DECISION ON ADMISSIBILITY AND MERITS

DELIVERED ON 14 MAY 1999

CASE No. CH/97/65

Milosava PANIĆ

against

BOSNIA AND HERZEGOVINA
THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 14 April 1999 with the following members present:

Ms. Michèle PICARD, President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
Mr. Želimir JUKA
Mr. Andrew GROTRIAN

Mr. Leif BERG, Registrar
Ms. Olga KAPIĆ, Deputy Registrar

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

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

I. INTRODUCTION

1. The applicant's husband contracted to purchase an apartment from the Yugoslav National Army ("JNA") in February of 1992. While the applicant and her husband were in Belgrade so the husband could receive medical treatment, the General Staff of the then Republic of Bosnia and Herzegovina Army declared the apartment abandoned.

2. The applicant has alleged the violation of her right to return to her apartment and the right to the protection of her possessions. According to the Chamber's previous case law (*Medan and Others v. Bosnia and Herzegovina and The Federation of Bosnia and Herzegovina*, Cases Nos. CH/96/3, 8 and 9, Decision on the merits of 7 November 1997, Decisions 1996-1997; *Podvorac and 15 Other JNA cases*, Decision on the admissibility and the merits of 12 June 1998, Decisions and Reports 1998, p. 1; and *Eraković v. The Federation of Bosnia and Herzegovina*, Case No. CH/97/42, Decision of 15 January 1999) the application raises issues under Articles 6, 8 and 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and Article 1 of Protocol No. 1 to the Convention.

II. PROCEEDINGS BEFORE THE CHAMBER

3. The application was received on 11 September 1997 and registered on 16 October 1997. The applicant is represented by Mr. Jakša Mitrović, an attorney practising in Sarajevo.

4. On 11 May 1998 the Chamber decided to request observations on the admissibility and merits of the application from the respondent Parties.

5. On 15 June 1998 the Chamber received observations from the Federal Ministry of Defence of the Federation of Bosnia and Herzegovina. No observations were received from Bosnia and Herzegovina.

6. On 8 September 1998 the Chamber received observations from the applicant's lawyer in reply to the observations of the Federal Ministry of Defence.

7. On 2 January 1999 the Registry requested the applicant to provide additional information which was received on 10 February 1999 and transmitted to the respondent Parties on 22 March 1999.

III. ESTABLISHMENT OF THE FACTS

A. Facts as presented by the Applicant

8. The facts of the case are based on the application form and appended documents and can be summarised as follows:

9. The applicant's husband entered into a contract for the purchase of a JNA apartment on 12 February 1992 and on the same day paid 127.626,75 dinars. The contract was authorised by the City of Sarajevo Department of Novo Sarajevo on 13 February 1992 and authorised in the First Instance Court II in Sarajevo on 14 February 1992.

10. At the end of 1994 the applicant's husband left Sarajevo for Belgrade to receive medical treatment. In March 1995 the applicant joined her husband in Belgrade.

11. On 13 April 1995 the General Staff of the Army of the then Republic of Bosnia and Herzegovina ("the Army") issued a decision declaring the apartment temporarily abandoned. The same decision granted J.T. a temporary occupancy right to the apartment.

12. In February 1996 the applicant and her husband returned temporarily to Sarajevo. On 16 February 1996 the applicant appealed to the General Staff against the decision of 13 April 1995. No response was received regarding the appeal.

13. On 23 May 1996 the General Staff of the Army issued a decision declaring the apartment permanently abandoned. The applicant received this decision in November 1996 and submitted an appeal to the General Staff against the decision shortly thereafter.

14. The General Staff of the Army rejected the applicant's appeal in a decision dated 30 April 1997 because it was filed out of time. Against this decision the applicant filed another appeal to the Federal Ministry of Defence on 5 September 1997. On 20 October 1997 the Ministry refused the appeal.

15. The applicant's husband died on 5 February 1997 in Novi Sad, FRY. By a testament dated 20 December 1996 the husband bequeathed the apartment to the applicant.

16. The applicant initiated an administrative dispute against the Federal Ministry of Defence in the Supreme Court of the Federation of Bosnia and Herzegovina. On 2 July 1998 the Supreme Court rejected the administrative dispute as being outside of its competence under the 1998 Law on Cessation of Application of the Law on Abandoned Apartments.

17. On 6 May 1998 the applicant reported herself to the Novo Sarajevo Municipality for voluntary return into her apartment.

18. On 7 May 1998 the applicant submitted a request for the return of her apartment under the 1998 Law on Cessation of Application of the Law on Abandoned Apartments. There has been no response to date.

19. J.T. continues to occupy the apartment.

B. Relevant domestic law

1. JNA Apartments

20. The apartment in question was originally social property over which the JNA had jurisdiction. Social property was property which was considered to belong to the society as a whole. The applicant's husband enjoyed an occupancy right in the apartment. An occupancy right was a right, subject to certain conditions, to occupy an apartment on a permanent basis.

21. The applicant's husband contracted to purchase the apartment under the Law on Securing Housing for the Yugoslav Army (*Službeni List* (Official Gazette) of the Socialist Federal Republic of Yugoslavia, No. 84/90). This was a Law of the Socialist Federal Republic of Yugoslavia ("the SFRJ"), which was passed in 1990 and came into force on 6 January 1991. In the following years a number of Decrees with force of law as well as laws proper were issued by the Government of the Socialist Republic of Bosnia and Herzegovina, the Presidency of the Republic of Bosnia and Herzegovina and the Parliament of the Republic of Bosnia and Herzegovina with the aim of regulating social property issues in general and social property over which the JNA had jurisdiction in particular (see the Chamber's decision in the cases of *Medan and others*, loc. cit., paragraph 9-13). These legal instruments included, amongst others, a Decree imposing a temporary prohibition on the sale of socially owned property, issued on 15 February 1992 by the Government of the Socialist Republic of Bosnia and Herzegovina (S.L. of the Socialist Republic of Bosnia and Herzegovina, No. 4/92). Subsequently, a Decree with force of law, issued on 3 February 1995 by the Presidency of the Republic (S.L. of the Republic of Bosnia and Herzegovina, No. 5/95), ordered courts and other state authorities to adjourn proceedings relating to the purchase of apartments and other properties under the Law on Securing Housing for the JNA. This Decree suspended court proceedings until new housing legislation was adopted. The Decree entered into force on 10 February 1995, the date of its publication in the *Službeni List*. On 22 December 1995 the Presidency of the Republic of Bosnia and Herzegovina issued a Decree with force of law (S.L., No. 50/95) stating 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 retroactively invalid. This Decree entered into force on the same day. It was adopted as a law by the Assembly of the Republic of Bosnia and Herzegovina on 18 January 1996 and promulgated on 25 January 1996 (S.L., No. 2/96).

22. The Decree of 22 December 1995 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. On 6 December 1997 the Law on the Sale of Apartments with an Occupancy Right came into force (*Službene Novine* of the Federation of Bosnia and Herzegovina, No. 27/97. This law was amended by a law of 23 March 1998 (S.N., No. 11/98). Neither law affected the annulment of the present applicant's contract. Under Article 39 an occupancy right holder who, under provisions of the 1997 Law, contracts to purchase an apartment which he had contracted to purchase on the basis of, *inter alia*, the Law on Securing Housing for the JNA shall be recognised the purchase amount earlier paid.

2. Abandoned Property

a. The 1994 Law on Abandoned Apartments

23. On 15 June 1992 the Presidency of the Republic of Bosnia and Herzegovina issued a Decree with the Force of Law on Abandoned Apartments. This Decree was adopted as law by the Assembly of the Republic of Bosnia and Herzegovina on 1 June 1994 ("the old Law"). This Law governed the re-allocation of occupancy rights over socially-owned apartments which had been abandoned. On 4 April 1998 it was repealed by the Law on the Cessation of the Application of the Law on Abandoned Apartments.

b. The 1998 Law on the Cessation of the Application of the Law on Abandoned Apartments

24. The Law on the Cessation of the Application of the Law on Abandoned Apartments ("the new Law") entered into force on 4 April 1998. According to this legislation all administrative, judicial and other decisions terminating occupancy rights on the basis of regulations issued under the old Law shall be null and void. Nevertheless, all decisions establishing a right of temporary occupancy shall remain effective until revoked in accordance with the new Law. Moreover, all decisions establishing a new occupancy right shall remain in force unless revoked in accordance with the new Law (Article 2). The holder of an occupancy right in respect of an apartment which has been declared abandoned or a member of his or her household is referred to in the new Law as "the occupancy right holder" (Article 3(1)). The holder of a newly allocated occupancy right based either on a decision of the holder of the right of allocation or on a contract is referred to as "the current occupant" (Article 3(6)).

25. The occupancy right holder shall be entitled to seek his or her reinstatement into the apartment at a certain date which must not be earlier than 90 days and no later than one year from the submission of the claim (Articles 3, 4 and 7). The competent authority shall decide on such a repossession claim within 30 days (Article 6). The decision shall be delivered to the occupancy right holder, the holder of the allocation right and the current occupant within five days from its issuance. An individual has 15 days from the date of receipt of the decision in which to appeal to the Cantonal Ministry for Housing Affairs. An appeal shall not suspend the execution of the decision (Article 8). In no event shall a failure, either of the cantonal authorities or the holder of the allocation right, to meet their obligations under Article 3, or a failure of "the current occupancy right holder" to accept another apartment, delay the attempts of "an occupancy right holder" to reclaim his or her apartment (Article 3(9)).

26. If the apartment is occupied without a legal basis or was vacant when the new Law entered into force, the occupancy right holder shall be granted repossession of the apartment without any restriction and any temporary user shall be evicted (Article 3(3)). A person who is temporarily occupying the apartment and whose housing needs are otherwise met shall vacate the apartment within 90 days from the decision pursuant to Article 6 (Article 3(4)). If his or her housing needs are not otherwise met, he or she shall be provided with accommodation in accordance with the Law on the Taking Over of the Law on Housing Relations. In such a case the period within which the apartment must be vacated shall not be shorter than 90 days from the issuance of the decision pursuant to Article 6. The apartment must be vacated before the day of the intended return of the occupancy right holder but the intended return must not be sooner than 90 days from the date when the claim for repossession was submitted (Article 3(5) and Article 7(2) of the new Law).

27. In exceptional circumstances the deadline for vacating an apartment may be extended to up to one year if the municipality or the allocation right holder responsible for providing alternative

accommodation provides the cantonal administrative authority with detailed documentation about the efforts to secure alternative accommodation and if the cantonal authority finds that there is documented lack of available housing. In each individual case, the requirements of the Convention and its Protocols must be met, and the occupancy right holder must be notified of the decision extending the deadline, including its reasoning, 30 days before the initial deadline expires (Article 7(3) of the new Law).

28. If "a person occupying the apartment" fails to comply with a decision ordering its vacation, the competent administrative body shall take enforcement measures at the request of the occupancy right holder (Article 11).

29. If a decision within the meaning of Article 6 has been passed in respect of an apartment inhabited by a new occupancy right holder (i.e. the current occupant) (either based on a decision of the holder of the allocation right or on a contract), the holder of the allocation right shall, within 30 days, refer the case to the competent cantonal authority which shall, again within 30 days, allocate another apartment either to current occupant or to the occupancy right holder (Article 3(6)). Under Article 3(7) a finding that the occupancy right holder should be allocated an apartment other than the one into which he or she seeks to be reinstated must be based on criteria in compliance with Article 1 of Annex 7 to the General Framework Agreement for Peace, the Convention and its Protocols and the Law on Housing Relations. These criteria shall be developed by the Ministry of Urban Planning and Environment in consultation with organisations competent to implement the standards stated in Article 3(7). On 21 October 1998 the Government of the Federation published criteria for the purposes of Article 3(7). However, on 5 November 1998 the High Representative for Bosnia and Herzegovina, in accordance with his authority under Annex 10 of the General Framework Agreement for Peace in Bosnia and Herzegovina and Article XI of the Conclusions of the Bonn Peace Implementation Conference, suspended the application of Article 3(6) of the new Law. The decision entered into force immediately. On 1 April 1999 the High Representative extended the deadline for requesting reinstatement into socially owned apartments to 4 July 1999.

30. According to Article 7 of the new Law, a decision within the meaning of Article 6 shall contain a confirmation that the claimant is the holder of the occupancy right; a decision granting repossession of the apartment to the occupancy right holder if the dwelling is temporarily occupied by someone else, is vacant or is occupied without legal basis; a decision terminating the right of temporary occupancy if the apartment is in temporary use; a time limit by which a temporary user or another person occupying the apartment shall vacate it; and a decision as to whether the temporary user is entitled to accommodation in accordance with the Law on Housing Relations. Under Article 10 of the Instruction of 30 April 1998 on the Application of Article 4 of the new Law, the authority issuing the decision within the meaning of Article 6 of the new Law shall verify the status of the occupancy right; verify whether the apartment is uninhabitable, vacant or occupied; and verify the status of any current occupant (illegal, temporary occupant or person having been living in the apartment prior to 7 February 1998 on the basis of an occupancy right acquired before that date). Contracts on the use of apartments declared abandoned pursuant to regulations issued under the old Law and decisions on the allocation of such an apartment shall be null and void, if concluded or issued after 7 February 1998 (Article 16 of the new Law).

IV. COMPLAINTS

31. The applicant alleges the violation of her right to return to her apartment and the right of peaceful enjoyment of her possessions. The applicant also alleges the violation of her right of access to an effective remedy.

V. SUBMISSIONS ON THE PARTIES

A. Federation of Bosnia and Herzegovina

32. The Federation of Bosnia and Herzegovina submits that the application should be rejected because the applicant failed to exhaust domestic remedies on both the abandoned property issue and the JNA apartment issue. The Federation argues that the applicant could have initiated an administrative dispute before the Supreme Court of the Federation of Bosnia and Herzegovina if she

was not satisfied with the decisions of the General Staff and Ministry of Defence. The Federation claims that other citizens have done exactly that.

33. The Federation also claims that under the old Law, had the applicant presented the competent authorities with documentation that her husband was going abroad for medical treatment the apartment would not have been declared abandoned. The Federation notes that the applicant failed to apply for reinstatement under the new Law.

34. On the issue of the contract for the purchase of the JNA apartment, the Federation refers to its opinion stated in similar cases and specifically notes that legal remedies have not been exhausted.

B. Bosnia and Herzegovina

35. No observations were received from the government of Bosnia and Herzegovina.

C. Applicant

36. The applicant maintains that the purchase contract was valid at the time it was executed under the Law on Securing Housing in JNA (S.L. SFRY, No. 84/90). The applicant refers to the decision of the Chamber in *Medan and Others* as support for her argument.

37. The applicant argues that the Decree with Force of Law of 22 December 1995 (S.L. RBiH, No. 50/95) issued by the Presidency of RBiH which annulled the JNA contracts violated the Dayton Agreement.

38. In response to the claim of the Federation in *Medan and Others* that the Law on Securing Housing in JNA was discrimination in favour of some, the applicant contends that the provisions of the Law on the Sale of Apartments with an Occupancy Right (S.N. FBiH, No. 27/97 and 11/98) are even more favourable for the purchase than the provisions of the Law on Securing Housing in the JNA.

VI. OPINION OF THE CHAMBER

A. Admissibility

39. Before considering the case on its merits the Chamber must first decide, taking into account the criteria set out in Article VIII(2) of the Agreement, whether it is admissible. Article VIII(2) provides as follows:

> "2. The Chamber shall decide which applications to accept.... In so doing the Chamber shall take into account the following criteria:
>
> (a) Whether effective remedies exist, and the applicant has demonstrated that they have been exhausted....
>
> (c) The Chamber shall also dismiss any application which it considers incompatible with this Agreement,..."

40. As submitted in prior JNA cases, the Federation of Bosnia and Herzegovina argues that the present case, on the issue of the JNA purchase contract, falls within the jurisdiction of the Constitutional Court and is incompatible with the Agreement under Article VIII(2)(c). As in other cases involving JNA purchase contracts, the Chamber rejects the Federation's argument, recalling that it is competent to consider "alleged and apparent violations of human rights as provided in the European Convention..." (Article II(2)(a) of the Agreement; see also Human Rights Chamber, *Grbavac and 26 Other JNA Cases v. Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina*, Case No. CH/97/81, decision of 15 January 1999).

41. The Federation argues that the applicant has failed to exhaust domestic remedies for either

the JNA purchase contract or the abandoned property issue as required by Article VIII(2)(a) of the Agreement. In regards to the exhaustion of domestic remedies on the issue of the JNA contract, the Chamber finds that there was no effective remedy available to the applicant because of the Decree issued on 3 February 1995 by the Presidency of the Republic (S.L. RBiH 5/95) which ordered courts and other state authorities to adjourn proceedings relating to the purchase of apartments and other properties under the Law on Securing Housing for the JNA (see the aforementioned *Podvorac and 15 Other JNA Cases*, loc. cit., p. 5, paragraph 54).

42. Regarding the exhaustion of domestic remedies on the issue of the abandoned property, the Federation claims that the applicant failed to exhaust domestic remedies because she failed to initiate an administrative dispute before the Supreme Court of the Federation of Bosnia and Herzegovina. The Federation also points out that the applicant failed to apply for reinstatement into her apartment under the 1998 Law on the Cessation of the Application of the Law on Abandoned Apartments.

43. However, the Chamber notes that while these observations may have been true when submitted, the applicant eventually initiated proceedings before the Supreme Court of the Federation, and also reclaimed her apartment under the new Law. The Supreme Court of the Federation rejected her administrative dispute. There has been no response to the applicant's request for reinstatement into her apartment under the new Law.

44. The Chamber finds, therefore, that the applicant has exhausted domestic remedies and as no other ground for declaring the case inadmissible has been shown, the Chamber declares the application admissible.

B. Merits

45. Under Article XI of the Agreement the Chamber must address the question whether the facts established above indicate a breach by one or both of the respondent Parties of their obligations under the Agreement. In terms of Article I of the Agreement the Parties are obliged to "secure to all persons within their jurisdiction the highest level of internationally recognised human rights and fundamental freedoms," including the rights and freedoms provided for in the Convention.

1. Contract to Purchase JNA Apartment

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

46. The applicant complains that the contract which her husband entered into for the purchase of their apartment was annulled retroactively by the Decree issued on 22 December 1995, which was adopted as law on 18 January 1996. She alleges a breach of Article 1 of Protocol No. 1 to the Convention, which is in the following terms:

> "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."

47. As to whether, at the time when the December 1995 Decree came into force, the applicant and her husband had any rights under the purchase contract which constituted a "possession" for the purposes of Article 1 of Protocol No. 1, the Chamber refers to its decisions in the cases of *Medan and Others* and in *Podvorac and 15 other JNA* cases (loc. cit., paragraph 33 and paragraph 61, respectively). The answer to this question is therefore affirmative. The effect of the Decree was to annul those rights and the applicant and her husband were therefore deprived of their possession. It is accordingly necessary for the Chamber to consider whether this deprivation was justified under Article 1 of the Protocol as being "in the public interest" and "subject to the conditions provided for by law".

48. The Federation of Bosnia and Herzegovina argues that the impugned legal acts were designed to support those who were prevented from buying JNA apartments and to protect State property. These acts would therefore correspond with the requirements of Article 1 paragraph 2 of Protocol No. 1 to the Convention and justify the measures concerned in the present case.

49. The Chamber finds that there is no material distinction between the present case and those of *Medan and Others* and *Podvorac and 15 other JNA* cases (loc. cit.). Moreover, the new legislation issued after the Chamber's decision in *Medan and Others* (see paragraph 22 above) did not change the present applicant's situation. The legislation posterior to the Decree of December 1995 and the related law of January 1996, as in force at present, cannot revalidate the original purchase contract retroactively, that is to say with effect from the date when this contract was concluded. Accordingly, this legislation can have no bearing on the outcome of the present case (*see, e.g., Grbavac and 26 Other JNA Cases,* loc. cit.).

50. Accordingly, the Chamber finds, as in the earlier JNA cases decided on the merits, that the present applicant was also made to bear an "individual and excessive burden" and that there has been a violation of Article 1 of Protocol No. 1 to the Convention.

b. Article 6 of the Convention

51. Although the applicant in the present case did not initiate proceedings with a view to obtaining recognition of her ownership and registration in the Land Registry, those applicants in previous JNA cases who instituted proceedings complained that the civil proceedings instituted had been compulsorily adjourned by virtue of the February 1995 Decree. In addition, those applicants who did not institute proceedings alleged a violation of Article 6 of the Convention on the ground that the aforementioned Decree deprived them of their right of access to court. Article 6 reads, as far as relevant, 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…"

52. As in the cases of *Medan and Others* and *Podvorac and 15 other JNA* cases (loc. cit.) the Chamber notes that had the present applicant initiated court proceedings with a view to registering her ownership, they would have been adjourned shortly after the Decree in question entered into force. The Chamber observes, *ex officio,* that according to the observations of the Federation in other cases, the Federation enacted the legislation needed to lift the adjournment during 1998. The Chamber also notes that the present applicant's husband had the purchase contract authorised both by the City of Sarajevo and by the Court of First Instance II in Sarajevo. Accordingly, there was an interference from 14 December 1995 until sometime in 1998 with the applicant's effective access to court, as guaranteed by Article 6 (see the Chamber's decisions in the cases of *Medan and Others* and *Podvorac and 15 other JNA cases*, paragraphs 40 and 64, respectively and the European Court of Human Rights in the case of *Golder v. United Kingdom*, judgement of 21 February 1975, Series A No. 18, paragraphs 35-36). The Chamber sees no justification for this state of affairs in light of the conclusion which it has reached under Article 1 of Protocol No. 1 to the Convention. It follows that there is a violation of the applicant's right of access to court under Article 6 of the Convention in so far as the compulsory adjournment of her case would have continued since 14 December 1995, when the Agreement came into force, at least until 1998. The Chamber would add that any proceedings initiated would have lasted beyond a "reasonable time" due to the adjournment imposed by the February 1995 Decree which, as stated earlier, apparently remained effective until some time in 1998.

2. Abandoned Apartment

a. Article 8 of the Convention

53. Article 8 of the Convention reads, as far as relevant, as follows:

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

54. The applicant did not mention Article 8 expressly in her complaint. However, following its decision in *Kevešević v. The Federation of Bosnia and Herzegovina* (Case No. CH/97/46, decision of 10 September 1998, Decisions and Reports 1998, pp. 214-217, paragraphs 36-58) and *Eraković* (loc. cit., paragraph 45) the Chamber will nevertheless examine the case under this provision.

55. The Chamber notes at the outset that during the hostilities the applicant's husband was forced to leave their apartment for medical reasons and the applicant subsequently joined him abroad. After the end of the war they were allegedly unable to return to the apartment which was eventually declared permanently abandoned after they had appealed the decision declaring the apartment temporarily abandoned.

56. The Chamber has already found that the links which an applicant facing similar difficulties retained to his dwelling sufficed for this to be considered his "home" for the purposes of Article 8 paragraph 1 of the Convention (see, *inter alia*, the aforementioned decision in *Kevešević,* paragraphs 39-42, and *Eraković*, paragraph 48). This link is strengthened in the present case by the fact that the applicant and her husband had contracted to purchase and, indeed, had paid for the apartment. The Chamber, therefore, considers that there has been an ongoing interference with the applicant's right to respect for her home.

57. In order to determine whether this interference has been justified under the terms of paragraph 2 of Article 8, the Chamber must examine whether it was "in accordance with the law", served a legitimate aim and was "necessary in a democratic society" (cf. the aforementioned *Eraković* decision, paragraph 48). There will be a violation of Article 8 if any one of these conditions is not satisfied.

58. The Chamber has already found that the provisions of the Law on Abandoned Property (i.e. the old Law), as applied also in the present case, failed to meet the standards of "law" as this expression is to be understood for the purposes of Article 8 of the Convention (see the *Kevešević* decision, paragraphs 50-58, and *Eraković*, paragraph 50). In the present case the Chamber sees no reason to differ. Accordingly, this provision was violated already by virtue of the decision of 23 May 1996 to declare the applicant's apartment permanently abandoned.

59. The present case also relates to the application of the new Law. The Chamber notes that the applicant's claim for repossession initiated on 7 May 1998 has not been decided in compliance with the time-limit of 30 days stipulated in Article 6 of the new Law. In addition to the violation stemming from the decision to declare the applicant's apartment permanently abandoned there is thus an ongoing violation of her right to respect for her home within the meaning of Article 8 paragraph 1, in so far as the procedure for examining her repossession claim has not been "in accordance with the law" either.

60. Accordingly, the Chamber concludes that Article 8 of the Convention has been violated, given both the declaration of permanent abandonment and the failure to decide on the repossession claim within the time limit specified by the 1998 law.

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

61. The applicant complains, in essence, that her right to the peaceful enjoyment of her possession has been and continues to be violated as a result of the decision declaring her apartment abandoned and the effective prevention of her return into this dwelling. The Chamber, however, finds it unnecessary to examine this complaint again under Article 1 of Protocol No. 1 to the Convention as it has already found a violation of this provision in respect of the annulled purchase contract (see

paragraph 50).

c. Article 13 of the Convention

62. The applicant also maintains that she has been the victim of a breach of Article 13 of the Convention in that no effective remedy has been available to her in respect of her complaints. Article 13 provides as follows:

> "Everyone whose rights and freedoms as set forth in this 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."

63. In view of its finding of a violation of Article 8 of the Convention (see paragraph 60) the Chamber does not deem it necessary to determine whether there has also been a failure to observe the requirements of Article 13 of the Convention.

VII. REMEDIES

64. 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.

65. The applicant has requested the Chamber to enable her to be reinstated into her apartment. She made no request for compensation.

66. The breaches of Article 1 of Protocol No. 1 which the Chamber has found arose from the legislation already referred to. The State is responsible for having passed that legislation, but the matters which it deals with are now within the responsibility of the Federation, which recognises and applies this legislation. In these circumstances the Chamber considers that it is the responsibility of the Federation to take the necessary legislative or administrative action to render ineffective the annulment of the applicant's husband's purchase contract which was imposed. It will therefore make an order against the Federation to that effect.

67. The Chamber will also order the Federation to take any necessary steps to secure the applicant's right of access to court.

68. In the present case the Chamber finds it appropriate to order that the Federation through its authorities take immediate steps to reinstate the applicant into her apartment.

VIII. CONCLUSION

69. For these reasons, the Chamber decides:

1. unanimously, to declare the application admissible;

2. by 4 votes to 1, that the passing of legislation providing for the retroactive nullification of the applicant's husband's purchase contract violated the applicant's rights under Article 1 of Protocol No. 1 to the Convention, Bosnia and Herzegovina thereby being in breach of its obligations under Article I of the Agreement;

3. by 4 votes to 1, that the recognition and application of the legislation providing for the retroactive nullification of the applicant's husband's purchase contract has violated the applicant's rights under Article 1 of Protocol No. 1 to the Convention, the Federation thereby being in breach of its obligations under Article I of the Agreement;

4. unanimously, that the adjournment since 14 December 1995 of court proceedings aiming at formal recognition of the applicant's property rights has violated her right of access to a court and to a hearing within a reasonable time as guaranteed by Article 6 of the Convention, the Federation

thereby being in breach of its obligations under Article I of the Agreement;

5. unanimously, that the declaration of permanent abandonment and the failure to decide on the applicant's repossession claim within the time limit specified by the 1998 Law on the Cessation of the Application of the Law on Abandoned Apartments violated the applicant's right to respect for her home as guaranteed by Article 8 of the Convention, the Federation thereby being in breach of its obligations under Article I of the Agreement;

6. unanimously, that it is unnecessary to examine whether the declaration of abandonment and the failure to decide on the applicant's repossession claim also violate Article 1 of Protocol No. 1 to the Convention;

7. unanimously, that it is unnecessary to examine the case under Article 13 of the Convention;

8. by 4 votes to 1, to order the Federation to take all necessary steps to render ineffective the annulment of the applicant's husband's purchase contract imposed by the Decree of 22 December 1995 and the Law of 18 January 1996;

9. unanimously, to order the Federation to take any necessary steps to lift the compulsory adjournment by the Decree of 3 February 1995 of court proceedings aiming at formal recognition of the applicant's property right and to take any necessary steps to secure in this matter her right of access to court and to a hearing within a reasonable time;

10. unanimously, to order that the Federation through its authorities take immediate steps to reinstate the applicant into her apartment; and

11. unanimously, to order the Federation to report to it by 14 August 1999 on the steps taken by it to give effect to this decision.

(signed)
Leif BERG
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel