



DECISION ON ADMISSIBILITY AND MERITS
(delivered on 7 February 2003)

Case no. CH/98/166

Omer BJELONJA

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 5 February 2003 with the following members present:

Mr. Mato TADIĆ, President
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Manfred NOWAK
Mr. Vitomir POPOVIĆ
Mr. Viktor MASENKO-MAVI

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

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

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 case concerns the applicant's attempts to obtain compensation for his house, which was confiscated for temporary use by the Armed Forces during the armed conflict. Since 3 May 1996, the applicant has pursued proceedings before different domestic bodies, both judicial and administrative, in order to obtain compensation for the use of his house and for the damage and loss of his property after the confiscation, but to date, these proceedings have not been concluded.

2. The case raises issues under Article 6 paragraph 1 (right to a fair hearing) of the European Convention on Human Rights (the "Convention") and Article 1 of Protocol No. 1 (right to peaceful enjoyment of possessions) to the Convention.

II. PROCEEDINGS BEFORE THE CHAMBER

3. The application was received and registered on 26 January 1998. In the application, the applicant, who is represented by Jasmin Bjelonja, requested compensation in the amount of 75,100 KM for the use of his house and 65,286 KM for the damage caused to his house and the loss of property that was removed from the house.

4. On 29 May 1998, the Chamber asked the applicant for additional information regarding the alleged demolition of his house and the settlement of his claim for compensation by the Secretariat for National Defence of the Municipality of Ilidža.

5. On 2 July 1998, the case was transmitted to the respondent Party for its observations on admissibility and merits with respect to Article 6 paragraph 1 of the Convention and Article 1 of Protocol No. 1 to the Convention.

6. The Chamber did not receive written observations from the respondent Party on the admissibility and merits of the application.

7. On 22 February 1999, the applicant submitted a claim for compensation.

8. On 19 April 1999, the Chamber received the respondent Party's written observations in reply to the applicant's compensation claim.

9. On 28 July 1999, the Chamber received additional information from the applicant regarding the proceedings he had initiated.

10. On 15 January 2003, the Chamber asked the applicant for updated information regarding his proceedings before the domestic administrative organs and courts.

11. On 20 January 2003, the Chamber received the requested additional information from the applicant, in which he confirmed that no progress has been made in his proceedings before the domestic organs and courts.

12. The Chamber deliberated on the admissibility and merits of the application on 6 December 2002, 10 January 2003, 3 February 2003 and 5 February 2003. On 5 February 2003, the Chamber adopted the present decision on admissibility and merits.

III. STATEMENT OF THE FACTS

A. Background facts

13. The applicant is the owner of a house in Donji Kotorac, no. 33, in the Municipality of Ilidža. On 3 August 1993, the Secretariat for National Defence of the Municipality of Ilidža ordered the applicant to hand over the house to the Working Group of the Armed Forces of the First Military Group.

14. On 26 August 1997, the applicant was given back *de facto* possession of his house.
15. On 2 September 1998, the Supreme Court of the Federation of Bosnia and Herzegovina informed the applicant by letter that his case regarding his claim for compensation had been transferred to the Cantonal Court in Sarajevo. This letter does not specify whether it refers to both sets of proceedings, as described below. According to the applicant, both sets of proceedings are pending before the Cantonal Court in Sarajevo.

B. Proceedings regarding compensation for the use of the house

16. On 3 May 1996, the applicant requested the Secretariat for National Defence of the Municipality of Ilidža to compensate him for the use of his house after it was confiscated.
17. On 10 March 1997, the Secretariat for National Defence of the Municipality of Ilidža informed the applicant that it found itself not competent to deal with the applicant's request.
18. On 12 March 1997, the applicant submitted a request to the Secretariat for National Defence of the Municipality of Ilidža, arguing that it is competent and asking it to decide upon his request within the prescribed time limits.
19. On 24 April 1997, the applicant lodged a complaint with the Ministry of Defence of the Federation of Bosnia and Herzegovina regarding the absence of a decision from the Secretariat for National Defence of the Municipality of Ilidža.
20. On 16 July 1997, the applicant initiated an administrative dispute before the Supreme Court of the Federation of Bosnia and Herzegovina with regard to the silence of the administration.
21. On 11 March 1998, the Supreme Court of the Federation of Bosnia and Herzegovina issued a decision ordering the Ministry of Defence of the Federation of Bosnia and Herzegovina to issue a decision within 30 days with regard to the applicant's compensation claim for the use of the house.
22. On 2 June 1998, the applicant addressed the Federal Administrative Inspection Service with a request for actions by the Federal Administrative Inspector because the Ministry of Defence of the Federation of Bosnia and Herzegovina did not comply with the decision of the Supreme Court of 11 March 1998.
23. On 15 June 1998, the applicant received a procedural decision of the Ministry of Defence of the Federation of Bosnia and Herzegovina issued on 24 April 1998, referring the case to the Secretariat for National Defence of the Municipality of Ilidža and ordering it to carry out proceedings within 15 days.
24. On 26 June 1998, the Secretariat for National Defence of the Municipality of Ilidža issued a procedural decision establishing the amount of compensation to be paid for the use of the house.
25. On 21 July 1998, the applicant appealed against this procedural decision of 26 June 1998.
26. On 4 August 1998, the Ministry of Defence of the Federation of Bosnia and Herzegovina refused the applicant's appeal.
27. On 20 August 1998, the applicant initiated an administrative dispute before the Supreme Court of the Federation of Bosnia and Herzegovina. Since then, there appear to have been no developments in these proceedings.

C. Proceedings regarding compensation for damage to the house

28. According to the applicant, his house, at the time he recovered *de facto* possession of it, was partly destroyed. The applicant also alleges that moveable property was removed from the house in question. On 1 December 1997, the applicant filed a claim for compensation to the Secretariat for National Defence of the Municipality of Ilidža for this damage and loss of property.

29. On 2 December 1997, the Secretariat for National Defence of the Municipality of Ilidža informed the applicant that it found itself incompetent to deal with the applicant's request.

30. On 4 February 1998, the applicant filed an appeal with the Ministry of Defence of the Federation of Bosnia and Herzegovina because the Secretariat for National Defence of the Municipality of Ilidža had not issued a decision on his claim.

31. On 7 May 1998, the applicant initiated an administrative dispute before the Supreme Court of the Federation of Bosnia and Herzegovina because the Ministry of Defence of the Federation of Bosnia and Herzegovina had not issued a decision on his appeal. Since then, there appear to have been no developments in these proceedings.

IV. RELEVANT LEGISLATION

32. In accordance with the Law on Defence (Official Gazette of Republic of Bosnia and Herzegovina, - "OGRBiH" - nrs 4 and 9/92), the Government of the Republic of Bosnia and Herzegovina enacted the Decree on Criteria and Standards of Deployment of Citizens and Resources to the Armed Forces and for Other Needs of Defence (OGRBiH, no. 19/92). This Decree establishes the means, criteria and standards for supplying the Armed Forces of BiH with manpower and material resources, among them the confiscation of private property needed to supply the armed forces during the course of the war. The decree further provides that persons whose resources were used, damaged or lost when confiscated are entitled to compensation. It finally provides for the procedures to determine the amount of compensation to be awarded and the establishment of damage.

33. Article 82, insofar as relevant, provides as follows:

“Compensation referred to in Article 77, 78 and 79 of this Decree shall be paid to the owners of resources who utilised those resources. Such compensation shall be calculated and paid *ex officio* or following a request by the owner of the resources (...).”

34. Article 86 provides as follows:

“The compensation amount referred to in Articles 77, 78 and 79 of this Decree shall be determined by a commission composed of three members, established by the municipal secretariat that ordered the seizure of the resources.

“The compensation referred to in paragraph 1 of this Article shall be determined by a procedural decision.

“An appeal may be filed against the procedural decision referred to in paragraph 2 of this Article to the Ministry of Defence within 15 days from the day of receipt of the procedural decision.

“The procedural decision issued following the appeal is final.”

35. Article 87 provides as follows:

“If the resources referred to in Articles 53, 66, 70 and 75 of this Decree, except for perishable resources, are destroyed or damaged or go missing during the period of utilisation by the users of those resources, then the owner of those resources is entitled to

compensation for sustained damage pursuant to general rules on compensation for damage.”

36. Article 88, insofar as relevant, provides as follows:

“The existence of damage and the amount of compensation for damaged, destroyed or missing resources shall be established by a commission composed of three members formed by the competent body of the user of those resources, who utilised those resources as follows:

1. the municipal secretariat – for resources seized for the needs of armed forces, civil protection, surveillance and information service, communication and crypto-protection units, as well as the organs of the state; (...).”

37. Article 89 provides as follows:

“The procedure for establishing the existence of damage and realising the compensation referred to in Article 87 of this Decree shall be initiated *ex officio* or following a request by the owner of the resources.

“In the procedure for establishing the existence of damage and its amount, the bodies referred to in Article 88 paragraph 1 of this Decree shall, in accordance with the finding of the commission, try and conclude an agreement with the injured person concerning damage compensation, but in case an agreement cannot be concluded, those bodies shall either decide about the amount of compensation or refuse the claim for compensation by issuing a procedural decision.

“A procedural decision of the body referred to in paragraph 2 of this Article is final.

“The owner of resources may, if not satisfied with the decision contained in the procedural decision referred to in paragraph 2 of this Article, within 30 days from the day of receipt of such procedural decision, initiate proceedings before a competent regular court in order to effectuate damage compensation.”

38. On 23 May 1993 the Law Amending the Law on Defence (Official Gazette of Republic of Bosnia and Herzegovina, - "OGRBiH" – no. 11/93) was issued. At the moment of issuing it was a “Decree with the Force of Law Amending the Decree with the force of Law on Defence”.

39. Article 9 of this Decree reads:

“...During the time of war, as well as in case of immediate threat of war or state of emergency, citizens are under an obligation to surrender their resources, which are necessary for the needs of armed forces and other needs of defence, to the competent authorities.....

The material resources shall be confiscated/seized temporarily for the period when they are necessary for the needs of defence and shall be returned to their owner after the need for their use ceases to exist.

The owner is entitled to compensation for using his resources in the amount established pursuant to the Government’s regulation as well as compensation for the damage in case they were damaged, destroyed or missing. The amount of compensation shall be established in accordance with the regulations on compensation...”

40. The Law on Provisional Suspension of Enforcement of Claims Originating from the Period of the State of War and the Immediate Threat of War (Official Gazette of the Federation of Bosnia and Herzegovina 39/1998), which came into effect on 16 October 1998, suspends the enforcement of the claims of physical and legal persons against the Federation of Bosnia and Herzegovina, which arose due to the needs of defense during the period of the State of War and the Immediate Threat of War on the Federation territory. This law stipulated that, unless a settlement has been reached previously, the enforcement of the judgments and other administrative acts should commence three years after this law’s coming into effect.

41. Article 2 provides as follows:

“The termination of enforcement of claims from Article 1 of this law concerns the claims which arose pursuant to the following legislation:

... - The Decree on Criteria and Standards for Deployment of Citizens and Resources to the Armed Forces and for Other Needs of Defense. ... “

42. The Law on Establishment and Pursuing Claims Originating from the Period of State of War and Immediate Threat of War (Official Gazette of the Federation of Bosnia and Herzegovina 41/01) regulates the manner of establishing and pursuing the claims of physical and legal persons to the Federation, which arose due to the needs of defense during the period of the State of War and the Immediate Threat of War. This law's coming into effect ends the application of the Law on Provisional Suspension of Enforcement of Claims Originating from the Period of the State of War and immediate treat of war.

43. Article 2 provides as follows:

“The right to lodge a claim lies with the physical and legal persons whose claims arose pursuant to the following legislation:

... - The Decree on Criteria and Standards for Deployment of Citizens and Resources to the Armed Forces and for Other Needs of Defense. ...”

44. II Types of claims

45. Article 3 provides as follows:

“The claims, as defined and pursued under this law, entail the claims of physical and legal persons, on the following grounds:

- Mobilized or relinquished material assets and equipment.
- ...
- Other grounds for the needs of defense.”

46. III Manner of Establishment and Pursuit of Claims

47. Article 4 provides as follows:

“The liabilities of the Federation to the legal and physical persons which arose due to the needs of defense will be registered by the Ministry of Finance ... , according to the legal and binding court procedural decisions, procedural decisions by the competent administrative bodies, contracts and other legal documents enacted as provided in Article 2 of this law. “

48. Article 6 provides as follows:

“The claims under Article 3 of this Law shall be declared public debt of the Federation of Bosnia and Herzegovina and no interest shall be paid on their amounts for the period between the date of their arising and the day of their fulfillment.

The amounts of claims under Article 1 of this law will not be paid until the legislation under Article 7 of this law is enacted. “

49. IV Transitional and final provisions

50. Article 7 provides as follows:

“The Government of the Federation of Bosnia and Herzegovina, upon proposal of the Ministry of Finance, will provide the manner of establishment and settlement of the public debt under Article 6 of this law within 30 day as of the date of this law’s coming into effect.”

V. COMPLAINTS

51. The applicant alleges that his right to property has been violated. He states that his house was damaged and that moveable property was removed from it following its confiscation. The applicant further specifically complains about the fact that the administrative organs and domestic courts failed to issue decisions on his complaints within the prescribed time limits.

VI. SUBMISSIONS OF THE PARTIES

A. The respondent Party

52. Although the application was transmitted to the respondent Party on 2 July 1998 for its observations on the admissibility and merits, the respondent Party submitted no such observations. The respondent Party only submitted observations with regard to the applicant’s compensation claim of 22 February 1999.

B. The applicant

53. In the applicant’s submissions of 22 February 1999, the applicant states that since the respondent Party has not submitted any observations, it may be concluded that the respondent Party does not object to the admissibility of the application and to the applicant’s description of the facts.

VII. OPINION OF THE CHAMBER

A. Admissibility

54. Before considering the merits of this application, the Chamber must decide whether to accept it, taking into account the admissibility criteria set forth in Article VIII(2) of the Agreement.

1. Exhaustion of domestic remedies

55. In accordance with Article VIII(2) of the Agreement, “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...”.

56. In the *Blentić* case (case no. CH/96/17, *Blentić*, decision on admissibility and merits delivered on 3 December 1997, paragraphs 19-21, Decisions on Admissibility and Merits 1996–1997, with further references), the Chamber considered this admissibility criterion in the light of the corresponding requirement to exhaust domestic remedies in Article 26 of the Convention (presently Article 35 of the Convention, as amended by Protocol No. 11 to the Convention). The European Court of Human Rights has found that such remedies must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness. The Court has, moreover, considered that in applying the rule on exhaustion, it is necessary to take realistic account not only of the existence of formal remedies in the legal system of the Contracting Party concerned, but also of the general legal and political context in which they operate, as well as of the personal circumstances of the applicants.

57. In the present case, the applicant initiated proceedings regarding compensation for the use of the house and the damage and loss of property. Prior to the outcome of these proceedings, he filed his application with the Chamber. Whilst the initiated proceedings afford remedies which might in principle qualify as effective ones within the meaning of Article VIII(2)(a) of the Agreement, insofar as the applicant is seeking to be compensated for the use and the alleged demolition of the house, the Chamber must ascertain whether, in the case now before it, these remedies can also be considered effective in practice.

58. The Chamber observes that the essence of the applicant's claim concerns the over-all length of all the proceedings to obtain compensation. Since the applicant initiated proceedings on 3 May 1996 and these proceedings are still not concluded, the Chamber finds that in this specific case, these proceedings cannot be considered effective.

59. In these particular circumstances, the Chamber is satisfied that the applicant could not be required to exhaust, for the purposes of Article VIII(2)(a) of the Agreement, any further remedy provided by domestic law.

2. Admissibility *ratione temporis*

60. In accordance with Article VIII(2) of the Agreement, "The Chamber shall decide which applications to accept... In doing so, the Chamber shall take into account the following criteria: ... (c) The Chamber shall also dismiss any application which it considers incompatible with this Agreement, manifestly ill-founded, or an abuse of the right of petition."

61. The Chamber finds that, insofar as the applicant complains about the use of his property by the armed forces, the facts complained of partly relate to a period prior to 14 December 1995, which is the date on which the Agreement entered into force. However, the Agreement only governs facts subsequent to its entry into force. It follows that the application is incompatible *ratione temporis* with the provisions of the Agreement insofar as the complaint relates to the use of the property which took place prior to 14 December 1995, within the meaning of Article VIII(2)(c). The Chamber therefore decides to declare only this part of the application inadmissible.

3. Admissibility of the complaint with regard to the damage and moveable property

62. The applicant alleges that his house was damaged and moveable property was removed from it during the period the house was confiscated.

63. The Chamber notes that the applicant, although having been explicitly asked to do so, failed to substantiate these complaints. Therefore, the Chamber finds that this part of the application does not disclose any appearance of a violation of the rights and freedoms guaranteed under the Agreement. It follows that the part of the application, which relates to the damage and the loss of moveable property, is manifestly ill-founded, within the meaning of Article VIII(2)(c) of the Agreement (see paragraph 60 above). The Chamber therefore decides to declare the part of the application that relates to these claims inadmissible as well.

4. Conclusion as to admissibility

64. The Chamber decides to declare inadmissible the parts of the application which relate to the time period prior to 14 December 1995 and which relate to the claim of damage and loss of property. However, the Chamber decides to declare the remainder of the application admissible since no other grounds for declaring the application inadmissible have been established.

B. Merits

65. Under Article XI of the Agreement, the Chamber must next address the question of whether the facts established above disclose a breach by the respondent Party of its obligations under the Agreement. Under Article I of the Agreement, the Parties are obliged to "secure to all persons within

their jurisdiction the highest level of internationally recognised human rights and fundamental freedoms”, including the rights and freedoms provided for in the Convention.

1. Article 6 of the Convention

66. The applicant complains about the length of his proceedings to obtain compensation.

67. Article 6 of the Convention, insofar as relevant to the present case, reads 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....”

68. Noting that the pending proceedings concern the applicant’s rights based on the Decree on Criteria and Standards of Deployment of Citizens and Resources to the Armed Forces and for Other Needs of Defence, the Chamber finds that these proceedings relate to the determination of his “civil rights and obligations”, within the meaning of Article 6 paragraph 1 of the Convention. Accordingly, that provision is applicable to the proceedings in the present case.

69. The first step in establishing the length of the proceedings is to determine the period of time to be considered. On 3 May 1996, the applicant requested compensation for the use of his house after it was confiscated. The applicant having filed another request, a complaint, and an appeal, and having initiated an administrative dispute because the competent bodies failed to issue decisions, the Supreme Court of the Federation of Bosnia and Herzegovina, on 11 March 1998, issued a decision. As ordered by the Supreme Court and the Ministry of Defence of the Federation of Bosnia and Herzegovina, the Secretariat for National Defence of the Municipality Ilidža issued a decision granting compensation to the applicant. The applicant was unsatisfied with the amount and filed an appeal and initiated another administrative dispute before the Supreme Court of the Federation of Bosnia and Herzegovina, which then referred the case to the Cantonal Court. Since then, the Cantonal Court has not taken any procedural steps in this case. On 1 December 1997, the applicant also filed a claim for compensation for damage and loss of property. After the applicant filed an appeal and initiated an administrative dispute because the competent bodies failed to issue decisions, the Supreme Court of the Federation of Bosnia and Herzegovina referred this case to the Cantonal Court as well. Since then, the Cantonal Court has not taken any procedural steps in this case. To sum up, the applicant’s total proceedings to obtain compensation for the use of the house have lasted six years and nine months and the total proceedings to obtain compensation for the damage and loss of property have lasted five years and two month as of the date of this decision, and they are still pending.

70. The reasonableness of the length of proceedings is to be assessed having regard to the criteria laid down by the Chamber, namely the complexity of the case, the conduct of the applicant and of the relevant authorities, and the other circumstances of the case (*see, e.g., case no. CH/97/54, Mitrović, decision on admissibility of 10 June 1998, paragraph 10, Decisions and Reports 1998, with reference to the corresponding case-law of the European Court of Human Rights*).

71. The Chamber notes that the issues in the underlying case are the establishment of the amount of compensation to which the applicant is entitled due to the confiscation of his property and the establishment of whether or not the applicant’s property was partly damaged or lost during the time period of confiscation. The case does not seem to the Chamber to be so complex as to require over six years, or five years, respectively, of proceedings. The Chamber especially notes that it is undisputed that the applicant’s house was confiscated on 3 August 1993 and returned to him only on 26 August 1997. Accordingly, the Chamber finds no reason why, after this period of time, both sets of proceedings are still not concluded.

72. As to the conduct of the applicant, it is clear that he has pursued the various procedures available to him in an expeditious manner. The Chamber cannot find any evidence that any conduct of the applicant has served to prolong the sets of proceedings. On the contrary, from the case file it can be concluded that the applicant made all possible attempts to speed up the proceedings and to react adequately to the failure of the competent bodies to issue decisions within the prescribed time limits.

73. The authorities in this case, however, have not met their responsibility to ensure that the proceedings are expedited in a reasonable time. In particular, the competent administrative bodies several times failed to issue decisions within the prescribed time limits, the Supreme Court of the Federation of Bosnia and Herzegovina in both sets of proceedings referred the case to the Cantonal Court, and that Cantonal Court appears not to have taken any procedural steps in the cases since 1998. The Chamber thus finds that their conduct caused an unnecessary delay in the over-all proceedings.

74. Given that the question concerned the applicant's house and the right to be compensated and given that the amount of compensation involved is related to several years of use, which might result in a considerable amount of compensation to be awarded to the applicant, the Chamber notes that a speedy outcome of the proceedings would have been of particular importance to the applicant.

75. In view of the above, the Chamber finds a violation of Article 6 paragraph 1 of the Convention in that the proceedings in the applicant's case have not been determined within a reasonable time.

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

76. The applicant complains that his property rights have been violated. Article 1 of Protocol No. 1 to the Convention 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."

77. The Chamber recalls that Article 1 of Protocol No. 1 to the Convention comprises three distinct rules:

"the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers deprivation of possessions and subjects it to certain conditions; the third rule, stated in the second paragraph, recognises that the Contracting States are entitled, amongst other things, to control the use of property in accordance with the general interest.... The three rules are not, however, 'distinct' in the sense of being unconnected. The second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule." (*James and Others v. United Kingdom*, judgement of 21 February 1986, Series A no. 98, paragraph 37).

a. Existence of a "possession"

78. From the case file it can be concluded that the applicant's house was not returned to him immediately following the armed conflict and that the Secretariat for National Defence of the Municipality of Ilidža continued to hold the property until 26 August 1997 when *de facto* possession of the house was returned to the applicant. The Federation of Bosnia and Herzegovina does not dispute this rendition of the fact.

79. The Chamber finds, without question, that the property at issue, the applicant's house in Donji Kotorac, no. 33, in the Municipality of Ilidža, constitutes a "possession" of the applicant within the meaning of Article 1 of Protocol No. 1 to the Convention.

b. Whether there has been an interference with the applicant's possession

80. On 3 August 1993, the Secretariat for National Defence of the Municipality of Ilidža ordered the applicant to hand over his house to the Working Group of the Armed Forces of the First Military Group. On 26 August 1997, the applicant was given back *de facto* possession of his house.

81. Having regard to the above facts, the Chamber concludes that the Federation of Bosnia and Herzegovina has interfered with the applicant's protected possession in the time period after 14 December 1995, until 26 August 1997.

c. Whether the interference was lawful

82. Regardless of which of the three rules set forth in Article 1 of Protocol No. 1 is applied in a given case (*i.e.*, interference with possessions, deprivation of possessions, or control of use of property), the challenged action by the respondent Party must have been lawful in order to comply with the requirements of Article 1 of Protocol No. 1. The European Court of Human Rights has explained as follows:

“The Court reiterates that the first and most important requirement of Article 1 of Protocol No. 1 is that any interference by a public authority with the peaceful enjoyment of possession should be lawful: the second sentence of the first paragraph authorises a deprivation of possessions only 'subject to the conditions provided for by law' and the second paragraph recognises that the States have the right to control the use of property by enforcing 'laws'. Moreover, the rule of law, one of the fundamental principles of a democratic society, is inherent in all the Articles of the Convention and entails a duty on the part of the State or other public authority to comply with judicial orders or decisions against it. It follows that the issue of whether a fair balance has been struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights becomes relevant only once it has been established that the interference in question satisfied the requirement of lawfulness and was not arbitrary” (Eur. Court HR, *Iatridis v. Greece*, judgment of 25 March 1999, Reports of Judgments and Decisions 1999-II, page 97, paragraph 58).

83. On the basis of the 1992 Decree on Criteria and Standards of Deployment of Citizens and Resources to the Armed Forces and for Other Needs of Defense, during the state of war private property could be confiscated in order to be used for the purposes of the military effort. The Chamber further notes that according to the 1993 Decree with the Force of Law Amending the Decree with the Force of Law on Defence this legislation applies not only during the state of war, but also during the “state of immediate threat of war” and the state of emergency. This Decree restates also that the resources were to be confiscated only temporarily and returned to the owner once the need of defence ceases to exist.

84. The Decision Revoking the State of War was issued by the Presidency of the Republic of Bosnia and Herzegovina on 22 December 1995. In paragraph 2 of this decision it is stated that the Decision Declaring the Immediate Threat of War will stay in force. On 23 December 1996, the Federation Parliament issued the Decision on the Cessation of the Application of the Decision Declaring the Immediate Threat of War in the Territory of the Federation of Bosnia and Herzegovina (OG FBiH no. 25/96). On this basis, the Chamber concludes that until 23 December 1996 the confiscation of the applicant's property was in accordance with applicable legislation. There was, however, no such legal basis for the Armed Forces to continue to hold the applicant's house from 23 December 1996 until 26 August 1997, the date on which the applicant was given back *de facto* possession of his house. The Chamber is aware that it may not have been possible in practice to hand over the property to the applicant on the exact date the Federation Parliament proclaimed that the immediate threat of war had ceased. However, the armed forces continued to hold the applicant's property for eight months, an unreasonably long period of time. Therefore, the interference with the applicant's property rights during this period of time was unlawful.

d. Whether the interference was in the public interest

85. As for the period during which the interference with the applicant's property had a legal basis (until 23 December 1996), the Chamber needs to examine whether the interference was in the “public interest”. The notion of “public interest” within the meaning of Article 1 of Protocol No. 1 is

“necessarily extensive” (Eur. Court HR, *James v. United Kingdom*, judgment of 21 February 1986, Series A no. 98-B, paragraph 46). In determining the existence of such a “public interest”, the national authorities enjoy a certain margin of appreciation. “Because of their direct knowledge of their society and its needs, the national authorities are in principle better placed than the international judge to appreciate what is ‘in the public interest’”. Therefore, the European Court “will respect the legislature’s judgment as to what is ‘in the public interest’ unless that judgment is manifestly without reasonable foundation” (*id.*).

86. Beginning with the confiscation for temporary use of the applicant’s house on 3 August 1993, the government effectively took over the property for purposes related to the armed conflict in Bosnia and Herzegovina. The applicant does not appear to argue that the interference with his house during the period of the armed conflict in Bosnia and Herzegovina was not justified. The Chamber finds that the confiscation of private property in order to support the national defense in time of war is a justified interference with the peaceful enjoyment of possessions. However, the respondent Party continued to interfere with the applicant’s house following the official declarations ending the state of war in Bosnia and Herzegovina.

87. Pursuant to the Decision Revoking the State of War of the Presidency of the Republic of Bosnia and Herzegovina of 22 December 1995, there persisted an imminent threat of war even after the conclusion of the Dayton Peace Agreement. The Federation Parliament determined that this imminent threat only ceased to exist on 23 December 1996. Thereby it decided that it was necessary in order to protect the integrity of the Federation territory and the safety of its citizens to keep in force certain war-time legislation for an entire year after the Peace Agreement was signed. The Chamber finds that in the area of national security and defense the respondent Party enjoys a wide margin of appreciation, and that the determination that the imminent threat of war ceased only in December 1996 falls within that margin. The Chamber further finds that the extension of war-time legislation relating to the military use of private property to periods of “immediate threat of war” also falls within the margin of appreciation of the respondent Party. The Chamber therefore concludes that the government’s actions during and following the armed conflict were taken in the public interest until 23 December 1996.

e. Conclusion as to Article 1 of Protocol No. 1

88. In conclusion, there has been a violation by the Federation of Bosnia and Herzegovina of the applicant’s right to peaceful enjoyment of its possessions guaranteed under Article 1 of Protocol No. 1 to the Convention from 23 December 1996 to 26 August 1997.

VIII. REMEDIES

89. Under Article XI(1)(b) of the Agreement, the Chamber must address the question of what steps shall be taken by the Federation of Bosnia and Herzegovina to remedy the established breaches of the Agreement. In this regard, the Chamber shall consider issuing orders to cease and desist and for monetary relief.

90. The applicant requested compensation for pecuniary damage related to the damage to and loss of moveable property from the house. However, the Chamber can only award compensation if it makes a finding of a violation of the Agreement. Since the Chamber will declare this part of the application inadmissible, the Chamber cannot award compensation for this alleged damage and loss of property.

91. The applicant further requested compensation for the use of the house during the time period it was confiscated. The respondent Party summarily rejected this part of the compensation claim as inadmissible and ill-founded.

92. The Chamber notes that it has found a violation of the applicant’s right protected by Article 1 of Protocol No. 1 to the Convention. The Chamber further notes that it has found a violation of the applicant’s right protected by Article 6 paragraph 1 of the Convention with regard to the length of

proceedings. Since the applicant's compensation claims already progressed through all stages of possible proceedings and the Supreme Court of the Federation Bosnia and Herzegovina referred both of these compensation claims to the Cantonal Court, so that now both sets of proceedings are once again in the first stage, the Chamber considers it appropriate to order the respondent Party to take all necessary steps to promptly conclude both sets of the pending proceedings, in any case within two months of the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure, taking into account that the Chamber established that the applicant's house was confiscated on 3 August 1993 and returned to the applicant on 26 August 1997.

93. Furthermore, the Chamber considers it appropriate to award a sum to the applicant in recognition of the sense of injustice he has suffered as a result of his inability to have his case decided within a reasonable time and for the unlawful interference with his possession.

94. Accordingly, the Chamber will order the respondent Party to pay to the applicant the sum of 3,000 Convertible Marks (*Konvertibilnih Maraka*) in non-pecuniary damages in recognition of his suffering as a result of his inability to have his case decided within a reasonable time and for the unlawful interference with his possession.

95. Additionally, the Chamber will further award simple interest at an annual rate of 10% on the sum awarded to be paid to the applicant in the preceding paragraph. The interest shall be paid as of one month from the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure on the sum awarded or any unpaid portion thereof until the date of settlement in full.

96. Moreover, the Chamber will order the Federation of Bosnia and Herzegovina to report to it no later than three months after the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure on the steps taken by it to comply with the above orders.

97. The Chamber reserves the right to issue any other orders it deems necessary to remedy the violations found.

IX. CONCLUSIONS

98. For these reasons, the Chamber decides,

1. unanimously, to declare inadmissible the part of the application relating to the time period prior to 14 December 1995;

2. unanimously, to declare inadmissible the part of the application relating to the applicant's claims of damage and loss of property;

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

4. unanimously, that there has been a violation of the applicant's rights under Article 6 paragraph 1 of the European Convention on Human Rights with regard to the length of proceedings, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Human Rights Agreement;

5. unanimously, that there has been a violation of the applicant's rights under Article 1 of Protocol No. 1 to the European Convention on Human Rights to peaceful enjoyment of possessions, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Human Rights Agreement;

6. unanimously, to order the Federation of Bosnia and Herzegovina, through its authorities, to take all necessary steps to promptly conclude both sets of the pending proceedings, in any case within two months of the date on which this decision becomes final and binding in accordance with

Rule 66 of the Chamber's Rules of Procedure, taking into account that the Chamber has established that the applicant's house was confiscated on 3 August 1993 and returned to the applicant on 26 August 1997;

7. unanimously, to order the Federation of Bosnia and Herzegovina to pay to the applicant, no later than one month after the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure, three thousand (3,000) Convertible Marks ("*Konvertibilnih Maraka*") by way of compensation for non-pecuniary damages;

8. unanimously, to dismiss the remainder of the applicant's claim for compensation;

9. unanimously, to order the Federation of Bosnia and Herzegovina to pay simple interest at the rate of 10 (ten) per cent per annum on the sum awarded in conclusion 7 or any unpaid portion thereof from the date of expiry of the above one-month period until the date of settlement in full;

10. unanimously, to order the Federation of Bosnia and Herzegovina to report to it no later than three months after the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure on the steps taken by it to comply with the above orders; and

11. unanimously, to reserve the right to order additional remedies in this case as it deems warranted.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Mato TADIĆ
President of the Second Panel