DECISION ON ADMISSIBILITY AND MERITS

(delivered on 9 June 2000)

Cases nos. CH/98/1124, CH/98/1126, CH/98/1127, CH/98/1130, CH/98/1131, CH/98/1132, CH/98/1133, CH/98/1134, CH/98/1135, CH/98/1136, CH/98/1139, CH/98/1141, CH/98/1144, CH/98/1145, CH/98/1146, CH/98/1147, CH/98/1148, CH/98/1149, CH/98/1150, CH/98/1151, and CH/98/1153

Fehreta and Refik DIZDAREVIĆ, Munib RAKOVIĆ, Hasan HATIĆ, Mirsad PIVAČ, Ziza DEMO, Avdo ĆIRKIĆ, Šukrija HATIĆ, Atifa RIZVANOVIĆ, Kadir LOJIĆ, Ismet LOJIĆ, Šaban NEŠKIĆ, Muhamed ANADOLAC, Ibrahim DRNDIĆ, Šerif CRNKIĆ, Muharem HALILOVIĆ, Hakija HADŽIHAFIZOVIĆ, Ramadan MESIĆ, Ramadan SAMARDŽIĆ, Said ŠARAC, Sakib NEŠKIĆ, and Enes PORIĆ

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 10 May 2000 with the following members present:

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

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

Having considered the aforementioned 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;

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 applicants are citizens of Bosnia and Herzegovina of Bosniak descent. They are owners of real property in the Gradiška area in the Republika Srpska, who were forced to leave them during the war. Their properties are or were occupied by refugees and internally displaced persons of Serb origin, most of whom received decisions from the authorities of the Republika Srpska entitling them to do so. Most of the applicants left the Republika Srpska during the war and have now returned to the area. In two of the cases (CH/98/1124 Mr. Ćirkić and CH/98/1134 Ms. Rizvanović) the applicants have regained possession of their properties and in one further case (CH/98/1124 Mr. and Mrs. Dizdarević) the applicants have succeeded in regaining possession of part of their property.

2. The cases concern their attempts before various authorities of the Republika Srpska to regain possession of their property. The applicants have taken all or some of the following steps to this end: applying to the Commission for the Accommodation of Refugees and Administration of Abandoned Property in Gradiška ("the Commission") and the Ministry for Refugees and Displaced Persons ("the Ministry") under the Law on Use of Abandoned Property which entered into force in February 1996 ("the old law", see paragraphs 97-105 below), initiating proceedings before the Court of First Instance in Gradiška ("the court"), applying to the Commission under the Law on Cessation of Application of the Law on Use of Abandoned Property which entered into force in December 1998 ("the new law", see paragraphs 106-119 below) and applying to various political institutions of the Republika Srpska. The Commission is competent to decide on applications for repossession of property under both the old and new laws. The facts of each individual case are set out briefly at Section III below.

3. The cases raise issues principally under Articles 6 and 8 of the European Convention on Human Rights, under Article 1 of Protocol No. 1 to the Convention and under Article II(2)(b) of the Agreement in relation to discrimination in the enjoyment of the above-mentioned rights.

II. PROCEEDINGS BEFORE THE CHAMBER

4. The applications were submitted and registered between 16 July and 14 September 1998. The applicants are all represented by the legal assistance centre "Terra" in Gradiška.

5. A number of the applicants requested that the Chamber order the respondent Party as a provisional measure that they be allowed to regain possession of their properties. At its sessions in December 1998 and January 1999 the Chamber decided to reject such requests where they were made and to transmit the cases to the Republika Srpska for observations on their admissibility and merits. These observations were received on 19 March 1999.

6. The observations were sent to the representative of the applicants on 13 April 1999 and the applicants were requested to submit any further observations or requests for compensation or other relief they wished to make. On 14 April 1999 these were received by the Chamber and on 20 April 1999 were sent to the Republika Srpska for its further observations. These were received on 22 June 1999 and sent to the representative of the applicants on 5 July 1999 for information.

7. On 22 February 2000 the Chamber wrote to the representative of the applicants requesting a factual update on the cases. This update was received by the Chamber on 13 April 2000 and sent to the Republika Srpska for information.

8. The Chamber deliberated on the admissibility and merits of the applications on 10 May 2000 and decided to join the applications and adopted the present decision.

III. FACTS

A. The facts of the individual cases

9. All of the applications concern land situated in villages or settlements in the Gradiška area, on which houses and certain accessory buildings are situated. The applicants lost possession of their properties during the war.

10. All of the properties either are or were occupied by refugees or displaced persons of Serb origin. In all but two of the cases, the applicants have stated that these persons did so in accordance with decisions of the Commission. The applicants in the other two cases, Mr. Raković (CH/98/1126) and Ms. Demo (CH/98/1131), state that they have no specific confirmation concerning the legal basis, if any, upon which their properties are occupied.

11. In the course of 1997 and 1998, all of the applicants applied to the Commission under the old law to regain possession of their properties and made additional submissions regarding their applications to the Ministry at second instance. None of them ever received any decision on any of their applications. The date of the first application in this regard made by each applicant is set out below.

12. Unless otherwise specified, the applicants have not initiated court proceedings seeking to regain possession of their properties.

13. In addition, all of the applicants have applied under the new law to regain possession of their properties. The details of such applications are set out below in respect of each case.

1. Case no. CH/98/1124 Fehreta and Refik Dizdarević

14. The applicants are the owners of land in Gradiška as evidenced by extract numbers 428 and 509 from the Cadastral Registry in Gradiška.

15. The applicants first applied to the Commission under the old law on 19 February 1998.

16. In the course of 1998 they initiated proceedings against the current occupants of the property before the court, seeking their eviction. On 24 November 1998 the court issued its decision, in which it declared itself incompetent to consider the matter as it concerned abandoned property. On 4 January 1999 the applicants appealed to the Regional Court against this decision. According to the information available to the Chamber, there has been no decision on this appeal to date.

17. On 29 December 1998 the applicants applied to the Commission under the new law to regain possession of their property. On 3 March 1999 it issued a decision entitling them to regain possession of it. The date set for such reentry was 5 March 1999. On that date they succeeded in regaining possession of part of the property, consisting of one floor of their house. The remainder is still occupied by displaced persons of Serb origin from the Federation of Bosnia and Herzegovina. The applicants have sought execution of the decision of 3 March 1999, so far without success.

2. Case no. CH/98/1126 Munib Raković

18. The applicant is the owner of land in Gradiška as evidenced by extract number 667 from the Cadastral Registry in Gradiška.

19. The applicant first applied to the Commission under the old law on 4 June 1998.

20. On 30 December 1998 he applied to the Commission under the new law to regain possession of the property. On 30 March 1999, after the applicant had lodged a complaint concerning the failure to issue a decision within the relevant time-limit, the Commission issued a decision entitling him to regain possession of the property and ordering the current occupants to

vacate it. The applicant has sought execution of this decision, but has not yet succeeded in regaining possession of the property to date.

3. Case no. CH/98/1127 Hasan Hatić

21. The applicant is the owner of land in Gradiška as evidenced by extract number 786 from the Cadastral Registry in Gradiška.

22. The applicant first applied to the Commission under the old law on 27 May 1998.

23. On 11 March 1999 he applied to the Commission under the new law to regain possession of the property. On 26 June 1999 it issued a decision entitling him to regain possession of the property and ordering the current occupants to vacate it. The applicant has sought execution of this decision, but has not yet succeeded in regaining possession of the property to date.

4. Case no. CH/98/1130 Mirsad Pivač

24. The applicant is the owner of land in Gradiška as evidenced by extract number 809 from the Cadastral Registry in Gradiška.

25. The applicant first applied to the Commission under the old law on 29 May 1998.

26. After the entry into force of the new law, the applicant applied to the Commission to regain possession of the property. In August 1999 it issued a decision entitling him to regain possession of the property and ordering the current occupants to vacate it. The date set for this was 11 November 1999, but the applicant did not succeed in regaining possession of the property on that date. The applicant has sought execution of the decision of the Commission, so far without success.

5. Case no. CH/98/1131 Ziza Demo

27. The applicant is the owner of land in Gradiška as evidenced by extract number 71 from the Cadastral Registry in Gradiška.

28. The applicant first applied to the Commission under the old law on 24 December 1998.

29. On 26 January 1999 the applicant applied to the Commission under the new law to regain possession of the property. On 28 March 1999 it issued a decision entitling her to regain possession of it. The date set for such reentry was 28 June 1999. The applicant did not succeed in regaining possession of the property on that date. She states that she has requested execution of the decision.

6. Case no. CH/98/1132 Avdo Ćirkić

30. The applicant is the owner of land in Gradiška as evidenced by extract number 667 from the Cadastral Registry in Gradiška.

31. The applicant first applied to the Commission under the old law on 12 November 1997.

32. He applied to the Commission under the new law to regain possession of his property. On 20 March 1999 it issued a decision entitling him to reenter the property and on 23 April 1999 the applicant succeeded in doing so as a result of this decision.

7. Case no. CH/98/1133 Šukrija Hatić

33. The applicant is the owner of land in Gradiška as evidenced by extract number 237 from the Cadastral Registry in Gradiška.

34. The applicant first applied to the Commission under the old law on 6 July 1998.

35. On 12 January 1999 he applied to the Commission under the new law to regain possession of the property. On 20 March 1999 it issued a decision entitling him to reenter the property. The date set for such reentry was 12 April 1999. The applicant did not succeed in regaining possession of the property on that date and has on various occasions requested execution of the decision, so far without success.

8. Case no. CH/98/1134 Atifa Rizvanović

36. The applicant is the owner of land in Gradiška as evidenced by extract number 2272 from the Cadastral Registry in Gradiška.

37. The applicant first applied to the Commission under the old law on 30 June 1998.

38. On 15 September 1998 she initiated proceedings against the current occupants of the property before the court, seeking their eviction. On 21 December 1998 the court issued its decision, in which it declared itself incompetent to consider the matter as it concerned abandoned property. On 29 December 1998 the applicant appealed to the Regional Court against this decision. According to the information available to the Chamber, there has been no decision on this appeal to date.

39. On 4 February 1999 the applicant applied to the Commission under the new law to regain possession of the property. On 18 March 1999 it issued a decision entitling her to do so on 4 May 1999. She did not regain possession of it on that date. On 4 October 1999 she succeeded in regaining possession of the property on the basis of the decision of 18 March 1999.

9. Case no. CH/98/1135 Kadir Lojić

40. The applicant is the owner of land in Gradiška as evidenced by extract number 380 from the Cadastral Registry in Gradiška.

41. The applicant first applied to the Commission under the old law on 11 June 1998.

42. In early 1999 he applied to the Commission under the new law to regain possession of his property. On 28 March 1999 it issued a decision entitling him to reenter the property. The date set for such reentry has passed but the applicant has not yet succeeded in regaining possession of the property. He has requested execution of the decision.

10. Case no. CH/98/1136 Ismet Lojić

43. The applicant is the owner of land in Gradiška as evidenced by extract number 972 from the Cadastral Registry in Gradiška.

44. The applicant first applied to the Commission under the old law on 11 June 1998.

45. In early 1999 he applied to the Commission under the new law to regain possession of his property. On 28 March 1999 it issued a decision entitling him to reenter the property. The date set for such reentry has passed but the applicant has not yet succeeded in regaining possession of the property. He has requested execution of the decision.

11. Case no. CH/98/1139 Šaban Neškić

46. The applicant is the owner of land in Gradiška as evidenced by extract number 567 from the Cadastral Registry in Gradiška.

47. The applicant first applied to the Commission under the old law on 30 July 1998.

48. In early 1999 he applied to the Commission under the new law to regain possession of his property. On 29 March 1999 it issued a decision entitling him to reenter the property. The date set for such reentry has passed but the applicant has not yet succeeded in regaining possession of the property. He has requested execution of the decision.

12. Case no. CH/98/1141 Muhamed Anadolac

49. The applicant is the owner of land in Gradiška as evidenced by extract number 65 from the Cadastral Registry in Gradiška.

50. The applicant first applied to the Commission under the old law on 25 June 1997.

51. He initiated proceedings against the current occupants of the property before the court, seeking their eviction. On 22 December 1998 the court issued its decision, in which it declared itself incompetent to consider the matter as it concerned abandoned property. On 13 January 1999 the applicant appealed to the Regional Court against this decision. According to the information available to the Chamber, there has been no decision on this appeal to date.

52. In early 1999 the applicant applied to the Commission under the new law to regain possession of his property. On 20 March 1999 it issued a decision entitling him to regain possession of the property. The date set for such reentry was 19 April 1999. The applicant did not succeed in regaining possession of the property on that date and has requested execution of the decision.

13. Case no. CH/98/1144 Ibrahim Drdić

53. The applicant is the owner of land in Gradiška as evidenced by extract number 196/5 from the Cadastral Registry in Gradiška.

54. The applicant first applied to the Commission under the old law on 4 August 1998.

55. In early 1999 he applied to the Commission under the new law to regain possession of his property. On 20 March 1999 it issued a decision entitling him to reenter the property. The date set for such reentry has passed but the applicant has not yet succeeded in regaining possession of the property. He has requested execution of the decision.

14. Case no. CH/98/1145 Šerif Crnkič

56. The applicant is the owner of land in Gradiška as evidenced by extract number 140 from the Cadastral Registry in Gradiška.

57. The applicant first applied to the Commission under the old law on 15 June 1998.

58. On 5 January 1999 the applicant applied to the Commission under the new law to regain possession of his property. On 20 March 1999 it issued a decision entitling him to regain possession of the property. The date set for such reentry was 5 April 1999. The applicant did not succeed in regaining possession of the property on that date and has requested execution of the decision.

15. Case no. CH/98/1146 Muharem Halilović

59. The applicant is the owner of land in Gradiška as evidenced by extract number 100 from the Cadastral Registry in Gradiška.

60. The applicant first applied to the Commission under the old law on 13 May 1998.

61. In January 1999 he applied to the Commission under the new law to regain possession of his property. On 20 March 1999 it issued a decision entitling him to regain possession of the property. The date set for such reentry has passed. The applicant did not succeed in regaining possession of the property on that date and has requested execution of the decision.

16. Case no. CH/98/1147 Hakija Hadžihafizovič

62. The applicant is the owner of land in Gradiška as evidenced by extract number 786 from the Cadastral Registry in Gradiška.

63. The applicant first applied to the Commission under the old law on 20 July 1998.

64. He initiated proceedings against the current occupants of the property before the court, seeking their eviction. On 21 December 1998 the court issued its decision, in which it declared itself incompetent to consider the matter as it concerned abandoned property. On 28 December 1998 the applicant appealed to the Regional Court against this decision. According to the information available to the Chamber, there has been no decision on this appeal to date.

65. On 30 December 1998 the applicant applied to the Commission under the new law to regain possession of his property. On 16 March 1999 it issued a decision entitling him to regain possession of the property. The date set for such reentry was 30 March 1999. The applicant did not succeed in regaining possession of the property on that date and has requested execution of the decision.

17. Case no. CH/98/1148 Ramadan Mesić

66. The applicant is the owner of land in Gradiška as evidenced by extract number 513/7 from the Cadastral Registry in Gradiška.

67. The applicant first applied to the Commission under the old law on 21 April 1998.

68. In January 1999 he applied to the Commission under the new law to regain possession of his property. On 28 March 1999 it issued a decision entitling him to regain possession of the property. The date set for such reentry has passed. The applicant did not succeed in regaining possession of the property on that date and has requested execution of the decision.

18. Case no. CH/98/1149 Ramadan Samardžić

69. The applicant is the owner of land in Gradiška as evidenced by extract number 251 from the Cadastral Registry in Gradiška.

70. The applicant first applied to the Commission under the old law on 6 May 1998.

71. In January 1999 he applied to the Commission under the new law to regain possession of his property. On 28 March 1999 it issued a decision entitling him to regain possession of the property. The date set for such reentry has passed. The applicant did not succeed in regaining possession of the property on that date and has requested execution of the decision.

19. Case no. CH/98/1150 Said Šarac

72. The applicant is the owner of land in Gradiška as evidenced by extract numbers 1252 and 622 from the Cadastral Registry in Gradiška.

73. The applicant first applied to the Commission under the old law on 4 August 1998.

74. In January 1999 he applied to the Commission under the new law to regain possession of his property. On 15 February 1999 it issued a decision entitling him to regain possession of the property. The date set for such reentry was 15 May 1999. The applicant did not succeed in regaining possession of the property on that date and has requested execution of the decision.

20. Case no. CH/98/1151 Sakib Neškić

75. The applicant is the owner of land in Gradiška as evidenced by extract numbers 870 and 566 from the Cadastral Registry in Gradiška.

76. The applicant first applied to the Commission under the old law on 4 June 1998.

77. In January 1999 he applied to the Commission under the new law to regain possession of his property. On 20 March 1999 it issued a decision entitling him to regain possession of the property.

78. The date set for such reentry has passed. The applicant did not succeed in regaining possession of the property on that date and has requested execution of the decision.

21. Case no. CH/98/1153 Enes Porić

79. The applicant is the owner of land in Gradiška as evidenced by extract number 498 from the Cadastral Registry in Gradiška.

80. The applicant first applied to the Commission under the old law on 10 July 1998.

81. On 18 January 1999 the applicant applied to the Commission under the new law to regain possession of his property. On 20 March 1999 it issued a decision entitling him to regain possession of the property. The date set for such reentry was 19 April 1999. The applicant did not succeed in regaining possession of the property on that date and has requested execution of the decision.

B. Relevant legal provisions

1. General Framework Agreement for Peace in Bosnia and Herzegovina, Annex 7

82. Paragraph 1 of Article I of Annex 7 states, insofar as relevant as follows:

> "All refugees and displaced persons have the right freely to return to their homes of origin. They shall have the right to have restored to them property of which they were deprived in the course of hostilities since 1991 …. The early return of refugees and displaced persons is an important objective of the settlement of the conflict in Bosnia and Herzegovina. The Parties confirm that they will accept the return of such persons who have left their territory, including those who have been accorded temporary protection by third countries."

83. Article XIII of Annex 7, entitled "Use of Vacant Property" states:

> "The Parties, after notification to the Commission and in coordination with the UNHCR and other international and nongovernmental organisations contributing to relief and reconstruction, may temporarily house refugees and displaced persons in vacant property, subject to final determination of ownership by the Commission and to such temporary lease provisions as it may require."

2. Constitution of Bosnia and Herzegovina

84. Article II of the Constitution of Bosnia and Herzegovina ("the BH Constitution"), entitled "Human Rights and Fundamental Freedoms", sets out the mechanism for the protection of human rights and fundamental freedoms within Bosnia and Herzegovina.

85. Article II(1) of the BH Constitution, entitled "Human Rights", reads as follows:

> "Bosnia and Herzegovina and both Entities shall ensure the highest level of internationally recognised human rights and fundamental freedoms. …."

86. Article II(2) of the BH Constitution, entitled "International Standards", reads as follows:

> "The rights set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms shall apply directly in Bosnia and Herzegovina. These shall have priority over all other law."

87. Article II(4) of the BH Constitution, entitled "Non-Discrimination", reads as follows:

> "The enjoyment of the rights and freedoms (guaranteed by the BH Constitution) shall be secured to all persons in Bosnia and Herzegovina without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

88. Article II(5) of the BH Constitution, entitled "Refugees and Displaced Persons", reads as follows:

> "All refugees and displaced persons have the right freely to return to their homes of origin. …. "

89. Article II(6) of the BH Constitution, entitled "Implementation", reads as follows:

> "Bosnia and Herzegovina, and all courts, agencies, governmental organs, and instrumentalities operated by or within the Entities, shall apply and conform to the human rights and fundamental freedoms referred to in paragraph 2 above."

3. Constitution of the Republika Srpska

90. Title II of the Constitution of the Republika Srpska ("the RS Constitution") is entitled "Human Rights and Freedoms".

91. Article 10 of the RS Constitution reads as follows:

> "Citizens of the Republic are equal in the enjoyment of rights, freedoms and duties, they are equal before the law and shall enjoy legal protection irrespective of their race, sex, language, national origin, religion, social origin, birth, education, property status, political and other beliefs, social status or other personal attributes."

92. Article 16 of the RS Constitution reads as follows:

> "Everyone has the right to equal protection of their rights before the courts and other state organs and organisations.
>
> Everyone has the right to appeal or otherwise institute legal proceedings against a decision concerning his rights or legal interests."

93. Article 17 of the RS Constitution reads as follows:

> "Everyone has the right of redress for loss caused by illegal or unjust actions by official persons or state organs or institutions acting in an official capacity. …."

94. Article 56 of the RS Constitution reads as follows:

> "In accordance with the law, rights of ownership may be limited or expropriated, subject to payment of fair compensation."

95. This provision was supplemented on 11 November 1994 by Amendment XXXI, which reads as follows:

"During the state of war, immediate danger of war or during the state of emergency the disposal of properties or use of property of legal or natural persons can be regulated by law."

96. Article 121 of the Constitution reads as follows:

"The judicial function is performed by the Courts. The Courts are independent and decide upon the basis of the Constitution and laws.

The Courts protect human rights and freedoms, established rights and interests of legal entities and legality."

4. The Law on Use of Abandoned Property

97. The Law on Use of Abandoned Property (Official Gazette of the Republika Srpska – hereinafter "OG RS" – no. 3/96; "the old law") was adopted by the National Assembly of the Republika Srpska on 21 February 1996. It establishes a legal framework for the administration of abandoned property. Accordingly, it defines what forms of property are to be considered as abandoned and sets out the categories of persons to whom abandoned property may be allocated. The provisions of the old law, insofar as they are relevant to the present cases, are summarised below.

98. Articles 2 and 11 define "abandoned property" as real and personal property which has been abandoned by its owners and which is entered in the register of abandoned property. Types of property which may be declared abandoned include apartments (both privately and socially owned) and houses.

99. Article 3 states that abandoned property is to be temporarily protected and managed by the Republika Srpska. To this end, the Ministry is obliged, in Article 4, to establish commissions to carry out this task. Article 6 states that these commissions shall issue decisions on the allocation of abandoned property to persons within the categories set out in Article 15. The preparation of registers of abandoned property is to be carried out by the appropriate administrative bodies in each municipality.

100. Article 15 reads as follows:

"Abandoned apartments, houses and other abandoned housing facilities shall be allocated exclusively to refugees and displaced persons and persons without accommodation as a result of war activities, in accordance with the following priorities:
- to the families of killed soldiers
- war invalids with injuries in categories I-V
- war invalids with injuries in categories V-X
- qualified workers of whom there is a lack in the Republika Srpska."

101. Article 15A (which was inserted by an amendment of 12 September 1996) adds a further category of persons to this list. This category is bearers of state honours, deputies of the National Assembly of the Republika Srpska and other officials of the Republika Srpska who have the status of refugees or displaced persons.

102. Articles 39-42 set out the terms upon which the owner of a property which has been declared abandoned may seek to regain possession of it.

103. Article 39 reads as follows:

"The owner of abandoned property, in the event of permanent return, may claim the right to return of his property, or the right to a fair reimbursement within the context of a settlement between the Republika Srpska, the Federation of Bosnia and Herzegovina and the Republic of Croatia."

104. Article 40 reads as follows:

> "In the event referred to in the previous Article, if the abandoned property or apartment has not been allocated for utilisation, it shall be possible for the owner to regain possession of the property or apartment within 15 days of the date of lodging the request for return of possession.
>
> If in the situation referred to in the previous Article the abandoned property or apartment has been allocated to someone whose own property or apartment is located in the Federation of Bosnia and Herzegovina or the Republic of Croatia, such property or apartment shall be returned to the owner:
> - within 30 days from the day the person who was the occupier of the property returns to his property or apartment
> - at the latest after 60 days have expired from the date of payment of compensation to the user of the property or apartment for the property he himself has abandoned as well as possible costs incurred by the previous user, or after the provision of suitable alternative accommodation.
>
> (...)"

105. Article 42 reads as follows:

> "The provisions of Articles 39-41 of this law shall be applied on the basis of reciprocity."

5. The Law on Cessation of Application of the Law on Use of Abandoned Property

106. The Law on Cessation of Application of the Law on Use of Abandoned Property of 11 December 1998 (OG RS no. 38/98; "the new law"), as amended, establishes a detailed framework for persons to regain possession of property considered to be abandoned. The new law puts the old law out of force.

107. Article 2 states that all decisions made under the old law granting temporary or permanent rights to occupy property shall be treated as being of a temporary nature and shall remain effective until cancelled in accordance with the new law.

108. Article 3 gives the owner, possessor or user of real property who abandoned such property the right to repossess it and enjoy it on the same terms as he or she did before 30 April 1991 or the date of its becoming abandoned. Article 4 states that the terms "owner", "possessor" or "user" shall mean the persons who had such status under the applicable legislation at the time the property concerned became abandoned or when such persons first lost possession of the property, in the event that the property was not declared abandoned.

109. Article 6 concerns the arrangements to be made for persons who are required to vacate property (described as "temporary users") in order to allow the previous owner, possessor or user to return.

110. The responsible body shall determine, within the thirty-day time-limit for deciding upon a request for repossession of property, whether the temporary user is entitled under the new law to be provided with alternative temporary accommodation. If it determines that this is the case, the relevant body of the Ministry (i.e. the local Commission) shall provide the temporary user with appropriate accommodation before the expiry of the deadline for him or her to vacate the property concerned.

111. Any failure of the responsible authority to provide alternative accommodation for a temporary user cannot delay the return of the owner, possessor or user of such property.

112. If a temporary user of a property occupies it without a legal basis, the Ministry is not obliged to provide him or her with alternative accommodation.

113. Article 7 states that the owner, possessor or user of real property shall have the right to submit a claim for repossession of his or her property at any time. Article 8 states that such claims may be filed with the responsible body of the Ministry. This Article also sets out the procedure for lodging of claims and the information that must be contained in such a claim.

114. Article 9 states that the responsible body of the Ministry shall be obliged to issue a decision to the claimant within thirty days from the receipt by it of a claim.

115. Article 10 states that proceedings concerning return of property shall, unless otherwise specified, be carried out in accordance with the Law on General Administrative Procedures (see paragraphs 120-125 below) and treated as an expedited procedure.

116. Article 11 sets out the information that must be contained in a decision entitling an applicant to regain possession of property. This includes basic details concerning the applicant and property. A decision entitling a person to regain possession of his or her property may not set a time-limit for such repossession sooner than 90 days from the date of the decision, nor after the date for return requested by the applicant. The applicant may not request a date for return into possession of the property which is sooner than 90 days from the date of lodging of the application. If a property is not currently occupied, the owner, possessor or user may regain possession of it immediately upon receipt of a decision. The deadline for return may be extended to up to one year in exceptional circumstances, which shall be agreed upon by the Office of the High Representative. The relevant Commission must also provide detailed documentation to the Ministry regarding the lack of available alternative accommodation to the Ministry.

117. Article 12 requires that the decision of the Commission be delivered to the current occupants of the property concerned. An appeal may be lodged against a decision within fifteen days of its receipt. However, the lodging of an appeal does not suspend the execution of the decision.

118. Article 13 states that a claimant for the return into possession of real property may at any time apply to the Commission for Real Property Claims of Refugees and Displaced Persons ("the Annex 7 Commission"). In the event that an application by a claimant has been rejected by the responsible body (i.e. the local Commission) on either formal or material grounds, the proceedings before the responsible body may be suspended pending the final decision of the Annex 7 Commission, if the Annex 7 Commission so requests. Any decision of the Annex 7 Commission shall be enforced by the appropriate authorities of the Republika Srpska.

119. Article 29 requires the Minister for Refugees and Displaced Persons to pass an instruction on the application of, *inter alia*, Articles 8 to 11 inclusive of the law. This instruction was published in OG RS no. 1/99 and entered into force on 21 January 1999. An amended instruction was contained in a decision of the High Representative dated 27 October 1999 and entered into force on 28 October 1999.

6. The Law on General Administrative Procedures

120. The Law on General Administrative Procedures (Official Gazette of the Socialist Federal Republic of Yugoslavia no. 47/86) was taken over as a law of the Republika Srpska. It governs all administrative proceedings. The provisions of this law, insofar as they are relevant to the present case, are summarised below.

121. Article 2 states that a law may, in exceptional cases, provide for a different administrative procedure than that provided for in the Law on General Administrative Procedures. Under Article 3, all issues that are not regulated by a special law are to be regulated by the Law on General Administrative Procedures.

122. Chapter XVII (Articles 270 – 288) is concerned with the procedure for enforcement of rulings and conclusions.

123. Article 270 states that a decision issued in an administrative procedure shall be enforced once it has become enforceable. This occurs, for example, when the deadline for submission of any appeal expires without any such appeal having been submitted.

124. Article 274 states that execution of a decision shall be carried out against the person who is ordered to fulfil the relevant obligation. Execution may be conducted *ex officio* or at the request of a party to the proceedings. *Ex officio* execution shall occur when required by the public interest. Execution which is in the interest of one party shall be conducted at the request of that party.

125. Article 275 states that execution shall be carried out either through an administrative or court procedure, as prescribed by the law. The execution of decisions of the type concerned in the present case (i.e. of reinstatement to property) is to be carried out by an administrative procedure.

7. The Law on Administrative Disputes

126. Under Articles 3 and 18 of the Law on Administrative Disputes (OG RS no. 12/94), the Supreme Court of the Republika Srpska has general jurisdiction over administrative disputes. Under Article 25 paragraph 1, if an administrative organ does not issue a decision on an appeal within 60 days of its being lodged, the applicant may lodge a reminder to the organ. If no decision is issued on the appeal in response to such a reminder within 7 days of it being lodged, the applicant may initiate an administrative dispute before the Supreme Court of the Republika Srpska in respect of this failure to decide upon the appeal.

8. The Law on Regular Courts

127. The Law on Regular Courts (OG RS nos. 22/96 and 25/96) regulates the court system in the Republika Srpska.

128. Article 2 reads as follows:

> "The courts shall protect liberties and rights of citizens, lawfully established rights and interests of legal subjects and shall safeguard constitutionality and legality."

129. Article 17 reads as follows;

> "The Court of First Instance ("*Osnovni Sud*") shall be competent:
> …
> 2) in civil suits, to try at first instance;
> a) civil legal disputes,
> b) disputes in respect of disturbance of property
> …"

130. Article 21 reads as follows;

> "The Regional Court ("*Okružni Sud*") shall be competent:
> 1) to decide on appeals against decisions of basic courts and decisions of magistrates
> …"

IV. COMPLAINTS

131. The applicant in case no. CH/98/1131, Ms. Demo, complains in general of a violation of her rights caused by her inability to regain possession of her property.

132. The applicants in all of the other cases complain of violations of their rights as protected by Articles 8, 13 and 14 of the Convention and Article 1 of Protocol No. 1 to the Convention.

V. FINAL SUBMISSIONS OF THE PARTIES

A. The respondent Party

133. The Republika Srpska submits that the Chamber is not competent to decide upon the applications. It states that the applications are, in essence, requests for the return of real property into their possession. Such claims should be decided by the Annex 7 Commission or the competent organ in the Republika Srpska under the new law. The respondent Party further claims that the applicants have not exhausted the domestic remedies available to them and that accordingly the Chamber should refuse to accept their applications in accordance with the terms of Article VIII(2)(a) of the Agreement.

134. In conclusion, the respondent Party submits that the Chamber should refuse to accept the applications or postpone consideration of them until the domestic remedies available to the applicants have been exhausted.

B. The applicants

135. The applicants maintain their complaints. In addition, those that have not yet regained possession of their property state that they have exhausted all of the domestic remedies available to them without success and that as a result the Chamber is competent to decide upon the applications. They deny that their requests to regain possession of their properties should be decided solely by the Annex 7 Commission. They claim that they have the right under the new law to regain possession of their property, but that most of them have been unable to realise this right due to the inaction of the authorities of the Republika Srpska. All of the applicants maintain their claims for compensation.

VI. OPINION OF THE CHAMBER

A. Admissibility

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

1. Requirement to exhaust effective domestic remedies

137. According to Article VIII(2)(a), the Chamber must consider whether effective remedies exist and whether the applicants have demonstrated that they have been exhausted. The respondent Party contends that the cases should be declared inadmissible on this ground. It refers to Article 7 of the new law (see paragraph 113 above), stating that all of the applicants have applied to regain possession of their properties under this provision and that the proceedings under this provision are still pending. A general statement to the effect that domestic remedies have not been exhausted is not sufficient. It is incumbent on the respondent Party to specify such remedies and to show that they are effective in practice.

138. In the *Onić* case (case no. CH/97/58, decision on admissibility and merits delivered on 12 January 1999, paragraph 38, Decisions January-July 1999), the Chamber held that the domestic remedies available to an applicant "must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness. ...[M]oreover, ... 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 ... concerned but also of the general legal and political context in which they operate as well as of the personal circumstances of the applicants."

139. The Chamber notes that all of the applicants unsuccessfully applied to the relevant organ under the old Law to regain possession of their properties. Accordingly, they have all sought to avail themselves of this remedy which turned out to be ineffective and illusory in practice.

140. The Chamber further notes that the applicants in three of the cases also initiated proceedings before the Court in Gradiška against the current occupants of their properties, seeking to regain possession of those properties (the specific situation in respect of each applicant is set out in Section III above). Those applicants who did not initiate such proceedings claimed that the reason for not doing so was the fact that the Court declined to consider the cases on the ground that it did not have jurisdiction over "abandoned property".

141. The Chamber has previously noted that the Supreme Court of the Republika Srpska has held that matters concerning abandoned property are within the sole competence of the Ministry, as such issues should be decided by an administrative procedure rather than by the courts (see cases nos. CH/98/659 *et al.*, *Pletilić and others,* decision on admissibility and merits delivered on 10 September 1999, paragraphs 151–152, Decisions August-December 1999). Accordingly, having recourse to the courts, as provided for in the Law on Regular Courts (see paragraphs 127-130 above), does not appear to be a remedy at all.

142. The Chamber notes that in all of the cases, the applicants have applied under the new Law to regain possession of their properties. All of them have received decisions from the Commission, entitling them to regain possession of their properties within a specified time-period. In two cases the applicants regained possession of their properties on or after the date specified for this in the decision. In one further case, the applicants partly regained possession of their property. In the remaining eighteen cases the applicants have not, so far, regained possession of their properties, although the time-limits for such regaining of possession have expired.

143. As the Chamber noted in its decision in *Pletilić and others* (sup. cit., paragraph 154) a remedy such as that provided for by the new law could in principle qualify as an effective one. The Chamber notes that all of the applicants have received a decision under the new law in their favour and that in two cases they have already regained possession of their properties on the basis of such decisions and in one further case the applicants have regained possession of part of their property. However, the Chamber notes with grave concern that over one and a half years after the adoption of the new law, the applicants in the remaining eighteen cases have been unable to regain possession of their properties. The Chamber cannot therefore conclude that the new law has been effective in most of the cases before it. Further, the Chamber wishes to stress that even in the cases where the new law has proved to be effective, it only puts an end to the ongoing violations of the applicants' rights, without providing redress for the past violations which they suffered.

144. The Chamber finds, in the circumstances, the requirements of Article VIII(2)(a) of the Agreement have been met.

2. Possibility of seizing the Annex 7 Commission

145. The Republika Srpska also claimed that the applications should be declared inadmissible as the applicants have not applied to the Annex 7 Commission seeking a decision on their request for the return of their property (see paragraph 133 above).

146. The above provision establishes a mechanism under which persons may be declared to be the lawful owners of real property and authorised to regain possession of that property. It is therefore an integral and extremely important part of the mechanism established by the General Framework Agreement for Peace for the return of refugees and displaced persons to their properties. Article VIII(2)(d) of the Agreement enables the Chamber to declare an application inadmissible if the same matter is already pending before the Annex 7 Commission. However, in the present cases, none of the applicants has applied to the Annex 7 Commission, but have chosen instead to apply to the Chamber. Therefore, Article VIII(2)(d) is inapplicable in the present cases and they are therefore not inadmissible under that provision.

147. The Chamber further finds that none of the other grounds for declaring the cases inadmissible have been established. Accordingly, the cases are to be declared admissible.

B. Merits

148. 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 and the other treaties listed in the Appendix to the Agreement.

149. Under Article II(2) of the Agreement the Chamber has competence to consider (a) alleged or apparent violations of human rights as provided in the Convention and its Protocols and (b) alleged or apparent discrimination arising in the enjoyment of the rights and freedoms provided for in the 16 international agreements listed in the Appendix to the Agreement (including the Convention), where such a violation is alleged to or appears to have been committed by the Parties, including by any organ or official of the Parties, Cantons or Municipalities or any individual acting under the authority of such an official or organ.

1. Article II(2)(a) of the Agreement

(a) Article 8 of the Convention

150. Except for one case (no. CH/98/1131, Ms. Demo), all of the applicants claimed to be victims of a violation of Article 8 of the Convention which reads, insofar as relevant, as follows:

> "1. Everyone has the right to respect for …, his home …
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

151. The respondent Party did not submit any observations under this provision. The Chamber will consider all of the applications under this provision.

152. The Chamber notes that all of the applicants had lived in the houses situated on their properties and used them as their homes until such times as they were forced to leave. The Chamber has previously held that the links that persons in similar situations as the applicants in the present cases retained to their dwellings were sufficient for them to be considered to be their "homes" within the meaning of Article 8 of the Convention (see, e.g., *Pletilić and others*, sup. cit., paragraph 165). In addition, the respondent Party did not contest that the properties were to be considered the applicants' homes.

153. It is therefore clear that the properties are to be considered as the applicants' "homes" for the purposes of Article 8 of the Convention.

154. The Chamber notes that all of the applicants were forced to leave their homes, either because they were evicted by private persons or because of fearing for their safety as a result of the hostilities. All of the properties were then occupied by refugees or displaced persons of Serb origin. In all except two of the present cases, these refugees or displaced persons occupied the properties concerned in accordance with decisions of the Commission issued in accordance with the old law. The applicants in all of the cases where they have been unable to regain possession of their properties or parts thereof have been unable to do so due to the failure of the authorities of the Republika Srpska to deal effectively with their various applications in this regard. Therefore, the respondent Party is responsible for the interference with the rights of the applicants to respect for their homes in these cases. Only the applicants in cases nos. CH/98/1132, Mr. Ćirkić, and CH/98/1134, Ms. Rizvanović, have succeeded in fully regaining possession of their properties. Accordingly, the interference in the other nineteen cases is ongoing. This applies also in case no.

CH/98/1124 where the applicants, Mr. and Ms. Dizdarević (see paragraph 17 above), have regained possession of part of the property.

155. In order to examine whether this interference has been justified under the terms of paragraph 2 of Article 8 of the Convention, the Chamber must examine whether it was "in accordance with the law", served a legitimate aim and was "necessary in a democratic society" (see *Pletilić and others*, sup. cit., paragraph 168). There will be a violation of Article 8 if any one of these conditions is not satisfied.

156. The majority of the properties were considered to be abandoned in accordance with the old law (see paragraphs 97-105 above). All of the properties either are or were occupied by refugees or displaced persons of Serb origin. Moreover, all of the applicants tried to regain possession of their properties in accordance with Articles 39 and 42 of the old law. This law sought to provide for a regime for the administration of abandoned property in the Republika Srpska. In accordance with the provisions of this law, the properties were occupied by refugees and displaced persons of Serb origin. The Chamber notes that neither the Ministry, during the domestic proceedings initiated by the applicants, nor the respondent Party, during the proceedings before the Chamber, have sought to claim that the Ministry did not allocate the properties concerned in these applications. In addition, all of except two of the applicants have positively stated that the occupants of their property lived there in accordance with decisions of the Commission. The Chamber accordingly finds that they were allocated to the current occupants by the Ministry.

157. The Chamber must decide whether the old law can be considered to be a "law" in the context of Article 8 paragraph 2 of the Convention. As the Chamber has found in a number of cases, the old law cannot be considered as a "law" under paragraph 2 of Article 8 (see, e.g., *Pletilić and others,* sup. cit., paragraphs 170-174).

158. There is therefore no requirement for the Chamber to examine whether the acts complained of pursued a "legitimate aim" or were "necessary in a democratic society".

159. In conclusion, the Chamber finds that there has been a violation by the respondent Party of the rights of all of the applicants to respect for their homes as guaranteed by Article 8 of the Convention. This violation is ongoing in nineteen of the cases (i.e. in all those except cases nos. CH/98/1132, Mr. Ćirkić, and CH/98/1134, Ms. Rizvanović), where the applicants have not yet regained possession of all of their property.

160. The Chamber notes that the new law has been adopted in order to remedy the violations caused by the old law. The rights of all of the applicants under Article 8 of the Convention were violated by the old law, as it did not meet the standards of a "law" as required by the second paragraph of that provision. The Chamber considers that the new law does meet the requirements of paragraph 2 of Article 8, as it grants the applicants a right to regain possession of their properties. However, the realisation of this right has been delayed in nineteen of the cases presently before the Chamber. Accordingly the conduct of the respondent Party to date in relation to the applicants in these nineteen cases has not been "in accordance with the law" as required by paragraph 2 of Article 8. There is therefore a continuing violation of the rights of the applicants in those nineteen cases to respect for their homes and this violation will continue until such time as they actually regain possession of their homes.

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

161. Except for one case (no. CH/98/1131, Ms. Demo), all of the applicants complain that their rights to peaceful enjoyment of their possessions have been violated as a result of their inability to regain possession of their properties. Article 1 of Protocol No. 1 reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

162. The respondent Party did not submit any observations under this provision. The Chamber will consider all of the applications under this provision.

163. The Chamber finds that the properties concerned constitute the applicants' "possessions" within the meaning of Article 1 of Protocol No. 1 to the Convention. All applicants are in fact exclusive or joint owners of the properties.

164. The Chamber considers that the treatment of the applicants' properties in the majority of the cases as abandoned by the authorities of the Republika Srpska and their allocation to third parties for use constitutes or constituted an "interference" with the applicants' rights to peaceful enjoyment of their possessions. The failure of the Republika Srpska to take the necessary steps to enable the applicants to regain possession of their properties also constitutes such an interference.

165. In all of the cases except for the two where the applicants have regained full possession of their properties (see paragraphs 32 and 39 above), the interference is still ongoing. This applies also in case no. CH/98/1124, where the applicants, Mr. and Ms. Dizdarević (see paragraph 17 above), have only regained possession of part of their property.

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

167. The Chamber has further noted (in its examination of the applications under Article 8 of the Convention; see paragraph 157 above) that the old law does not meet the standards of a "law" in a democratic society, as is provided for in Article 1 of Protocol No. 1. This is in itself sufficient to warrant a finding that there has also been a violation of that provision.

168. In conclusion, the Chamber finds that there has been a violation of the rights of all of the applicants to peaceful enjoyment of their properties as guaranteed by Article 1 of Protocol No. 1 to the Convention. Again, this violation is ongoing in nineteen of the cases where the applicants have not yet regained possession of all of their property, despite their efforts to do so, including under the new Law.

169. The Chamber again notes that the new law has been adopted in order to remedy the violations caused by the old law. The Chamber reiterates, however, that although the new law may provide an effective remedy, it has not, so far, been applied in a manner consistent with Article 1 of Protocol No. 1 in respect of the majority of the cases before it.

(c) Article 6 of the Convention

170. The applicants did not specifically claim that their rights as protected by Article 6 of the Convention had been violated. However, in view of the fact that a number of the applicants complained of the conduct of the proceedings they had initiated at national level, the Chamber raised this issue *proprio motu* when it transmitted the applications to the respondent Party for its observations on their admissibility and merits.

171. Article 6 of the Convention reads 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 …."

172. The respondent Party did not submit any observations under this provision. The Chamber will consider all of the applications under this provision.

173. The Chamber recalls that it has held that the right to enjoyment of one's property is a civil right within the meaning of Article 6 of the Convention (see e.g. *Pletilić and others,* sup. cit., paragraph 191).

174. The Chamber notes that the applicants in three of the cases initiated proceedings before the Municipal Court in Gradiška (the situation in respect of each applicant is set out in Section III above). In those cases where a decision has in fact been issued by the Court, this decision has been to reject consideration of the requests for lack of competence. The Court has stated that matters concerning abandoned property are within the sole competence of the Ministry.

175. The Chamber notes that Article 121 of the RS Constitution states that the establishment of legal rights and interests is the role of the courts. It also states that the courts shall decide upon the basis of, *inter alia*, the laws of the Republika Srpska (see paragraph 96 above). Accordingly, for any subject matter to be removed from their jurisdiction, this would have to be done by a law or other valid legal instrument. Such a removal would require a specific statement to this effect. The Chamber has previously found that in the absence of a specific statement to that effect, the old law did not remove jurisdiction over property that was considered to be abandoned form the Courts (see *Pletilić and others,* sup. cit., paragraph 194).

176. Nevertheless, the practical effect of the standpoints of the courts of the Republika Srpska is that it has been or would, for the time being at least, be impossible for the applicants to have the merits of their civil actions against the current occupants of their properties determined by a tribunal within the meaning of Article 6 paragraph 1. Accordingly, there has been a violation of the applicants' right to effective access to court as guaranteed by Article 6 paragraph 1 of the Convention.

(d) Article 13 of the Convention

177. Except for one case (no. CH/98/1131, Ms. Demo) all applicants allege that their right to an effective remedy has been violated. This may be understood as referring to Article 13 of the Convention, which 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."

178. In view of its finding that there has been a violation of Article 6 of the Convention (see paragraph 176 above) the Chamber does not deem it necessary to examine the complaints under Article 13 of the Convention.

2. Article II(2)(b) of the Agreement

179. All of the applicants, except in case no. CH/98/1131 Ms. Demo, complained that they had been a victim of discrimination on the ground of their national origin in the enjoyment of the rights guaranteed to them by the Convention. The Chamber will consider this allegation in the context of Article II(2)(b) of the Agreement, which states that the Chamber shall consider:

> "alleged or apparent discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status arising in the enjoyment of any of the rights and freedoms provided for in the international agreements listed in the Appendix to this Agreement ...."

180. The respondent Party did not submit any observations on this issue. The Chamber will consider all of the applications in the light of the requirements of this part of the Agreement.

181. The Chamber notes that it has already found violations of all of the applicants' rights as protected by Articles 6 and 8 of the Convention and by Article 1 of Protocol No. 1 to the Convention. It must now consider whether the applicants have suffered discrimination in the enjoyment of those rights.

182. In examining whether there has been discrimination contrary to the Agreement the Chamber recalls its jurisprudence. As the Chamber noted in the *Đ.M.* case (case no. CH/98/756, decision on admissibility and merits delivered on 14 May 1999, paragraph 73, Decisions January-July 1999), it is necessary first to determine whether an applicant was treated differently from others in the same or relevantly similar situations. Any differential treatment is to be deemed discriminatory if it has no reasonable and objective justification, that is, if it does not pursue a legitimate aim or if there is no reasonable relationship of proportionality between the means employed and the aim sought to be realised. There is a particular onus on the respondent Party to justify differential treatment which is based on any of the grounds explicitly enumerated in the relevant provisions, including religion or national origin.

183. The Chamber recalls that the obligation on the Parties to the Annex 6 Agreement to "secure" the rights and freedoms mentioned in the agreement to all persons within their jurisdiction not only obliges a Party to refrain from violating those rights and freedoms, but also imposes on that Party a positive obligation to protect those rights (see *Đ.M.,* sup. cit., paragraph 75). Analogous obligations are also contained in the Constitutions of Bosnia and Herzegovina and of the Republika Srpska (see paragraphs 85, 87 and 91 above).

184. The Chamber notes that all of the applicants are of Bosniak origin.

185. The Chamber recalls that the applicants' ownership of the properties in question has never been in dispute. Nevertheless, with the exception of the applicants in cases nos. CH/98/1132, Mr. Ćirkić, and CH/98/1134, Ms. Rizvanović (see paragraphs 32 and 39 above) and partly in case no. CH/98/1124, (where the applicants are Mr. and Mrs. Dizdarević), their attempts to seek assistance from the authorities in order to regain possession of their properties have been unsuccessful, both at the judicial and administrative level.

186. The Chamber notes that all of the applicants sought to regain possession of their properties under the old law. The Chamber has previously concluded that this law was drafted in such a way as to deny to refugees and internally displaced persons any real prospect of regaining possession of their properties, therefore reinforcing the ethnic cleansing which occurred during the war by protecting the refugees and displaced persons of Serb origin who currently occupy the properties concerned in the applications and by seeking to frustrate the efforts of persons who were forced to leave their homes in the Republika Srpska from regaining possession of them (see *Pletilić and others,* sup. cit., paragraphs 203-205). The experience of the present applicants in their attempts to regain possession of their properties under this law only serves to reinforce this view.

187. In addition, the Chamber has found that the standpoint of the courts in the Republika Srpska (see paragraph 176 above) was such as to deny the applicants their right of access to court. This denial was a consequence of the application by the courts in the Republika Srpska of the old law.

188. In conclusion, the Chamber finds that the passage and application of the old law constitutes discrimination against the applicants in relation to their right to respect for their homes, to peaceful enjoyment of their possessions and of access to court. This discrimination has been based on the ground of national origin in respect of all of the applicants. So far, the new law has largely failed to remedy this situation.

189. The Chamber concludes that the applicants have been discriminated against in the enjoyment of their rights under Articles 6 and 8 of the Convention and Article 1 of Protocol No. 1 to the Convention.

VII. REMEDIES

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

191. The Chamber considers it appropriate to order the respondent Party to take all necessary steps to enable the applicants, who have not already done so, to regain possession of their properties without further delay, and in any event not later than one month from the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure.

192. With regard to possible compensatory awards, the Chamber first recalls that in accordance with its order for proceedings in the respective cases, all applicants were afforded the possibility of claiming compensation or other relief within the time-limit fixed by the Chamber. Sixteen of the applicants requested compensation for mental suffering and for the cost of renting another property and/or for general expenses. Five of the applicants did not make any claim for compensation. The specific situation in respect of each applicant is set out below.

193. Mr. and Ms. Dizdarević (CH/98/1124) claimed compensation for mental suffering experienced by them and their family due to their inability to return to their home in the sum of 7,500 Convertible Marks (*Konvertibilnih Maraka,* "KM"). They also claimed compensation for the cost of renting another property, in the sum of KM 150 per month for 9 months, totalling KM 1,350. In addition, they claimed KM 1,000 for the costs of redecorating their home. The total amount of compensation they claimed was therefore KM 9,850.

194. Mr. Raković (CH/98/1126) claimed compensation for mental suffering experienced by him due to his inability to return to his home in the sum of KM 2,500. He also claimed compensation of KM 4,000 for other expenses, including rental costs for other property and redecoration costs. The total amount of compensation he claimed was therefore KM 6,500.

195. Mr. Hatić (CH/98/1127) and Mr. Pivač (CH/98/1130) did not make any claim for compensation.

196. Ms. Demo (CH/98/1131) claimed compensation for mental suffering experienced by her and her family due to their inability to return to their home in the sum of KM 12,500. She also claimed compensation for the cost of renting another property in the sum of KM 200 per month for 8 months, totalling KM 1,600. In addition, she claimed KM 700 for other unspecified costs. The total amount of compensation she claimed was therefore KM 14,800.

197. Mr. Ćirkić (CH/98/1132) did not make any claim for compensation.

198. Mr. Hatić (CH/98/1133) claimed compensation for mental suffering experienced by him and his wife due to their inability to return to their home in the sum of KM 5,000. He also claimed compensation for the cost of renting another property in the sum of KM 200 per month for 9 months, totalling KM 1,800. In addition, he claimed KM 900 for redecoration costs. The total amount of compensation he claimed was therefore KM 7,700.

199. Ms. Rizvanović (CH/98/1134) claimed compensation for mental suffering experienced by her due to her inability to return to her home in the sum of KM 2,500. She also claimed compensation for the cost of renting another property, in the sum of KM 150 per month for 10 months, totalling KM 1,500. In addition, she claimed KM 800 for other unspecified costs. The total amount of compensation she claimed was therefore KM 4,800.

200. Mr. Kadir Lojić (CH/98/1135) claimed compensation for mental suffering experienced by him due to his inability to return to his home in the sum of KM 2,500. He also claimed compensation for the cost of renting another property, in the sum of KM 100 per month for 8 months, totalling KM 800. In addition, he claimed KM 1,000 for redecoration costs. The total amount of compensation he claimed was therefore KM 4,300.

201. Mr. Ismet Lojić (CH/98/1136) claimed compensation for mental suffering experienced by him and his family due to their inability to return to their home in the sum of KM 10,000. He also claimed compensation for the cost of renting another property, in the sum of KM 150 per month for 8 months, totalling KM 1,200. He also claimed compensation in the sum of KM 1,000 for redecoration costs. The total amount of compensation he claimed was therefore KM 12,200.

202. Mr. Neškić (CH/98/1139) did not make any claim for compensation.

203. Mr. Anadolac (CH/98/1141) claimed compensation for mental suffering experienced by him and his wife due to their inability to return to their home in the sum of KM 5,000. He also claimed compensation for the cost of renting another property, in the sum of KM 150 per month for 10 months, totalling KM 1,500. In addition, he claimed KM 900 for redecoration costs. The total amount of compensation he claimed was therefore KM 7,400.

204. Mr. Drndić (CH/98/1144) claimed compensation for mental suffering experienced by him and his wife due to their inability to return to their home in the sum of KM 5,000. He also claimed compensation for the cost of renting another property, in the sum of KM 200 per month for 9 months, totalling KM 1,800. In addition, he claimed KM 700 for other unspecified costs. The total amount of compensation he claimed was therefore KM 7,500.

205. Mr. Crnkić (CH/98/1145) claimed compensation for mental suffering experienced by him and his wife due to their inability to return to their home in the sum of KM 5,000. He also claimed compensation for the cost of renting another property, in the sum of KM 200 per month for 9 months, totalling KM 1,800. In addition, he claimed KM 900 for other unspecified costs. The total amount of compensation he claimed was therefore KM 7,700.

206. Mr. Halilović (CH/98/1146) claimed compensation for mental suffering experienced by him and his family due to their inability to return to their home in the sum of KM 20,000. He also claimed compensation for the cost of renting another property, in the sum of KM 200 per month for 9 months, totalling KM 1,800. In addition, he claimed KM 1,000 for redecoration costs. The total amount of compensation he claimed was therefore KM 22,800.

207. Mr. Hadžihafizović (CH/98/1147) did not make any claim for compensation.

208. Mr. Mesić (CH/98/1148) claimed compensation for mental suffering experienced by him due to his inability to return to his home in the sum of KM 2,500. He also claimed compensation for the cost of renting another property, in the sum of KM 100 per month for 12 months, totalling KM 1,200. In addition, he claimed KM 800 for other unspecified costs. The total amount of compensation he claimed was therefore KM 4,500.

209. Mr. Samardžić (CH/98/1149) claimed compensation for mental suffering experienced by him and his family due to their inability to return to their home in the sum of KM 7,500. He also claimed compensation for the cost of renting another property, in the sum of KM 150 per month for 12 months, totalling KM 1,800. In addition, he claimed KM 800 for redecoration costs. The total amount of compensation he claimed was therefore KM 10,100.

210. Mr. Šarac (CH/98/1150) claimed compensation for mental suffering experienced by him and his wife due to their inability to return to their home in the sum of KM 5,000. He also claimed compensation for the cost of renting another property, in the sum of KM 200 per month for 9 months, totalling KM 1,800. In addition, he claimed KM 1,000 for redecoration costs. The total amount of compensation he claimed was therefore KM 7,800.

211. Mr. Neškić (CH/98/1151) claimed compensation for mental suffering experienced by him and his family due to their inability to return to their home in the sum of KM 10,000. He also claimed compensation for the cost of renting another property, in the sum of KM 150 per month for 12 months, totalling KM 1,800. In addition, he claimed KM 900 for redecoration costs. The total amount of compensation he claimed was therefore KM 12,700.

212. Mr. Porić (CH/98/1153) claimed compensation for mental suffering experienced by him and his family due to their inability to return to their home in the sum of KM 12,500. He also claimed compensation for the cost of renting another property, in the sum of KM 100 per month for 9 months, totalling KM 900. In addition, he claimed KM 900 for redecoration costs. The total amount of compensation he claimed was therefore KM 14,300.

213. The respondent Party, in its observations on the claims for compensation, states that the applicants left the territory of the Republika Srpska before the entry into force of the Agreement on 14 December 1995. It claims that it is entitled, under Annex 7 to the General Framework Agreement to house refugees and internally displaced persons in abandoned property subject to final determination of ownership of such property by the Annex 7 Commission. The respondent Party points out that it has objected to the admissibility of the applications on the same grounds. It claims that neither it nor any body, the actions of which it is responsible for, are responsible for any damage that may have occurred to the applicants. It states that the applicants are responsible for the difficulties they are experiencing as they decided to leave the places where they were accommodated after leaving Gradiška. In conclusion, the respondent Party states that the claims for compensation are ill-founded and inadmissible.

214. Article XIII of Annex 7 (see paragraph 83 above) of the General Framework Agreement allows the Parties, after notification to the Annex 7 Commission and in coordination with, *inter alia*, the United Nations High Commission for Refugees, to house refugees and internally displaced persons in vacant property. It is obvious, however, that this provision could not have been applied prior to the entry into force of the General Framework Agreement and the establishment of the Annex 7 Commission. Accordingly, the Chamber cannot accept the argument of the respondent Party in this regard.

215. The Chamber likewise does not accept the argument of the respondent Party that the applicants themselves are responsible for the difficulties in which they find themselves by leaving the places in which they were temporarily accommodated and returning to the Gradiška area. As clearly stated by Article XIII of Annex 7, all refugees and displaced persons have the right to return freely to their homes. As the Chamber has found in its decision, the right to return to one's prewar home also raises various issues under the Agreement. It is the responsibility of all of the Parties to the Agreement to ensure that this right is guaranteed to all refugees and displaced persons. A refugee or displaced person who chooses to return to his or her place of origin cannot be held responsible for any difficulties he or she may suffer as a result of the failure of a Party to the Agreement to comply with its obligations, under national law and the General Framework Agreement, to allow him or her to return to his property.

216. Accordingly, the Chamber does not accept the arguments of the respondent Party in relation to the claims for compensation by the applicants.

217. The Chamber notes that 16 of the applicants have claimed sums for mental suffering allegedly caused to them, and in most cases also to members of their families, as a result of their inability to regain possession of their properties. These sums vary from KM 2,500 to KM 20,000 and are based on a figure of KM 2,500 per person in every household allegedly affected. The Chamber considers that such sums are excessive. The Chamber does however, consider it appropriate to award a sum to all of the applicants in recognition of the sense of injustice they have no doubt suffered as a result of their inability to regain possession of their properties, especially in view of the fact that they have all taken various steps to do so. The Chamber does not consider it appropriate to award sums under this head to members of the applicants' families; it can only award such sums to the applicants themselves.

218. Accordingly, the Chamber will order the respondent Party to pay to the applicant or applicants in each of the 21 cases the sum of KM 1,200 in recognition of their suffering as a result of their inability to regain possession of their properties. In the particular circumstances at hand the Chamber will also award the applicants in cases nos. CH/98/1127, Mr. Hatić, CH/98/1130, Mr. Pivač, CH/98/1132, Mr. Ćirkić, CH/98/1139, Mr. Neškić, and CH/98/1147, Mr. Hadžihafizović, the same sum, even though they did not claim compensation. As the Chamber held in *Pletilić and others,* (sup. cit., paragraph 236), Article XI(1)(b) of the Agreement does not preclude the Chamber from ordering a remedy which has not been requested by an applicant.

219. In 16 cases, the applicants also claimed compensation for the rent they have been forced to pay for their accommodation pending their return to their properties. These sums range from KM 100 to KM 200 per month for each month that they have been required to pay such rent.

220. In accordance with its decision in *Pletilić and others* (sup. cit., paragraph 238), the Chamber considers that the sum of KM 100 per month is appropriate to award for each month that the applicants were forced to pay for alternative accommodation, payable from two months after the end of the month in which they lodged their first application to the Ministry to regain possession of their properties under the old law. For the purposes of compensation for rental costs in cases nos. CH/98/1124, Mr. and Mrs. Dizdarević, and CH/98/1134, Ms. Rizvanović, this period is to be calculated to the end of the month in which they were able to move into their homes, i.e. the end of March and October 1999 respectively. For the remaining cases, where claims of compensation for rental costs have been made, this sum should continue to be paid at the same rate until the applicants regain possession of their properties. For practical purposes, the Chamber will award the applicants a set sum until the end of May 2000 and a further monthly sum payable from the beginning of June 2000 until the end of the month in which they actually regain possession of their properties.

221. The remaining claims for compensation (relating to redecoration and other unspecified costs) are unsubstantiated and must be rejected.

222. Additionally, the Chamber awards 4 % (four per cent) interest as of the date of expiry of the three-month period set for the implementation of the present decision, on the sums awarded in paragraphs 218 and 220 above.

VIII. CONCLUSIONS

223. For the above reasons, the Chamber decides,

1. unanimously, to declare the applications admissible;

2. unanimously, that there has been a violation of the rights of the applicants to respect for their homes within the meaning of Article 8 of the European Convention on Human Rights, the Republika Srpska thereby being in breach of Article I of the Human Rights Agreement;

3. unanimously, that there has been a violation of the rights of the applicants to peaceful enjoyment of their possessions within the meaning of Article 1 of Protocol No. 1 to the Convention, the Republika Srpska thereby being in breach of Article I of the Agreement;

4. unanimously, that the impossibility for the applicants to have the merits of their civil actions against the current occupants of their property determined by a tribunal constitutes a violation of their right to effective access to court within the meaning of Article 6 of the Convention, the Republika Srpska thereby being in breach of Article I of the Agreement;

5. unanimously, that the enactment of, and application by the authorities of the Republika Srpska of the Law on Use of Abandoned Property in the applicants' cases constituted discrimination against them on the ground of national origin in the enjoyment of their rights as protected by Articles 6 and 8 of the Convention and Article 1 of Protocol No. 1 to the Convention;

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

7. unanimously, to order the Republika Srpska to enable the applicants who have not already done so to regain possessions of their properties (as described more particularly in respect of each applicant in Section III of this decision) without further delay, and in any event not later than one month from the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure;

8. by 6 votes to 1, to order the Republika Srpska:

(a) to pay to the applicants within three months of the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure, the following sums:

to Ms. Fehreta and Mr. Refik Dizdarević, the applicants in case no. CH/98/1124: KM 2,300 (two thousand three hundred), composed of KM 1,200 by way of compensation for mental suffering and KM 1,100 for rental payments in respect of paying for alternative accommodation;

to Mr. Munib Raković, the applicant in case no. CH/98/1126: KM 3,300 (three thousand three hundred), composed of KM 1,200 by way of compensation for mental suffering and KM 2,100 for rental payments in respect of paying for alternative accommodation;

to Mr. Hatić, the applicant in case no. CH/98/1127: KM 1,200 (one thousand two hundred), by way of compensation for mental suffering;

to Mr. Pivač, the applicant in case no. CH/98/1130: KM 1,200 (one thousand two hundred), by way of compensation for mental suffering;

to Ms. Demo, the applicant in case no. CH/98/1131: KM 2,700 (two thousand seven hundred), composed of KM 1,200 by way of compensation for mental suffering and KM 1,500 for rental payments in respect of paying for alternative accommodation;

to Mr. Ćirkić, the applicant in case no. CH/98/1132: KM 1,200 (one thousand two hundred), by way of compensation for mental suffering;

to Mr. Hatić, the applicant in case no. CH/98/1133: KM 2,600 (two thousand six hundred), composed of KM 1,200 by way of compensation for mental suffering and KM 1,400 for rental payments in respect of paying for alternative accommodation;

to Ms. Rizvanović, the applicant in case no. CH/98/1134: KM 2,600 (two thousand six hundred), composed of KM 1,200 by way of compensation for mental suffering and KM 1,400 for rental payments in respect of paying for alternative accommodation;

to Mr. Kadir Lojić, the applicant in case no. CH/98/1135: KM 3,300 (three thousand three hundred), composed of KM 1,200 by way of compensation for mental suffering and KM 2,100 for rental payments in respect of paying for alternative accommodation;

to Mr. Ismet Lojić, the applicant in case no. CH/98/1136: KM 3,300 (three thousand three hundred), composed of KM 1,200 by way of compensation for mental suffering and KM 2,100 for rental payments in respect of paying for alternative accommodation;

to Mr. Neškić, the applicant in case no. CH/98/1139: KM 1,200 (one thousand two hundred), by way of compensation for mental suffering;

to Mr. Anadolac, the applicant in case no. CH/98/1141: KM 4,400 (four thousand four hundred), composed of KM 1,200 by way of compensation for mental suffering and KM 3,200 for rental payments in respect of paying for alternative accommodation;

to Mr. Drndić, the applicant in case no. CH/98/1144: KM 3,100 (three thousand one hundred), composed of KM 1,200 by way of compensation for mental suffering and KM 1,900 for rental payments in respect of paying for alternative accommodation;

to Mr. Crnkić, the applicant in case no. CH/98/1145: KM 3,300 (three thousand three hundred), composed of KM 1,200 by way of compensation for mental suffering and KM 2,100 for rental payments in respect of paying for alternative accommodation;

to Mr. Halilović, the applicant in case no. CH/98/1146: KM 3,400 (three thousand four hundred), composed of KM 1,200 by way of compensation for mental suffering and KM 2,200 for rental payments in respect of paying for alternative accommodation;

to Mr. Hadžihafizović, the applicant in case no. CH/98/1147: KM 1,200 (one thousand two hundred), by way of compensation for mental suffering;

to Mr. Mesić, the applicant in case no. CH/98/1148: KM 3,500 (three thousand five hundred), composed of KM 1,200 by way of compensation for mental suffering and KM 2,300 for rental payments in respect of paying for alternative accommodation;

to Mr. Samardžić, the applicant in case no. CH/98/1149: KM 3,400 (three thousand four hundred), composed of KM 1,200 by way of compensation for mental suffering and KM 2,200 for rental payments in respect of paying for alternative accommodation;

to Mr. Šarac, the applicant in case no. CH/98/1150, KM 3,100 (three thousand one hundred), composed of KM 1,200 by way of compensation for mental suffering and KM 1,900 for rental payments in respect of paying for alternative accommodation;

to Mr. Neškić, the applicant in case no. CH/98/1151: KM 3,300 (three thousand three hundred), composed of KM 1,200 by way of compensation for mental suffering and KM 2,100 for rental payments in respect of paying for alternative accommodation;

to Mr. Porić, the applicant in case no. CH/98/1153: KM 3,200 (three thousand two hundred), composed of KM 1,200 by way of compensation for mental suffering and KM 2,000 for rental payments in respect of paying for alternative accommodation;

(b) to pay to those applicants who have not yet regained possession of their properties by 31 May 2000 (excluding the applicants in case no. CH/98/1124, Mr. and Mrs. Dizdarević), within three months from the dates when they regain possession of their properties, the sum of KM 100 (one hundred) per month from 1 June 2000 until the end of the month in which they regain possession of the properties;

(c) to pay to the applicant or applicants in each case simple interest at the rate of 4 (four) per cent per annum over the above sums or any unpaid portion thereof from the date of expiry of the above three-month periods until the date of settlement of all sums due to the applicant or applicants in each case in accordance with this decision; and

9. unanimously, to order the Republika Srpska to report to it within three months of the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure on the steps taken by it to comply with the above orders.

(signed)
Anders MÅNSSON
Registrar of the Chamber

(signed)
Giovanni GRASSO
President of the Second Panel