



DECISION ON ADMISSIBILITY AND MERITS
(delivered on 7 December 2001)

**Cases nos. CH/97/60, CH/98/276
CH/98/287 and CH/98/362 and 99/1766**

**Andrija MIHOLIĆ, Božo ČORAPOVIĆ,
Milorad ĆIRIĆ, Dušan RISTIĆ and Mihailo BUZIĆ**

against

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

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 9 November 2001 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. Ulrich GARMS, 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 57 and 58 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. These cases concern the attempts of the applicants, who were members of the Yugoslav National Army (hereinafter "JNA") to regain possession of apartments in Bosnia and Herzegovina. All of the applicants entered into purchase contracts with the JNA for apartments sometime between November 1991 and March 1992.

2. All of the applicants have initiated administrative proceedings before the relevant authorities to regain possession of the respective apartments. In all of these cases, the relevant authorities have denied their requests for repossession. In three cases, the applicants have appeals pending before cantonal courts. The applicants have not been able to repossess apartments in Bosnia and Herzegovina as a result of the application of Article 3a of the Law on Cessation of the Application of the Law on Abandoned Apartments in connection with Article 39e of the Law on the Sale of Apartments with an Occupancy Right (see paragraphs 84 and 90 below). Article 3a came into force on 1 July 1999.

3. Article 3a essentially prevents persons who were in active military service with the JNA on 30 April 1991, who were not citizens of Bosnia and Herzegovina as of that date, and who had not been granted refugee or other equivalent protective status in a country outside of the former Socialist Federal Republic of Yugoslavia ("SFRY") from repossessing apartments in Bosnia and Herzegovina. Additionally, persons who remained in active military service of any armed forces outside the territory of Bosnia and Herzegovina after 14 December 1995 are barred from repossessing apartments in Bosnia and Herzegovina. The applicants complain that the application of this law violates their right to possession of their property. They further complain that they have been discriminated against on the ground of their status as former members of the JNA.

4. The cases raise issues under Article 6, 8 and 13 of the European Convention on Human Rights ("the Convention") and Article 1 of Protocol No. 1 to the Convention, as well as discrimination in the enjoyment of their rights to peaceful enjoyment of the rights guaranteed by these provisions.

II. PROCEEDINGS BEFORE THE CHAMBER

5. Application no. CH/97/60 (Andrija Miholić) was received on 3 July 1997 and registered on 16 October 1997. On 15 September 1998 the application was transmitted to Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina under Articles 6 and 13 of the Convention and Article 1 of Protocol No. 1 to the Convention. The Federation of Bosnia and Herzegovina requested an extension until 6 November 1998 within which to submit its observations. Neither respondent Party submitted observations at this point in the proceedings. Further information was received from the applicant on 7 October 1998.

6. Application no. CH/98/276 (Božo Čorapović) was received on 2 February 1998 and registered on 10 April 1998. On 25 June 1998 the application was transmitted to Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina under Articles 6 and 13 of the Convention and Article 1 of Protocol No. 1 to the Convention. On 25 August 1998 the Federation of Bosnia and Herzegovina submitted its observations on the admissibility and merits of the case. On 22 September 1998 the Chamber received the applicant's response. The applicant's observations were transmitted to the respondent Parties. No response was received from either Party at this point in the proceedings.

7. Application no. CH/98/287 (Milorad Ćirić) was received on 2 February 1998 and registered on 10 April 1998. On 30 June 1999 the applicant informed the Chamber in writing that he had withdrawn his application before the Commission for Real Property Claims of Displaced Persons and Refugees (Annex VII Commission). On 15 December 1999 the case was transmitted to Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina under Articles 6 and 8 of the Convention and Article 1 of Protocol No. 1 to the Convention.

8. On 27 January 2000 Bosnia and Herzegovina submitted its observations on the admissibility and merits of the case. On 15 February 2000 the Federation of Bosnia and Herzegovina submitted its observations on the admissibility and merits of the case. On 14 March 2000 the applicant submitted his response. On 17 May 2000 the Federation submitted additional observations informing the Chamber that the applicant would be reinstated into his apartment on 15 June 2000. However, the eviction of the temporary occupant was never carried out and the applicant has never been reinstated.

9. On 10 May 2001 each Panel of the Chamber relinquished, pursuant to Rule 29 (4) of its Rules of Procedure, its respective jurisdiction over the above mentioned cases to the Plenary Chamber. The Plenary Chamber then considered these cases together with application nos. CH/98/362 and CH/99/1766.

10. The Chamber directed the Registry to retransmit case nos. CH/97/60, CH/98/276 and CH/98/287 under Article II(2)(b) of the Agreement to both respondent Parties. The cases were retransmitted to the respondent Parties on 15 May 2001. Additionally, the respondent Parties were asked specifically why the Law on Cessation of Application of the Law on Abandoned Apartments treats occupancy right holders, who come within the scope of Article 3a of this Law, differently from other occupancy right holders. The Federation submitted its additional observations in all three cases on 15 June 2001.

11. Application no. CH/98/362 (Dušan Ristić) was introduced on 18 February 1998 and registered on 10 April 1998. On 3 July 2000 the applicant informed the Chamber that he wanted to pursue his claim before the Human Rights Chamber as opposed to the Ombudsperson. On 15 May 2001 the application was transmitted to Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina under Articles 6, 8, 13 and 14 of the European Convention and Article 1 of Protocol No. 1 to the Convention. On 15 June 2001 the Federation of Bosnia and Herzegovina submitted its observations on the admissibility and merits of the case.

12. Application No. CH/99/1766 (Mihailo Buzic) was received on 25 March 1999 and registered on the same day. On 15 May 2001 the application was transmitted to Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina under Articles 6, 8, 13 and 14 of the European Convention and Article 1 of Protocol No. 1 to the Convention. On 15 June 2001 the Federation of Bosnia and Herzegovina submitted its observations on the admissibility and merits of the case.

13. On 4 July 2001 the Chamber held a public hearing on the admissibility and merits of the cases at the Cantonal Court in Sarajevo. The applicant Andrija Miholić was represented by his spouse, Dušanka Miholić. The applicant Bozo Ćorapović was represented by his spouse, Zora Ćorapović. The applicant Milorad Ćirić was represented by his spouse, Zorica Ćirić. The applicant Mr. Dušan Ristić was present in person and was represented by his attorney, Ms. Vanesa Ibrišimović. Mr. Mihailo Buzić was present in person and was represented by his attorney Ms. Amra Gorda. Bosnia and Herzegovina was represented by its agent Mr. Jusuf Halilagić. The Federation of Bosnia and Herzegovina was represented by its agent Ms. Seada Palavrić. Assisting Ms. Palavrić were Ms. Liljana Savić-Branković and Mrs. Zumreta Joldzo as well as Ms. Nura Zimić, an attorney for the Federal Ministry of Defense and Mr. Lutvo Mehonjić, Deputy Minister in the Federal Ministry of Defense. The Office of the High Representative ("OHR"), the United Nations Office of the High Commissioner for Refugees ("UNHCR") and the Organisation for Security and Co-operation in Europe ("OSCE") were invited to attend as *amici curiae*. They did not attend. However, OHR and UNHCR submitted observations in writing on 3 July 2001.

14. The Chamber deliberated on the admissibility and merits of the applications on 10 May, 8 June, 4 and 5 July, 9 and 10 October and 5, 6 and 9 November 2001 and adopted the present decision on the latter date. On 5 November 2001 the Chamber decided to join the cases pursuant to Rule 34 of the Chamber's Rules of Procedure.

III. FACTS

A. The facts of the individual cases

15. The apartments in question were all socially owned property. The holders of socially owned property in the Socialist Federal Republic of Yugoslavia were state organs or legal persons. The JNA was one such state organ that controlled a certain portion of socially owned property. Each applicant enjoyed an occupancy right over his apartment as granted to him by the JNA. All of the applicants entered into purchase contracts with the JNA for the apartments over which they held occupancy rights. The contracts were entered into pursuant to the Law on Securing Housing for the Yugoslav National Army (see paragraphs 65 and 66 below). This law, which was passed in 1990 and came into force on 6 January 1991, essentially regulated the housing needs of military and civilian members of the JNA.

1. The case of Mr. Andrija Miholić (CH/97/60)

16. The applicant was born in Croatia and had Croatian citizenship since he was born. In the former Socialist Federal Republic of Yugoslavia ("SFRY") all citizens had federal citizenship and citizenship of the republic where they were born or had their residence registered (see paragraph 153 below). He has lived in Bosnia and Herzegovina since 1970 and acquired citizenship of Bosnia and Herzegovina in 1996. The applicant's wife has always been a citizen of Bosnia and Herzegovina.

17. On 21 March 1974 the JNA allocated to the applicant an apartment at Ulica Kulovića 2 (then Ulica Slobodna Principa 10) in the center of Sarajevo. On 14 November 1991 the applicant, as the occupancy right holder over the apartment, concluded a contract on purchase of the apartment in question with the JNA, pursuant to the Law on Securing Housing for the JNA (see paragraph 66 below). The price of the apartment was 584.918,59 Dinar. At the time of purchase the applicant did not pay any money, as his contributions to the JNA Housing Fund covered the purchase price. The contract was verified by the Municipal Court II in Sarajevo on 28 December 1991. The applicant alleges that he attempted to register his ownership with the competent office, but was told that no condominium books were available at the moment.

18. The applicant alleges that he deserted from the JNA Army in March of 1992. On 25 April 1992 his military service with the JNA was terminated. The applicant had lived in Tuzla from 1989 until 15 May 1992 when he went to Germany. The applicant's family lived in the apartment in question until 1 November 1994. At that point the applicant's family went to live with the applicant's wife's parents in Glamoč. They were allegedly forced to leave Glamoč and in 1995 went to Banja Luka.

19. On 25 June 1995 the applicant's wife, with the agreement of the applicant, exchanged the apartment in Sarajevo for an apartment at Ulica Carice Milice 26/38 in Banja Luka. The contract on exchange of the apartments of 25 June 1995 was annulled *ex lege* by Article 2 of the Law on Cessation of the Application of the Law on Use of Abandoned Property (see paragraph 82 below).

20. On 24 May 1996 the apartment in Sarajevo was declared permanently abandoned and allocated to Ms. S.A.

21. The applicant, according to a document issued by the Embassy of Bosnia and Herzegovina in Bonn on 2 December 1997, alleges to have had refugee status in Germany. On 31 March 1998 the applicant allegedly lost his refugee status and returned to Bosnia and Herzegovina. Upon his return he went to Banja Luka where his family was residing.

22. On 2 April 1998 the applicant requested the Administration for Housing Issues in Sarajevo Center ("the Administration") to reinstate him into his apartment. On 9 April 1998 he filed a request for repossession of his apartment in Sarajevo with the Annex 7 Commission. That case is still pending. The applicant alleges that he has attempted to register his ownership over the apartment on three occasions, to no avail.

23. On 28 September 2000 the Administration issued a decision refusing the applicant's request because he was in active service in the JNA on 30 April 1991, he was not a citizen of the Socialist Republic of Bosnia and Herzegovina according to the citizenship records on 30 April 1991 and he did not establish that he had residence approved to him in the capacity of a refugee, or other equivalent protective status, in a country outside the former Socialist Federal Republic of Yugoslavia before 14 December 1995. The procedural decision also provided that further disposal of the apartment shall be taken over by the Federal Ministry of Defence ("MoD") and that an appeal has no suspensive effect.

24. On 9 November 2000 the applicant appealed the Administration's 28 September 2000 decision to the Ministry of Housing Affairs of Canton Sarajevo ("the Ministry"). On 30 March 2001 the Ministry rejected the appeal, confirming the Administration's decision of 28 September 2000.

25. On 22 December 2000 the Ministry for Refugees and Displaced Persons in Banja Luka issued a decision ordering the applicant and his family to vacate the apartment in Banja Luka within 90 days with the right to alternative accommodation. The applicant and his family have vacated the apartment. The applicant currently pays rent for an apartment in Banja Luka.

2. The case of Mr. Božo Čorapović (CH/98/276)

26. The applicant, who is of Serb origin, was born in Bosnia and Herzegovina and has citizenship of Bosnia and Herzegovina. The applicant's wife is also a citizen of Bosnia and Herzegovina. The applicant was a member of the JNA and continues to be a member of the armed forces of the Federal Republic of Yugoslavia. The Federation of Bosnia and Herzegovina denies that the applicant was a citizen of Bosnia and Herzegovina on 30 April 1991 because he was not, according to the Federation, registered in the Register of Citizenship at that date.

27. On 29 March 1990 the JNA allocated to the applicant an apartment at Ulica Armije Bosne i Hercegovine 17/25 (then Ulica Skojevska 53/25) in Tuzla. On 7 March 1992 the applicant purchased the apartment from the JNA pursuant to the Law on Securing Housing for the JNA. The price of the apartment was 1013.137,21 Dinar. The actual price of the apartment was reduced based on contributions to the JNA Housing Fund and other deductions to 606.819,00 Dinar. The purchase price appears to have been substantially paid off on 14 February 1992. The remainder appears to have been paid off on 9 March 1992. The applicant and his family lived in the apartment until May 1992 when they left to the Federal Republic of Yugoslavia where they still live.

28. On 25 July 1992 the apartment in question was declared temporarily abandoned and allocated to Mr. S.T. The apartment was later declared permanently abandoned. Mr. S.T. still occupies the apartment. The applicant alleges that Mr. S.T. is a double occupant. On 14 March 1997 the apartment in question was allocated for permanent use to Mr. S.T. who allegedly concluded a contract on the use of the apartment in question with the Logistics Administration Headquarters of the Army in Sarajevo.

29. On 26 May 1998 the applicant filed a request for repossession of his apartment in Tuzla with the Annex 7 Commission. The case is still pending. The applicant alleges that he has attempted to register ownership over his apartment, to no avail.

30. On 21 August 1998 the applicant requested the Service for Communal and Housing Affairs in Tuzla ("the Service") to reinstate him into his apartment. He alleges that before 1998, no municipal or state institution in Tuzla received requests for repossession of property. On 17 April 2000 the Service issued a decision refusing the applicant's request because he remained in active service in the armed forces of the Federal Republic of Yugoslavia after 14 December 1995. On 23 June 2000 the Ministry of Urbanism, Urban Planning and Environment of the Tuzla Canton upheld the decision of 17 April 2000. On 13 December 2000 the applicant allegedly filed an appeal to the Supreme Court. No decision has been taken on that appeal.

31. The applicant alleges that his wife and children have refugee status in the Federal Republic of Yugoslavia. The applicant further alleges that in January 2000 his wife submitted a request to her former employer in Tuzla to be reinstated. She has received no response.

32. The applicant alleges that he has not acquired another occupancy right outside the territory of Bosnia and Herzegovina. Allegedly, he pays rent of 250 German Marks (DEM) per month for an apartment in Indija, the Federal Republic of Yugoslavia.

3. The case of Mr. Milorad Ćirić CH/98/287

33. The applicant is of Serb origin. He was born in Serbia and had citizenship in the Republic of Serbia until 1999. The applicant has had citizenship of Bosnia and Herzegovina since 1999. He lived in Bosnia and Herzegovina from 1974 until 1992. The applicant's wife has always been a citizen of Bosnia and Herzegovina.

34. On 29 March 1990 the JNA allocated to the applicant an apartment at Ulica Armije Bosne I Hercegovine 17/49 (then Ulica Skojevska 53/49) in Tuzla. On 4 March 1992 the applicant purchased the apartment pursuant to the Law on Securing Housing for the JNA. The price of the apartment was 658.848,56 Dinar. The actual purchase price was reduced to 323.020,00 Dinar based on the applicant's contributions to the JNA Housing Fund and other deductions. The purchase price apparently was substantially paid off on 12 February 1992 and appears to have been completely paid off on 21 February 1992.

35. The applicant left the apartment in 1992 and settled in the Federal Republic of Yugoslavia, together with his wife. The applicant has been in active service in the armed forces of the Federal Republic of Yugoslavia since then. Allegedly, the applicant was promoted in the armed forces in 1993 and 1998.

36. On 25 July 1992 the apartment was declared temporarily abandoned and allocated to Mr. S.B. On 18 March 1997 the apartment was declared permanently abandoned and allocated to Mr. S.B. for permanent use. Mr. S.B. concluded a contract on the use of the apartment with the Logistics Administration Headquarters of the Army in Sarajevo.

37. On 26 May 1998 the applicant filed a request for repossession of his apartment to the Annex 7 Commission. On 30 June 1999 the applicant withdrew his request. The applicant attempted to register his ownership over the apartment but was told that he could not register unless he first entered into possession.

38. On 21 August 1998 the applicant requested the Service for Communal and Housing Affairs in Tuzla ("the Service") to reinstate him into his apartment. The applicant also applied to the Department for Geodetic and Property Rights Affairs to register the apartment. However, he was informed that his case had been transferred to the Service to be solved. On 12 April 2000 the Service issued a decision refusing the applicant's request because he remained in the active service in the armed forces of the Federal Republic of Yugoslavia after 14 December 1995.

39. However, according to a certificate issued by the Ministry of Urbanism, Urban Planning and Environment of the Tuzla Canton ("the Ministry"), dated 3 May 2000, the applicant was to repossess the apartment on 15 June 2000. The eviction of the current occupant was never carried out. On 13 September 2000 the Ministry upheld the decision of 12 April 2000. The applicant alleges that he appealed the Ministry's 13 September 2000 decision to the Cantonal Court in Tuzla. No decision has been issued.

40. The applicant alleges that he has not acquired another occupancy right in the Federal Republic of Yugoslavia. He alleges that he pays rent of 250 DEM per month in Novi Sad, the Federal Republic of Yugoslavia.

4. The case of Mr. Dušan Ristić CH/98/362

41. The applicant is of Serb origin. He was born in Serbia and had citizenship in the Republic of Serbia until 1999. He acquired citizenship of Bosnia and Herzegovina in 1999. He has lived in Bosnia and Herzegovina since 1974. The applicant's wife has always been a citizen of Croatia.

42. On 30 January 1981 the JNA allocated an apartment to the applicant at Ulica Topal Osman Paše (then Ulica Milutina Đuraškovića) 16 in Novo Sarajevo. On 14 February 1992 the applicant purchased the apartment pursuant to the Law on Securing Housing for the JNA. The price of the apartment was 1.328.435,13 Dinar. The actual purchase price was reduced to 408.752,00 Dinar based on the applicant's contributions to the JNA Housing Fund and other deductions. The purchase price was paid off on 14 February 1992. The applicant was in military service with the JNA until 8 May 1991, when he was retired.

43. The applicant left the apartment in 1992 and settled in the Federal Republic of Yugoslavia together with his family. The apartment appears to have been completely devastated during the war as it was on the front line. It is disputed by the parties whether the apartment was ever formally declared abandoned. Nonetheless, the apartment was reconstructed, after the war, and allocated to Mr. N.G.

44. On 13 July 1998 the applicant requested the Administration for Housing Issues in Novo Sarajevo ("the Administration") to reinstate him into his apartment. On 12 July 2000 the Administration issued a decision refusing the applicant's request because he was in active service of the JNA on 30 April 1991, he was not a citizen of Bosnia and Herzegovina according to the citizenship records and he did not have residence approved to him in the capacity of a refugee, or other equivalent protective status, in a country outside the former Socialist Federal Republic of Yugoslavia before 14 December 1995.

45. On 18 October 2000 the Ministry of Housing Affairs of Canton Sarajevo upheld the decision of 12 July 2000. On 7 December 2000 the applicant initiated an administrative dispute before the Cantonal Court in Sarajevo. The case is still pending.

46. Presently, the applicant and his wife live in their daughter's apartment in Sarajevo Novi Grad, together with her family.

5. The case of Mr. Mihailo Buzić CH/99/1766

47. The applicant is of Serb origin and was born in Montenegro. He has lived in Bosnia and Herzegovina since 1959 and has had citizenship of Bosnia and Herzegovina since 1999. The applicant's wife has Montenegrin citizenship since birth.

48. On 16 June 1981 the JNA allocated to the applicant an apartment at Merhemića trg (then Trg nesvrstanih Zemalja) 9 in Sarajevo Centar. On 7 December 1981 he concluded a contract on use of the apartment. On 14 February 1992 the applicant purchased the apartment. The price of the apartment was 1.190.976,00 Dinar. The actual purchase price was reduced to 452.107,00 Dinar based on the applicant's contributions to the JNA Housing Fund and other deductions. The price was paid off on that same day. The applicant, upon an order of the General Staff of the JNA, was dislocated to Belgrade on 7 May 1992. The applicant's family remained in the apartment until 1994. The applicant's service in the JNA was terminated 2 June 1992.

49. On 3 February 1994 the applicant's representative requested the Court of First Instance I in Sarajevo to confirm his ownership over the apartment. On 14 November 1994 the Court of First Instance I issued a decision granting the applicant's request. The Court of First Instance I found that the applicant had met all legal conditions to be registered as an owner of the apartment before the Decree on Temporary Prohibition on Sale of Socially Owned Apartments entered into force on 17 February 1992 (see paragraph 68 below). The Republic of Bosnia and Herzegovina, represented by the Military Attorney's Office, appealed this decision to the Court of Second Instance in Sarajevo. The case is still pending.

50. On 25 June 1998 the applicant requested the Administration for Housing Issues in Sarajevo Center ("the Administration") to reinstate him into the apartment. On 22 December 1999 the Administration issued a decision refusing the applicant's request because he was in the active military service of the JNA on 30 April 1991, he was not a citizen of the Socialist Republic of Bosnia and Herzegovina according to the citizenship records and he did not have residence approved to him in the capacity of a refugee, or other equivalent protective status, in a country outside of the former

Socialist Federal Republic of Yugoslavia before 14 December 1995. The procedural decision further provides that further disposal of the apartment shall be issued by the Federal Ministry of Defence and that an appeal does not have suspensive effect. On 2 March 2000 the Administration issued another decision of the same content as the 22 December 1999 decision.

51. On 9 November 2000 the Ministry of Housing Affairs of Canton Sarajevo (“the Ministry”) upheld the decision of 22 December 1999. On 10 November 2000 the Ministry annulled the decision of 2 March 2000 since the matter had already been decided by the procedural decision of 22 December 1999.

52. On 15 January 2001 the applicant initiated an administrative dispute before the Cantonal Court in Sarajevo. This case is still pending.

B. Submissions of *amici curiae*

1. The Office of the High Representative

53. As a background to the issue of JNA apartments, OHR stated that prior to 1992 there were approximately 12,500 JNA apartments in the Federation (the majority being in Sarajevo, with approximately 10,500) and approximately 3,500 in the Republika Srpska. In 1991 and 1992, the JNA began to privatise these apartments, offering them for sale to occupancy right holders. The JNA apartments were the first category of apartments to be privatised. The process of privatisation for most other socially owned apartments did not start until after the war. Additionally, the Republic/Federation authorities, beginning in February 1992, expressed their displeasure with the privatisation process, and their intention to prevent further privatisation of the apartments in light of the “dissolution” of Yugoslavia. Occupants signed contracts for purchase of the apartments, and paid part, or all, of the purchase price. However, some purchasers did not complete all of the requisite formalities for purchase, and others did not take any such steps at all.

54. Between February 1992 and January 1996 a series of laws and decrees were promulgated which effectively blocked the purchasers from completing their contracts and cancelling them all together (see paragraphs 68-80 below). A number of these apartments were declared abandoned and allocated for other use. The allocations were mainly to serving and wounded soldiers of the Federation Army, war widows and invalids and their families.

55. OHR stated that it was clear that certain military apartment holders have been treated differently from non-military apartment holders. OHR, then went on to discuss the legislative history of Article 3a. Decisions of the Human Rights Chamber had found that the Federation had violated the European Convention on Human Rights, specifically by retroactively annulling JNA contracts, and by denying the purchasers access to the courts to challenge the annulment. After the Chamber’s first decision in 1997 (case no. CH/96/3, 8 and 9, *Medan, Bastijanović and Marković*, decisions on the merits of 3 November 1997, Decisions on Admissibility and Merits March 1996–December 1997), Federation authorities, including the Ministry of Defence (hereinafter “MoD”), failed to take any steps to rectify the violations by recognising the contracts. Discussions ensued between the MoD and OHR regarding implementation of the *Medan and Others* decision. In June 1999, it was agreed that the contracts would be recognised. Under the 1998 property laws, all pre-war occupancy right holders had a right to claim for repossession. This general law also applied to military apartments. However, the military had refused to allow return to these apartments, or even facilitate the processing of claims until 1999.

56. The environment surrounding the issue of return of military apartments was one of strong resistance. However, the OHR stated that it argued strongly during the above referenced negotiations that there are many people with a genuine desire to return, including pensioners who retired from the JNA in the years before this war, and that Chamber decisions must be implemented in full. Citing to Article 3a, provisions were negotiated to allow for the unqualified return to those who could show that they were refugees or displaced persons (namely, those who were not actively serving in the JNA in 1991, who were citizens of Bosnia and Herzegovina or who were given refugee or other status abroad

during the war, etc.). In other cases, it was agreed that those who had begun to purchase their apartments would receive compensation.

57. In mid-1999, an agreement “in principle” was reached between OHR and the Federation on these issues. Amendments to the Law on Cessation of the Application on the Law of Abandoned Apartments, giving effect to the agreement, were accepted and put in place by the High Representative in July 1999. OHR stated that at the time the agreement on Article 3a was reached with the Federation, OHR told the Federation that a finding by the Human Rights Chamber that the new legislation violated the European Convention on Human Rights would require a change to the legislation.

58. OHR then outlined what it called “factors to consider”. It explained, that the exclusion from the general definition of refugee, found under Article 3, of persons who were citizens of another country and continued to serve in the other country’s armed forces after the end of the war, were not in the 1951 Refugee Convention definition of refugees. The 1951 Refugee Convention definition of refugees provides as follows:

“The term “refugee” shall apply to any person who, owing to a well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.”

59. Further, the test for the definition of “refugee” found in the second paragraph of Article 3a, namely that one is not considered a refugee if he or she has acquired another occupancy right outside the territory of Bosnia and Herzegovina, was intended to reduce the shortage of housing. It stated that occupancy rights in the former Yugoslavia were limited to one household, given that they were in very short supply. Those who benefited from new housing rights outside the country had the benefit of assistance from that country.

60. The other class of persons excluded from the definition of refugee, found in the first paragraph of Article 3a, includes non-citizens of Bosnia and Herzegovina in active service with the JNA in 1991 who were not given refugee or other similar protective status outside of the former Socialist Federal Republic of Yugoslavia. In the opinion of OHR, this definition is closer to that of the Refugee Convention because non-citizens of Bosnia and Herzegovina may seek protection of their country of nationality under the 1951 Convention.

61. Finally, OHR pointed out the failure of the Federation authorities to comply with requests made by the High Representative to report on the allocation of these apartments, particularly in Croat areas. Under the *Instruction on Application of the Law on Cessation of the Application of the Law on Abandoned Apartments*, all bodies dealing with MoD apartments are obliged to ensure that apartments are not used in violation of the housing laws by persons whose housing needs are otherwise met. This obligation includes making available information on the past and present use of such apartments. On 12 October 1999 the Federation MoD agreed with OHR to provide detailed information on the status of these apartments to ensure that a good proportion of them would be provided for humanitarian needs. Since then, the OHR has received numerous reports of non-compliance in this respect, particularly regarding allocation of apartments to individuals whose housing needs are otherwise met. The MoD has often neglected to provide information regarding the current status of apartments, so that these reports could be assessed accurately.

2. The United Nations High Commissioner for Refugees Sarajevo

62. UNHCR stated its understanding of Articles 3 and 3a of the Federation Law on Cessation of the Application of the Law on Abandoned Apartments. Article 3, which provides for a broader definition of refugee than the definition found in Article 3 of the Law on Refugees from Bosnia and Herzegovina and Displaced Persons in Bosnia and Herzegovina (Official Gazette of Bosnia and Herzegovina-hereinafter “OG BiH no. 3/99) adopted on 23 December 1999, is presumed solely for the purpose of regulating the process of property repossession. As such, it stands apart from any

definition of a refugee in International Refugee Law, and should also be considered *lex specialis* in relation to the Bosnia and Herzegovina Law on Refugees from Bosnia and Herzegovina.

63. UNHCR's understanding of Article 3a is that it provides a narrower set of conditions under which an occupancy right holder can be considered a refugee for the purposes of repossession of military apartments. These conditions were adopted to exclude a particular category of persons on the assumption that these persons would have found protection outside of Bosnia and Herzegovina, and that their claims for restitution or property in Bosnia and Herzegovina could be satisfactorily resolved under other legislation.

64. UNHCR notes, however, that it is conceivable that this provision could be reconsidered in the context of the ongoing effort to harmonise the legislation of both Entities, which should be undertaken in a manner so as to not prejudicially disadvantage any group. Moreover, UNHCR is concerned by the lack of transparency in the manner in which Article 3a has been implemented by the Federation authorities. Specifically, UNHCR notes the lack of information provided on the current use and possible re-allocation of military apartments.

IV. RELEVANT DOMESTIC LEGISLATION

A. Relevant legislation of the Socialist Federal Republic of Yugoslavia

65. Each of the applicants contracted to purchase his apartment under the Law on Securing Housing for the Yugoslav National Army (Official Gazette of the Socialist Federal Republic of Yugoslavia –hereinafter- “OG SFRJ”, no. 84/90). This Law was passed in 1990 and came into force on 6 January 1991. It essentially regulated the housing needs for military and civilian members of the Yugoslav National Army (“JNA”).

66. Article 20 of the Law provided that the holder of an occupancy right residing in an apartment of the JNA Housing Fund could purchase the apartment on the basis of a contract made with the authority responsible for the apartment. Article 21 laid out a formula for calculating the price payable for apartments so purchased. The price was based on a valuation of the apartment, subject to a number of deductions. In particular, provisions were made for a deduction in the purchase price based on the amount of contributions made by a particular purchaser to the JNA Housing Fund. Article 23 of the Law placed an obligation on the purchaser of an apartment to submit, within 30 days of the conclusion of the purchase contract, a request to the Land Registry to register the ownership of the apartment. This Law was never adopted as part of the law of Bosnia and Herzegovina.

67. Article 33 of the Law on Basic Ownership Relations provided that the ownership over immovables was acquired when the ownership was registered in a registry book (OG SFRY 6/80 and 36/90). This Law was in force in the Federation of Bosnia and Herzegovina until 17 March 1998.

B. Relevant Legislation of the Socialist Republic of Bosnia and Herzegovina and after 11 April 1992, following independence, the Republic of Bosnia and Herzegovina

68. On 15 February 1992 the Government of the Socialist Republic of Bosnia and Herzegovina issued a Decree imposing a temporary prohibition on the sale of apartments previously characterised as social property (Official Gazette of the Socialist Republic of Bosnia and Herzegovina-hereinafter “OG SR BiH” no. 4/92”). Article 1 of this Decree temporarily prohibited the sale of socially owned apartments located in the territory of the Republic of Bosnia and Herzegovina to holders of occupancy rights in them, where sales were being concluded in accordance with the Law on Securing Housing for JNA. Article 3 of the Decree declared invalid any purchase contract or other contract relating to a property right in such an apartment where that contract was inconsistent with the provisions of the Decree. Article 4 of the Decree prohibited courts and other state organs from notarising such contracts and from registering them either in property registers or in court registers. Article 5 of the Decree provided that the temporary prohibition on sales should remain in force until the entry into

force of a law regulating *inter alia* the sale of apartments within the JNA's control, and at longest for a year following the date of issue of the Decree (15 February 1993).

69. On 11 April 1992 the Presidency of the newly independent Republic of Bosnia and Herzegovina issued a Decree declaring that it was not bound by any purchase contract an individual had entered into for the purchase of real property from the JNA.

70. On 15 June 1992 the Presidency issued a Decree which provided that all property belonging to the JNA and other state organs of the Socialist Federal Republic of Yugoslavia located on the territory of Bosnia and Herzegovina should be considered as belonging to the Republic of Bosnia and Herzegovina (Official Gazette of the Republic of Bosnia and Herzegovina –hereinafter- “OG R BiH” no. 6/92). This Decree thereby established that the Republic of Bosnia and Herzegovina was the *de jure* owner of apartments that had previously been alienated by the Socialist Federal Republic of Yugoslavia.

71. The Law on Abandoned Apartments, issued on 15 June 1992 as a Decree with force of law, was adopted as law on 1 June 1994 and amended on various occasions (OG R BiH 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.

72. According to the 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 1990 (Article 1). An apartment was considered abandoned if, even temporarily, it was not used by the occupancy right holder or members of the household (Article 2). There were, however, certain exceptions to this definition. For example, an apartment was not to be considered abandoned if the apartment was destroyed, burnt or in direct jeopardy as a result of war actions (Article 3 paragraph 2).

73. 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).

74. 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 R BiH 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).

75. On 13 March 1993 the Presidency of the Republic of Bosnia and Herzegovina issued a Decree with the force of law on the Resources and Financing of the Army of Bosnia and Herzegovina which provided that the social resources of the former Socialist Federal Republic of Yugoslavia which had been used by the JNA were placed under the temporary use and management of the army of the Republic (OG R BiH nos. 6/93 and 17/93).

76. On 1 June 1994 the Assembly of the Republic of Bosnia and Herzegovina adopted all previously issued Decrees with legal force as Law (OG R BiH no. 13/94). Thus, all Decrees with legal force listed above were adopted as laws on this date. Only the Decree of 15 February 1992 (see paragraph 68 above) was not adopted as law either on this date or at a later time.

77. On 12 July 1994 the Presidency of the Republic of Bosnia and Herzegovina issued a Decree with force of law amending the Law on Real Property Transactions (OG R BiH no. 18/94). Article 1 provided that contracts relating to real property transactions must be in writing and that the signatures of the contracting parties must be verified by a competent court. It further provided that any contract, relating to property transactions, that had been concluded in a manner that did not conform with the provisions of paragraph 1 of this Article shall have no legal force or effect. Article 3

of the Decree provided that written contracts concluded prior to the entry into force of the Decree were valid if the parties had fulfilled all obligations arising from the contracts completely or substantially. It further provided that contracts concluded prior to the entry into force of the Decree would be considered valid provided the parties had their signatures certified by a competent court within six months of the entry into force of the Decree.

78. On 25 November 1994 the Assembly of the Republic of Bosnia and Herzegovina introduced a Law on the Transformation of Social Property (OG R BiH no. 33/94). The effect of this Law was to transform all property that had formerly been categorised as socially owned property into state property. This Law entered into force on 25 November 1994 and was applied as of 1 January 1995.

79. On 3 February 1995 the Presidency of the Republic issued a Decree with force of law amending the Law on the Resources and Financing of the Army (OG R BiH no. 5/95)(see paragraph 75 above). This Decree provided that for the protection of the housing fund of the army, until the issuing of the Law on Housing in the Republic, courts and other state authorities should adjourn proceedings relating to the purchase of apartments and other properties under the Law on Securing Housing for the JNA. This Decree came into force on 10 February 1995, the date of its publication in the Official Gazette.

80. On 22 December 1995 the Presidency of the Republic of Bosnia and Herzegovina issued a Decree with force of law amending the Law on the Transfer of Resources of the Socialist Federal Republic of Yugoslavia into the property of the Republic. This Decree provided that contracts for the sale of apartments and other property concluded on the basis of *inter alia* the Law on Securing Housing for the JNA were invalid. This Decree also provided that questions connected with the purchase of real estate, which was the subject of annulled contracts, would be resolved under a law to be adopted in the future. This Decree came into force on 22 December 1995. It was adopted as law by the Assembly of the Republic of Bosnia and Herzegovina on 18 January 1996 (OG R BiH 2/96).

C. Relevant Legislation of the Federation of Bosnia and Herzegovina

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

81. The Law on Abandoned Apartments was repealed by the Law on Cessation of Application of the Law on Abandoned Apartments ("the Law on Cessation") 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).

82. According to the Law on Cessation, 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 Law on Cessation. Pursuant to the amendment of the Law of 13 April 1999, 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).

83. 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. Persons who left their apartments between 30 April 1991 and 4 April 1998, the date when the Law on Cessation entered into force, shall be considered to be refugees or displaced persons under Annex 7 of the General Framework Agreement (Article 3 paragraphs 1 and 2).

84. Article 3a provides for an exception to Article 3, paragraph 1 and 2 of this Law, regarding apartments declared abandoned on the territory of the Federation of Bosnia and Herzegovina, at the disposal of the Federation Ministry of Defence. It provides as follows:

“the occupancy right holder shall not be considered a refugee if on April 30, 1991 s/he was in active service in the SSNO (Federal Secretariat for National Defence)- JNA (i.e. not retired) and was not a citizen of Bosnia and Herzegovina according to the citizenship records, unless s/he had residence approved to him or her in the capacity of a refugee, or other equivalent protective status, in a country outside the Former SFRJ before 14 December 1995.”

“A holder of an occupancy right from paragraph 1 of this Article will not be considered a refugee if s/he remained in the active military service of any armed forces outside the territory of Bosnia and Herzegovina after 14 December 1995, or if s/he has acquired another occupancy right outside the territory of Bosnia and Herzegovina.”

Article 3a of the Law on Cessation came into force according to the High Representative's Decision of 1 July 1999.

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

86. 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.

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

2. The Law on Sale of Apartments with an Occupancy Right

88. Relevant to the current cases, Article 39a of the Law on Sale of Apartments with an Occupancy Right (OG FBiH nos. 27/97 and 11/98) states that a person who entered into a contract to purchase a JNA apartment, who holds the occupancy right over said apartment, and is legally using the apartment shall be registered as that apartment's owner with the competent court by an order of the relevant housing authority within the Federation Ministry of Defence. Article 39c states that Article 39a shall also apply to an occupancy right holder who has “exercised the right to repossess the apartment under the Law on Cessation of the Application of the Law on Abandoned Apartments.”

89. Article 39d states that if an individual fails to realise their rights to the apartment with the Federation Ministry of Defence, they may initiate proceedings before the competent court.

90. Article 39e provides that an individual who is not entitled to repossession of the apartment in accordance with the provisions of Articles 3 and 3a of the Law on the Cessation of the Application of the Law on Abandoned Apartments and who entered into a legally binding contract on the purchase of an apartment with the JNA before 6 April 1992, shall have the right to submit a request to the Federation Ministry of Defence for compensation of the funds paid on that basis, unless it is proved that these funds were acknowledged for purchase of an apartment outside the territory of Bosnia and Herzegovina.

3. Law on Housing Relations

91. Relevant to the current cases, Article 19 of the Law on Housing Relations (OG SRBiH nos. 14/84, 12/87 and 36/89; OG RBiH nos. 2/93; OG FBiH nos. 11/98 and 38/98) provides that only one person may be the occupancy right holder over one apartment. If the contract on use of the apartment is concluded by one of the spouses who lives in the household, the other spouse shall also be considered the occupancy right holder.

4. The Law on Administrative Proceedings

92. 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”).

D. Relevant legislation of Bosnia and Herzegovina

93. The Constitution of Bosnia and Herzegovina is contained in Annex 4 to the General Framework Agreement. Article III of the Constitution is entitled “Responsibilities of and Relations Between the Institutions of Bosnia and Herzegovina and the Entities.” Paragraph 1 of Article III, entitled “Responsibilities of the Institutions of Bosnia and Herzegovina” reads as follows:

“The following matters are the responsibility of the Institutions of Bosnia and Herzegovina:

- (a) Foreign policy.
- (b) Foreign trade policy.
- (c) Customs policy.
- (d) Monetary policy (...)
- (e) Finances of the Institutions and for the international obligations of Bosnia and Herzegovina.
- (f) Immigration, refugee, and asylum policy and regulation.
- (g) International and Inter-Entity criminal law enforcement, including relations with Interpol.
- (h) Establishment and operation of common international communications facilities.
- (i) Regulation of Inter-Entity transportation.
- (j) Air traffic control.

94. In paragraph 3 of Article III, it is stated that “...(a)ll governmental functions and powers not expressly assigned in this Constitution to the institutions of Bosnia and Herzegovina shall be those of the Entities.

V. ALLEGED AND APPARENT VIOLATIONS OF HUMAN RIGHTS

95. The applicants complain of the fact that they have not been reinstated into their respective apartments and that the contracts on purchase of their respective apartments have not been recognised. The applications raise issues under Articles 6, 8 and 13 of the European Convention on Human Rights and Article 1 on Protocol No. 1 to the Convention, as well as of discrimination in the enjoyment of the rights guaranteed by these provisions.

VI. SUBMISSIONS OF THE PARTIES

A. Bosnia and Herzegovina

96. Bosnia and Herzegovina submitted its observations on the admissibility and merits of case no. CH/98/287 (Milorad Ćirić) on 27 January 2000. With respect to the admissibility and merits, it stated that the applicant has failed to exhaust domestic remedies available to him.

97. During the public hearing on 4 July 2001, Mr. Jusuf Halilagić, the agent for Bosnia and Herzegovina, submitted Bosnia and Herzegovina's position with respect to the admissibility and merits of all five cases. Mr. Halilagić stated that the applicants' cases do not fall within the competence of the institutions of Bosnia and Herzegovina as defined under Article III paragraph 1 (a)-(j) of the Constitution of Bosnia and Herzegovina. Additionally, he stated that Bosnia and Herzegovina agrees completely with the observations of the Federation of Bosnia and Herzegovina submitted on 15 June 2001. Finally, he stated that the applicants' legal status with respect to possession of their apartments has been determined pursuant to the laws of the Federation of Bosnia and Herzegovina. Therefore, Bosnia and Herzegovina argues that it bears no responsibility for alleged violations of human rights in this regard.

B. The Federation of Bosnia and Herzegovina

1. Written observations of 25 August 1998

98. The observations of the Federation of Bosnia and Herzegovina were received in case no. CH/98/276 (Božo Ćorapović) on 25 August 1998. With respect to admissibility, the Federation argues that the Chamber should declare the case inadmissible because the applicant failed to exhaust domestic remedies. The Federation did not expand on this argument at that time.

99. With respect to the merits, the Federation argues that the Chamber is not competent to examine allegations of alleged human rights violations that occurred prior to 14 December 1995. In this case, the Federation argues that the applicant entered into a contract on purchase of the apartment after the publishing and coming into force of the Decree of 15 February 1992 which imposed a temporary prohibition on the sale of apartments that were characterised as socially owned property (see paragraph 68 above). Article 3 of that Decree declared null and void any contracts made in contravention of the Decree. Accordingly, the Federation argues that the applicant's contract was void *ab initio*. Therefore, unlike the case of *Medan* (see paragraph 55 above), this case does not involve the retroactive annulment of a contract since a valid contract never existed. Therefore, the Federation argues that there has been no violation of the applicant's human rights and the application should be rejected as manifestly ill-founded.

100. Additionally, the Federation argues that the actions taken with regard to JNA apartments were necessary to remedy the inequality that existed between persons who were able to purchase JNA property and those who were not. Accordingly, it argues that such legal provisions designed to ensure that all occupancy right holders in Bosnia and Herzegovina can purchase apartments on an equal footing do not violate Article 1 of Protocol No. 1 to the Convention. Finally, the Federation asks the Chamber to set aside its decision in the *Medan* case.

2. Written observations of 15 February 2000

101. The Federation submitted its observations on the admissibility and merits of case no. CH/98/287 (Milorad Ćirić) on 15 February 2000. With respect to admissibility, the Federation argues that the applicant failed to exhaust domestic remedies. With respect to the merits, the Federation argues that there has been no violation of Article 6 because pursuant to Article 39d of the Law on Sale of Apartments with an Occupancy Right the applicant can initiate proceedings before a competent court and the applicant has failed to do so.

102. With respect to an alleged violation of Article 8 of the Convention, the Federation argues that the applicant voluntarily abandoned his apartment without any influence from the Federation. With respect to an alleged violation of Article 1 of Protocol No.1 to the Convention, the Federation argues that Article 39 of the Law on Sale of Apartments with an Occupancy Right sufficiently protects the property rights of the applicant.

3. Written observations of 15 and 16 June 2001

103. Observations from the Federation of Bosnia and Herzegovina were received in all five cases on 15 and 16 June 2001. With respect to all five cases, the Federation objects to the admissibility of the applications *ratione personae* on the ground that Article 3a of the Law on the Cessation of the Application of the Law on Abandoned Apartments (see paragraph 84 above) was inserted into the Law according to a decision of the High Representative of 1 July 1999. Further, the OHR additionally imposed the Instructions on the Application of the Law on Cessation of the Application of the Law on Abandoned Apartments, which included a section on processing claims for repossession of military apartments. The Federation states that it is required to apply these laws unconditionally. Accordingly, the Federation cannot be the respondent Party in these cases. Further, as the Chamber has held in the cases of *Municipality Council of the Municipality of South-West Mostar v. the High Representative* (cases nos. CH/00/4027 and CH/00/4074, decision of 9 March 2000, Decisions January-June 2000), the High Representative is not a party to the Agreement and the Chamber did not find that any of the acts complained of fell within the responsibility of any of the parties to the Agreement. Likewise, in this case the alleged violations of human rights are a result of a law imposed by the High Representative and the Chamber should not, in fact, cannot find that any of these alleged violations are the responsibility of the Federation.

104. Further the Federation argues that the applications are inadmissible for failure to exhaust domestic remedies. Specifically, it argues that two of the cases are still pending before domestic courts. Additionally, none of the applicants filed proceedings pursuant to Article 39d of the Law on the Sale of Apartments with an Occupancy Right (see paragraph 89 above).

105. With respect to cases nos. CH/97/60 (Miholić) and CH/98/276 (Čorapović) in which the applicants have filed claims with the Annex 7 Commission, the Federation argues that these applications should be declared inadmissible pursuant to Article VIII(2)(d) of the Agreement as they are pending before another Commission.

106. With respect to the merits, the Federation argues that there has not been a violation of Article 14 of the Convention in connection with Article 8 of the Convention and Article 1 of Protocol No. 1 to the Convention. The Federation concedes that there has been differential treatment between the occupancy right holders who are subject to the exclusions under Article 3a and other occupancy right holders. However, it argues that these groups of persons are not in analogous situations and such differential treatment is fully justified and has been pursued in accordance with the law. Finally, it argues that the Chamber should bear in mind the margin of appreciation granted to contracting States under the Convention.

107. Specifically, the Federation argues that persons subject to Article 3a are not similarly situated to other occupancy right holders. Persons who are included in this category and who are not able to repossess their apartments are able to seek protection in their countries of origin, such as the Federal Republic of Yugoslavia, Slovenia, Macedonia and Croatia. These persons also have the possibility of being granted the status of a refugee in countries outside the territory of Bosnia and Herzegovina. In any event, these persons are entitled to claim compensation.

108. Further, as alluded to above (see paragraph 100 above), the Federation reiterates its position that former JNA members had certain advantages over occupancy right holders of civilian apartments in that the purchase price for JNA apartments was lower than for others based on their contributions to the JNA Housing Fund. Further, all persons paid contributions to a housing fund and many of them have not been allocated any apartment for use. Additionally, there is a huge number of military persons who left other Republics of the former Socialist Federal Republic of Yugoslavia and settled in Bosnia and Herzegovina and who do not have the opportunity to regain their occupancy rights on the territory of the Republics they left. Considering all of the above, the Federation

considers that these are not relevant groups for comparison and that, in any event, any interference is justified.

109. With respect to Article 8, the Federation argues that the domestic bodies applied properly Article 3a. Further, to the extent there has been an interference it was in accordance with the law. Additionally, it argues that this interference pursued a legitimate aim that is necessary in a democratic society. Namely, it protects the rights of others, *e.g.*, of active fighters and their families or of persons who were forced to leave their houses due to the war.

110. With respect to cases nos. CH/98/276 (Čorapović) and CH/98/287 (Ćirić), the Federation reminds the Chamber that the applicants left their respective apartments of their own free will as active military personnel serving in the armed forces of another state.

111. Additionally, the Federation argues in connection with the allegation put forward in case no. CH/98/287 (Ćirić), that the applicant's wife has also been discriminated against as the wife of the occupancy right holder, that this allegation is ill-founded. Specifically, the Federation concedes that the applicant's wife is also considered an occupancy right holder according to Article 2 paragraph 2 of the Law on Housing Relations (see paragraph 91 above). However, since the applicant and his wife left Tuzla in 1992 as active military personnel in the armed forces of another State and not as refugees or displaced persons, the first instance organ determined that they were not refugees and not entitled to repossession.

4. Oral statements during the public hearing on 4 July 2001

112. The Federation maintains its previous written observations. Further it accepts the *amicus curiae* statement of the OHR on the whole, except for the statement regarding its failure to report to the international community about the allocation of the Federation MoD apartments. Further, the Federation states that it did not consider any of the applicants to be the owners of the apartments in question, because none of the applicants properly registered their ownership.

113. Ms. Nura Zimić, the attorney for the Federal Ministry of Defense, submitted a statement on behalf of the Federation regarding Article 3a of the Law on the Cessation of the Application of the Law on Abandoned Apartments and Article 39 of the Law on Sale of Apartments with an Occupancy Right. Ms. Zimić stated that the MoD has completed more than 1,800 proceedings in which persons' ownership over former JNA apartments have been registered. Reports of the registrations have been regularly submitted to the OHR. Further, approximately 30% of the free military apartments were allocated by the MoD to three social categories-disabled veterans, demobilised fighters and the families of fallen soldiers. Additionally, 576 new procedural decisions on temporary contracts have been issued.

114. Ms. Zimić further submitted that on the whole of Bosnia and Herzegovina there were about 16,052 military apartments. In the Federation about 12,559 and in the Republika Sprska about 3,493. Under control of the Army there were 6,418 abandoned apartments and there were more than 5,500 claims for regaining possession before the Annex 7 Commission. She added that, in Belgrade, there are more military apartments than in the whole of Bosnia and Herzegovina. Finally, officers of the Federation Army who had an apartment outside of the territory of Bosnia and Herzegovina cannot be legally reinstated into those apartments.

115. Mr. Lutvo Mehonjić, Deputy Minister in the Federal Ministry of Defence, also submitted a statement on behalf of the Federation. He stated that Article 5 of the Statute on Allocation of Apartments in the former JNA provided that military personnel were allocated apartments in the garrison where they performed their service. Pursuant to Article 10, after retirement or termination of service, a military person had the right to choose where he wanted an apartment to be provided to him. In practise, he stated that the majority of persons used to request allocation of an apartment in the republic where they were born. After the dissolution of the former JNA, military persons from the former JNA went back to their Republic of origin, "almost as a rule, and left their pre-war apartments". They submitted their applications in the republics they went to and other apartments

were allocated to them. He then stated that he had about ten certificates which proved this statement and that he would provide them to the Chamber.

116. With regard to the case of Mr. Ristić (CH/98/362), Mr. Mehonjić further explained that there was no distinction between “active service” or at the “disposal” of the army. A person was considered in “active” service until such time as a procedural decision was issued on retirement or termination of service.

117. Finally, Mr. Mehonjić stated that the sale of former JNA apartments during 1991 and 1992 was only done in Bosnia and Herzegovina. It was not done in any other Republic of the former Federal Republic of Yugoslavia. The Army of the Federation was not in the position to purchase an apartment outside Bosnia and Herzegovina. Therefore, members of the Federation Army cannot realise the right to reinstatement, while their colleagues from other former Republics (now States) request apartments in Bosnia and Herzegovina.

118. Mr. Mehmedalija Huremović, head of the Association of Tenants BIHUS, also submitted a statement on behalf of the Federation. Mr. Huremović has been involved with housing laws for over forty years and took part in the creation of the majority of Republic regulations regarding housing issues. He stated that pursuant to the Law on Housing Relations one citizen may be the occupant over one apartment only. There is one exception when the contract is concluded by one spouse and the other spouse becomes the sub-occupancy right holder. Such holder is at the same time a member of the family household and if he or she acquires another apartment he or she cannot be the occupancy right holder over both apartments. He further stated that:

“a spouse as a family household member always bears the fate of the occupancy right holder. So, if the apartment is not used any more because of the cancellation of the contract on use of the apartment, by the contract on exchange, by occupancy right realized over some other apartment these refer also to the other spouse as a member of the family household”.

Further, he stated that the intent of Article 3a would be thwarted if one of the spouses was forbidden to return into possession of an apartment and the other was permitted to do so. Additionally, such an interpretation would not be in accord with the Law on Housing Relations. This principle flows from the presumption that one person and one citizen may be the occupancy right holder over one apartment and this concept applies to the actual occupancy right holder and the members of his household.

119. With respect to Mr. Andrija Miholić, (CH/97/60) the Federation denies that he was given refugee status in Germany. The document he provided to the domestic courts and the Chamber, which was issued by the embassy of Bosnia and Herzegovina in Bonn on 2 December 1997, is very vague. Further, to establish refugee status he would need to have a document issued by the German Government confirming that he enjoyed refugee status.

5. Additional information received after the Public Hearing

120. The Federation provided further information establishing that other former members of the JNA or current members of the Army of Yugoslavia have, in fact, acquired occupancy rights in the Federal Republic of Yugoslavia. It further asserts that these persons have filed claims for return of apartments in Bosnia and Herzegovina. Additionally, it provided information that the rental price of an apartment from the Army of the Federal Republic of Yugoslavia comes to approximately 1 or 2 DEM.

C. The Applicants

121. All of the applicants maintain their applications in whole. They state that they have pursued every available option before the domestic organs. Further, all of the applicants state that their housing problems have not been solved elsewhere. Mr. Ćorapović and Mr. Ćirić maintain that they have not been able to acquire property in the Federal Republic of Yugoslavia because they purchased apartments in the Republic of Bosnia and Herzegovina. The applicant, Mr. Ćorapović, states that the Decree on Temporary Prohibition on Sale of Socially Owned Apartments was invalid, since it was contrary to the legislation of the then Socialist Federal Republic of Yugoslavia. As a

remedy, all of the applicants request repossession of their respective apartments in Bosnia and Herzegovina and registration in the land books as owners.

VII. OPINION OF THE CHAMBER

A. Admissibility

122. Before considering the merits of these cases the Chamber must 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 they have been exhausted. 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 Commission established by the Annexes to the General Framework Agreement.

1. Bosnia and Herzegovina

123. Bosnia and Herzegovina objects to the admissibility of the applications as directed against it on the ground that the applicants' complaints do not fall within the competence of Bosnia and Herzegovina as provided for in the Article III of the Constitution of Bosnia and Herzegovina (Annex 4 to the General Framework Agreement). It further argues that the applicants' legal status with respect to the apartments in question has been determined pursuant to the laws of the Federation of Bosnia and Herzegovina. Therefore, Bosnia and Herzegovina claims that it cannot be held responsible for any violation of human rights that may be found in connection with the applicants' property rights. To the extent that Bosnia and Herzegovina objected in its early submission that the applicant in case no. CH/98/287 (Ćirić) failed to exhaust domestic remedies, this objection appears to be superseded by the argument stated above. In any event, the objection on the ground of failure to exhaust domestic remedies is addressed below (see paragraphs 134-135).

124. The Chamber notes that the matters the applicants complain of are not within the responsibilities of Bosnia and Herzegovina as listed in Article III of the Constitution. However, the Chamber finds that the applicants' claims, at their inception, stem from the Decree of 22 December 1995, which annulled all JNA contracts. This Decree was issued by the Presidency of the Republic of Bosnia and Herzegovina and adopted as law by the Assembly of the Republic (see paragraph 80 above). In this regard, the Chamber recalls the case of *Medan and others* wherein the Chamber found that Bosnia and Herzegovina violated the applicants' rights under Article 1 of Protocol No. 1 to the Convention since it was responsible for passing the legislation that retroactively annulled the applicants' contracts (see the above-mentioned *Medan and others* decision, paragraphs 45-47). The present applicants must be understood as alleging that it is the effects of that Decree that have been ongoing to this day (see cases nos. CH/98/159 et al., *Huseljić and others*, decision on admissibility and merits of 11 June 1999, paragraph 31, Decisions January-July 1999). Accordingly, the objection of Bosnia and Herzegovina must be rejected.

125. As no other ground for declaring the applications inadmissible has been put forward or is apparent, the applications are to be declared admissible in relation to Article 8 of the Convention and Article 1 of Protocol No. 1 to the Convention with respect to Bosnia and Herzegovina.

2. The Federation of Bosnia and Herzegovina

(a) Ratione personae

126. The Federation objects to the admissibility of the applications on the ground that Article 3a of the Law on the Cessation of the Application of the Law on Abandoned Apartments was inserted into the Law according to a Decision of the High Representative of 1 July 1999, which the Federation is obliged to implement without the possibility to raise objections. The Federation reminds the Chamber that it has on other occasions declared inadmissible *ratione personae* applications complaining about decisions of the High Representative.

127. The Chamber notes that it is true that it has declared inadmissible *ratione personae* applications directed against decisions of the High Representative removing officials from office. In case no. CH/98/1266, *Čavić v. Bosnia and Herzegovina* (decision on admissibility of 18 December 1998, Decisions and Reports 1998), the applicant alleged a violation of his freedom of opinion, freedom of expression and of his right to be elected in free elections due to a decision of the High Representative removing him from his position as a member of the National Assembly of Republika Srpska and barring him from office for an indefinite period. The Chamber noted that the case, though directed against Bosnia and Herzegovina, concerned the actions of the High Representative. The Chamber proceeded to find that:

“18. Article II(2) of the Agreement gives the Chamber competence to consider, *inter alia*, alleged or apparent violations of human rights for which it is alleged or apparent that the Parties are responsible. It does not provide for the possibility of the Chamber considering applications directed against the High Representative. As the Chamber has previously stated, it is beyond doubt that the actions of the High Representative are not subject to any review in relation to the carrying out of his functions under the General Framework Agreement. For this to be the case, the General Framework Agreement would have to provide specifically for any such review [...] .

19. The actions complained of were carried out by the High Representative in the performance of his functions under the General Framework Agreement, as interpreted by the Bonn Peace Implementation Conference. There is no provision for any intervention by the respondent Party (or by any of the other Parties to the General Framework Agreement) in those actions. In addition, the High Representative cannot be said to be acting as, or on behalf of, the State or the Entities when acting in pursuance of his powers. As a result, the actions giving rise to the present application cannot be considered to be within the scope of responsibility of the respondent Party.”

In conclusion, the Chamber held that “the impugned acts do not come within the responsibility of the respondent Party and are therefore outside the competence of the Chamber under Articles II and VIII(1) of the Agreement” (*Čavić* decision, paragraph 20).

128. In the cases of the *Municipal Council of the Municipality of South-West Mostar v. the High Representative* (cases nos. CH/00/4027 and CH/00/4074, decision of 9 March 2000, Decisions January-June 2000), the applicant directed its complaint concerning the removal from office of two officials of the Municipality South-West Mostar directly against the High Representative. The Chamber dismissed the cases on grounds of incompatibility with the Agreement *ratione personae*, noting that “the High Representative is not a Party to the Agreement and the Chamber cannot find that any of the acts complained of by the applicant falls within the responsibility of the possible respondent Parties” (*Municipal Council of the Municipality of South-West Mostar* decision, paragraph 9).

129. Returning to the cases currently before it, the Chamber takes the view that the role of the High Representative in enacting Article 3a of the Law on Cessation is of a different nature than his decisions to remove officials of national elective bodies, which constituted the subject matter of the two Chamber decisions recalled above. In this respect, it is useful to refer to the *Law on State Border Service* decision of the Constitutional Court of Bosnia and Herzegovina (Case No. U 9/00, *Request for evaluation of the constitutionality of the Law on State Border Service*, decision of 3 November 2000). The Law on State Border Service had been enacted by the High Representative and was published, two weeks later, in the Official Gazette of Bosnia and Herzegovina. The applicants before the Constitutional Court contended, on the one hand, that the High Representative did not have the normative powers to impose a law in the absence of a vote by the Parliamentary Assembly. On the other hand, the applicants challenged the conformity of the Law on State Border Service with certain provisions of the Constitution of Bosnia and Herzegovina (paragraph 2 of the decision).

130. The Constitutional Court examined whether it had jurisdiction to evaluate the constitutionality of a law imposed by the High Representative. The relevant part of its decision reads:

“5. The Law on State Border Service was enacted by the High Representative for Bosnia and Herzegovina on 13 January 2000 following the failure of the Parliamentary Assembly to adopt a draft law proposed by the Presidency of Bosnia and Herzegovina on 24 November 1999. [...] The High Representative] has been vested with special powers by the international community and his mandate is of an international character. In the present

case, the High Representative – whose powers under Annex 10 to the General Framework Agreement, the relevant resolutions of the Security Council and the Bonn Declaration as well as his exercise of these powers are not subject to review by the Constitutional Court – intervened in the legal order of Bosnia and Herzegovina and the law which he enacted is in the nature of a national law and must be regarded as a law of Bosnia and Herzegovina.

6. Thus, irrespective of the nature of the powers vested in the High Representative by Annex 10 of the General Framework Agreement for Bosnia and Herzegovina, the fact that the Law on State Border Service was enacted by the High Representative and not by the Parliamentary Assembly does not change its legal status, either in form – since the Law was published as such in the Official Gazette of Bosnia and Herzegovina on 26 January 2000 (O.G. No 2/2000) – or in substance, since, whether or not it is in conformity with the Constitution, it relates to a field falling within the legislative competence of the Parliamentary Assembly according to Article IV.4 (a) of the Constitution. The Parliamentary Assembly is free to modify in the future the whole text or part of the text of the Law, provided that the appropriate procedure is followed.”

131. In accordance with the reasoning developed by the Constitutional Court, the Chamber takes the view that for the purpose of the admissibility *ratione personae* of applications directed against alleged violations originating in an act of the High Representative, two situations must be distinguished. In certain cases, the High Representative “substitut[es] himself for the national authorities” and acts “as an authority of Bosnia and Herzegovina and the law which he enact[s] is in the nature of a national law and must be regarded as a law of Bosnia and Herzegovina”, or, as in the cases presently before the Chamber, as a law of the Federation. Indeed, as Article 3a constitutes an amendment to the Federation Law on Cessation, which was adopted pursuant to the procedures provided for by the relevant constitutional provisions, there can be no doubt that the provisions of Article 3a share the nature of national law and can be amended by the Federation Legislature. The fact that Article 3a was published in the Official Gazette of the Federation no. 27/99, just as an enactment by the Federation Legislature would have been published, stresses that Article 3a is national law both in form and substance. The Federation, therefore, is the appropriate respondent Party in respect to allegations of violations of the Agreement resulting from the application of Article 3a.

132. When the High Representative decides to remove officials, on the contrary, as in the above-mentioned *Čavić* and *Municipal Council of the Municipality of South-West Mostar* cases, he cannot be seen as “substituting himself for the national authorities”. No national authority within the constitutional framework of Bosnia and Herzegovina, the Republika Srpska or the Federation is empowered to remove elected officials as it is done by the High Representative. Moreover, once an official is removed and barred from office by the High Representative, no national authority or electorate can modify the decision, reinstating the official. Therefore, these decisions do not share the nature of national law, and are not within the scope of responsibility of any of the possible respondent Parties of the Agreement. Applications to the Chamber directed against such decisions are thus inadmissible *ratione personae*.

133. In conclusion, for the reasons stated, the Chamber holds that, Article 3a being a provision of the Federation law, the Federation is the appropriate respondent Party for allegations of violations of the Agreement resulting from the application of Article 3a by Federation authorities.

(b) Exhaustion of domestic remedies

134. The Federation objects further to the admissibility of the applications on the ground that the applicants have failed to exhaust domestic remedies. According to Article VIII(2)(a) of the Agreement, the Chamber must consider whether effective remedies exist and whether the applicants have demonstrated that they have been exhausted. The Chamber has found that the existence of remedies in question must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness (see e.g, case no. CH/96/17, *Blentić*, decision on admissibility and merits of 3 December 1997, paragraph 19-21, with further references, Decisions on Admissibility and Merits March 1996- December 1997). 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 the personal circumstances of the applicants (ibid.). It is incumbent on the respondent Party, claiming non-exhaustion, to satisfy the Chamber there was an effective remedy available.

135. The Federation submits that none of the applicants have exhausted the domestic remedies available to them. Specifically, the Federation argues that with respect to some applicants appeals are still pending before the Cantonal Court and with respect to other applicants recourse may be had to other appeals or extraordinary remedies which may be effective. However, at the same time, the Federation argues that the first and second instance bodies have properly applied Article 3a of the Law on Cessation in deciding that the applicants are not entitled to regain possession of the apartments in question. Accordingly, the Chamber notes that even if the applicants had sought to avail themselves of further domestic remedies available to them, they would have no prospect of success as a result of the application of Article 3a of the Law of Cessation in conjunction with Article 39 of the Law on Sale of Apartments with an Occupancy Right. In these circumstances, the Chamber is satisfied that the applicants cannot be required to exhaust any further domestic remedies for the purposes of Article VIII(2)(a) of the Agreement (see e.g., case no. CH/98/800, *Gogić*, decision on admissibility and merits of 13 May 1999, paragraph 46, Decisions January–July 1999).

(c) Lis alibi pendens

136. Finally, the Federation objects to the admissibility of cases nos. CH/97/60 and CH/98/276 pursuant to Article VIII(2)(d) of the Agreement because they are currently pending before the Annex 7 Commission.

137. According to Article VIII(2)(d) of the Agreement the Chamber may reject or defer further consideration of a case, if it concerns a matter currently pending before any other international human rights body responsible for the adjudication of applications or the decision of cases, or another Commission established by the Annexes to the General Framework Agreement.

138. The Chamber notes that the applicants in case nos. CH/97/60 (Miholić) and CH/98/276 (Čorapović) have also claimed return of their respective apartments with the Annex 7 Commission. These cases are currently pending. According to Annex 7, the mandate of that Commission is confined to decisions on claims for real property in Bosnia and Herzegovina, where the property has not been sold voluntarily or otherwise transferred since 1 April 1992. The Chamber notes that in the present cases the applicants have raised several complaints essentially different from the subject matter that they have brought before the Annex 7 Commission, among others the complaint that they were discriminated against. These complaints fall outside the Annex 7 Commission's competence.

139. As the Chamber has already held in prior cases, in these circumstances, the applicants' pending claims before the Annex 7 Commission do not preclude the Chamber from examining the whole of the present cases before the Chamber. Moreover, even if one of the matters now before the Chamber remains pending before the Annex 7 Commission, the Chamber does not find it appropriate to defer further consideration of the present application or part of it (see e.g., cases nos. CH/97/93, *Matić*, decision on admissibility and merits of 14 May 1999, paragraphs 52-54, Decisions January–July 1999; CH/98/756, *D.M.*, decision on admissibility and merits of 13 April 1999, paragraphs 58-60, Decisions January–July 1999).

(d) Conclusion as to admissibility

140. As the Chamber has concluded that the applications are admissible *ratione personae* against Bosnia and Herzegovina, and all of the objections as to admissibility raised by the Federation having to be dismissed, the applications are admissible against Bosnia and Herzegovina in relation to Article 8 of the Convention and Article 1 of Protocol No. 1 to the Convention and the Federation of Bosnia and Herzegovina in their entirety.

B. Merits

141. Under Article XI of the Agreement, the Chamber must address the question whether the facts established above disclose a breach by one or both of the respondent Parties of its or their obligations under the Agreement. Article I of the Agreement provides that the Parties shall secure to all persons within their jurisdiction the highest level of internationally recognised human rights and fundamental freedoms, including the rights and freedoms provided in the Convention and the other international agreements listed in the Appendix to the Agreement.

142. Under Article II(2) of the Agreement, the Chamber has competence to consider (a) alleged or apparent violations of human rights as provided in the Convention and its Protocols and (b) alleged or apparent discrimination arising in the enjoyment of the rights and freedoms provided for in the 16 international agreements listed in the Appendix (including the Convention), where such a violation is alleged or appears to have been committed by the Parties, including by any official or organ of the Parties, Cantons, Municipalities or any individual acting under the authority of such an official or organ. The Chamber has held in the case of *Hermas* (case no. CH/97/45, decision on admissibility and merits of 18 February 1998, paragraph 118, Decisions and Reports 1998) that the prohibition of discrimination is a central objective of the General Framework Agreement to which the Chamber must attach particular importance.

1. Article 1 of Protocol No. 1 to the Convention and discrimination in the enjoyment of the right to peaceful enjoyment of possessions

(a) Right to peaceful enjoyment of possessions

143. The applicants allege a violation of their rights to peaceful enjoyment of their possessions and discrimination in the enjoyment of these rights. Specifically, the applicants allege that they have been discriminated against in that they are still prevented from repossessing and registering the apartments that they purchased from the JNA, whereas other persons who purchased apartments from the JNA are permitted, according to Articles 39a and c of the Law on Sale of Apartments with an Occupancy Right, to repossess their apartments and register their ownership (see paragraph 88 above). Since the Chamber finds that in the present cases the analysis of the allegation of discrimination is inextricably linked with the question of the justification of the interference with the applicants' enjoyment of their claimed possessions, the Chamber will consider the complaint under Article 1 of Protocol No. 1 to the Convention and the complaint of discrimination together. Article 1 of Protocol No. 1 to the 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.”

144. Article 1 of Protocol No. 1 thus contains three rules. The first rule enunciates the general principle that one has the protected right to peaceful enjoyment of one's property. The second rule covers deprivation of property and subjects it to the requirements of the public interest and conditions laid out in law. The third rule recognises that States are entitled to control the use of property and subjects such control to the general interest and domestic law. It must then be determined in respect of these conditions 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 individual applicant's rights, bearing in mind that the last two rules should be construed in light of the general principle (see among other authorities, *Blentić*, case no. CH/96/17, decision on admissibility and merits, paragraphs 31-32, Decisions 1996-1997; case no. CH/96/29, *Islamic Community*, decision on admissibility and merits of 11 June 1999, Decisions January-July 1999). Thus, there must be a reasonable relationship of proportionality between the means employed and the aim sought to be realised.

(b) Prohibition of discrimination

145. In order to determine whether the applicants have been discriminated against, the Chamber must determine whether the applicants were treated differently from others in the same or relevantly similar situation. Any differential treatment is to be deemed discriminatory if it has no reasonable relationship of proportionality between the means employed and the aim sought to be achieved. The Chamber has consistently held that there is a particular onus on the respondent Party to justify otherwise prohibited differential treatment which is based on any of the grounds explicitly enumerated in Article 1(14) of the Agreement (see e.g. cases nos. CH/97/67, *Zahirović*, decision on admissibility and merits of 10 June 1999, paragraphs 120-121, Decisions January-June 1999 and CH/98/1309 et al., *Kajtaž and others*, decision on admissibility and merits of 4 September 2001, paragraphs 154 and 159).

(c) The existence of “possessions” under Article 1 of Protocol No. 1

146. The Chamber must first consider whether the applicants had any rights under their contracts that constituted “possessions” for the purposes of Article 1 of Protocol No. 1. In this regard, the Chamber refers to its decisions in *Medan and Others*, *Podvorac and Others*, *Ostojić and 31 Other JNA Cases* and *Huseljić and Others* (loc. cite paragraphs 32-34, case no. CH/96/2 et al, decision on admissibility and merits of 14 May 1998, paragraphs 59-61, Decisions and Reports 1998, case no. 97/82 et al, decision and admissibility and merits of 13 January 1999, paragraph 91, Decisions January-July 1999, and case no. CH/98/159 et al, decision on admissibility and merits of 14 April 1999, paragraph 37, Decisions January-July 1999). In the aforementioned cases, the Chamber has consistently found that the rights under a contract to purchase an apartment concluded with the JNA, pursuant to the Law on Securing Housing for the JNA, constitute “possessions” for the purposes of Article 1 of Protocol No. 1 to the Convention. The Chamber notes that in the present cases the applicants have concluded such contracts under factual circumstances similar to those obtaining in the cases cited and therefore sees no reason to differ from its previous jurisprudence.

(d) Interference with the applicants’ rights

147. The effect of the Decree of 22 December 1995 (adopted as law) was to annul the applicants’ rights under their purchase contracts. The Law on Cessation and the Law on Sale of Apartments with an Occupancy Right continue to deprive the applicants of their rights. Accordingly, each applicant has been continuously “deprived of his possessions” by the Decree, the Law on Cessation and the Law on Sale of Apartments with an Occupancy Right. It is accordingly necessary for the Chamber to consider whether these deprivations are justified under Article 1 of Protocol No. 1 as being “in the public interest” and “subject to conditions provided for by law”.

(e) In the public interest

148. The Chamber recalls that it found in the case of *Medan and others* that the Decree of 22 December 1995, which effectively deprived the applicants in these cases of their apartments, in the first instance, might in principle be regarded as having pursued a legitimate aim. However, the Chamber has consistently held in all of its JNA apartments decisions that, even accepting the need to equalise the rights of all occupancy right holders to purchase apartments, the Chamber is not satisfied that there was any form of social injustice of such a magnitude as to justify retroactive legislation annulling the purchase contracts concluded under the Law on Securing Housing for the JNA (see *Medan and other* loc. cit. paragraph 37, *Podvorac and Others*, case no. CH/96/2 et al, decision on admissibility and merits of 14 May 1998, paragraphs 59-61, Decisions and Reports 1998, *Ostojić and 31 Other JNA cases* case no. 97/82 et al, decision and admissibility and merits of 13 January 1999, paragraph 91, Decisions January-July 1999, and *Huseljić and Others* case no. CH/98/159 et al, decision on admissibility and merits of 14 April 1999, paragraph 37, Decisions January-July 1999). The same reasoning applies in the cases of the applicants now before the Chamber. Accordingly, the Chamber finds, as in the earlier JNA cases decided on the merits, that the Decree of 22 December 1995 violated the rights of the applicants under Article 1 of Protocol No. 1 to the Convention. Since institutions of the State were responsible for passing the legislation which

annulled the applicants' contracts, Bosnia and Herzegovina is responsible for the violations of Article 1 of Protocol No. 1 to the Convention in this regard.

149. The Chamber further notes that in July of 1999, based upon an agreement with the OHR, the result of which was Article 3a of the Law on Cessation and an amendment to the Law on Sale of Apartments, the Federation of Bosnia and Herzegovina has begun to implement the Chamber's prior JNA decisions and register owners of JNA apartments (see paragraph 55 above). However, the applicants in the cases now pending before the Chamber are still unable to enjoy possession of their apartments due to the application of Article 3a of the Law on Cessation in connection with Article 39 of the Law on Sale of Apartments.

150. Accordingly, the applicants in these cases now before the Chamber are being treated differently from other persons who purchased and can now register their ownership over JNA apartments. Therefore, the central issue of these cases, and what the Chamber must now examine, is whether the continuing interference or deprivation of the applicants' property rights ensuing as a result of the application of Article 3a on the Law on Cessation in connection with Article 39 of the Law of Sale of Apartments can be justified as "in the public interest".

151. When considering whether the taking of property is "in the public interest", it must 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 to be achieved. The requisite balance will not be found if the persons concerned had to bear "an excessive burden" (see e.g., Eur. Court HR, *Sporrong and Lönnroth v Sweden*, judgment of 23 September 1982, Series A no. 52, pp. 26-28, paragraphs 70-73).

152. The European Court has acknowledged that in taking decisions involving the deprivation of property rights of individuals, national authorities enjoy a wide margin of appreciation because of their direct knowledge of their society and its needs. Further, the decision to expropriate property will often involve consideration of political, economic and social issues on which opinions within a democratic society may reasonably differ. Therefore, the judgement of the national authorities will be respected unless it was "manifestly without reasonable foundation" (Eur. Court HR, *James and Others v. United Kingdom*, judgment of 21 February 1986, Series A no. 98, p. 40, paragraph 46).

(f) Legitimate aims

153. With respect to the Law on Cessation in conjunction with the Law on Sale of Apartments with an Occupancy Right, the Federation has submitted that the aim of these laws is twofold. First, the Federation put forth the identical argument it put forth in *Medan and others*, namely, that the Laws are aimed at correcting the factual inequalities that existed between occupancy right holders over JNA apartments and all other occupancy right holders. Second, the aim was to protect the rights of others, namely active fighters and their families or persons who were forced to leave their homes due to the war hostilities.

154. With respect to the first aim put forth, as stated above, the Chamber accepted that the aim of putting all holders of occupancy rights on an equal footing as regards their right to purchase apartments might be regarded as a legitimate one (see paragraph 148 above). However, now as then, there is no evidence that the applicants were placed in an especially privileged position (see loc. cite, *Medan and Others* at paragraph 36). With respect to the second aim put forth, the Chamber can also accept, in principle, that the national authorities' decision to give aid to its war veterans and families can be regarded as a legitimate one. However, there is no evidence that the property is necessarily being used for this stated purpose (see paragraph 61 above).

(g) Proportionality

155. Assuming that these reasons can be regarded as legitimate aims, the Chamber must now examine whether there was a reasonable relationship of proportionality between the means employed and the aims sought to be realised. In other words, it must be established whether the applicants

had to bear “an excessive burden” in pursuit of the stated aims. In this respect, the Chamber notes that the effects of Article 3a of the Law on Cessation and Article 39 of the Law on Sale Apartments with an Occupancy Right was to solidify the annulment of the applicants’ contractual rights. Such legislation strikes at the heart of the principle of the rule of law referred to in the Preamble of the Convention and serves to undermine legal certainty. Therefore, in the Chamber’s opinion, this legislation must be regarded as a very serious form of infringement of property rights and can only be justified by cogent reasons. As such the Chamber must look closely at each provision of Article 3a.

(h) Citizenship requirement and active service as of 30 April 1991 as applied to the applicants Miholić, Ristić, and Buzić

156. The first provision of Article 3a, by excluding them from being considered as refugees, bars persons who were not registered citizens of Bosnia and Herzegovina on 30 April 1991 and who were in the active military service in the JNA on that date from repossessing and, as such, registering their apartments, unless they had been granted refugee or other equivalent protective status, in a country outside the former Socialist Federal Republic of Yugoslavia. Both conditions must be met in order for a person to come within the purview of this part of Article 3a. However, for the purposes of this analysis the Chamber will examine each condition separately. It is this provision of Article 3a that is applied in the cases of the applicants Mr. Miholić, Mr. Ristić and Mr. Buzić and effectively bars them from enjoyment of their possessions.

(i) Citizenship requirement as of 30 April 1991

157. With respect to the citizenship condition, the Federation argues that the applicants, who were not registered citizens of Bosnia and Herzegovina on 30 April 1991, are not subject to an excessive burden because these persons, who fall under Article 3a, are able to seek protection in their countries of origin, such as the Federal Republic of Yugoslavia, Slovenia, Macedonia and Croatia (see paragraph 107 above). It appears that the Federation is essentially arguing that this requirement is narrowly tailored so as to achieve its aim of providing housing to war veterans with the least possible impact on other individuals. However, the Chamber notes that these three applicants live in Bosnia and Herzegovina and have not had their housing needs met elsewhere.

158. Additionally, the Chamber recalls that the three applicants concerned currently have citizenship of Bosnia and Herzegovina, even if they were not officially registered in 1991, have lived as residents of Bosnia and Herzegovina for at least twenty years and currently live in Bosnia and Herzegovina with their families. The Chamber notes further that in the former SFRY all citizens had federal citizenship and citizenship of the republic where they were born or had their residence registered. Citizenship registration was done by the offices for birth records (*matice rodjenih*). Information regarding citizenship was entered automatically, generally based upon place of birth. Prior to the dissolution of the SFRY there was no real need to ensure that one was actually a registered citizen of the Republic in which one lived. Accordingly, many citizens who had SFRY citizenship and were residents of the Socialist Republic of Bosnia and Herzegovina were not registered in the citizenship books. However, in all other respects they participated fully as citizens of Bosnia and Herzegovina.

159. Additionally, since citizenship in 1991 was predominantly based upon where a person was born, the citizenship requirement appears to be targeted at persons of Serb or Croat descent, having been born outside of Bosnia and Herzegovina. Even accepting that the Federation did not intend specifically to target persons of Serb or Croat descent by this requirement, it clearly has a disproportionate impact on persons of Croat or Serb descent. Therefore, the Chamber finds that this requirement is discriminatory in its intent or at least in its impact. Discriminatory means can never justify an otherwise legitimate aim.

160. Taking all of these factors into consideration, in the Chamber’s opinion the distinction made under Article 3a between persons who were registered citizens of Bosnia and Herzegovina on 30 April 1991 and those who were not has no reasonable relationship of proportionality to the decision to significantly interfere with these persons’ property and lacks a reasonable foundation. Further, the Chamber finds that the applicants, Mr. Miholić, Mr. Ristić and Mr. Buzić, who have been unable to regain their apartments due to this provision of Article 3a, have been discriminated against in this

respect since the exclusion of persons who were not registered citizens of Bosnia and Herzegovina as of 30 April 1991, but living in Bosnia and Herzegovina, in and of itself, is discriminatory in its intent or impact and thwarts the efforts of "return", which is an essential goal of the General Framework Agreement.

(ii) Active service as of 30 April 1991

161. A further condition under the first part of Article 3a is that in conjunction with not being registered as a citizen of Bosnia and Herzegovina as of 30 April 1991 one was also in active service of the JNA as of 30 April 1991. The Chamber notes that this date is approximately one full year before Bosnia and Herzegovina declared its independence and the war started in Bosnia and Herzegovina. The Federation has not provided any reason for choosing this specific date and the Chamber does not see that an explanation is readily apparent. As of that date, Bosnia and Herzegovina was still a part of the former SFRY. Persons who served in the JNA at that time were accordingly serving in the army of the then unified country. Once the war broke out in April of 1992, service in the JNA necessarily changed into something different. Therefore, even if one was a member of the JNA as of 30 April 1991, it does not mean that person took part in the war in Bosnia and Herzegovina in armed forces opposed to the Army of the Republic of Bosnia and Herzegovina. In fact, two of the applicants in these cases served only very limited amounts of time in the JNA after the war broke out before they deserted or were retired and one applicant served for only eight days after the 30 April 1991 time limit set out in the Law.

162. Accordingly, the Chamber finds that there is no reasonable relationship of proportionality between this date and any aim, stated or otherwise, to be achieved. Further, the apparently artificial date chosen creates a category of persons who are unable to repossess their apartments without any cogent justification. Such differential treatment based on completely artificial grounds can not be reasonably related to the aim of providing housing to war veterans and as such the Chamber finds that the applicants, Mr. Miholić, Mr. Ristić and Mr. Buzić, who have not been able to regain their apartments due to this provision of Article 3a, have been discriminated against.

(i) Active military service in a foreign army after 14 December 1995 as applied to the applicants Čorapović and Čirić

163. The second provision of Article 3a, by excluding them from being considered as refugees, denies persons who remained in active military service outside of Bosnia and Herzegovina after 14 December 1995 from registering and repossessing their JNA apartment. In this context, again the Federation has stated that persons who fall into this category can have their housing needs met elsewhere. However, the Chamber cannot find that excluding this category of persons from the peaceful enjoyment of their possessions in Bosnia and Herzegovina is proportional to the stated aims. Furthermore, the fact that someone might possibly obtain an occupancy right elsewhere cannot bar that person from exercising their rights under a valid purchase contract in Bosnia and Herzegovina.

164. Additionally, the Chamber finds that persons who served in the JNA and continued to serve in a foreign army are treated differently from other former JNA members, with respect to recognition of valid purchase contracts. The Chamber considers that there is no reasonable relationship of proportionality with respect to this differential treatment and the accomplishment of the stated goals. It could potentially be reasonable and necessary to bar persons serving in a foreign army from the exercise of certain rights, however service in a foreign army is not a basis for stripping a person of an otherwise valid property contract. As such the Chamber finds that the applicants, Božo Čorapović and Milorad Čirić, who have not been able to regain their apartments under this provision of Article 3a, have been discriminated against.

(j) Compensation

165. Finally, the Federation argues that pursuant to Article 39e of the Law on Sale of Apartments with a Occupancy Right, the applicants are entitled to compensation, therefore, the interference under Article 1 of Protocol No. 1 is justifiable. The Chamber has found that the interference with the

applicants' property rights is not justifiable, in principle, because the means are not proportional to the aims. Further, the motivation, at least in part, for employing these particular means have been found by the Chamber to be discriminatory. In these circumstances, the Chamber does not find it necessary to consider the adequacy of any potential compensation.

(k) Conclusion

166. In respect of Bosnia and Herzegovina, the Chamber finds, as it found in the *Medan* case (loc. cit. paragraph 49), that the institutions of the State of Bosnia and Herzegovina were responsible for passing the legislation that annulled the applicants' contracts in the first instance. Therefore, the State is responsible for the violations of the applicants' rights to peaceful enjoyment of their possessions under Article 1 of Protocol No. 1 to the Convention in connection with the Decree of 22 December 1995 (see paragraph 148 above).

167. In respect of the Federation of Bosnia and Herzegovina, for all of the reasons stated above, the Chamber finds that the applicants in the present cases, by the application of Article 3a of the Law on Cessation in connection with Article 39e of the Law on the Sale of Apartments with an Occupancy Right, were made to bear an "individual and excessive burden" that simply cannot be justified. This is particularly clear in light of the fact that the reasons for denying these applicants' the enjoyment of their property rights were based, in part, on discriminatory grounds. As such, these interferences can not be considered to be in accordance with the public interest. The Chamber, therefore, finds a violation of the right to the peaceful enjoyment of possessions under Article 1 of Protocol No. 1 to the Convention as well as discrimination in the enjoyment of this right, the Federation being responsible for those violations.

2. Article 8 of the Convention

168. The applicants allege violations of their right to respect for their homes, as protected by Article 8 of the Convention. Article 8 reads as follows:

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

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."

169. In view of the above finding under Article 1 of Protocol No. 1 to the Convention the Chamber finds it unnecessary to examine whether there has also been a violation under Article 8 of the convention.

3. Article 6 of the Convention

170. Article 6 of the Convention, so far as relevant, provides as follows:

"1. 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. . ."

171. In view of its decision concerning Article 1 of Protocol No. 1 and discrimination in enjoyment of the rights protected therein, the Chamber considers that it is not necessary to examine the cases under Article 6.

4. Article 13 of the Convention

172. The applicants essentially argued that they did not have an effective remedy before a domestic court. These cases were transmitted to the respondent Parties under Article 13, which provides:

“Everyone whose rights and freedoms as set forth in the Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

173. In view of its decision concerning Article 1 of Protocol No. 1 to the Convention and discrimination in the enjoyment of the rights protected therein, the Chamber considers that it does not have to examine the cases under Article 13.

VIII. REMEDIES

174. Under Article XI(1)(b) of the Agreement the Chamber must address the question of what steps shall be taken by the respondent Parties to remedy the established breaches of the Agreement. In this connection the Chamber shall consider issuing orders to cease and desist, monetary relief as well as provisional measures. The Chamber is not necessarily bound by the claims of an applicant.

175. All of the applicants request repossession of their respective apartments in Bosnia and Herzegovina and registration in the land books.

176. The breaches of Article 1 of Protocol No. 1 which the Chamber has found, arose initially from the Decree of 22 December 1995 and continued as a result of the Laws of the Federation, namely, Article 3a of the Law on Cessation of the Application of the Law on Abandoned Apartments and Article 39 of the Law on Sale of Apartments with an Occupancy Right. The State is responsible for having passed the initial Decree, but the matters that the Decree deals with, and the subsequent legislation regarding these matters are now within the responsibility of the Federation. In these circumstances, the Chamber considers that it is the responsibility of the Federation to take necessary legislative or administrative action to render ineffective the annulment of the applicants' contracts and enable the applicants to register their ownership over their apartments, thus permitting them to exercise their property rights. It will therefore make an order against the Federation to that effect.

177. The Chamber will further order the Federation to enable the applicants in cases nos. CH/97/60 (Miholić), CH/98/362 (Ristić) and CH/99/1766 (Buzić) to regain possession of their apartments without further delay. Under Annex 7 of the Agreement and the property laws in Bosnia and Herzegovina refugees and internally displaced persons are entitled to reinstatement into their pre-war apartments through the administrative organs, without having to go through the court system, as such, streamlining the procedure. As these three applicants are internally displaced persons in Bosnia and Herzegovina, they are entitled to be reinstated without the need to go to court and as a consequence the Chamber will, therefore, order the Federation to directly reinstate them. However, the applicants, Mr. Ćirić and Mr. Ćorapović, have left Bosnia and Herzegovina and remain outside of Bosnia and Herzegovina, and they continue to serve in the army of the Federal Republic of Yugoslavia. Accordingly, the Chamber finds that they can not be considered refugees or internally displaced persons and, therefore, their reinstatement into their respective apartments is subject to their registration as owners in the land book and to subsequent exercise of their ownership rights. The Chamber consequently rejects their claims to be reinstated.

178. The Chamber will further order the Federation to report to it within three months of the date of the delivery of this decision on the steps it has taken to comply with this decision.

IX. CONCLUSIONS

179. For the above reasons, the Chamber decides,

1. by 13 votes to 1, to declare the applications admissible against the Federation of Bosnia and Herzegovina in their entirety;
2. by 13 votes to 1, to declare the applications admissible against Bosnia and Herzegovina in respect of Article 8 of the Convention and Article 1 of Protocol No. 1 to the Convention;
3. unanimously, to declare the remainder of the applications inadmissible against Bosnia and Herzegovina;
4. by 11 votes to 3, that the passing of legislation providing for the retroactive nullification of the applicants' contracts for the purchase of their apartments involved a violation by Bosnia and Herzegovina of the rights of all of the applicants under Article 1 of Protocol No. 1 to the Convention, Bosnia and Herzegovina thereby being in breach of the Human Rights Agreement;
5. by 12 votes to 2, that the rights of the applicants, Mr. Andrija Miholić (CH/97/60), Mr. Dušan Ristić (CH/98/362) and Mr. Mihailo Buzić (CH/99/1766), to peaceful enjoyment of their possessions within the meaning of Article 1 of Protocol No. 1 to the Convention have been violated by the Federation of Bosnia and Herzegovina and, further, that they have been discriminated against in their right to peaceful enjoyment of their 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;
6. by 8 votes to 6 that the rights of the applicants, Mr. Božo Čorapović (CH/98/276) and Mr. Milorad Ćirić (CH/98/287), to peaceful enjoyment of their possessions within the meaning of Article 1 of Protocol No. 1 to the Convention have been violated by the Federation of Bosnia and Herzegovina and, further, that they have been discriminated against in their right to peaceful enjoyment of their 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;
7. unanimously, that it is not necessary to examine the applications under Article 8 of the Convention;
8. unanimously, that it is not necessary to examine the applications under Article 6 of the Convention;
9. unanimously, that it is not necessary to examine the application under Article 13 of the Convention;
10. by 12 votes to 2, to order the Federation of Bosnia and Herzegovina to take all necessary steps swiftly, and in any event not later than 7 June 2002, by way of legislative or administrative action, to render ineffective the annulments of the contracts of the applicants Mr. Andrija Miholić (CH/97/60), Mr. Dušan Ristić (CH/98/362) and Mr. Mihailo Buzić (CH/99/1766) and to allow for registration of ownership of their apartments;
11. by 8 votes to 6, to order the Federation of Bosnia and Herzegovina to take all necessary steps swiftly, and in any event not later than 7 June 2002, by way of legislative or administrative action, to render ineffective the annulments of the contracts of the applicants Mr. Božo Čorapović (CH/98/276) and Mr. Milorad Ćirić (CH/98/287) and to allow for registration of ownership of their apartments;
12. by 12 votes to 2, to order the Federation of Bosnia and Herzegovina swiftly, and in any event not later than 7 March 2002, to take all necessary steps to enable the applicants Mr. Andrija Miholić (CH/97/60), Mr. Dušan Ristić (CH/98/362) and Mr. Mihailo Buzić (98/1766) to regain possession of their apartments;

13. by 7 votes to 7 with the casting vote of the President of the Human Rights Chamber, to reject the claims of Messrs. Čorapović (CH/98/276) and Ćirić (CH/98/287) that the Chamber order the Federation to reinstate them; and

14. unanimously, to order the Federation of Bosnia and Herzegovina to report to it not later than 7 March 2002 on the steps taken to comply with the above orders.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the Chamber

ANNEX I

In accordance with Rule 61 of the Chamber's Rules of Procedure, this Annex contains the partly dissenting opinion of Mr. Manfred Nowak, joined by Ms. Michele Picard.

PARTLY DISSENTING OPINION OF MR. MANFRED NOWAK, JOINED BY MS. MICHELE PICARD

I agree with the majority that three of the applicants (Mr. Miholić, Mr. Ristić and Mr. Buzić), are victims of discrimination and of a violation of their right to property. The mere fact that in April 1991, i.e. one year before the independence of Bosnia and Herzegovina and of the outbreak of hostilities, they happened not to be registered as citizens of Bosnia and Herzegovina despite the fact of having lived there for a significant part of their lives, cannot be considered as a reasonable criteria for distinguishing them from citizens of Bosnia and Herzegovina who were in exactly the same situation and thereby depriving them of their right to property.

The situation of the two remaining applicants (Mr. Ćirić and Mr. Ćorapović) is, however, fundamentally different. They were not treated differently because of some formal legal status before the war but because of the fact that they remained in the active service of the Yugoslav National Army (JNA) (which started the armed conflict in Bosnia and Herzegovina) during the war and in active service of the Army of Federal Republic of Yugoslavia subsequently. In many countries, the fact that one voluntarily serves in a foreign army (even in time of peace) is a valid legal reason to be deprived even of one's citizenship and other human rights, such as the right to vote, for which citizenship is a precondition. The right to property allows States a fairly broad margin of appreciation in deciding whether or not to interfere with this right for reasons of public interest. In times of acute housing shortage, it is certainly justified to interfere with the right to property for the aim of providing those in need (including war veterans) with an apartment. Before the war, these two applicants had only lived for two years in their respective JNA apartments in Tuzla. Since they entered into purchase contracts with the JNA only in March 1992, even the validity of those contracts under the then applicable law is in dispute. Immediately after the beginning of the armed conflict, they left these apartments and served in the JNA and in the armed forces of the Federal Republic of Yugoslavia until today. For the money they paid for these apartments, they are entitled to compensation in accordance with Article 39e of the Law on the Sale of Apartments with an Occupancy Right. They, therefore, certainly did not have to bear an "excessive burden". For these reasons, I cannot agree with the majority in finding this interference with the right to property of Mr. Ćirić and Mr. Ćorapović as unproportional or even discriminatory. In my opinion, such an interference definitely falls within the broad margin of appreciation which governments enjoy under Article 1 of the 1St Protocol to the Convention.

(signed)
Manfred Nowak

(signed)
Michele Picard

ANNEX II

In accordance with Rule 61 of the Chamber's Rules of Procedure, this Annex contains the partly dissenting opinion of Mr. Hasan Balic

PARTLY DISSENTING OPINION OF DR. HASAN BALIC

I fully disagree with sub-paragraphs in the conclusion except the conclusion in paragraph 179 sub-paragraphs 3, 7, 8, 9 13 and 14.

My disagreement is of a legal nature only.

Conclusion in sub-paragraph number 4

I consider that the respondent Party, for the purpose of protection of legitimate interests of its citizens and the rights to its property which was still socially owned property, was entitled to pass legislation that would protect such property until it is accessible to all the citizens on an equal footing. The specific legislation provides for retroactive application. Therefore, I consider that the respondent Party has not thereby violated Article 1 of Protocol No. 1 to the Convention or the Human Rights Agreement.

I. Conclusions in sub-paragraphs numbers 5 and 6

I consider that the respondent Party has not discriminated against Andrija Miholic, Dusan Ristic and Mihajlo Buzic in their right to peaceful enjoyment of possessions as stated in conclusion sub-paragraph number 5. The sole fact that they are not Bosniaks cannot be the reason for discrimination, because BiH as a state is multi-ethnic and especially the Federation of BiH. Therefore, I see their problem mostly as a legal issue that is outside the scope of discrimination and I, accordingly, consider that the Federation of Bosnia and Herzegovina has not violated Article 1 of Protocol No. 1 to the Convention and Article 1 of the Agreement. All of this also refers to conclusion in sub-paragraph number 6.

II. Conclusions in sub-paragraphs numbers 5,6 and 10

Before I started writing my dissenting opinion in relation to Mr. CMC and Mr. Corapovic, I carefully read the dissenting opinion of Mr. Manfred Nowak. My legal opinion and reasoning completely correspond to the opinion and reasoning given by judge Nowak. Therefore, I would avoid repetition and unnecessary clarifications. I would ask you to take this part of my dissenting opinion, in the above decision of the Chamber, as opinion joined to the dissenting opinion of Judge Nowak.

(signed) Dr. Hasan Balic

ANNEX III

In accordance with Rule 61 of the Chamber-2s Rules of Procedure, this Annex contains the concurring opinion of Mr. Dietrich Rauschnig

CONCURRING OPINION OF MR. DIETRICH RAUSCHNING

I agree with all the conclusions of the decision. But I should add some reasons especially for the conclusions set out under No 6, No 11 in No 13.

The Federation as the respondent Party treats the applicants differently from other purchasers of JNA apartments because of Article 3a of the Law on the Cessation of the Application of the Law on Abandoned Apartments, cited under paragraph 84 above. I agree that the application of this Article to the disadvantage of the applicants Miholic, Ristic and Buzic is discriminatory. But I admit that the other two applicants, Corapovic and Ciric, are excluded from the group of refugees for acceptable reasons for the purposes of the Law on the Cessation of the Application of the Law on Abandoned Apartments. A soldier retreating with the troops fighting against Bosnia and Herzegovina and remaining in the service of his army after the end of hostilities must not be given the status of a refugee in relation to Bosnia and Herzegovina or the Federation.

The Law on the Cessation of the Application of the Law on Abandoned Apartments provides for administrative proceedings to reinstate refugees in their apartments. If the respondent Party decided within its competence not to grant the two applicants the status of a refugee it is not obliged by its law to reinstate the applicants into their apartments using administrative proceedings. And there are no human rights entitling the applicants to claim reinstatement according to this law. For these reasons I voted for conclusion No 13 rejecting the corresponding claims of the applicants.

The rights of the two applicants as to property are not directly affected by Article 3a of the Law on the Cessation of the Application of the Law on Abandoned Apartments. The Chamber has decided in its consistent jurisprudence that members of the JNA who purchased their apartments in the process of privatisation before the independence of Bosnia and Herzegovina and paid the amount due before that date achieved a valid title to be registered as owners. The right to be registered is not dependent on the status of refugee. That purchasers are not entitled to be registered cannot be derived from the articles 39a to 39c, 39e of the Law on Sales of Apartments with Occupancy rights. These articles provide that the Ministry of Defence has to co-operate in a special way in the registration of ownership of purchased JNA apartments if the purchaser is in possession of the apartment or is entitled to be reinstated as an refugee. But it does not state that this kind of co-operation is the only way to be registered as an owner if the person is entitled to such registration according to a valid contract. This would amount to an expropriation of the position of the purchaser protected under Article 1 of the First Protocol to the Convention. Without a clear expression in the wording of the articles that this expropriation is meant by the law the provisions cannot be interpreted extensively to the result that they violate human rights. For these reasons I voted in favour of conclusions 6 and 11 of the decision.

This result does not contradict the decision in conclusion No 13. Conclusion No 13 rejects the claim of the two applicants to be reinstated by administrative actions of the respondent Party the applicants applied for. It is conceivable that the applicants have ownership of the apartments but are not entitled to use them. It is up to the two applicants to clarify their relation with the present occupants before the competent courts after their registration as owners.

(Signed) Dietrich Rauschnig