DECISION ON ADMISSIBILITY AND MERITS
(delivered on 8 September 2000)

Case no. CH/97/62

Dragan MALČEVIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 4 September 2000 with the following members present:

Mr. Giovanni GRASSO, President
Mr. Viktor MASENKO-MAVI, Vice-President
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Manfred NOWAK
Mr. Vitomir POPOVIĆ
Mr. Mato TADIĆ

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

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

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

I. INTRODUCTION

1. The applicant, a citizen of Bosnia and Herzegovina of Croat origin, was the occupancy right holder over an apartment in Vareš, Bosnia and Herzegovina. During the war, he and his family left the apartment. Since February 1996, he has pursued various administrative and judicial remedies to regain the apartment but to no avail. In October 1997 it was allocated to another user who remains in the apartment.

2. The application raises issues under Articles 6, 8 and 13 of the European Convention on Human Rights as well as Article 1 of Protocol No. 1 to the Convention.

II. PROCEEDINGS BEFORE THE CHAMBER

3. The application was introduced to the Chamber on 14 July 1997 and registered on 16 October 1997. The applicant is represented by Ms. Senija Poropat, a lawyer from Vogošća.

4. On 12 November 1998 the Chamber decided to transmit the application to the respondent Party. The applicant submitted observations on the merits and a claim for compensation on 22 April 1999, and updated the claim for compensation on 7 June 1999. The respondent Party submitted its observations on the admissibility and merits of the application and on the claim for compensation on 27 May and 15 July 1999. Finally, the applicant again updated his claim for compensation on 18 January and 31 March 2000.

5. The Chamber considered the case on 8 March, 6 July and 4 September 2000. On the latter date it adopted the present decision.

III. ESTABLISHMENT OF THE FACTS

A. Particular facts of the case

6. The applicant held the occupancy right over property located at Armije BiH No. 31/I in Vareš. It consists of an apartment and a garage, which was used for business purposes, with a total area of approximately 115 metres square. He had completed the contract on use for the apartment in 1970 and for the garage in 1972. On 18 November 1993, after the applicant and his family had left the apartment, it was declared temporarily abandoned by a decision of the Vareš Municipality. On 26 February 1996 the applicant submitted a request to the Vareš Municipality to repossess the apartment. When no action was taken, he submitted a second request to the same municipality on 16 September 1996. There was no reply to these requests.

7. On 10 December 1996 the Vareš Municipal Secretariat for General Administration, Urban Planning, Property Law and Geodetic Affairs declared the apartment permanently abandoned and terminated the applicant's occupancy right under the Law on Abandoned Apartments. This decision was not delivered to the applicant until the Chamber requested it from the respondent Party during the course of the proceedings before the Chamber.

8. The applicant submitted a claim to the Commission for Real Property Claims of Displaced Persons and Refugees ("the Annex 7 Commission") on 21 February 1997.

9. On 4 June 1997 the applicant filed a complaint against F.O., the current occupant, and the Vareš Municipality with the Municipal Court in Vareš, asking that F.O. be evicted, that the applicant be allowed to repossess the apartment, and that he be awarded monetary compensation for F.O.'s use of it.

10. The Medical Centre Vareš, the holder of the allocation right over the apartment, officially reallocated it to F.O., who is of Bosniak origin, on 20 October 1997.

11. On 13 April 1998 the applicant submitted another request to the Vareš Municipality pursuant to the Law on Cessation of Application of the Law on Abandoned Apartments. On 2 June 1998, however, when no decision was made within the prescribed time-limit, the applicant wrote a letter to the Federal Administrative Inspectorate within the Federal Ministry of Justice complaining that the municipality had failed to take action upon his request.

12. The letter was rendered moot, however, as on 18 June 1998 the head of the Vareš Municipality issued a procedural decision under the latter law. The decision established that both the applicant and F.O. held an occupancy right over the apartment. Accordingly, it ordered the allocator of the apartment to submit the case file to the Ministry of Urbanism, Physical Planning and Environmental Protection of the Zenica – Doboj Canton within 30 days so that that body could make a decision on allocation of another apartment to the applicant or F.O. The applicant appealed against the decision to the Ministry on 9 July 1998.

13. On 25 August 1998 the applicant filed a complaint, under the Law on Administrative Disputes, to the Cantonal Court in Zenica because of the "silence of the administration" regarding his appeal to the Ministry. There is no evidence that the Court has issued a decision.

14. On 2 February 1999 the Ministry anulled the decision issued on 18 June 1998 by the office of the head of the Vareš Municipality and sent the case back to that office for renewed proceedings. There is no evidence that these proceedings have been undertaken.

15. Regarding the applicant's complaint of 4 June 1997, the Municipal Court held the first hearing in the matter on 28 May 1999 and on that day issued a procedural decision stating that it was not the competent organ to decide on the applicant's request for repossession of the apartment. Further, it does not appear from the decision of the Municipal Court that any decision was made on the applicant's claim to have F.O. evicted. The applicant appealed against this decision to the Cantonal Court on 5 June 1999. There is no evidence of a decision on the appeal.

16. The applicant's claim before the Annex 7 Commission was examined in a decision of 28 October 1999. The decision states that the applicant is the occupancy right holder over the apartment and has the right to repossess it. On 13 December 1999 he submitted the decision to the Municipal Court in Vareš for its enforcement. Two days later that court declared itself not competent to consider the issue. Also on 15 December 1999, he submitted the decision to the Vareš Municipality for enforcement. Two weeks later, when no action had been taken, he informed the Annex 7 Commission of his efforts. Lastly, on 14 January 2000, the applicant's representative resubmitted the Annex 7 Commission's decision to the same authorities for enforcement as the applicant had failed to follow the procedures for submitting such a claim and therefore the applicant's representative was afraid the case would not be properly processed. The Municipality has not yet issued any conclusion on permission for enforcement of the Annex 7 Commission decision and the applicant has not yet regained possession of his property.

B. Relevant legislation

1. The Law on Abandoned Apartments

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

18. According to the old law, an occupancy right expired if the holder of the right and the members of his or her household had abandoned the apartment after 30 April 1991 (Article 1). An apartment was considered abandoned if, even temporarily, it was not used by the occupancy right holder and members of the household (Article 2). There were, however, certain exceptions to this definition. For example, an apartment was not to be considered abandoned if the occupancy right holder was forced to leave the apartment because of aggressive actions intended to further a policy of ethnic cleansing of a certain population from a particular region (Article 3 paragraph 1).

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

20. 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).

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

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

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

23. According to the new law, no further decisions declaring apartments abandoned are to be taken (Article 1). All administrative, judicial and other decisions terminating occupancy rights based on regulations issued under the old law are invalid. Nevertheless, decisions establishing a right of temporary occupancy shall remain effective until revoked in accordance with the new law. Until 13 April 1999 all decisions which had created a new occupancy right pursuant to regulations issued under the old law were valid unless revoked. However, on that date, the High Representative in Bosnia and Herzegovina 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).

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

the deadline and the basis therefor 30 days before the original deadline expires (Article 3 paragraph 5 compared to Article 7 paragraphs 2 and 3).

25. If the relevant municipality were to determine that the current inhabitant was an occupancy right holder on the basis of a decision of the allocation right holder, and if there also was a previous occupancy right holder, the allocation right holder shall refer the case to the responsible cantonal administrative body. This body will then make a decision on allocation of another apartment to the current occupant or the previous occupancy right holder (Article 3 paragraph 6, which was repealed, see OG FBiH no. 18/99).

26. 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).

27. 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 within 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.

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

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

3. The Law on Implementation of Decisions of the Commission for Real Property Claims of Displaced Persons and Refugees

30. The Law on Implementation of Decisions of the Commission for Real Property Claims of Displaced Persons and Refugees was imposed as a law of the Federation of Bosnia and Herzegovina by a decision of the High Representative on 27 October 1999 (OG FBiH no. 43/99). It sets out a regime for the enforcement of decisions of the Annex 7 Commission.

31. This law states that a decision of the Annex 7 Commission is final and binding as of the day of its issuance. It confirms the rights over the property concerned in the decision, in favour of the person named in such decision (Article 2).

32. Further, the law states that in the case of an apartment over which there is an occupancy right, the decision shall be enforced by the administrative authority for housing affairs in the municipality where the apartment is located (Article 3).

33. Next, the law outlines certain formal requirements to apply to a request for enforcement of a decision of the Annex 7 Commission regarding socially-owned property and the categories of persons who may seek enforcement of such a decision. These include the person named in the decision as being the holder of the occupancy right over the apartment (Articles 4 - 6).

34. With respect to such requests, the competent organ is obliged to issue a conclusion authorising the execution of the Annex 7 Commission decision within 30 days of the date of a request for such enforcement (Article 7).

35. Finally, the law states that a decision of the Annex 7 Commission is enforceable against the current occupants of the property concerned, regardless of the basis on which they occupy it (Article 9 of the Law on Implementation). With certain restrictions, any person with a legal interest in the property in question may file a request for reconsideration to the Annex 7 Commission or may file an appeal against any conclusion on permission for enforcement (Article 10).

4. The Law on Administrative Proceedings

36. 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").

5. The Law on Administrative Disputes

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

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

IV. COMPLAINTS

39. The applicant complains that his right to respect for his home and to peaceful enjoyment of his possessions, as protected by Article 8 of the Convention and Article 1 of Protocol No. 1 to the Convention, respectively, have been violated. Further, the applicant asserts that his rights to a fair hearing within a reasonable time and to an effective remedy have been violated, as protected by Article 6 paragraph 1 and Article 13 to the Convention, respectively.

V. SUBMISSIONS OF THE PARTIES

A. The respondent Party

40. The Federation of Bosnia and Herzegovina maintains that the application is inadmissible. It argues that, as there are still proceedings pending, the applicant has not exhausted effective domestic remedies. It further asserts that there are other remedies still available to the applicant, both ordinary appeals to the higher courts and extraordinary remedies such as a request for renewal of proceedings, and that these remedies are effective.

41. Concerning the merits, the Federation asserts that there can be no violation of Article 6 of the Convention as there have been no unnecessary delays in the proceedings and the relevant bodies have all acted properly. Further, it argues that, since there is no violation of Article 6, there is no violation of Article 13. In addition, it states that there has been no violation of Article 8 as no act of the relevant authorities put into question the applicant's right to respect for his home. It also states that the applicant left his apartment of his own volition, not because of any act of the authorities.

Lastly, the actions of the respective municipal bodies regarding the applicant's apartment were done in accordance with regulations in force at the time and were justified in the public interest. Therefore, there has not been a violation of Article 1 of Protocol No. 1 to the Convention.

42. Lastly, the Federation asserts that the claim for compensation is ill-founded as the applicant has presented no evidence that the damage occurred as described. Further, any claims for legal expenses are unsubstantiated. Also, it points out that the applicant has received assistance from the Benefits Commission for Legal Aid for Bosnia and Herzegovina.

B. The applicant

43. In his submissions the applicant asserts that the responsible authorities have misinterpreted the law and that his apartment should not have been declared abandoned in 1993. Further, he and his family were forced to leave because of ethnic cleansing of persons of Croat origin in the region. He also argues that the continuing failure of the authorities to take a decision in his case constitutes a violation of his rights.

44. In addition, the applicant has claimed compensation for legal expenses and rent he could have earned during the period since he first initiated proceedings to regain possession of the property in question. The applicant has stated that he has availed himself of the assistance of the Benefits Commission for Free Legal Aid for Bosnia and Herzegovina.

VI. OPINION OF THE CHAMBER

A. Admissibility

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

46. Previously, the Chamber has stated in reference to the requirement to exhaust domestic remedies under Article 26 of the Convention (see case no. CH/97/58, *Onić,* decision on admissibility and merits delivered on 12 February 1999, paragraph 38, Decisions January-July 1999):

> "The European Court of Human Rights has found that such remedies must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness. The Court has, moreover, considered that in applying the rule on exhaustion it is necessary to take realistic account not only of the existence of formal remedies in the legal system … but also of the general legal and political context in which they operate as well as of the personal circumstances of the applicants."

47. In the present case, the applicant began proceedings in February 1996 when he first filed a claim for repossession of the apartment. As the facts above reflect, the applicant has been a party to innumerable hearings, procedures and complaints, before administrative authorities and courts, in an effort to determine his rights with respect to the apartment.

48. The Federation of Bosnia and Herzegovina argues that as there are still appeals pending and further appeals available, the applicant has not exhausted effective domestic remedies. It argues that the applicant could pursue extraordinary remedies such as a request to reopen proceedings where the proceedings have not been concluded in a favourable manner. The Chamber notes, however, that the applicant has been pursuing his claims for over 4 years and that he still has numerous proceedings ongoing, which now include his efforts to have the decision of the Annex 7 Commission enforced. Accordingly, the courts and authorities of the Federation of Bosnia and Herzegovina have for no apparent reason failed in their responsibility to take decisions in the applicant's case.

49. The Chamber also notes that recourse may be had to other appeals or extraordinary remedies which may be effective. However, the factual background of this case, i.e. the failure of the relevant municipal and judicial authorities to bring the applicant's claims to conclusion, shows that the applicant cannot be required to exhaust any further domestic remedy (see case no. CH/97/42, *Eraković,* decision on admissibility and merits delivered on 15 January 1999, paragraph 40, Decisions January-July 1999).

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

B. Merits

1. Article 8 of the Convention

51. The applicant complains that his right to respect for his home under Article 8 of the Convention has been violated. This provision 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."

52. The Federation maintains that the procedural decision of the Vareš Municipality of 18 June 1998 shows that the organs of the Federation have taken steps to ensure the applicant's rights and that under current administrative and judicial procedures within the Federation the applicant's claim will be dealt with adequately.

53. The Chamber notes that the applicant occupied the apartment and the garage without interruption from 1970 and 1972, respectively, until November 1993, when he and his family left because of the war in Bosnia and Herzegovina. The Chamber has previously held that a person seeking to regain possession of property he or she lost possession of during the war retains sufficient links with that property for it to be considered his or her "home" within the meaning of Article 8 of the Convention (see, e.g., case no. CH/98/777, *Pletilić,* decision on admissibility and merits delivered on 8 October 1999, paragraph 74, Decisions August-December 1999). The Chamber therefore considers that the applicant's property constitute his "home" for this purpose.

54. On 20 October 1997 the holder of the allocation right over the apartment officially reallocated it to another occupant, F.O. (although it appears that F.O. had been using the apartment prior to that time), on the basis that it was abandoned property.

55. As described above, however, the applicant had previously initiated administrative and judicial proceedings seeking to regain possession of the apartment. However, these proceedings have been unsuccessful to date and he has neither regained possession of it, nor have the proceedings been brought to a conclusion (see paragraphs 6-16 above).

56. In addition, the applicant has received a decision of the Annex 7 Commission confirming his occupancy right over the apartment. He has requested enforcement of this decision, and while the initial requests for enforcement may not have followed the procedures outlined in the appropriate law, this oversight has since been corrected (see paragraph 16 above). However, despite the fact that the time-limit for the issuing of a conclusion authorising him to regain possession of it has expired, no such conclusion has been issued.

57. Lastly, the Chamber notes the Federation's argument that because of the decision of the Vareš Municipality of 18 June 1998 there was no violation of the applicant's rights. Simply because there was a decision, however, does not abrogate the responsibility of the authorities of the respondent Party to process the case to conclusion after legitimate appeals had been made.

58. Therefore, the applicant has been unable to regain possession of the apartment due to the failure of the authorities of the Federation to deal effectively with his various applications in this regard, which he commenced in February 1996, four years and eight months ago.

59. In view of the above, the Chamber finds that the Federation authorities have interfered with the applicant's right to respect for him home. The Chamber must therefore examine whether this interference has been in accordance with paragraph 2 of Article 8 of the Convention.

60. For an interference to be justified under the terms of paragraph 2 of Article 8 of the Convention, it must be "in accordance with the law", serve a legitimate aim and be "necessary in a democratic society". There will be a violation of Article 8 if any one of these conditions is not satisfied.

61. The Chamber has previously found that the provisions of the Law on Abandoned Apartments, as also applied in this case, fail to meet the standards of law as this expression is understood for the purposes of Article 8 of the Convention (see, *e.g.*, case no. CH/97/46, *Kevešević*, decision on the merits delivered on 10 September 1998, paragraphs 50-58, Decisions and Reports 1998). Accordingly, this provision was violated by virtue of the authorities' effective refusal after 14 December 1995 to allow the applicant to return to her apartment.

62. With respect to the Law on Cessation of the Application of Law on Abandoned Apartments, while it is true that the applicant has received a decision in which it was determined that he shared the occupancy right with the current occupant, the authorities have failed to decide on any of the applicant's complaints and appeals stemming from this decision. Further, he has not received a decision regarding the execution of the Annex 7 Commission's decision. In both instances, the failure to make a decision is contrary to time-limits established by law. Therefore, the proceedings have not been concluded in accordance with law.

63. As the interference with the applicant's right to respect for his home referred to above are not "in accordance with the law", it is not necessary for the Chamber to examine whether they pursued a "legitimate aim" or were "necessary in a democratic society". Therefore, in conclusion, there has been a violation of the right of the applicant to respect for his home as guaranteed by Article 8 of the Convention.

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

64. The applicant complains that his right to enjoyment of his possessions under Article 1 of Protocol No. 1 to the Convention has been violated. This provision reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a state to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

65. The Federation argues that the procedural decision of 18 June 1998 provided adequate protection of the applicant's possessions and that simply because the applicant was not satisfied with the decision and filed further complaints and appeals does not mean that there has been a violation of his human rights.

66. The Chamber notes that the applicant is the holder of the occupancy right over the apartment in question, as confirmed by the decision of the Annex 7 Commission (see paragraph 16 above). The

Chamber has previously held (case no. CH/96/28, *M.J.*, decision on admissibility and merits delivered on 3 December 1997, paragraph 32, Decisions on Admissibility and Merits 1996-1997):

> "... An occupancy right is a valuable asset giving the holder the right, subject to the conditions prescribed by law, to occupy the property in question indefinitely. ... In the Chamber's opinion it is an asset which constitutes a "possession" within the meaning of Article 1 [of Protocol No. 1] ..."

67. Accordingly, the Chamber considers that the applicant's rights with respect to the property in question constitute his "possession" for the purposes of Article 1 of Protocol No. 1 to the Convention.

68. The Chamber considers that the allocation of the property to F.O. on 20 October 1997 and the failure of the authorities of the Federation to allow the applicant to regain possession of the property constitutes an "interference" with his right to peaceful enjoyment of that possession. This interference is ongoing as the applicant still does not enjoy possession of it.

69. The Chamber must therefore examine whether this interference can be justified. For this to be the case, it must be in the public interest and subject to conditions provided for by law. This means that the deprivation must have a basis in national law and that the law concerned must be both accessible and sufficiently precise.

70. The Chamber has found, in the context of its examination of the case under Article 8 of the Convention, that the actions of the authorities in relation to the allocation of the apartment to F.O. and the failure to allow the applicant to regain possession of it were not in accordance with the law. This is in itself sufficient to justify a finding of a violation of the applicant's right to peaceful enjoyment of his possessions as guaranteed by Article 1 of Protocol No. 1. Accordingly, the right of the applicant under this provision has been violated.

3. Article 6 of the Convention

71. The applicant complains that his case has not been determined within a reasonable time. Article 6 paragraph 1 of the Convention states, in so far as relevant, as follows:

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

72. The Federation of Bosnia and Herzegovina argues that there can be no violation of Article 6 as there have been no unnecessary delays in the proceedings.

73. The Chamber has already considered that the proceedings in the applicant's case have been unjustifiably ineffective. It recalls that the applicant initiated proceedings to repossess the apartment with the Vareš Municipality in February 1996. When no action was taken regarding that request, he submitted a second such request to the same municipality on 16 September 1996. It does not appear that these requests were ever decided.

74. Furthermore, in June 1997 the applicant submitted a request to the Municipal Court to have F.O. evicted and to regain possession of the apartment. The first hearing in this matter was held nearly two years later and the court decided that it was not the competent body to hear the claim. The applicant appealed against this decision on 5 June 1999 but no further decision has been taken to date.

75. Also, on 13 April 1998 the applicant submitted a third claim to repossess the apartment. This claim was decided on 18 June 1998 by the office of the head of the Vareš Municipality. However, the Ministry of Urbanism, Physical Planning, and Environmental Protection anulled this decision on 2 February 1999 and ordered renewed proceedings before that office. There is no evidence that these proceedings have ever been concluded.

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

77. The issue underlying the proceedings is who holds the occupancy right in question. The Chamber cannot find this issue to be of a particularly complex nature.

78. As to the conduct of the applicant it appears that he has been expeditious in his pursuit of the various procedures available to him. He has attempted to speed up the proceedings and have the relevant bodies issue decisions by, for example, filing claims regarding the silence of the administration.

79. The authorities in this case, however, have not met their responsibility to ensure that the proceedings are expedited in a reasonable time. The applicant currently has various appeals pending. The authorities of the Federation have not acted in accordance with its own laws and procedures in an effort to decide these proceedings and has offered no explanation for the delays. Clearly, therefore, the conduct of the authorities is the cause of the delays in the various proceedings.

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

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

4. Article 13 of the Convention

82. The applicant also complains that he has been the victim of a breach of Article 13 of the Convention as there is no effective remedy available to him.

83. However, the guarantees afforded by Article 13 of the Convention are less strict than those stipulated by Article 6 paragraph 1. Thus, having regard to its finding of a violation under the latter provision, the Chamber considers it unnecessary to examine the complaint also under Article 13 of the Convention.

VII. REMEDIES

84. Under Article XI(1)(b) of the Agreement the Chamber must address the question of what steps shall be taken by the respondent Party to remedy the established breaches of the Agreement. In this connection the Chamber shall consider issuing orders to cease and desist, monetary relief (including pecuniary and non-pecuniary damages) as well as provisional measures.

85. The applicant has requested the Chamber to enable him to be reinstated into his apartment and has also filed a claim for compensation consisting of 39,200 Convertible Marks ("*Konvertibilnih Maraka";* KM) for back rent for the period from February 1996, when the applicant first began proceedings to regain the apartment, until today, at a rate of KM 700 per month, and KM 2322 for legal expenses associated with both the proceedings before the domestic system and the Chamber.

86. With respect to the claim for back rent for the apartment, the applicant argues that the claimed amount is fair, given the size and location of the apartment and garage and based on amounts paid by persons in international organisations who rent flats in that region. With respect to the legal expenses, the applicant argues that the claimed amount was made in accordance with the applicable lawyer's tariff.

87. The Federation states that these claims are manifestly ill-founded and should be rejected. Specifically, regarding the back rent, the Federation first states that it is unsubstantiated how it can

be held responsible for that claim. If it is concluded that it is responsible for the lost rent, however, it argues that, as it is unclear how the amount given was decided upon, it should be rejected as unsubstantiated. With respect to the legal expanses, the Federation states that the amount is too high and unsubstantiated. Further, it adds that the applicant has had financial assistance from the Benefits Commission for Free Legal Aid for Bosnia and Herzegovina and that therefore has not had to pay such exorbitant costs.

88. The Chamber first notes that the applicant is not yet in possession of the property in question. The Chamber considers it appropriate, therefore, to order the respondent Party to take all necessary steps to enable the applicant, whose occupancy right has been confirmed, to return to his property swiftly, and in any event not later than one month after the present decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure.

89. Regarding the compensation claim, the Chamber first concludes that, in line with its jurisprudence, the applicant should receive compensation for the period that he was unable to enter into his apartment (see case no. CH/98/697 *Džonlić*, decision on admissibility and merits delivered on 11 February 2000, Decisions January – June 2000). Given that the applicant began proceedings in February 1996, the Chamber concludes that the period should begin in May 1996, from which point the authorities of the Federation should have been reasonably expected to be able to process the applicant's claim. From that point, therefore, the Federation will be held responsible for the applicant's inability to enter the apartment, which, up and until the date of delivery of this decision, is a period of 53 months. The Chamber notes, however, the amount of KM 700 per month, as requested by the applicant, is excessive. Deciding on an equitable basis taking into account the relatively large size of the property and its location, the Chamber finds that the applicant should be awarded KM 250 per month as from May 1996. The total amount to be paid for back rent, therefore, is KM 13,250.

90. The Chamber also considers appropriate to order the Federation to pay the applicant, within three months from the date when he regains possession of the property if he has not regained possession of it by 31 September 2000, KM 250 per month from 1 October 2000 until the end of the month in which he regains possession of the property.

91. With respect to the claimed lawyer's fees, the Chamber notes that there are some inconsistencies with respect to the amount claimed including items which were changed and others which are unsubstantiated. It is, however, reasonable that the applicant should be reimbursed for his legal expenses. The Chamber decides therefore to award the applicant KM 1750 under this head.

VIII. CONCLUSIONS

92. For the above reasons, the Chamber decides:

1. unanimously, to declare the application admissible;

2. unanimously, that the refusal to allow the applicant to return to his apartment and the failure to enforce the decision of the Commission for Real Property Claims of Displaced Persons and Refugees confirming his occupancy right constitute a violation of his right to respect for his home within the meaning of Article 8 of the European Convention on Human Rights, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Human Rights Agreement;

3. unanimously, that the refusal to allow the applicant to return to his apartment and the failure to enforce the decision of the Commission for Real Property Claims of Displaced Persons and Refugees confirming his occupancy right also constitute a violation of his right to peaceful enjoyment of his possessions within the meaning of Article 1 of Protocol No. 1 to the Convention, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Agreement;

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

5. unanimously, that it is not necessary to rule on the complaint under Article 13 of the Convention;

6. unanimously, to order the Federation of Bosnia and Herzegovina to take all necessary steps to enable the applicant, whose occupancy right has been confirmed, to return to his property swiftly, and in any event not later than one month after the present decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure; and

7. unanimously, to order the Federation of Bosnia and Herzegovina to pay the applicant, not later than one month after the present decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure, 15,000 (Fifteen Thousand) Convertible Marks (*Konvertibilnih Maraka;* "KM"), composed of KM 1750 for legal expenses and KM 13,250 for back rent;

8. unanimously, to order the Federation of Bosnia and Herzegovina to pay the applicant, within three months from the date when he regains possession of the property if he has not regained possession of it by 30 September 2000, KM 250 (Two hundred and fifty) per month from 1 October 2000 until the end of the month in which he regains possession of the property;

9. unanimously, that simple interest at an annual rate of 4% will be payable over the above sum or any unpaid portion thereof from the deadline mentioned in conclusions 7 and 8 above;

10. unanimously, to order the Federation of Bosnia and Herzegovina to report to the Chamber within two weeks of the expiry of the time-limit referred to in conclusions nos. 6 and 7 on the steps taken by it to give effect to this decision.

(signed)
Anders MÅNSSON
Registrar of the Chamber

(signed)
Giovanni GRASSO
President of the Second Panel