DECISION ON ADMISSIBILITY AND MERITS
(delivered on 12 May 2000)

Case no. CH/98/1195

Rahima LISAC

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 8 May 2000 with the following members present:

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

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

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

Adopts the following decision pursuant to 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 attempts of the applicant, a citizen of Bosnia and Herzegovina of Bosniak descent, to regain possession of an apartment in Banja Luka of which she is the owner. She lived in the apartment until September 1995, when she vacated it and entered into a contract for the rental of the apartment with a private individual. She claims that she was forced by that individual to enter into the contract. The applicant has initiated administrative and judicial proceedings to regain possession of the apartment, so far without success.

2. The case raises issues under Articles 6 and 8 of the European Convention on Human Rights and under Article 1 of Protocol No. 1 to the Convention.

II. PROCEEDINGS BEFORE THE CHAMBER

3. The application was submitted on 28 September 1998 and registered on the same day.

4. On 18 January 1999 the Chamber requested certain factual information from the applicant. Her reply was received on 5 February 1999.

5. On 26 July 1999 the application was transmitted to the respondent Party for its observations on its admissibility and merits, which were received on 28 September 1999.

6. The applicant's further observations, including a claim for compensation, were received on 13 October and 8 November 1999 and transmitted to the respondent Party on 14 October and 12 November 1999. The respondent Party was requested to submit observations on the claim for compensation submitted by the applicant but did not do so.

7. On 18 February 2000 the Chamber requested certain further factual information from the applicant, which was received on 10 March 2000 and sent to the respondent Party for information on 15 March 2000.

8. The Chamber deliberated on the admissibility and merits of the application on 4 April and 8 May 2000.

III. ESTABLISHMENT OF THE FACTS

A. The particular facts of the case

9. The facts of the case as they appear from the submissions of the Parties and the documents in the case-file may be summarised as follows.

10. The applicant is a citizen of Bosnia and Herzegovina of Bosniak descent. She resided in an apartment located at Jevrejska 24/II in Banja Luka. After the death of her husband in 1991, his occupancy right over the apartment was transferred to the applicant by the holder of the allocation right over the apartment, the Yugoslav National Army ("JNA"). She subsequently entered into a contract for the purchase of the apartment. On 8 December 1997 this contract, which is not dated, was approved by the Court of First Instance in Banja Luka and the applicant was duly registered in the land registry as the owner of the apartment.

11. In the course of 1995 a private individual, V.Đ., exerted pressure on the applicant to vacate the apartment, as he wished to reside there. This pressure consisted of repeated visits by armed men and threats of violence against the applicant if she did not vacate the apartment. On 9 September 1995 the applicant vacated the apartment, having been forced to enter into a contract with V.Đ., under which he was entitled to occupy the apartment. This contract, signed by the applicant and V.Đ., was for a period of two years. On 15 October 1995 the High Commission for

Accommodation of the Bosnian Serb Army declared the apartment abandoned. V.Đ. now refuses to vacate the apartment. The applicant has since lived at various temporary addresses in Banja Luka.

12. On 4 June 1996 the applicant initiated proceedings before the Court of First Instance in Banja Luka against V.Đ., requesting the termination of the rental contract of 9 September 1995 and requesting that she be entitled to regain possession of the apartment.

13. The applicant made various additional submissions to the court regarding her proceedings. On a number of occasions she requested the court to expedite its proceedings in the case. On 18 February 1998 she amended her proceedings in view of the fact that the contract for rental of the apartment of 9 September 1995 had expired. The amendment of the proceedings was thus to reflect the fact that she no longer requested the termination of the contract, but solely requested to be allowed to regain possession of the apartment. At a hearing held before the court on 21 January 1999, V.Đ. presented a copy of a decision of the Commission for the Accommodation of Refugees and Administration of Abandoned Property in Banja Luka, a department of the Ministry for Refugees and Displaced Persons, dated 11 April 1997. This decision allocated the apartment to V.Đ. and stated that the apartment was considered to be abandoned. The applicant had not been delivered a copy of this decision and this was the first time she became aware of its existence.

14. On 4 February 1999 the Court of First Instance issued its decision in the applicant's proceedings. It declared itself incompetent to deal with the matter as it concerned abandoned property. The court stated that matters concerning abandoned property are to be dealt with by the Ministry in administrative proceedings. On 12 March 1999 the applicant appealed to the Regional Court in Banja Luka against this decision. According to the latest information available to the Chamber, there has been no decision upon her appeal to date.

15. On 24 January 1999 the applicant appealed to the Ministry for Refugees and Displaced Persons against the decision of 11 April 1997 allocating the apartment to V.Đ. The grounds of her appeal were that she had never left Banja Luka and that she only vacate the apartment due to the pressure of V.Đ. No decision has been issued on this appeal to date.

16. On 26 March 1999 the applicant applied under the Law on the Cessation of the Application of the Law on the Use of Abandoned Property to be allowed to regain possession of the apartment. On 1 July 1999 the Commission ordered that the apartment be returned into her possession within 90 days of the date of the decision. It also stated that the right of V.Đ. to occupy the apartment would cease upon the expiry of that period. The decision also stated that V.Đ. was to be granted alternative accommodation by the Ministry before the expiry of the 90-day period referred to above for the return of the apartment into the applicant's possession. On 14 July 1999 the applicant appealed against this decision, on the ground that V.Đ. was not entitled to be allocated alternative accommodation. There has, according to the information available to the Chamber, been no decision on this appeal to date. The applicant claims that she will, in fact, be unable to regain possession of the apartment as long as V.Đ. has the right to be granted alternative accommodation, as there is at present a chronic shortage of such accommodation.

17. On 23 November 1996 the applicant appealed to the relevant authorities of the Army of the Republika Srpska against the decision of the High Commission for Accommodation of 15 October 1995 declaring the apartment to be abandoned. On 29 November 1996 this commission wrote to the applicant, stating that her complaint would not be considered as it was not lodged within the relevant time and in any event that organ no longer had competence to deal with the apartment (as it was abandoned and therefore to be administered by the Ministry). On 5 December 1996 the applicant appealed against this decision. There has been no decision on this appeal to date.

18. The applicant has not yet regained possession of the apartment and her administrative and court proceedings are still pending before the relevant organs of the Republika Srpska. She currently lives in Banja Luka with friends.

B. Relevant legislation

1. Constitution of the Republika Srpska

19. Article 121 of the Constitution of the Republika Srpska 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."

2. The Law on Use of Abandoned Property

20. 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 was published in the OG RS on 26 February 1996 and entered into force the following day. It established a legal framework for the administration of abandoned property. Accordingly, it defined what forms of property were to be considered as abandoned and set out the categories of persons to whom abandoned property could be allocated. The provisions of that law, insofar as they are relevant to the present case, are summarised below.

21. 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 records of abandoned property. Types of property which could be declared abandoned include apartments (both privately and socially owned) and houses.

22. Article 3 states that abandoned property is to be temporarily protected and managed by the Republika Srpska. To this end, the Ministry is obliged, under 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. The preparation of registers of abandoned property is to be carried out by the appropriate administrative bodies in each municipality

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

23. 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. It puts the old law out of force.

24. 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.

25. 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.

26. Upon receipt of an application, 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.

27. 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.

28. Article 8 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. 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.

29. 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.

30. Article 10 states that proceedings concerning return of property shall, unless otherwise specified, be carried out in accordance with the Law on Administrative Proceedings and treated as an expedited procedure.

31. 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.

32. 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.

4. The Law on General Administrative Proceedings

33. The Law on General Administrative Proceedings (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.

34. 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 Proceedings. Under Article 3, all issues that are not regulated by a special law are to be regulated by the Law on Administrative Proceedings.

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

36. 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.

37. 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.

38. 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.

39. Under Article 277(1), administrative execution shall be carried out by the administrative body which issued the first instance decision, unless a different procedure is provided for by law.

40. Article 286 states that if the person against whom execution is ordered does not comply with the decision, the administrative body which made the decision shall ensure the execution of the decision. The administrative body shall warn the person against whom execution is ordered that if he or she does not comply with the decision within a specified period that forceful means shall be employed to ensure execution of the decision. If he or she fails to comply with the decision within this specified period, the threatened means shall be applied and further stronger, means shall be threatened.

41. Article 287 provides for the use of direct force to ensure the execution of a decision which cannot be executed using the procedure provided for under Article 286 above.

IV. COMPLAINTS

42. The applicant complains of violations of her rights as guaranteed by Articles 6 and 8 of the Convention and Article 1 of Protocol No. 1 to the Convention.

V. SUBMISSIONS OF THE PARTIES

43. The respondent Party, in its observations on the admissibility and merits of the application, refers to the administrative and court proceedings initiated by the applicant. It states that these proceedings are still pending before the competent organs of the Republika Srpska.

44. The respondent Party claims that the matter essentially involves a private dispute between the applicant and V.Đ. In addition, it claims that the proceedings before the Court of First Instance have not lasted an excessively long period of time, especially in view of the fact that the applicant amended her proceedings and thereby is herself responsible for the length of time they have lasted.

45. Concerning the administrative proceedings initiated by the applicant, the respondent Party points out that the Commission issued a decision on 1 July 1999 (see paragraph 16 above) entitling the applicant to regain possession of the apartment.

46. In conclusion, the respondent Party states that the application should be declared inadmissible as manifestly ill-founded.

47. The applicant maintains her complaint. She claims that her court proceedings have lasted an unreasonably long time, due to the actions of the court. She denies that she has contributed to the delay in the proceedings. She claims that the conduct of the authorities of the respondent Party in the administrative proceedings has been such as to deny her the right to regain possession of the apartment, of which she is the registered owner.

VI. OPINION OF THE CHAMBER

A. Admissibility

48. Before considering the merits of the case the Chamber must decide whether to accept it, taking into account the admissibility criteria set out in Article VIII(2) of the Agreement. According to Article VIII(2)(a), the Chamber must consider whether effective remedies exist and whether the applicant has demonstrated that they have been exhausted.

49. In the *Onić* case (case no. CH/97/58, decision on admissibility and merits delivered on 12 February 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."

50. The Chamber notes that in June 1996, the applicant initiated proceedings before the Court of First Instance in Banja Luka, seeking to regain possession of the first apartment. However, these proceedings were rejected by the court and the applicant's appeal is currently pending before the Regional Court (see paragraph 14 above).

51. 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, finding that 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 does not appear to be an effective remedy.

52. The Chamber notes that the applicant has applied under the new law to regain possession of the apartment. On 1 July 1999 the Commission issued a decision entitling her to regain possession of it and granting the current occupant the right to alternative accommodation. The applicant's appeal against the latter part of the decision is still pending. The reason for her appeal was that she claims that the current occupant will not be evicted unless and until he is provided with alternative accommodation, which has not yet happened.

53. As the Chamber noted in its decision in *Eraković* (case no. CH/97/42, decision on admissibility and merits delivered on 15 January 1999, paragraph 40, Decisions January-July 1999) a remedy such as that provided for by the law applicable in the Federation of Bosnia and Herzegovina, analogous to the new law in the Republika Srpska, could in principle qualify as an effective one. The Chamber finds that its analysis in that case applies equally to the new law, i.e. the Republika Srpska law, relevant to the present case.

54. In the *Eraković* case, the Chamber considered the factual background to the case in the context of its admissibility. It held that the circumstances of that case, including the failure to adhere to the relevant time-limits, meant that the applicant could not be required to exhaust any further remedy provided for by national law. The Chamber finds that the same applies in the present case, especially in view of the fact that, despite the clear statement in the new law (see paragraph 27 above) that any failure by the relevant organ to provide a temporary occupant with alternative accommodation cannot delay the return of the pre-war owner, no steps have been taken to restore possession of the apartment to the applicant. In addition, the Commission in Banja Luka has not complied with the part of the decision ordering it to provide the current occupant with alternative accommodation.

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

56. The respondent Party claims that the application is manifestly ill-founded. The reasons it gives in support of this claim (see paragraphs 43-45 above) essentially relate to the question of exhaustion of domestic remedies, which the Chamber has considered above. The Chamber does not consider that there are any grounds for considering the application to be inadmissible as manifestly ill-founded and accordingly there is no reason to declare the application inadmissible on this ground.

57. The Chamber finds that no other ground for declaring the case inadmissible has been established. Accordingly, the case is to be declared admissible.

B. Merits

58. 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. 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.

1. Article 6 of the Convention

59. The applicant claimed that her right to a fair trial as protected by Article 6 of the Convention had been violated. 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 ...."

60. The respondent Party claimed that the applicant's proceedings before the Court of First Instance in Banja Luka had not lasted an unreasonably long time and that in any event the applicant had contributed to the length of those proceedings by amending her complaint.

61. 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. case no. CH/98/659 *et al., Pletilić and others,* decision on admissibility and merits delivered on 10 September 1999, paragraph 191, Decisions August-December 1999).

62. The Chamber notes with concern the length of the proceedings before the court, especially in view of the fact that the applicant is seeking to regain possession of an apartment of which she is the undisputed owner. In addition, even if the contract for rental of the apartment signed by the applicant with V.Đ. on 9 September 1995 could be considered to have been valid, it expired in September 1997. In addition, the decision of the Commission of 11 April 1997 purporting to allocate the apartment to him was clearly not in accordance with the law in force at the time, as the apartment could not be considered to be abandoned as the applicant had already initiated court proceedings to regain possession of it. Accordingly, since September 1997, there has been absolutely no doubt that V.Đ. is an illegal occupant. However, the Chamber does not consider it necessary to decide upon the reasonableness of the length of the applicant's proceedings for the following reasons.

63. As the Chamber has already noted, the applicant initiated proceedings before the Court of First Instance in Banja Luka on 4 June 1996, requesting that she be entitled to regain possession of the apartment. On 4 February 1999 the court declared itself incompetent to deal with the matter, as proceedings concerning return of property should be dealt with by the Ministry, in administrative proceedings. The applicant's appeal against this decision is still pending before the Regional Court in Banja Luka. As the Chamber has noted above (see paragraph 51), the courts of the Republika Srpska have a practice of suspending consideration of claims for repossession of abandoned and other property, holding that such questions are to be determined by administrative proceedings before the Ministry.

64. The Chamber notes that Article 121 of the Republika Srpska 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 19 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 court jurisdiction over property that was considered to be abandoned (see *Pletilić and others,* sup. cit., paragraph 194).

65. Nevertheless, the practical effect of the decision of the court of 4 February 1999 is that it is impossible for the applicant to have the merits of her civil action for the return into her possession of the apartment, which she owns, determined by a tribunal within the meaning of Article 6 paragraph 1 of the Convention. Accordingly, there has been a violation of her right to effective access to court as guaranteed by Article 6 paragraph 1 of the Convention.

2. Article 8 of the Convention

66. The applicant alleged a violation of her right to respect for her home as protected by Article 8 of the Convention. Article 8 reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 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."

67. The Chamber notes that the applicant lived in the apartment until September 1995, when she left and V.Đ. entered into possession of it in pursuance of a contract he concluded with the applicant. The Chamber has previously held that persons seeking to regain possession of properties they lost possession of during the war retain sufficient links with those properties for them to be considered their "home" within the meaning of Article 8 of the Convention (see, e.g., case no. CH/98/777, *Pletilić,* decision on admissibility and merits delivered on 8 October 1999, paragraph 74, Decisions August-December 1999). The Chamber therefore considers that the apartment is the applicant's "home" for this purpose.

68. The applicant has not claimed that the respondent Party or any body for whose actions it is responsible were responsible for her leaving the apartment. In any event she vacated the apartment before the entry into force of the Agreement, so the Chamber has no competence *ratione temporis* to consider the circumstances in which the applicant vacated the apartment.

69. V.Đ. received a decision of the Commission on 11 April 1997 entitling him to reside in the apartment. This decision was issued despite the fact that the applicant never abandoned the apartment, but rather entered into a contract for the rental of it with V.Đ. The Chamber does not consider it necessary for the purposes of the present case to determine whether she did so as a result of undue pressure. It is sufficient to note that as of the date of the decision of 11 April 1997 the applicant's court proceedings to regain possession of the apartment had been pending for over ten months. Accordingly, the apartment cannot be considered to have been abandoned. As a result, the decision of the Commission of 11 April 1997 was clearly not in accordance with the old law (see paragraph 21 above).

70. As noted above (see paragraphs 12-18), the applicant has initiated court and administrative proceedings seeking to regain possession of the apartment. However, these proceedings have been unsuccessful to date and she has not yet regained possession of that apartment. The decision of the Commission of 1 July 1999 grants the applicant the right to regain possession of her apartment and grants the current occupant the right to alternative accommodation (see paragraph 16 above). The respondent Party has not shown that the relevant authorities have taken any steps to provide V.Đ. with such accommodation and the Chamber has no evidence that this has occurred. The practical consequence of this failure appears to be that the prospects of the applicant regaining possession of her apartment are remote while V.Đ. is not provided with alternative accommodation and the respondent Party is responsible for this.

71. Therefore, the applicant has been unable to regain possession of the first apartment due to the failure of the authorities of the Republika Srpska to deal effectively with her various applications in this regard, which she commenced in June 1996. In addition, during these proceedings the Commission issued a decision granting V.Đ. the right to occupy the apartment. As a result, the

respondent Party is responsible for the interference with the right of the applicant to respect for her home as of 11 April 1997, the date of the decision of the Commission. This interference is ongoing as the applicant has not yet regained possession of the apartment.

72. The Chamber must therefore examine whether this interference has been in accordance with paragraph 2 of Article 8 of the Convention.

73. For an interference to be justified under the terms of paragraph 2 of Article 8 of the Convention, it must be "in accordance with the law", serve a legitimate aim and be "necessary in a democratic society". There will be a violation of Article 8 if any one of these conditions is not satisfied.

74. As the Chamber has pointed out at paragraph 69 above, the decision of the Commission of 11 April 1997 allocating the apartment to V.Đ. for his use was not in accordance with the old law. Therefore it cannot be considered to have been in accordance with the law as required by paragraph 2 of Article 8 of the Convention.

75. In addition, as the Chamber has noted in the context of its examination of the case under Article 6 of the Convention (see paragraph 63 above), the Court of First Instance in Banja Luka rejected the applicant's application to regain possession of her home, as it considered itself incompetent in such matters. The Chamber has found that this is not in accordance with the Constitution of the Republika Srpska. Accordingly, the failure of the court to decide upon the applicant's proceedings is not "in accordance with the law" as required by paragraph 2 of Article 8.

76. 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".

77. In conclusion, there has been a violation of the right of the applicant to respect for her home as guaranteed by Article 8 of the Convention and this violation is ongoing.

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

78. The applicant claimed that her right to peaceful enjoyment of her possessions as guaranteed by Article 1 of Protocol No. 1 to the Convention has been violated. This provision 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."

79. The Chamber notes that the applicant is the registered owner of the apartment. Accordingly, the apartment constitutes her "possession" for the purposes of Article 1 of Protocol No. 1 to the Convention.

80. The Chamber considers that the failure of the authorities of the Republika Srpska to allow the applicant to regain possession of the apartment constitutes an interference with her right to peaceful enjoyment of her possession. This interference is ongoing as the applicant still does not enjoy possession of the apartment.

81. The Chamber must therefore examine whether this interference 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 precise.

82. The Chamber has found, in the context of its examination of the case under Article 8 of the Convention, that the allocation of the apartment to V.Đ by the Commission on 11 April 1997 and the

failure of the authorities to enable the applicant to regain possession of the apartment was not in accordance with the law. This is in itself sufficient to justify a finding of a violation of the applicant's right to peaceful enjoyment of her possessions as guaranteed by Article 1 of Protocol No. 1. Accordingly, the right of the applicant under this provision has been violated and this violation is ongoing.

VII. REMEDIES

83. 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.

84. The Chamber considers it appropriate to order the respondent Party to take all necessary steps to enable the applicant to regain possession of the apartment without further delay.

85. The applicant has submitted a claim for compensation. The respondent Party did not submit any observations on this claim.

86. The applicant requests compensation for material damages in the sum of 300 German marks per month from 1 June 1996, totaling 11,700 German Marks as of the date of lodging her claim for compensation. She does not substantiate this claim in any way.

87. The Chamber does, however, consider it appropriate to award the applicant monetary compensation, as she has undoubtedly suffered stress as a result of the fact that, despite initiating various administrative and court proceedings, she has been unable to regain possession of her apartment. As the Chamber has found, this is due to the actions of the authorities of the Republika Srpska. The Chamber considers that the Republika Srpska can only be considered to be responsible for this stress as and from the passing of a reasonable time after the applicant's first steps to regain possession of the apartment, i.e. when she initiated court proceedings in June 1996. The Chamber therefore considers that a reasonable sum to award the applicant in respect of the loss of use of her apartment and moral suffering is 2,500 Convertible marks (*Konvertibilnih Maraka*, "KM"). It will accordingly award the applicant this sum. Additionally, the Chamber awards 4% (four per cent) interest as of the date of expiry of the period set for the implementation of the present decision, on the above sum.

VIII. CONCLUSION

88. For the above reasons, the Chamber decides,

1. unanimously, to declare the application admissible;

2. unanimously, that the impossibility for the applicant to have the merits of her civil action determined by a tribunal constitutes a violation of her right to effective access to court within the meaning of Article 6 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 and continues to be a violation of the right of the applicant to respect for her home within the meaning of Article 8 of the Convention, the Republika Srpska thereby being in breach of Article I of the Agreement;

4. unanimously, that there has been and continues to be a violation of the right of the applicant to peaceful enjoyment of her 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;

5. unanimously, to order the Republika Srpska, as soon as possible and in any event no later than one month after the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure, to take all necessary steps to ensure that the applicant regains possession of her apartment, located at Jevrejska 24/II in Banja Luka, Republika Srpska;

6. by 5 votes to 1, to order the Republika Srpska to pay to the applicant, within one month of the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure, the sum of 2,500 (two thousand five hundred) Convertible marks as compensation for the loss of use of her apartment and for moral suffering;

7. unanimously, to reject the remainder of the applicant's claim for compensation as unsubstantiated;

8. by 5 votes to 1, to order that simple interest at an annual rate of four per cent will be payable on the sum awarded in conclusion 6 above after the expiry of the period set in that conclusion for the payment of that sum; and

9. unanimously, to order the Republika Srpska to report to it, within two weeks of the expiry of the time-limit referred to in conclusion 5 above, on the steps taken by it to comply with the above orders.

(signed)
Anders MÅNSSON
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel