DECISION ON ADMISSIBILITY AND MERITS
(delivered on 10 October 2003)

Case no. CH/98/1297

D.B. and J.B.

against

BOSNIA AND HERZEGOVINA
and
THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 2 September 2003 with the following members present:

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

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

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

Adopts the following decision pursuant to Article VIII(2) and Article XI of the Agreement and Rules 52, 57 and 58 of its Rules of Procedure:

I. INTRODUCTION

1. The applicants are a married couple of Serb origin. They own a piece of real estate with a house in Sanski Most, where they used to live before the armed conflict in Bosnia and Herzegovina broke out. In autumn 1995, when hostilities approached the region, the applicants left their house and fled to Banja Luka. Today, their house is completely destroyed. According to the applicants, the destruction took place after April 1996, *i.e.* after the integration of the Municipality of Sanski Most into the territory of the Federation of Bosnia and Herzegovina. The applicants have attempted to initiate civil proceedings against the Federation of Bosnia and Herzegovina with a view to obtaining compensation before the Municipal Court in Sanski Most. However, that Court refused to register the applicant's lawsuit until they advance court fees in the amount of 7,500 Convertible Marks (*Konvertibilnih Maraka*, hereinafter "KM"), which the applicants declined to do.

2. The application raises issues under Article 6 paragraph 1 of the European Convention on Human Rights (hereinafter: "the Convention") and under Article 1 of Protocol No. 1 to the Convention.

II. PROCEEDINGS BEFORE THE CHAMBER

3. The application was introduced on 4 November 1998 and registered on the same day. The applicants are represented by Ms. Vesna Rujević, a lawyer practising in Banja Luka.

4. On 22 July 1999, the application was transmitted to Bosnia and Herzegovina and to the Federation of Bosnia and Herzegovina as respondent Parties. Observations of Bosnia and Herzegovina regarding the admissibility and merits of the case were received on 13 September 1999, and the Federation of Bosnia and Herzegovina sent observations on 22 September and 10 December 1999 and 31 July 2003. The applicants replied on 24 January 2000 and submitted further information on 12 February 2003.

5. The Chamber deliberated on the admissibility and merits of the case on 8 July 1999, 2 July and 2 September 2003. On the latter date, it adopted the present decision.

III. ESTABLISHMENT OF THE FACTS

6. The applicants are a married couple of Serb origin from the village of Kamengrad, which belongs to the Municipality of Sanski Most. They are co-owners of a two-storey residential building built in 1984 on a piece of land registered as cadastral lot no. 754/2 in the cadastral books of Kamengrad. Throughout the armed conflict in Bosnia and Herzegovina, Sanski Most was under the control of Bosnian Serb authorities. In October 1995, when the Army of Bosnia and Herzegovina was approaching the area of Sanski Most, the applicants left their house in Kamengrad and fled to Banja Luka, where they still reside today.

7. After the end of the armed conflict and the conclusion of the General Framework Agreement, Sanski Most became part of the Federation of Bosnia and Herzegovina. The applicants contend that until April 1996, their house in Kamengrad remained intact. They allege that after that date, their former home was ransacked and subject to wanton destruction by persons unknown to them. In the applicants' opinion, the Federation of Bosnia and Herzegovina bears responsibility for these events to the extent that its authorities have not interfered to prevent the destruction, although they have been in a position to do so.

8. On 27 October 1998, the applicants filed a claim against the Federation of Bosnia and Herzegovina before the Municipal Court in Sanski Most ("the Municipal Court") with a view to being compensated for the destruction of their house in the amount of 250,000 KM. On the same occasion, the applicants requested to be exempted from paying court fees in advance since they were in a difficult financial situation. The applicants did not provide the Municipal Court with verified documents regarding their financial standing.

9. Thereafter, on an unspecified date, the President of the Municipal Court in Sanski Most, Adil

Draganović, wrote a letter to the applicants containing the following statement:

> "We return the lawsuit you have lodged before this Court with a view to obtaining compensation from the Federation of Bosnia and Herzegovina for the reason that you are obliged to submit a receipt that you have paid court fees in the amount of 7,500 KM. The Court cannot allow an exemption from paying the expenses for the forthcoming proceedings because the plaintiffs are both self-employed shopkeepers in Prijedor.
>
> (signed) President of the Court, Adil Draganović"

IV. RELEVANT LEGISLATION

A. The Law on Civil Procedure of the Federation of Bosnia and Herzegovina

10. The Law on Civil Procedure of the Federation of Bosnia and Herzegovina (Official Gazette of the Federation of Bosnia and Herzegovina nos. 42/98 and 3/99), under its heading XII, contains detailed provisions regarding the expenses of court proceedings. Articles 159 – 164 contain provisions regarding the exemption from court fees.

11. Article 159 of the Law provides, in relevant part:

> "(1) The court shall exempt a party from paying expenses if that party, according to its general financial situation, cannot meet this obligation without harm to its own or its family's basic support.
> …
> (3) When reaching a decision on exemption of paying expenses, the court shall carefully take into consideration all circumstances, in particular the value of the dispute …."

12. Article 160 of the Law provides:

> "(1) The court shall decide, upon the request of a party, on the exemption of paying expenses.
>
> (2) The party is obliged to attach verified documentation of the competent administrative organ on its financial standing.
>
> (3) If necessary, the court shall *ex officio* investigate the necessary information and inform the party which requested to be exempted from paying expenses, and the court may hear the opposite party on that matter.
>
> (4) No appeal is allowed against the decision of the court to exempt a party from paying expenses."

13. Article 163 of the Law provides, in relevant part:

> "(1) The court can, during the proceedings, revoke its decision to exempt a party from paying expenses if it is satisfied that the party can settle the expenses."

B. The Law on Court Fees of the Una-Sana Canton

14. The Law on Court Fees of the Una-Sana Canton was adopted on 24 April 1997 and entered into force on 30 April 1997 (Official Gazette of the Una-Sana Canton no. 3/97). It contains provisions for the payment of court fees applicable to all courts of the Canton (Article 1).

15. Article 4 of the Law provides, in relevant part:

> "Unless otherwise regulated by this Law, the obligation to pay fees arises:

1. for initiating proceedings – at the moment when the claim it is handed in,
…"

16. Article 5 of the Law provides:

"The fee is to be paid at the moment when the obligation to pay it arises, unless otherwise regulated by this Law."

17. Article 8 of the Law provides:

"(1) Unpaid or not completely paid fees shall not prevent the lodging of the claim or the processing of the claim by the court.
…"

18. Article 10 of the Law provides, in relevant part:

"(1) The following persons are exempted from paying fees:
…
4. citizens of poor financial standing,
…
Citizens of poor financial standing within the meaning of paragraph 1 subparagraph 4 of this Article are to be regarded as those persons who are of poor financial standing according to provisions of the Federation, the Cantons and the units of local self-administration where they reside.
…"

19. Article 12 of the Law provides, in relevant part:

"(1) The exemption from paying fees in civil proceedings is granted in accordance with provisions of the Law on Taking over the Law on Civil Proceedings (OG RBiH no. 2/92).
…"

20. According to a list appended to Article 46 of the Law, the amount of court fees to be paid when proceedings are initiated for claims exceeding 5,000 German Marks (hereinafter "DEM") is 3% of the dispute's value, and in no case more than 10,000 DEM.

V. COMPLAINTS

21. The applicants allege a violation of their right of access to a court (Article 6 paragraph 1 of the Convention), their right to an effective remedy (Article 13 of the Convention), as well as their right to peacefully enjoy their possessions (Article 1 of Protocol No. 1 to the Convention).

VI. SUBMISSIONS OF THE PARTIES

A. Bosnia and Herzegovina

22. In its observations received on 13 September 1999, Bosnia and Herzegovina suggests to declare the application inadmissible because the applicants have not availed themselves of civil proceedings to protect their rights. Bosnia and Herzegovina did not comment on the Municipal Court's request that the applicants advance the sum of 7,500 KM as court fees.

B. The Federation of Bosnia and Herzegovina

23. The Federation of Bosnia and Herzegovina, in its observations of 22 September 1999, calls into question that the applicants' house was destroyed at a point in time after Sanski Most was

integrated into the territory of the Federation. As the applicants had not submitted evidence in that respect, it is stated, it was more likely that their home was destroyed in the course of the take-over of the area by the Army of Bosnia and Herzegovina, *i.e.* already before the entry into force of the Agreement on 14 December 1995. The Chamber, therefore, would be incompetent to examine this part of the application *ratione temporis*.

24. In addition, the Federation suggests, the application should be declared inadmissible for non-exhaustion of domestic legal remedies because the applicants have not gone through regular court proceedings with a view to being compensated. Moreover, the Federation claims that it could not be held responsible for damages inflicted on the applicants' building by unknown third parties.

25. As to the merits of the case, the Federation denies any responsibility for violations of the applicants' rights that may have occurred.

C. The applicants

26. According to the applicants, between October 1995 and November 1996, persons wearing military uniforms, probably members of the Army of Bosnia and Herzegovina, were using their abandoned home. This provides an additional argument that the Federation of Bosnia and Herzegovina incurs responsibility for the devastation of the house that took place within that period of time.

27. The applicants contend that they were unlawfully prevented from exhausting domestic legal remedies with respect to their compensation claim for the destruction of their house, as the Municipal Court refused to register their lawsuit and to deal with the claim. Since they cannot afford to pay in advance a sum as high as 7,500 KM, the applicants complain that they are left without legal redress.

VII. OPINION OF THE CHAMBER

A. Admissibility

28. 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 of the Agreement. In accordance with Article VIII(2) of the Agreement, "the Chamber shall decide which applications to accept and in what priority to address them. In so doing, the Chamber shall take into account the following criteria: (a) Whether effective remedies exist, and the applicant has demonstrated that they have been exhausted.... (c) The Chamber shall also dismiss any application which it considers incompatible with this Agreement, manifestly ill-founded, or an abuse of the right of petition."

1. Concerning events before 14 December 1995

29. The Chamber notes that it remains in dispute at what time and by whom the house in Kamengrad was destroyed. The applicants claim that until April 1996, the building remained intact, whereas the Federation of Bosnia and Herzegovina puts forward the assumption that no such destruction could have taken place after 14 December 1995, the date when the Agreement entered into force.

30. The Chamber cannot find that there is sufficient substantiation for the fact that the destruction of the applicants' house took place after the entry into force of the Agreement on 14 December 1995. Moreover, the Chamber has repeatedly found that in accordance with generally accepted principles of law, the Agreement cannot be applied retroactively, and it will also in this case confine its examination to considering whether the human rights of the applicants have been violated or threatened with violation since that date (see case no. CH/96/30, *Damjanović v. The Federation of Bosnia and Herzegovina*, decision on admissibility of 11 April 1997, paragraph 13, Decisions on Admissibility and Merits 1996-1997). It follows that the application is incompatible *ratione temporis* with the provisions of the Agreement, within the meaning of Article VIII(2)(c), insofar as it concerns allegations of events occurring prior to 14 December 1995.

2. Responsibility of Bosnia and Herzegovina

31. The Chamber further notes that the applicants direct their application against Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina. They submit that uniformed men, supposedly members of the Army of Bosnia and Herzegovina, were seen in and around their house between October 1995 and November 1996. However, recalling the above finding that the part of the application relating to events prior to 14 December 1995 is inadmissible *ratione temporis*, the applicants have not provided any indication that Bosnia and Herzegovina is responsible for any of the actions they complain of after that date. The competencies of Bosnia and Herzegovina are set out in Article III of the Constitution of Bosnia and Herzegovina, contained in Annex 4 to the General Framework Agreement. These do not include military matters. Accordingly, any action by military personnel after 14 December 1995 is within the competence of the Entities, in this case the Federation of Bosnia and Herzegovina. It follows that the application is inadmissible *ratione personae* as directed against Bosnia and Herzegovina.

3. Requirement to exhaust effective domestic remedies

32. According to Article VIII(2)(a) of the Agreement, the Chamber must consider whether effective remedies exist and whether the applicants have demonstrated that they have been exhausted. In the *Onić* case (case no. CH/97/58, *Onić v. The Federation of Bosnia and Herzegovina*, decision on admissibility and merits of 12 February 1999, Decisions January-July 1999, paragraph 38), the Chamber held that it was necessary to take realistic account not only of the existence of formal remedies in the domestic system, but also of the general legal and political context in which they operate.

33. The Chamber notes that the applicants have submitted a claim to the Municipal Court in Sanski Most with a view to being compensated for the damages that occurred to their house in Kamengrad. However, their lawsuit was not registered until they would advance court fees in the amount of 7,500 KM, which the applicants refused to do given their financial situation.

34. The Chamber observes that the ability to institute civil proceedings before the domestic courts is indispensable in order to have the claims with respect to the destruction of the applicants' house determined. As concerns the applicants' complaint arising from this inability to institute such proceedings, the Federation of Bosnia and Herzegovina has not shown that there was an effective remedy that could challenge the decision of the President of the Municipal Court not to deal with the applicants' lawsuit. It follows that the applicants did not have an effective domestic remedy to exhaust in this respect.

4. Conclusion as to admissibility

35. No other grounds for declaring the case inadmissible have been raised or are apparent. Accordingly, the application will be declared admissible insofar as it is directed against the Federation of Bosnia and Herzegovina with regard to the complaints under Article 6 paragraph 1 of the Convention, Article 13 of the Convention, and Article 1 of Protocol No. 1 thereto, relating to events after 14 December 1995. The remainder of the application will be declared inadmissible.

B. Merits

36. Under Article XI of the Agreement, the Chamber must next address the question whether the facts found disclose a breach by the Federation of Bosnia and Herzegovina 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 by the Convention.

1. Article 6 of the Convention

37. Paragraph 1 of Article 6 of the Convention reads, in relevant part:

> "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.
> …"

38. The applicants complain that the President of the Municipal Court in Sanski Most has unlawfully conditioned the registration of their lawsuit upon an advance payment of 7,500 KM as court fees. As a consequence, they were prevented from initiating civil proceedings to pursue their rights. The Federation of Bosnia and Herzegovina does not raise a particular argument regarding this issue.

(a) Whether the obligation to pay court fees imposed by the Municipal Court amounted to a violation of Article 6 paragraph 1 of the Convention

39. The Chamber observes that it is settled jurisprudence of the European Court of Human Rights that Article 6 paragraph 1 of the Convention encompasses the right of access to a court (*Golder v. United Kingdom*, judgment of 21 February 1975, Series A no. 18, paragraphs 26 *et seq.*). The right of access means access in law, as well as in fact. However, this right is not an absolute one, and the European Court has never ruled out that the interests of the fair administration of justice may justify imposing a financial restriction on the individual's access to a court (*Tolstoy Miloslavsky v. United Kingdom*, judgment of 13 July 1995, Series A no. 316 B, paragraphs 61 *et seq.*).

40. Nonetheless, the Chamber must satisfy itself that the limitations applied by the Municipal Court in Sanski Most do not restrict or reduce the access left to the applicants to an extent that the very essence of the right guaranteed under Article 6 paragraph 1 of the Convention is impaired. The European Court has previously held that a restriction must pursue a legitimate aim, and there must be a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see, *e.g.*, *Fayed v. United Kingdom*, judgment of 21 September 1994, Series A no. 294-B, paragraph 65).

41. According to Article 4 of the Law on Court Fees of the Una-Sana Canton (see paragraph 15 above), a plaintiff is required to pay court fees at the moment of filing a civil lawsuit. The Chamber is of the opinion that in civil proceedings, the requirement to pay court fees in advance does not *per se* constitute a restriction on the right of access to a court that is incompatible with Article 6 paragraph 1 of the Convention. To the contrary, it cannot be gainsaid that the obligation of a party to civil proceedings to advance court fees serves the aim of securing costs arising from the conduct of those proceedings before the courts and of discouraging frivolous litigation. As a consequence, the Chamber cannot find that the mere obligation to pay court fees in advance imposed by the Municipal Court amounted to a violation of Article 6 paragraph 1 of the Convention.

(b) Whether the fee required from the applicants for initiating their lawsuit restricted their "right of access to a court" in a manner contrary to Article 6 paragraph 1 of the Convention

42. Still, the Chamber must examine the amount of the fees required to be paid by the applicants, taking into account all particular circumstances of the case. The applicants were requested to pay 7,500 KM for the initiation of proceedings with an amount in dispute of 250,000 KM, those fees thus constituting 3% of the dispute's value, in accordance with the Law on Court Fees of the Una-Sana Canton (see paragraph 20 above). The Chamber finds that, even though the sum of 7,500 KM may be deemed high in absolute terms, the percentage of the total amount in dispute can hardly be regarded as excessive. Nonetheless, the Chamber is particularly aware of Article 8 of the Law on Court Fees, which stipulates that a claim can be lodged and shall be processed even if the court fee was not paid in advance (see paragraph 17 above).

43. As regards a possible exemption from this obligation, the Chamber notes that Articles 10 and 12 of the Law on Court Fees of the Una-Sana Canton (see paragraphs 18 and 19 above), in conjunction with the provisions with the Law on Civil Procedure (see paragraphs 11 *et seq.* above), provide for such an exception. In assessing whether a party is entitled to such privilege, the civil court has to take into account all circumstances relating to the financial situation of the party. A party shall

support its request for exemption with documentation confirmed by an administrative organ, but the court shall *ex officio* make inquiries to that end if it deems necessary. An exemption from the payment of court fees can at any time be revoked by the court if the basis therefore has ceased to exist.

44. In the instant case, the Chamber observes that the letter of the President of the Municipal Court in Sanski Most, sent on an unspecified date, not only required the applicants to pay court fees in advance, but simultaneously refused the applicants' request to be granted an exemption on the ground that they were shopkeepers. Their submission of 27 October 1998 was sent back to them, and the Municipal Court never dealt with the matter.

45. Recalling that according to the Law on Court Fees, a court may not refuse registration and the processing of a civil claim on the mere ground that the party initiating the lawsuit has not paid court fees in advance, the Chamber finds that the decision of the President of the Municipal Court violated the applicable law. Furthermore, the Chamber is not convinced that the applicants' request to be exempted from paying court fees in advance, which was rejected by a mere statement, was dealt with in accordance with the procedural safeguards contained in the law and with due diligence. These acts resulted in the applicants' desisting from their claim and in their case never being heard by a court. In the Chamber's opinion, that impaired the very essence of their right to a court.

46. Moreover, the Chamber finds that with regard to Article 163 of the Law on Civil Proceedings, allowing the applicants to proceed with their claim at the initial phase of the proceedings would not have prevented the Municipal Court from collecting court fees thereafter if the applicants' financial situation had turned out to be different than stated by them.

47. Assessing the facts of the case as a whole, and also having regard to the prominent place held by the right of access to a court in a democratic society, the Chamber finds that the Federation of Bosnia and Herzegovina failed to strike a fair balance between, on the one hand, its own interest in collecting court fees for dealing with claims and, on the other hand, the applicants' interest in vindicating their claim through the courts. It follows that the Federation of Bosnia and Herzegovina has violated the applicants' right of access to a court, as guaranteed by Article 6 paragraph 1 of the Convention.

2. Article 13 of the Convention

48. In view of the finding of a violation under Article 6 paragraph 1 of the Convention, the Chamber does not consider it necessary to examine whether there has been any violation of the applicants' rights under Article 13 of the Convention, given that the right of access to a court under Article 6 paragraph 1 of the Convention provides a stricter guarantee than Article 13 of the Convention (*see also* case no. CH/98/698, *Jusufović v. The Republika Srpska,* decision on admissibility and merits of 9 June 2000, Decisions January-June 2000, paragraph 101).

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

49. Article 1 of Protocol No. 1 to the Convention reads as follows:

> "(1) 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.
> ..."

50. The Chamber recalls its above finding that the Federation of Bosnia and Herzegovina has violated the applicants' right of access to a court. When this violation is remedied it should be possible for the applicants to pursue their compensation claims before the domestic courts. In these circumstances, the Chamber decides that it is not necessary separately to examine the application under Article 1 of Protocol No. 1 to the Convention.

VIII. REMEDIES

51. Under Article XI(1)(b) of the Agreement, the Chamber must next address the question of what steps shall be taken by the Federation of Bosnia and Herzegovina to remedy breaches of the Agreement which it has found. 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 the applicants.

52. The Chamber finds it appropriate to order the Federation of Bosnia and Herzegovina to provide the applicants with access to a court without the restrictions previously imposed on them and in accordance with the reasoning contained in the present decision.

IX. CONCLUSIONS

53. For the above reasons, the Chamber decides,

1. unanimously, to declare the application admissible as directed against the Federation of Bosnia and Herzegovina with regard to the complaints under Article 6 of the European Convention on Human Rights, under Article 13 of the Convention, and under Article 1 of Protocol No. 1 thereto, relating to events after 14 December 1995;

2. unanimously, to declare inadmissible the remainder of the application;

3. unanimously, that there has been a violation of the applicants' right of access to a court under Article 6 paragraph 1 of the European Convention on Human Rights, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Human Rights Agreement;

4. unanimously, to order the Federation of Bosnia and Herzegovina to take all necessary action to provide the applicants with access to a court, thereby ensuring that their claim can be determined;

5. unanimously, that it is not necessary to examine the application under Article 13 of the European Convention on Human Rights and under Article 1 of Protocol No. 1 to the Convention; and

6. unanimously, to order the Federation of Bosnia and Herzegovina to report to it or to its successor institution 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 on the steps taken by it to comply with the above order.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel