DECISION ON ADMISSIBILITY AND MERITS
(delivered on 5 November 1999)

Case no. CH/98/1245

Persa SLAVNIĆ

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 1 November 1999 with the following members present:

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

Mr. 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 applicant is a citizen of Bosnia and Herzegovina, resident in Banja Luka, Republika Srpska. She is a refugee from Šibenik, Croatia. In November 1992 her husband exchanged their apartment in Šibenik for one in Banja Luka. Due to the hostilities the applicant was not able immediately to enter into possession of the apartment in Banja Luka after the contract on exchange was made. When she came to Banja Luka in November 1993 the apartment was already occupied by an employee of the holder of the allocation right. In November 1993 the applicant's husband initiated civil proceedings, requesting the eviction of the occupant. By several decisions taken by the Municipal Court and the Regional Court in Banja Luka, the request was refused. However, the Supreme Court of Republika Srpska has quashed these decisions and referred the case back to the Municipal Court, where the case is currently pending.

2. The holder of the allocation right permanently allocated the apartment to the occupant. On 4 October 1994 the applicant's husband initiated administrative proceedings before the Municipality of Banja Luka, requesting that he be able to enter into possession of the apartment. The Municipality granted her request, and the Ministry for Urbanism, Housing-Communal Affairs and Civil Engineering refused the occupant's appeal. The occupant then initiated an administrative dispute before the Supreme Court. The Supreme Court ordered the occupant to vacate the apartment and return it to the holder of the allocation right until the civil proceedings have been concluded. After a number of attempts to evict the occupant, he still occupies the apartment in question.

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

II. PROCEEDINGS BEFORE THE CHAMBER

4. The application was received on 21 October 1998 and registered on the same day. At the time of submitting the application the case was already pending before the Office of the Human Rights Ombudsperson (OHRO). On 20 April 1999 the applicant informed the Registry that on 13 April 1999 the Ombudsperson had decided to close the investigation.

5. On 14 May 1999 the Chamber decided to transmit the case to the respondent Party for its observations under Article 6 of the Convention and Article 1 of Protocol No. 1.

6. The respondent Party's observations were received on 22 July 1999, and were transmitted to the applicant for further observations and any compensation claim she wished to make.

7. The applicant's further observations, containing a claim for compensation, were received on 24 August 1999. The respondent Party's observations on the compensation claim were received on 23 September 1999.

8. The Chamber deliberated on the admissibility and merits of the case on 9 September, 7 October and 1 November 1999.

III. ESTABLISHMENT OF THE FACTS

A. The particular facts of the case

9. The facts of the case have not been contested by the respondent Party and can be summarised as follows.

1. The allocation and contracts regarding the apartment

10. The applicant and her husband were forced to leave Šibenik, Croatia, where they lived before the war, as they were of Serb origin. Initially they went to Travnik, the Federation of Bosnia and

Herzegovina. From Travnik they contacted I.B., a third person, and offered to exchange their apartment in Šibenik for the one I.B. had in Banja Luka.

11. On 26 November 1992 the holder of the allocation right ("the allocation company") over I.B.'s apartment in Banja Luka, located at K. Hercegovca No. 7, consented to an exchange of occupancy rights. On 27 November 1992 the applicant's husband and I.B. concluded the exchange contract. On 26 December 1992 also the holder of the allocation right over the apartment in Šibenik gave its consent to the exchange. However, on 10 March 1993 consent of the allocation company in Banja Luka was revoked. On 5 May 1993 the applicant's husband concluded a contract on the use of the apartment with the Housing Company of Banja Luka. The applicant was not able to enter into possession of the apartment immediately, as the hostilities started. They came to Banja Luka in November 1993.

12. On 3 June 1993 the allocation company allocated the Banja Luka apartment to another person ("the occupant") for a twelve-month period. On 25 June 1993 the occupant entered into a contract on the use of the apartment with the Housing Company. On 7 March 1994 the allocation was extended for a further twelve months.

13. On 4 December 1996 the Housing Company informed the applicant that the contract on the use of the apartment the Housing Company entered into with the occupant was invalid, as it was concluded upon an illegal decision on allocation. Furthermore, the Housing Company confirmed that the applicant and her husband were considered as holders of the occupancy right over the apartment.

2. The first set of court proceedings

14. On 13 November 1993 the applicant's husband initiated proceedings before the Municipal Court in Banja Luka requesting the court to invalidate the contract the occupant had with the Housing Company and to order him to vacate the apartment. When the applicant's husband died she succeeded into the proceedings he had initiated.

15. On 5 August 1994 the Municipal Court refused the applicant's request. In the reasoning the court stated that the contract on exchange of the apartments was invalid, and as a result the applicant had never become the holder of the occupancy right. The contract was considered invalid as the allocation company had given its consent to a non-existing contract, and as the allocation company had later withdrawn its consent. On 13 September 1994 the applicant appealed against this decision. On 30 November 1994 the Regional Court in Banja Luka refused the appeal.

16. On 9 March 1995 the applicant requested the Supreme Court to review the decision of 30 November 1994. In reply the Housing Company, as one of the respondent parties in these proceedings, agreed with the applicant's request. On 15 March 1996 the Supreme Court issued a procedural decision annulling the decisions of the Municipal and Regional Courts and ordering the Municipal Court to reconsider the case. In the reasoning the Supreme Court stated as follows:

> "...According to the opinion of this court the lower instance courts applied the law wrongly, when they decided to refuse the request of the claimant. Namely, the facts that the consent to the exchange of the apartments ... was given on 26 November 1992, that the contract was concluded on 27 November 1992, and that the holder of the allocation right on 10 March 1993 revoked the consent given, do not make the contract absolutely invalid. The lower instance courts wrongly established the fact of invalidity of this contract."

17. The Supreme Court argued that the purpose of Article 32 paragraph 3 of the Law on Housing Relations (see paragraph 36 below), i.e. that the contract on the exchange needs to be submitted to the holders of the allocation rights, is to inform the holders of the allocation rights in order to avoid possible problems (i.e. if the exchange is fictitious, inadequate etc.). The fact whether the contract has been signed or not does not affect its validity.

18. The Supreme Court further found that:

> "The finding of the lower instance courts that the holder of the allocation right revoked its consent so that the consent no longer exists, is wrong, since such a possibility is not provided for by law. Namely, Article 33 of the Law [on Housing Relations, see paragraph 37 below] gives reasons for which the holder of the allocation right can refuse to give its consent. Article 34 of the same Law [see paragraph 38 below] gives a possibility to the holder to file a lawsuit to the competent court when there is doubt the contract has been fictitious. ... It is beyond any doubt that the holder of the allocation right ... has not sought to use this right.
>
> Because of the wrong legal finding that the contract on the exchange of the apartments was absolutely invalid the lower instance courts did not go into examination of the grounds on which ...[the occupant] occupies the apartment. The courts did not examine whether he had entered into a contract on the use of the apartment upon a valid act of the holder of the allocation right over the apartment. The claimant [the applicant] claims to have certain rights on the apartment and the courts needed to establish whose right was stronger ...
>
> In the renewed proceedings the lower instance courts will remove the irregularities pointed out, and then upon the results of the proceedings as a whole the courts will pass an appropriate and lawful decision."

3. The second set of court proceedings

19. On 8 July 1997 the Municipal Court issued a decision refusing the applicant's request (as sent back for reconsideration by the Supreme Court) with the same reasoning as the decision of 5 August 1994. The decision was passed after an oral and public hearing had been held. The Municipal Court gave the following reasons for its decision:

> "...the apartment was allocated to [the occupant] by a decision of his [employer]. The decision was issued upon this law [Article 24 of the Law on Housing Relations] ... This decision is final and binding since it has not been revoked in a labour dispute within the meaning of the Law on Housing Relations. All this means that this decision could have been disputed only in a labour dispute upon the Law on Housing Relations and general act of the Working Organisation [i.e. the holder of the allocation right] as the owner of the apartment. Therefore the finding of the Supreme Court ... of 24 October 1995 [see paragraph 28 below] in which it decided, in the administrative dispute, and from which it appears that the decision on allocation was invalidated, is wrong. It is generally known that such an issue cannot be decided upon in the administrative proceedings, i.e. in an administrative dispute, but only before a regular court and in the labour proceedings."

20. The Municipal Court then gave its reasons for not accepting the applicant's occupancy right as valid and stated as follows:

> "Deciding ... on the validity of the contract on the use of the apartment, entered into upon the contract on the exchange of the apartments this court came to the conclusion that the contract on the exchange of the apartments is not legally valid, and therefore the contract on the use of the apartments is not legally valid. This legal finding of the court is based on the indisputable fact that the consent to the exchange was given by the owner prior to the entry into the contract. ... From the above stated it follows that the consent given on the contract on the exchange is legally invalid, upon the law itself, and as such could have been revoked by the owner of the apartment, since it was given contrary to the Law on Housing Relations. This is because the consent to the contract on the exchange of the apartments can be given only if such a contract was concluded. The contract is not concluded if it is not signed. Therefore the finding of the Supreme Court ... that in the concrete case the consent could not have been withdrawn although it was given at the time when the contract did not exist is unacceptable. This is because if we accept the mentioned finding of the Supreme Court, that means that a consent can be given even on a contract that does not exist. This really would be lacking not only any legal grounds but also any sense or reason at all."

21. On 27 April 1998 the Regional Court refused the applicant's appeal against the decision of

8 July 1997. The Regional Court agreed with the Municipal Court's reasoning.

22. On 20 July 1998 the applicant filed a request with the Supreme Court for review of the decision of 27 April 1998. On 18 March 1999 the Supreme Court again granted the applicant's request, invalidated the decisions of 8 July 1997 and 27 April 1998 and ordered the Municipal Court to reconsider the case.

23. The decision of the Supreme Court of 18 March 1999 stated that the fact that the allocation company's consent was given prior to the conclusion of the contract was of no relevance, since the allocation company had seen the terms of contract and had given its consent to that basis. The lower instance courts had not considered the copy of the contract of 27 November 1992, although the applicant had submitted it, but only the copy of 26 November 1992 (which does not contain the signatures of the holders of the occupancy rights). By this failure the lower instance courts had violated the applicable procedure. The Supreme Court further stated that only oral exchange contracts to which there is no written consent are invalid. Therefore the fact that the consent had been given a day before the contract was signed did not make the contract invalid. Furthermore, the holder of the allocation right was not entitled to withdraw the consent given.

24. The Supreme Court instructed the Municipal Court to follow the guidelines of the decision of 18 March 1999, giving special attention to the contract of 27 November 1992.

25. The Municipal Court scheduled a hearing for 20 July 1999, but the hearing has been postponed for 7 September 1999. It is not known to the Chamber whether the hearing was held and if any decision was passed.

4. The administrative proceedings

26. On 4 October 1994 the applicant initiated administrative proceedings before the Municipality of Banja Luka. On 11 January 1995 the Municipal Secretariat for Economy issued a decision ordering the occupant to vacate the apartment, on the basis that he was an illegal occupant.

27. On 27 March 1995 the Ministry for Urbanism, Housing-Communal Affairs and Civil Engineering refused the appeal lodged by the occupant. The occupant initiated an administrative dispute before the Supreme Court against the Ministry's decision.

28. On 24 October 1995 the Supreme Court issued a decision annulling the decisions of 11 January and 27 March 1995, but declaring the occupant to be an illegal occupant and ordering him to vacate the apartment and place it at the disposal of the holder of allocation right. The Court stated that the applicant was not the holder of the occupancy right over the apartment and, therefore, was not entitled to request the occupant's eviction (see paragraph 34 below). Nevertheless, the occupant was not the holder of the occupancy right either, since the act upon which he occupied the apartment was not a valid one. Therefore the apartment had to be put at the disposal of the allocation company until the question of who is the holder of the occupancy right had been resolved.

29. Upon the decision of 24 October 1995 the applicant requested the Municipal Secretariat for Housing Affairs ("the Secretariat") to evict the occupant. There have been seven attempts to carry out the eviction, without success. On 21 October 1998 the occupant was apparently evicted and the apartment was given to the holder of allocation right. The applicant states that the occupant vacated the apartment, but as soon as the representatives of the OSCE and the IPTF had left the scene he moved back in.

30. This allegation is confirmed by the fact that another eviction was scheduled for 5 November 1998. It was not carried out, however, since the local police failed to appear on the ground that the Minister of Internal Affairs had not signed their order.

31. The applicant requested to meet the Secretary of the Secretariat in order to find out about the reasons for not carrying out the occupant's eviction. On 8 July 1999 the Secretary replied to her in writing that the occupant had been evicted and that, accordingly, the decision of the Supreme Court of 24 October 1995 had been complied with. The Secretary further stated that on 28 October 1998.

(i.e. after the occupant was evicted) the allocation company had issued a decision again allocating the apartment to the occupant until the final decision in the civil proceedings initiated by the applicant. Therefore there has been no issue for the Secretariat to deal with, since the decision of the Supreme Court has been complied with.

32. The applicant states that the occupant is still occupying the apartment.

5. Proceedings before the Human Rights Ombudsperson

33. On 29 August 1996 the applicant filed an application with the Office of the Human Rights Ombudsperson for Bosnia and Herzegovina. On 13 April 1999 the Ombudsperson decided to close the investigation in the applicant's case, as the occupant had been evicted on 21 October 1998 and as the holder of the allocation right had caused the delay in the eviction proceedings.

B. Relevant legislation

1. The Law on Housing Relations

34. Article 11 of the Law on Housing Relations (Official Gazette of the Socialist Republic of Bosnia and Herzegovina no. 14/84) provides that an occupancy right is acquired through legal entry into possession of an apartment, carried out in accordance with the contract on the use of the apartment.

35. Article 22, in its relevant parts, prescribes that if the holder of the occupancy right dies, and his or her spouse does not continue to use the apartment, other members of the family household should agree on who will succeed into the occupancy right. The members of the family household are to inform the holder of the allocation right about the agreement they have reached.

36. Article 32, in its relevant parts, reads as follows:

> "The holder of the occupancy right can exchange the apartment for an apartment of another holder of the occupancy right. Exchange is done in writing.
> …
> The written consent of the holders of the allocation rights is required for the exchange of the apartments. Such consent is to be requested by submitting the contract on exchange to the holders of the allocation rights.
> …
> The contract which has not been made in writing and which has not been approved by the holders of the allocation rights does not have any legal effects.
>
> In the case of the exchange of the apartments the occupancy right is acquired by moving into the apartment upon a valid contract.
>
> Fictitious exchange of the apartments is forbidden."

37. Article 33, in its relevant parts, reads as follows:

> "The holder of the allocation right can refuse to give its consent to the exchange for the following reasons:
>
> 1) if it is possible to provide, within six months, an apartment corresponding to the one the holder of the occupancy right intends to acquire by the exchange;
> …
> 3) if the contract on the use of the apartment has been invalidated prior to submitting the contract for the consent of the holder of the allocation right;
> 4) if the occupancy right of the holder, who is to enter into the apartment upon the exchange contract, has been terminated upon his responsibility;
> 5) if the rent has not been paid;
> 6) if the holder of the allocation right considers that the exchange is fictitious.

The refusal to give consent to the exchange of apartments needs to be done in writing and with the reasons given.
…"

38. Article 34 of the Law reads as follows:

"The holder of the allocation right can initiate proceedings before the competent court for invalidation of the contract on the use of apartment … in case that after the exchange has been done it considers that the exchange was fictitious. The lawsuit in this direction needs to be filed within 30 days from the date of awareness of the fact that the contract has been fictitious, and the latest within 2 years from the date the exchange has been carried out".

2. The Law on Civil Proceedings

39. Article 384 of the Law on Civil Proceedings (Official Gazette of the Socialist Federal Republic of Yugoslavia no. 4/77) prescribes that the Court of Review (i.e. the Supreme Court) will return the case for reconsideration by a lower instance court if the factual background has not been completely or correctly established.

40. Article 395 provides that the Court of Review will pass a judgment by which it will change the disputable decision of the lower instance courts in case the laws have been applied wrongly.

IV. COMPLAINTS

41. The applicant generally complains of violations of her property rights and the treatment she has had before the courts. She has not alleged any specific violation of her human rights as protected by the Agreement, but complains that she has been denied her rights to property and fair proceedings before the domestic organs.

V. SUBMISSIONS OF THE PARTIES

A. The respondent Party

42. The respondent Party submits that the application should be rejected as the applicant has not exhausted available domestic remedies. The applicant's prospect of success in the domestic proceedings is allegedly beyond any doubt, since her request for review was adopted by the Supreme Court on 18 March 1999.

43. The respondent Party further submits that the applicant filed the application with the Ombudsperson on 29 August 1996 and that the Ombudsperson decided to close the investigation in the applicant's case since the respondent Party could not be held responsible for any violation of the applicant's human rights.

B. The applicant

44. The applicant maintains that the Supreme Court by its decision of 24 October 1995 (see paragraph 28 above) ordered the occupant to vacate the apartment. She further argues that her late husband was the only holder of the occupancy right and that none of the parties to the exchange contract sought to have the contract invalidated. The holder of the allocation right has not initiated proceedings for invalidation of the consent it had given for the exchange contract. It is not true that the occupant was evicted on 21 October 1998. She substantiates her claim with the conclusion of 26 October 1998 by which the Secretariat scheduled an attempt to evict him for 5 November 1998 (see paragraph 30 above).

45. The applicant further argues that the respondent Party in its observations only gives an overview of the proceedings, neglecting the non-compliance with the Supreme Court judgment upon her request for review (see paragraph 16 above). The respondent Party appears to neglect the

judgment of the Supreme Court in the administrative dispute (see paragraph 28 above).

46. As regards the argument that the Ombudsperson decided to close the investigation in the case, the applicant states that she had no contact with that office for months, and since the case before this institution is finished she wants the Chamber to help her.

47. The applicant also states that she has never been summoned to give a statement before the courts or the Municipality. On 15 December 1997 she filed a criminal report against the director of the holder of the allocation right, but there has been no action upon it.

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.

1. Requirement to exhaust effective domestic remedies

49. 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.

50. The respondent Party submits that the application should be rejected since the applicant failed to exhaust available domestic remedies (see paragraph 42 above). The applicant argues that the remedies available could not be considered as "effective" within the meaning of the Agreement.

51. The Chamber notes that on 15 March 1996 the Supreme Court of the Republika Srpska adopted the applicant's request for review and ordered the Municipal Court to consider as valid the contract on exchange of the apartments and the contract on the use of the apartment the applicant's husband had entered into. The lower instance courts refused to implement the Supreme Court's finding. Therefore the decision of the Supreme Court of 18 March 1999 by which the Municipal Court was again instructed to reconsider the case could not be considered to be an effective remedy. This remedy has already proved to be ineffective.

2. Criteria set out in Article VIII(2)(d) of the Agreement

52. According to Article VIII(2)(d) of the Agreement, the Chamber may reject or defer further consideration of a case, if it concerns a matter currently pending before any other international human rights body responsible for the adjudication of applications or the decision of cases, or any other Commission established by the Annexes to the General Framework Agreement.

53. The respondent Party submits that the application should be rejected as already decided upon by the Human Rights Ombudsperson. The applicant submits that the investigation before the Ombudsperson was closed (see paragraph 46 above).

54. The Chamber notes that it shall reject only the cases that are currently pending before the bodies mentioned in Article VIII(2)(d). The applicant's case before the Ombudsperson was terminated by the decision to close the investigation. As the case is no longer pending before that office, there are no grounds for the Chamber to reject it under this provision of the Agreement.

3. Competence *ratione temporis*

55. The Chamber must consider to what extent it is competent *ratione temporis* to consider the case, bearing in mind that the applicant exchanged the apartment on 27 November 1992 and initiated proceedings before the Municipal Court on 13 November 1993, i.e. prior to the entry into force of the Agreement. The Chamber has previously held that it can only consider violations of the Agreement which were alleged to have occured after the entry into force of the Agreement (see, e.g., case no. CH/98/1171, *Čuturić*, decision on admissibility and merits delivered on 8 October 1999, paragraph 19).

56. The applicant's proceedings before the Court have been pending since 13 November 1993. The time that the Chamber can take into account commences on 14 December 1995, the date of entry into force of the Agreement. Nonetheless, the Chamber can take into consideration the events which occurred prior to the entry into force of the Agreement, if they have repercussions on the applicant's current situation.

57. Accordingly, the Chamber is competent to examine the case insofar as it relates to the conduct in the applicant's proceedings in relation to her occupancy right, as they have continued after 14 December 1995.

B. Merits

58. 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.

1. Article 6 of the Convention

59. The applicant did not specifically allege any violation of her 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.

60. Article 6 paragraph 1 of the Convention, insofar as relevant to the present case, 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...."

61. The Chamber must examine whether the proceedings as a whole were "fair" within the meaning of Article 6 paragraph 1 of the Convention. In this respect it has considered whether the refusal of the municipal and regional courts to follow the decision of the Supreme Court in the review proceedings infringed the right to a "fair" hearing.

62. The Chamber notes that the Supreme Court, in its decision of 15 March 1996, gave a clear ruling on two questions of law which arose in the case, namely whether consent to an exchange contract which had not yet been signed was valid and whether such consent could be withdrawn. It ruled that such consent was valid and could not be withdrawn (see paragraphs 16-18 above). It instructed the lower court to remove the irregularities it had pointed out and then take an appropriate and lawful decision (see paragraph 18 above). The Municipal Court, in its decision of 8 July 1997, refused to follow the Supreme Court's instructions and stated that the opinion of the Supreme Court was "lacking not only any legal grounds but also any sense or reason at all". The Regional Court agreed with the Municipal Court.

63. It is not the Chamber's function, in applying Article 6 of the Convention, to review the decisions of domestic courts and decide whether they have correctly applied domestic law. It can only consider whether the proceedings have been "fair" or not. However, the obligation on domestic courts to act fairly includes, in the Chamber's opinion, an obligation to interpret and apply domestic law in good faith. This implies, *inter alia,* that they should treat relevant decisions of superior courts with due respect. Legal certainty and the "rule of law" referred to in the preamble to the Convention require this. In the present case both the Municipal Court and the Regional Court refused to follow the Supreme Court's clear rulings on questions of law. Neither court stated any convincing reason for this refusal. In these circumstances the Chamber concludes that they did not act "fairly" in considering the issues of law which arose.

64. Accordingly, the Chamber considers that the applicant's right to a "fair hearing", as provided for by Article 6 paragraph 1 of the Convention, has been violated.

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

65. The applicant did not specifically allege a violation of her rights as protected by Article 1 of Protocol No. 1 to 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 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."

66. The respondent Party has not submitted any observations under this provision. The applicant maintains that she is the holder of the occupancy right over the apartment in question.

(a) The applicant's claim

67. The Chamber notes that the applicant has not yet become the holder of the occupancy right over the apartment in question. The Law on Housing Relations requires her not only to have valid grounds to occupy the apartment but also to enter into possession of it. The Chamber further notes that it was the applicant's husband who entered into the exchange contract and the contract on the use of the apartment. Her husband is still considered to be the party in the domestic proceedings (since he initiated them and the applicant only succeeded into the proceedings at a late stage). None of the respondents in the domestic proceedings nor the respondent Party in its observations disputed her right to pursue her claim.

68. Therefore, the Chamber finds that the applicant can be considered as entitled to seek to enter into possession of the apartment in question.

(b) Whether "possessions" are at issue

69. The Chamber must first consider whether the applicant's contract on the use of the apartment constitutes a "possession" within the meaning of Article 1 of Protocol No. 1 to the Convention.

70. The Supreme Court, in its judgment of 24 October 1995 in the administrative dispute, considered the decision on allocation of the apartment to the occupant as invalid. Although the Municipal Court in its decision of 8 July 1997 points out that the Supreme Court could not decide on the occupant's occupancy right, this judgment of the Supreme Court is final and binding.

71. The Supreme Court, in its decision of 15 March 1996, found that the contracts that the applicant's husband entered into needed to be considered as valid. Then the Supreme Court ordered the lower instance courts to compare the rights of the applicant's husband and the occupant and decide who had the stronger right to the apartment. Since the Supreme Court has already found that the occupant's occupancy right was not valid it is obvious that there are no rights to compare.

72. The Chamber has previously held that contractual rights, although subject to some uncertainty should be regarded as "possessions" (see, e.g., cases nos. CH/96/3, 8 and 9, *Medan, Bastijanović and Marković*, decision on the merits delivered on 7 November 1997, paragraph 33, Decisions on Admissibility and Merits 1996-1997). Furthermore, the European Court of Human Rights has held that even revocable rights, if found valid by a decision of a domestic court constitute "possessions" for the purposes of Article 1 of Protocol No. 1 (see, e.g., *Stran Greek Refineries v. Greece* judgment of 9 December 1994, Series A no. 301-B, paragraph 62).

73. In the light of the above, the Chamber concludes that the legal position of the applicant, as described in the factual part of this decision, constitutes a possession within the meaning of Article 1 of Protocol No. 1 to the Convention.

(c) Justified interference with the peaceful enjoyment of one's possessions

74. Having established that the applicant's right from the contract on the use of the apartment constitutes her possession, the Chamber next finds that the conduct of the domestic courts in dealing with her request to be enabled to enter into possession of it, interfered with her right to peaceful enjoyment of her possession within the meaning of the first sentence of Article 1 of Protocol No. 1.

75. The Chamber finds that this interference is still ongoing. 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.

76. The Chamber notes that there are no justified reasons for the municipal and regional courts to keep refusing the applicant's request to be enabled to enter into possession of her apartment. Three decisions of the Supreme Court of the Republika Srpska support her request. None of them have been complied with. Two of these decisions (i.e. the decisions passed in the civil proceedings) are not enforceable. The third decision (the judgment passed in the administrative dispute) is enforceable, but it has not been complied with.

77. Accordingly, the requirements of national law have not been adhered to and therefore the interference was not "subject to conditions provided for by law" as required by Article 1 of Protocol No. 1 to the Convention.

(d) Conclusion

78. Accordingly, the Chamber finds that there has been a violation of the applicant's right to peaceful enjoyment of her possessions within the meaning of Article 1 of Protocol No. 1 to the Convention.

VII. REMEDIES

79. 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.

80. The Chamber considers it appropriate to order the respondent Party to take all necessary steps to enable the applicant to enter into possession of her apartment without further delay.

81. The applicant requests to be reinstated into the apartment, to enter into possession of the belongings and to be compensated for not being able to use her property since May 1993. She further claims compensation for the fear she suffered. She also requests to be compensated for her health that has been impaired because she had to live under bad conditions. The applicant wants to be compensated for not being provided with accommodation, which she was entitled to as a refugee. She also wants the damage caused to her reputation to be remedied. The applicant did not set a sum that she considers would be appropriate to compensate her for the damages she allegedly suffered. The applicant has not substantiated any of her claims.

82. The respondent Party submits that it cannot be held responsible for any violation of the applicant's rights provided for by the Agreement. Therefore the compensation claim is ill-founded and as such should be rejected.

83. The Chamber considers that it cannot reject the claim for compensation submitted by the applicant on the grounds suggested by the respondent Party, as it has not accepted analogous

arguments relating to the admissibility of the application (see paragraphs 48-54 above). As the two arguments are inextricably linked, the fact that the Chamber has not accepted them in relation to the admissibility of the application precludes the Chamber from accepting them in relation to the claim for compensation.

84. However, considering that the applicant has failed to substantiate her claim for compensation for pecuniary damages she has allegedly suffered the Chamber considers that her request should be rejected.

85. Nevertheless, the Chamber considers it appropriate to award a sum to the applicant in recognition of the sense of injustice she has suffered as a result of her inability to enter into possession of her apartment, especially in view of the fact that she has taken various steps to do so.

86. Accordingly, the Chamber will order the respondent Party to pay to the applicant the sum of 2,000 Convertible Marks (*Konvertibilnih Maraka*, "KM") in recognition of her suffering as a result of her inability to enter into possession of her apartment.

87. Additionally, the Chamber awards 4% interest as of the date of expiry of the three-month period set for the implementation of the present decision, on the sum awarded in the preceding paragraph.

VIII. CONCLUSIONS

88. For these reasons, the Chamber decides,

1. by 6 votes to 1, to declare the application admissible;

2. by 6 votes to 1, that the conduct of the municipal and regional courts in Banja Luka constituted a violation of the applicant's right to a fair hearing within the meaning of Article 6 paragraph 1 of the European Convention on Human Rights, the Republika Srpska thereby being in breach of Article I of the Human Rights Agreement;

3. by 6 votes to 1, that by such conduct of the courts the applicant's right to peaceful enjoyment of her possessions as guaranteed by Article 1 of Protocol No. 1 to the Convention has been violated, the Republika Srpska thereby being in breach of Article I of the Agreement;

4. by 6 votes to 1, to order the Republika Srpska to enable the applicant to enter into possession of her apartment located at K. Hercegovca Street No. 7 in Banja Luka, without further delay;

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

   (a) to pay to the applicant within three months of the delivery of this decision the sum of 2,000 (two thousand) Convertible Marks (*Konvertibilnih Maraka*) by way of compensation for mental suffering; and

   (b) to pay simple interest at the rate of four (4) per cent per annum over the above sum or any unpaid portion thereof from the date of expiry of the above three-month period until the date of settlement;

6. unanimously, to reject the remainder of the applicant's compensation claim; and

7. unanimously, to order the Republika Srpska to report to it by 5 February 2000 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