DECISION ON THE ADMISSIBILITY AND MERITS

DELIVERED ON 10 MARCH 1999

Matija IVKOVIĆ, Ismeta KRIVOŠIJA, Slavko CIGANOVIĆ, Đurdica MRŠIĆ, Raza HODŽIĆ, Behadil MEMIŠEVIĆ, and "ČO"

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 8 February 1999 with the following members present:

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

Mr. Leif BERG, Registrar
Ms. Olga KAPIĆ, Deputy Registrar

Having considered the admissibility and merits of Cases Nos. CH/98/129, CH/98/135, CH/98/153, CH/98/173, CH/98/191, CH/98/241, and CH/98/255 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 Article VIII(2) and Article XI of the Agreement and Rules 52, 57 and 58 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The present decision concerns 7 cases involving Yugoslav National Army apartments. The cases were considered to be directed against the State of Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina. The names of the individual applicants and the corresponding case numbers are listed in part III B of the decision.

2. In 1992 the applicants contracted to buy apartments from the Yugoslav National Army ("the JNA"). The contracts were annulled by legislation passed shortly after the General Framework Agreement for Peace in Bosnia and Herzegovina entered into force in December 1995. The applicants complain that the annulment of their contracts violated their property rights as guaranteed by Article 1 of Protocol No. 1 to the (European) Convention for the protection of Human Rights and Fundamental Freedoms ("the Convention") and also allege violations of Articles 6 and 13 of the Convention.

3. These 7 cases resemble the cases of *Medan and Others v. Bosnia and Herzegovina and The Federation of Bosnia and Herzegovina* (Cases Nos. CH/96/3, 8 and 9, Decision on the merits of 7 November 1997, Decisions 1996-1997, p. 53), *Podvorac and 15 other JNA cases* (Decision on the admissibility and the merits of 12 June 1998, Decisions January-June 1998, p. 37) and *Grbavac and 26 Other JNA cases v. Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina* and *Ostojić and 31 Other JNA cases v. Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina* (Decisions on the admissibility and the merits of 15 January 1999).

II. PROCEEDINGS BEFORE THE CHAMBER

4. The applications were introduced between December 1997 and January 1998 and registered between January 1998 and April 1998. The applicants in Case Nos. CH/98/173 and CH/98/255 are represented by lawyers. The applicant in Case No. CH/98/255 objects to his identity being disclosed to the public (Rule 46 paragraph 2 (d) of the Chamber's Rules of Procedure).

5. Some of the applications were directed against both Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina, whereas others were initially directed either against Bosnia and Herzegovina or the Federation of Bosnia and Herzegovina. The Chamber considered, however, that the applicants' complaints raised issues which might in all cases engage the responsibility of both the State and the Federation of Bosnia and Herzegovina. It therefore decided to treat all cases as being directed against both the State and the Federation (see also the decision in the *Podvorac and 15 other JNA cases*, loc. cit., paragraph 4 and the *Medan and Others* decision, loc. cit., paragraphs 28-30 and 44-47).

6. Between 6 April 1998 and 2 July 1998 the applications were transmitted pursuant to Rule 49(3)(b) of the Rules of Procedure to the respondent Parties for observations on their admissibility and merits.

7. The Federation of Bosnia and Herzegovina submitted observations between June 1998 and September 1998. The State of Bosnia and Herzegovina did not submit any observations. The applicants replied between July and October 1998. In accordance with the Chamber's order for the proceedings in the respective cases, all applicant's were afforded the possibility of claiming compensation within the time limit fixed for any reply to observations submitted by a respondent Party.

8. The First Panel deliberated on the admissibility and the merits of the cases on 8 February 1999. Under Rule 34 of its Rules of Procedure, it decided to join the applications and adopted the present decision.

III. ESTABLISHMENT OF THE FACTS

A. Relevant domestic law

9. The apartments occupied by the applicants were all socially owned property over which the JNA had jurisdiction. Such property was considered to belong to society as a whole. Each applicant enjoyed an occupancy right in respect of his or her apartment. An occupancy right was a right, subject to certain conditions, to occupy an apartment on a permanent basis.

10. Each of the applicants contracted to purchase his or her apartment under the Law on Securing Housing for the Yugoslav Army (Official Gazette of the Socialist Federal Republic of Yugoslavia, No. 84/90). This was a Law of the Socialist Federal Republic of Yugoslavia ("the SFRJ"), which was passed in 1990 and came into force on 6 January 1991. In the following years a number of Decrees with force of law as well as laws proper were issued by the Government of the Socialist Republic of Bosnia and Herzegovina, the Presidency of the Republic of Bosnia and Herzegovina and the Parliament of the Republic of Bosnia and Herzegovina with the aim of regulating social property issues in general and social property over which the JNA had jurisdiction in particular (see the Chamber's decision in the cases of *Medan and Others*, loc. cit., paragraphs 9-13). These legal instruments included, amongst others, a Decree imposing a temporary prohibition on the sale of socially owned property, issued on 15 February 1992 by the Government of the Socialist Republic of Bosnia and Herzegovina (Official Gazette of the Socialist Republic of Bosnia and Herzegovina, No. 4/92). Subsequently, a Decree with force of law, issued on 3 February 1995 by the Presidency of the Republic (Official Gazette of the Republic of Bosnia and Herzegovina, No. 5/95), ordered courts and other state authorities to adjourn proceedings relating to the purchase of apartments and other properties under the Law on Securing Housing for the JNA. This Decree entered into force on 10 February 1995, the date of its publication in the Official Gazette. On 22 December 1995 the Presidency of the Republic of Bosnia and Herzegovina issued a Decree with force of law (Official Gazette, No. 50/95) stating that contracts for the sale of apartments and other property concluded on the basis of, *inter alia*, the Law on Securing Housing for the JNA were invalid. This Decree entered into force on the same day. It was adopted as a law by the Assembly of the Republic of Bosnia and Herzegovina and promulgated on 25 January 1996 (Official Gazette, No. 2/96).

11. The Decree of 22 December 1995 also provided that questions connected with the purchase of real estate which was the subject of annulled contracts would be resolved under a law to be adopted in the future. On 6 December 1997 the Law on the Sale of Apartments with Occupancy Right came into force (Official Gazette of the Federation of Bosnia and Herzegovina, No. 27/97). This law was amended by a law of 23 March 1998 (Official Gazette, No. 11/98). Neither law affected the annulment of the present applicants' contracts. Under Article 39 an occupancy right holder who, under provisions of the 1997 law, contracts to purchase an apartment which he had contracted to purchase on the basis of, *inter alia*, the Law on Securing Housing for the JNA shall be recognised the purchase amount earlier paid.

B. The individual cases

12. The applicants are former members or employees of the JNA. The facts of the cases as they appear from the applicants' respective submissions and the documents in the case file are not in dispute and may be summarised as follows. It should be noted that the amount paid by the applicant at or around the moment of contracting does not necessarily reflect the officially determined price of the dwelling. This is because the applicants were only obliged to pay an amount fixed taking into account their earlier contribution to the JNA Housing Fund.

1. The case of Mr. Matija IVKOVIĆ (CH/98/129)

13. On 7 March 1992 the applicant concluded a purchase contract for a JNA apartment at Muharema Fizovića 7, Tuzla.

14. It appears from the file that the applicant has not initiated any written court proceedings to have himself registered as the owner of the apartment. The applicant was part of the "Group of Pensioners of Tuzla" which may have had the assistance of an attorney in drafting observations.

2. The case of Ms. Ismeta KRIVOŠIJA (CH/98/135)

15. On 3 April 1992 the applicant concluded a purchase contract for a JNA apartment at Moše Pijade Street 17, now Kulina bana 21, in Tuzla. The applicant paid 140.000 dinars for the apartment although the contract price was 123.824 dinars.

16. The applicant has not initiated any written court proceedings to have herself registered as the owner of the apartment. The applicant was part of the "Group of Pensioners of Tuzla" which may have had the assistance of an attorney in drafting observations.

3. The case of Mr. Slavko CIGANOVIĆ, CH/98/153

17. On 4 April 1992 the applicant concluded a purchase contract for a JNA apartment at Rose Hadživuković 10 in Tuzla, and paid the purchase price due (20.000 dinars).

18. The applicant has not initiated court proceedings to have himself registered as the owner of the apartment. The applicant was part of the "Group of Pensioners of Tuzla" which may have had the assistance of an attorney in drafting observations.

4. The case of Ms. Đurđica MRŠIĆ (CH/98/173)

19. On 12 February 1992, the applicant's husband, who died on 15 November 1994, paid the purchase price for a JNA apartment at Maršala Tita 99, Travnik. He paid 570.340 dinars on 12 February 1992 and 40.310 dinars on 31 March 1992. The contract does not specify on what date it was signed.

20. On 28 August 1995, the Court of First Instance in Travnik issued a decision declaring the applicant and her daughter heirs to Mr. Mršić's estate.

21. On 6 September 1995 the applicant initiated court proceedings before the Court of First Instance in Travnik to have herself registered as the owner of the apartment. The court adjourned the proceedings on31 May 1996.

22. The applicant is represented by Ms. Ljiljana Imamović, an attorney in Travnik.

5. The case of Ms. Raza HODŽIĆ (CH/98/191)

23. On 31 January 1992 the applicant paid the purchase price of 156.970 dinars for an apartment at Derviša Numića 20 in Sarajevo. The contract was signed on 10 February 1992. On 29 December 1994 the applicant initiated proceedings before the Court of First Instance II in Sarajevo seeking to be registered in the Land Registry as the owner of the apartment.

24. The applicant died on 23 February 1998. She had been represented by her son, Mr. Ismet Spužić, who submitted a decision of the First Instance Court II in Sarajevo dated 27 April 1998 declaring him the legal heir. He also submitted a decision of the Federation Ministry of Defense Chief of Staff dated 1 June 1998 allocating the occupancy right over the apartment to Mr. Spužlć

6. The case of Mr. Behadil MEMIŠEVIĆ (CH/98/241)

25. The applicant paid 345.000 dinars on 14 February 1992 for a JNA apartment located at Skojevska 61 (now Armije BIH no 25.) in Tuzla. On 7 March 1992 the applicant signed the contract and paid 27.100 dinars.

26. The applicant has not initiated court proceedings to have herself registered as the owner of the apartment. The applicant was part of the "Group of Pensioners of Tuzla" which may have had the assistance of an attorney in drafting observations.

7. The case of "ČO" (CH/98/255)

27. The applicant paid 553.789,50 dinars on 14 February 1992 for a JNA apartment located at Avde Jabucice 45, Sarajevo. The applicant signed the contract on 1 March 1992.

28. On 12 October 1993 the applicant initiated proceedings before the Court of First Instance I in Sarajevo to have himself registered as the owner. In a decision dated 22 November 1994 the court decided in favor of the applicant. This decision did not come into effect because the Military Attorney appealed. The Higher Court did not decide on the appeal.

29. The applicant is represented by Mr. Mitrović Jakša, an attorney in Sarajevo.

IV. COMPLAINTS

30. The applicants essentially complain that the retroactive annulment of their purchase contracts and the compulsory adjournment of their civil proceedings under the Decree No. 5/95 (see paragraphs 10-11 above) involve violations of their rights under Article 6 and 13 of the Convention and Article 1 of Protocol 1 to the Convention.

V. SUBMISSIONS OF THE PARTIES

A. The Respondent Parties

1. Bosnia and Herzegovina

31. No observations have been received from the State of Bosnia and Herzegovina.

2. The Federation of Bosnia and Herzegovina

32. The Federation of Bosnia and Herzegovina primarily refers to the liability of the State of Bosnia and Herzegovina for the impugned measures. Having regard to the ongoing discussion regarding the succession of the former SFRJ, it is presently impossible for the Federation to fulfil its obligations flowing from the Chamber's decision in *Medan and Others* (loc. cit.).

33. The Federation furthermore argues that the Chamber lacks competence *ratione temporis* to deal with the cases. In the cases of Mr. Memišević (CH/98/241) and "ČO" (CH/98/255), the Federation, moreover, argues that the cases have been lodged belatedly, since the essential grievance concerns the Decree of 22 December 1995 which was adopted as law on 18 January 1996. This enactment constituted the "final decision" within the meaning of Article VIII(2)(a) of the Agreement. Consequently, the applications should have been lodged by 18 July 1996.

34. It is further alleged that the issue at stake in these cases is the constitutionality of a law and not the infringement of human rights. These cases would therefore fall within the jurisdiction of the Constitutional Court. Moreover, the impugned legal acts were designed to place those prevented from buying JNA apartments on an equal footing with the applicants, and to protect State property. The measures were therefore justified under the second paragraph of Article 1 of Protocol No. 1 to the Convention.

B. The Applicants

35. The applicants maintain their complaints. Regarding the Federation's argument that other citizens were not treated equally to those who had the opportunity to purchase JNA apartments, the applicants stress the fact that the purchasers were all former members or employees of the JNA and had contributed to the Army Housing Fund. The apartments they purchased were constructed with

means from this fund and not from the Housing Fund of the then Republic of Bosnia and Herzegovina. Consequently, the purchasers cannot be compared with those who did not contribute to the Army Housing Fund.

VI. OPINION OF THE CHAMBER

A. Admissibility

36. As in the case of *Medan and Others* (loc. cit., paragraph 26), the Chamber takes note of the fact that the applicant, Ms. Raza Hodžić, has died during the proceedings before it. Her son, who was her representative before the Chamber and her legal heir, has informed the Chamber of his wish to continue the application. Therefore, the Chamber considers it appropriate to give a decision on the merits of the case.

37. Before considering the cases on their merits the Chamber must decide whether to accept them, taking into account the admissibility criteria set out in Article VIII(2) of the Agreement which, provides, *inter alia*, as follows:

> "2. The Chamber shall decide which applications to accept ... . 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 and that the application has been filed with the Commission within six months from such date on which the final decision was taken.
>
> ...
>
> (c) The Chamber shall also dismiss any application which it considers incompatible with this Agreement, ... "

38. The Federation of Bosnia and Herzegovina argues that the present cases would fall within the jurisdiction of the Constitutional Court and presumably be incompatible with the Agreement within the meaning of Article VIII (2) (c) (see paragraph 34 above). However, the Chamber recalls that it is competent to consider "alleged and apparent violations of human rights as provided in the European Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocols thereto" (Article II(2)(a) of the Agreement). The Federation's argument must therefore be rejected.

39. In accordance with generally accepted principles of international law, it is outside the competence of the Chamber *ratione temporis* to decide whether events occurring before the coming into force of the Agreement on 14 December 1995 gave rise to violations of human rights. Evidence relating to such events may, however, be relevant as a background to events which occurred after the Agreement entered into force. Moreover, in so far as an applicant alleges a continuing violation of his rights after 14 December 1995, the case may fall within the Chamber's competence *ratione temporis* (*see Bastijanović* v. *Bosnia and Herzegovina and The Federation of Bosnia and Herzegovina*, Case No. CH/96/8, decision of 4 February 1997, Decisions 1996-97, p. 39, 42).

40. The Chamber recalls that the present cases were introduced in December 1997 and January 1998. The applicants essentially complain about the effects of the decrees of 3 February and 22 December 1995. In previous JNA cases the Chamber has found the Federation to be in violation of the Agreement because of its recognition and application of those decrees (see, e.g., the aforementioned *Medan and Others* decision, loc. cit., p. 62, paragraphs 38 and 41). The present applicants must also be understood as alleging that the effects of those decrees have been ongoing up to this day. The Chamber notes that the Decree of 22 December 1995 also provided that questions connected with the purchase of real estate which was the subject of annulled contracts would be resolved under a new law to be adopted in the future. Indeed, legislation to that effect was enacted in December 1997 and March 1998 (see paragraph 11 above). In these circumstances the Chamber is unable to identify any "final decision" whereby the six months' period stipulated in Article VIII(2)(a) could be considered to have commenced on 18 January 1996. Given this ongoing situation, the Chamber is also competent *ratione temporis* to examine the present cases. It follows that the Federation's objections must be rejected.

41. The Chamber notes that neither Party has raised any other objection to the admissibility of the applications in light of the criteria set out in Article VIII(2) of the Agreement (cf., *a contrario*, e.g., *Blentić v. Republika Srpska*, Case No. CH/96/17, decision of 3 December 1997, paragraphs 19-21, Decisions 1996-97, p.87, in which the Chamber considered this admissibility criterion in light of the corresponding requirement in Article 26 of the Convention). Nor can the Chamber of its own motion find any grounds for declaring the present cases inadmissible.

42. The Chamber concludes therefore that all the applications, including those where the applicants did not institute any court proceedings, are admissible.

B. Merits

43. Under Article XI of the Agreement the Chamber must next address the question whether the facts established above indicate a breach by one or both of the respondent Parties of its or their obligations under the Agreement. In terms of 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. The Chamber will therefore consider whether the annulment of the applicants' purchase contracts and the compulsory adjournment of any related civil proceedings constitutes a breach of the applicants' rights under Article I of the Agreement.

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

44. The applicants complain that the contracts which they entered into for the purchase of their apartments were annulled retroactively by the Decree issued on 22 December 1995, which was adopted as law on 18 January 1996. They allege a breach of Article 1 of Protocol No. 1 to the Convention, which is in the following terms:

> "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."

45. As to whether, at the time when the December 1995 Decree came into force, the applicants had any rights under their contracts which constituted "possessions" for the purposes of Article 1 of Protocol No. 1, the Chamber refers to its decisions in the cases of *Medan and Others* and in *Podvorac and 15 other JNA* cases (loc. cit., paragraph 33 and paragraphs 59-61, respectively). The answer to this question is therefore affirmative. The effect of the Decree was to annul those rights and the applicants were therefore deprived of their possessions. It is accordingly necessary for the Chamber to consider whether these deprivations were justified under Article 1 of the Protocol as being "in the public interest" and "subject to the conditions provided for by law".

46. The Federation of Bosnia and Herzegovina argues that the infringed legal acts were designed to support those who were prevented from buying JNA apartments and to protect State property. These acts would therefore correspond with the requirements of Article 1 paragraph 2 of Protocol No. 1 to the Convention and justify the measures concerned in the present cases.

47. The applicants stress the fact that the purchasers were all former members or employees of the JNA and had contributed to the Army Housing Fund. The apartments they purchased were constructed with means from this fund and not from the Housing Fund of the then Republic of Bosnia and Herzegovina. Consequently, the purchasers cannot be compared with those who had not contributed to the Army Housing Fund.

48. The Chamber finds that there is no material distinction between the present cases and those of *Medan and Others* and *Podvorac and 15 other JNA* cases (loc. cit.). Moreover, the new legislation issued after the Chamber's decision in *Medan and Others* (see paragraph 10 above) did not change

the present applicants' situation. The Chamber notes, however, that the legislation posterior to the Decree of December 1995 and the related law of January 1996 (see paragraphs 10-11 above), as in force at present, cannot revalidate the applicants' original purchase contracts retroactively, that is to say with effect from the dates when those contracts were concluded. Accordingly, this legislation can have no bearing on the outcome of the present cases.

49. Accordingly, the Chamber finds, as in the earlier JNA cases decided on the merits, that the present applicants were also made to bear an "individual and excessive burden" and that there has been a violation of Article 1 of Protocol No. 1 to the Convention.

2. Article 6 of the Convention

50. Those applicants who instituted proceedings complain that the civil proceedings instituted with a view to obtaining recognition of their ownership and registration in the Land Registry, have been compulsorily adjourned by virtue of the February 1995 Decree. They allege a breach of Article 6 of the European Convention on Human Rights in this respect. Those applicants who did not institute proceedings allege a violation of Article 6 on the ground that the aforementioned Decree deprived them of their right of access to court. Article 6 reads, as far as relevant, as follows:

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

51. As in the cases of *Medan and Others* and *Podvorac and 15 other JNA* cases (loc. cit.) the Chamber notes that the court proceedings in question either were or would have been adjourned shortly after the Decree in question entered into force. As far as the Chamber is aware, this situation has continued up to this day. Accordingly, there is a continuing deprivation of the applicants' right of access to court for the purpose of having their civil claims determined, as guaranteed by Article 6 (see the Chamber's decisions in the cases of *Medan and Others* and *Podvorac and 15 other JNA cases*, paragraphs 40 and 64, respectively and the European Court of Human Rights in the case of *Golder v. United Kingdom*, judgement of 21 February 1975, Series A No. 18, paragraphs 35-36). The Chamber sees no justification for this state of affairs in light of the conclusion which it has reached under Article 1 of the Protocol to the Convention. It follows that there is a breach of Article 6 of the Convention in the case of each applicant, in so far as the compulsory adjournment of his or her case has continued since 14 December 1995, when the Agreement came into force. The Chamber would add that any proceedings initiated would by now have lasted beyond a "reasonable time" due to the February 1995 Decree.

3. Article 13 of the Convention

52. Some applicants also maintain that they have been the victims of a breach of Article 13 of the Convention in that no effective remedy has been available to them in respect of their complaints. Article 13 provides as follows:

> "Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

53. In view of its decision under Article 6(1) of the Convention to the effect that the applicants have been denied access to court to establish their property rights, the Chamber considers it unnecessary also to examine the complaints under Article 13. The requirements of Article 13 are less strict than those of Article 6 and are absorbed by the latter (see, e.g., European Court of Human Rights, *Hentrich v. France* judgment of 22 September 1994, Series A No. 296, para. 65).

VII. REMEDIES

54. Under Article XI paragraph 1(b) of the Agreement the Chamber must also address the question what steps shall be taken by the respondent Party or Parties to remedy the breaches of the Agreement which it has found.

55. The Chamber notes that the legal situation remains essentially the same as that which it addressed in its decisions in the cases of *Medan and Others* and *Podvorac and 15 other JNA* cases (loc. cit.). It is therefore appropriate to make orders similar to those issued in those cases.

56. The breaches of Article 1 of Protocol No. 1 which the Chamber has found arose from the legislation already referred to. The State is responsible for having passed that legislation, but the matters which it deals with are now within the responsibility of the Federation, which recognises and applies this legislation. In these circumstances the Chamber considers that it is the responsibility of the Federation to take the necessary legislative or administrative action to render ineffective the annulment of the applicants' contracts which was imposed. It will therefore make an order against the Federation to that effect.

57. The Chamber will also order the Federation to take all necessary steps to lift the compulsory adjournment of the court proceedings instituted by certain of the applicants and which the Chamber has found to be in violation of Article 6 of the Convention, and to take all necessary steps to secure the applicants' right of access to court.

58. With regard to possible compensatory awards, the Chamber first recalls that in accordance with its order for the proceedings in the respective cases, all applicants were afforded the possibility of claiming compensation within the time limit fixed for any reply to observations submitted by a respondent Party. The following applicants seek compensation:

59. Mr. Matija IVKOVIĆ (CH/98/129) claims compensation amounting to 10 DEM for lawyer's fee, 5 DEM for costs of posting documents to the Chamber, 10.000 DEM for offensive remarks made by the military lawyer to the applicant and 30.000 DEM for pain suffered and maltreatment as an employee of the former JNA.

60. Ms. Ismeta KRIVOŠIJA (CH/98/135) claims compensation for the amount paid in excess of the purchase price for the apartment, 10 DEM for lawyer's fee, 8 DEM for costs of posting documents to the Chamber, 10.000 for offensive remarks made by the military lawyer to the applicant and 30.000 DEM for pain suffered and maltreatment as an employee of the former JNA.

61. Mr. Slavko CIGANOVIĆ (CH/98/153) claims compensation, amounting to 10 DEM for lawyer's fee, 5 DEM for costs of posting documents to the Chamber, 10.000 DEM for offensive remarks made by the military attorney to the applicant and 30.000 DEM for pain suffered and maltreatment as an employee of former JNA.

62. Mrs. Đurđica MRŠIĆ (CH/98/173) claims compensation amounting to 450 DEM for submission of the application on 18 January 1995, 450 DEM for representation at the hearing before the Court in Travnik on 31 May 1996, 450 DEM for the application to the Chamber and 450 DEM for the response to the allegations of the respondent Party.

63. The Chamber finds it appropriate to award Mr. Matija IVKOVIĆ (CH/98/129) 15 KM for legal fees and postage. The Chamber rejects the claim of 10.000 DEM for offensive remarks made by the military lawyer to the applicant as not being related to the violation of human rights which it has found. Finally, the Chamber rejects the request for 30.000 DEM for pain suffered and maltreatment as the applicant cannot be said to have suffered any damage as a result of his inability to be registered as the owner (*see Bastijanović v. Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina*, Case No. CH/96/8, Decision on the Claim for Compensation of 29 July 1998, paragraph 15; and *Grbavac and 26 Other JNA Cases*, loc. cit., paragraph 95).

64. The Chamber finds it appropriate to award Ms. Ismeta KRIVOŠIJA (CH/98/135) 18 KM for legal fees and postage. The Chamber rejects as outside its competence *ratione temporis* the request

for a rebate for the amount she paid above the contract price. The Chamber also rejects the claim for 10.000 DEM for offensive remarks made by the military lawyer to the applicant as not related to the violation of human rights which it has found. Finally, the Chamber rejects the request for 30.000 DEM for pain suffered and maltreatment as the applicant cannot be said to have suffered any damage as a result of his inability to be registered as the owner (see the aforementioned *Bastijanović* decision, paragraph 15; and aforementioned *Grbavac* decision, paragraph 95).

65. The Chamber finds it appropriate to award Mr. Slavko CIGANOVIĆ (CH/98/153) 15 KM for legal fees and postage. As with Mr. Ivković and Ms. Krivošija, the Chamber rejects Mr. Ciganović's request for 10.000 DEM for offensive remarks and 30.000 DEM for pain suffered and maltreatment.

66. With reference to applicant Mrs. Đurđica MRŠIĆ (CH/98/173) the Chamber notes that part of her compensation claim relates to legal costs allegedly incurred in January 1995, i.e. prior to the entry into force of the Agreement. This part of the claim must therefore be rejected. As for the remainder of her claim, the Chamber finds it appropriate, taking into account the Advocates' Tariff, to award her a total of 200 KM in compensation for legal costs and expenses incurred in the proceedings before the Court in Travnik in May 1996 and before the Chamber, 50 and 150 KM, respectively (see *Ostojić and 31 Other JNA Cases,* loc. cit., paragraph 123).

VIII. CONCLUSIONS

67. For the above reasons the Chamber decides:

1. unanimously, to declare the applications admissible;

2. by 5 votes to 1, that the passing of legislation providing for the retroactive nullification of the applicants' purchase contracts violated their rights under Article 1 of Protocol No. 1 to the Convention, Bosnia and Herzegovina thereby being in breach of its obligations under Article I of the Agreement;

3. by 5 votes to 1, that the recognition and application of the legislation providing for the retroactive nullification of the applicants' contracts has violated their rights under Article 1 of Protocol No. 1 to the Convention, the Federation thereby being in breach of its obligations under Article I of the Agreement;

4. unanimously, that the continuing adjournment since 14 December 1995 of court proceedings aiming at formal recognition of the applicants' property rights (whether or not actually initiated by them) has violated their right of access to a court and to a hearing within a reasonable time as guaranteed by Article 6 of the Convention, the Federation thereby being in breach of its obligations under Article I of the Agreement;

5. unanimously, that it is unnecessary to examine the applicants' complaints based on Article 13 of the Convention;

6. by 5 votes to 1, to order the Federation to take all necessary steps to render ineffective the annulment of the applicants' contracts imposed by the Decree of 22 December 1995 and the Law of 18 January 1996;

7. unanimously, to order the Federation to take all necessary steps to lift the compulsory adjournment by the Decree of 3 February 1995 of court proceedings aiming at formal recognition of the applicants' property right and to take all necessary steps to secure in this matter their right of access to court and to a hearing within a reasonable time;

8. (a) unanimously, to order the Federation to pay applicant Mr. Matija IVKOVIĆ (CH/98/129) within three months, the sum of 15 KM in compensation for fees and expenses;

(b) unanimously, to reject the remainder of his claim for compensation;

9. (a) unanimously, to order the Federation to pay applicant Ms. Ismeta KRIVOŠIJA (CH/98/135) within three months, the sum of 18 KM in compensation for fees and expenses;

(b) unanimously, to reject the remainder of her claim for compensation;

10. (a) unanimously, to order the Federation to pay applicant Mr. Slavko CIGANOVIĆ (CH/98/153) within three months, the sum of 15 KM in compensation for fees and expenses;

(b) unanimously, to reject the remainder of his claim for compensation;

11. (a) unanimously, to order the Federation to pay applicant Mrs. Đurđica MRŠIĆ (CH/98/173) within three months, the sum of 200 KM in compensation for fees and expenses;

(b) unanimously, to reject the remainder of her claim for compensation;

12. unanimously, to order that simple interest at an annual rate of four per cent will be payable over the awarded sums any unpaid portion thereof, from the date of expiry of the above-mentioned three month period until the date of settlement; and

13. unanimously, to order the Federation to report to it by 10 June 1999 on the steps taken by it to give effect to this decision.

(signed)
Leif BERG
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel