DECISION ON ADMISSIBILITY AND MERITS
(delivered on 5 November 1999)

Case no. CH/98/1786

Muharem ODOBAŠIĆ

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 2 November 1999 with the following members present:

Mr. Giovanni GRASSO, President
Mr. Viktor MASENKO-MAVI, Vice-President
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Manfred NOWAK
Mr. Vitomir POPOVIĆ

Mr. Anders MÅNSSON, Registrar
Ms. Olga KAPIĆ, Deputy Registrar

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

Adopts the following decision pursuant to Articles VIII(2) and XI of the Agreement and Rules 52, 57 and 58 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The applicant is a citizen of Bosnia and Herzegovina of Bosniak descent, resident in Prnjavor, Republika Srpska. On 14 September 1996 he was arrested by Mr. Braco Milijašević, a police officer in Prnjavor, for alleged failure to produce an identity card upon request, as required by the law of the Republika Srpska. He was detained at Prnjavor police station and released the same day. During his arrest and detention he was physically and verbally abused by Mr. Milijašević on the basis of his Bosniak origin.

2. On 22 November 1996 he was tried before the Petty Offences Court in Prnjavor and was convicted of failure to comply with a legal request to provide identification and of refusal to accompany a police officer to a police station. He was sentenced to 20 days imprisonment and ordered to pay court costs of 120 Yugoslav Dinars ("YUD"). On appeal, the sentence of imprisonment was replaced by a fine of YUD 200.

3. The case raises issues principally under Articles 3, 5 and 6 of the European Convention on Human Rights and under the provisions of the Agreement guaranteeing freedom from discrimination in the enjoyment of the rights enumerated in the Appendix thereto.

II. PROCEEDINGS BEFORE THE OMBUDSPERSON

4. The Ombudsperson issued two reports concerning the case. The first of these, registered at her office under number (B)72/96, concerned the arrest and detention of the applicant. The second, registered at her office under number (B)227/97, concerned the proceedings against the applicant before the courts of the Republika Srpska.

A. Application number (B)72/96

5. Application number (B)72/96 was submitted to the Ombudsperson on 28 October 1996 and registered on the same day. On 19 December 1996 the Ombudsperson decided to open an investigation into the application. On the same day she gave notice of the application to the respondent Party and requested the parties to submit written observations on its admissibility and merits. She also decided to seek the opinion of the respondent Party as to the possibility of an amicable settlement in the case. On 16 January 1997 the time-limit for the receipt of the respondent Party's observations expired. No such observations were received.

6. On 4 March 1997 the Ombudsperson, in accordance with paragraph 4 of Article V of the Agreement, adopted her report on the application. She concluded that the arrest and detention of the applicant had involved violations of his rights as guaranteed by Articles 3 and 5(1) of the Convention. The Ombudsperson found that there had been no violation of the applicant's rights as guaranteed by Article 5(2) of the Convention and that it was not necessary to examine the application under Article 14 of the Convention. The Ombudsperson found that as a consequence the respondent Party has violated its obligations under Article I of the Agreement. She made the following recommendations on the basis of her conclusions:

(i) that the respondent Party pay to the applicant the nominal sum of 300 German Marks ("DM") on the understanding that the above sum would constitute recognition of the wrongs done to him and would not amount to full compensation for the damage he suffered;

(ii) that the respondent Party provide the applicant with a written apology for the treatment he suffered; and

(iii) that the respondent Party commence a full investigation into the conduct of police officer Milijašević (the arresting officer) in this case, in co-operation with the International Police Task Force.

7. These recommendations were to be carried out within four weeks of the date of the report. None have been complied with by the respondent Party.

B. Application number (B)227/97

8. Application number (B)227/97 was submitted to the Ombudsperson on 9 July 1997 and registered on the same day. On 8 October 1997 the Ombudsperson decided to give notice of the application to the respondent Party and requested the parties to submit written observations on its admissibility and merits. On 15 November 1997 the time-limit for the receipt of the respondent Party's observations expired. No such observations were received. On 29 September 1998, in accordance with paragraph 4 of Article V of the Agreement, the Ombudsperson adopted her report on the application. In her report, the Ombudsperson concluded that the court proceedings against the applicant arising out of his arrest and detention had involved violations of his rights as guaranteed by Article 6(1) and (3) of the Convention. The Ombudsperson found that as a consequence the respondent Party has violated its obligations under Article 1 of Agreement. She recommended that the respondent Party pay to the applicant, within six weeks of the date of the report, the nominal sum of 500 Convertible Marks (*Konvertibilnih Maraka*; "KM") by way of compensation for the moral damage he suffered.

9. This recommendation has not been complied with by the respondent Party.

III. PROCEEDINGS BEFORE THE CHAMBER

10. On 11 November 1998 the Ombudsperson, pursuant to paragraph 7 of Article V of the Agreement, initiated proceedings before the Chamber based on her reports referred to above. On 21 December 1998 the application was registered under the above case number.

11. The Chamber considered the application at its session in February 1999. It decided to transmit the application to the respondent Party for its observations on its admissibility and merits.

12. On 16 February 1999, pursuant to Rule 49(3)(b) of the Rules of Procedure, the application was so transmitted. Under the Chamber's Order concerning the organisation of the proceedings in the case, such observations were due by 16 March 1999.

13. No observations were received from the respondent Party within the time-limit set. Accordingly, on 16 March 1999, the applicant was requested to submit his further observations and any claim for compensation or other relief he wished to make. On 19 March 1999 the applicant's further observations, which included a claim for compensation, were received. On 23 March 1999 these observations were transmitted to the respondent Party.

14. The respondent Party's observations on the claim for compensation submitted by the applicant were due by 23 April 1999. On 29 March 1999 the applicant's further observations were transmitted to the Ombudsperson and she was invited to submit any written observations which she wished in response. On 2 April 1999 the Ombudsperson informed the Chamber that she did not wish to submit any written observations in response to the applicant's further observations and that Dr. Valerija Šaula, Deputy Ombudsperson, would represent her in the proceedings before the Chamber.

15. On 29 March 1999 the Parties were informed that the Chamber intended to hold a public hearing on the admissibility and merits of the case, either on 13 or 14 May 1999, in Sarajevo and that they would be informed of the exact date and time of the hearing before the end of April 1999.

16. On 13 April 1999 the respondent Party submitted its observations on the admissibility and merits of the application, outside the time-limit set by the Chamber. Despite this, the Chamber decided to accept these observations and on 4 May 1999 they were transmitted to the applicant for his further observations. On 20 May 1999 they were transmitted to the Ombudsperson for her further observations.

17. On 11 May 1999 the Parties were informed that the Chamber had decided to postpone the public hearing on the admissibility and merits of the case until 11 June 1999 in order to allow adequate time for the summoning of witnesses.

18. On 11 May 1999 the applicant's further observations, in response to the observations of the respondent Party on the admissibility and merits of the case, were received by the Chamber. On 20 May 1999 these further observations were transmitted to the respondent Party and the Ombudsperson for information.

19. On 4 June 1999 the Chamber received a request from the applicant that the public hearing in the case be postponed, due to his poor health, his lack of financial resources and fears regarding his safety. The Chamber, after considering the request, decided to postpone the public hearing until 8 July 1999. The Parties were informed of this new date for the hearing on 14 June 1999.

20. At its session in June 1999 the Chamber decided to request the Ombudsperson to submit to it any reports she had from the Organisation for Security and Co-operation in Europe ("OSCE") and/or the United Nations International Police Task Force ("UNIPTF") on her files relating to the application. On 22 June 1999 the Ombudsperson's office submitted certain reports from the OSCE and UNIPTF, the contents of which are summarised at paragraphs 60-63 below. These reports were sent to the applicant and respondent Party for information on 3 August 1999.

21. At its session in June 1999 the Chamber also considered which witnesses to summon to appear at the public hearing on the admissibility and merits of the case. It decided to summon the following persons: Mr. Braco Milijašević, the police officer who arrested the applicant on 14 September 1996; Mr. Mladen Ružičić, one of the police officers who accompanied the applicant to Prnjavor police station after his arrest, Mr. Goran Debeljak and Ms. Mlađa Studić, witnesses to the arrest of the applicant and the doctor or doctors who examined the applicant at Prnjavor health centre on the day of his arrest. On 21 June 1999 an official of the Chamber duly summoned Messrs. Ružičić and Debeljak and Ms. Studić. Dr. Slavko Šušak of the Prnjavor health centre was also summoned on the same date. On 24 June 1999 Mr. Milijašević was also duly summoned by an official of the Chamber.

22. On 23 June 1999 the Chamber received a letter form Ms. Mlađa Studić, informing it that she would not be able to attend the public hearing on 8 July 1999 due to the serious illness of her husband.

23. On 1 July 1999 the Chamber received a letter from Dr. Valerija Šaula, Deputy Ombudsperson, in which she requested a postponement of the public hearing, due to illness. On 5 July 1999 the Chamber considered this request and decided not to accede to it and to request the Ombudsperson's office to nominate another official to represent it at the public hearing. On 6 July 1999 a letter in these terms was sent to the office of the Ombudsperson. No reply was received.

24. On 6 July 1999 the Chamber received a letter from Dr. Slavko Šušak, informing it that on 14 September 1996 he had referred the applicant to the Accident and Emergency Department of the health centre in Prnjavor. Dr. Šušak asked that he be relieved from the requirement to appear before the Chamber as witness.

25. On 8 July 1999 the Chamber held a public hearing on the admissibility and merits of the application in the Cantonal Court building in Sarajevo. The applicant appeared in person. The respondent Party was represented by its legal representative before the Human Rights Commission for Bosnia and Herzegovina, Mr. Stevan Savić. The Ombudsperson was not represented. Of the witnesses who had been summoned, only Mr. Goran Debeljak appeared.

26. The Chamber heard addresses from the applicant and respondent Party. It then heard the evidence of Mr. Goran Debeljak as witness. The Agent of the respondent Party submitted certain documents relating to the domestic proceedings against the applicant. Copies of these documents were given to the applicant by the Registry on the same day.

27. On 3 August 1999 the Chamber transmitted to the applicant and respondent Party certain

documents received from the OSCE and UNIPTF relating to the application. A deadline of 18 August 1999 was set for the receipt of any observations on these documents. On 10 August 1999 the Chamber received further observations from the applicant. No further observations have been received from the respondent Party.

28. The Chamber deliberated upon the admissibility and merits of the application on 8 July, 6 and 8 October and 1 November 1999. On 2 November 1999 it adopted the present decision.

IV. ESTABLISHMENT OF THE FACTS

A. The particular facts of the case

29. The Chamber regrets that due to the failure of Messrs. Miljašević, Ružičić, Ms. Studić and Dr. Šušak to comply with their summons to appear before the Chamber, it has not had the opportunity of hearing them in person. However, the Chamber has sufficient information on its case file to enable it to properly establish the facts and decide upon the application.

30. The facts of the case are established by the Chamber on the basis of the reports of the Ombudsperson referred to at paragraphs 4-9 above, the submissions of the applicant and respondent Party, the reports of the OSCE and UNIPTF referred to at paragraphs 60-63 below and the information and evidence presented at the public hearing. The facts of the case are summarised as set out below.

31. The applicant is a lawyer and former judge from Prnjavor, Republika Srpska of Bosniak origin. Until November 1992 he was employed as a judge in the Municipal Court in Prnjavor, when he was removed from his position. He remained in Prnjavor town, which has a population of approximately 10,000, during the war. He still lives there today with his brother in a house in the centre of the town.

32. Early in the morning of 14 September 1996 the applicant was walking down Vida Nježića Street in the centre of Prnjavor, as was his daily habit. The first national elections after the war took place throughout Bosnia and Herzegovina on that day. The applicant was walking towards a butcher shop, owned by Mr. Goran Debeljak. The exact time is in dispute between the parties and has not been established exactly. However, the Chamber finds it established that it was between 5.30 a.m. and 6.30 a.m. and that it was clear daylight. The weather was clear. A white Volkswagen Golf car without number plates, driven by Mr. Milijašević, a local police officer, approached the applicant. Mr. Milijašević opened the door of the car and ordered the applicant to get into it. He used language of an extremely insulting nature to the applicant on the basis of his Bosniak origin, including the derogatory phrases “Balija” and “Alija”. He also called the applicant a “Turk”, which is considered derogatory when used in an aggressive manner to describe members of the Bosniak nation.

33. The applicant knew Mr. Milijašević, who had been a party in a case heard by the applicant as a judge and who had also made unsolicited approaches to the applicant regarding his house. They had also had frequent professional dealings while the applicant had been a judge in Prnjavor. On one occasion, Mr. Milijašević had threatened the applicant that his house would be mined if he refused to sell it to him. In addition, witness Debeljak, the Chief of Police in Prnjavor, as well as Mr. Milijašević himself, have all confirmed that the applicant was known to him.

34. The applicant refused to enter the car and go with Mr. Milijašević to the police station. An altercation followed outside witness Debeljak’s shop. This altercation involved Mr. Milijašević attempting, by the use of force, to bring the applicant to the police station. The Chamber has obtained conflicting accounts of the exact events involved in this altercation. Having examined all of the evidence, the Chamber finds that the applicant was physically maltreated by Mr. Milijašević, involving sustained and repeated assaults, by the use of excessive force. This excessive force included Mr. Milijašević intentionally beating the applicant on the chest after the applicant had informed him that he had a heart condition. The applicant sought to enter witness Debeljak’s shop, where he was a regular customer, in order to request that Mr. Debeljak inform the applicant’s brother of what was happening.

35. Mr. Milijašević continued to use force against the applicant while he was attempting to enter the shop. Witness Debeljak, who saw this happen, motioned to Mr. Milijašević to enter the shop, as he hoped to defuse the situation by informing him of the applicant's identity. Witness Debeljak was under the impression that perhaps Mr. Milijašević was unaware of the applicant's identity. Mr. Milijašević entered witness Debeljak's shop, and upon being informed of the applicant's identity, stated "Yes, I know". During the altercation, the applicant offered to show his identity card ("*Lična Karta*") to Mr. Milijašević, who said it was not necessary. In his evidence at the trial of the applicant before the Petty Offences Court in Prnjavor, Mr. Milijašević specifically stated that he knew who the applicant was, but that he still sought to detain the applicant and bring him to Prnjavor police station in order to establish his identity. Mr. Milijašević also stated that while attempting to detain the applicant he left him in order to move his car, so that a bus could pass by. The altercation thereafter continued.

36. Another person, Ms. Mlađa Studić, passed by during the altercation. The applicant requested her to inform UNIPTF of what was happening. It is not known if she did so. The physical and verbal assault of the applicant by Mr. Milijašević continued, involving continued beating and derogatory language, such as the use of the word "Balija". The applicant was ordered to empty his pockets on the street. Mr. Milijašević ignored the repeated pleas of the applicant to stop beating him. This was despite the fact that the applicant had asked Mr. Milijašević what it was he wanted the applicant to do. The length of time the altercation lasted has not been established precisely, but the Chamber finds it established that it lasted at least a number of minutes.

37. Mr. Milijašević motioned to a uniformed police officer on duty nearby to come and assist him in detaining the applicant. This officer came to the scene. Mr. Milijašević then called on his two-way radio for further officers to come from the police station to bring the applicant there. One of the police officers who arrived was Mr. Ružičić. The applicant was then taken to the police station in a police vehicle. During this journey, the applicant requested from Mr. Ružičić, who is also known to him, that he protect him from Mr. Milijašević, which Mr. Ružičić said he would do. Mr. Ružičić assured the applicant that he would be dealt with by the duty officer at the station, who would treat him in accordance with the appropriate regulations.

38. Upon his arrival at the police station, the applicant was not taken to the required area. Instead of being taken to the duty officer, he was taken to an unofficial detention room by Mr. Milijašević, who had already arrived at the police station independently of the applicant. There he was further maltreated by Mr. Milijašević in front of a number of other police officers. Mr. Ružičić left the room, having been instructed to do so by the other police officers present. The applicant's further maltreatment again involved physical assault, verbal abuse (again including being called a "Balija" and "Turk" and being told for whom he should vote for in the elections on that day) and humiliating treatment, involving having a kitten placed upon his head. None of the other police officers present intervened to protect the applicant. Instead, they laughed at the treatment suffered by the applicant and showed their approval of that treatment.

39. Mr. Milijašević told the applicant that he would be dealt with by the courts. After this further maltreatment had ended, Mr. Milijašević told the applicant, who at this stage was waiting to see the senior police officer in charge of the police station, "Let Alija fuck you" and "Get out of here before I tramp on you". The reference to "Alija" is to Alija Izetbegović, the Bosniak member of the Presidency of Bosnia and Herzegovina.

40. The applicant returned home briefly and then went to the health centre in Prnjavor to receive medical assistance. There he was examined by a doctor. The medical report, which was stated to be issued solely for the purposes of criminal proceedings, was signed by Drs. Slavko Šušak and Branko Šikanić. It concludes that the applicant had received physical injuries on his head, chest and legs. He suffered contusions to his ear, face, chest and lower limbs. The contusion on his chest measured approximately 10 cm by 5 cm. The opinion of the examining doctors was that the applicant had suffered minor injuries. A copy of this report was sent to the police in Prnjavor.

41. After this examination, the applicant went to the OSCE office in Prnjavor and reported the incident. A report was made by Mr. Igor Lapsha, a Human Rights Officer in the Prnjavor OSCE Office. On the same morning the matter was referred to UNIPTF who also interviewed the applicant. The

UNIPTF report, written by Mr. Jesper Haaning, noted that the applicant was in an emotional state and cried on occasion during the interview. It also noted that the applicant had bruising to his ear, face and chest and that his clothes had been damaged.

42. A report of the Head of the police in Prnjavor, Mr. Dragan Mektić, dated 14 September 1996, was sent to the Banja Luka Public Security Station and UNIPTF. In this report, Mr. Metkić apologised to UNIPTF for the incident. He also stated that the police officer involved could have acted in a more restrained manner.

43. On 23 September 1996 the applicant was visited at his home by three uniformed police officers and instructed to attend Prnjavor police station on the same day. He did so that afternoon. At his request, his interview was postponed until the following day with the agreement of the Head of Police in Prnjavor, as the applicant wished that UNIPTF monitors be present at the interview. The applicant was not able to contact UNIPTF monitors in time for the meeting to proceed on 23 September 1996. On 24 September 1996 an interview was held between the Deputy Head of Police in Prnjavor and the applicant in the presence of UNIPTF monitors. This interview concerned the events of 14 September 1996.

44. On 28 September 1996 Mr. Dejan Šamara, the Head of the Banja Luka Public Security Station, stated in a letter to the Prnjavor police station that the force used to detain the applicant was in accordance with the law.

45. On 10 October 1996 the applicant was summoned to appear at the Petty Offences Court in Prnjavor on 22 November 1996. The summons indicated that the applicant was charged with an offence under Article 2(5), of the Law on Public Order and Peace (see paragraph 72 below). He was represented by Mr. Milorad Ivošević and Ms. Spomenka Starović-Boda, lawyers practising in Doboj. Both lawyers had been engaged by the OSCE to represent the applicant.

46. The trial was attended by representatives of the OSCE and United Nations Civil Affairs Office. The judge in charge of the case was Zdravko Bunić. The Court heard submissions from the applicant's representative, Mr. Ivošević. It heard the applicant, Mr. Milijašević, Mr. Ružičić and Mr. Debeljak as witnesses. Two further witnesses, police officers who brought the applicant to the police station in Prnjavor on the day of his arrest, were summoned to appear but did not. The applicant, through his representative, was given the opportunity to cross-examine the witnesses. He was also given an opportunity to present his version of events in detail. While he was interrupted on a number of occasions, these interruptions do not appear to have been of such an intrusive nature as to have prevented the applicant from having his version of events heard by the Court.

47. Mr. Milijašević sought to intimidate the trial judge, the representative of the applicant and representatives of international organisations present at the hearing. He appeared before the Court wearing his personal weapon, which is not permitted when appearing as a witness. He made certain inflammatory statements to the Court, including "I would crush anyone who would deny the authority of the (Republika Srpska) police." He also stated that he would take certain punitive actions against the doctors who wrote the medical report of the applicant's injuries sustained during his arrest and detention, saying that they had exaggerated them. The judge did not reprimand Mr. Milijašević for his actions. Mr. Milijašević admitted during his evidence that he knew the applicant. The applicant's representative requested that the Court schedule a further hearing for the purpose of hearing the evidence of Ms. Mlađa Studić.

48. In a letter to the Court dated 26 November 1996, Mr. Ivošević, one of the applicant's representatives, withdrew the request for the Court to hear further evidence, stating that he considered the evidence heard by the Court on 22 November 1996 to be sufficient. He also complained of the fact that the Court had allowed an armed person to appear before it and act as he had. He also expressed his hope that the further proceedings in the case would be conducted in accordance with the laws of the Republika Srpska.

49. On 3 February 1997 the Petty Offences Court found the applicant guilty of failing to comply with the request of a police officer, acting as an authorised official, to produce an identity card to identify himself and of refusing to accompany a police officer to a police station for that purpose, as

prescribed by Article 2(5) of the Law on Public Order (see paragraph 72 below). In accordance with Article 7(1)(5) of the same Law, the applicant was sentenced to twenty days' imprisonment and, in accordance with Article 130 of the Law on Petty Offences, was ordered to pay the costs of the proceedings, which amounted to YUD 120 (at the time 1 Dinar was worth approximately 0.30 German Marks ("DEM"), so that YUD 120 was approximately DEM 36).

50. The judgment of the Petty Offences Court contains a detailed account of the evidence and submissions as heard by it. The Court stated that it could not rely on the medical report from the health centre in Prnjavor concerning the examination of the applicant on 14 September 1996, as that report had not been verified by the health centre, as it was not important for the determination of the matter by the Court and because it had not been issued for the specific purposes of the present proceedings.

51. The Court essentially accepted the evidence as presented by Mr. Milijašević, finding that the applicant had been stopped by him at approximately 5.20am on the morning of 14 September 1996, while it was still dark, for the purposes of establishing his identity, which the applicant refused to do. The Court could not find that Mr. Milijašević had used excessive force in detaining the applicant and that he was required to restrain the applicant as he repeatedly sought to get away from him. The Court found that the arrogant behaviour of the applicant towards the authorities of the Republika Srpska represented an aggravating circumstance in terms of sentencing.

52. The decision allowed for an appeal to be made within eight days of receipt to the Regional Court in Banja Luka. On 17 February 1997 the applicant received a copy of this decision from the OSCE Field Office in Doboj. On 21 February 1997 he lodged an appeal to the Regional Court in Banja Luka, which was received by that Court on 27 February 1997. In his appeal the applicant contested the findings of fact made by the Petty Offences Court and its indulgence of the behaviour of Mr. Milijašević. He also complained of the failure of the Petty Offences Court to hear the evidence of Ms. Studić. In conclusion, the applicant contested both the findings of the Petty Offences Court on the evidence and its conclusions based on those findings.

53. One of the applicant's representatives, Mr. Ivošević, also appealed to the Regional Court in Banja Luka against the decision of the Court of 3 February 1997. This appeal was lodged without the knowledge of the applicant. In its decision of 31 March 1997 the Regional Court, sitting with three members, upheld the findings of fact made by the Court. It however replaced the penalty of imprisonment imposed upon the applicant with a fine of YUD 200 (approximately DEM 61 at the exchange rate at the time), payable within fifteen days of the receipt of the decision. Failure to pay within this time limit would lead to the reimposition of the penalty of imprisonment. The Regional Court found that the Court had correctly established the relevant facts and had given clear and convincing reasons for its decision.

54. The applicant received the decision of the Regional Court on 30 June 1997. On the same day he lodged a request to the Republic Public Prosecutor to initiate proceedings before the Supreme Court of the Republika Srpska for the "protection of legality", due to the failure of the Regional Court to accept his appeal. This is an extraordinary remedy.

55. On 23 July 1997 the Petty Offences Court issued a decision replacing the sentence imposed by the Regional Court with a sentence of 20 days imprisonment, as the applicant had not paid the fine of YUD 200 within the relevant time-limit. The length of imprisonment was on the basis that under Article 27 of the Law on Offences, one day of imprisonment counted as YUD 10 at the time. The part of the sentence relating to the payment of costs (YUD 120) remained unchanged. The decision allowed for an appeal to be lodged through the Petty Offences Court within eight days of receipt of the decision. The Petty Offences Court is responsible for forwarding the appeal to the Regional Court. Any such appeal was to be decided by the Regional Court. The applicant was served with this decision on 2 August 1997. On 7 August 1997 he lodged an appeal against it, which was stamped as received by the Petty Offences Court on the same day. There has been no decision on this appeal.

56. On 12 September 1997 the applicant was informed by the office of the Republic Public Prosecutor that, after its investigation of the matter, it had not found any basis for intervening and

accordingly would not do so.

57. On 3 November 1997 the applicant was summoned to appear before the Petty Offences Court on 18 November 1997 for the purposes of imprisoning him. On 8 November 1997 he received this summons and appealed against it on the same day. On 13 November 1997 the Petty Offences Court purported to reject the applicant's appeal of 8 November 1997 on the ground that it was out of time. From the Court's decision it appears that it considered the applicant's appeal to be against its decision of 23 July 1997 (see paragraph 55 above).

58. On 17 November 1997 the applicant went to the office of the Court in Prnjavor, fearing that he would be imprisoned if he did not pay the fine and costs of the proceedings (YUD 200 and 120, respectively). He did so and produced evidence of such payment to the Court.

B. Written evidence

59. The Chamber has received two reports of the OSCE and a report of the UNIPTF in Prnjavor. These reports are summarised briefly below.

1. OSCE reports

60. A report dated 14 September 1996 written by Mr. Igor Lapsha, a Human Rights Officer with the OSCE at the time, commences by giving an account of the arrest and detention of the applicant on that day. It gives the time of the arrest as "around 6.15 a.m.". In a document entitled "Weekly Report", dated 10 October 1996, from the OSCE's Field Office in Prnjavor to Ms. Larisa Gabriel, Head of the Human Rights Section at the OSCE, Mr. Lapsha recounts a conversation with the chief of the local police where they discussed the arrest of the applicant. He stated that he had informed the chief that various violations of the applicant's rights had occurred and that he would continue to monitor the case.

61. A further report dated 23 November 1996 was prepared by Mr. Tim Waters, OSCE Human Rights Officer in Doboj. This report contains a detailed account of the trial of the applicant before the Court on 22 November 1996. The report states that the evidence revealed serious inconsistencies in the account of Mr. Milijašević. It states that he acted in a threatening manner to both the judge and representative of the applicant and also towards an interpreter employed by the United Nations. The report also states that the presiding judge, Zdravko Bunić, allowed himself to be intimidated by Mr. Milijašević and interrupted the applicant on a number of occasions while he was giving his evidence. It concludes that the charges against the applicant were "trumped up" and that the evidence did not support a conviction.

2. UNIPTF Reports

62. A report of the UNIPTF, prepared by Prnjavor UNIPTF Station Commander Jesper Haaning and dated 14 September 1996, contains details of the arrest of the applicant and the subsequent events. The report states that the author met the applicant personally in the offices of the OSCE in Prnjavor at 9.30 a.m. on 14 September 1996. The author states that Mr. Odobašić appeared emotionally touched and wept periodically. It also stated that his left ear was severely swollen and that his left cheek bore a scratch mark. His shirt was torn and his upper body displayed bruising. The report also refers to an interview between the author of the report and Ms. Mlađa Studić, a witness to the arrest of the applicant. In this interview she reportedly stated that she saw Mr. Milijašević harass the applicant while hitting him and kicking him.

63. A further report dated 20 September 1996 by Station Commander Haaning contains details of the UNIPTF investigation into the arrest and detention of the applicant. UNIPTF had interviewed certain witnesses, including Mr. Debeljak and another person who had seen the arrest of the applicant. The latter witness had not seen any events additional to those witnessed by Mr. Debeljak. The report also contains details of the weather report for that day as supplied by forces of the British Army stationed in the area. This report states that first light on 14 September 1996 was at 6 a.m. and that the weather was clear.

C. Oral testimony

64. At the public hearing on the admissibility and merits of the application (see paragraph 25 above) the Chamber heard evidence from Mr. Goran Debeljak, who appeared before the Chamber as a witness. His evidence may be summarised as follows.

65. Mr. Debeljak, who owns a butcher shop on the street on which the arrest of the applicant took place, was working in his shop in the morning of 14 September 1996. He had commenced work at approximately 5.30 a.m. that morning. He could not recall the time the events took place. He saw the applicant, as he does each morning. He also noticed the applicant engaged in a discussion with Mr. Milijašević. He did not have a clear unobstructed view, as part of his shop obscured his view. His visibility was not reduced by lack of light, as it was daylight at the time.

66. Witness Debeljak thought that Mr. Milijašević perhaps did not know the applicant and accordingly had requested his identification papers. He heard the applicant call his name and ask him to telephone his brother. He noticed the applicant trying to enter his shop, but failing to do so as he was being restrained by Mr. Milijašević. In order to try and resolve what he thought was a misunderstanding he motioned to Mr. Miljašević to enter into his shop. Mr. Miljašević did so and upon being informed by the witness of the identity of the applicant replied "Yes, I know". Mr. Miljašević was inside the witness' shop for a short period, approximately twenty seconds. While Mr. Milijašević was inside the witness' shop the witness could not see the applicant but saw him outside again as soon as Mr. Milijašević went outside again.

67. The witness saw that Mr. Miljašević then spoke into his two-way radio. A short time later some other police officers arrived and took the applicant away. The witness did not see Mr. Milijašević kick or treat the applicant roughly. He did see him being grabbed by Mr. Miljašević. The witness stated that he could not see both persons at all times during the incident. Mr. Miljašević was wearing a police uniform and driving a private car (i.e it did not bear any obvious markings indicating that it was an official police car).

D. Relevant legislation

1. Law on Identity Cards

68. The Law on Identity Cards (Official Gazette of the Republika Srpska – hereinafter "OG RS" – no. 14/92, as amended, regulates the question of identity cards. Article 9 states as follows:

> "A person who is obliged to possess an identity card is obliged to carry it and to produce it upon the request of an official authorised to check identity."

69. Article 18 states as follows:

> "A fine of YUD 9,000 or up to 30 days imprisonment will be imposed upon a person, i.e. a citizen, if:
> …
>
> 3) he refuses to produce an identity card at the request of an official person authorised to check identity (Article 9).
> …"

2. The Law on Internal Affairs

70. The Law on Internal Affairs which was in force at the time of the arrest and conviction of the applicant is contained in OG RS no. 6/94. Article 41 of this law, as in force at the relevant time, allowed authorised officials to check the identity of persons when it is necessary to do so in order to carry out their tasks. It also authorised such officials to detain persons in certain circumstances, including if they refused to provide identification upon request.

71. Article 50 allows the use of force by official persons in certain circumstances, including:

"... when it is necessary in order to protect themselves or another person ..., in order to suppress resistance by a person or persons who are violating public order and peace, or of persons who are to be detained or are being detained or otherwise deprived of their liberty in order to restore public order and peace or in order to prevent persons who are to be detained or are being detained or otherwise deprived of their liberty from escaping if there is a suspicion that they may try to escape."

3. The Law on Public Order and Peace

72. Article 2 paragraph 5 of the Law on Public Order and Peace (Official Gazette of the Socialist Republic of Bosnia and Herzegovina no. 42/90), which was in force at the relevant time, states that it is an offence to refuse a request of an official person to accompany him or her to a public security station. This law has subsequently been replaced by another law of the same name (published in OG RS no. 10/98).

4. The Law on Petty Offences

73. The Law on Petty Offences (OG RS no. 12/94) regulates in detail the procedures to be followed in proceedings relating to petty offences. The relevant provisions are summarised as follows. Under Article 27 paragraph 1, if a person does not pay a fine of below YUD 300 within the prescribed time-limit, the fine shall be transformed into a term of imprisonment with one day counting for YUD 10. Article 27 paragraph 2 states that if the person pays the original fine at any time during the enforcement proceedings those proceedings shall be terminated.

V. COMPLAINTS

74. In his first complaint to the Ombudsperson, registered at that office under number (B)72/96, the applicant complained of violations of his following rights as protected by the Agreement:

(i) Article 3 of the Convention (right to freedom from torture and inhuman and degrading treatment and punishment);
(ii) Article 5 of the Convention (right to liberty and security of person);
(iii) Article 8 of the Convention (right to respect for, *inter alia*, private and family life);
(iv) Article 14 of the Convention (right to freedom from discrimination in respect of enjoyment of protected rights); and
(v) Article 2 of Protocol No. 4 to the Convention (freedom of movement).

75. In his second complaint to the Ombudsperson, registered at that office under number (B)227/97, the applicant complained of a violation of his right to a fair trial as protected by Article 6 of the Convention.

VI. FINAL SUBMISSIONS OF THE PARTIES

A. The respondent Party

76. In its written observations of 13 April 1999 the Agent of the respondent Party contested the admissibility of the applications to the Ombudsperson, on the grounds that the domestic proceedings against him were still pending when they were lodged.

77. The Agent of the respondent Party denies that the alleged ill-treatment of the applicant while detained by the police in Prnjavor was racist, on the ground that the applicant is not of a different race than a Serb or Croat. In addition, the expression "Balija" and "Turk" are not indications of discrimination of a racist nature against the applicant. In fact, the word "Balija" is used to describe a capricious or lazy person and is not meant to refer specifically to Bosniaks.

78. The applicant could have initiated criminal proceedings against the arresting officer for illegal

arrest. Regarding the injuries suffered by the applicant, it would have been open to him to initiate private proceedings against the arresting officer. For the type of injuries suffered by the applicant, the law provides for the injured person to initiate proceedings, as opposed to cases involving more serious injuries where criminal proceedings are initiated *ex officio*. The courts have the power to award compensation in the event that they find a criminal act has been committed by a person acting in an official capacity.

79. The respondent Party claims that as the applicant has not initiated proceedings against the arresting officer, he cannot be considered to have exhausted the domestic remedies available to him and therefore the application should be declared inadmissible.

80. The respondent Party also contests the recommendation by the Ombudsperson that the applicant be paid compensation, as the domestic remedies available to the applicant had not been exhausted and in any event Article XI(1)(b) of the Agreement only the Chamber has the power to award compensation and other relief to applicants.

81. At the public hearing, the Agent of the respondent Party raised a further argument concerning the admissibility of the application, stating that it was inadmissible under Article VIII(2) of the Agreement as the proceedings before the Chamber had only been initiated nineteen months after the publication of the first Report of Ombudsperson (under reference (B)72/96 – see paragraphs 5-7 above).

82. On the merits of the case, the Agent also contested that there had been any violation of the applicant's rights. He claimed that the incident arose out of the applicant's refusal to show his identification to Mr. Milijašević and his general attitude and behaviour during the incident.

83. The Agent stated that if the Chamber accepted the findings of the Ombudsperson with regard to Articles 3 and 5 of the Convention, it should bear in mind the behaviour of the applicant. He also cast doubt on the relevance of the medical certificate issued by the health centre in Prnjavor on the day of the applicant's arrest (see paragraph 40 above). He based these doubts on the fact that Mr. Milijašević alleged during the domestic proceedings against the applicant that the medical report had exaggerated the applicant's injuries for political reasons.

B. The applicant

84. The applicant maintains his complaints and previous submissions to the Chamber. He agrees in essence with the findings of fact that the Ombudsperson made in her two Reports on the matter. He contested the evidence given by witness Debeljak at the public hearing in the case, claiming that the witness saw more than he stated at that hearing. He also stated that the lawyer appointed to defend him during the proceedings before the Court was not appointed officially but rather by the OSCE. He also stated that he had known Mr. Milijašević very well for a number of years prior to 14 September 1996 and gave details of numerous professional dealings between himself and Mr. Milijašević and displayed a detailed knowledge of the background and personal circumstances of Mr. Milijašević.

VII. OPINION OF THE CHAMBER

A. Admissibility

85. Before considering the merits of the case the Chamber must decide whether to accept it, taking into account the admissibility criteria set out in Article VIII(2) of the Agreement.

1. The six-month rule

86. Article VIII(2) of the Agreement requires the Chamber, when deciding upon the admissibility of an application, to take into account, *inter alia*, whether the application was filed with the Human Rights Commission within six months from the date when the final decision was taken in the matter at national level. The respondent Party objected to the admissibility of the application under this

provision, stating that the proceedings were initiated before the Chamber nineteen months after the adoption of the first Report in the matter by the Ombudsperson (under reference (B)72/96; see paragraphs 5-7 above).

87. The Chamber notes that the six-month time-limit refers to the submission of an application to the Human Rights Commission. It does not set down any time-limit for the initiation of proceedings before the Chamber by the Ombudsperson. Accordingly the rule does not apply in the present case and no issue of admissibility arises under this head.

2. Exhaustion of domestic remedies

88. According to Article VIII(2)(a), the Chamber must consider whether effective remedies exist and whether the applicant has demonstrated that they have been exhausted.

89. The respondent Party claimed that the applicant had not exhausted the domestic remedies available to him. In particular the applicant had not initiated private criminal proceedings against Mr. Milijašević for compensation for illegal arrest and the injuries caused to him. The Chamber has previously considered a similar argument in a case concerning arrest and detention (case no. CH/97/45, *Hermas*, decision on admissibility and merits delivered on 18 February 1998, paragraphs 22-24, Decisions and Reports 1998). In that case the Chamber found that an argument that an applicant complaining of illegal arrest and detention could have initiated proceedings for compensation was essentially a statement that domestic law provides for an enforceable right to compensation for detention in violation of Article 5 of the Convention. Such an argument therefore is essentially one that there has been no violation of Article 5 paragraph 5 of the Convention, which provides for an enforceable right to compensation at the domestic level in cases of detention in violation of Article 5. This argument does not therefore relate to the question of whether the applicant has exhausted the domestic remedies available to him.

90. Regarding the other remedies available to the applicant, the Chamber notes that the applicant and his lawyer appealed against his conviction by the Petty Offences Court. In addition, he has sought to avail himself of various other remedies at every stage of the domestic proceedings, such as lodging an appeal for protection of legality to the Republic Public Prosecutor. The Chamber therefore considers it established that the applicant has exhausted the remedies available to him.

91. The Chamber does not consider that any of the other grounds for declaring the case inadmissible have been established. Accordingly, the case is to be declared admissible.

B. Merits

92. Under Article XI of the Agreement the Chamber must next address the question 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 and the other treaties listed in the Appendix to the Agreement.

93. Under Article II(2) of the Agreement the Chamber has competence to consider (a) alleged or apparent violations of human rights as provided in the Convention and its Protocols and (b) alleged or apparent discrimination arising in the enjoyment of the rights and freedoms provided for in the 16 international agreements listed in the Appendix to the Agreement (including the Convention), where such a violation is alleged to or appears to have been committed by the Parties, including by any organ or official of the Parties, Cantons or Municipalities or any individual acting under the authority of such an official or organ.

1. Article II(2)(a) of the Agreement

(a) Article 3 of the Convention

94. Article 3 of the Convention provides as follows:

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

95. The applicant claimed that he had been a victim of a violation of his rights as guaranteed under this provision.

96. The Ombudsperson found that the arrest and detention of the applicant constituted "inhuman and degrading treatment and punishment" and therefore violated the applicant's rights as protected by Article 3 of the Convention.

97. The respondent Party denied that the applicant's rights as guaranteed by this provision had been violated. It claimed that the arrest and detention of the applicant had been lawful and arose out of his failure to produce his identity card when requested to do so by Mr. Milijašević.

98. The Chamber has established that the applicant was physically and verbally abused by Mr. Milijašević in public for a number of minutes. This took place in his home town, where he is well known, including by Mr. Milijašević. During the arrest he was treated in a very abusive manner and treated with open and flagrant contempt by a law enforcement official of the Republika Srpska. The maltreatment included the making of derogatory remarks based on his national origin, such as being called a "Balija", "Alija" and "Turk". When he was finally taken to the Prnjavor police station, he was further humiliated and maltreated. He was taken to a room where he was laughed at by a number of police officers, while being assaulted by Mr. Milijašević. None of these police officers intervened on his behalf during these events. On the contrary they showed their approval of Mr. Miljašević's actions by laughing at his treatment. He was forced to sit with a kitten on his head, and told for whom he should vote in that days' elections.

99. A person in a situation such as that in which the applicant found himself would not only have suffered trauma as a result of the actual treatment but would also have been very afraid of the possibility of what else could have happened to him. To be detained in an unofficial room in a police station, while being verbally and physically assaulted by a police officer who is being cheered on by a number of his fellow officers, all acting with apparent impunity, would give rise to extreme concern for one's personal safety. This fear and humiliation is in addition to the actual physical and verbal maltreatment he suffered.

100. Such treatment as that suffered by the applicant during his arrest and detention could not be justified in any circumstances. In a case such as the present, where the applicant had not committed any wrongdoing at all and was merely walking to a shop, the treatment is all the more inhuman and degrading. The medical report issued by the health centre in Prnjavor shows that the applicant suffered bruising and scratches (see paragraph 40 above). Persons who saw the applicant on the morning of the attack state that he was in an extremely distressed state (see paragraphs 41 and 62 above). The Chamber finds the fact that Mr. Milijašević commenced beating the applicant in the region of his chest after the applicant had informed him that he had a heart condition as a particularly serious and offensive aspect of the treatment suffered by the applicant.

101. As the Chamber has noted before, Article 3 enshrines one of the fundamental values of a democratic society (see the above-mentioned *Hermas* decision, paragraph 28). In the same decision the Chamber also noted that in respect of a person deprived of his liberty, any recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of Article 3. In the Chamber's view the treatment the applicant suffered is all the more serious as he was arrested without any valid reason (see paragraph 110 below).

102. In conclusion there has been a violation of the applicant's right not to be subjected to inhuman and degrading treatment as guaranteed by Article 3 of the Convention.

(b) Article 5 of the Convention

103. Article 5 of the Convention provides, in relevant part, as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> (a) the lawful detention of a person after conviction by a competent court;
>
> (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfillment of any obligations prescribed by law;
>
> (c) the lawful arrest of any detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
>
> (d) the detention of a minor by lawful order for the purposes of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
>
> (e) the lawful detention of persons for the prevention of the spreading of infectious disease, of persons of unsound mind, alcoholics or drug addicts or vagrants;
>
> (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.
>
> 2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.
>
> (...)
>
> 5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

(i) *Article 5 paragraph 1 – lawfulness of the applicant's detention*

104. The applicant claimed that his detention had been in violation of Article 5 of the Convention.

105. The Ombudsperson, in her Report issued on 4 March 1997 under reference (B)72/96, found that the applicant's detention had violated Article 5 paragraph 1 of the Convention.

106. The respondent Party claimed that the applicant's detention was lawful as Mr. Milijašević was justified in requesting him to produce his identity card. The applicant's refusal to do so justified his being detained and brought to Prnjavor police station.

107. The applicant was arrested and detained ostensibly as a result of his failure to produce identification pursuant to a request of an official person authorised to check identity.

108. Article 5 of the Convention guarantees in essence the right to liberty and security of person. Article 5 paragraph 1 sets out in detail the permitted circumstances in which a person may be deprived of his liberty. One of these is to secure an obligation imposed by law, as contained in Article 5 paragraph 1(b). The law of the Republika Srpska imposes an obligation to present identification to authorised persons on request.

109. The Chamber has established that the applicant and Mr. Milijašević had known each other for a number of years (see paragraphs 33, 35 and 66 above). It has also found (at paragraph 35 above) that the applicant actually offered to show his identification card to Mr. Milijašević, who refused to look at it. Therefore the justification put forward by the respondent Party for the arrest of the

applicant is unacceptable.

110. The Chamber considers it established that the sole reason for the arrest and detention of the applicant was to harass and intimidate him because of his religious and ethnic origin. Therefore the arrest and detention of the applicant was in violation of Article 5(1) of the Convention.

(ii) *Article 5 paragraphs 2 and 5*

111. The applicant claimed that he had been a victim of a violation of his rights as guaranteed by Articles 5 paragraphs 2 and 5 of the Convention.

112. The respondent Party claimed that the applicant's arrest and detention was lawful and therefore denied that there had been any violation of Article 5 in general.

113. In her Report under reference (B)72/96, the Ombudsperson dismissed the applicant's claim that he had not been informed of the reasons for his arrest, as required by Article 5 paragraph 2 of the Convention.

114. The Chamber, in view of its findings under Article 5 paragraph 1 of the Convention, does not consider it necessary to examine the case under Article 5 paragraph 2.

115. Article 5 paragraph 5 requires that national legal systems provide for an enforceable right of compensation in cases of arrest or detention contrary to Article 5. However, the Chamber does not consider it necessary to examine the case under Article 5 paragraph 5.

(c) Article 6 of the Convention

116. Article 6 paragraph 1 of the Convention reads, in relevant parts, as follows:

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

117. The applicant claimed that he had been denied a fair trial and that therefore he had suffered a violation of his rights as guaranteed by Article 6 of the Convention.

118. In her report on the matter under reference (B) 227/97 dated 29 September 1998 the Ombudsperson found that the applicant had been denied the right to a fair trial as guaranteed by Article 6 paragraphs 1 and 3 of the Convention.

119. The respondent Party did not submit any observations under this provision.

120. The Chamber has established that during the trial of the applicant before the Petty Offences Court, Mr. Milijašević was armed and acted in a threatening manner towards the representative of the applicant and other persons present at the trial and made certain inflammatory statements. This conduct was tolerated by the presiding judge. In its decision of 3 February 1997, the Petty Offences Court essentially accepted the evidence of Mr. Milijašević and convicted the applicant on the basis of that evidence. The decision of the Regional Court of 31 March 1997 on the applicant's appeal accepted the findings of the Petty Offences Court.

121. The Chamber considers that the threatening and intimidating behaviour of Mr. Milijašević during the hearing before the Petty Offences Court on 22 November 1996 attended by the applicant and his representatives before Judge Bunić created conditions that deprived the proceedings of the appearance of fairness. In addition, certain other elements of the proceedings, including the acceptance by Judge Bunić of the conduct of Mr. Milijašević before the Petty Offences Court and his assessment of the evidence in the case, put Judge Bunić's impartiality into question.

122. Accordingly, the Chamber finds that the principle of a fair hearing was not adhered to in the applicant's trial and that therefore there has been a violation of the applicant's right to a fair trial as

guaranteed by Article 6 paragraph 1 of the Convention.

(d) Article 8 of the Convention and Article 2 of Protocol No. 4 to the Convention

123. In his complaint to the Ombudsperson of 28 October 1996, the applicant complained of violations of his rights as guaranteed by Article 8 of the Convention and Article 2 of Protocol No. 4 to the Convention (see paragraph 74 above).

124. In her report adopted on 4 March 1997 in application No. (B)72/96 the Ombudsperson found that in view of her other findings in that report, no separate issue arose under these provisions.

125. The respondent Party did not submit any observations under these provisions.

126. In view of its other findings relating to the violations of the Agreement suffered by the applicant, the Chamber does not consider it necessary to examine the case under these provisions.

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

127. The Chamber has previously held on a number of occasions that the prohibition of discrimination is a central objective of the General Framework Agreement for Peace in Bosnia and Herzegovina to which the Chamber must attach particular importance (see, *inter alia*, case no. CH/98/756, *Đ.M.*, decision on admissibility and merits delivered on 14 May 1999, paragraph 68, Decisions January-July 1999). Article II(2)(b) affords to it the jurisdiction to consider alleged or apparent discrimination on any ground in the enjoyment of any of the rights and freedoms provided for in the 16 international agreements listed in the Appendix to the Agreement.

128. The Chamber notes that it has already found violations of the rights of the applicant as protected by Articles 3, 5 and 6 of the Convention. It must now consider whether he has suffered discrimination in the enjoyment of those rights.

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

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

131. The Chamber must first consider whether the applicant was treated differently from others in the same or relevantly similar situations. The Chamber has found (at paragraph 110 above) that the applicant was arrested and detained by Mr. Milijašević solely for the purpose of harassing and intimidating him as a member of the Bosniak minority in Prnjavor. This therefore constitutes differential treatment on the ground of national origin. This treatment could not, in any circumstances, be justified as pursuing a legitimate aim.

132. In conclusion, the arrest, detention and conviction of the applicant was designed to harass and intimidate the applicant, as a member of a minority in Prnjavor. The applicant has therefore been discriminated against in the enjoyment of his right not to be subjected to inhuman and degrading treatment as guaranteed by Article 3 of the Convention, in the enjoyment of his right to liberty and security of person as guaranteed by Article 5 of the Convention and in the enjoyment of his right to a fair trial in the determination of any criminal charge against him as guaranteed by Article 6 of the Convention.

133. In view of the serious nature of this case, the Chamber has also considered whether the

applicant suffered discrimination in the enjoyment of his rights under the International Convention on the Elimination of All Forms of Racial Discrimination.

134. Article 5(b) of this Convention prohibits racial discrimination in the enjoyment of the right to "security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual, group or institution".

135. The Chamber has found that the applicant was subjected to physical maltreatment by Mr. Milijašević which resulted in physical injuries and constituted inhuman and degrading treatment. It has also found that this treatment was the result of discrimination on the ground of his national origin. The Chamber therefore also finds it established that the applicant has been discriminated against in the enjoyment of his rights as guaranteed by Article 5(b) of the International Convention on the Elimination of All Forms of Racial Discrimination.

VIII. REMEDIES

136. Under Article XI(1)(b) of the Agreement the Chamber must 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 Chamber shall consider issuing orders to cease and desist, monetary relief as well as provisional measures.

137. The applicant did not make any specific claim for compensation. Instead, he said that he wished to leave it to the Chamber to decide what is the most appropriate way of remedying the violations of his rights that he suffered.

138. The Chamber notes that it has found that the applicant has suffered violations of his rights not to be subjected to inhuman and degrading treatment, to liberty and security of person and to a fair trial in the determination of any criminal charge against him. It has also found that he was discriminated against in the enjoyment of those rights and in the enjoyment of his right of protection by the State against violence inflicted by Government officials. The Chamber has found that these violations were essentially caused by one person, Mr. Braco Milijašević. The Chamber notes that he is no longer a serving police officer. It has been informed that Mr. Milijašević has retired and now runs his own business.

139. The Chamber has not been informed of the reasons for Mr. Milijašević's retirement from the police service of the Republika Srpska while he is in his early thirties and cannot speculate as to the reasons therefor. It is sufficient for the Chamber to note that if Mr. Milijašević were still a serving police officer, it would have ordered the respondent Party to remove him from such a position of trust and responsibility in the community.

140. In view of the fact that Mr. Miljašević seriously violated Mr. Odobašić's human rights, and thereby exceeded his authority and abused his position, the Chamber finds it appropriate that criminal proceedings should be initiated against him. It considers that such acts, which not only adversely affected the applicant but also the police service of the Republika Srpska and indeed the Republika Srpska as a whole, should not go unpunished.

141. The Chamber therefore considers it necessary to order the respondent Party to initiate, in accordance with its internal legal procedures, an investigation into the conduct of Mr. Milijašević in relation to the arrest and detention of the applicant, with a view to initiating criminal proceedings against him in accordance with the law of the Republika Srpska.

142. The Chamber notes that this decision in itself, taken after the proceedings before the Chamber, will in large part constitute recognition of the wrongs done to the applicant. Nevertheless, the Chamber considers it appropriate to award the applicant a monetary sum as compensation for the appalling treatment he suffered. It considers an appropriate sum to be KM 3,500 and will accordingly order the Republika Srpska to pay this sum to the applicant within three months.

143. Additionally the Chamber awards 4% (four per cent) interest as of the date of expiry of the three-month period set for the implementation of the present decision on the sum awarded in paragraph 142 above.

IX. CONCLUSION

144. For the above reasons, the Chamber decides,

1. unanimously, to declare the application admissible;

2. unanimously, that the treatment to which the applicant was subjected by the police in Prnjavor while arrested and detained on 14 September 1996 constituted inhuman and degrading treatment and thus violated the applicant's rights under Article 3 of the European Convention on Human Rights, the Republika Srpska thereby being in breach of Article I of the Human Rights Agreement;

3. unanimously, that the arrest and detention of the applicant by the police in Prnjavor on 14 September 1996 constituted a violation of the right of the applicant to liberty and security of person as guaranteed by Article 5 of the Convention, the Republika Srpska thereby being in breach of Article I of the Agreement;

4. unanimously, that the conduct of the proceedings against the applicant, including the conduct of the hearing before the Petty Offences Court in Prnjavor on 22 November 1996, constituted a violation of the right of the applicant to a fair trial in the determination of a criminal charge against him as guaranteed by Article 6 of the Convention, the Republika Srpska thereby being in breach of Article I of the Agreement;

5. unanimously, that the applicant has been discriminated against in the enjoyment of his rights as guaranteed by Articles 3, 5 and 6 of the Convention, the Republika Srpska thereby being in breach of Article I of the Agreement;

6. unanimously, that the applicant has been discriminated against in the enjoyment of his right to security of person and to protection by the State against violence and bodily harm inflicted by Government officials, as guaranteed by Article 5(b) of the International Convention on the Elimination of All Forms of Racial Discrimination, the Republika Srpska thereby being in breach of Article I of the Agreement;

7. unanimously, to order the respondent Party to carry out an investigation into the conduct of Mr. Braco Milijašević on 14 September 1996, with a view to initiating criminal proceedings against him in accordance with the law of the Republika Srpska;

8. by 5 votes to 1, to order the respondent Party to pay to the applicant, within three months from the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure, the sum of 3,500 (three thousand five hundred) Convertible Marks (*Konvertibilnih Maraka*) by way of compensation for moral damage suffered;

9. by 5 votes to 1, that simple interest at an annual rate of 4% (four per cent) will be payable on the sum awarded in conclusion number 8 above from the expiry of the three-month period set for such payment until the date of final settlement of all sums due to the applicant under this decision; and

10. unanimously, to order the Republika Srpska to report to it within three months 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 steps taken by it to comply with the above orders.

(signed)
Anders MÅNSSON
Registrar of the Chamber

(signed)
Giovanni GRASSO
President of the Second Panel

ANNEX

According to Rule 61 of the Chamber's Rules of Procedure, this Annex contains the partly dissenting opinion of Mr. Vitomir Popović.

PARTLY DISSENTING OPINION OF MR. VITOMIR POPOVIĆ

In the decision of the Human Rights Chamber no. CH/98/1786, issued by Panel II, I voted against the conclusions in paragraph 144 sub-paragraphs 8 and 9 for the following reasons:

1. In the disputed paragraphs, by 5 votes against 1 (my vote), it has been decided to order the respondent Party to pay to the applicant, within three months from the date on which the decision becomes final and binding, the amount of 3,500 Convertible Marks, as compensation for his mental suffering, with 4% interest on this amount from the date of expiry of the three-month time-limit until the date of final settlement of all sums due to the applicant.

Article VIII2(a) of the Human Rights Agreement prescribes that a decision whether to accept an application has to take into account the following criteria: "whether effective remedies exist, and the applicant has demonstrated that they have been exhausted…"

Article I of the aforementioned Agreement prescribes that: "The Parties shall ensure to all persons within their jurisdiction the highest level of internationally recognized human rights and fundamental freedoms…".

In the concrete case, the fact that the applicant did not institute any proceedings for compensation before competent bodies and courts of the Republika Srpska is not disputed, i.e. he did not, in accordance with Article I of the Agreement use any legal remedy at his disposal under the jurisdiction of the Republika Srpska. However, in order to give rise to a right to claim compensation for damage, in accordance with the applicable legislation of the Republika Srpska, the procedure against him must have been terminated or he must have been acquitted of the offence, and prove the existence of damage.

On the contrary, the applicant was found guilty of having committed the offence of failure to show his identification documents pursuant to an official request, and refusal to follow the police officer to the police station, for which he was sentenced to 20 days in prison and payment of the proceedings costs in the amount of 120 Dinars. The prison sentence was, according to his wish, replaced with the pecuniary penalty in the amount of 200 Dinars.

Since this case is about a long-serving judge of the First Instance Court in Prnjavor, who spent the whole period of war (and still lives) in Prnjavor, it is difficult to assume that "as a long-time attorney he was not familiar that he had the obligation to respect the existing legislation of the Republika Srpska and that the unlearned party instituted a procedure for compensation of damage". So, the applicant has failed to use all actions and options for a legal procedure, which is not disputable before this Panel, and enable the respondent Party to, in this way, according to Article I of the Agreement, "ensure the highest possible level of internationally recognized human rights, pursuant to its jurisdiction".

For this reason, the Panel should have declared inadmissible this claim for compensation, i.e. the claim should have been refused as premature for non-exhaustion of all domestic remedies, pursuant to Article VIII2(a) of the Agreement.

2. The applicant is a long-serving judge and his legal obligations are well known to him but, by his refusal to show his identification documents on the day of the elections, when police security measures are usually more strict, and his further refusal to come to the police station, he contributed to possible consequences in a certain manner. The fact of establishing violations of human rights in paragraph 144 sub-paragraphs 2, 3, 4, 5, 6, 7 and 10 represents satisfaction for the applicant, and, because of that, he could not claim a right to compensation.

3. The established rate of compensation, considering his relatively brief detention at a police

station (only a couple of hours), is inappropriately high and contrary to the way this compensation claim is usually established according to the jurisdiction of the Republika Srpska, under Article I of the Agreement.

(signed)
Prof. Dr. Vitomir Popović