DECISION ON ADMISSIBILITY AND MERITS
(delivered on 8 October 1999)

Case no. CH/98/1237

F. G.

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 9 September 1999 with the following members present:

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

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 VIII(2) and VIII(3) of the Agreement and Rules 52, 57 and 58 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The applicant is a citizen of Bosnia and Herzegovina, resident in Janja, Republika Srpska. In August 1994 he and his father were forcibly evicted from their home. When the applicant returned to it in October 1994, it had been occupied by Bosnian Serbs, displaced from the Federation of Bosnia and Herzegovina. The applicant initiated court proceedings, and the court issued a decision ordering the current occupants of the house to vacate it and return it into the applicant's possession. On 13 January 1999 the applicant got back into the house.

2. The case raises issues principally under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and under Article 1 of Protocol No.1 to the Convention.

II. PROCEEDINGS BEFORE THE CHAMBER

3. The application was referred to the Chamber by the Human Rights Ombudsperson for Bosnia and Herzegovina ("the Ombudsperson") on 1 October 1998 and registered on 20 October 1998.

4. On 18 December 1998 the Chamber decided, pursuant to Rule 49(3)(b) of the Rules of Procedure to transmit the application to the respondent Party for observations on its admissibility and merits. Under the Chamber's Order concerning the organisation of the proceedings in the case, such observations were due by 12 March 1999.

5. The respondent Party's observations were received on 29 March 1999.

6. On 7 April 1999 the observations were transmitted to the applicant and he was requested to submit any further observations and any compensation claim he wished to make. The applicant's written statement was received on 30 April 1999, within the time-limit laid down by the Chamber's Order concerning the organisation of the proceedings in the case.

7. On 5 May 1999 the applicant's written statement was transmitted to the Agent of the respondent Party. It was also sent to the Ombudsperson, who was invited to submit any written observations which she wished to make on the case. The Ombudsperson submitted her statement on 4 June 1999. The respondent Party submitted its observations on the applicant's compensation claim on 8 June 1999.

8. The First Panel deliberated upon the admissibility and merits of the application on 8 July and 9 September 1999, and adopted its decision.

III. ESTABLISHMENT OF THE FACTS

A. The particular facts of the case

9. The facts of the case as they appear from the Report of the Ombudsperson of 20 May 1998, the applicant's submissions and the documents in the case file have not been contested by the respondent Party and may be summarised as follows.

10. The applicant is a citizen of Bosnia and Herzegovina, resident in Janja, Republika Srpska.

11. Until 1994 the applicant and his father lived in a house located at Omladinska Street No. 2 in Janja. The house was owned by the applicant's father. On 14 November 1996 the father donated the house to the applicant.

12. On 27 August 1994 the applicant and his father were forcibly evicted from the house and taken to the mountain of Majevica. The applicant returned to Janja in October 1994, and then found out that the house had been occupied by a displaced Bosnian Serb ("the occupant") and his family.

On 12 October 1994, the applicant requested the municipal organ competent to administer abandoned property in Bijeljina to enable him to regain possession of his house. He has never received any direct reply to this request, but on 19 October 1994 the Municipal Administration for Geodetic Affairs and Cadaster of Real Properties of the Municipality of Bijeljina ("the Municipality") issued a decision refusing the request of the occupant for temporary allocation of the applicant's house.

13. On 30 January 1996 the applicant filed a request similar to the one of 12 October 1994 to the Municipal Commission for Accommodation of Refugees and Administration of Abandoned Property ("the Commission"). There have been no developments in the proceedings.

14. On 25 November 1996 the applicant filed a lawsuit to the Municipal Court in Bijeljina ("the court") requesting the court to reinstate him into his house.

15. On 13 February 1998 the President of the court issued a report stating that the court had serious lack of personnel in the course of 1996 and 1997 (the court had five to six judges, although the internal regulations request eighteen judges to be appointed in this court). The president stated that the court has been mainly dealing with the cases which were urgent upon the law, and the applicant's case is not of that kind. The case was allocated to a judge on 18 December 1997 who then scheduled a hearing for 29 January 1998.

16. On 9 April 1998, after having held three hearings in the case, the court issued a decision ordering the occupant to vacate the house and return it into the applicant's possession.

17. The occupant appealed against the decision and on 28 August 1998 the Regional Court in Bijeljina granted the appeal, invalidated the first instance decision and sent the case back to the Municipal Court for reconsideration. The reasons for such a decision were that the Municipal Court had not established the facts of the case and that the law had not been applied properly.

18. On 17 November 1998 the Municipal Court issued a decision of the same substance as the decision of 9 April 1998, following the instructions of the Regional Court regarding establishment of the facts and application of the law. The occupant appealed against the decision. There have been no developments in the proceedings before the Regional Court, as the second instance court, to date.

19. On 26 November 1998 the applicant repeated the request to the Commission in order to be reinstated into the house.

20. On 13 January 1999 the applicant entered into possession of his house, with the assistance of the local police and the officials of the Ministry.

B. Relevant legislation

1. Constitution of the Republika Srpska

21. Article 56 of the Constitution of the Republika Srpska ("the Constitution") reads as follows:

> "In accordance with the law, rights of ownership may be limited or expropriated against payment of equal compensation."

22. 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."

2. The Law on the Use of Abandoned Property

23. The Law on the Use of Abandoned Property (Official Gazette of Republika Srpska – hereinafter "OG RS" – no. 3/96) ("the Law") was adopted by the National Assembly of the Republika Srpska on 21 February 1996. It was published on 26 February 1996 and entered into force the following day. 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 Law, insofar as they are relevant to the present case, are summarised below.

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

25. Article 3 of the Law 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. The preparation of registers of abandoned property is to be carried out by the appropriate administrative bodies in each municipality.

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

26. The Law on the Cessation of the Application of the Law on the Use of Abandoned Property (OG RS no. 38/98) establishes a detailed framework for persons to regain possession of property considered to be abandoned under the Law. It puts the Law on the Use of Abandoned Property out of force.

4. The Law on Basic Property Relations

27. Article 37 of the Law reads as follows:

> "The owner can file a lawsuit and request the return of an individually specified property from the current holder.
> The owner needs to prove his ownership over the property he requests to be returned, as well as that the property is in actual possession of the respondent.
> The right from paragraph 1 of this Article does not expire."

IV. COMPLAINTS

28. The applicant has not alleged any specific violation of his human rights protected by the Agreement.

V. SUBMISSIONS OF THE PARTIES

A. The respondent Party

29. The respondent Party submits that the application should be rejected as the case is about a private dispute of the applicant and the occupant of his house. The respondent Party has not legalised the occupancy of the house by allocating the house to the occupant.

30. The respondent Party further submits that the applicant filed the application to the Ombudsperson on 31 July 1996, i.e. before he became the owner of the house in question and before he sought to avail himself of the domestic remedies.

31. Regarding the issue of Article 6 of the Convention the respondent Party submits that although it took thirteen months for the first hearing to be held before the Municipal Court in Bijeljina the proceedings before this court lasted for fifteen months, and therefore it could not be considered that the proceedings were unreasonably long. Therefore the applicant had an access to court in determination of his civil rights, and the complaint concerning the access to court should be regarded

as ill-founded.

B. The applicant

32. The applicant maintains that he was evicted by the soldiers of the "Panteri" Squad, which have been acting on behalf of the respondent Party. He argues that it is true that the respondent Party has not legalised the occupants' occupancy of the house, but also has not taken any action to enable him be reinstated into the house. As far as the ownership over the house is concerned the applicant claims that he has participated in the construction of the house, and that his father has made a testament by which he would inherit the house after his father's death.

33. Regarding the submission of the respondent Party that the application to the Human Rights Ombudsperson was filed before the applicant sought to avail himself of domestic remedies, the applicant argues that it took almost two years for the case before the Ombudsperson to be decided upon. Therefore, since the proceedings he initiated are still pending he still would not be entitled to file an application to the Ombudsperson or the Chamber. The applicant further argues that the Ombudsperson in her Report of 20 May 1998 found a violation of Article 6 paragraph 1 to the Convention.

34. The applicant requests the Chamber to order the respondent Party to pay him compensation of KM 10,400 as he has not been able to use his house for more than four years, KM 5,000 as the length of proceedings exceeded a "reasonable time" and KM 40,000 for his belongings.

C. The Ombudsperson

35. In her observations dated 4 June 1999 (see paragraph 7 above) the Ombudsperson notes that in the applicant's case she has only examined the applicant's right to a hearing within a reasonable time, and therefore the respondent Party's arguments set out in paragraph 27 are irrelevant.

36. As to the respondent Party's suggestion that the applicant has not sought to avail himself of domestic remedies before he filed the application to her, the Ombudsperson argues that the time of introduction of the application is relevant only for the consideration of whether the case was introduced within six months from the date of the final decision in the case.

37. The Ombudsperson further argues that it took fourteen months for the Municipal Court to schedule the first hearing in the applicant's case. Then in three months the court held three hearings and decided the case in the applicant's favour. This proves that the delay could not be convincingly justified by the Government, although the President of the court confirmed that the court had a serious lack of personnel until February 1998. The Ombudsperson maintains that there has been a violation of Article 6 paragraph 1 of the Convention as the civil proceedings in the applicant's case exceeded the requirement of "a reasonable time".

VI. OPINION OF THE CHAMBER

A. Article 8 of the Convention and Article 1 of Protocol No. 1 to the Convention

1. Criteria set out in Article VIII(3) of the Agreement

38. According to Article VIII(3) of the Agreement, the Chamber may at any point decide to strike out an application on the ground that (a) the applicant does not intend to pursue his application; (b) the matter has been resolved; or (c) for any other reason established by the Chamber, it is no longer justified to continue the examination of the case. In all these situations, however, a decision to strike out an application must be consistent with the objective of respect for human rights.

39. In the present case the Chamber notes that the applicant was reinstated into his house on 13 January 1999, with the assistance of the local police and the officials of the Ministry. Therefore any violation of the applicant's right to respect for his home and his right to peaceful enjoyment of

property that may have occured was remedied.

40. Accordingly, the Chamber concludes that this part of the application has been resolved. In these circumstances it is no longer justified to continue the examination of this part of the case and such an outcome would not be inconsistent with the objective of respect for human rights.

2. Admissibility *ratione personae* and *ratione temporis*

41. In the light of the circumstances described in paragraph 36 above the Chamber finds it unnecessary to examine the arguments of the respondent Party, the applicant and the Ombudsperson on whether the respondent Party can be held responsible for possible violations of the applicant's right to respect for his home and his right to property.

B. Article 6 paragraph 1 of the Convention

42. The respondent Party did not make any objection to the admissibility of the application. The Chamber sees no grounds for rejecting the application under any of the admissibility criteria set out in the Agreement. Accordingly, this part of the application is admissible.

43. The applicant did not specifically allege any violation of his rights as protected by Article 6 paragraph 1 of the Convention. The Chamber raised it *proprio motu* when transmitting the case to the respondent Party for its observations on the admissibility and merits of the case. Article 6 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 [a] ... tribunal ..."

44. The respondent Party suggests that the proceedings should be regarded as a whole. Nevertheless, in her Report of 20 May 1998, the Ombudsperson found a violation of Article 6 paragraph 1 of the Convention, and maintains the same arguments in her submission of 4 June 1999, i.e. that it is up to the respondent Party to organise its legal system so as to enable the courts to comply with the requirements of Article 6 paragraph 1 of the Convention (see *F.Gr. v. Republika Srpska*, Ombudsperson's Report of 20 May 1998, para. 35). Therefore the delay in the applicant's case cannot be justified by a certain lack of personnel. The applicant maintains the arguments brought up in the above - mentioned Report.

45. The Chamber notes that the applicant initiated proceedings before the Municipal Court in Bijeljina on 25 November 1996. On 9 April 1998 the court issued a decision granting his request and ordering the occupant to return the house into the applicant's possession. On 28 August 1998 the Regional Court invalidated the decision of 9 April and returned the case to the Municipal Court for reconsideration, instructing the Municipal Court to remedy certain procedural defects. On 17 November 1998 the Municipal Court issued a decision, again granting the applicant's request, but following the instructions given by the Regional Court. The occupant appealed against the decision of 17 November 1998.

46. Accordingly, the period of time the Chamber can take into account is two years and nine months (as of September 1999), in which period the Municipal Court issued a first instance decision, the Regional Court invalidated it, the Municipal Court issued another decision, and the case is pending before the Regional Court, again following the occupant's appeal.

47. The Chamber has held that the factors to be taken into account in determining whether the length of civil proceedings has been reasonable are as follows: the complexity of the case, the conduct of the applicant and the conduct of the national authorities (see e.g. *Mitrović*, case no. CH/97/54, decision on admissibility of 10 June 1998, paragraph 12, Decisions and Reports 1998).

1. The complexity of the case

48. According to the Ombudsperson's Report, and documents in the case file, the case does not

appear to be a complex one. It is about the owner requesting the courts to evict the illegal occupant and to enable him to enter into possession of his house. Such a conclusion is supported by the fact that once the applicant's case had been taken into consideration it took three months to the Municipal Court to decide upon it.

2. The conduct of the applicant

49. The respondent Party does not suggest that the applicant could be held responsible for the initial backlog of the case. There is no information in the case file that there has been any conduct on the part of the applicant which could be considered as causing a delay in the proceedings.

3. The conduct of the national authorities

50. The Chamber notes that the initial backlog of the applicant's case was due to a serious lack of personnel in the Municipal Court in Bijeljina in the course of 1996 and 1997. The President of the Municipal Court stated that as soon as a new judge was appointed to this court a hearing was scheduled in the applicant's case, and it was consequently decided upon, within three months.

51. The Chamber recalls that the European Court of Human Rights has held that a temporary backlog of court business does not engage the responsibility of the state concerned, provided that the state takes effective remedial action with the requisite promptness (see, e.g, the *Guincho v. Portugal* judgment of 10 July 1984, Series A no. 81, p. 17, para. 40). In the present case the Chamber notes that the courts had to face a serious lack of personnel, which resulted in initial delay in the applicant's case. In addition, once the additional judges were appointed to the Municipal Court the case was allocated to a judge and a decision was passed within three months. However, the Chamber considers that the length of time the respondent Party took to remedy this delay was not, in the circumstances prevailing at the time, unreasonable.

52. The respondent Party cannot be held responsible for the length of proceedings conducted after the decision of 9 April 1998 was adopted, since the occupant was exercising his right to an effective remedy. It took seven months for the Regional Court to decide upon his appeal, and the Municipal Court to comply with the instructions of the Regional Court. The Chamber notes, that although the case is still pending before the Regional Court, following the occupant's appeal the decision of 9 April 1998 was complied with as the applicant entered into possession of his house on 13 January 1999.

53. Accordingly the Chamber finds that the applicant's right to a hearing within a reasonable time, as provided for in Article 6 paragraph 1 of the Convention has not been violated, as the respondent Party remedied the reason for initial delay in the applicant's case.

C. The applicant's compensation claim

54. In the light of the above findings the Chamber finds that it is not necessary to examine the applicant's compensation claim.

VII. CONCLUSIONS

55. For these reasons, the Chamber decides,

1. unanimously, to strike out the part of the application relating to the violations of Article 8 of the European Convention on the Protection of Human Rights and Fundamental Freedoms and Article 1 of Protocol No. 1 to the Convention;

2. unanimously, to declare the remainder of the application admissible;
3. unanimously, that there has been no violation of the applicant's rights as guaranteed by Article 6 paragraph 1 of the Convention; and

4. unanimously, that there is no need to examine the applicant's claim for monetary relief.

(signed)
Anders MÅNSSON
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel