DECISION ON THE ADMISSIBILITY AND MERITS

DELIVERED ON 15 JANUARY 1999

Miro GRBAVAC AND 26 OTHER JNA CASES

against

BOSNIA AND HERZEGOVINA
AND
THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 18 December 1998 and 11 January 1999 with the following members present:

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

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

Having considered the admissibility and merits of case no. CH/97/81 and the 26 other applications 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 and listed in part III B of this decision;

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

I. INTRODUCTION

1. The present decision concerns 27 cases involving Yugoslav National Army apartments. The cases were considered to be directed against the State of Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina. The names of the individual applicants and the corresponding case numbers are listed in part III B of the decision.

2. In 1991 or 1992 the applicants contracted to buy apartments from the Yugoslav National Army ("the JNA"). The contracts were annulled by legislation passed shortly after the General Framework Agreement for Peace in Bosnia and Herzegovina entered into force in December 1995. The applicants complain that the annulment of their contracts violated their property rights as guaranteed by Article 1 of Protocol No. 1 to the (European) Convention for the protection of Human Rights and Fundamental Freedoms ("the Convention") and also allege violations of Articles 6 and 13 of the Convention.

3. These 27 cases resemble the cases of *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, p. 53) and the *16 JNA cases*, (Decision on the admissibility and the merits of 12 June 1998, Decisions January-June 1998, p. 37).

II. PROCEEDINGS BEFORE THE CHAMBER

4. The applications were introduced between November 1997 and February 1998 and registered between November 1997 and April 1998. Some of the applicants are represented by lawyers. The applicants in the cases No. CH/98/167 and CH/98/233 object to their identity being disclosed to the public (Rule 46 paragraph 2 (d) of the Chamber's Rules of Procedure).

5. Some of the applications were directed against both Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina, whereas others were initially directed either against Bosnia and Herzegovina or the Federation of Bosnia and Herzegovina. The Chamber considered, however, that the applicants' complaints raised issues which might in all cases engage the responsibility of both the State and the Federation of Bosnia and Herzegovina. It therefore decided to treat all cases as being directed against both the State and the Federation (see also the decision in the *16 JNA* cases, loc. cit., paragraph 4 and the *Medan and others* decision, loc. cit., paragraphs 28-30 and 44-47).

6. On 2 April and 11 May 1998 the First Panel decided pursuant to Rule 49(3)(b) of the Rules of Procedure to transmit the applications to the respondent Parties for observations on their admissibility and merits.

7. The Federation of Bosnia and Herzegovina submitted observations between April and June 1998. The State of Bosnia and Herzegovina did not submit any observations. The applicants replied between July and October 1998. In accordance with the Chamber's order for the proceedings in the respective cases, all applicants were afforded the possibility of claiming compensation within the time limit fixed for any reply to observations submitted by a respondent Party.

8. The First Panel deliberated on the admissibility and the merits of the cases on 18 December 1998 and 11 January 1999. On the first-mentioned date the Panel decided, under Rule 34 of its Rules of Procedure, to join the applications. It further voted on the merits of the cases and on the remedies to be ordered, except for possible compensatory awards. On 11 January 1999 the Panel voted on the compensation claims and adopted the present decision.

III. ESTABLISHMENT OF THE FACTS

A. Relevant domestic law

9. The apartments occupied by the applicants were all socially owned property over which the JNA had jurisdiction. Such property was considered to belong to society as a whole. Each applicant

enjoyed an occupancy right in respect of his or her apartment. An occupancy right was a right, subject to certain conditions, to occupy an apartment on a permanent basis.

10. Each of the applicants contracted to purchase his or her apartment under the Law on Securing Housing for the Yugoslav National Army (Official Gazette of the Socialist Federal Republic of Yugoslavia, No. 84/90). This law 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., paragraphs 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 (Official Gazette 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 (Official Gazette 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 entered into force on 10 February 1995, the date of its publication in the Official Gazette. On 22 December 1995 the Presidency of the Republic of Bosnia and Herzegovina issued a Decree with force of law (Official Gazette, 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 and promulgated on 25 January 1996 (Official Gazette, No. 2/96).

11. 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 (Official Gazette of the Federation, No. 27/97; "the 1997 Law"). This law was amended by a law of 23 March 1998 (Official Gazette, No. 11/98). Neither law affected the annulment of the present applicants' contracts. 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.

B. The individual cases

12. The applicants are former members or employees of the JNA. The facts of the cases as they appear from the applicants' respective submissions and the documents in the case file are not in dispute and may be summarised as follows. It should be noted that the amount paid by the applicant at or around the moment of contracting to purchase an apartment (henceforth "the purchase price") does not necessarily reflect the officially determined price of the dwelling. This is because the applicants were only obliged to pay an amount fixed taking into account their earlier contribution to the JNA Housing Fund.

1. The case of Mr. Miro GRBAVAC (CH/97/81)

13. On 18 March 1992 the applicant concluded a purchase contract for a JNA apartment at Odobasina 49/IV Street in Sarajevo and paid the purchase price (435.000,00 Dinars and 4.469,00 Dinars) on 12 February 1992 and on 20 March 1992.

14. On 10 February 1994 the applicant instituted civil proceedings in the Court of First Instance II in Sarajevo, seeking to establish that he was entitled to recognition as owner of the apartment and to be registered in the Land Registry as such. On 10 February 1995 the Court adjourned his case under the Decree of 3 February 1995. The proceedings have remained adjourned since. The applicant is represented by an attorney, Mr. Petar Grabovac.

2. The case of Mr. Slavoljub MITIĆ (CH/97/83)

15. On 10 February 1992 the applicant concluded a purchase contract for a JNA apartment at Envera Sehovića Street 22/III in Sarajevo having paid the purchase price (354.226,00 Dinars) on 8 February 1992.

16. On 23 February 1994 the applicant instituted civil proceedings in the First Instance Court II in Sarajevo, seeking to establish that he was entitled to recognition as owner of the apartment and to be registered in the Land Registry as such. On 10 February 1995 the Court adjourned his case under the Decree of 3 February 1995. The decision stated that no special appeal was allowed. The proceedings have remained adjourned since. The applicant is represented by an attorney, Mr. Petar Grabovac.

3. The case of Mr. Mladen DIMITRIJEVIĆ (CH/97/85)

17. On 10 February 1992 the applicant concluded a purchase contract for a JNA apartment at Čekaluša Street 66 in Sarajevo, having paid the purchase price on 13 February 1992.

18. On 4 February 1994, the applicant initiated proceedings before the Court of First Instance II in Sarajevo, seeking to be registered in the Land Registry as the owner of the apartment. These proceedings were adjourned on 25 February 1995. The applicant is represented by an attorney, Mr. Petar Grabovac.

4. The case of Mr. Milan LAPONJA (CH/97/91)

19. On 28 February 1992 the applicant concluded a purchase contract for a JNA apartment at Topal Osman Paše 18/IV in Sarajevo, having paid the purchase price (358.000,00 Dinars) on 13 February 1992.

20. It appears from the file that the applicant has never instituted any court proceedings to have himself registered as the owner of the apartment. The applicant is represented by an attorney, Mr. Petar Grabovac.

5. The case of Mr. Georgi POPOVSKI (CH/97/95)

21. The applicant concluded an undated purchase contract for a JNA apartment at Envera Sehovića 22/II in Sarajevo and paid the purchase price (453.778,00 Dinars) on 10 February 1992.

22. It appears from the file that the applicant has never instituted any court proceedings to have himself registered as the owner of the apartment. The applicant is represented by an attorney, Mr. Petar Grabovac.

6. The case of Ms. Anđa MIŠEVSKI (CH/97/101)

23. On 16 March 1992 the applicant's now deceased husband concluded a purchase contract for a JNA apartment at Grbavička 8-A/XI in Sarajevo, having paid the purchase price (140.000,00 Dinars) on 7 February 1992.

24. It appears from the file that the applicant has never instituted any court proceedings to have herself registered as the owner of the apartment. The applicant is represented by an attorney, Mr. Petar Grabovac.

7. The case of Mr. Dragoljub SVETOZAREVIĆ (CH/97/111)

25. On 23 December 1991 the applicant concluded a purchase contract for a JNA apartment in Sarajevo at Topal Osman Paše 24/IV and paid the purchase price (419.000,00 Dinars) on 31 January 1992. The contract was certified by the First Instance Court II in Sarajevo on 26 December 1991.

26. On 26 June 1996 the applicant instituted civil proceedings in the First Instance Court II in Sarajevo, seeking to establish that he was entitled to recognition as owner of the apartment and to be registered in the Land Registry as such. On 2 July 1996 the Court adjourned his case under the Decree of 3 February 1995. The proceedings have remained adjourned since. The applicant is represented by an attorney, Ms. Zorica Svetozarević.

8. The case of Mr. Mirko OBRADOVIĆ (CH/98/121)

27. On 3 March 1992 the applicant concluded a purchase contract for a JNA apartment at Grbavička 6 in Sarajevo, having paid the purchase price (208.256,00 Dinars) on 11 February 1992.

28. It appears from the file that the applicant has never instituted any court proceedings to have himself registered as the owner of the apartment.

9. The case of Mr. Himzo SALIHBEGOVIĆ (CH/98/125)

29. The applicant concluded an undated purchase contract for a JNA apartment at 38 Patriotske Lige Street in Sarajevo. He paid the price on 14 February 1992.

30. The applicant has not initiated court proceedings to have himself registered as owner of the apartment.

10. The case of Mr. Dušan ŽIGIĆ (CH/98/127)

31. On 3 April 1992 the applicant concluded a purchase contract for a JNA apartment in Tuzla at Armije BiH 19/V, having paid the purchase price (120.000,00 Dinars) on 12 February 1992.

32. It appears from the file that the applicant has never instituted any court proceedings to have himself registered as the owner of the apartment.

11. The case of Mr. Ms. Sejda FRLJ (CH/98/131)

33. On 23 October 1991 the applicant's husband, who died on 9 October 1992, concluded a purchase contract for a JNA apartment at 1 Milana Preloga in Sarajevo. He paid the purchase price on 3 February 1992.

34. The applicant has not initiated court proceedings to have herself registered as the owner of the apartment.

12. The case of Mr. Selim ŠKAMO (CH/98/137)

35. On 3 April 1992 the applicant concluded a purchase contract for a JNA apartment at 25 Aleja Bosanskih Vladar in Tuzla, having paid in advance a total of 175.000 Dinars (173.000 Dinars on 14 February 1992 and 2.000 Dinars on 19 March 1992) for an apartment priced at 153.491 Dinars in the contract.

36. The applicant has not initiated court proceedings to have herself registered as the owner of the apartment. The applicant was part of the "Group of Pensioners of Tuzla" which may have had the assistance of an attorney in drafting observations.

13. The case of Mr. Vidoje ŠIPČIĆ (CH/98/143)

37. On 4 April 1992 the applicant concluded a purchase contract for a JNA apartment at 62 Titova in Tuzla, having paid the purchase price on 14 February 1992.

38. The applicant has not initiated court proceedings to have himself registered as the owner of the apartment. The applicant was part of the "Group of Pensioners of Tuzla" which may have had the assistance of an attorney in drafting observations.

14. The case of Mr. Muhamed HODŽIĆ (CH/98/147)

39. On 3 April 1992 the applicant concluded a purchase contract for a JNA apartment in Tuzla at Maršala Tita 151, having paid the purchase price (225.000,00 Dinars) on 14 February 1992.

40. It appears from the file that the applicant has never instituted any court proceedings to have himself registered as the owner of the apartment.

15. The case of Mr. Meho AJKIĆ (CH/98/149)

41. On 3 April 1992 the applicant concluded a purchase contract for a JNA apartment at Maršala Tita 56 in Tuzla, having paid the purchase price (130.000,00 Dinars) on 7 February 1992.

42. It appears from the file that the applicant has never instituted any court proceedings to have himself registered as the owner of the apartment.

16. The case of Mr. Bajro DREKOVIĆ (CH/98/151)

43. On 7 March 1992 the applicant concluded a purchase contract for a JNA apartment at Armije BiH 25/6 in Tuzla, having paid the purchase price (63.000,00 + 36.200,00 + 147.000,00 Dinars) on 31 January, 12 February and 14 February 1992.

44. It appears from the file that the applicant has never instituted any court proceedings to have himself registered as the owner of the apartment.

17. The case of Mr. Milan BATAR (CH/98/155)

45 On 28 February 1992 the applicant concluded a purchase contract for a JNA apartment at Patriotske lige 38 in Sarajevo and paid the purchase price.

46. In February 1992 the applicant attempted to initiate court proceedings to have himself registered as the owner of the apartment but with no success. He was informed by the City Administration that such proceedings had been adjourned until further notice.

18. The case of Mr. Ibrahim KUKURUZOVIĆ (CH/98/157)

47. On 20 March 1992 the applicant concluded a purchase contract for a JNA apartment at Oktobarske Revolucije 2 in Tuzla, having paid the purchase price (30.000,00 + 26.000,00 Dinars) on 30 January and 6 February 1992.

48. It appears from the file that the applicant has never instituted any court proceedings to have himself registered as the owner of the apartment.

19. The case of Mr. Dedo SARVAN (CH/98/163)

49. On 25 February 1992 the applicant concluded a purchase contract for a JNA apartment in Tuzla at Skojevska 61, having paid the purchase price (80.000,00 + 80.000,00 + 13.000,00 Dinars) on 30 January, 11 February and 25 February 1992.

50. It appears from the file that the applicant has never instituted any court proceedings to have himself registered as the owner of the apartment.

20. The case of Mr. Marko BEGOVIĆ (CH/98/165)

51. On 3 April 1992 the applicant concluded a purchase contract for a JNA apartment at Skojevska 55 Tuzla, having paid part of the purchase price (296.000,00 Dinars) on 12 February. He paid the rest (24.049,00 Dinars) on 14 April 1992.

52. It appears from the file that the applicant has never instituted any court proceedings to have himself registered as the owner of the apartment.

21. The case of Mr. "M.R." (CH/98/167)

53. On 3 March 1992 the applicant concluded a purchase contract for a JNA apartment in Sarajevo at Topal Osman Paše 18/I, having paid the purchase price (288.000,00 + 41.000,00 Dinars) on 12 February and 14 February 1992.

54. It appears from the file that the applicant has never instituted any court proceedings to have himself registered as the owner of the apartment.

22. The case of Mr. Franjo PREMUDA (CH/98/169)

55. On 28 October 1991 the applicant concluded a purchase contract for a JNA apartment in Sarajevo at Igmanska 5 and paid the purchase price (46.906,00 Dinars) on 27 January 1992.

56. On 14 February 1992 the contract was notarised by the First Instance Court I in Sarajevo.

23. The case of Ms. Advija SALIHOVIĆ (CH/98/179)

57. On 20 March 1992 the applicant concluded a purchase contract for a JNA apartment at Skojevska 53 in Tuzla. The purchase price (162.053,00 + 233.000,00 + 35.102,00 Dinars) was paid on 12 February 1992 and 21 March 1992.

58. It appears from the file that the applicant has never instituted any court proceedings to have herself registered as the owner of the apartment.

24. The case of Mr. Daut DAUTOVSKI (CH/98/185)

59. On 20 March 1992 the applicant concluded a purchase contract for a JNA apartment in Tuzla at Veljka Vlahovića 100, having paid the purchase price (350.000,00 Dinars) on 11 February 1992.

60. It appears from the file that the applicant has never instituted any court proceedings to have himself registered as the owner of the apartment. The applicant was part of the "Group of Pensioners of Tuzla" which may have had the assistance of an attorney in drafting observations.

25. The case of Mr. "M.M." (CH/98/233)

61 On 17 March 1992 the applicant concluded a purchase contract for a JNA apartment at 38 Patriotske lige Street in Sarajevo, having paid the purchase price on 11 February 1992.

62. The applicant has not initiated court proceedings to have himself registered as the owner of the apartment.

26. The case of Mr. Miloš DAVIDOVIĆ (CH/98/235)

63. On 19 March 1992 the applicant concluded a purchase contract for a JNA apartment at Grbavička 8-A/IX in Sarajevo, having paid the purchase price (234.516,00 Dinars) on 7 February 1992.

64. It appears from the file that the applicant has never instituted any court proceedings to have himself registered as the owner of the apartment. The applicant is represented by an attorney, Mr. Petar Grabovac.

27. The case of Mr. Ilija SARIĆ (CH/98/237)

65. On 23 March 1992 the applicant concluded a purchase contract for a JNA apartment at Envera Sehovića 3/I in Sarajevo, having paid the purchase price (430.000,00 Dinars) on 3 February 1992.

66. On 28 March 1994 the applicant instituted civil proceedings in the First Instance Court II in Sarajevo, seeking to establish that he was entitled to recognition as owner of the apartment and to be registered in the Land Registry as such. On 10 February 1995 the Court issued a decision adjourning the applicant's case under the Decree of 3 February 1995. The decision stated that no special appeal was allowed. The proceedings have remained adjourned since. The applicant is represented by an attorney, Mr. Petar Grabovac.

IV. COMPLAINTS

67. The applicants essentially complain that the retroactive annulment of their purchase contracts and the compulsory adjournment of their civil proceedings under the Decree No. 5/95 (see paragraphs 10-11 above) involved violations of their rights under Article 6 and 13 of the Convention and Article 1 of Protocol 1 to the Convention.

V. SUBMISSIONS OF THE PARTIES

A. The Respondent Parties

1. Bosnia and Herzegovina

68. No observations have been received from the State of Bosnia and Herzegovina.

2. The Federation of Bosnia and Herzegovina

69. The Federation of Bosnia and Herzegovina primarily refers to the liability of the State of Bosnia and Herzegovina for the impugned measures. Having regard to the ongoing discussion regarding the succession of the former SFRJ, it is presently impossible for the Federation to fulfil its obligations flowing from the Chamber's decision in *Medan and others* (loc. cit.).

70. It is further alleged that the issue at stake in these cases is the constitutionality of a law and not the infringement of human rights. These cases would therefore fall within the jurisdiction of the Constitutional Court. Moreover, the impugned legal acts were designed to place those prevented from buying JNA apartments on an equal footing with the applicants, and to protect State property. The measures were therefore justified under the second paragraph of Article 1 of Protocol No. 1 to the Convention.

B. The Applicants

71. The applicants maintain their complaints. Regarding the Federation's argument that other citizens were not treated equally to those who had the opportunity to purchase JNA apartments, the applicants stress the fact that they were all former members or employees of the JNA and had contributed to the Army Housing Fund. The apartments they purchased were constructed with means from this fund and not from the Housing Fund of the then Republic of Bosnia and Herzegovina. Consequently, the applicants cannot be compared with those who did not contribute to the Army Housing Fund.

VI. OPINION OF THE CHAMBER

A. Admissibility

72. Before considering the cases on their merits the Chamber must decide whether to accept them, taking into account the admissibility criteria set out in Article VIII(2) of the Agreement which

provides, *inter alia*, 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, ... "

73. The Federation of Bosnia and Herzegovina argues that the present cases would fall within the jurisdiction of the Constitutional Court and presumably be incompatible with the Agreement within the meaning of Article VIII (2) (c) (see paragraph 70 above). However, the Chamber recalls that it is competent to consider "alleged and apparent violations of human rights as provided in the European Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocols thereto" (Article II(2)(a) of the Agreement). The Federation's argument must therefore be rejected.

74. The Chamber notes that neither Party has raised any objection to the admissibility of the applications in light of the exhaustion requirement set out in Article VIII(2)(a) of the Agreement (cf., *a contrario*, e.g., *Blentić v. Republika Srpska,* case No. CH/96/17, decision of 3 December 1997, paragraphs 19-21, Decisions 1996-97, p. 87 in which the Chamber considered this admissibility criterion in light of the corresponding requirement in Article 26 of the Convention). Nor can the Chamber of its own motion find any grounds for declaring the present cases inadmissible.

75. The Chamber concludes therefore that all applications, including those where the applicants did not institute any such proceedings, are admissible.

B. Merits

76. Under Article XI of the Agreement the Chamber must next address the question whether the facts established above indicate a breach by one or both of the respondent Parties of its or 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. The Chamber will therefore consider whether the annulment of the applicants' purchase contracts and the compulsory adjournment of any related civil proceedings constitutes a breach of the applicants' rights under Article I of the Agreement.

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

77. The applicants complain that the contracts which they entered into for the purchase of their apartments were annulled retroactively by the Decree issued on 22 December 1995, which was adopted as law on 18 January 1996. They allege 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."

78. As to whether, at the time when the December 1995 Decree came into force, the applicants had any rights under their contracts which constituted "possessions" 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 the *16 JNA* cases (loc. cit., paragraph 33 and paragraphs 59-61, respectively). The answer to this question is therefore affirmative. The effect of the Decree was to annul those rights and the applicants were

therefore deprived of their possessions. It is accordingly necessary for the Chamber to consider whether these deprivations were justified under Article 1 of the Protocol as being "in the public interest" and "subject to the conditions provided for by law".

79. The Federation of Bosnia and Herzegovina argues that the infringed legal acts were designed to equalise the applicants' positions, 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 cases.

80. The applicants stress the fact that they were all former members or employees of the JNA and had contributed to the Army Housing Fund. The apartments they purchased were constructed with means from this fund and not from the Housing Fund of the then Republic of Bosnia and Herzegovina. Consequently, the applicants cannot be compared with those who had not contributed to the Army Housing Fund.

81. The Chamber finds that there is no material distinction between the present cases and those of *Medan and Others* and the *16 JNA* cases (loc. cit.). Moreover, the new legislation issued after the Chamber's decision in *Medan and Others* (see paragraph 10 above) did not change the present applicants' situation. It is true that under the 1997 Law the applicants may in principle repurchase their apartments (see paragraph 11 above). The Chamber notes, however, that the legislation posterior to the Decree of December 1995 and the related law of January 1996 (see paragraphs 10-11 above), as in force at present, cannot revalidate the applicants' original purchase contracts retroactively, that is to say with effect from the dates when those contracts were concluded. Accordingly, this legislation can have no bearing on the outcome of the present cases.

82. Accordingly, the Chamber finds, as in the earlier JNA cases decided on the merits, that the present applicants were 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.

2. Article 6 of the Convention

83. Those applicants who instituted proceedings complain that the civil proceedings instituted with a view to obtaining recognition of their ownership and registration in the Land Registry, have been compulsorily adjourned by virtue of the February 1995 Decree. They allege a breach of Article 6 of the European Convention on Human Rights in this respect. Those applicants who did not institute proceedings allege a violation of Article 6 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..."

84. As in the cases of *Medan and Others* and the *16 JNA* cases (loc. cit.) the Chamber notes that the court proceedings in question either were or would have been adjourned shortly after the Decree in question entered into force. As far as the Chamber is aware, this situation has continued up to this day. Accordingly, there is a continuing deprivation of the applicants' right of access to court for the purpose of having their civil claims determined, as guaranteed by Article 6 (see the Chamber's decisions in the cases of *Medan and Others* and the *16 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 and 36). The Chamber sees no justification for this state of affairs in light of the conclusion which it has reached under Article 1 of the Protocol to the Convention. It follows that there is a breach of Article 6 of the Convention in the case of each applicant, in so far as the compulsory adjournment of his or her case has continued since 14 December 1995, when the Agreement came into force. The Chamber would add that any proceedings initiated would by now have lasted beyond a "reasonable time" due to the February 1995 Decree.

3. Article 13 of the Convention

85. Some applicants also maintain that they have been the victims of a breach of Article 13 of the Convention in that no effective remedy has been available to them in respect of their 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."

86. In view of its decision under Article 6(1) of the Convention to the effect that the applicants have been denied access to court to establish their property rights, the Chamber considers it unnecessary also to examine the complaints under Article 13. The requirements of Article 13 are less strict than those of Article 6 and are absorbed by the latter (see, e.g., European Court of Human Rights, *Hentrich v. France* judgment of 22 September 1994, Series A No. 296, para. 65).

VII. REMEDIES

87. Under Article XI paragraph 1(b) of the Agreement the Chamber must also address the question what steps shall be taken by the respondent Party or Parties to remedy the breaches of the Agreement which it has found.

88. The Chamber notes that the legal situation remains essentially the same as that which it addressed in its decisions in the cases of *Medan and Others* and the *16 JNA* cases (loc. cit.). It is therefore appropriate to make orders similar to those issued in those cases.

89. 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 applicants' contracts which was imposed. It will therefore make an order against the Federation to that effect.

90. The Chamber will also order the Federation to take all necessary steps to lift the compulsory adjournment of the court proceedings instituted by certain of the applicants and which the Chamber has found to be in violation of Article 6 of the Convention, and to take all necessary steps to secure the applicants' right of access to court.

91. With regard to possible compensatory awards, the Chamber first recalls that in accordance with its order for the proceedings in the respective cases, all applicants were afforded the possibility of claiming compensation within the time limit fixed for any reply to observations submitted by a respondent Party. The following applicants seek compensation:

92. Mr. Škamo (CH/98/137) requests to be reimbursed the difference between the purchase price paid (175.000 dinars) and the price as finally determined (153.491 dinars), (see para. 35 above). He further claims compensation in the following respective amounts: 10 DEM paid to his lawyer; 8 DEM apparently for posting his submissions to the Chamber; 10.000 DEM for being branded "a robber" in Ms. Nura Pinjo's observations on behalf of the Federation; 30.000 DEM for all traumas, maltreatment and intimidation suffered before, and for present sufferings and for disrespect shown by the Federation and its organs.

93. Mr. Šipčić (CH/98/143) claims compensation in the amount of 657 DEM per square meter of his apartment (he does not specify its surface), 10 DEM for lawyer's expenses, 5 DEM for postage, 10.000 DEM for being called "a plunderer" in Ms. Nura Pinjo's written observations on behalf of the Federation, and 30.000 DEM for the trauma he suffers and for the manner in which he has been treated by the Federation.

94. Mr. Ajkić (CH/98/149) claims compensation in the amount of KM 5.000 for the "mental

stress" he and his family have been subjected to as well as for medical treatments, lawyer's expenses, telephone and postage.

95. The Chamber finds it appropriate to award Mr. Škamo (CH/98/137) 18 KM for legal fees and postage. The Chamber rejects as outside its competence *ratione temporis* the request for a rebate for the amount he paid above the contract price. The Chamber also rejects the claim for 10.000 DEM for being branded "a robber" in Ms. Nura Pinjo's written observations as not being related to the violation of human rights which it has found. Finally, the Chamber rejects the request for 30.000 DEM for trauma suffered as the applicant cannot be said to have suffered any damage as a result of his inability to be registered as the owner (*see Bastijanović v. Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina*, case No. CH/96/8, Decision on the Claim for Compensation of 29 July 1998, paragraph 15).

96. The Chamber finds it appropriate to award Mr. Šipčić (CH/98/143) 15 KM for legal fees and postage. The Chamber rejects his request for 657 DEM per square meter of his apartment as not relevant because the Chamber is ordering the respondent Party to register the applicant as owner of the apartment by conclusions 6 and 7, below. The Chamber also rejects the claim for 10.000 DEM for being called "a plunderer" in Ms. Nura Pinjo's written observations as not related to the violation of human rights. Finally, the Chamber rejects the request for 30.000 DEM for trauma suffered as the applicant cannot be said to have suffered any damage as a result of his inability to be registered as the owner (see the aforementioned Bastijanović decision, paragraph 15).

97. The Chamber finds it appropriate to award Mr. Ajkić (CH/98/149) 15 KM for legal fees and postage. As with Mr. Škamo and Mr. Šipčlć, the Chamber rejects Mr. Ajkić's request for compensation for mental stress and medical treatments as the applicant has not shown he suffered any damage as a result of his inability to be registered as the owner (see the aforementioned Bastijanović decision, paragraph 15).

VIII. CONCLUSIONS

98. For the above reasons the Chamber decides:

1. unanimously, to declare the applications admissible;

2. by four votes to one, that the passing of legislation providing for the retroactive nullification of the applicants' purchase contracts violated their rights under Article 1 of Protocol No. 1 to the Convention, Bosnia and Herzegovina thereby being in breach of its obligations under Article I to the Agreement;

3. by four votes to one, that the recognition and application of the legislation providing for the retroactive nullification of the applicants' contracts has violated their 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 continuing adjournment since 14 December 1995 of court proceedings aiming at formal recognition of the applicants' property rights (whether or not actually initiated by them) has violated their 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. by four votes to one, that it is unnecessary to examine the applicants' complaints based on Article 13 of the Convention;

6. by four votes to one, to order the Federation to take all necessary steps to render ineffective the annulment of the applicants' contracts imposed by the Decree of 22 December 1995 and the Law of 18 January 1996;

7. unanimously, to order the Federation to take all necessary steps to lift the compulsory adjournment by the Decree of 3 February 1995 of court proceedings aiming at formal recognition of

the applicants' property right and to take all necessary steps to secure in this matter their right of access to court and to a hearing within a reasonable time;

8. (a) unanimously, to order the Federation to pay to the applicant, Mr. Škamo (CH/98/137) within three months, the sum of 18 KM in compensation for fees and expenses;

(b) unanimously, to reject the remainder of his claim for compensation;

9. (a) unanimously, to order the Federation to pay to the applicant Mr. Šipčlć (CH/98/143) within three months, the sum of 15 KM in compensation for fees and expenses;

(b) unanimously, to reject the remainder of his claim for compensation;

10. (a) unanimously, to order the Federation to pay to the applicant Mr. Ajkić (CH/98/149) within three months, the sum of 15 KM in compensation for fees and expenses;

(b) unanimously, to reject the remainder of his claim for compensation;

11. unanimously, to order that simple interest at an annual rate of four per cent will be payable over the awarded sums or any unpaid portion thereof, from the date of expiry of the above-mentioned three month period until the date of settlement; and

12. unanimously, to order the Federation to report to it by 15 April 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