DECISION ON ADMISSIBILITY AND MERITS
(delivered on 10 May 2002)

Case no. CH/98/1373

Aleksandar BAJRIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 9 April 2002 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. Ulrich GARMS, 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 was arrested by the police of the Federation of Bosnia and Herzegovina for allegedly unlawfully possessing munitions after the car he was driving was stopped on 22 May 1996. The applicant's detention was thereafter extended several times at the request of the Municipal Prosecutor who allegedly was also investigating the applicant for war crimes. The applicant was finally released following an order of the Cantonal Court in Bihać of 24 March 1997 after the Municipal Prosecutor withdrew its charges of war crimes as against the applicant. The charges related to the possession of munitions were dropped by the Court of First Instance in Sanski Most on 27 September 2000 as the Municipal Prosecutor indicated that it would no longer pursue the case.

2. The case mainly raises issues under Articles 3 and 5 of the European Convention on Human Rights ("the Convention").

II. PROCEEDINGS BEFORE THE CHAMBER

3. This case was referred to the Chamber by the Ombudsperson for Bosnia and Herzegovina (hereinafter "the Ombudsperson") on 2 December 1998 at the applicant's request in accordance with paragraph 5 of Article V and paragraph 1 of Article VIII of Annex 6 to the Agreement. It was registered with the Chamber on 23 March 1999. It originated in an application lodged with the Ombudsperson on 11 December 1996 against the Federation of Bosnia and Herzegovina.

4. On 24 May 1999 the Chamber transmitted the application to the respondent Party for observations on Article 3, Article 5 paragraphs 1 and 5, Article 6 and Article 13 of the Convention and Article 1 of Protocol No. 1 to the Convention and Article II(2)(b) of the Agreement pursuant to Rule 49(3)(b) of the Chamber's Rules of Procedure.

5. The respondent Party's written observations on admissibility and merits were received on 23 July 1999. On 27 August 1999 the applicant responded to the above and submitted his claim for compensation. The respondent Party's observations on these claims were received on 19 October 1999. Further observations were received from the respondent Party on 17 April 2000 and from the applicant on 29 November 2001.

6. By letter sent 27 February 2000, the respondent Party was requested to supply evidence that the domestic procedures referred to in its observations on admissibility and merits provide an effective remedy and to provide a copy of the decision of the First Instance Court of Sanki Most of 4 February 1999 in which the court declares itself incompetent to deal with the applicant's request for compensation.

7. In its response of 17 April 2000 the respondent Party stated that it would provide court decisions demonstrating that the domestic procedures provide an effective remedy. The respondent Party, however, has failed to do so until the present date. The respondent Party submitted the requested copy of the decision of the first-instance Court of Sanki Most of 4 February 1999 in which the court declares itself incompetent.

8. On 27 April 2000 the applicant submitted further observations.

9. On 16 November 2001 the Chamber asked the respondent Party for more information in regard to the original application of the applicant to the Human Rights Ombudsperson. This information was received on 29 November 2001.

10. On 16 January 2002 the Chamber re-transmitted the case to the respondent Party, this time asking for observations on Article 5, paragraphs 2 and 3 of the Convention. These observations were received on 18 February 2002 and on 22 February 2002 sent to the applicant for his comment. The Chamber received the applicant's response on 19 March 2002. On 3 March 2002 the Chamber received additional information regarding the compliance of the respondent Party with the "Rules of the Road".

11. The Chamber deliberated on the admissibility and merits of the case on 10 March 1999, 14 May 1999, 8 February 2000, 9 November 2001, 8 January 2001 and 9 April 2002. On 9 April 2002 the Chamber adopted the present decision.

III. ESTABLISHMENT OF THE FACTS

12. The following is a summary of the facts as found in the application, the observations of the parties, the findings of the International Police Task Force ("IPTF") and the documents submitted to the Ombudsperson and the Chamber.

13. On 22 May 1996 the applicant, who is from a mixed Serb-Bosniak marriage, was driving through Sanski Most on the road from Prijedor to Ključ when he was arrested for unlawful possession of munitions. The applicant was detained in a military camp in Tomina, and later on the same day brought to the police station in Sanski Most for questioning. His car was confiscated, but has subsequently been returned to the applicant's family. On the same day, 22 May 1996, the Municipal Court in Sanski Most ordered that the applicant be detained for 30 days for the purpose of investigating whether he had committed the criminal act of illegal possession of weapons and explosive materials as prohibited by Article 213 paragraphs 1 and 2 of the Criminal Law of the Republic of Bosnia and Herzegovina. The respondent Party claims that only one hour later, at 11 a.m., this decision was delivered to the applicant. The applicant disputes that he was delivered the decision on 22 May 1996. He claims that he only saw and signed the decision on 6 June 1996. He further claims that he was only arrested in the evening hours of 22 May 1996 after 4 p.m. and therefore could not possibly have been delivered a decision on his arrest at 11 a.m. the same day. The applicant alleges that he was not heard in court by the investigative judge in regard to his pre-trial detention.

14. The applicant alleges that during the time of his detention he was subject to severe beatings on numerous occasions by police of Sanski Most and persons in civil outfit, one of whom the applicant recognized to be Elvedin Rizvan, a person of Bosniak origin from his home town Prijedor. The applicant claims that he obtained heavy injuries to his head and chest. As a result he suffered from headaches, a numb feeling in his face, problems with his left eye and impairment of his ability to hear with his left ear. He further claims that he suffered from a contusion of the ribs on the left side of his chest which made it difficult for him to breathe deeply. The applicant submitted to the Chamber medical documents to support his claims. There is also evidence contained in the IPTF reports that the applicant was subject to physical ill-treatment of a serious nature during his detention. Most of this is based on hearsay, reporting claims made by co-detainees of the applicant. In a report dated 24 June 1996 the IPTF monitor Kim Meyer reports that he visited the applicant who had suffered injuries.

15. The applicant further claims that he was mentally abused and that he was repeatedly insulted on the basis of his ethnic origin and residence in the Republika Srpska. In particular he claims that he was repeatedly referred to as "Chetnik", an expression which the applicant considers to be a derogatory term for persons of Serb origin. He claims that he was not registered as being detained and that he was hidden during visits of the IPTF on several occasions so that the IPTF could not find out about the mistreatment. The respondent Party disputes that the applicant was physically injured during his detention and that he suffered long-lasting pain.

16. On 3 June 1996 the First Instance Prosecutor in Sanksi Most submitted to the First Instance Court in Sanski Most a request for investigation against the applicant because of the suspicion of having committed the criminal act of illicit possession of weapons and explosives under Articles 213 paragraphs 1 and 2 of the RBiH Criminal Code.

17. On or about 6 June 1996 the applicant was transferred to the prison in Bihać. The applicant claims that only then he was for the first time informed of the charges against him, as he was given a copy of the decision of the Municipal Court ordering his pre-trial detention referred to in paragraph 13 above.

18. By decision dated 21 June 1996 the Higher Court in Bihać ordered that the applicant be detained for another 60 days (until 22 August 1996), pursuant to Articles 191(1) and 191(2) of the Law on Criminal Procedure of the Republic of Bosnia and Herzegovina for the purpose of hearing more witnesses in the investigation of the charges related to the alleged unlawful possession of munitions. The applicant had the right to appeal against this decision within 3 days from the moment of receipt of the decision. He did not appeal the decision.

19. A report prepared by the IPTF indicates that on 24 June 1996 the applicant was visited in the Bihać prison by two IPTF monitors. The memorandum describes various injuries of the applicant, including "scars over both eyes" and pain in his ribs which the applicant claimed to have received during multiple beatings while held at the Sanski Most police station.

20. By decision dated 21 August 1996 the Higher Court in Bihać ordered that the applicant be detained for another 30 days, but this time for the purpose of investigating alleged war crimes committed by the applicant. According to an "Incident Report" of the United Nations Civil Police ("UNCIVPOL") of the same date, the applicant had been brought to a hearing before a judge on that date. When the judge asked how he was being treated, the applicant replied that he currently was treated well, but that he had been beaten every day from his arrest on 22 May 1996 until 6 June 1996, when he was transferred from Sanski Most to Bihać. According to a report by the IPTF, the IPTF were told by the applicant on 22 August 1996 that a lawyer, Ms. Delista Delić, had *ex offcio* been assigned to him for the hearing on 21 August 1996, but that he had not been given the opportunity to consult with the lawyer prior to the hearing. In addition when the lawyer visited him the following days she allegedly told the applicant that she could not help him as he was a "political case" and requested her dismissal.The respondent Party disputes this and claims that the applicant was given the opportunity to consult with the lawyer.

21. In his observations, the applicant also states that 21 August 1996 was the first and only time that he was brought before a judge during his detention.

22. By decision dated 16 September 1996 the Higher Court in Bihać ordered an investigation into the alleged commission of war crimes by the applicant, pursuant to Article 142(1) of the Criminal Law of the SFRY and Article 159(1) of the Law on Criminal Procedure. The decision states that the applicant was suspected of having committed war crimes as a member of the army of the Republika Srpska, including murder, torture and robbery in May, June and July 1992, and specifically that he, as a member of a sniper group, in Prijedor shot and killed at least 10 civilians from the top of a building and also killed at least two others; physically abused others, including beating certain people and forcing one to eat grass; and robbed homes of other people. The applicant had the right to appeal against this decision within 3 days from the moment of receipt of the decision. The applicant did not appeal the decision.

23. By decision dated 19 September 1996 the Higher Court in Bihać, pursuant to Article 142 of the Criminal Law of the SFRY and Article 191(1) of the Law on Criminal Procedure, ordered the applicant detained for another two months (until 21 November 1996) for the purpose of hearing more witnesses in the investigation of the charges related to the alleged war crimes. The applicant had a right of appeal against this decision that had to be lodged within 3 days from the moment of receipt of the decision. The applicant did not appeal the decision.

24. On 12 November 1996 the investigative judge of the Higher Court in Bihać sent the case file to the International Criminal Tribunal for the former Yugoslavia in The Hague (the "ICTY") to review the case in accordance with the "Rules of the Road".

25. By decision dated 15 November 1996 the Supreme Court of the Federation ordered the applicant detained for another three months and six days (until 21 February 1997) for the purpose of continuing the investigation of the charges related to the alleged war crimes. According to a report of the IPTF from 14 November 1996, a lawyer had been assigned to the applicant.

26. By decision dated 17 February 1997, the Municipal Prosecutor's Office in Sanski Most (previously the First Instance Prosecutor's office) brought charges against the applicant concerning the illegal trade in munitions pursuant to Article 129(3) of the Criminal Code of Bosnia and

Herzegovina

27. By decision dated 20 February 1997 the Cantonal Court in Bihać ordered that the applicant be detained for another two months (until 21 April 1997) for the purpose of continuing the investigation of the charges related to the alleged war crimes. The applicant had the right to appeal against this decision within 3 days from the moment of receipt of the decision. The applicant did not appeal the decision. On the same day the Cantonal Prosecutor's Office in Bihać indicted the applicant for war crimes under Article 142 paragraph 1 of the SFRY Criminal Code.

28. By decision dated 21 February 1997 the Cantonal Court in Bihać *ex officio* appointed a lawyer for the applicant, Ms. Silvia Seferagić. The applicant claims that he was never given the opportunity to meet or consult with this lawyer.

29. On 10 March 1997 the Deputy Prosecutor at the ICTY, in reply to the investigative judge's request of 12 November 1996, informed the investigative judge that the ICTY did not find sufficient evidence that the applicant has committed a serious violation of international humanitarian law.

30. On 24 March 1997 the Cantonal Court in Bihać issued a decision terminating the criminal procedure against the applicant because the Cantonal Prosecutor had withdrawn the indictment related to war crimes on 21 March 1997. The same day the applicant's detention was terminated and he was released.

31. On 9 June 1997 the applicant filed a lawsuit in Municipal Court in Sanski Most against the Federation, seeking compensation for the detention and alleged beatings. Specifically, the applicant claimed KM 80,000 (*Konvertibilnih Maraka*) for physical pain, KM 60,000 for mental suffering, KM 40,000 for general reduced ability to engage in life activities and KM 20,000 for embarrassment resulting from disfigurement.

32. By decision dated 4 February 1999 the Municipal Court in Sanski Most declared itself locally incompetent to hear the case in accordance with Article 40 of the Law on Civil Disputes.

33. On 2 May 1999 the applicant submitted a claim to the Ministry of Justice of the Federation of Bosnia and Herzegovina for compensation for his arrest and imprisonment, based upon the same information provided in the lawsuit filed on 9 June 1997.

34. By letter dated 16 June 1999 the Ministry of Justice of the Federation of Bosnia and Herzegovina rejected, without explanation, the applicant's claim for compensation for his arrest and imprisonment, and advised him to file a lawsuit for compensation in the appropriate court. The applicant did not file such a lawsuit.

35. By decision dated 27 September 2000 the Court of First Instance in Sanski Most dropped the charges of unlawful possession of weapons against the applicant from the May 1996 arrest, and the new charges brought in February 1997.

IV. RELEVANT LEGISLATION

A. The Criminal Code of the Socialist Federal Republic of Yugoslavia

36. Article 142 paragraph 1 of the Criminal Code of the former Socialist Federal Republic of Yugoslavia, adopted by the then Republic of Bosnia and Herzegovina (Official Gazette of the Socialist Federal Republic of Yugoslavia – hereinafter "OG SFRY" – nos. 44/76, 36/77, 56/77, 34/84, 37/84, 74/87, 57/89, 3/90, 38/90 and 45/90, and Official Gazette of the Republic of Bosnia and Herzegovina – hereinafter "OG RBiH" – nos. 2/92, 8/92, 10/92, 16/92 and 13/94), reads as follows:

> "A person who, in violation of rules of the International Law during a period of war, armed conflict or occupation, has ordered that civilians be subjected to: killing, torture, inhuman actions, biological experiments, major suffering, violations of their bodily integrity or health;

displacing or moving to other places, changing of their nationality and taking of another religion; forcible prostitution or rape; measures of fear and terror, being hostages, collective punishment, being taken into concentration camps, illegal detention, being deprived of the right to a fair and impartial trial; forcibly joining the enemy armed forces or intelligence service or administration; forced labour, starvation, confiscation of property, looting; a person who has ordered that the following be done: illegal and unlawful extirpation or usurpation of a great amount of property which is not justified by military needs, taking an illegal and disproportionate amount of contribution and requisition, reduction of the value of the domestic currency or illegal printing of money; or who has executed any of the above mentioned actions, will be punished by at least five years of imprisonment or by death penalty."

B. The Law on Criminal Procedure, the Law on Application of the Law on Criminal Procedure, the Law on Internal Affairs and the Law on Obligations

37. The provisions on arrest, detention and related issues are contained in the Law on Criminal Procedure, the Law on Application of the Law on Criminal Procedure, the Federation of Bosnia and Herzegovina Law on Internal Affairs and the Law on Obligations. While the Law on Criminal Procedure in the Federation was substituted by the new Federation Law on Criminal Procedure which entered into force on 28 November 1998 (Official Gazette of the Federation of Bosnia and Herzegovina no. 43/98) the old provisions quoted below were in effect at the time of the alleged violations in this case.

38. Relevant Articles of the Law on Criminal Procedure (Consolidated text) (OG SFRY nos. 26/86, 74/87, 57/89 and 3/90, and OG RBiH nos. 2/92, 9/92, 16/92 and 13/94) read as follows:

Article 157:

"(1) An investigation shall be instituted against a particular individual if there is a ground for suspicion that he has committed a crime."

Article 158:

"(1) The investigation shall be conducted on the application of the public prosecutor.

(2) The application to conduct the investigation shall be submitted to the investigative judge of the competent court.

(3) The application must indicate the following: the person against whom the investigation is to be conducted, a description of the act which has the legal attributes of a crime, the legal name of the crime, the circumstances justifying suspicion and the evidence that exists.

(4) The application to conduct the investigation may include a proposal that certain circumstances be investigated, that certain actions be taken, and that certain persons be examined with respect to certain points, and it may also be recommended that the person against whom the investigation is being applied for be taken into custody.

(5) The public prosecutor shall deliver to the investigative judge the criminal charge and all papers and records concerning actions which have been taken. The public prosecutor shall at the same time deliver to the investigative judge physical objects which may serve as evidence or shall indicate where they are located."

Article 159:

"(1) When the investigative judge receives the application for the conduct of the investigation, he shall examine the records, and if he concurs in the application, he shall order that the investigation be conducted; the decision to that effect should contain the data referred to in Article 158 paragraph 3 of this law. The decision shall be delivered to the public prosecutor and to the accused.

(2) Before making the decision the investigative judge shall question the person against whom the conduct of the investigation is applied for unless there is a risk of delay.

(3) Before deciding on the public prosecutor's application the investigative judge may summon the public prosecutor and the person against whom conduct of the investigation has been applied for to come before the court on a specified date, if this is necessary in order to clarify circumstances which may be important in deciding on the petition, or if the investigative judge feels that an oral hearing would be advisable for other reasons. On that occasion the parties to the proceedings may present their motions orally, and the public prosecutor may amend or supplement his application for conduct of an investigation and he may also propose that proceedings be conducted on the basis of an indictment (Article 160).

(4) Provisions on the summoning and examining of an accused shall be applied to the summoning and examining of the person against whom the conduct of an investigation has been applied for. A person summoned under paragraph 3 of this article shall be instructed by the investigative judge in conformity with Article 218 paragraph 2 of this law.

(5) An appeal is allowed against the decision of an investigative judge to conduct an investigation. If the decision was communicated orally, the appeal may be filed for the record at that time."

Article 190:

"(1) Custody may be ordered only under the conditions envisaged in this law.

(2) The length of custody must be limited to the shortest necessary time. It is the duty of all bodies and agencies participating in criminal proceedings and of agencies providing legal aid to proceed with particular urgency if the accused is in custody.

(3) Throughout the entire course of the proceedings custody shall be terminated as soon as the grounds on which it was ordered cease to obtain."

Article 191:

"(1) Custody shall always be ordered against a person if there is a reasonable suspicion that he has committed a crime for which the law prescribes the death penalty. Custody need not to be ordered if the circumstances indicate that in the particular case involved the law prescribes that a less severe penalty may be pronounced.

Article 192:

"(1) Custody shall be ordered by the investigative judge of the competent court.

(2) Custody shall be ordered in a written decision containing the following: the first and the last name of the person being taken into custody, the crime he is charged with, the legal basis for custody, instruction as to the right of appeal, a brief substantiation in which the basis for ordering custody is specifically argued, the official seal, and the signature of the judge ordering custody.

(3) The decision on custody shall be presented to the person to whom it pertains at the moment when he is arrested, and no later than 24 hours from the moment he is deprived of liberty. The time of his detention and the time of presentation of the warrant must be indicated in the record.

(4) An individual who has been taken into custody may appeal the decision on custody to the panel of judges (Article 23 paragraph 6) within 24 hours from the time when the warrant was presented. If the person taken into custody is examined for the first time after that period has expired, he may file an appeal at the time of his examination. The appeal, a copy of the transcript of the examination, if the person taken into custody has been examined, and

the decision on custody shall be immediately delivered to the panel of judges. The appeal shall not stay execution of the warrant.

(5) If the investigative judge does not concur in the public prosecutor's recommendation that custody be ordered, he shall seek a decision on the issue from the panel of judges (Article 23 paragraph 6). A person taken into custody may file an appeal against the decision of the panel of judges which ordered custody, but that appeal shall not stay execution of the order. The provisions of paragraphs 3 and 4 of this Article shall apply in connection with presentation of the warrant and the filing of the appeal.

(6) In the cases referred to in paragraphs 4 and 5 of this Article the panel of judges ruling on an appeal must render a decision within 48 hours."

Article 193:

"(1) The investigative judge must immediately inform a person who has been detained and brought before him that he may engage defence counsel, who may attend his examination, and, if necessary, he shall help him to find defence counsel. If within 24 hours of the time of this communication a person taken into custody does not provide the presence of defence counsel, the investigative judge must immediately examine that person.

(2) If a person who has been detained declares that he will not engage defence counsel, the examining magistrate has a duty to examine him within 24 hours.

(3) If, in a case in which legal representation is obligatory (Article 70 paragraph 1), a person taken into custody does not engage defence counsel within 24 hours from the date when he is informed of his right to do so, or if he declares that he will not engage defence counsel, counsel shall be appointed for his defence ex officio.

(4) Immediately after the examination the investigative judge shall decide whether to release the individual who has been taken into custody. If he considers that the person arrested should be detained, the investigative judge shall immediately inform the public prosecutor to that effect unless the latter has already submitted an application for the conduct of an investigation. If within 48 hours from the time of being informed about custody the public prosecutor does not file an application for the conduct of an investigation, the investigative judge shall release the person who has been taken into custody."

Article 195:

"(1) Authorised officials of the Ministry of Internal Affairs may detain a person if any of the reasons envisaged in Article 191 of this law obtain, but they must bring that person without delay before the competent investigative judge or the investigative judge of the lower court in whose jurisdiction the crime was committed, if the seat of that court can be reached more quickly. When the authorised official of the law enforcement agency brings the person before the investigative judge, he shall inform him of the reasons at the time of his arrest.

(2) If impediments which could not be overcome made it impossible to bring a person who has been arrested before the investigative judge within 24 hours, the officer must give a specific justification for this delay. The delay must also be justified when an individual is being brought in at the request of the investigative judge.

(3) If, because of the delay in bringing the accused before the investigative judge, the latter is unable to make the decision on custody within the period referred to in Article 192, paragraph 3, of this law, he is obliged to render a decision on custody as soon as the person who has been arrested is brought before him."

39. Article 4 paragraph (a) of the Law on the Application of the Law on Criminal Procedure (OG RBiH nos. 6/92, 9/92, 13/94 and 33/95) supersedes and is identical to Article 196 of the Law on Criminal

Procedure[1]. Insofar as relevant it provides as follows:

> "(1) In exceptional circumstances custody can be ordered by the Ministry of Internal Affairs authority before an investigation is carried out, if it is necessary for establishing an identity, checking an alibi or for other reasons it is necessary to gather information required for the conduct of proceedings against a particular person, and reasons for pre-trial custody prescribed in Article 191 paragraph 1 and paragraph 2 points 1 and 3 of this law exist, although in cases prescribed by Article 191 paragraph 2 point 2 this can be done only if there is a well-founded fear that the person at issue will destroy evidence of the criminal act.
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> (3) Custody ordered by the Ministry of Internal Affairs authority may last up to three days, from the moment of arrest. The provisions of Article 192 paragraphs 2 and 3 of this law shall apply to custody. A detained person may appeal against a decision on custody before the panel of judges of the competent court within 24 hours from the moment he receives the decision. The panel is obliged to render a decision on appeal within 48 hours from the moment of receipt of appeal. The appeal has no suspensive effect. The Ministry of Internal Affairs authority shall provide a detainee with legal aid for the lodging of his appeal.
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> (5) If, after the expiry of the three days time-limit, the detainee is not released, the Ministry of Internal Affairs authority shall act in accordance with Article 195 of this law, and the investigative judge before whom the detainee is brought shall act in accordance with Article 193 of this law."

40. The Law on Criminal Procedure (Consolidated text) continued as follows:

> Article 197:
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> "(1) On the basis of the investigative judge's decision the accused may not be held in custody more than 1 month from the date of his arrest. At the end of that period the accused may be kept in custody only on the basis of a decision to extend custody.
>
> (2) Custody may be extended for a maximum period of 2 months under a decision of the panel of judges (Article 23 paragraph 6). An appeal is permitted against the panel's decision, but the appeal does not stay the execution of the decision. If proceedings are conducted for a crime carrying a prison sentence of more than 5 years or a more severe penalty, a panel of the Supreme Court of the Republic may for important reasons extend custody by not more than another 3 months. The decision to extend custody shall be made on the agreed recommendation of the investigative judge or public prosecutor.
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> (3) If a bill of indictment is not brought before the expiration of the periods referred to in paragraph 2 of this Article, the accused shall be released."
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> Article 198:
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> "In the course of the preliminary examination the investigative judge may terminate custody on agreement with the public prosecutor when proceedings are being conducted on his petition, unless custody is terminated because the period of its duration has expired. If the investigative judge and public prosecutor do not reach agreement on this point the investigative judge shall ask the panel of judges to decide the issue, which it must do within 48 hours."

41. On 10 January 1996 the Federation of Bosnia and Herzegovina passed a new Law on Internal Affairs (Official Gazette of the Federation of Bosnia and Herzegovina no. 1/96). This Law entered into force on 1 February 1996.

[1] The original Article 196 was deleted from the Law on Criminal Procedure by the Law on the Adoption of the Law on Criminal Procedure (OG RBiH nos. 2/92, 9/92 and 13/94), but was introduced again by Article 4 paragraph (a) of the Law on the Application of the Law on Criminal Procedure. Since the original text of this Article has not changed, the words "this law" in Article 4 paragraph (a) in fact refer to the Law on Criminal Procedure.

Article 35:

"If necessary in the course of duty and for the execution of assignments, authorised officers may request persons to identify themselves, and in cases prescribed by Federal Law, bring them in or have them brought before the competent authority."

Article 36:

"In cases prescribed by the law regulating criminal procedure, authorised officers may bring in the persons, if the criminal act falls within the competence of the Ministry."

42. The Law on Criminal Procedure imposes in Article 205 a duty on the President of the court to survey and visit detainees at least once a week and to take all necessary steps to remedy irregularities.

43. Article 13 of the Law on the Application of the Law on Criminal Procedure (OG RBiH nos. 6/92, 9/92, 13/94 and 33/95) *inter alia*, provided:

"(1) Provisions of the Law on Criminal Procedure in regard to ... procedures for the compensation of damage, rehabilitation and procedures for the achievement of other rights of persons unjustly convicted and unjustly deprived of liberty, shall not apply."

44. The Law on the Application of the Law on Criminal Procedure was in force from 15 June 1992 until 23 December 1996, i.e. from the day of its publication in the Official Gazette until the cessation of the imminent threat of war. Since the day it was repealed, the provisions of Articles 541 to 549, relating to the procedure for compensation for damage, rehabilitation and realisation of other rights of persons who had been unjustly sentenced and whose detention was ill-founded, have been fully applicable once more.

45. Articles 542 paragraph 2. 543 paragraph 1 and 545 paragraph 3 of the Law on Criminal Procedure provide as follows:

Article 542 paragraph 2:

"Before submitting a claim for compensation for damages, the person concerned is obliged to address his request to the Administration authority of the Republic which is competent for the legal matters."

Article 543 paragraph 1:

"If a claim for compensation for damages is not accepted or no decision by the authority organ has been taken on it within three months since the date of laying it, the person concerned may submit a complaint to a competent court for compensation for damages. If an agreement has been made in respect to a part of the claim, the damaged person concerned may submit a complaint regarding the remainder of the claim."

Article 545 paragraph 3:

"The right to compensation for damage belongs also to a person who is, because of a mistake or the illegal act of an organ, deprived of his/her freedom or kept for a longer period of time under custody or in prison than would otherwise have been the case."

46. In the new Federation Law on Criminal Procedure which entered into force on 28 November 1998 (Official Gazette of the Federation of Bosnia and Herzegovina no. 43/98) the question of compensation is now regulated as follows:

Article 524:

"(1) The right to compensation for damage shall expire 5 years from the date when the verdict

in the first instance acquitting the accused of the charge or dismissing the charge became valid or the date when the decision in the first instance dismissing the proceeding became final; and if it occurred when a higher court was ruling on an appeal, from the date when the decision of the higher court was received.

"(2) Before filing with the court a plea for compensation of damage the injured party must present his petition to the Federal Ministry of Justice so that agreement might be reached as to the existence of damage and the type and amount of compensation.

Article 525:

"(1) If a petition for compensation of damage is not accepted or if the Federal Ministry of Justice does not render a decision concerning such petition within 3 months from the date when the petition was filed, the injured party may file a plea with the competent court for compensation of damages. If an agreement has been reached only concerning a part of the petition, the injured party may file suit with respect to the remainder of the claim.

"(2) So long as the proceeding referred to in Paragraph 1 of this article persists, the statute of limitations envisaged in Article 524, paragraph 1, of this law shall not run.

"(3) The plea for compensation of damage shall be filed against the Federation."

Article 527

"(1) An individual shall also be entitled to compensation for damage in the following cases:

1. if he has been in custody, and a criminal proceeding was not instituted, or the proceeding has been dismissed by a decision that has become final, or he has been acquitted of the charge by a verdict that has become final, or the charge was dismissed;

2. if he has served a prison sentence, but in a retrial or in response to a petition for protection of legality a shorter sentence than he has served is pronounced against him or a criminal sanction is pronounced against him which does not consist of imprisonment, or he is found guilty but released from punishment;

3. if because of an error or illegal act by an authority he has been falsely arrested or kept for a prolonged period in custody or other institution for serving punishment or measure;

4. if he has spent a longer time in custody than the prison sentence pronounced against him."

47. Articles 195 paragraphs 1 and 2, and 200 paragraphs 1 and 2 of the Law on Obligations provide as follows:

Article 195 paragraph 1:

"Who inflicts a bodily injury or impairs someone's health is under obligation to reimburse the medical expenses to that person and other necessary costs and expenses in this regard as well as the income lost because of that person's inability to work during the time of his or her medical treatment."

Article 195 paragraph 2:

"If the injured person due to his or her partial inability to work loses income, or his necessities increase permanently, or the possibilities of his or her further development or advancement are ruined or reduced, the responsible person is under obligation to pay to the injured person a fixed annuity as compensation for that damage."

Article 200 paragraph 1:

> "For sustained physical pains, for mental suffering because of reduced quality of life, disfigurement, damaged reputation, honour, freedom or rights of personality, death of a close person as well as fear, the court shall, if it finds that the circumstances of the case, especially the strength of pains and fear and their duration justify it, award a fair pecuniary compensation, regardless of the compensation for physical damages as well as in its absence."

Article 200 paragraph 2:

> "When deciding upon a compensation claim for non-pecuniary damages as well as the amount thereof, the court shall take into account the importance of the damaged asset and the purpose of the compensation is aimed at, but also that it does not favour the aspirations incompatible with its nature and social purpose."

3. The Rome Agreement, Agreed Measures ("The Rules of the Road")

48. On 18 February 1996, the signatories to the General Framework Agreement for Peace in Bosnia and Herzegovina, meeting in Rome, agreed on certain measures to strengthen and advance the peace process. The second sub-paragraph of paragraph 5, entitled "Co-operation on War Crimes and Respect for Human Rights", reads as follows:

> "Persons, other than those already indicted by the International Tribunal, may be arrested and detained for serious violations of international humanitarian law only pursuant to a previously issued order, warrant or indictment that has been reviewed and deemed consistent with international legal standards by the International Tribunal. Procedures will be developed for expeditious decision by the Tribunal and will be effective immediately upon such action."

49. The expressions "International Tribunal" and "Tribunal" refer to the ICTY, which has its seat in The Hague. The above-quoted provision is normally referred to as the Rules of the Road.

50. At the public hearing before the Chamber in cases no. CH/96/21 *Čegar*, no. CH/97/41 *Marčeta* and no. CH/97/45 *Hermas*, the Agent of the Federation of Bosnia and Herzegovina stated, in relation to the legal status of the Rome Agreement, as follows (see case no. CH/97/45, *Hermas*, decision on admissibility and merits delivered on 18 February 1998, paragraph 18, Decisions and Reports 1998):

> "Legally, the Rome Agreement, The Rules of the Road, dated 18 February 1996, for the Federation of Bosnia and Herzegovina, has an obligatory character. The Federal Ministry of Justice in Sarajevo has delivered the text of this Agreement promptly on time to all courts within the Federation of Bosnia and Herzegovina in order to comply with it. The courts within the Federation were informed on time of its content and it is in force and legally binding because the Parties who signed the Agreement of 18 February 1996 in Rome agreed about the procedure and instructions to the Parties in the event of prosecution for war crimes against the civilian population and other crimes against humanity under international law."

51. This view of the direct applicability as domestic law of the Rules of the Road is confirmed and elaborated in the decision (no. Kž-465/97) of the Supreme Court of the Federation of 28 May 1998 in the case of D.B. The accused in this case had been found guilty of war crimes against the civilian population under Article 142 of the Criminal Code by the then High Court in Mostar in the absence of an opinion by the ICTY Prosecutor on the charges against him. The Supreme Court quashed the conviction and sent the case back to the High Court for renewed proceedings with the following reasoning:

> "... the courts in the Federation of Bosnia and Herzegovina are obliged to apply the Rome Agreement ('The Rules of the Road'). According to the Rome Agreement ('The Rules of the

Road'), the court of first instance cannot begin a criminal procedure before the Prosecutor of the ICTY reviews the indictment and gives his or her opinion on whether the indictment is consistent with international legal standards. This Court is also of the opinion that doing so violated Article 349, paragraph 1(4) of the Law on Criminal Procedure, because an approval or opinion of the competent authority necessary for the criminal proceedings was not previously obtained. This Court finds a violation of the provisions of an international agreement (the Rome Agreement), that has been signed and approved by Bosnia and Herzegovina, and the courts in the Federation of Bosnia and Herzegovina are obliged to apply it."

IV. COMPLAINTS

52. The applicant, referring to his detention, alleges that his right to life, the right not to be tortured or treated in an inhuman or humiliating manner, his right to liberty and security of person and his right to freedom of movement and residence have been violated. He states that he was not informed of any charges against him until fifteen days into his imprisonment, he was not brought before a judge or assigned a lawyer for the first three months of his imprisonment, and only once during his imprisonment was he brought before a judge or given the opportunity to consult with a lawyer. The applicant further complains about a violation of his right to property as he was deprived of his car which was confiscated by the police at the time of his arrest.

V. SUBMISSIONS OF THE PARTIES

1. The respondent Party

53. As to the admissibility of the case, the Federation states that the applicant has not yet exhausted the available domestic remedies. It points out that under the RBiH Law on Criminal Procedure, the similar provisions of the Federation Law on Criminal Procedure and the Law on Obligations (see above paragraphs 37-40), the applicant could have initiated administrative or court proceedings for compensation related to his detention. With respect to the detention, the Federation states that the applicant could have appealed against the decisions ordering his detention, pursuant to Article 192 of the Law on Criminal Procedure, but failed to do so.

54. The Federation also argues that the application should be declared inadmissible on the ground that it was not submitted within six months of the final decision in the applicant's case, as provided by Article VIII(2)(a) of the Agreement. The Federation considers that the final decision to be counted from was the 24 March 1997 decision of the domestic court terminating the applicant's detention.

55. As for the merits under Article 3, the respondent Party states that the applicant was not subjected to torture or inhumane or degrading treatment, and has not provided any evidence of such treatment.

56. With regard to Article 5, the Federation argues that the detention of the applicant was lawfully pursued under Article 213 of the Criminal Law of the SR BiH and Article 142 of the Criminal Law of the SFRY. The Federation further claims that on the day of the arrest, 22 May 1996, the applicant was told the reasons for the arrest and questioned at the Sanski Most Police station. The applicant was then allegedly promptly taken before the investigative judge at 10 a.m. and delivered the decision on his pre-trial detention at 11 a.m. on 22 May 1996.

57. With regard to Article 5(5), the respondent Party submits that the applicant has available domestic remedies for achieving compensation.

58. With regard to Article 6, the respondent Party submits that there has been no violation of Article 6(1) as the length of the applicant's detention was justified by the complexity of the charges against him and the need to hear witnesses on those charges. It further submits that there also is no violation of Article 6(3), as the applicant was immediately informed of the charges against him upon his detention and was provided a lawyer and adequate time to prepare his defense.

59. With regard to Article 13, the respondent Party submits that the applicant has available to him domestic remedies for achieving redress for the alleged violations.

60. With regard to Article 1 of Protocol No. 1, the respondent Party finds that there is no violation as the applicant's vehicle was returned to his family.

61. With regard to Article II(2)(b) of the Agreement, the respondent Party states there is no evidence of discrimination against the applicant.

2. The applicant

62. The applicant maintains his complaints.

VI. OPINION OF THE CHAMBER

A. Admissibility

63. 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. Six Month Rule

64. Article VIII(2)(a) of the Agreement requires the Chamber, when deciding upon the admissibility of an application, to take into account, *inter alia*, whether the application was filed with the Human Rights Commission within six months from the date on which the final decision was taken in the matter at the domestic level. The Federation objects to the admissibility of the application submitted by the applicant under this provision, stating that he lodged his application to the Chamber on 23 March 1999, more than six months after his release from detention.

65. The Chamber notes that the application was lodged with the Human Rights Commission, as required by Article VIII(2)(a) of the Agreement, by submission to the Ombudsperson on 11 December 1996. Accordingly, the application was submitted to the Human Rights Commission during the detention of the applicant and the six-month period had not at that stage begun to run. The Chamber therefore considers that no issue of admissibility arises under this head (s*ee* CH/98/1027 and CH/99/1842, *R.G and Matković*, decision on admissibility and merits delivered 9 June 2000, paragraphs 113-114).

2. Exhaustion of Domestic Remedies

66. 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.

67. The Federation claims that it was open to the applicant to seek compensation for alleged illegal detention under the domestic law (see above paragraph 43-46).

68. However, it does not appear to the Chamber that the domestic provisions provide a sufficient remedy for the applicant. As the Chamber noted in case no. CH/98/1374, *Pržulj*, decision on admissibility and merits, delivered 13 January 2000, at paragraphs 120-124, the provisions of both the old and new laws on criminal procedure do not provide a sufficient remedy in that the noted laws had no definitive provision for the award of non-pecuniary damage. In addition, in cases nos. CH/98/1027and CH/99/1842, *R.G. and Matković*, decision on admissibility and merits, delivered 9 June 2000, at paragraphs 116-118, the Chamber found the laws on criminal proceedings to be insufficient for compensation in that they do not explicitly provide for compensation for actions predating the re-instatement of the law on 23 December 1996.

69. With respect to the possibility to initiate civil proceedings under the Law on Obligations, in *Pržulj* the Chamber stated "to sue private individuals for monetary compensation cannot be considered a remedy for violations of the applicant's right not to be subjected to inhuman or degrading treatment, where these individuals have acted in their capacity as public officials" (paragraph 119).

70. The Chamber has invited the Federation to specifically demonstrate the efficacy of these provisions, and to thereby substantiate its instant argument. The Chamber requested, by letter dated 27 March 2000, that the Federation provide any court decisions in which individuals claiming to have been unlawfully arrested or detained were granted compensation in a domestic court proceeding. By letter, received 17 April 2000, the Federation advised that it would so do.

71. As of the date of the adoption of this decision in April 2002, almost two full years after the above correspondence with the Federation, not even a single court decision has been provided to the Chamber in which an individual was granted such compensation by a domestic court. The Federation's actions in this regard have made it abundantly clear that, in reality, the applicant had no realistic chance of obtaining redress before the domestic courts.

72. The Chamber therefore finds that the respondent Party has failed to show that the remedies available to the applicant had any reasonable prospect of success. The application is therefore not inadmissible on the ground of non-exhaustion of domestic remedies.

3. The applicant's complaint that his right to life has been violated

73. Regarding the applicant's claim that his right to life has been violated, the Chamber notes that the applicant's factual allegations do not raise any issues with regard to the right to life as protected by Article 2 of the Convention. The Chamber is therefore of the opinion that this part of the application is manifestly ill-founded.

4. Conclusion

74. The Chamber does not consider that any other grounds for declaring the case inadmissible have been established. Accordingly, the Chamber decides to declare the application admissible under Article 3 and 5 of the Convention, Article 1 of Protocol No. 1 to the Convention and Article II (2) (b) of the Agreement. The applicant's complaint of a violation of his right to life is inadmissible.

B. Merits

1. Article 3 of the Convention

75. Article 3 of the Convention reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

76. The applicant is of the opinion that his rights under Article 3 of the Convention were violated in that he was subject to verbal and physical abuse during the fifteen days in which he was imprisoned in Sanski Most. In support of this claim, the applicant has submitted records of doctor visits from April and May 1997. These records indicate that the applicant had suffered fractured bones in his face, had difficulty breathing through his nose, had headaches and problems with his hearing. The notes of a psychiatrist indicate that the applicant suffers from anxiety, depression, paranoia, loss of appetite and has difficulty sleeping.

77. The respondent Party disputes that the applicant was subjected to the complained-of abuse.

78. The Chamber recalls that Article 3 enshrines one of the fundamental values of democratic society. Even in the most difficult of circumstances, such as the fight against organised terrorism and crime, the Convention prohibits in absolute terms torture or inhuman or degrading treatment or punishment. Unlike most of the substantive clauses of the Convention and of Protocols Nos. 1 and 4,

Article 3 makes no provision for exceptions and no derogation from it is permissible under Article 15, even in the event of a public emergency threatening the life of the nation (see case no. CH/97/45, *Hermas*, decision on admissibility and merits, delivered 18 February 1998, paragraph 28, citing, *inter alia*, the judgment of the European Court of Human Rights in the case of *Aksoy v. Turkey*, 18 December 1996, Reports of Judgments and Decisions 1996-VI, paragraph 62).

79. The Chamber recalls that where a person is taken into custody by police organs in good health and is, after release from that custody, found to be injured, the respondent Party bears the burden to provide a plausible explanation as to the causes of the injury, failing which an issue arises under Article 3 of the Convention (see case no. CH/98/1374, *Pržujl*, decision on admissibility and merits of 13 January 2000, paragraph 146, Decisions January-June 2000 and Eur. Court HR, *Tomasi v. France* judgment of 27 August 1992, Series A no. 241, paragraphs 108-111).

80. As noted above, in support of his claim under this Article the applicant has submitted both his own written statements, and doctor's records made shortly after the termination of the detention. Similarly, the reports of the IPTF written during the detention (see above paragraphs 14 and 19) also substantiate that the applicant showed signs of having been beaten. The respondent Party has submitted no response to any of these records to cast doubt on their validity, nor have they submitted any statements from either police or prison officials to rebut the allegations. The Chamber is not persuaded by the respondent Party's naked denial of the allegations in the face of the evidence before it. The evidence demonstrates that the applicant was subjected to beatings while imprisoned by the respondent Party.

81. The Chamber recalls that the European Court of Human Rights has held that the treatment complained of must have attained a minimum level of severity if it is to fall within the scope of Article 3 (see Eur. Court HR. *Ireland v. The United Kingdom* judgment of 18 January 1978, series A no. 25, paragraph 162).

82. In this respect the Chamber notes the particular vulnerability of a person held in police custody and its considerations in previous decisions that any recourse to physical force against a person held in police custody, which has not been made strictly necessary by the person's own conduct diminishes human dignity and is, in principle, an infringement of Article 3 (see e.g. case no. CH/97/45, *Hermas*, decision on admissibility and merits of 18 February 1998, paragraph 29, Decisions and reports 1998, with reference to the corresponding case law of the European Court).

83. In the present case the applicant was repeatedly maltreated and received bruises that could be seen days later by members of the IPTF visiting the applicant. As noted above, according to the medical records submitted by the applicant he suffered fractured bones in his face, and still in April and May 1997 as a consequence of his maltreatment had difficulty breathing through his nose, headaches and problems with his hearing. The applicant who was held in custody could not protect himself against the police officers and civilians punching, kicking and beating his body and head. The Chamber finds that this treatment that was inflicted to the applicant amounted to inhuman and degrading treatment as mentioned in Article 3 of the Convention.

84. The Chamber recalls that, in accordance with its own jurisprudence in the Bihać cases (see cases nos. CH/98/1335 et al., *Rizvić et al.*, partial decision on admissibility and decision on the merits of 8 March 2002, paragraph 212) and the jurisprudence of the European Court (see e.g. Eur. Court HR *Osman v. United Kingdom* judgment of 28 October 1998, Reports of Judgments and Decisions 1998-VIII, paragraphs 115-116), the obligation on states, contained in Article 1 of the Convention, to "secure" the rights and freedoms set out in the Convention to all persons within their jurisdiction not only obliges states to refrain from violating those rights and freedoms, but also entails positive obligations on the states to protect those rights. In line with this jurisprudence, the Chamber has held in *Matanović* (case no. CH/96/1, decision on the merits of 11 July 1997, paragraph 56, Decisions on Admissibility and Merits 1996-1997) that the same principle applies to the obligation on the Parties to the Annex 6 Agreement to "secure" the rights and freedoms mentioned in the Agreement. In the Chamber's opinion this responsibility of the Parties to ensure and protect human rights means that the Parties have to provide not only the appropriate structures to guarantee the exercise of rights, but also appropriate means whereby violations will be prevented,

investigated and, where necessary, punished (see also case no. CH/99/1568, *Čoralić*, decision on admissibility and merits of 7 December 2001, paragraph 39).

85. In the present case, as recorded in the "Incident Report" of the UNCIVPOL (see paragraph 19 above), the applicant, when asked by the judge of the Higher Court in Bihać how he was being treated, replied that he had been beaten every day from 22 May 1996, the day of his arrest until 6 June 1996, the day he was transferred from Sanski Most to Bihać.

86. Nothing in the Chamber's case files indicates that the investigative judge initiated any form of investigation whatsoever into the applicant's allegations. Taking this into consideration, along with the fact that the IPTF in a memorandum prepared on 24 June 1996 recorded that the applicant had various visible injuries including "scars over both eyes" and pain in the ribs allegedly stemming from beatings at the Sanski Most Police station, leads the Chamber to believe that there has been a maltreatment which was obvious to the respondent Party's authorities and which has not been investigated.

87. In light of its considerations as mentioned in paragraph 85 above, the Chamber finds that the failure of the investigative judge to take any steps to investigate the allegations made by the applicant, violates the positive obligation of the respondent Party to secure the applicant's rights as protected by Article 3 of the Convention.

88. In conclusion, Article 3 of the Convention has been violated.

2. Article 5 of the Convention

89. Article 5 of the Convention reads as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> (a) the lawful detention of a person after conviction by a competent court;
>
> (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfillment of any obligation prescribed by law;
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
>
> (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
>
> (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
>
> (f) the lawful arrest or detention of a person to prevent his effecting an unauthorized entry into the country or of a person against whom action is being taken with a view to deportation or extradition.
>
> 2. Everyone who is arrested shall be informed promptly, in a language that he understands, of the reasons for his arrest and of any charge against him.
>
> 3. Everyone arrested or detained in accordance with the provisions of paragraph 1(c) of this Article shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

90. The applicant considers that he was the victim of a violation of his right to liberty and security.

91. The respondent Party disputes the applicant's contentions.

92. The Chamber notes at the outset that it is not disputed that the applicant was deprived of his liberty.

(a) Article 5 paragraph 1 of the Convention: whether the applicant's detention was "lawful"

93. The applicant claims that his detention was unlawful. The respondent Party in its observations on the admissibility and merits disputes this. It expresses its opinion that the detention of the applicant was lawful in accordance with Article 5 paragraph 1 (c) of the Convention as the applicant was in pre-trial detention under the suspicion of having committed the criminal act of illicit possession of weapons and explosive materials as prohibited by Article 213 paragraphs 1 and 2 of the Criminal Code of RBiH and the criminal act of war crimes as prohibited by Article 142 paragraph 1 of the Criminal Code of SFRY.

(aa) Detention in the period from 22 May 1996 to 21 August 1996

94. As noted above the applicant was arrested on 22 May 1996 under the suspicion the criminal act of illicit possession of weapons and explosive materials as prohibited by Article 213 paragraphs 1 and 2 of the Criminal Code of RBiH. By decision of the same day the First Instance Court in Bihać ordered his detention for the period of one month based on the danger that the applicant might flee the criminal proceedings if not held in detention. On 21 June 1996 in accordance with Article 197 paragraph 2 of the Law on Criminal Procedure the Higher Court in Bihać extended the pre-trial detention for two more months until 21 August 1996.

95. The Chamber recalls that Article 5 paragraph 1(c) of the Convention provides that detention is lawful "for the purpose of bringing him (the applicant) before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so."

96. The Chamber finds that in light of the fact that munitions were found in the applicant's car the suspicion of the respondent Party's authorities that the applicant had committed the criminal act of unlawfully possessing munitions was reasonable and that the respondent Party's decisions to hold the applicant in pre-trial detention fulfilled the requirements of Article 5 paragraph 1(c) of the Convention. The detention of the applicant for the period until 21 August 1996 does not violate Article 5 paragraph 1 of the Convention.

(bb) Detention in the period from 21 August 1996 until 24 March 1997

97. On 21 August 1996 the Higher Court in Bihać ordered another 30 days of pre-trial detention. This time it based the pre-trial detention no longer on the suspicion of illict possession of weapons and explosives but on the allegation that the applicant had committed war crimes as prohibited by Article 142 paragraph 1 of the Criminal Code of SFRY. The Chamber must examine whether this prolonged pre-trial detention in accordance with Article 5 paragraph 1(c) of the Convention was lawful.

98. As the respondent Party based its decision to hold the applicant in pre-trial detention after 21 August 1996 on the suspicion that he had committed war crimes, the Chamber finds that the Rules of the Road should have been taken into account in the present case. The Chamber notes that the

opinion of the ICTY prosecutor was only requested on 12 November 1996 and obtained on 10 March 1997 . No order, warrant or indictment against the applicant had been preliminary submitted to the ICTY after the Rules of the Road had entered into force on 18 February 1996, as required by these Rules. The applicant's detention was therefore in breach of the "Rules of the Road" and not lawful as required by paragraph 1 (c) of Article 5 of the Convention.

99. The Chamber concludes that the detention of the applicant from 21 August 1996 until his release on 24 March 1997 constitutes a violation of Article 5 paragraph 1 of the Convention.

(b) Article 5 paragraph 3 of the Convention

100. The applicant claims that he was the victim of a violation of Article 5 paragraph 3 of the Convention because he was not brought promptly before a judge, brought to trial within a reasonable time or released pending trial.

101. The respondent Party disputes the applicant's allegations. It states that the applicant was brought before the investigative judge on 22 May 1996, the day of the arrest, at 10 a.m..

102. The applicant states that his arrest on 22 May 1996 took only place in the early evening after 4 p.m.. He further claims that he was brought before a court only on 21 August 1996, three months after his arrest. He states that he saw the procedural decision of 22 May 1996 ordering his pre-trial detention for the first time on 6 June 1996 when he was transferred to the prison in Bihać. He also alleges that he was then forced to sign it and no indication was added that this signature was only made 15 days after the date of the decision. As of that date, he was kept in detention for the stated purpose of investigating his alleged unlawful possession of munitions and involvement in war crimes.

103. Also in this respect the respondent Party, in spite of a specific request from the Chamber of 13 March 2002, provides no evidence to substantiate its bare denial of the applicant's allegation that he was not brought before the competent investigative judge before 21 August 1996. The respondent Party fails to provide any documents to prove that the applicant was brought before the investigative judge, such as the minutes of the hearing before the investigative judge, or any written statement of the investigative judge himself or any other official with personal knowledge of the matter. The Chamber is hence persuaded of the truthfulness of the applicant's allegation that he was not brought promptly before a judge.

104. The Chamber notes that applicant should have been brought before the competent investigative judge or the investigative judge of the lower court in whose jurisdiction the crime was committed, without delay (Article 195 paragraph 1 of the Law on Criminal Procedure). The failure to bring the applicant before the investigating judge within 24 hours required the enforcement authorities to provide specific justification for the delay (Article 195 paragraph 2 of the Law on Criminal Procedure), which was never done. Alternatively, if the law enforcement bodies had been acting in accordance with Article 4(a) of the Law on Application of the Law on Criminal Procedure, after a maximum of three days in detention, the applicant should have been brought without delay before the competent investigative judge of the lower court in whose jurisdiction the crime was committed.

105. The failure to appropriately bring the applicant before a judge in a timely fashion constitutes a violation of Article 5 paragraph 3 of the Convention.

3. Freedom of movement, as protected by Article 2 of Protocol No. 4 to the Convention

106. The applicant complains of a violation of his right to freedom of movement as guaranteed by Article 2 paragraph 1 of Protocol No. 4 to the Convention. The provision reads as follows:

> " Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence."

107. In view of its findings in respect of the unlawful detention of the applicant as prohibited by

Article 5 of the Convention the Chamber does not deem it necessary to examine the case under Article 2, paragraph 1 of Protocol No. 4 to the Convention.

4. Article II (2)(b) of the Agreement

108. The Chamber has previously held on a number of occasions that the prohibition of discrimination is a central objective of the General Framework Agreement for Peace in Bosnia and Herzegovina to which the Chamber must attach particular importance (see, *inter alia*, case no. CH/98/756, *Đ.M.*, decision on admissibility and merits delivered on 14 May 1999, paragraph 68, Decisions January-July 1999). Article II(2)(b) affords to it the jurisdiction to consider alleged or apparent discrimination on any ground in the enjoyment of any of the rights listed in the Appendix to the Agreement.

109. The Chamber notes that it has already found violations of the rights of the applicant as protected by Articles 3 and 5 of the Convention. It must now consider whether he has suffered discrimination in the enjoyment of those rights.

110. In examining whether there has been discrimination contrary to the Agreement the Chamber recalls its previous jurisprudence on the issue of discrimination in the enjoyment of the rights guaranteed under the Agreement. In *Đ.M.* (sup. cit., paragraph 73), the Chamber drew on the experience of other international bodies such as the European Court of Human Rights and the United Nations Human Rights Committee, who have consistently found it necessary first to determine whether the applicant was treated differently from others in the same or relevantly similar situations.

111. Any differential treatment is to be deemed discriminatory if it has no reasonable and objective justification, that is, if it does not pursue a legitimate aim or if there is no reasonable relationship of proportionality between the means employed and the aim sought to be realised. There is a particular onus on the respondent Party to justify differential treatment which is based on any of the grounds explicitly enumerated in the relevant provisions, including religion or national origin.

112. Concerning the violations of the rights of the applicant as guaranteed by Article 3 of the Convention, the Chamber recalls that the applicant was subject to verbal abuse, namely being called "Chetnik" while he was being physically abused. The Chamber is persuaded by this evidence that the applicant's perceived ethnicity was, in fact, at least a partial basis for the beatings he endured. The Chamber considers that the fact that he was treated to abusive language and treatment on the basis of his perceived religion and national origin constitutes differential treatment for which there is no possible justification. The Chamber therefore finds that he was also subjected to discrimination in the enjoyment of this right.

113. Concerning the violations of the rights of the applicant as guaranteed by Article 5 of the Convention, on the basis of the evidence before it the Chamber cannot find that the applicant was discriminated against in the enjoyment of this right.

114. In conclusion, the Chamber finds that the applicant was discriminated against in the enjoyment of his rights as guaranteed by Article 3 of the Convention.

5. Article 1 of Protocol No. 1 to the Convention - deprivation of the vehicle

115. The applicant complains that the fact that the respondent Party confiscated his vehicle constituted a violation of his right to peaceful enjoyment of his possessions, as guaranteed by Article 1 of Protocol No. 1 to the Convention. This provision reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with

the general interest or to secure the payment of taxes or other contributions or penalties."

116. The Chamber considers that in light of the fact that the respondent Party returned the car to the applicant's family after the confiscation, the issue has been solved. Hence it is not necessary to examine the case under Article 1 of Protocol No. 1 to the Convention.

VII. REMEDIES

117. Under Article XI(1) of the Agreement the Chamber must next address the question what steps shall be taken by the respondent Party to remedy breaches of the Agreement which it has found, including orders to cease and desist, monetary relief (including pecuniary and non-pecuniary injuries), and provisional measures.

118. The Chamber notes that it has found that the applicant has suffered violations of his right not to be subjected to inhuman and degrading treatment and of his right to liberty and security of person. In view of these findings, the Chamber considers it necessary to order the respondent Party to initiate, in accordance with its internal legal procedures, an investigation into the conduct of the police and prison officials involved in the violations of the applicant's rights, with a view to initiating criminal proceedings against them in accordance with the law of the Federation of Bosnia and Herzegovina.

119. The Chamber will now turn to the question of monetary relief. The applicant states that he has suffered physical and mental injuries as a result of the detention, and claims entitlement to monetary compensation as follows:

(1) KM 60,000 compensation for continuing physical pain;

(2) KM 30,000 compensation for psychological harm suffered;

(3) KM 90,000 compensation for reduced ability to perform life's activities, resulting from injuries to his nose and ribs and hearing loss;

(4) KM 20,000 compensation for embarrassment suffered as a result of the physical deformation in the visible injuries to his nose.

120. The respondent Party submits that the each of these claims is ill-founded and excessive because the applicant did not suffer physical or psychological pain to warrant compensation.

121. The Chamber notes that it has established that the applicant has suffered a violation of his rights as protected by Article 3 and 5 of the Convention. This violation is of a very serious nature: The Chamber takes into consideration that according to medical documents submitted by the applicant he continues to suffer from the injuries he obtained while he was in detention. His hearing is impaired and his nose is deformed. In addition, the applicant was kept in unlawful detention for seven months and three days. It is therefore appropriate to award the applicant a substantial amount of compensation for the non-pecuniary damages. The Chamber considers that the applicant is entitled to KM 30,000.

122. Additionally, the Chamber awards 10 percent interest as of the date of the expiry of the time period set for the implementation of the present decision, on the sums awarded in the relevant conclusion below.

VIII. CONCLUSION

123. For the above reasons, the Chamber decides,

1. unanimously, to declare the application inadmissible in so far as it concerns the applicant's

complaint of a violation of his right to life as protected by Article 2 of the European Convention on Human Rights ("the Convention");

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

3. unanimously, that there has been a violation of Article 3 of the Convention, the Federation of Bosnia and Herzegovina thereby being in breach of its obligations under Article I of the Human Rights Agreement;

4. unanimously, that the detention of the applicant from 21 August 1996 to 24 March 1997 was unlawful in violation of Article 5 paragraph 1 of the Convention, the Federation of Bosnia and Herzegovina thereby being in breach of its obligations under Article I of the Agreement;

5. unanimously, that there has been a violation of Article 5 paragraph 3 of the Convention, the Federation of Bosnia and Herzegovina thereby being in breach of its obligations under Article I of the Agreement;

6. unanimously, that the applicant has been discriminated against in the enjoyment of his rights under Article 3 of the Convention, the Federation of Bosnia and Herzegovina thereby being in breach of its obligations under Article I of the Agreement;

7. unanimously, that the applicant has not been discriminated against in the enjoyment of his rights under Article 5 of the Convention;

8. unanimously, that it is not necessary to consider the applicant's complaint under Article 2 of Protocol No. 4 to the Convention that his right to freedom of movement has been violated;

9. unanimously, to order the Federation of Bosnia and Herzegovina to carry out an investigation into the conduct of the police and prison officials involved in the violation of the applicant's rights, with a view to initiating criminal proceedings against them in accordance with the law of the Federation of Bosnia and Herzegovina;

10. by six votes to one, to order the Federation of Bosnia and Herzegovina to pay to the applicant, within one month of the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure, the sum of KM 30,000 by way of compensation for pecuniary and non-pecuniary injury;

11. by six votes to one, that simple interest at an annual rate of 10 per cent will be payable over the sum awarded in conclusion 10 or any unpaid portion thereof from the day of expiry of the above-mentioned time period until the date of settlement in full;

12. unanimously, to order the Federation of Bosnia and Herzegovina to report to the Chamber, one month after the 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 orders under conclusions numbers 10 and 11 and six months after the 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 under conclusion number 9.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel