DECISION ON ADMISSIBILITY AND MERITS
(delivered on 6 June 2003)

Case no. CH/98/1169

R.M.

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 2 June 2003 with the following members present:

Ms. Michèle PICARD, President
Mr. Mato TADIĆ, Vice-President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
Mr. Rona AYBAY
Mr. Želimir JUKA
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Giovanni GRASSO
Mr. Miodrag PAJIĆ
Mr. Manfred NOWAK
Mr. Vitomir POPOVIĆ
Mr. Viktor MASENKO-MAVI
Mr. Andrew GROTRIAN

Mr. Ulrich GARMS, Registrar
Ms. Olga KAPIĆ, Deputy Registrar
Ms. Antonia DE MEO, Deputy Registrar

Having considered the aforementioned application introduced pursuant to Article VIII(1) of the Agreement on Human Rights ("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 case concerns the applicant's attempts to register his ownership over a former Yugoslav National Army ("JNA") apartment located at Ulica Skenderija 24 in Sarajevo, the Federation of Bosnia and Herzegovina. At issue is whether the applicant should be recognised as the owner of the apartment, based on the fact that he initiated the proceedings to purchase his apartment, was assessed the purchase price, which turned out to be 0.00 Yugoslav Dinars ("YUD"), and paid a small fee related to the purchase, but never concluded the written purchase contract. The applicant has always been in possession of his apartment.

2. The case raises issues under Articles 6 and 13 of the European Convention on Human Rights (the "Convention") and Article 1 of Protocol No. 1 to the Convention.

II. PROCEEDINGS BEFORE THE CHAMBER

3. The application was introduced and registered on 18 September 1998.

4. On 23 April 1999, the Chamber transmitted the case to the Federation of BiH for its observations on the admissibility and merits under Articles 6 and 13 of the Convention and Article 1 of Protocol No. 1 to the Convention.

5. On 23 June 1999, the Federation of BiH submitted its observations on the admissibility and merits, which were forwarded to the applicant. On 12 July 1999, the applicant submitted his comments on the observations on the admissibility and merits.

6. On 25 December 2001, 23 January 2003, 6 February 2003, 26 March 2003 and 28 April 2003, the applicant submitted additional comments.

7. On 11 April 2003, 29 April 2003 and 21 May 2003, the respondent Party submitted additional observations.

8. The Chamber deliberated on the admissibility and merits of the application on 31 March 2003, 1 April 2003, 6 May 2003, and 2 June 2003 and adopted the present decision on the latter date.

III. ESTABLISHMENT OF THE FACTS

9. The applicant served in the former JNA between 1954 and 1987.

10. The applicant has been the occupancy right holder over the apartment in question since 1971.

11. On 30 January 1992, the applicant requested the JNA to sell to him the apartment in question in accordance with the Law on Securing Housing for the Yugoslav National Army (see paragraphs 26-27 below).

12. On 31 January 1992, a "draft" contract on purchase of the apartment was prepared and signed by the applicant, contract no. 25/3-3-5008. The applicant states that he was expecting the other contracting party, the JNA, to sign it; however, this never happened.

13. On 4 February 1992, the applicant paid the costs of assessment of the value of his apartment and other procedural costs.

14. On 27 February 1992, the competent commission of the JNA Housing Fund valued the applicant's apartment at 669,426 YUD.

15. On 12 March 1992, the JNA Social Welfare Fund issued a certificate stating that the applicant's contributions for the housing needs of JNA service members amounted to 816,867 YUD.

16. Since the applicant's contributions were larger than the value of his apartment, the purchase price was 0.00 YUD. Nevertheless, the applicant decided to pay an additional 5,600 YUD on 12 April 1992, suspecting that the purchase price might rise due to inflation.

17. On 12 January 1995, the applicant requested the Municipal Court I in Sarajevo ("Municipal Court") to establish his ownership over the apartment in question regardless of the fact that he had not concluded a purchase contract. The applicant submitted the draft purchase contract together with his lawsuit.

18. On 16 October 2000, the Municipal Court issued a judgment establishing the applicant's ownership over the claimed apartment. The Municipal Court concluded that the applicant obtained the ownership over the apartment based on the purchase contract of 31 January 1992, which was only signed by the applicant, and on the basis of the additional 5,600 YUD which he paid. The Federation Ministry of Defence appealed this decision on 25 December 2000.

19. On 7 August 2001, the Cantonal Court in Sarajevo quashed the judgment of 16 October 2000 and returned the case to the Municipal Court.

20. The applicant alleges that, upon his insistence, the Municipal Court judge scheduled hearings on 18 June 2002, 2 August 2002, 26 August 2002, 24 September 2002, and 21 October 2002. All of these hearings were postponed, apparently because one of the parties to the proceedings, the Federation Ministry of Defence, did not appear. Finally, on 6 November 2002 the hearing was held, even though the above-mentioned party was still not present. The respondent Party did not dispute these statements.

21. On 6 November 2002, the Municipal Court issued a procedural decision declaring its lack of jurisdiction. In its reasoning, the Municipal Court noted that the applicant is the occupancy right holder over the apartment in question, and that therefore, in accordance with the Law on Sale of Apartments with an Occupancy Right, he is obliged to initiate proceedings with the Federation Ministry of Defence to privatise his apartment.

22. On 24 January 2003, the applicant appealed against the procedural decision of 6 November 2002 to the Cantonal Court in Sarajevo. The case is still pending.

23. The applicant furthermore alleges that he visited the Federation Ministry of Defence in 2000 and 2002 and orally requested it to issue to him a contract on purchase of the apartment in question on the basis of his contributions to the JNA Housing Fund. The officials of the Federation Ministry of Defence allegedly refused the applicant's requests. However, there are no written records of those conversations.

24. On 29 April 2003 and 21 May 2003, the respondent Party informed the Chamber that the applicant had signed a new purchase contract for the apartment in question and that the signatures of the parties have already been verified by the competent court. The applicant should be registered as the owner over the apartment in question within a short time.

25. On 12 May 2003, the Chamber requested the applicant to inform the Chamber whether he had signed a new purchase contract with the Federation Ministry of Defence to purchase the apartment in question. The applicant was requested to respond within two weeks, but failed to do so.

IV. RELEVANT LEGAL FRAMEWORK

A. Law on Securing Housing for the Yugoslav National Army

26. The applicant initiated the proceedings to purchase his apartment under the Law on Securing Housing for the Yugoslav National Army (Official Gazette of the Socialist Federal Republic of Yugoslavia –hereinafter- "OG SFRJ", no. 84/90). This Law was passed in 1990 and came into force on 6 January 1991. It essentially regulated the housing needs for military and civilian members of the JNA.

27. Article 20 of the Law provided that the holder of an occupancy right residing in an apartment of the JNA Housing Fund could purchase the apartment on the basis of a contract made with the former JNA.

B. Law on the Transfer of Real Estate

28. Article 9 of the Law on the Transfer of Real Estate (Official Gazette of the Socialist Republic of Bosnia and Herzegovina – hereinafter – "OG SRBiH" nos. 38/78, 4/89, 29/90 and 22/91; Official Gazette of the Republic of Bosnia and Herzegovina – hereinafter – "OG RBiH" nos. 21/92, 3/93, 17/93, 13/94, 18/94 and 33/94) states that a contract on the transfer of real estate must be made in written form and the signatures must be verified by the competent court.

C. Law on Sale of Apartments with an Occupancy Right

29. Article 39a of the Law on Sale of Apartments with an Occupancy Right (Official Gazette of the Federation of Bosnia and Herzegovina – hereinafter –"OG FBiH" nos. 27/97, 11/98, 22/99, 27/99, 7/00, 25/01, 32/01, 61/01 and 15/02) states that a person who entered into a contract to purchase a JNA apartment, who holds the occupancy right over said apartment and is legally using the apartment, shall be registered as that apartment's owner with the competent court by an order of the relevant housing authority within the Federation Ministry of Defence."

30. Article 39d states that if an individual fails to realise his or her rights in connection with the apartment with the Federation Ministry of Defence, as provided for in this Law, the individual may initiate proceedings before the competent court.

D. Instruction on Application of Articles 39a, 39b and 39c of the Law on Sale of Apartments with an Occupancy Right

31. According to Article 6 of the Instruction for Implementation of Articles 39a, 39b and 39c of the Law on Sale of Apartments with an Occupancy Right (OG FBiH no. 6/00), the Federation Ministry of Defence shall sell a former JNA apartment to the occupancy right holder over such apartment, who is not in possession of a contract on purchase concluded with the former JNA, in accordance with the Law on Sale of Apartments. The Federation Ministry of Defence shall assess the new purchase price of the apartment and it shall subtract from such purchase price any sum that was paid in accordance with the Law on Securing Housing for the JNA.

V. COMPLAINTS

32. The applicant complains that the authorities of the Federation of BiH have not recognised him as the owner, but only as the occupancy right holder, of the apartment in question. Therefore, the application raises issues under Article 1 of Protocol No. 1 to the Convention. Given that the applicant initiated proceedings before the courts in 1995 to establish his ownership over the apartment, and has still not obtained a final decision, the application also raises issues under Articles 6 and 13 of the Convention.

VI. SUBMISSIONS OF THE PARTIES

A. The respondent Party

33. The Federation of BiH submitted its observations on the admissibility and merits of the application on 23 June 1999. As to the admissibility, the Federation of BiH submits that the applicant has not exhausted domestic remedies, and also raises objections concerning the six-month rule. As to the merits, the Federation of BiH submits that as the applicant has not exhausted any domestic remedies, a violation of Article 6 of the Convention can not be in question. As to Article 1 of Protocol No. 1 to the Convention, the Federation of BiH asserts that ownership over property must be evidenced by a written contract. In this case, the applicant does not have a written contract, which means that Article 1 of Protocol No. 1 to the Convention has not been called into question. The Federation of BiH also points out that all evidence that the applicant submitted related to the purchase of the apartment is inadequate to prove his ownership. The courts are the only body that can establish whether a contract existed or not.

34. On 29 April 2003, the respondent Party submitted additional information, namely, that the Prosecutor's Office of the Federation Ministry of Defence determined that the applicant's contract on purchase of the apartment, number 17-1-102/01, was valid on 2 September 2002, and that the order for the applicant to be registered as the owner over the apartment should be issued shortly. On 21 May 2003, the respondent Party confirmed that such contract is a new contract on purchase, issued under the Law on Sale of Apartments with an Occupancy Right.

B. The applicant

35. The applicant maintains that he obtained ownership over his apartment in 1992 because he fulfilled all the conditions set out in the Law on Securing Housing for the JNA. The fact that he did not conclude the purchase contract is not relevant, in the applicant's opinion, as he took all other necessary steps. The applicant requests the Chamber to issue a decision finding a violation of his rights in that the organs of the Federation of BiH have not recognised his ownership based on the steps he took in 1992 and due to the length of proceedings before the domestic organs.

VII. OPINION OF THE CHAMBER

A. Admissibility

36. Before considering the merits of the application the Chamber must decide whether to accept it, taking into account the admissibility criteria set out in Article VIII(2) of the Agreement. Under Article VIII(2)(a), the Chamber shall consider whether effective remedies exist and, if so, whether they have been exhausted, and whether the application has been filed within six months from the date of the final decision in the case.

37. The Federation of BiH objects to the admissibility of the application on the ground that the applicant has failed to exhaust domestic remedies. The Chamber has found that the existence of the remedies in question must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness (see *e.g*, case no. CH/96/17, *Blentić,* decision on admissibility and merits of 5 November 1997, paragraph 19, Decisions on Admissibility and Merits March 1996 – December 1997).

38. The Chamber is aware that proceedings are still pending in the present case, as the applicant has appealed the most recent decision of the Municipal Court I in Sarajevo to the Cantonal Court. However, given the fact that the applicant initiated proceedings in this matter in 1995, and that the proceedings are thus pending for more than eight years, the Chamber concludes that the domestic remedies have not proven effective. For these reasons, the application is admissible despite the pending court proceedings.

39. As to the Federation of BiH's objections to the admissibility of the application due to the six-month rule, that is that the applicant must file his application to the Chamber within six months of receiving a final decision in the matter, the Chamber does not consider this objection well-founded as the applicant has still not received a final decision in his case from the domestic authorities. Consequently, the six-month time limit for filing an application to the Chamber has not started running.

40. As to the Federation of BiH's objection that the lack of a written contract on purchase of the apartment means that the applicant has no protected possession for the purposes of Article 1 of Protocol No. 1 to the Convention, the Chamber will consider this question on the merits of Article 1 of Protocol No. 1 to the Convention.

41. The Chamber finds that none of the other grounds for declaring the application inadmissible have been established. Accordingly, the application is admissible in its entirety.

B. Merits

42. Under Article XI of the Agreement, the Chamber must address the question whether the facts established above disclose a breach by the respondent Party of its obligations under the Agreement. Article I of the Agreement provides that the Parties shall secure to all persons within their jurisdiction the highest level of internationally recognised human rights and fundamental freedoms, including the rights and freedoms provided in the Convention and the other international agreements listed in the Appendix to the Agreement.

1. Article 6 of the Convention

43. Article 6 paragraph 1 of the Convention, so far as relevant, provides as follows:

> "1. In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law...."

44. The applicant primarily complains of the length of proceedings before the domestic bodies. The reasonableness of the length of proceedings is to be assessed based on criteria laid down by the European Court of Human Rights, 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., case no. CH/97/54, *Mitrović*, decision on admissibility of 10 June 1998, paragraph 10, Decisions and Reports 1998).

a. Period to be taken into account

45. It is an uncontested fact that the applicant initiated proceedings before the competent court to determine the ownership over the apartment in question on 12 January 1995. However, the period which falls under the Chamber's jurisdiction did not begin on that date, but rather on 14 December 1995, the date the Agreement came into force. Thus, although the proceedings are pending for over eight years and five months, the Chamber has jurisdiction to consider the period starting from 14 December 1995 to the present, a period of seven years and six months.

b. Applicable criteria

i. The complexity of the case

46. The applicant seeks the domestic organs to confirm his ownership right over the apartment given the steps he took in 1992 to purchase the apartment. The Chamber considers that this determination is not particularly complex.

ii. The conduct of the applicant

47. The Chamber has no information that the conduct of the applicant has in any way contributed to the length of the proceedings. On the contrary, from the statements of the applicant, it appears that he has urged the court on several occasions to issue a decision in his case.

iii. The conduct of the national authorities

48. The Chamber recalls that the applicant received the decision from the first instance body in his favour on 16 October 2000, five years after he first initiated the proceedings in January 1995. However, as the Federation Ministry of Defence appealed the decision, the Cantonal Court quashed that decision and returned the case to the Municipal Court on 7 August 2001. Nearly a year later, the Municipal Court declared its lack of jurisdiction on 6 November 2002. In declaring its lack of jurisdiction, the Municipal Court simply disregarded the claim brought before it by the applicant, which is that he validly concluded a contract on purchase of the apartment and seeks to be registered as the owner over the apartment on the basis of that contract, and not of a new contract to be concluded under the Law on Sale of Apartments with an Occupancy Right. The applicant appealed this decision to the Cantonal Court. In the event that the Cantonal Court rules that the Municipal Court in fact has jurisdiction, then the procedural decision issued by the Municipal Court only served to further delay the proceedings.

c. Conclusion

49. The Chamber holds that the excessive length of proceedings in a relatively simple matter violates the applicant's right to a fair trial within a reasonable time under Article 6, paragraph 1 of the Convention, for which the Federation of BiH is responsible.

2. Article 13 of the Convention

50. Article 13 of the Convention 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."

51. In view of its finding under Article 6 of the Convention, the Chamber considers it unnecessary also to examine the application under Article 13 of the Convention. The requirements of Article 13 of the Convention are less strict than those of Article 6 of the Convention and are absorbed by the latter (see, *e.g.*, Eur. Court HR, *Hentrich v. France*, judgment of 22 September 1994, Series A no. 296, paragraph 65).

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

52. The applicant alleges a violation of his right to the peaceful enjoyment of possessions. Article 1 of Protocol No. 1 to the Convention 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."

53. The Chamber observes that the applicant appears to have concluded a new contract on purchase under the Law on Sale of Apartments with an Occupancy Right. However, this does not resolve the question of whether the Federation's refusal to recognise him as the owner over the

apartment on question based on the steps he took under the Law on Securing Housing for the JNA constitutes a violation of the applicant's right to the peaceful enjoyment of his possessions.

54. In previous JNA apartment cases, the Chamber has held that the contractual rights obtained on the basis of contracts concluded with the former JNA constitute "possessions", within the meaning of Article 1 of Protocol No. 1 to the Convention (see, *e.g.*, case no. CH/96/3, 8 and 9 *Medan, Bastijanović and Marković*, decision on the merits of 3 November 1997, paragraphs 32-34, Decision on Admissibility and Merits March 1996-December 1997; case no. CH/96/2 *et al.*, *Podvorac and Others,* decision on admissibility and merits of 14 May 1998, paragraphs 59-61, Decisions and Reports 1998). These contractual rights (although the contracts may in some cases be challengeable in court), were based on a written contract concluded between the applicants and the former JNA.

55. In the present case, the Chamber must determine whether the steps the applicant took in 1992 towards the purchase of the apartment can be considered to have conferred on him a protected possession within the meaning of Article 1 of Protocol No. 1 to the Convention. The Chamber recalls that the applicant was assessed the purchase price of his apartment (which happened to be 0.00 YUD) and paid a small fee related to the purchase, and even signed a draft contract, but never concluded the written purchase contract.

a. Does the applicant have a protected possession on the grounds of having concluded a contract?

56. While true that the Municipal Court in its decision issued on 16 October 2000 found that the steps taken by the applicant in 1992 were sufficient to conclude that the applicant had obtained the ownership over the apartment in question, the Cantonal Court quashed this decision and ordered that the first instance organ remove the deficiencies from the judgment and again carefully consider the submitted evidence. It appears to the Chamber that the most probable interpretation of domestic law is that the applicant's position is not that he concluded a contract which may be challengeable in court (as the applicants Messrs. Medan, Marković and D.Đ. and Ms. Fetahagić in the above-mentioned cases), but that he has a claim which is *prima facie* not recognised by domestic law. Although the Chamber does not exclude the possibility that the domestic courts might find that the applicant is the owner over the apartment in question, the Chamber considers that the applicant's claim at the present moment is too tenuous to find that he has a protected possession on the grounds of having concluded a purchase contract.

b. Does the applicant have a present legitimate expectation to have the contract concluded under the Law on Securing Housing for the Yugoslav National Army?

57. The Chamber recalls that, according to the jurisprudence of the European Court of Human Rights, a protected possession can only be an "existing possession" (Eur. Court HR, *Van der Mussele v. Belgium*, judgment of 23 November 1983, Series A no. 70, paragraph 48), or, at least, an asset which the applicant has a "legitimate expectation" to obtain. Furthermore, that "legitimate expectation" must be based upon a valid administrative act or upon legislation in force (see, e.g. case no. CH/98/1040 *Živojnović,* decision on admissibility of 9 October 1999, paragraph 20, Decisions August— December 1999).

58. In the present case, the applicant, at the time of taking the steps towards the purchase of the apartment, had a legitimate expectation to purchase the apartment under the Law on Securing Housing for the Yugoslav National Army. However, that Law is no longer in force. The Chamber considers that while the applicant may have had a legitimate expectation in 1992 to conclude a purchase contract with the JNA and be registered as the owner over the apartment, the applicant presently does not have a valid legitimate expectation to be recognised as the owner over such apartment. Consequently, he does not have a protected possession in the sense of having a valid legitimate expectation to be recognised as the owner over the apartment based on the steps he took in 1992 under the Law on Securing Housing for the JNA.

c. Conclusion

59. In conclusion, the Chamber holds that the applicant's claim under Article 1 of Protocol No. 1 to the Convention is too tenuous to amount to a protected possession, and therefore, there has been no violation of Article 1 of Protocol No. 1 to the Convention.

VIII. REMEDIES

60. The Chamber has established that the Federation of BiH violated the right of the applicant to a fair trial within a reasonable time. According to Article XI(1)(b) of the Agreement, the Chamber must next address the question of what steps shall be taken by the Federation of BiH to remedy the established breach. In this connection the Chamber shall consider, *inter alia,* issuing orders to cease and desist and monetary relief (including pecuniary and non-pecuniary damages).

61. With regard to the court proceedings, the Chamber considers it appropriate to order the respondent Party to take all necessary steps to secure the speedy resolution of the applicant's claim.

62. The applicant did not request any monetary compensation for pecuniary damage, and the Chamber finds no reason to award any.

63. However, the Chamber *proprio motu* considers it appropriate to award a sum of 1,000 KM to the applicant in recognition of the sense of injustice he suffered due to the unjustified delays in the resolution of his claim before the domestic organs, such sum to be paid not later than 6 August 2003.

64. The Chamber will further award simple interest at an annual rate of 10% as of 6 August 2003 on the sum awarded in the preceding paragraph or any unpaid portion thereof until the date of settlement in full.

65. The Chamber will order the respondent Party to report to it no later than 6 August 2003 on the steps taken to comply with the above orders.

IX. CONCLUSIONS

66. For the above reasons, the Chamber decides,

1. by 11 votes to 3, to declare the application admissible against the Federation of Bosnia and Herzegovina in respect of Article 1 of Protocol No. 1 to the European Convention on Human Rights;

2. by 13 votes to 1, to declare the application admissible against the Federation of Bosnia and Herzegovina in respect of Articles 6 and 13 of the European Convention on Human Rights;

3. by 12 votes to 2, that the right of the applicant to a fair trial within a reasonable time under Article 6 of the European Convention on Human Rights has been violated, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Agreement;

4. unanimously, that it is not necessary to examine the application under Article 13 of the European Convention on Human Rights;

5. unanimously, that the right of the applicant to the peaceful enjoyment of his possessions within the meaning of Article 1 of Protocol No. 1 to the European Convention on Human Rights has not been violated;

6. by 13 votes to 1, to order the Federation of Bosnia and Herzegovina to take all necessary steps to secure the speedy resolution of the applicant's claim;

7. by 10 votes to 4, to order the Federation of Bosnia and Herzegovina to pay to the applicant, not later than 6 August 2003, the sum of 1,000 (one thousand) Convertible Marks (Konvertibilnih Maraka) by way of compensation for non-pecuniary damage;

8. by 10 votes to 4, to order the Federation of Bosnia and Herzegovina to pay simple interest at an annual rate of 10% (ten percent) on the sum specified in conclusion no. 7 above or any unpaid portion thereof as from 6 August 2003 until the date of settlement in full; and

9. unanimously, to order the Federation of Bosnia and Herzegovina to report to it on the steps taken to comply with the above orders no later than 6 August 2003.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the Chamber