments to the decision.

III. ESTABLISHMENT OF THE FACTS

A. Facts as presented by the applicant

8. The applicant is of Serb descent. On 6 June 1991 she obtained permission from the Municipality of Novo Sarajevo to run a barber shop at Aleja lipa 51 in Sarajevo. On 12 July 1991 she concluded a rental contract with Sarajevostan (the municipal/cantonal institution responsible for the maintenance of state-owned property) for the use of the premises for an indefinite period. She subsequently invested approximately DM 33,000 to adapt the site into a barber shop.

9. During the subsequent war the applicant lived in Grbavica, which was under Bosnian Serb control. She could not enter her barber shop as it was located in an area controlled by the Army of the then Republic of Bosnia and Herzegovina ("RBiH").

10. A temporary lease for the barber shop was contracted between the Municipality Novo Sarajevo and R.M., a woman of Bosniak descent, and signed on 10 December 1994. The term of this lease was to run until one year after the cessation of the war.

11. After the war ended in December 1995 the applicant was prevented from entering her shop by R.M., who was then running (and continues to run) the barber shop. The applicant appealed to the Municipality of Novo Sarajevo on 6 May 1996 to request her reinstatement into the premises at issue. On 4 July 1996 the municipal authorities issued a decision refusing the applicant's request and instructed her to address the Federal Ministry of Trade.

12. The applicant then filed an appeal against the Municipality's decision with the Ministry of Trade. On 4 September 1996 the Ministry issued a decision invalidating the decision of the Municipality and ordered it to re-consider the applicant's request. The Municipality did not comply with this order.

13. On 7 November 1996 the applicant initiated proceedings before the Municipal Court II of Sarajevo to evict R.M. from the premises. A hearing was scheduled for 4 February 1997. However, R.M. did not appear at the hearing nor did she contest the application in writing. The Court consequently issued a decision by default in favour of the applicant.

14. On 13 March 1997 R.M. submitted a proposal to restore the proceedings, claiming that she had never received the summons to appear in court. She also alleged that she had never signed the summons and that an expert analysis by a graphologist would prove it.

15. The court scheduled another hearing for 3 April 1997. Again R.M. did not appear, nor did she contest the application in writing. The court re-scheduled the hearing for 7 May 1997. Again R.M. failed to either appear before the court or to contest the application. The court re-scheduled the hearing again, this time for 5 June 1997. R.M. also failed to appear at this hearing. On 23 June the applicant requested that the defendant's proposal of 13 March 1997 be denied.

16. The court scheduled yet another hearing for 25 June 1997. R.M. did not appear and the applicant's lawyer again requested that the court reject R.M.'s proposal of 13 March 1997 because her failure to appear had not been approved nor had she contested the court action in writing. Judge Ademović dictated a record of the hearing in which statements made by the applicant and her representative were, so the applicant alleges, misrepresented. For this reason the applicant's representative refused to sign the record.

17. On 10 July 1997 the applicant submitted a request to the Sarajevo Cantonal Ministry of Justice to have judge Ademović removed from the case because of alleged discrimination based on national origin.

18. Judge Ademović scheduled another hearing for 7 August 1997 and transferred the case to judge Mujagić. On 7 August 1997 R.M. did not appear, but a lawyer who was not authorised to represent her appeared before the court, arguing that the Municipality of Novo Sarajevo, rather than the court, had competence over the case. On 13 August 1997 the applicant submitted evidence to the court that she had been instructed by municipal authorities to address the court.

19. The court then scheduled another hearing for 7 October 1997. At this hearing the court ordered the restoration of the proceedings and invalidated its earlier decision of 4 February 1997. On 10 October 1997 the applicant submitted an appeal to the Cantonal Court in Sarajevo, through the Municipal Court, against the decision of 7 October 1997.

20. On 13 October 1997 the applicant brought criminal charges against judges Ademović and Mujagić before the Office of the Municipal Prosecutor I of Sarajevo. The charges were based on Article 233 (violations of the law by judges) of the Criminal Law of Socialist Republic of Bosnia and Herzegovina and Article 51 (a) (preventing refugees and displaced persons from returning) of the Decree With Force of Law on Amendments of Criminal Law of the RBiH (Official Gazette, No. 28/94). The applicant also raised the possibility of charges under Article 154 (1) of the Criminal Law (discrimination based on race or other grounds).

21. In the restored proceedings the Municipal Court scheduled another hearing for 29 October 1997. However, the hearing was cancelled because the judge was ill. The hearing was re-scheduled for 28 November 1997. At this hearing, which was again not attended by R.M., the court rejected the applicant's appeal of 10 October 1997 against its decision of 7 October 1997 because such an appeal was not provided for by law.

22. On 26 January 1998 the applicant appealed to the Cantonal Court through the Municipal Court, against the lower court's decision of 28 November 1997.

23. On 23 February 1998 the applicant submitted a request to the Municipality of Novo Sarajevo (Sector for Housing Affairs and Business Premises) to have R.M. evicted. The Mayor of Novo Sarajevo responded by letter dated 3 March 1998, stating that R.M. was not using the premises illegally, since the Municipality had granted her a right to temporary use and had also entered into a rental contract with her. Moreover, the Municipality could not in any event take action due to the proceedings pending before the Municipal Court.

24. On 10 April 1998 the applicant initiated, before the Cantonal Court, an administrative dispute against the Municipality of Novo Sarajevo for refusing to evict R.M. from the premises at issue.

25. On 13 July 1998 the applicant received a decision from the Cantonal Court dated 18 May 1998 which confirmed the rejection of her appeal against the decision of the Municipal Court of 28 November 1997.

26. On 13 October 1998 the applicant initiated, before the Municipal Court II in Sarajevo, civil proceedings against the Municipality of Novo Sarajevo and R.M. The applicant requested the court to invalidate the rental contract between Municipality of Novo Sarajevo and R.M., to order the Municipality to conclude a contract with the applicant, to order R.M. to vacate the business premises, and to order the Municipality and R.M. to pay compensation to the applicant. There has been no response to this request.

27. Another hearing took place on 26 January 1999 in the Court of First Instance II in Sarajevo. Again R.M. failed to appear. The applicant's lawyer requested a default judgement but this was refused by the judge. Another hearing was scheduled for 6 April 1999.

B. Facts as presented by the respondent Party

28. According to the respondent Party, the applicant never owned the business premises in question. The owner is the Municipality Center of Sarajevo which transferred its property rights to the company Sarajevostan. The applicant concluded a lease with Sarajevostan as the authorised representative of the owner.

29. According to the respondent Party, the Municipality of Sarajevo, through Sarajevostan, gave a written cancellation of the lease contract to the applicant, dated 14 February 1996 and stating the reason to be the failure of the applicant to pay rent since 1 April 1992.

C. Relevant domestic law

30. The relevant provisions of the Law on the Leasing of Business Buildings and Premises (Official Gazette ("*Službeni List*") of the Socialist Republic of BiH, Nos. 33/77, 12/87, 30/90, and of RBiH, No. 3/93) read as follows:

> Article 5(1):
> "The leasing of business buildings and business premises (hereinafter: business premises) is contracted through an agreement between the lessor and the lessee."
> Article 19(1):
> "The lessee is under obligation to pay the rent during the time specified in the agreement."
>
> Article 26:

"(1) A lease agreement concluded for an indefinite period of time is terminated by agreement or on the basis of cancellation.
(2) A lease agreement for business premises concluded for an indefinite period of time cannot be terminated before the expiry of a period of one year since the agreement was concluded."

Article 27(1):
"The cancellation of a lease agreement for business premises becomes valid when the period between the day of delivery of the cancellation to the opposite party and the day when the leasing relation ought to cease (cancellation period) as specified by the agreement or by law, expires."

Article 28:
"If not specified by the agreement, the cancellation period is six months."

Article 29:
"(1) A lease agreement of the business premises is cancelled through a competent court.

(2) The cancellation must include a specific date on which the opposite party, upon request of the cancelling party, is under obligation to vacate the business premises and return them to the cancelling party, i.e. the date until which the opposite party is under an obligation to receive the business premises."

Article 30:
"(1) On the basis of a cancellation submitted by the lessor the court will issue an order, if the cancellation and the attached lease agreement contain a clause that the lessor has a right of cancellation and provided that the cancellation period stipulated by this law has been respected.

(2) The court shall order the lessee to vacate the business premises and return them to the lessor before the date specified in the cancellation note or to submit an objection to the court against this order within eight days from the day of delivery of the order.

(3) On the date of submission of the objection against the order the lessor gains the position of plaintiff and the lessee the position of defendant.

(4) Accordingly, the provisions of the Law on Civil Proceedings are applied to the orders mentioned in paragraph 1 of this Article.

(5) Disputes relating to the cancellation of lease agreements of business premises are considered urgent."

Article 34 (1), sub-paragraph 2:
"(1) The lessor may withdraw from a lease concerning business premises at any time, regardless of the contractual or legal provisions concerning the duration of the lease:...
(b) if the lessee fails to pay the rent within two months from the day he or she was notified to do so by the lessor."

Article 36:
"(1) The withdrawing party is under an obligation to give a written statement to the opposite party on the withdrawal as well as set a time limit for the opposite party to surrender/receive the ... premises.

(2) The time limit referred to in the above paragraph cannot be shorter than 30 days from the day when the opposite party has received the statement of withdrawal."

31. On 17 September 1993 the Municipality of Novo Sarajevo issued the Decision on Conditions and Procedures for Allocating Business Premises for Temporary Use in the Area of Municipality Novo Sarajevo During the State of War or in Case of Immediate Threat of War ("the 1993 Decision"). The Decision came into force on the same day and was published on the board in the building of the

Municipality. The Decision was passed on the basis of the Decree with the Force of Law on Temporary Abandoned Real Property Owned by Citizens During the State of War or Immediate Threat of War (O.G. of RBiH, No. 11/93). Article 2 of the 1993 Decision anticipates a possibility to allocate abandoned business premises to other natural and legal persons for temporary use.

32. On 2 February 1994 the Presidency of District Sarajevo issued the Decision on the Unique Procedure for Allocating, Using and Protecting Business Premises and the Criteria for the Leasing of Business Premises in the Conditions of War and Immediate Threat of War in the Area of District Sarajevo ("the 1994 Decision"). With the entry into force of this decision, all related regulations, including the 1993 Decision, were rendered ineffective. The 1994 Decision came into force on the day of its publishing on the bulletin board of municipalities and the City of Sarajevo. The Decision on the Cessation of the State of War was taken by the Presidency of the Republic of Bosnia and Herzegovina on 22 December 1995 (O.G. of RBiH, No. 50/95). It was published on the Bulletin Board of the Presidency of the RBiH in Sarajevo and entered into force on that same day. The relevant Official Gazette comprising this decision was distributed on 5 January 1996.

IV. COMPLAINTS

33. The applicant alleges violations of Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and Article 1 of Protocol No. 1 to the Convention. She also alleges "discrimination on the grounds of ethnicity" and alleges a violation of the International Convention on the Elimination of All Forms of Racial Discrimination ("CERD").

V. OBSERVATIONS OF THE PARTIES

A. The respondent Party

34. The respondent Party considers the application inadmissible for failure to exhaust domestic remedies. The respondent Party pointed out in June 1998 that the applicant's appeal was still pending before the Cantonal Court. In January and March 1999 the respondent Party argued that the applicant should have initiated proceedings against the Municipality as the lessor rather than against R.M.

35. As for the merits of the complaint relating to the applicant's property rights, the respondent Party contends that *de facto* possession of property, based upon a lease contract, is not protected by Article 1 of Protocol No. 1 of the Convention. The 1993 and 1994 Decisions were war regulations on the use of business space in Sarajevo which were passed for the purpose of satisfying urgent needs of citizens in extraordinary circumstances. These regulations satisfied the requirement of the second paragraph of Article 1 of Protocol No. 1 to the Convention, in that they served the public interest. Under Articles 567 to 586 of the Law on Contractual Obligations (O.G. of SFRY, No. 29/78, 39/85, 45/89 and 57/89) and the Law on the Leasing of Business Buildings and Premises a lease contract for an indefinite period could be cancelled without any special reason or because of non-fulfilment or violation of contractual obligations. Because the owner of the premises gave the applicant a written cancellation of the lease on 14 February 1996 her request to be reinstated into the business premises is ill-founded. The respondent Party acknowledges that the applicant had made material investments in the premises and had to leave her trade inventory behind. Therefore, according to the respondent Party, the applicant is entitled to make a claim for compensation under Article 585 of the Law on Contractual Obligations.

36. The respondent Party also rejects the claim that Article 6 of the Convention has been violated by unreasonably lengthy proceedings. The proceedings have been extended, in part, because of the applicant. The hearing on 7 May 1997 was adjourned at her request. Subsequent hearings were delayed because of graphological evidence that showed that the signature on the summons for 4 February 1997 did not belong to the defendant R.M. This led to the procedural decision dated 7 October 1997 which returned the case to the stage before the default judgement of 4 February 1997. The applicant's appeal against the procedural decision to return the proceedings to the previous stage was not allowed under Article 122 of the Law on Civil Proceedings and therefore delayed the proceedings even further.

B. The applicant

37. The applicant maintains that domestic remedies have either been ineffective or exhausted. Over the last 32 months, she has applied to the Municipality of Novo Sarajevo, other administrative organs, the Municipal Court, and the Federal Ministry of Trade. None of these organs issued a final decision within a reasonable period of time.

38. The applicant refutes the claim that the Municipality of Sarajevo is the owner of the business premises because it was socially owned. The applicant also states that she never concluded a lease with the Municipality, but with Sarajevostan. This contract has never been legally cancelled. Her failure to pay rent was due to the war, as she was unable to go through the front lines to reach a place where she could pay the rent.

VI. OPINION OF THE CHAMBER

A. Admissibility

39. Before considering the case on its merits, the Chamber must first decide whether to accept the case taking into account the admissibility criteria set out in Article VIII(2) of the Agreement.

40. The respondent Party has claimed that the applicant has failed to exhaust all domestic remedies and, therefore, the application should be declared inadmissible.

41. The Chamber must consider whether, for the purposes of Article VIII(2)(a) of the Agreement, any "effective remedy" was available to the applicant with regard to her respective complaints and, in the affirmative, whether she has demonstrated that they have been exhausted. For the purposes of this examination, the Chamber has consistently sought guidance in the case-law of the European Court of Human Rights. Normal recourse should be had by an applicant to remedies which are available and sufficient to afford redress in respect of the breaches alleged. The existence of the remedies in question must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness. Moreover, in applying the rule on exhaustion of domestic remedies it is necessary to take realistic account not only of the existence of formal remedies in the legal system of the respondent Party concerned but also of the general legal and political context in which they operate as well as of the personal circumstances of the applicants. In the absence of any indication of such a remedy the onus is on the respondent Party to show that there was a remedy available to the applicant other than his application based on the Agreement. It is incumbent on a respondent Party claiming non-exhaustion to satisfy the Chamber that the remedy was an effective one available in theory and in practice at the relevant time, that is to say, that it was accessible, was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see, e.g., *Čegar v. The Federation of Bosnia and Herzegovina*, Case No. CH/96/21, decision on admissibility of 11 April 1997, Decisions 1996-1997, paragraphs 11, 14; *Blentić v. The Republika Srpska,* Case No. CH/96/17, decision of 3 December 1997, Decisions 1996-97, paragraphs 19-21, both with references to case-law of the European Court).

42. The Chamber notes that the applicant has tried without success to evict the current occupant R.M. from the premises. Yet after ten court hearings over two and a half years she has seen no final decision. The respondent Party claims that the applicant should have initiated proceedings against the Municipality as the lessor rather than against R.M. The Chamber notes, however, that the Court of First Instance II issued a default judgement in favour of the applicant on 4 February 1997. This indicates that the court had recognised itself as competent to hear the case between the applicant and R.M. Even if the applicant had initiated proceedings against the Municipality, there is no reason to think that she would have made more progress in that action, as that case would have been heard by the same court.

43. In these circumstances the Chamber finds that it is not established that any effective remedy was available to the applicant.

44. As there is no other ground for declaring the case inadmissible, the Chamber declares the application admissible.

B. Merits

1. Article 6(1) of the Convention

45. The relevant part of Article 6(1) of the Convention provides as follows:

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

46. Article 6(1) requires there to be a dispute over a right and for this right to be of a civil nature. In the present case, the Chamber finds that the right under the lease between the applicant and the lessor to use the business premises is such a civil right (e.g. *Kevešević v. The Federation of Bosnia and Herzegovina*, Decision on the Merits of 10 September 1998, Decisions and Reports 1998, paragraph 63). The Chamber also finds that there is a dispute over this right.

a. Impartial tribunal

47. In examining a potential violation of Article 6(1) for lack of impartiality, there are two aspects to consider. The first is whether the tribunal is subjectively impartial, that is to say, whether the judge is prejudiced or biased. In the absence of any evidence, there is a presumption that the judge is subjectively impartial. The second question is whether the judge is impartial from an objective standpoint (see Eur. Court H.R., *Fey v. Austria* judgement of 24 February 1993, Series A no. 255, p. 12, paragraph 28). Did the appearances of the judge and his or her court offer sufficient guarantees to assure impartiality? What is at stake is the confidence which the courts in a democratic society must inspire in the public (see Eur. Court H.R., *Ferrantelli and Santangelo v. Italy* judgement of 7 August 1996, Reports 1996-III, paragraph 58).

48. The applicant has alleged that judges Ademović and Mujagić were personally biased against her due to her national origin. The Chamber finds, however, that the applicant has offered no evidence of subjective partiality of either judge.

49. Nor can the Chamber find any conclusive evidence of objective bias in this case. The Chamber, therefore, finds that the applicant's right to have the dispute in question decided by an impartial tribunal has not been violated.

b. Length of proceedings

50. When assessing the length of proceedings for the purposes of Article 6(1) of the Convention, the first step is to determine the period to be taken into consideration. In this case, the period is not in dispute. It began on 6 November 1996 when the applicant initiated proceedings to have R.M. evicted. It has lasted two and a half years before the first instance court alone. There were ten hearings scheduled in this time period.

51. The reasonableness of the length of proceedings is to be assessed based on criteria laid down by the European Court of Human Rights, namely the complexity of the case, the conduct of the applicant, the conduct of the authorities and the matter at stake for the applicant (see, e.g., *Mitrović v. The Federation of Bosnia and Herzegovina*, Case No. CH/97/54, decision on admissibility of 10 June 1998, Decisions and Reports 1998, paragraph 10).

52. Does the complexity of the present case warrant the length of proceedings complained of? The issue in the underlying case is who has a valid lease to the business premises in question. It does not seem to the Chamber to be so complex a case to require almost three years of proceedings, and neither party alleges the case to be complex.

53. The respondent Party alleges that the delay in proceedings was, in part, the fault of the applicant. The respondent Party alleges that the first hearing scheduled to decide on the proposal of R.M. on 7 May 1997 was adjourned at the request of the applicant and that other proposals were

delayed because of the graphological testing that was being done. The applicant claims the first hearing was actually scheduled for 3 April 1997 and that both of these hearings were adjourned because R.M. failed to appear.

54. Even if the Chamber were to accept that the adjournment was to some extent attributable to the applicant, the Chamber must also examine the conduct of the judicial authorities. Why did the court allow R.M. another four opportunities to request the restoration of the proceedings to their previous state when she failed to appear on any of those occasions? Why did the court allow the graphological evidence to delay the proceedings for so long when its purpose was to prove that R.M. had never received the original summons and she continued to fail to appear for any of the nine hearings? The respondent Party did not offer any explanation.

55. The Chamber finally notes that a reasonably speedy outcome of the dispute would have been of particular importance to the applicant, as the question concerned her livelihood.

56. Given the above facts, the Chamber finds a violation of Article 6(1) of the Convention in regard to the length of proceedings.

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

57. Article 1 of Protocol No. 1 Convention 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."

58. The respondent Party argues that "only real property" is protected by Article 1 of Protocol No. 1 to the Convention and thus a lease "does not have the significance of the property right" which is protected by that provision. The Chamber recalls, however, that apart from rights *in rem* various economic assets and other rights *in personam* may also be considered "possessions" falling within the scope of protection of Article 1 of Protocol No. 1 (see, e.g., *M.J. v. The Republika Srpska*, CH/96/28, decision of 7 November 1997, Decisions 1996-97, paragraph 32). Thus, the term "possessions" within the meaning of Article 1 of Protocol No. 1 may include rights not recognised as "property rights" in the domestic law of a Contracting Party.

59. The Chamber finds that the entire business enterprise, including the applicant's right under the lease to use the business premises and the results of her efforts to improve the space, are economic assets which fall within the scope of the right to peaceful enjoyment of possessions in Article 1 of Protocol No. 1.

60. Article 1 of Protocol No. 1 contains three rules. The first is the general principle of peaceful enjoyment of possessions. The second rule covers deprivation of property and subjects it to the requirements of public interest and conditions laid out in law. The third rule deals with control of use of property and subjects this to the requirement of the general interest and domestic law. It must be determined in respect of all of these situations whether a fair balance was struck between the demands of the general interest of the community and the requirements of the protection of the individual applicant's fundamental rights (see, e.g., the aforementioned *Blentić* decision, loc.cit., paragraphs 31-32). Although States Parties to the Convention enjoy a wide margin of appreciation in judging what is in the general interest, that judgement must not be manifestly without reasonable foundation (see Eur. Court H.R., *James and Others v. the United Kingdom* judgement of 21 February 1986, Series A no. 98, p. 32, paragraph 46). In the assessment of whether an applicant has had to bear "an individual and excessive burden" it is also of relevance whether he has had the possibility of effectively challenging the measure taken against him (see Eur. Court HR., *Hentrich v. France* judgement of 22 September 1994, Series A No. 296-A, p. 21, paragraph 49).

61. The Chamber finds that the Municipality, by withholding the premises in violation of its legal obligation, has interfered with the applicant's peaceful enjoyment of her possessions. The respondent Party has asserted that the lease could be lawfully terminated by the lessor either following a violation by the applicant of his contractual obligations or without giving any special reason. This cancellation was in accordance with the general interest and subject to the conditions laid down in law as required by Article 1 of Protocol No. 1. In any case, the applicant herself effectively terminated the lease by abandoning the premises at the beginning of the war in 1992. The war regulations allowed the municipality to reallocate abandoned property according to specific priorities. A temporary lease for the barber shop was therefore contracted with R.M. in 1994.

62. The Chamber accepts the argument that the control of use of the property was justified with regard to the situation during the war. It is unnecessary for the Chamber to decide whether the interference with the applicant's property rights after the war was control of use or deprivation. In either case, it was unjustified. The Chamber notes that under Article 29(1) of the Law on the Leasing of Business Buildings the applicant's lease agreement could only be cancelled through a competent court. During the public hearing the respondent Party did not dispute that the lease could only be legally terminated by a court decision. That was not done in this case, as the applicant's lease was formally cancelled by Sarajevostan on 14 February 1996, citing the failure of the applicant to use the premises or to pay rent as of 1 April 1992.

63. The Chamber finds, therefore, that the lease was not terminated in accordance with the law and there was, therefore, no legal basis for the Municipality to refuse the applicant's taking possession of the property. Consequently, this interference with the applicant's possessions was not "subject to the conditions provided for by law" and the applicant's rights under Article 1 of Protocol No. 1 to the Convention have been violated.

3. Discrimination

64. The applicant also alleges that she has been a victim of discrimination in relation to the rights guaranteed by Article 6 of the Convention and Article 1 Protocol 1 to the Convention. The alleged discrimination was based on her national origin. The applicant alleges that the judges were biased against her and stalled the proceedings because she is of Serb descent and the defendant R.M. is a Bosniak.

65. Article 14 of the Convention provides as follows:

> "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

66. The Chamber has held in *Hermas v. The Federation of Bosnia and Herzegovina* (Case No. CH/97/45, Decision of 16 January 1998, Decisions and Reports 1998, paragraph 82) that "as confirmed by Article II(2)(b) of Annex 6, the prohibition of discrimination is a central objective of the Dayton Agreement to which the Chamber must attach particular importance."

67. Therefore, it is necessary to determine if the applicant was discriminated against in her enjoyment of her rights under Article 6(1) and Article 1 of Protocol No. 1. The applicant provided no evidence of discrimination in this case. In fact, the evidence of two decisions in the applicant's favour tends to dispute the claim of discrimination: the decision of 4 September 1996 of the Federal Ministry of Trade invalidating the earlier decision of the Municipality against the applicant and the default judgement issued by the Municipal Court in favour of the applicant on 2 February 1997. The Chamber, therefore, finds that no discrimination has been established in this case.

VII. REMEDIES

68. The applicant requests the Chamber to order her repossession of the barber shop in which she had invested DEM 33,000. She also requests compensation for lost income in the amount of KM 2,000 per month starting from May 1996 until her repossession of the premises; legal and

administrative costs of KM 1,716; and interest on the claim at a rate of 1 per cent per month. The Chamber requested the applicant's lawyer to clarify and substantiate the lost income claim and legal expenses. In a letter received by the Chamber on 1 April 1999, the applicant's lawyer submitted a compensation claim requesting lost profits over a period of three years amounting to KM 32,106. The applicant's lawyer also submitted in the above letter a new claim for legal fees that totalled KM 3,960. However, the Registry was unable to match the last-mentioned sum to the Advocate's Tariff of the Federation. When the Registry enquired about the legal fees over the telephone, the lawyer stated that her husband had written the letter received on 1 April 1999.

69. At first the respondent Party did not comment on the applicant's compensation claim, arguing that because the Chamber's Rules of Procedure deal separately with the procedure before an application is admitted and after it is admitted, the procedure should also be separate in practice. Therefore, it would be easier for the respondent Party and the Chamber to deal with the merits of the case and any compensation claim after establishing if the application is admissible or not.

70. However, on 5 May 1999 the Chamber received observations from the respondent Party on the applicant's final compensation claim. The respondent Party claims it can not be held responsible for a broken lease agreement between the applicant and the company Sarajevostan. The respondent party also argues that under the Law on Contractual Obligations, compensation for damages is realised in court by suing the debtor. The respondent Party, furthermore, points out that the applicant has followed the Law on Contractual Obligations by seeking compensation through the courts, but that the suit is still pending and therefore the Chamber should not award compensation until domestic remedies are exhausted. Further, the respondent Party argues that the claim is ill-founded because the business space had been devastated during the war and repaired by R.M. It would have been impossible for the applicant to make an income in a devastated business space.

71. The respondent Party further argues that it cannot be asked to compensate for taxes and contributions. In addition, the amount of compensation requested is too high and unsubstantiated. The amount could only be based on the period after the submission on 13 October 1998 of the complaint in the Municipal Court. The respondent Party asserts that the requested compensation for legal fees and expenses relate only to the representation of the applicant in the civil proceedings and therefore should only be awarded for the work in the civil case and not for work in front of the Chamber. In addition, the amount requested is too high.

72. The Chamber has already found the respondent Party to be in violation of the Agreement because the Municipality withheld the premises from the applicant in violation of its legal obligation under the lease. In addition, the Federation cannot convincingly argue that the applicant should have brought suit against the Municipality as the lessor rather than against R.M. (see paragraph 42) and then argue in the compensation section that it cannot be responsible for the broken lease between the applicant and its representative, Sarajevostan. The Chamber finds it appropriate, therefore, to order compensation for loss of income. As to the Federation's argument regarding the need to exhaust domestic remedies concerning the compensation claim, the Chamber has already determined in paragraphs 41-43 that the case is admissible and the existence of effective remedies has not been established. No separate question as to domestic remedies arises as to compensation claims based on Article XI(1)(b) of the Agreement (see *Damjanović v. The Federation of Bosnia and Herzegovina*, Case No. CH/96/30, decision on the claim for compensation of 16 March 1998, Decisions and Reports 1998, paragraphs 13-16). Finally, the Federation argues that the Chamber should award legal fees and expenses only for representation during the civil proceedings. The Chamber is not precluded from awarding compensation both for legal representation during civil proceedings and before the Chamber and finds it appropriate to do so in this case.

73. As the Chamber has already held that the applicant's lease is still valid, it finds it appropriate to order the Federation to make the business premises available to the applicant. The Chamber also orders the Federation to pay compensation for loss of income in the amount of KM 250 per month starting from January 1997 (one year after the cessation of the war was declared) until the applicant is restored into her premises. Despite the failure of the applicant's lawyer to specify her legal expenses according to the relevant Advocate's Tariff, the Chamber will further award KM 1,000 in compensation for legal expenses taking into account the numerous hearings held by the Municipal Court.

VIII. CONCLUSION

74. For the reasons given above, the Chamber decides:

1. unanimously, to declare the application admissible;

2. unanimously, to find no violation of Article 6(1) of the Convention in so far as the case relates to the applicant's right to a hearing before an impartial tribunal;

3. by 6 votes to 1, to find a violation of Article 6(1) of the Convention in so far as the case relates to the length of the court proceedings, the respondent Party thereby being in violation of Article I of the Agreement;

4. unanimously, to find a violation of Article 1 of Protocol No. 1 to the Convention, the respondent Party thereby being in violation of Article I of the Agreement;

5. unanimously, to find no violation of Article 14 of the Convention in conjunction with Article 6(1) of the Convention and Article 1 of Protocol No. 1;

6. unanimously, to order the respondent Party to take all necessary steps to reinstate the applicant into her business premises;

7. by 6 votes to 1, to order the respondent Party to pay to the applicant, within three months, compensation for income lost during the period from January 1997 up to and including June 1999, the amount of KM 7,500;

8. by 6 votes to 1, to order the respondent Party to pay to the applicant, within three months from compliance with the order in conclusion no. 6, further compensation for lost income in the amount of KM 250 per month for each month starting 1 July 1999 in which the applicant has not been reinstated into her business premises;

9. unanimously, to order the respondent Party to pay to the applicant, within three months of this decision, KM 1,000 for legal expenses;

10. unanimously, orders that simple interest at an annual rate of 4% (four percent) will be payable over the above sums or any unpaid portion thereof from the day of expiry of the above-mentioned time-limits until the date of settlement; and

11. unanimously, to order the respondent Party to report to it by 11 September 1999 on the steps taken by it to comply with the above orders.

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