# DECISION ON THE ADMISSIBILITY AND MERITS

## DELIVERED ON 11 JUNE 1999

## CH/97/93

## Mirjana MATIĆ

## against

## THE FEDERATION OF BOSNIA AND HERZEGOVINA

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

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

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

Having considered the 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 is a citizen of Bosnia and Herzegovina of Serb descent. She was an occupancy right holder over an apartment in Sarajevo. In April 1992 soldiers of the Army of the Republic of Bosnia and Herzegovina ("RBiH") entered the apartment and threatened the applicant and her children. The applicant and her children left Sarajevo shortly afterwards, while her husband remained. He obtained permission to leave Sarajevo in January 1995 in order to visit a sick relative. While the apartment was vacant, it was occupied by a number of soldiers of the Army of the Republic of Bosnia and Herzegovina "RBiH". In March 1995 the apartment was declared abandoned and allocated to B.H. The case concerns the proceedings taken by the applicant to regain possession of her apartment and property therein.

2. The case raises issues principally under Articles 6, 8 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 introduced on 24 November 1997 and registered on the same day.

4. On 10 April 1998 the Chamber requested the applicant to provide some further information regarding her application. On 12 April 1998 the applicant responded.

5. On 10 April 1998, the Chamber requested the Ombudsmen of the Federation of Bosnia and Herzegovina to send further information regarding the applicant's application submitted to the Ombudsmen on 17 November 1997. On 20 April 1998 the Ombudsmen forwarded the requested information.

6. On 29 May 1998 the Chamber decided to transmit the application to the respondent Party for observations on the admissibility and merits. On 11 June 1998 the respondent Party submitted its observations.

7. On 23 June 1998 the Chamber transmitted the observations submitted by the respondent Party to the applicant. On 1 July 1998 the applicant replied to the Federation's observations and submitted her request for compensation.

8. By a letter of 3 July 1998 the Chamber transmitted the applicant's observations and the compensation claim of 1 July 1998 to the respondent Party.

9. On 6 July 1998 the applicant submitted further information in relation to an administrative procedure that she had initiated in order to regain possession of her apartment.

10. On 20 July 1998 the respondent Party requested an extension of the time-limit for the submission of observations on the compensation claim. An extension of the time-limit until 28 August 1998 was granted.

11. On 23 July 1998 the Human Rights Ombudsperson for Bosnia and Herzegovina was invited to intervene in the proceedings. By a letter of 6 August 1998 she informed the Chamber that she would not intervene.

12. On 6 August 1998 the Chamber became aware that the applicant had also submitted an application to the Commission for Real Property Claims of Displaced Persons and Refugees (established by Annex 7 to the General Framework Agreement for Peace in Bosnia and Herzegovina; henceforth "the Annex 7 Commission").

13. On 1 September 1998 the applicant informed the Chamber that she had been entitled to re-possess her apartment by a decision of 3 August 1998 from the Cantonal Administration for Housing Affairs. By a letter of 17 September 1998 the applicant informed the Chamber that there were no developments in the case and that she had not re-entered into the apartment.

14. On 23 October 1998 the applicant was requested to keep the Chamber informed of any developments in the case.

15. On 23 October 1998 the respondent Party was informed by the Chamber that the time-limit for the receipt of its observations on the applicant's request for compensation had expired. The respondent Party was invited to submit observations as soon as possible and at the same time to submit reasons for its non-compliance with the time-limit. The Chamber further requested the respondent Party to specify the terms of a friendly settlement based on the respect for the rights and freedoms referred to in the Agreement.

16. The applicant addressed the Chamber on 12 and 15 January 1999 stating that there had been no developments in the case. On 20 January 1999 the Chamber requested the applicant to answer specific questions related to domestic court and administrative proceedings. On 25 January 1999 the applicant responded.

17. On 29 January 1999 the applicant informed the Chamber that the decision allowing her to enter into the apartment had been annulled.

18. On 25 February 1999 the Chamber invited the respondent Party to submit further observations on the developments of the case.

19. On 26 March 1999 the respondent Party submitted its observations.

20. On 14 May 1999 the Chamber deliberated on the admissibility and merits of the case and adopted the present decision.

## III. ESTABLISHMENT OF THE FACTS

### A. The particular facts of the case

#### 1. Administrative proceedings

21. The facts of the case, as they appear from the applicant's and the Government's submissions and the documents in the case file, are in essence not in dispute and may be summarised as follows.

22. The applicant is the occupancy right holder over an apartment in Hamdije Kreševljakovića Street No. 60/6 (formerly Dobrovoljačka No.50/6) in Sarajevo. On 9 April 1992 a number of soldiers of the Army of RBiH entered the apartment, threatening the applicant and her children that they would be shot if snipers were found in the apartment. The applicant and her children left Sarajevo shortly afterwards. Her husband remained in the apartment. He obtained permission to leave Sarajevo in January 1995 in order to visit a sick relative. During the temporary absence, the applicant's father frequently checked on the apartment. On 10 March 1995 during one of these visits, he was allegedly attacked by soldiers of the Army of RBiH, including B.H. who had occupied the apartment. The applicant and her husband are currently living in Abu Dhabi in the United Arab Emirates.

23. On 11 March 1995 the Municipal Secretariat for Housing Affairs declared the apartment temporarily abandoned, and on 27 April 1995 allocated it temporarily to B.H. The applicant never received a decision.

24. On 14 July 1997 the applicant submitted a request to the Municipal Secretariat for Housing Affairs in Sarajevo for her reinstatement into the apartment. This request was rejected on 17 October 1997 as being out of time under the 1994 Law on Abandoned Apartments (hereinafter "the old Law"). On 14 November 1997 the applicant filed an appeal to the Ministry for Urban Planning and Environment of the City of Sarajevo. On 5 May 1998 the Ministry annulled the conclusion in the above-mentioned decision and referred the case back for reconsideration. The Ministry found that the matter of repossession of the applicant's apartment should be resolved pursuant to the 1998 Law on Cessation of the Application of the Law on the Abandoned Apartments (hereinafter "the new Law").

25. On 2 June 1998 the applicant submitted a new request for her reinstatement into the apartment. By a decision of 3 August 1998 the Cantonal Administration for Housing Affairs, in pursuance of Articles 4, 6 and 7 of the new Law confirmed her occupancy right and entitled her to re-possess the apartment. The decision further established that the temporary occupancy right of B.H. based upon the decision of 27 April 1995 had been terminated. B.H. was obliged to vacate the apartment within three days of the date of the decision. B.H. appealed the decision. According to Article 8 of the new Law, an appeal does not suspend the execution of a decision on reinstatement.

26. On 8 September 1998 the applicant requested the Cantonal Administration for Housing Affairs to order the eviction of the B.H. and her family. The applicant has never received a reply.

27. On 19 November 1998 the Cantonal Ministry for Urban Planning and Housing Affairs annulled the decision of 3 August 1998 and returned the case to the Cantonal Administration for Housing Affairs for reconsideration. The Ministry reasoned that the Cantonal Administration had failed to; (1) summon the owner of the apartment, thereby violating Articles 8, 133 and 141 of the Law on Administrative Procedure; (2) examine the conditions prescribed in Article 3(2) of the new Law; and (3) decide whether the temporary user had another accommodation in terms of Article 7(1) of the new Law. The Cantonal Administration had also stipulated a three day time-limit for eviction of the temporary user instead of the 90-day time limit prescribed by Article 7 of the new Law.

28. The Cantonal Administration for Housing Affairs has not issued a new decision to date despite the strict 15-day time limit to render a new decision, according to Article 239(3) of the Law on Administrative Procedure.

### 2. Civil court proceedings

29. On 8 May 1995 the applicant initiated civil proceedings before the Municipal Court in Sarajevo, seeking an order restoring her possession of certain household items which had been inventoried by the authorities after they declared the apartment abandoned. After twenty hearings the Municipal Court issued on 21 February 1997 a judgement in terms sought by the applicant. However, the defendant B.H. filed an appeal to the Cantonal Court in Sarajevo. The Cantonal Court found that the first instance judgement had certain procedural deficiencies and issued a decision of 4 October 1997 to return the case to the Municipal Court for reconsideration. The Municipal Court since then scheduled two hearings, for 28 September 1998 and 2 December 1998, but according to the applicant the case has not been resolved.

## B. Relevant legislation

### 1. The 1994 Law on Abandoned Apartments

30. On 15 June 1992 the Presidency of the then Republic of Bosnia and Herzegovina issued a Decree with Force of Law on Abandoned Apartments. The Decree was adopted by the Assembly of the Republic of Bosnia and Herzegovina as a law on 1 June 1994 ("the old Law"). The 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.

31. Under Article 1 of the old Law an occupancy right was to be suspended if the holder of that right and the members of his or her household had abandoned the apartment after 30 April 1991. Article 2 defined an apartment as having been abandoned already if, even temporarily, it was not being used by the occupancy right holder or the members of his or her household. Article 3 provided for some exceptions to the definition, namely

> (a) where the occupancy right holder and members of his or her household had been forced to leave the apartment as a result of aggressive actions intended to execute a policy of ethnic cleansing of a particular population from certain areas or in the course of a pursuit of other goals of the aggressors;

(b) if the apartment was destroyed, burnt or in direct jeopardy as a result of war actions;

(c) if the holder of the occupancy right and members of his or her household had resumed using the apartment either within seven days from the issuing of the declaration on the cessation of the state of war (if the holder of the right had been staying within the territory of the Republic of Bosnia and Herzegovina) or within fifteen days from the issuing of the declaration (if he or she had been staying outside that territory);

(d) if the holder of the occupancy right or members of his or her household had, within the terms of the requisite permission to stay abroad or in another place within the country, left the apartment for the purpose of effecting a private or business journey; had been sent as a representative of a state authority, enterprise, state institution or other organisation or association upon the request of, or with the approval of, a competent state authority; had been sent for medical treatment; or had joined the armed forces of the Republic of Bosnia and Herzegovina.

32. The Presidency of the Republic of Bosnia and Herzegovina declared the Republic of Bosnia and Herzegovina to be at war on 20 June 1992 (Official Gazette (*"Službeni list")* of the Republic of BiH No. 7/92). The Decision on the Cessation of the State of War was taken on 22 December 1995 (Official Gazette, No. 50/95). It was published on the bulletin board of the Presidency Building of the Republic in Sarajevo and entered into force on the same day. The issue of the Official Gazette comprising this decision was published on 5 January 1996.

33. A state organ, a holder of an allocation right, a political organisation, a social organisation, an association of citizens or a housing board could initiate proceedings seeking to have an apartment declared abandoned. The competent municipal housing authority was to decide on a request to this end within 7 days and could also *ex officio* declare an apartment abandoned. Failing a decision within this time limit, it was to be made by the Minister for Urban Planning, Housing and Environment (Articles 4-6 of the old Law). Interested parties could challenge a decision by the municipal organ before the same Ministry but an appeal had no suspensive effect.

34. An apartment declared abandoned could be allocated for temporary use to "an active participant in the fight against the aggressor against the Republic of Bosnia and Herzegovina" or to a person who had lost his or her apartment due to hostile action. 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 under the threat of eviction to vacate the apartment at the end of that period and to place it at the disposal of the organ which allocated it (Articles 7-8).

35. If the holder of the occupancy right failed to resume using the apartment within the time limit of one or two weeks as laid down in Article 3 read in conjunction with Article 10, he or she was to be regarded as having abandoned the apartment permanently. The resultant loss of the occupancy right was to be recorded in a decision by the competent authority (Article 10).

**2. The 1998 Law on the Cessation of the Application of the Law on Abandoned Apartments**

36. 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)).

37. 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 (Articles 6 and 7). 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 appeal lies to the Cantonal Ministry for Housing Affairs within 15 days from the date of receipt of the decision. 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)).

38. 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).

39. 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 every 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).

40. 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).

41. 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 the 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 until 4 July 1999.

42. 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).

### 3. The Law on Administrative Procedure

43. Under Article 139 of the Law on Administrative Procedure (Official Gazette of the Federation, No. 2/98) the competent administrative authority may issue a decision following summary proceedings when the facts are not in dispute. Under Article 200 the competent administrative authority issues a decision on the basis of the facts established in ordinary administrative proceedings. Under Article 275 the competent administrative organ has to issue a decision to execute an administrative decision within 30 days upon receipt of a request to this effect. Article 216(3) provides for an appeal to the administrative appellate body if a decision is not issued within this time limit.

44. Article 239(2) of the Law on Administrative Procedure (Official Gazette of the Federation, No. 2/98) stipulates that in a case where the second instance body finds that eliminating flaws in the first instance procedure can be more speedily and economically done by the first instance body, the second instance shall nullify the first instance decision and refer the case back for a review procedure. In such cases, the second instance body is obliged to point out to the first instance body how the procedure should be completed. The first instance body is obliged to act upon the second instance decision in all aspects and without delays and no later than 15 days from the day of the receipt of the returned case. A party has a right to appeal the new decision.

## IV. COMPLAINTS

45. The applicant complains that her fundamental rights have been violated due to the fact that she cannot return to her apartment. She further complains that her right to a fair hearing within a reasonable time and her right to the peaceful enjoyment of her property have been violated. The applicant invokes Articles 6 and 8 of the Convention as well as Article 1 of Protocol No. 1 to the Convention.

## V. SUBMISSIONS OF THE PARTIES

### 1. The respondent Party

46. As to the admissibility of the case, the Federation states that the application submitted to the Chamber is premature as the proceedings under the new Law are still pending. With regard to the applicant's moveable property, the case is still pending before the Municipal Court. The Federation argues that it is indisputable that the applicant is entitled to her moveable property claimed in the apartment. In the Federation's opinion, it is most likely that the Municipal Court will make a determination in her favour. Therefore, effective remedies still exist which the applicant has not exhausted.

47. As for the merits, the Federation states that they have not interfered with the applicant's right to respect for her family life and home guaranteed by Article 8 of the Convention nor with the applicant's "possessions" as protected by Article 1 Protocol No. 1 to the Convention. The Federation argues that because the applicant willingly left her home she accepted the known consequences of her departure during the state of hostilities.

48. The Federation further argues that paragraph 2 of Article 1 of Protocol No. 1 to the Convention protects rights of ownership for which an occupancy right does not provide. In the alternative, it is argued that the interference with the applicant's property rights was justified, given the need to provide alternative accommodation to a temporary occupant who could no longer inhabit his dwelling

due to the hostilities. Finally, the Federation considers that there has not been a violation of Article 6 of the Convention as the applicant's claims have been examined in a timely manner by lawful, independent and impartial courts.

### 2. The Applicant

49. The applicant claims that the temporary occupant could not have believed that the apartment and the applicant's property therein had been declared abandoned because B.H. assaulted her father when intruding into the apartment. In any event, the applicant states that the Federation's ongoing interference with her property right is not justified because the temporary occupant has had other accommodation since 1996 when his home was reconstructed. Finally, the applicant claims there has been a continuing obstruction of justice with regard to both the return of her apartment and the moveable property therein.

## VI. OPINION OF THE CHAMBER

## A. Admissibility

### 1. Competence *ratione temporis*

50. 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. According to Article VIII(2)(c), the Chamber shall dismiss any application which it considers incompatible with the Agreement.

51. The Chamber notes *proprio motu* that the applicant's apartment was declared temporarily abandoned prior to the entry into force of the Agreement on 14 December 1995. The Chamber observes, however, that the applicant's grievance relates to a situation which has continued up to date, namely the impossibility for her to return to her pre-war dwelling. The Chamber is therefore competent *ratione temporis* to examine the case in so far as the situation has continued past 14 December 1995. In doing so the Chamber can also take into account, as background, events prior to that date.

### 2. *Lis alibi pendens*

52. According to Article VIII(2)(b) of the Agreement, the Chamber shall not address any application which is substantially the same as a matter which has already been examined by the Chamber or has already been submitted to another procedure of international investigation or settlement. Moreover, under Article VIII(2)(d) of the Agreement the Chamber may reject or defer further consideration of a case, if it concerns a matter currently pending before any other international human rights body responsible for the adjudication of applications or the decision of cases, or any other Commission established by the Annexes to the General Framework Agreement.

53. The Chamber notes that the applicant has also claimed the return of her apartment by petitioning the Annex 7 Commission on 21 November 1997. According to Annex 7, the mandate of that Commission is confined to decisions on claims for real property in Bosnia and Herzegovina, where the property has not been sold voluntarily or otherwise transferred since 1 April 1992 and where the claimant does not now enjoy possession of that property. The Chamber notes that in the present case the applicant has raised several complaints essentially different from the subject matter which she has brought before the Annex 7 Commission. These complaints all fall outside the Annex 7 Commission's competence.

54. The Chamber finds therefore that the applicant's pending claim before the Annex 7 Commission does not preclude the Chamber from examining the whole of her present case before the Chamber. Moreover, even if one of the matters now before the Chamber remains pending before the Annex 7 Commission, the Chamber does not find it appropriate to defer further consideration of the present application or part of it.

### 3. Exhaustion of effective domestic remedies

55. According to Article VIII(2)(a) of the Agreement, the Chamber must consider whether effective remedies exist and whether the applicant has demonstrated that they have been exhausted. The Chamber 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 Chamber 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 of the Contracting Party concerned but also of the general legal and political context in which they operate as well as of the personal circumstances of the applicants (see *Blentić v. The Republika Srpska,* Case No. CH/96/17, decision of 3 December 1997, Decisions 1996-1997, paragraphs 19-21, with references to corresponding case law of the European Court).

56. In the present case the Federation objects to its admissibility primarily on the ground that the domestic remedy provided by the new Law has not yet been exhausted as there are proceedings still pending. It is not for the Chamber to examine the new Law in general, in isolation from the manner in which it is being applied by the competent authorities. Accordingly, while the new Law has afforded a remedy which might in principle qualify as an effective one within the meaning of Article VIII(2)(a) of the Agreement in so far as the applicant is seeking to return to her apartment, the Chamber must ascertain whether in the case now before it this remedy can also be considered effective in practice.

57. The Chamber notes that the applicant initiated proceedings under the 1998 Law with a view to being reinstated into her apartment. However, the resultant decision confirming her occupancy right and ordering the temporary occupant to vacate the apartment was appealed to the Cantonal Ministry. The appeal was not to have suspended the reinstatement of the applicant according to Article 8 of the 1998 Law. Nonetheless, no execution has occurred. By a decision of 19 November 1998 the Ministry returned the applicant's request for reconsideration. These proceedings are still pending despite the strict 15-day time limit for rendering a decision as stipulated in Article 239(3) of the Law on Administrative Procedure.

58. The proceedings before the Municipal Court initiated in 1995 in order to have certain household items restored also remain pending, despite the admission by the respondent Party that the items indisputably belong to the applicant. No reasons have been put forward to explain this current delay.

59. In these particular circumstances the Chamber is satisfied that that the remedies attempted cannot be considered effective in practice and the applicant should not be required to exhaust, for the purposes of Article VIII(2)(a) of the Agreement, any further remedy provided by domestic law.

60. As no ground for declaring the case inadmissible has been established, the Chamber declares the application admissible.

## B. Merits

61. Under Article XI of the Agreement the Chamber must next address the question whether the facts established above disclose a breach by the respondent Party of its obligations under the Agreement. Under 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. Article 8 of the Convention

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

> "1. Every one has the right to respect for ..., his home ...
>
> 2. There shall be no interference by a public authority with the exercise of their 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."

63. The Federation argues that it did not interfere in the exercising of the applicant's rights protected under Article 8 of the Convention because the applicant left her apartment on her own accord. Therefore the Federation argues it should not be held responsible for the events which followed her departure.

64. The Chamber notes that after the applicant's family departed from Sarajevo her apartment was occupied by members of the army. After the end of the war the applicant and her family were unable to return to their dwelling, as on 11 March 1995 it had been declared temporarily abandoned and temporarily allocated to B.H on 27 April 1995. As from 1997 the applicant repeatedly contested these decisions of 1995 but was unable to obtain any final decision in her favour. In these circumstances and bearing in mind its competence *ratione temporis* (see paragraph 50 and 51 above) the Chamber cannot but find that after 14 December 1995 up to the entry into force of the new Law the authorities, by applying the old Law, continued to consider the applicant's apartment abandoned, thereby refusing to allow her to return there.

65. In the circumstances of the case the Chamber does not find that the applicant and her family's departure from Sarajevo could be considered as a waiver of their rights under Article 8 of the Convention. The Chamber has already found that the links which an applicant facing similar difficulties retained to her dwelling sufficed for this to be considered her "home" for the purposes of Article 8 paragraph 1 of the Convention. (see *Onić v. The Federation of Bosnia and Herzegovina,* Case No. CH/97/589, decision of 12 February 1999, paragraph, 48, with references to case law of the European Court). The Chamber furthermore considers that there has been an ongoing interference with the present applicant's right to respect for her home.

66. 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 *Onić* decision of 12 February 1999, paragraph 49). There will be a violation of Article 8 if any one of these conditions is not satisfied.

67. The Chamber has already found that the provisions of 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 *Onić* decision, paragraph 50). Accordingly, the provision was violated already by virtue of the authorities' effective refusal after 14 December 1995 to allow the applicant to return to her apartment.

68. The present case also relates to the application of the new Law. The Chamber has already noted (in paragraph 57) that the temporary occupant's ("B.H.") appeal has effectively suspended any execution of the decision of 3 August 1998 entitling the applicant to repossess her apartment. Such suspension is not foreseen by the new Law. In addition, the procedure following the return of the applicant's repossession claim to the Cantonal Administration in response to B.H.'s appeal has not been in accordance with the Law on Administrative Procedure. The Chamber would add that even the initial decision of 3 August 1998 was not made within the time limit under the new Law. In addition to the violation of Article 8 of the Convention stemming from the fact that the refusal, by application of the old Law, to allow the applicant to return to her apartment was not "in accordance with the Law," there is a further 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 the applicant's repossession claim and for executing the decision in her favour dated 3 August 1998 has not been "in accordance with the law" either.

69. Accordingly, the Chamber concludes that Article 8 of the Convention has been violated, given both the refusal under the old Law to allow the applicant to return to her apartment and the failure to comply with the procedure laid down by domestic law with respect to the examining of her claim for repossession and the non-execution of the decision of 3 August 1998 effectively entitling her to return to that dwelling.

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

70. The applicant complains, in essence, that her right to peaceful enjoyment of her possession has been and continues to be violated as a result of the decision declaring her apartment abandoned, the allocation to B.H. of a temporary right to use the apartment and the effective prevention of the applicant's return into this dwelling. The Chamber will examine the complaint under Article 1 of Protocol No. 1 to the Convention which provides 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."

71. The Federation has argued that the rights protected by Article 1 of Protocol No. 1 have not been endangered by any acts of the respondent Party because the applicant willingly moved from the apartment. It is further maintained that paragraph 2 of this provision is inapplicable because it protects ownership rights and the applicant only holds an occupancy right. Furthermore, there has been no violation of this provision, as the temporary allocation of the applicant's apartment to B.H. was necessary in the public interest so as to solve an urgent housing problem.

72. With reference to paragraph 65 above and in the circumstances of the case the Chamber does not find that the applicant and her family's departure from Sarajevo could be considered as a waiver of their rights under Article 1 of Protocol No. 1 to the Convention.

73. The Chamber further notes that Article 1 Protocol No. 1 applies not only to "ownership rights" as stated by the respondent Party, but also extends to the protection of "possessions". The opinion that only possessions in the sense of the Roman Law and within the meaning of the domestic law of the respondent Party are protected under Article 1 does not conform with the jurisprudence of the European Court of Human Rights. The word "possessions" is understood in a broader sense and implies various assets.

74. The Chamber has already found that an occupancy right can indeed be regarded as a "possession", it being a valuable asset giving the holder the right, subject to the conditions prescribed by the law, to occupy an apartment indefinitely (see *M.J. v. The Republika Srpska*, No. CH/96/28, decision of 7 November 1997, Decisions 1996-1997, paragraph 32 and the aforementioned Onić decision, paragraph 55). In the above cases the Chamber recalled, *inter alia*, that the European Court of Human Rights has indeed given a wide interpretation to the concept of "possessions", holding that the notion covers a wide variety of rights and interests with an economic value (see, e.g*., Van Marle v. Netherlands* judgment of 26 June 1986, Series A No. 101, paragraph 41*; Pressos Compania Naviera S.A. v. Belgium* judgment of 20 November 1995, Series A No. 332, paragraph 31).

75. The Chamber has further found that a decision declaring permanently abandoned an apartment over which someone enjoyed an occupancy right, and the allocation thereof to another person pursuant to the old Law, amounted to a *de facto* expropriation which was not "subject to the conditions provided for by law" and thereby in violation of Article 1 of Protocol No. 1 (see the above-mentioned Onić decision, paragraph 56). The Chamber finds no reason to differ in the present case.

76. Accordingly, this provision was violated already by virtue of the authorities' effective refusal after 14 December 1995 up to 3 August 1998 to recognise the applicant's occupancy right and to allow her to return to her apartment.

77. The applicant's grievance under this provision extends to the failure of the authorities to decide finally on her claim for repossession. The Chamber has already noted (in paragraphs 57 and 68 above) that the applicant's claim for repossession has not been examined in compliance with the time-limits stipulated in the new Law and the Law on Administrative Procedure. Despite the wording of

the new Law the decision in the applicant's favor of 3 August 1998 has not been executed. In addition to the violation stemming from the decision to declare the applicant's apartment permanently abandoned, there has thus also been a continuing violation of the applicant's right to the peaceful enjoyment of her possessions within the meaning of Article 1 of Protocol No. 1, in so far as the procedure for examining her repossession claim and executing the decision in her favor of 3 August 1998 has not been "subject to the conditions provided for by law".

78. Accordingly, the Chamber concludes that Article 1 of Protocol No. 1 has been violated, given both the refusal under the old Law to allow the applicant to return to her apartment and the failure to comply with the new Law and Law on Administrative Procedure, with respect to the applicant's claim for repossession, these failures having prevented her from returning to her apartment.

### 3. Article 6 of the Convention

79. The applicant also complains that her right to efficient legal protection for her occupancy right and the moveable property in the apartment have been violated.

80. The Chamber has already found that a dispute relating to the existence of an occupancy right falls, within the ambit of Article 6 paragraph 1 of the Convention (see *Kevesević v. The Federation of Bosnia and Herzegovina,* Case No. CH/97/46, decision of 12 September 1998*,* Decisions and Reports 1998*,* paragraph 63). The Chamber further finds that the dispute regarding her possessions in the apartment likewise fall within the ambit of Article 6 paragraph 1 of the Convention. Article 6 paragraph 1 reads, in relevant parts, as follows:

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

81. Given its findings in respect of Article 8 and Article 1 of Protocol 1 of the Convention, the Chamber finds it unnecessary to examine the complaint under Article 6 in so far as regards the dispute relating to the applicant's occupancy right.

82. As for the dispute concerning the applicant's moveable possessions in the apartment, the Chamber notes that the civil proceedings initiated by her in May 1995 remain pending. When assessing the length of proceedings for the purposes of Article 6(1) of the Convention, the first step is to determine the period to be taken into consideration. The Chamber finds that due to its competence *ratione temporis* it can assess the length of the proceedings only in so far as they have continued beyond 14 December 1995. The stage which the proceedings had reached on that date can nonetheless be taken into account as background information.

83. In the present case, the proceedings had already been pending for seven months when the Agreement entered into force. A further fourteen months period passed before the Municipal Court issued the initial judgement, which included the terms sought by the applicant. On appeal, the Cantonal Court returned the case to the Municipal Court for re-consideration. More than a year and half later, the Municipal Court scheduled two hearings in September and December 1998 but a final determination of the dispute has not been made. In sum the proceedings have been pending for three and a half years since 14 December 1995.

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

85. The Chamber must first determine whether the complexity of the case warrants the length of proceedings complained of. The Federation submits that it is indisputable that the applicant is entitled to her claim. The claim does not appear to be complex, as the authorities had inventoried her moveable property at the time the apartment was declared abandoned. Neither party alleges any reasons for the current delay. In light of these particular facts and admissions by the respondent

Party, it is the Chamber's opinion that the present length of time is unreasonable for these proceedings, which are still pending.

86. Given the above facts, the Chamber finds a violation of Article 6(1) of the Convention in regard to the length of proceedings relating to the applicant's moveable property.

## VII. REMEDIES

87. Under Article XI paragraph 1(b) of the Agreement the Chamber must address the question 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 injuries) as well as provisional measures.

88. The applicant has requested the Chamber to order that she be effectively reinstated into her apartment. In addition the applicant claims the amount of 70,000 DEM as pecuniary damage for all moveable property. The applicant claims the amount of 50,000 DEM for pain suffered by her and her family. Finally, the applicant claims the amount of 100,000 DEM as pecuniary damage for the apartment, if the competent authority continues to obstruct further proceedings and do not allow the applicant to return to the apartment.

89. The Chamber considers it appropriate to order the Federation to process the applicant's repossession claim without further delay and to take all necessary steps to enable the applicant, whose occupancy right has already been confirmed by an enforceable decision under the new Law, to return swiftly to her apartment.

90. As for the claim for compensation of moveable possessions, the Chamber may leave open the question whether this claim is premature (given the uncertainty as to what possessions have remained in the applicant's apartment and in what condition they are). The Chamber recalls that where it has not been shown that the alleged loss of or damage to property was directly caused by the respondent Party or any person acting on its behalf, the respondent Party cannot be held responsible (see, e.g., *Blentić* and *Bejdić v. The Republika Srpska*, Cases Nos. CH/96/17 and CH/96/27, decisions of 22 July 1998, Decisions and Reports 1998, paragraphs 10 and 11, respectively). In the present case no such responsibility can be established. This claim must therefore be rejected. The applicant's claim for further pecuniary damage in the amount of 100,000 DEM appears to be of a conditional nature, should she be further prevented from returning to her apartment. The Chamber has just ordered the Federation to enable the applicant to return swiftly to her apartment. In these circumstances the issue of compensation in this respect does not arise.

91. As for the claim for non-pecuniary damage in the amount of 50,000 DEM, the Chamber considers that the present decision finding violations of the applicants' rights under the Agreement constitutes adequate satisfaction (see *Bulatovic v. The Federation of Bosnia and Herzegovina,* Case No. CH/98/22, decision of 15 July 1998, Decisions and Reports 1998, paragraph 18).

## VIII. CONCLUSIONS

92. For the above reasons, the Chamber decides:

1. unanimously, that the refusal to allow the applicant to return to her apartment, the failure to comply with the procedure laid down by the domestic law with respect to the examination of her claim for repossession and the non-execution of the decision of 3 August 1998 have involved a violation by the Federation of her right to respect for her home within the meaning of Article 8 of the Convention, the Federation thereby being in breach of Article I of the Agreement;

2. unanimously, that the refusal to allow the applicant to return to her apartment, the failure to comply with the procedure laid down by domestic law with respect to the examination of her claim for repossession and the non-execution of the decision of 3 August 1998 have involved a violation by the Federation of her right to peaceful enjoyment of her possessions within the meaning of Article 1 of Protocol No. 1 to the Convention, the Federation thereby being in breach of Article I of the Agreement;

3. by 6 votes to 1, that in so far as the civil court proceedings concerning her moveable property have lasted beyond a reasonable time, there has been a violation of Article 6 paragraph 1 of the Convention, the Federation thereby being in breach of Article I of the Agreement;

4. unanimously, to order the Federation to take all necessary steps to process the applicant's repossession claim without further delay, and to enable the applicant to return swiftly to her apartment;

5. unanimously, to reject the applicant's claims for compensation; and

6. unanimously, to order the Federation to report to it by 11 September 1999 on the steps taken by it to comply with the above order.

(signed)
Leif BERG
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel