DECISION ON ADMISSIBILITY AND MERITS

Case no. CH/98/1781

Helena and Predrag ŠUMAN

against

REPUBLIKA SRPSKA

The Human Rights Commission within the Constitutional Court of Bosnia and Herzegovina, sitting in plenary session on 6 September 2004, with the following members present:

Mr. Jakob MÖLLER, President
Mr. Miodrag PAJIĆ, Vice-President
Mr. Želimir JUKA
Mr. Mehmed DEKOVIĆ
Mr. Andrew GROTRIAN

Mr. J. David YEAGER, Registrar
Ms. Olga KAPIĆ, Deputy Registrar
Ms. Meagan HRLE, Deputy Registrar

Having considered the aforementioned application introduced to the Human Rights Chamber for Bosnia and Herzegovina 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;

Noting that the Human Rights Chamber for Bosnia and Herzegovina ("the Chamber") ceased to exist on 31 December 2003 and that the Human Rights Commission within the Constitutional Court of Bosnia and Herzegovina ("the Commission") has been mandated under the Agreement Pursuant to Article XIV of Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina entered into on 22 and 25 September 2003 ("the 2003 Agreement") to decide on cases received by the Chamber through 31 December 2003;

Adopts the following decision pursuant to Articles VIII(2) and XI of the Agreement, Articles 5 and 9 of the 2003 Agreement and Rules 50, 54, 56 and 57 of the Commission's Rules of Procedure:

I. INTRODUCTION

1. The application concerns the applicants' appeal against a decision ordering them to remove their temporary restaurant facility from a plot owned by the State, their inability to obtain compensation before the domestic bodies for the alleged illegal removal of their restaurant, and discrimination by the municipal authorities. Although Mrs. Helena Šuman appears as the party to all proceedings before the domestic bodies, the applicants are spouses who submitted their application to the Chamber together. (Throughout this decision, the term "the applicant" refers to Mrs. Helena Šuman.)

2. Since 1978 the applicant, who is of Hungarian origin, was the owner of the restaurant "Mađarica" in Hrvaćani, Municipality Prnjavor, the Republika Srpska. The restaurant was a temporary facility[1] located on a plot owned by the State, for which the applicant had taken over the lease from the RO Center of Primary Schools in Prnjavor. According to the requirements of the urban plan approval issued on 10 December 1989 by the Municipality Prnjavor, the applicant was obliged to remove the temporary facility within three years from the date of issuance of the urban plan approval, or earlier, if requested to do so by the competent organ.

II. PROCEEDINGS BEFORE THE CHAMBER AND COMMISSION

3. The application was submitted to the Chamber on 17 December 1998 and registered on 21 December 1998.

4. On 24 September 1999 the application was transmitted to the Republika Srpska under Articles 6 and 13 of the European Convention on Human Rights ("the Convention"), Article 1 of Protocol No. 1 to the Convention, and Article II(2)(b) of the Agreement.

5. The respondent Party did not submit any observations on the admissibility and merits of the application within the specified time limit. On 7 March 2000 the Chamber received the applicant's comments on the admissibility and merits.

6. On 27 June 2001 the Chamber received observations on the admissibility and merits of the application from the Republika Srpska.

7. On 15 November 2002 and 11 March 2003 the Chamber received additional information from the respondent Party.

8. On 10 October 2002, 3 March 2003, and 21 June 2004 the Chamber and Commission received further information from the applicant.

9. The Commission deliberated on the admissibility and merits of the application on 9 July 2004 and 6 September 2004. On the latter date it adopted the present decision.

III. FACTS

A. As to the administrative proceedings[2]

10. On 24 April 1996 the Secretariat for Urban Planning, Housing-Utility and Construction Affairs of the Municipality Prnjavor ("the Secretariat") issued a procedural decision ordering the removal of the temporary restaurant facility "Mađarica", owned by the applicant, within 20 days of receipt of the procedural decision. The dispositive part of the procedural decision also states that

[1] Also referred to in the case file as a "kiosk".
[2] Hereinafter "administrative proceedings" refers to both administrative proceedings and the administrative dispute initiated before the Supreme Court of the Republika Srpska.

an appeal does not halt the enforcement of the procedural decision. In the reasoning it is stated that, in accordance with the urban plan approval, a need has arisen to remove the applicant's temporary facility since the Municipality allocated the plot on which the facility was constructed to R.M. for his permanent use. On an unknown date, the applicant appealed against this procedural decision, pointing out that her facility had existed since 1977, that R.M. had erected his temporary facility on the same plot in 1988, that she was not aware of the proceedings for allocation of the land to R.M., and that she had filed a proposal for renewal of the proceedings for allocation of the plot for her use.

11. On 1 July 1996 the Ministry for Urban Planning, Housing-Utility and Construction Affairs in Banja Luka ("the Ministry") quashed the first instance procedural decision and returned the case for renewed proceedings. In the reasoning it is stated that the R.M.'s request is difficult to understand and incomplete and that parties who have standing to be sued have not been given the opportunity to take part in the proceedings.

12. On 12 December 1997 the Secretariat, in the renewed proceedings, issued a procedural decision ordering the applicant to remove the temporary facility within 15 days of receipt of the procedural decision and indicating that an appeal does not halt the enforcement of the procedural decision. The Secretariat established that the time limit relating to the urban plan approval had expired and that the applicant was obliged to remove the facility with no right to compensation. It also established that, according to the Regulatory Plan adopted by the Municipality Prnjavor, the plot in question was intended for the regular use of the existing facility owned by R.M.

13. On 2 January 1998 the Secretariat issued a conclusion on the enforcement of the 12 December 1997 procedural decision, ordering the applicant to remove the facility in question within three days under a threat of forcible enforcement, and again ordering that an appeal does not halt the enforcement of the procedural decision. It was stated in the reasoning that the procedural decision became enforceable on 31 December 1997 and the applicant had not met her obligation to remove the facility within the required time. The applicant filed an appeal against the 12 December 1997 procedural decision and the 2 January 1998 conclusion on enforcement.

14. On 30 April 1998 the Ministry quashed the 12 December 1997 procedural decision and the 2 January 1998 conclusion on enforcement and returned the case for renewed proceedings because the procedural decision of 12 December 1997 was not properly delivered to the applicant, and because there was no evidence of the applicant having received the summons to take part in the hearing held before the Secretariat.

15. On 8 May 1998, in defiance of the Ministry's decision of 30 April 1998, the Secretariat forcibly removed the applicant's facility by moving it out of the plot where it was placed.

16. On 28 January 2002 in the renewed proceedings, the Secretariat again issued a procedural decision ordering the removal of the temporary facility within 15 days of receipt of the procedural decision and obliging the applicant to return the plot to its original state. The applicant filed an appeal against this procedural decision to the Ministry.

17. On 2 September 2002 the Ministry rejected the applicant's appeal as ill-founded, finding that the order to remove the applicant's temporary facility was in accordance with the law. On 14 October 2002 the applicant initiated an administrative dispute against this procedural decision before the Supreme Court of the Republika Srpska. These proceedings are still pending.

B. As to the court proceedings

18. On 9 November 1998 the applicant initiated proceedings before the First Instance Court in Prnjavor for compensation of damages caused by the alleged illegal destruction of the restaurant "Mađarica" facility.

19. From November 1998 until May 2001 the First Instance Court in Prnjavor held eight hearings in the applicant's proceedings, two of which were postponed on a proposal of the applicant's authorized representative and two of which were postponed due to the applicant's absence from the hearing.

20. On 17 January 2002 the applicants' representative proposed to the court that the hearing scheduled for 1 February 2002 be postponed until the administrative proceedings were completed.

21. On 1 February 2002 the First Instance Court in Prnjavor suspended the proceedings until the valid completion of the administrative proceedings. In the reasoning it is stated that the issue to be resolved in the administrative proceedings represented a preliminary issue in the proceedings for compensation of damages and that the legal requirements were met for the suspension of the proceedings.

22. On 21 June 2004 the applicant informed the Commission that, because the administrative dispute before the Republika Srpska Supreme Court is still pending, she did not request the continuance of the proceedings before the First Instance Court for damage compensation.

IV. RELEVANT LEGAL FRAMEWORK

A. Law on Physical Planning

23. The Law on Physical Planning (Official Gazette of Socialist Republic of Bosnia and Herzegovina nos. 9/87, 23/88, 24/89, 10/90, 14/90, 15/90 and 14/91) was in force at the time when the urban plan approval was issued to the applicant and when the administrative proceedings for removal of temporary facility were initiated.

24. Article 129 provides, in relevant part:

> "(1) Urban plan approval for temporary facilities or temporary purposes shall be issued only exceptionally and with a limited deadline.
>
> "(2) Urban plan approval mentioned in the previous paragraph entails an obligation for a location user to remove, that is pull down the facility, upon the expiry of the deadline, when requested by the municipal administrative body, without the right to compensation. Upon the removal of the facility, the plot on which the facility was located, shall be developed in accordance with the requirements determined in the urban plan approval, *i.e.* in accordance with the requirements set forth in the request to pull down *i.e.* to remove the facility, if so established in the urban plan approval."

25. On 26 August 1996 the new Law on Physical Planning of the Republika Srpska entered into force (Official Gazette of the Republika Srpska ("OG RS") no. 19/96). It was later amended several times (OG RS 25/96, 10/98, 53/02, 64/02 and 14/03). This Law, in the relevant part regarding the issue of the urban plan approval for temporary facilities, prescribes the obligation to remove the facility upon the expiry of the deadline, and development of the plot in accordance with requirements.

B. The Law on General Administrative Proceedings (Official Gazette of Socialist Federal Republic of Yugoslavia ("OG SFRY") 47/86)

26. Article 6 provides:

> "When organs or self-management organizations and collectives resolve some administrative issues, they shall be obliged to ensure an efficient realization of interests and rights of laborers and citizens, organizations of associated labor and other self-management organizations and collectives."

27. Article 218 provides, in relevant part:

"(1) When the procedure is instituted in regard to a party's request, or *ex officio,* if that is in the party's interest, and it is not necessary to implement a special investigation procedure before decision-making, nor there are other reasons why the decision cannot be made without delay (solving the previous matter and etc.), the competent body is obliged to pass the decision and to send it to the party as soon as possible, and at the latest within a month counting from the day when the request was orderly submitted, or from the day when the procedure started *ex officio*, if a shorter deadline was not envisaged by a special regulation. In other cases when the procedure was instituted pursuant to a party's request, or *ex officio* if that is in the party's interest, the competent body is obliged to pass the decision and to forward it to the party at latest within two months if a shorter deadline was not envisaged by a special regulation."

28. Article 231 provides, in relevant part:

"(1) The decision cannot be implemented during the period in which is possible to file the appeal. After orderly stated appeal the decision cannot be implemented until the decision which is made in regard to the appeal is sent to the party.

"(2) Exceptionally, the decision can be implemented during the appeal period, as well as after filing the appeal, if it was foreseen by the law or if it is the matter of urgent actions (Article 141, Item 4) or if the delay of implementation would cause irreparable damage to any of the parties. If it is matter of the latest it is possible to seek an adequate insurance from the party whose interest is to carry out implementation and to condition the implementation by this insurance."

29. Article 242 provides, in relevant part:

"(1) If the second-instance body has determined that the facts were incompletely or wrongly established in the first-instance proceedings, that in the proceedings the attention was not paid to the rules of procedure which would be influential to solving of the matter, or that the contested decision is unclear or is in contradiction with the explanation, it shall complete the proceedings and remove the failures either by its own, or through the first-instance body or any other body asked to do so, and those bodies shall be bound to act according to the request of the second-instance body. If the second-instance body finds that based on the facts stipulated in the completed proceedings, the matter is to be solved in a different way comparing to its solving by the first-instance decision, it shall by its decision annul the first-instance decision and solve the matter by its own.

"(2) If the second instance body finds that the first-instance body will in a faster and more efficient way remove the failures of the first-instance proceedings, it shall by its decision annul the first-instance decision and remit the case to the first-instance body for re-proceedings. In that case the second-instance body shall be bound to explain in its decision to the first-instance body in what regard to make the proceedings complete, and the first instance body shall be bound to act under the second-instance decision without delay, and to make new decision at latest within 30 days from the day of receipt of the case. The party has right to an appeal against this decision."

30. Article 247 provides, in relevant part:

"A decision on the appeal must be made and submitted to the party as soon as possible, and at latest within two months counting from the date of delivery of the appeal, unless a shorter deadline has been defined by a separate regulation."

31. Article 270 provides, in relevant part:

"(1) The decision issued in an administrative procedure shall be enforced upon its becoming enforceable.

"(2) The first Instance decision shall become enforceable:

(1) by expiration of the deadline for an appeal, if an appeal was not declared;
(2) by submission to the party, if an appeal is not allowed;
(3) by submission to the party, if the appeal does not postpone the enforcement;"

32. Article 271 provides, in relevant part:

"(1) The conclusion made in an administrative procedure shall be enforced upon its becoming enforceable.

"(2) The conclusion against which a special appeal is not allowed and the conclusion against which a special appeal is allowed and which does not delay the execution of the conclusion, shall be effective on the notification or delivery to the party.

"(3) When the law or the conclusion itself specifies that the appeal delays the execution of the conclusion, the conclusion shall become effective on the expiration of the appeal period if the appeal has not been made, and if it has been made - on the delivery of the decision which rejects or dismisses the appeal."

33. On 28 February 2002 the Republika Srpska adopted a new Law on General Administrative Proceedings (OG RS no. 13/02), which entered into force on 26 March 2002. In relevant part, the provisions of the new Law are the same as in the previous Law.

C. The Law on Civil Proceedings (OG SFRY 4/77, 36/80, 69/82, 58/84, 7487, 27/90 and 35/91; OG RS 17/93, 14/94 and 32/94)

34. Article 12 provides, in relevant part:

"(1) When the court 's decision depends on a prior decision on whether a certain right or legal relation exists or not, and such a decision has not yet been reached by the court or another competent body (prior question), the court may resolve the issue itself, if not stipulated otherwise in special regulations."

35. Article 213 provides, in relevant part:

"(1) Except in cases specifically set forth in this law, the interruption of the proceedings shall be ordered by the court ...

if the court decides not to decide on a prior question (Article 12)"

36. Article 215 provides, in relevant part:

"(2) If the court interrupted the proceedings for the reasons given under Article 213 paragraph 1 subparagraph 1 and paragraph 2 of this Law, the proceedings shall be continued when the proceedings before the court or another competent body is effectively concluded, or the court finds that there is no reason any more to wait for its completion.

"(3) In all other cases, the interrupted proceedings shall be continued upon proposal of the party, as soon as reasons for the interruption cease to exist."

37. On 17 July 2003 the Republika Srpska adopted a new Law on Civil Proceedings (OG RS no. 58/03), which entered into force on 1 August 2003. In relevant part, the provisions of the new Law are the same as in the previous Law.

D. The Law on Administrative Disputes (OG RS no. 12/94)

38. Article 10 provides, in relevant part:

" (1) The administrative decision shall be denied:

1. if a Law, any regulation based on law, or other legally made rule or general act have not been correctly applied;
2. if a decision has been issued by an unauthorized body;
3. if in the procedure preceding the decision the authority didn't act according to the rules of procedure, and especially if the facts of the case were not properly established, or if from the determined facts an incorrect conclusion was drawn regarding the facts of the case."

39. Article 32 provides:

"(1) If the Court does not reject the action immediately, either by procedural decision under Article 28, Paragraph 2 or Article 29 of this Law, or quash the disputed administrative decision under Article 30 of this Law, the Court shall submit one copy of the action with attachments to the defendant and to all interested parties if they exist.

(2) The response shall be given within a period of time that the court determines in each individual case. This time period cannot be shorter than 8 or longer than 30 days.

(3) In the determined period of time the defendant is obliged to submit to the Court all documentation regarding the case. If the defendant does not submit the case file even after the second request or if he/she states that it is not possible for him/her to send it, the Court can deal with the matter even without the case file."

40. Article 33 provides:

"(1) The Court shall deal with administrative disputes in closed sessions.

(2) The Court can make a decision to have an oral hearing, due to complex issue or if the Court finds it necessary for better clarification of the situation.

(3) For the same reasons a party in the dispute can suggest having an oral hearing."

41. Article 42 provides:

"(1) If an oral hearing is held, the court shall issue a judgment or a procedural decision, together with all the most important reasoning, immediately after completion of the hearing.

(2) In more complex cases the court can give up on verbal stating of the decision, and issue the judgment or procedural decision within eight days, at the latest.

(3) If it is not possible for the court to state the judgment or procedural decision, after completion of the oral hearing, because it is necessary to determine a fact for which discussion a new oral hearing is not necessary, the Court shall pass the decision without a hearing, within eight days from specifying the fact at the latest."

V. COMPLAINTS

42. The applicant complains that the respondent Party illegally pulled down her restaurant in Hrvaćani and that she is unable to obtain compensation for damages because her case has not been decided before the court and administrative bodies. The applicant states that the respondent Party's bodies, by their conduct, have violated her right to a fair hearing protected by Article 6 of the Convention, her right to an effective remedy protected by Article 13, and her right to peaceful enjoyment of her property protected by Article 1 of Protocol No.1 to the Convention, as well as the prohibition of discrimination under Article II(2)(b) of the Agreement.

43. The applicant requests the Commission to find a violation of her rights and to award her monetary compensation in the amount of 100,000 KM for the illegal removal of her facility and 30,000 KM for lost profits due to cessation of her business activities.

VI. SUBMISSIONS OF THE PARTIES

A. The Republika Srpska

1. As to the facts

44. The Republika Srpska has not contested the facts as presented by the applicant.

2. As to the admissibility

45. The respondent Party considers the application premature because the proceedings are still pending before the First Instance Court in Prnjavor, which has still not issued its judgment.

46. On two occasions the respondent Party had informed the Chamber on the status of the court proceedings, stating that there had been no resumption of the suspended proceedings because neither of the parties had requested it, nor had any party informed the First Instance Court that the administrative dispute had been resolved.

3. As to the merits

47. The respondent Party considers the application premature and contrary to Article VIII(2)(a) of the Agreement. The respondent Party particularly points out that since 9 November 1999 the First Instance Court in Prnjavor has scheduled eight hearings. Two hearings were postponed upon the request of Mr. Krstan Simić, the applicants' legal representative, and two others because she failed to appear. On 1 February 2002 the civil proceedings were suspended upon the applicants' request until the valid completion of the administrative proceedings, which were conducted before the Department for Physical Planning of the Municipality Prnjavor. The respondent Party points out that the suspended civil proceedings have not been resumed because none of the parties to the proceedings had requested resumption of the proceedings nor had the court received a notification on the completion of the administrative proceedings.

B. The applicant

48. In her application and submissions, the applicant does not contest that on 10 December 1989 she was issued an urban approval for a limited time period. However, she stresses that her restaurant "Mađarica" had existed on the plot since 1977 and that it had not disturbed anybody until 1992, when R.M. was allocated the plot on which the object was located for his permanent use. The applicant considers this allocation illegal because R.M., who also constructed a catering facility on the same plot, has benefited in this way. In her application, the applicant also alleges that the Municipality took such actions against her because of her Hungarian origin.

49. The applicant maintains that the authorities of the respondent Party illegally removed her facility although the proceedings upon appeal were pending. The appeal was accepted, the procedural decision pursuant to which the facility had been removed was quashed, and only in the renewed proceedings a procedural decision was issued ordering the removal of the object that had already been removed (see paragraphs 15 to 17 above).

VII. OPINION OF THE COMMISSION

50. The Commission recalls that the application was introduced to the Human Rights Chamber under the Agreement. As the Chamber had not decided on the application by 31 December 2003, in accordance with Article 5 of the 2003 Agreement, the Commission is now competent to decide on the application. In doing so, the Commission shall apply the admissibility requirements set forth in Article VIII(2) of the Agreement. Moreover, the Commission notes that the Rules of Procedure

governing its proceedings do not differ, insofar as relevant for the applicant's case, from those of the Chamber, except for the composition of the Commission.

A. Admissibility

51. Before considering the case on the merits, the Commission must first decide whether to accept the case, taking into account the admissibility criteria set out in Article VIII(2) of the Agreement. In accordance with Article VIII(2) of the Agreement, "the [Commission] shall decide which applications to accept…. In so doing, the [Commission] shall take into account the following criteria: (a) Whether effective remedies exist, and the applicant has demonstrated that they have been exhausted …." and "(c) The [Commission] shall also dismiss any application which it considers incompatible with this Agreement, manifestly ill-founded, or an abuse of the right of petition."

1. As to the applicant's complaint relating to discrimination (Article II(2)(b) of the Agreement)

52. The applicant complains that her Hungarian origin was a motive for the issuance of the 24 April 1996 procedural decision on removal of her temporary facility and its allocation to R.M. for permanent use. The applicant therefore considers that she has been discriminated against on the ground of her national origin.

53. The Commission observes that the applicant has not substantiated her allegations by any evidence.

54. In these circumstances the Commission finds that the application does not disclose any appearance of discrimination against the applicant in the enjoyment of the rights and freedoms guaranteed under the Agreement. It follows that this part of the application is manifestly ill-founded, within the meaning of Article VIII(2)(c) of the Agreement. The Commission therefore decides to declare this part of the application inadmissible.

2. As to the applicant's complaint relating to a violation of the right to property (Article 1 of Protocol No. 1 to the Convention)

55. The applicant further complains that the Municipality Prnjavor, by forcibly removing her temporary facility, has violated her right to property. She has initiated a lawsuit before the First Instance Court in Prnjavor for compensation of damages caused by the illegal destruction of the facility. This suit is still pending. The Commission therefore considers that the applicant's complaint relating to the violation of the right to property is premature because the proceedings for damage compensation are still pending before the First Instance Court in Prnjavor. Accordingly, the domestic remedies have not been exhausted as required by Article VIII(2)(a) of the Agreement. The Commission therefore decides to declare this part of the application inadmissible.

3. As to the applicant's complaint relating to the length of proceedings (Article 6 of the Convention)

56. The applicant complains of the length of the administrative proceedings concerning the removal of her temporary facility, which have been pending since 1996. The applicant also complains of the length of the civil proceedings before the First Instance Court in Prnjavor for damage compensation, initiated on 9 November 1998, which is related to the administrative proceedings. The respondent Party asserts that the applicant has not exhausted domestic remedies because the proceedings in question are still pending. The Commission notes, however, that the Chamber repeatedly held that the fact that proceedings were still pending did not prevent the Chamber from examining the applicant's complaint in relation to length of the proceedings (*see, e.g.*, case no. CH/02/8770, *Dobojputevi d.d.,* decision on admissibility and merits of 5 December 2003, Decisions July-December 2003). The Commission therefore decides to declare

admissible the applicant's complaint under Article 6, paragraph 1 of the Convention with regard to the length of the civil and administrative proceedings.

4. Conclusion on admissibility

57. Consequently, the Commission considers the application admissible as to the length of the civil proceedings for damage compensation that have been pending since 9 November 1998 and in regard to the administrative proceedings pending since 1996. The Commission finds the remainder of the application inadmissible.

B. Merits

58. Under Article XI of the Agreement, the Commission must next address the question of whether the facts established above disclose a breach by the Republika Srpska 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 recognized human rights and fundamental freedoms", including the rights and freedoms provided for by the Convention and the other international agreements listed in the Appendix to the Agreement.

1. Article 6, paragraph 1 of the Convention (length of proceedings)

(a) As to the civil proceedings

59. The Commission has declared the application admissible under Article 6, paragraph 1 of the Convention with regard to the length of the civil proceedings pending in the Municipality Prnjavor for damage compensation. These proceedings have been pending before the First Instance Court in Prijedor since 9 November 1998 and have not been resolved to date.

60. Article 6 of the Convention reads as follows:

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

61. The European Court of Human Rights ("the European Court") has explained that by requiring in Article 6, paragraph 1 of the Convention that cases should be heard "within a reasonable time", "the Convention underlines the importance of rendering justice without delays which might jeopardize its effectiveness and credibility" (Eur. Court HR, H. versus France, judgment of 24 October 1989., Series A no. 162, paragraph 58).

62. The Commission recalls that the Chamber in its case law held that disputes involving a request for damage compensation relate to "civil rights and obligations". The Commission also notes that the respondent Party has not put this conclusion in question. The Commission considers that the right that the applicant claims before the domestic court represents a "civil right" within the meaning of Article 6, paragraph 1 of the Convention. For these reasons, the Commission concludes that Article 6, paragraph 1 of the Convention is applicable in this case.

63. The first step in establishing the length of proceedings is to determine the time to be considered. For the purposes of Article 6, paragraph 1 of the Convention, the Commission finds that the period of time to be considered starts on the date on which the applicant initiated the lawsuit before the First Instance Court in Prnjavor, 9 November 1998. On 1 February 2002, on the applicant's proposal, the First Instance Court suspended the civil proceedings until the valid completion of the administrative proceedings which were initiated in 1996 and which have been pending since September 2002 before the Supreme Court of the Republika Srpska. The First Instance Court regarded the administrative proceedings as involving a preliminary issue on which the result of the court's decision in the civil proceedings depended. Because the administrative

proceedings have not been validly completed, the civil proceedings have never been resumed. Therefore, these proceedings have been pending for almost six years.

64. The reasonableness of the length of proceedings is to be assessed having regard to the criteria laid down by the case law of the European Court, the Chamber, and the Commission. Considerations include 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). In civil cases, the defendant's behaviour and what is at stake in the litigation for the plaintiff are also taken into account (Eur. Court, *Bucholz versus Germany*, judgment of 6 May 1981., Series A no. 42, paragraph 49).

65. With respect to the complexity of the case, the Commission considers the civil proceedings for compensation initiated by the applicant to be fairly simple. The Commission notes that the First instance Court had to establish whether the forcible removal of the temporary facility by the Municipality Prnjavor was based on the law and, depending on that conclusion, to establish the actual damage. The First instance Court decided to ask a building expert to draw up an expert report (it is unclear whether the findings and the opinion of the expert were delivered to the court) after which the proceedings were halted. In these circumstances, the Commission is of the opinion that the complexity of the case cannot justify a delay in these proceedings for almost six years.

66. As to the applicant's conduct, the Commission finds that the applicant's actions, as the plaintiff in these civil proceedings, had a decisive effect on the length of proceedings and the failure to decide the case. The Commission notes that the court scheduled eight hearings in this case out of which two were postponed on a proposal of the applicant's authorized representative and two due to the applicant's absence at the hearing. Consequently, the first instance court was unable to achieve any progress in the resolution of the case. The Commission further observes that the applicant's authorized representative notified the court on 17 January 2002 that the administrative proceedings were pending before the Department for Physical Planning of the Municipality Prnjavor for the removal of the facility and proposed to postpone the hearing scheduled for 1 February 2002 until the administrative proceedings were completed by the issuance a final and binding decision. The administrative proceedings have not been completed to date and the applicant has not filed a proposal for resumption of the civil proceedings. In these circumstances the Commission considers that the applicant, as the plaintiff in the proceedings, has expressed lack of interest in a more expedient resolution of her case and, to a large extent by her own actions, has caused the delay by which the case has not been decided.

67. As to the conduct of the competent first instance court, the Commission notes that the court, to a certain extent, was unable to resolve the case due to the applicant's absence at the hearings and partly due to the suspension of the civil proceedings and duration of the administrative proceedings. The Commission notes that in the civil proceedings, the court by itself may, when a preliminary issue arises, resolve the preliminary issue or suspend the proceedings until the competent body decides. In the present case, the court, acting in compliance with the applicant's proposal, assessed that a decision in the applicant's lawsuit depended on the final and binding decision in the administrative proceedings, and it consequently suspended the proceedings until the issuance of such an administrative decision. The Commission also observes that the court in these proceedings, until the suspension of the proceedings, held a preparatory hearing and three hearings for the main trial. The Court took certain actions to resolve the case, such as requesting the Municipality Prnjavor to submit the applicant's case file and ordering an expert to assess the amount of damage. In these circumstances, the Commission considers that the delay in deciding this case cannot be attributed to insufficient activity in the applicant's case by the First Instance Court in Prnjavor.

68. In these circumstances the Commission finds that the respondent Party has not violated the applicant's right to a fair hearing within a reasonable time under Article 6(1) of the Convention.

(b) As to the administrative proceedings

69. The Commission has declared the application admissible under Article 6, paragraph 1 of the Convention in connection with the length of the administrative proceedings for the removal of the applicant's temporary facility, which is pending before the respondent Party's competent bodies. These proceedings were initiated in 1996, and the first decision ordering the removal of the applicant's temporary facility was issued on 24 April 1996. These proceedings have not been completed to date, however, and are currently pending upon the applicant's lawsuit against the procedural decision of 2 September 2002 in the administrative dispute before the Supreme Court of the Republika Srpska.

i. Civil character of rights and obligations

70. The proceedings in question are related to determination of the applicant's obligation to remove the temporary facility from the plot owned by the State for which she was issued the urban plan approval of limited duration. According to the European Court's case law, the concept of "civil rights and obligations" is not to be interpreted solely by reference to the respondent State's domestic law.

> "Article 6 para. 1 applies irrespective of the status of the parties, of the nature of the legislation which governs the manner in which the dispute is to be determined and of the character of the authority which has jurisdiction in the matter; it is enough that the outcome of the proceedings should be decisive for private rights and obligations."

(Eur. Court HR, *Tre Traktorer versus Sweden*, Judgement of 7 July 1989, Series A. no. 159., paragraph 18.; also *Allan Jacobsson versus Sweden*, Judgement of 25 Sepetmber 1989, Series A. no. 163., paragraph 72.)

71. The Commission notes that the outcome in the administrative proceedings is necessary for a decision in the civil proceedings for the applicant's right to damage compensation as well as her right to continue her business in the facility. The First Instance Court assessed that the issue related to the applicant's obligation to remove the temporary facility was a preliminary issue in the proceedings to decide on the damage compensation claim for the forcible removal of the facility by the municipal authorities. The respondent Party has not contested the concept of civil rights and obligations to be determined in these proceedings. For these reasons, the Commission concludes that Article 6, paragraph 1 of the Convention is applicable in this case.

ii. The length of proceedings

72. The Commission has considered the reasonableness of the length of the administrative proceedings having regard to the criteria laid down by the case-law of the European Court, the Chamber, and the Commission: 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).

73. As to the length of proceedings to be taken into account, the Commission observes that the administrative proceedings were initiated on an unknown date and the first decision was issued on 24 April 1996. This decision was quashed in the second instance for procedural flaws, but in the renewed proceedings an identical decision was issued on 2 January 1998, as well as a conclusion on its enforcement. This decision was also quashed on 30 April 1998. However, on 8 May 1998 the forcible removal of the facility took place. Subsequently, the first instance body issued a decision in the renewed proceedings on 28 January 2002, more than three and one-half years later. On 2 September 2002 the second instance body rejected the applicant's appeal, and on 14 October 2002 the applicant initiated the administrative dispute before the Supreme Court of the Republika Srpska. Consequently, these proceedings have been pending since early 1996, more then eight years. The time period from 8 May 1998 until 28 January 2002—three years, eight

months and twenty days—is particularly noticeable, that being the time taken by the respondent Party's bodies to decide in the renewed proceedings.

iii. Complexity of the case

74. As to the complexity of the case, the Commission considers that the administrative proceedings for the removal of the applicant's temporary facility are a rather simple legal matter. The Commission observes that the first instance body established the factual state, which was not disputed, without any particular difficulty. However, due to the procedural flaws, the first instance decision ordering the removal of the facility was quashed twice and the proceedings on review of the decision issued in the administrative proceedings are currently pending. In these circumstances, the Commission considers that the extension of the proceedings for more than eight years cannot be justified by the complexity of the case.

iv. Conduct of the applicant

75. As to the conduct of the applicant, the Commission cannot find any indication that the applicant contributed to the delay in the proceedings. Moreover, the respondent Party has not claimed that the applicant contributed to the delay in the administrative proceedings.

v. Conduct of the relevant authorities

76. As to the conduct of the relevant authorities, the Commission notes that the respondent Party's bodies have had this case before them for eight and one-half years, since early 1996. The First Instance administrative decisions were quashed only because of procedural flaws and it took three and one-half years since the decision was quashed for the second time and until the first instance procedural decision was issued again. The Commission cannot find any justification for this delay in deciding the case. The Commission further observes that on 8 May 1998 the Municipality Prnjavor carried out the forcible removal of the applicant's temporary facility on the basis of the 12 December 1997 procedural decision and the 2 January 1998 conclusion on enforcement, although the Ministry had quashed both decisions on 30 April 1998 (see paragraphs 14 and 15 above). These administrative proceedings are still pending, however. The Commission considers that the delay may be attributed to insufficient activity of the respondent Party in the applicant's case. Moreover, the Commission can find no other reason to justify this delay.

2. Conclusion as to the merits

77. Having regard to the above, the Commission considers that the delay in the civil proceedings cannot be regarded as entirely due to the conduct of the First Instance Court in Prnjavor, for which the respondent Party is held responsible. The Commission concludes that the length of the civil proceedings is mainly caused by the conduct of the applicant and her passive position in these proceedings, namely her failure to attend hearings and her proposals for postponing hearings.

78. By examination of the way in which the administrative proceedings were conducted for the removal of the applicant's facility, the Commission concludes that the delay in these proceedings occurred due to the inaction of the administrative bodies, for which the respondent Party is responsible. The length of the administrative proceedings has also caused the delay in deciding on the applicant's claim for damage compensation. The Commission finds, in examining the manner in which the administrative proceedings were conducted, that the administrative bodies should have dealt far more expediently with this case and that there is no evident justification for the delay that has occurred.

79. The Commission therefore finds that the period in which the applicants' proceedings have been pending before the administrative bodies and the Supreme Court of the Republika Srpska is unreasonably long and, as a result, the Republika Srpska has violated the applicant's right to a fair hearing within a reasonable time as guaranteed by Article 6, paragraph 1 of the Convention.

3. The right to an effective remedy (Article 13 of the Convention)

80. In view of its decision with respect to Article 6, paragraph 1, that the applicant was deprived of the right to a fair hearing within a reasonable time, the Commission considers it unnecessary to consider the case under Article 13 of the Convention.

VII LEGAL REMEDIES

81. Under Article XI(1)(b) of the Agreement, the Commission must next address the question of what steps shall be taken by the respondent Party to remedy the established breaches of the Agreement. In this connection the Commission shall consider issuing orders to cease and desist, monetary relief (including pecuniary and non-pecuniary damages), as well as provisional measures.

82. The applicant requested that the violation of her rights be established and that compensation in the amount of 130,000 KM be paid. This claim appears to be similar to the applicant's compensation claim in the pending civil suit.

83. The Commission notes that it has found a violation of the applicant's rights protected by Article 6, paragraph 1 of the Convention with regard to the length of proceedings. As the applicant's rights have been violated because the administrative case has taken more than eight years, the Commission considers it appropriate to order the respondent Party to take all necessary steps to promptly and without further delay conclude the pending administrative proceedings.

84. The Commission will further order the respondent Party to pay the applicant a sum in the amount of 2,000.00 Convertible Marks (*Konvertibilnih Maraka*, "KM") for non-pecuniary damages in recognition of her suffering as a result of her inability to have her administrative case decided within a reasonable time. This amount is to be paid within two months of the date of receipt of this decision.

85. In addition, the Commission will order the Republika Srpska to pay the applicant simple interest at an annual rate of 10% from the due date set out in the above paragraph for the implementation of the compensation award, on the full amount of the award or any unpaid portion thereof until the date of settlement in full.

86. In addition, the Commission will order the Republika Srpska to report to it, or its successor institution, within three months of the receipt of this decision on the steps taken by it to implement these orders.

VIII. CONCLUSIONS

87. For the above reasons, the Commission decides,

1. unanimously, to declare admissible the part of the application related to the length of civil proceedings pending since 1998 and in regard to the length of the administrative proceedings pending since 1996;

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

3. unanimously, that the applicant's rights under Article 6, paragraph 1 of the Convention have not been violated with regard to the civil proceedings for damage compensation initiated by the applicant before the First Instance Court in Prnjavor;

4. unanimously, that the applicant's rights under Article 6, paragraph 1 of the Convention have been violated with regard to the length of the administrative proceedings for the removal of the facility, the Republika Srpska thereby being in breach of Article I of the Human Rights Agreement;

5. unanimously, that it is unnecessary to examine the applicant's claims under Article 13 of the Convention;

6. unanimously, to order the Republika Srpska to take all necessary steps, through its authorities, to promptly and without further delay conclude the pending administrative proceedings;

7. unanimously, to order the Republika Srpska to pay to the applicant, within two months of the date of receipt of this decision, the sum of 2,000.00 Convertible Marks by way of compensation for non-pecuniary damage;

8. unanimously, to order the Republika Srpska to pay to the applicant simple interest at an annual rate of 10% (ten percent) on the sum awarded in conclusion number 7 above from the due date set for such payment until the date of final settlement of all sums due to the applicant under this decision; and,

9. unanimously, to order the Republika Srpska to report to it, or its successor institution, within three months of the receipt of this decision on the steps taken by it to implement these orders.

(signed)
J. David YEAGER
Registrar of the Commission

(signed)
Jakob MÖLLER
President of the Commission