DECISION ON ADMISSIBILITY AND MERITS

(Delivered on 7 November 2003)

Cases no. CH/98/377, CH/98/410, CH/98/416, CH/98/417, CH/98/418, CH/98/422, CH/98/427, CH/98/428, CH/98/429, CH/98/431, CH/98/435, CH/98/446, CH/98/447, CH/98/448, CH/98/449, CH/98/472, CH/98/473, CH/98/498, CH/98/584, CH/98/585, CH/98/622, CH/98/626, CH/98/784, CH/98/785, CH/98/1084, CH/98/1092, CH/98/1305, CH/99/1729, CH/99/2025, CH/99/2207, CH/99/2215, CH/99/2682, CH/99/2998, CH/00/4801, CH/00/4832, CH/00/5105, and CH/01/7301

Nenad ĐURKOVIĆ, Avdo HONĐO, S.G., M.G., M.G., B.L., O.I., M.M., Salko HADŽIMURATOVIĆ, B.T., K.T., J.Z., Hamid LJUBOVIĆ, E.M., Fehim ZVIZDIĆ, D.L., B.S., Sead NUHBEGOVIĆ, F.S., V.S., Mirza KAHVIĆ, Ivan ŠIMUNOVIĆ, E.D., B.D., Dragan PREČANICA, R.S., Dragomir VUKAŠINOVIĆ, F.H., M.J., Milena JOVANOVIĆ, Milana VUJISIĆ, Meho ŠUVALIJA, Branko TOŠOVIĆ, Fehima KASALO, Vera JIROTA, E.S., and Meho KAŠIĆ

against

BOSNIA AND HERZEGOVINA
and
THE FEDERATION OF BOSNIA AND HERZEGOVINA
and
THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 8 October 2003 with the following members present:

Ms. Michèle PICARD, President
Mr. Mato TADIĆ, Vice-President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
Mr. Rona AYBAY
Mr. Želimir JUKA
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Giovanni GRASSO
Mr. Miodrag PAJIĆ
Mr. Manfred NOWAK
Mr. Vitomir POPOVIĆ
Mr. Viktor MASENKO-MAVI
Mr. Andrew GROTRIAN

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

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

Adopts the following decision pursuant to Article VIII(2) of the Agreement and Rules 52, 57, and 58 of its Rules of Procedure:

I. INTRODUCTION

1. The applicants are citizens of Bosnia and Herzegovina. Before the dissolution of the Socialist Federal Republic of Yugoslavia (SFRY), they deposited foreign currency with commercial banks in that country. Because of a growing shortage of such currency and other economic problems, the withdrawal of money from these "old" foreign currency savings accounts was progressively restricted by legislation enacted during the 1980s and early 1990s.

2. Following the armed conflict in Bosnia and Herzegovina, the applicants' requests to withdraw money from their foreign currency savings accounts were all rejected, either without stated reasons or with reference to legislation enacted by the SFRY, the Republic of Bosnia and Herzegovina, or the Federation of Bosnia and Herzegovina.

3. Some of the applicants initiated court proceedings to obtain access to their foreign currency savings, but these actions have all been unsuccessful so far. Although at least one applicant has obtained favourable court judgements, none has ultimately succeeded in obtaining money from the banks.

4. According to legislation enacted by the Federation of Bosnia and Herzegovina in 1997 and 1998, in particular the Law on Determination and Settlement of Citizen's Claims in the Privatisation Process (hereinafter "the Citizens' Claims Law"), claims based on the old foreign currency savings accounts were to be resolved in the process of privatisation of socially and publicly owned property. Under the Citizens' Claims Law, the balances of foreign currency savings were to be recorded in a "Unique Citizen's Account" maintained by the Federal Payment Bureau. Instead of paying out the savings, the Bureau issued certificates in a commensurate amount. According to the relevant legal provisions, these certificates can be used in the privatisation process to purchase apartments, municipal business premises, shares of enterprises, or other assets. This procedure was designed to settle Citizen's Claims in a way that would protect the public debt payment system and the banking system from collapse.

5. On 9 June 2000, the Chamber delivered its Decision on Admissibility and Merits in CH/97/48 et al., *Poropat and Others v. Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina*, involving similarly situated applicants. The Chamber decided that, with regard to frozen foreign currency savings accounts, Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina had violated the applicants' rights to peaceful enjoyment of their possessions under Article 1 of Protocol No. 1 to the European Convention on Human Rights ("the Convention"). The Chamber ordered, *inter alia*, that the Federation of Bosnia and Herzegovina should "amend the privatisation program so as to achieve a fair balance between the general interest and the protection of the property rights of the applicants as holders of old foreign currency savings accounts."

6. Between 2 November 2000 and 8 February 2002, the Federation amended various provisions of the Citizens' Claims Law in an effort to comply with the Chamber's order in *Poropat and Others*.

7. During that period, on 8 January 2001, the Constitutional Court of the Federation of Bosnia and Herzegovina determined that Articles 3, 7, 11, and 18 of the Citizens' Claims Law — provisions essential to the scheme of conversion of old foreign currency savings into certificates — were not in accordance with the Constitution of the Federation of Bosnia and Herzegovina. This decision was published in the Official Gazette of the Federation on 9 March 2001.

8. On 11 October 2002, the Chamber delivered its Decision on Admissibility and Merits in CH/97/104 et al., *Todorović and Others against Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina*, also involving similarly situated applicants (case no. CH/97/104 et al., *Todorović and Others*, decision on admissibility and merits delivered 11 October 2002) (hereinafter "*Todorović and Others*"). In *Todorović and Others*, the Chamber decided, *inter alia*, that the state of legal uncertainty resulting from the Federation Constitutional Court's decision, the Federation's continued application of laws that had been declared unconstitutional, the lack of responsive amendments to those laws, and the unavailability of relief in the domestic courts, taken together, created a disproportionate interference with the applicants' property rights and therefore constituted a violation by the Federation of Bosnia and Herzegovina of the applicants' rights to peaceful enjoyment of their possessions under Article 1 of Protocol No. 1 to the Convention. The Chamber also found a violation of Article 1 of Protocol No. 1 to the Convention by Bosnia and Herzegovina, based on the state's general involvement in and responsibility for old foreign currency savings accounts and its failure to take adequate action in this respect. The Chamber ordered, *inter alia*, that, within six months of the date of the decision, the Federation of Bosnia and Herzegovina should enact relevant and binding laws and regulations that clearly address the old foreign currency savings problem in a manner compatible with Article 1 of Protocol No. 1 to the Convention.

9. On 4 July 2003, the Chamber Delivered a Decision on Further Remedies in CH/97/48 et al., *Poropat and Others against Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina*, involving all applicants from the prior *Poropat and Others* and *Todorović and Others* decisions. The Chamber concluded that neither Bosnia and Herzegovina nor the Federation of Bosnia and Herzegovina had taken any relevant steps to comply with the *Todorović and Others* decision and therefore continued to violate the applicants' rights under Article 1 of Protocol No. 1 to the Convention. The Chamber therefore found it appropriate to order further remedies, including, *inter alia*, payment of money to each of the applicants.

10. It appears that the banks have transferred the present applicants' old foreign currency savings to the Unique Citizen's Accounts at the Payment Bureau.

11. The applications raise issues in regard to the applicants' rights to peaceful enjoyment of their possessions under Article 1 of Protocol No. 1 to the Convention and their right to a fair hearing within a reasonable time under Article 6 of the Convention.

II. PROCEEDINGS BEFORE THE CHAMBER

12. The applicants submitted their applications between 25 February 1998 and 19 March 2001. Their applications were registered between 10 April 1998 and 19 March 2001. Two of the applications (case nos. CH/98/1084 and CH/98/1092) were referred to the Chamber by the Human Rights Ombudsperson for Bosnia and Herzegovina on 16 November 1998. The applicant "S.G." serves as the representative for 28 of the present applicants, including himself.[1]

13. On 18 January 2002, the applicants sought provisional measures including, *inter alia*, an order stopping the privatisation of Unionbanka and Ljubljanska Banka, an order annulling the privatisation of Central Profit Banka, an order to liquidate banks that can not meet their liabilities to the applicants, and an order to the respondent Parties to use privatisation proceeds and succession funds to settle the applicants' claims. On 5 February 2002, the Chamber rejected these requests for provisional measures.

14. On 20 February 2003, the Chamber decided to transmit the present applications to Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina for their observations on the admissibility and merits under Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention. On 21 April 2003, the Federation submitted its written observations regarding these cases. These observations were transmitted to the applicants on 25 April 2003.

15. Several individual applicants submitted written responses to the Federation's observations. On 27 February 2003, the Chamber received responsive written observations from the applicant in case no. CH/98/377, Nenad Đurković. On 28 February 2003, the Chamber received responsive written observations from the applicant in case no. CH/98/1092, R.S.. On 4 March 2003, the Chamber received responsive written observations from the applicant in case nos. CH/98/422 and CH/98/447, B.L. and Hamid Ljubović. On 20 March 2003, the Chamber received joint responsive written observations from the applicants in 28 cases, through their representative, S.G.. On 20 March 2003, the Chamber also received responsive written observations from the applicant in case no. CH/98/449, Fehim Zvizdić. On 30 April 2003, the Chamber received responsive written observations from the applicant in case no. CH/98/447, Hamid Ljubović. On 5 May 2003, the Chamber received additional responsive written observations from the applicant in case no. CH/98/449, Fehim Zvizdić. On 7 May 2003, the Chamber received responsive written observations from the applicant in case no. CH/98/498, Sead Nuhbegović. On 14 May 2003, the Chamber received additional responsive written observations from the applicant in case no. CH/98/422, B.L. On 15 May 2003, the Chamber received responsive written observations from the applicant in case no. CH/98/1092, R.S. Each of these submissions was subsequently transmitted to Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina.

16. On 15 May 2003, the Chamber received additional written observations from the Federation of Bosnia and Herzegovina in cases no. CH/98/449 (Fehim Zvizdić), CH/98/1305 (Dragomir Vukašinović), and CH/99/2215 (Milana Vujisić). These observations were transmitted to the applicants on 27 May 2003.

17. On 16 May 2003, the Chamber received a written submission from the applicant S.G. on behalf of twenty-eight of the present applicants. This submission was prepared in response to the observations submitted by the Federation of Bosnia and Herzegovina on 21 April 2003. It was transmitted to Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina on 27 May 2003.

18. On 3 June 2003, the Chamber received additional observations from the applicant in case no. CH/98/449, Fehim Zvizdić. This submission was transmitted to the Federation of Bosnia and Herzegovina on 9 June 2003.

[1] Case nos. CH/98/410, CH/98/416, CH/98/417, CH/98/418, CH/98/427, CH/98/428, CH/98/429, CH/98/431, CH/98/435, CH/98/446, CH/98/448, CH/98/472, CH/98/473, CH/98/498, CH/98/584, CH/98/585, CH/98/622, CH/98/626, CH/98/784, CH/98/785, CH/98/1305, CH/99/1729, CH/99/2025, CH/99/2998, CH/00/4801, CH/00/4832, CH/00/5105, and CH/01/7301.

19. The Chamber received observations from Bosnia and Herzegovina on 13 June 2003. These observations were transmitted to the applicants on 21 July 2003.

20. On 17 June 2003 and 8 July 2003, the Chamber received additional written observations from the applicants in case nos. CH/99/2207, CH/99/2215, and CH/99/2682. These observations were transmitted to the Federation on 14 July 2003. Also on 8 July 2003, the Chamber received additional written observations from the 28 applicants represented by S.G. These observations were signed by F.S., the applicant in case no. CH/98/784, and were transmitted to the respondent Parties on 14 July 2003.

21. On 12 August 2003, the Chamber received written observations from 28 of the present applicants, through their representative, S.G., in response to the 13 June 2003 observations of Bosnia and Herzegovina. These responsive observations were transmitted to Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina on 14 August 2003.

22. The Chamber deliberated on the admissibility and merits of the applications on 6 September 2003 and decided to request additional information from some of the applicants.

23. On 22 September 2003, the Chamber wrote to the applicants in cases CH/98/410, CH/98/429, CH/98/431, CH/98/435, CH/98/472, CH/98/473, CH/99/2998, and CH/01/7301, requesting additional information concerning their old foreign currency savings accounts. On 30 September 2003, the Chamber received a response from these applicants, through their representative S.G.

24. The Chamber again considered the applications on 8 October 2003. On that date, it decided to join the applications and adopted the present decision.

III. FACTS

A. Facts common to all cases

25. The applicants are citizens of Bosnia and Herzegovina. Before the dissolution of the Socialist Federal Republic of Yugoslavia (SFRY), they deposited foreign currency with commercial banks in that country. Each of them opened old foreign currency savings accounts with bank branches located in what is today the Federation of Bosnia and Herzegovina.

26. Because of a growing shortage of such currency and other economic problems, the withdrawal of money from these "old" foreign currency savings accounts was progressively restricted by legislation enacted during the 1980s and early 1990s. Following the armed conflict in Bosnia and Herzegovina, the applicants have been unable to obtain money from their accounts.

27. Some of the applicants initiated court proceedings to obtain access to their foreign currency savings, but these actions have all been unsuccessful so far. Although at least one applicant has obtained favourable court judgements, none has ultimately succeeded in obtaining money from the banks.

28. None of the present applicants appears to have used certificates from his or her old foreign currency savings in the privatisation process.

B. Facts of the individual cases

1. Case no. CH/98/377, Nenad Đurković against Bosnia and Herzegovina

29. The application was submitted to the Chamber on 25 February 1998 and registered on 10 April 1998.

30. The applicant deposited funds in foreign currency savings books in Ljubljanska Banka, Branch Office Sarajevo. For two of these currency savings books, only copies of the first pages were submitted to the Chamber, but the applicant alleges that the amounts on those currency savings books were DEM 5,671,11 and DEM 16,482.35. These amounts were confirmed by a judgement of the First Instance Court I in Sarajevo on 23 October 1995 (see paragraph 31 below). For a third currency savings book, the applicant states that the amounts on deposit were DEM 388.16 and CAD 365.69. Only evidence of the CAD 365.69 has been submitted to the Chamber.

31. On 3 May 1995 the applicant filed a lawsuit before the First Instance Court I in Sarajevo against Ljubljanska Banka. The court issued a judgement on 23 October 1995, recognizing his savings but refusing his request to be paid. The court reasoned that there was no legal basis for payment, citing the Law on Foreign Transactions of the Republic of Bosnia and Herzegovina (OG RBiH no. 10/94, 13/94), a decision of the Governor of the Bosnia and Herzegovina National Bank, and the Decision on Amendments to the Decision on Aims and Objectives of the Foreign Exchange Policy (OG RBiH no. 11/95. 19/95).

2. Case no. CH/98/410, Avdo Honđo against Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina

32. The application was submitted to the Chamber on 5 March 1998 and registered on 10 April 1998.

33. The applicant deposited funds in foreign currency savings books in Jugobanka (now Unionbanka), Ljubljanska Banka, and Privredna Banka (now Central Profit Banka) in Sarajevo. The total amount of his savings in Unionbanka is DEM 8,913.23, USD 11,601.21, and CHF 575.57. The total amount of his savings in Ljubljanska Banka is DEM 59.45, USD 92.45, and CHF 10.87. The total amount of his savings in Central Profit Banka is USD 67.17.

34. The applicant filed suit before the Municipal Court I in Sarajevo in 1998. The applicant alleges that the court has been silent and has not scheduled a single hearing in his case. It appears that the applicant initiated domestic court proceedings on 28 April 1998, but no hearing has been held in his case.

3. Case no. CH/98/416, S.G. against Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina

35. The application was submitted to the Chamber on 5 March 1998 and registered on 10 April 1998. The applicant serves as representative for 28 of the present applicants, including himself.

36. The applicant deposited funds in his foreign currency savings book at Jugobanka Sarajevo (now Unionbanka) until the end of 1991. At the end of 1991, the total amount of his savings was USD 9497.00, SCH 1030.00, and DEM 3423.00.

37. On 28 April 1998, the applicant filed a lawsuit in the Municipal Court I Sarajevo, requesting payment of all his old foreign currency savings, along with a provisional measure. The Municipal Court I Sarajevo refused his requests by its judgement of 26 November 1998. In its reasoning, the court stated that the bank could not be a respondent party because the proceeding was governed by the Law on Determination and Realisation of Citizens' Claims in the Privatisation Process (see paragraph 154 below).

38. On 20 January 1999, the applicant appealed against the judgement of the Municipal Court I. On 20 July 1999, the Cantonal Court in Sarajevo issued a procedural decision declaring the first instance court judgement null and void. The court held that the first instance court erred in finding that the bank was no longer responsible for old foreign currency savings, and it returned the case to the Municipal Court I for further proceedings.

39. On 10 April 2000, the Municipal Court I in Sarajevo issued a judgement, again refusing the applicant's request on the ground that the 1996 Decision on Aims and Objectives of the Foreign

Exchange Policy (OG RBiH no. 13/96) provided that the issue of old foreign currency savings would be resolved in consultation with the international community through a law on public debt or some other method. The court further referred to the Law on Foreign Transactions and concluded that the bank could not be a respondent party because the State had taken over responsibility for citizens' old foreign currency savings. The applicant appealed once again. On 23 October 2000, the Cantonal Court in Sarajevo refused the applicant's appeal and confirmed the first instance court's judgement.

40. The applicant sought review in the Supreme Court of the Federation of Bosnia and Herzegovina. On 14 May 2003, the Supreme Court issued a judgement refusing the appeal as ill-founded and confirming the first instance verdict and reasoning.

4. Case no. CH/98/417, M.G. against Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina

41. The application was submitted to the Chamber on 5 March 1998 and registered on 10 April 1998.

42. Between 4 November 1983 and 3 February 1992, the applicant deposited funds in her foreign currency savings book in the Jugobanka (now Unionbanka) in Sarajevo. On 3 February 1992, the amount of her currency funds was DEM 354.00.

43. The applicant filed a lawsuit before the Municipal Court I in Sarajevo. She alleges that the Court has been silent and has not scheduled any hearing in her case.

5. Case no. CH/98/418, M.G. against Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina

44. The application was submitted to the Chamber on 6 March 1998 and registered on 10 April 1998.

45. Between 9 September 1989 and 4 February 1992, the applicant deposited funds in foreign currency savings books in Jugobanka (now Unionbanka) and Privredna Banka (now Central Profit Banka) in Sarajevo. On 4 February 1992, the amount of her old foreign currency savings was USD 514.56 in Jugobanka and CHF 8565,08 in Central Profit Banka.

46. In 1998, the applicant filed suit in the Municipal Court I in Sarajevo. On 5 May 1999, she received an invitation for a hearing from Municipal Court I in Sarajevo to be held on 29 June 1999. That hearing was postponed indefinitely because the judge was on leave. The applicant alleges the Court remained silent after that and has not scheduled a new hearing in her case.

6. Case no. CH/98/422, B.L. against Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina

47. The application was submitted to the Chamber on 10 March 1998 and registered on 10 April 1998.

48. The applicant deposited funds in foreign currency savings books in Jugobanka (now Unionbanka) and Privredna Banka (now Central Profit Banka) in Sarajevo. The applicant states that the balance of the first account, as of the end of 1992, were USD 44,465.73, and that this amount was forcibly transferred to a Unique Citizen's Account at the Payment Bureau on 20 April 1998. The applicant states that the balance of the second account was USD 152,199.10, which was held in a long-term deposit account at 12 percent interest. According to the applicant, he had no alternative but to transfer these funds to a Unique Citizen's Account at the Payment Bureau on 28 April 1998.

49. The applicant resides in Canada under a permanent residence visa. He has not addressed any domestic or international institutions to resolve his claim.

7. Case no. CH/98/427, O.I. against Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina

50. The application was submitted to the Chamber on 10 March 1998 and registered on 10 April 1998.

51. The applicant deposited funds in two foreign currency savings books in Jugobanka (now Unionbanka) in Sarajevo. He deposited funds in the first account from 17 May 1991 until 27 May 1993; the total amount on deposit in that account on 27 May 1993 was USD 55,167.83. He deposited funds in the second account from 17 May 1991 until 17 April 1992; the total amount on deposit in that account on 17 April 1992 was DEM 44.98.

52. On 28 April 1998, the applicant filed a lawsuit against Unionbanka, the National Bank of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, Bosnia and Herzegovina, the National Bank of Yugoslavia, and the State of Yugoslavia before the Municipal Court I in Sarajevo. On 17 October 2000, the court issued a judgement refusing the applicant's complaint against the first four defendants and suspending the procedures with regard to the other two. With regard to the first four defendants, the court reasoned that the 1996 Decision on Aims and Objectives of the Foreign Exchange Policy provided that the issue of old foreign currency savings would be resolved in consultation with the international community through a law on public debt or some other method. The court further referred to the Law on Foreign Transactions and concluded that the bank could not be a respondent party because the State had taken over responsibility for citizens' old foreign currency savings. With regard to the other two defendants, the court suspended the proceedings because diplomatic relations with then-Yugoslavia had been suspended and the court therefore could not address the lawsuit to those defendants. The applicant sought revision ("revizija") before the Supreme Court on 12 December 2001, but there has apparently been no resolution of this proceeding.

8. Case no. CH/98/428, M.M. against the Federation of Bosnia and Herzegovina

53. The application was submitted to the Chamber on 10 March 1998 and registered on 10 April 1998.

54. Between 1989 and 1992, the applicant deposited funds in foreign currency savings books in Jugobanka (now Unionbanka) and Privredna Banka (now Central Profit Banka) in Sarajevo. At the end of 1992, the amounts on deposit in Jugobanka were DEM 12,935.71, FRF 2321.65, ACH 710.12, and USD 211.51. His savings in Central Profit Banka were USD 5908.32.

55. The applicant has not addressed any domestic or international institutions to resolve his old foreign currency savings claim.

9. Case no. CH/98/429, Salko HADŽIMURATOVIĆ against the Federation of Bosnia and Herzegovina

56. The application was submitted to the Chamber on 10 March 1998 and registered on 10 April 1998.

57. The applicant deposited funds in a foreign currency savings book in Jugobanka (now Unionbanka) in Sarajevo. The total amount of his savings is DEM 13,385.72 and USD 16,900.49.

58. The applicant has not addressed any domestic or international institutions to resolve his old foreign currency savings claim.

10. Case no. CH/98/431, B.T. against the Federation of Bosnia and Herzegovina

59. The application was submitted to the Chamber on 11 March 1998 and registered on 10 April 1998.

60. The applicant deposited funds in foreign currency savings books in Jugobanka (now Unionbanka) and Privredna Banka (now Central Profit Banka) Sarajevo. The total amount of his savings in Unionbanka is USD 8952.81, and the total amount of his savings in Central Profit Banka is USD 186.48.

61. It appears that the applicant initiated domestic court proceedings on 28 April 1998, but no hearing has been held in her case.

11. Case no. CH/98/435, K.T. against the Federation of Bosnia and Herzegovina

62. The application was submitted to the Chamber on 11 March 1998 and registered on 10 April 1998.

63. The applicant deposited funds in foreign currency savings books in Jugobanka (now Unionbanka), Privredna Banka (now Central Profit Banka), and Investbanka Beograd (now Depozitna Banka), all in Sarajevo. The total amount of the savings on deposit in Unionbanka is USD 37,298.32. The total amount of the savings on deposit in Central Profit Banka is USD 3,409.99. The total amount of the savings on deposit in Depozitna Banka is DEM 36,409.65.

64. It appears that the applicant initiated domestic court proceedings on 28 April 1998, but no hearing has been held in his case.

12. Case no. CH/98/446, J.Z. against the Federation of Bosnia and Herzegovina

65. The application was submitted to the Chamber on 17 March 1998 and registered on 10 April 1998.

66. The applicant deposited funds in foreign currency savings books from 1980 until 1994 in Privredna Banka (now Central Profit Banka) in Sarajevo. The total amount on deposit at the end of 1994 was USD 21,149.25.

67. The applicant has not addressed any domestic or international institutions to resolve his old foreign currency savings claim.

13. Case no. CH/98/447, Hamid LJUBOVIĆ against the Federation of Bosnia and Herzegovina

68. The application was submitted to the Chamber on 17 March 1998 and registered on 10 April 1998.

69. The applicant deposited funds in a foreign currency savings book in Jugobanka (now Unionbanka) in Sarajevo. The total amount of his savings, at the end of 1992, was USD 4174.36.

70. The applicant states that on 22 April 1991, he filed a written request to Unionbanka for payment of his old foreign currency savings, but he has received no reply.

71. On 27 January 1992, the applicant filed a lawsuit in the First Instance Court I in Sarajevo. On 16 March 1992, the court issued a judgement (no. P:364/92) in his favour and ordered Jugobanka to pay the applicant his foreign currency savings plus interest. On 31 March 1992, Jugobanka filed an appeal against this judgement, and the second instance court, on 28 September 1994, issued a procedural decision declaring the first instance court judgement null and void on the basis of violations of the Law on Civil Procedure, and returning the case to the First Instance Court I for further proceedings. The First Instance Court I in Sarajevo issued a judgement on 3 October 1995, refusing the applicant's request based on the Law on Foreign Exchange Transactions (OG RBiH no. 10/94).

The applicant appealed against this judgement, and on 5 July 1996 the second instance Court issued a procedural decision declaring the first instance court judgement null and void and again returning the case to the First Instance Court I for further proceedings, citing violations of procedural rules. The Municipal Court I in Sarajevo issued another judgement on 18 February 1998, again refusing the applicant's request with reference to the Law on Foreign Exchange Transactions. The applicant filed another appeal against this judgement. On 8 January 1999, the Cantonal Court in Sarajevo refused the applicant's appeal and confirmed the first instance Court judgement. The Cantonal Court reasoned that the appeal was ill-founded because Article 71 paragraph 3 of the Law on Foreign Exchange Transactions restricts such payments to limited circumstances, of which the applicant provided no proof.

14. Case no. CH/98/448, E.M. against Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina

72. The application was submitted to the Chamber on 17 March 1998 and registered on 10 April 1998.

73. Between 13 April 1982 and 6 March 1992, the applicant deposited foreign currency in three accounts in the Jugobanka (now Unionbanka) in Sarajevo. At the end of 1992, the amounts of his foreign currency savings in Jugobanka were DEM 370.28 and USD 3066.39.

74. The applicant has not addressed any domestic or international institutions to resolve his old foreign currency savings claim.

15. Case no. CH/98/449, Fehim ZVIZDIĆ against the Federation of Bosnia and Herzegovina

75. The application was submitted to the Chamber on 17 March 1998 and registered on 10 April 1998.

76. The applicant deposited funds in a foreign currency savings book in Privredna Banka (now Central Profit Banka) in Sarajevo from 7 December 1990 until 31 December 1991. The total amount of his savings at the end of 1991 was DEM 28,200.81. He also deposited funds in two foreign currency savings books in Jugobanka (now Unionbanka). On the first account, the total amount of his savings on 31 December 1991 was DEM 32,087.74. On the second account, the total amount of his savings on 31 December 1991 was DEM 23,255.58.

77. According to the Federation, the assets held by the applicant in Unionbanka were transferred to a Unique Citizen's Account at the Payment Bureau at the applicant's request on 4 March 1998. According to a Payment Bureau voucher dated 2 May 1999, the total amount of old foreign currency savings transferred was KM 84,519.13.

78. According to the applicant, he did not willingly allow his savings to be transferred to the Unique Citizen's Account. He states that he received the voucher on 24 May 1999 and filed objections to it on 27 May 1999, stating that he neither recognized nor accepted the voucher.

79. On 18 March 1998, the applicant filed a lawsuit before the Municipal Court II in Sarajevo. The Municipal Court II in Sarajevo issued a procedural decision (no. P-604/98) in the applicant's case on 25 September 1998, which decision became final on 12 October 1998. The procedural decision states that the court is absolutely incompetent, on procedural grounds, to decide the claim. The applicant did not file an appeal against this procedural decision before the Cantonal Court.

80. The applicant states that he did not file an appeal because he felt the judge was politically motivated and would never rule in his favour.

16. Case no. CH/98/472, D.L. against Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina

81. The application was submitted to the Chamber on 25 March 1998 and registered on 13 April 1998.

82. The applicant deposited funds in foreign currency savings books in Privredna Banka (now Central Profit Banka) in Sarajevo and Investbanka Beograd, Branch Office Sarajevo (now Depozitna Banka Sarajevo). The amount of her deposits in Central Profit Banka appear to be USD 4,663.72, and the total amount of her deposits in Depozitna Banka appear to be USD 2,460.78, DEM 398.53, and CHF 2,580.52.

83. The applicant has not addressed any domestic or international institutions to resolve her old foreign currency savings claim.

17. Case no. CH/98/473, B.S. against Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina

84. The application was submitted to the Chamber on 25 March 1998 and registered on 13 April 1998.

85. The applicant deposited funds in foreign currency savings books in Jugobanka (now Unionbanka), Privredna Banka (now Central Profit Banka), and Ljubljanska Banka in Sarajevo. The total amount of her deposits in Unionbanka is DEM 1,219.27 and GBP 20.72. The total amount of her deposits in Central Profit Banka is DEM 164.73, CHF 1,076.23, and USD 43,611.33. The total amount of her savings in Ljubljanska Banka is ATS 986.90, DEM 7,625.17, GBP 38.72, USD 14.05, and ITL 1,139.00.

86. The applicant has not addressed any domestic or international institutions to resolve her old foreign currency savings claim.

18. Case no. CH/98/498, Sead NUHBEGOVIĆ against Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina

87. The application was submitted to the Chamber on 3 April 1998 and registered on 12 May 1998.

88. The applicant deposited funds in a foreign currency savings book in Privredna Banka (now Central Profit Banka) in Sarajevo from 23 November 1988 until 2 June 1991. The total amount on deposit at the end of 1991 was USD 1555.73. The applicant states that he also had DEM 1625.18, but he has not submitted any evidence demonstrating the existence of these savings to the Chamber. In his written observations dated 5 May 2003, the applicant states that he had total savings of DEM 1650.00 and USD 1650.00.

89. The applicant has not addressed any domestic or international institutions to resolve his old foreign currency savings claim.

90. The applicant states that he would accept, after calculation of simple interest, shares of companies such as Elektropriveda, Energopetrol, Fabrika Duhana Sarajevo, BH Telekom, Bosnalijek, or Klas in exchange for his old foreign currency savings.

19. Case no. CH/98/584, F.S. against Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina

91. The application was submitted to the Chamber on 24 April 1998 and registered on 15 May 1998.

92. The applicant deposited funds in a foreign currency savings book in Privredna Banka (now Central Profit Banka) in Sarajevo from 26 January 1990 until 2 February 1998. The total amount of his old foreign currency savings at the end of 1998 was USD 6926.91.

93. The applicant initiated a lawsuit before the Municipal Court I in Sarajevo on 1 June 2002. It appears that no hearings have been held in the case.

20. Case no. CH/98/585, V.S. against Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina

94. The application was submitted to the Chamber on 24 April 1998 and registered on 15 May 1998.

95. The applicant deposited funds in a foreign currency savings book in Privredna Banka (now Central Profit Banka) in Sarajevo from 19 August 1983 until 2 February 1998. The total amount on deposit at the end of 1998 was DEM 111,612.33.

96. The applicant initiated a lawsuit before the Municipal Court I in Sarajevo on 1 June 2002. It appears that no hearings have been held in the case.

21. Case no. CH/98/622, Mirza KAHVIĆ against the Federation of Bosnia and Herzegovina

97. The application was submitted to the Chamber on 30 April 1998 and registered on 15 May 1998.

98. The applicant deposited funds in a foreign currency savings book in the Jugobanka (now Unionbanka) in Sarajevo. On 28 February 1995, the amount of his savings was USD 43.279,82.

99. The applicant has not addressed any domestic or international institutions to resolve his old foreign currency savings claim.

22. Case no. CH/98/626, Ivan ŠIMUNOVIĆ against Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina

100. The application was submitted to the Chamber on 5 May 1998 and registered on 15 May 1998.

101. The applicant deposited funds in a foreign currency savings book in Privredna Banka (now Central Profit Banka) in Sarajevo from 1988 until 2 October 1992. The total amount of his savings at the end of 1992 was USD 467.07. He also deposited funds into three accounts at Jugobanka (now Unionbanka) from 1979 until 1992. In the first account, the total savings as of 31 December 1992 was USD 392.36, ITL 9,033.10, and DEM 244.81. In the second account, the total savings as of 31 December 1992 was USD 710.13 and DEM 447.03. In the third account, the total savings as of 31 December 1992 was USD 5,830.08 and DEM 11,958.62. The applicant also deposited funds in foreign currency savings books at Ljubljanska Banka, Branch Office Sarajevo. The total savings were USD 129.75 and DEM 5.04.

102. The applicant has not addressed any domestic or international institutions to resolve his old foreign currency savings claim.

23. Case no. CH/98/784, E.D. against Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, and the Republika Srpska

103. The application was submitted to the Chamber on 20 July 1998 and registered on the same day.

104. The applicant deposited funds in foreign currency savings books in Privredna Banka (now Central Profit Banka). The total amounts, from the savings books, appear to be USD 10,562.43, USD 1277.64, and DEM 1277.64. He also deposited funds in Jugobanka (now Unionbanka), and a Unionbanka document dated 28 April 1998 shows the total amount of these deposits transferred to his Unique Citizen's Account as DEM 2,361.87.

105. The applicant has not addressed any domestic or international institutions to resolve his old foreign currency savings claim.

24. Case no. CH/98/785, B.D. against Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, and the Republika Srpska

106. The application was submitted to the Chamber on 20 July 1998 and registered on 20 July 1998.

107. The applicant deposited funds in a foreign currency savings book at Privredna Banka (now Central Profit Banka). The total amount of her savings as of 18 March 1992 was USD 3937.23. She alleges that she also deposited funds in Jugobanka (now Unionbanka), but no evidence of these deposits has been submitted to the Chamber.

108. The applicant has not addressed any domestic or international institutions to resolve her old foreign currency savings claim.

25. Case no. CH/98/1084, Dragan PREČANICA against Bosnia and Herzegovina

109. The application was introduced on 4 July 1996 before the Human Rights Ombudsperson for Bosnia and Herzegovina. On 16 November 1998, the Ombudsperson referred the case to the Chamber.

110. The applicant deposited funds in foreign currency savings accounts in Jugobanka (now Unionbanka) and in Ljubljanska Banka, Branch Office Sarajevo. It appears from court judgements that the amounts on deposit in Ljubljanska Banka were DEM 2667.42, USD 760.03, and FRF 203.94. It further appears from these court judgements that the amounts on deposit in Jugobanka were FRF 181.43 and USD 806.30.

111. In 1991, the applicant filed a lawsuit against Ljubljanska Banka before the First Instance Court I in Sarajevo. On 30 December 1991, the court issued a judgement in his favour and ordered Ljubljanska Banka to pay the applicant his entire savings plus interest, based on the Law on Obligations and the Law on Foreign Exchange Transactions. In 1992, the applicant filed a lawsuit against Jugobanka in the First Instance Court I Sarajevo. On 17 March 1992, the First Instance Court I in Sarajevo issued a judgement in his favour, based on section 332 of the Law on Civil Procedure, because the respondent party's representative did not come to the hearing. The court ordered the respondent party, Jugobanka, to pay the applicant his entire savings plus interest. The applicant sought enforcement of the 17 March 1992 judgement before the First Instance Court I in Sarajevo, but the date of this action cannot be determined from the documents. In 1994 and 1995, the applicant pressed criminal charges against various court officials for corruption and failure to enforce valid judgements. In 1996, the applicant filed another lawsuit before the First Instance Court I, but the identity of the respondent party or the result of the suit cannot be determined from the documents in the case file. On 7 January 1998, the applicant filed another lawsuit before the Municipal Court I in Sarajevo against the Presidency of Bosnia and Herzegovina because they had done nothing to solve the problem of his old foreign currency savings. On 4 February 1998, the court invited the applicant to correct certain procedural defects in his lawsuit, but the applicant failed to do so by the 17 March 1998 deadline. The Municipal Court I in Sarajevo subsequently issued a procedural decision rejecting his lawsuit as out of order. The applicant appealed against this decision. On 23 June 1998, the Cantonal Court in Sarajevo issued a procedural decision, confirming the procedural decision issued by the Municipal Court I in Sarajevo. The court referred to the procedural mistakes made by the applicant and confirmed the procedural decision without considering the merits of the case. Throughout the course of these court proceedings, the applicant

also submitted requests to various organs of Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina to help him recoup his old foreign currency savings.

26. Case no. CH/98/1092, R.S. against Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina

112. The application was introduced on 11 April 1997 before the Human Rights Ombudsperson for Bosnia and Herzegovina. On 16 November 1998, the Ombudsperson for Bosnia and Herzegovina referred the case to the Chamber.

113. The applicant deposited funds in foreign currency savings books in the Ljubljanska Banka, Branch Office Sarajevo. The total amounts on deposit as of 12 February 1992 were USD 169.14, DEM 19,690.90, CHF 115.63, and ACH 776.83.

114. On 13 February 1992, the applicant filed a lawsuit before the First Instance Court II in Sarajevo. The applicant alleges that the court has been silent and has not scheduled any hearing in his case.

27. Case no. CH/98/1305, Dragomir VUKAŠINOVIĆ against Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina

115. The application was submitted to the Chamber on 24 November 1998 and registered on 30 November 1998.

116. The applicant deposited funds in foreign currency savings books at Jugobanka (now Unionbanka) in Sarajevo. The total savings on his accounts in that bank were USD 9330.12 and DEM 27,046.45.

117. The Federation points out that the applicant's foreign currency savings book (no. 12-42-62623-8) bears a 4 September 1992 seal of Jugobanka d.d. Beograd, which is a seal from another state. This stamp refers only to one withdrawal of funds from the account taken from a Belgrade branch of Jugobanka.

118. The applicant has not addressed any domestic or international institutions to resolve his old foreign currency savings claim.

28. Case no. CH/99/1729, F.H. against Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina

119. The application was submitted to the Chamber on 16 March 1999 and registered on the same day.

120. The applicant deposited funds in foreign currency savings books in Privredna Banka (now Central Profit Banka). The total amount on deposit as of 7 August 1996 was USD 1167.43.

121. The applicant has not addressed any domestic or international institutions to resolve his old foreign currency savings claim.

29. Case no. CH/99/2025, M.J. against Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina

122. The application was submitted to the Chamber on 7 April 1999 and registered on the same day.

123. The applicant deposited funds in foreign currency savings books in Jugobanka (now Unionbanka). On 31 March 1992, the total amounts on deposit in his accounts were USD 11,340.06, DEM 3188.81, and ACH 119.73.

124. The applicant has not addressed any domestic or international institutions to resolve his old foreign currency savings claim.

30. Case no. CH/99/2207, Milena JOVANOVIĆ against Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina

125. The application was submitted to the Chamber on 20 May 1999 and registered on 27 May 1999.

126. The applicant deposited funds on her foreign currency savings books in Privredna Banka (now Central Profit Banka). The total amounts on deposit as of 6 February 1992 were USD 759.63, SCH 593.54, and ACH 1.271.86, and DEM 2978.88.

127. The applicant has not addressed any domestic or international institutions to resolve her old foreign currency savings claim.

31. Case no. CH/99/2215, Milana VUJISIĆ against Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina

128. The application was submitted to the Chamber on 20 May 1999 and registered on 27 May 1999.

129. The applicant deposited funds in foreign currency savings books at Ljubljanska Banka, Branch Office Sarajevo. The total amount on deposit as of 24 January 1992 was DEM 27,153.42.

130. The Federation reports that, on 24 April 1998, the applicant addressed Ljubljanska Banka d.d. Sarajevo requesting that her foreign currency savings in account number 740-72710-53681/20 be transferred to a Unique Citizen's Account with the Payment Bureau.

131. The applicant states in her application that she submitted a suit to Municipal Court I in Sarajevo and that, after further proceedings, she submitted a revision ("revizija") to the Supreme Court of the Federation of Bosnia and Herzegovina. She further states that the Supreme Court refused her requests. She did not, however, submit any copies of these judgements to the Chamber.

32. Case no. CH/99/2682, Meho ŠUVALIJA against Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina

132. The application was submitted to the Chamber on 12 July 1999 and registered on 14 July 1999.

133. The applicant deposited funds in foreign currency savings books in Privredna Banka (now Central Profit Banka). The total amount on deposit as of 25 February 1992 was DEM 5374.68.

134. The applicant states in his application that he filed a lawsuit before the Municipal Court I in Sarajevo and that, after further proceedings, he submitted a revision ("revizija") to the Supreme Court of the Federation of Bosnia and Herzegovina. According to the applicant, the Supreme Court has refused his requests. He did not, however, submit copies of those judgements to the Chamber.

33. Case no. CH/99/2998, Branko TOŠOVIĆ against the Federation of Bosnia and Herzegovina

135. The application was submitted to the Chamber on 11 October 1999 and registered on 12 October 1999.

136. The applicant deposited funds in a foreign currency savings books in Privredna Banka (now Central Profit Banka) and Jugobanka Sarajevo (now Unionbanka). The total amount of his savings in Central Profit Banka is USD 29,584.47, and the total amount of his savings in Unionbanka is USD 13,333.11.

137. The applicant has not addressed any domestic or international institutions to resolve his old foreign currency savings claim.

34. Case no. CH/00/4801, Fehima KASALO against Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina

138. The application was submitted to the Chamber on 5 May 2000 and registered on the same day.

139. The applicant deposited funds in foreign currency savings books in Privredna Banka (now Central Profit Banka). The total amounts on deposit as of 21 January 1992 were USD 2894.42 and DEM 104.99 DM. The applicant alleges that she also deposited funds in Ljubljanska Banka, Branch Office Sarajevo, and that the total amounts on deposit in that bank as of 9 January 1992 were USD 2071.31 and DEM 104.99.

140. The applicant has not addressed any domestic or international institutions to resolve her old foreign currency savings claim.

35. Case no. CH/00/4832, Vera JIROTA against Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina

141. The application was submitted to the Chamber on 9 May 2000 and registered on 11 May 2000.

142. The applicant deposited funds in foreign currency savings books in Privredna Banka (now Central Profit Banka). The total amount on deposit as of 6 March 1992 was USD 25,357.17. She alleged that she also deposited funds in Ljubljanska Banka, Branch Office Sarajevo, and that the total amounts on deposit in that bank as of 24 February 1997 were ACH 12,653.12, DEM 8174.35, USD 4004.18, CHF 5.75, SEK 541.17, NLG 0.39, and ITL 6.00.

143. The applicant has not addressed any domestic or international institutions to resolve her old foreign currency savings claim.

36. Case no. CH/00/5105, E.S. against Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina

144. The application was submitted to the Chamber on 14 June 2000 and registered on the same day.

145. The applicant deposited funds in a foreign currency savings book at Privredna Banka (now Central Profit Banka). The total amount on deposit as of 23 December 1996 was DEM 1944.61.

146. The applicant has not addressed any domestic or international institutions to resolve his old foreign currency savings claim.

37. Case no. CH/01/7301, Meho KAŠIĆ against Bosnia and Herzegovina

147. The application was submitted to the Chamber on 19 March 2001 and registered on the same day.

148. The applicant deposited funds in foreign currency savings books at Privredna Banka (now Central Profit Banka) and in Ljubljanska Banka, Branch Office Sarajevo. The amount of his savings in Ljubljanska Banka is DEM 16,509.95 and CHF 300.00. The amount of his savings in Central Profit Banka is unknown.

149. The applicant has not addressed any domestic or international institutions to resolve his old foreign currency savings claim.

IV. RELEVANT LEGAL PROVISIONS

A. Background

150. Because of a growing shortage of such currency and other economic problems in the former Socialist Federal Republic of Yugoslavia (SFRY), the withdrawal of money from "old" foreign currency savings accounts was progressively restricted by legislation enacted during the 1980s and early 1990s. Following the armed conflict in Bosnia and Herzegovina, attempts were made to address the unavailability of these old foreign currency savings through privatisation legislation.

B. Legislation of the Republic of Bosnia and Herzegovina

151. The 1994 Decree with Force of Law on Foreign Exchange Transactions (OG RBiH no 10/94; later enacted as law, OG RBiH no. 13/94) provides in relevant part as follows:

> Article 3:
>
> "Foreign exchange [including foreign currency] may be used only for payments towards foreign countries unless determined otherwise by this Decree."
>
> Article 12:
>
> "Domestic and foreign natural persons may hold foreign exchange in accounts with banks and use them freely...."
>
> Article 44
>
> "The foreign exchange reserves consist of claims on accounts in foreign countries and of foreign currency and securities issued in foreign countries ... [deposited] with the National Bank [of Bosnia and Herzegovina] and [authorised] banks."

The law also provided that the National Bank of Bosnia and Herzegovina should regulate the conduct of foreign exchange transactions (Article 19) and external payments (i.e. payments for exported and imported goods) (Article 25).

152. A Decision on Aims and Objectives of the Foreign Exchange Policy was issued on 10 April 1996 (OG RBiH no. 13/96). Paragraph 7 of this Decision stipulated, without specifying a date, that:

> "Foreign currency savings of individuals deposited with the former National Bank of Yugoslavia, together with interest on these savings, shall be resolved by the enactment of a law on the public debt of Bosnia and Herzegovina and in consultation with the international community."

C. Decision on Ratification of Socialist Federal Republic of Yugoslavia Succession Agreement (OG BiH 10/01)

153. The SFRY Succession Agreement, Annex C, provides, in relevant part:

> Article 2
>
> * * *
>
> "(3) Other financial liabilities [of the SFRY] include:
>
> "(a) guarantees by the SFRY or its National Bank of Yugoslavia of hard currency savings deposited in a commercial bank and any of its branches in any successor State before the date on which it proclaimed independence;"
>
> * * *

Article 7

"Guarantees by the SFRY or its NBY of hard currency savings deposited in a commercial bank and any of its branches in any successor State before the date on which it proclaimed independence shall be negotiated without delay taking into account in particular the necessity of protecting the hard currency savings of individuals. This negotiation shall take place under the auspices of the Bank for International Settlements."

D. The Federation of Bosnia and Herzegovina privatisation laws and amendments

154. The basic legal provisions enabling the transfer of old foreign currency savings to the Unique Citizen's Account for use in the privatisation process appear in Articles 3, 7, 11, and 18 of the Law on Determination and Realisation of Citizens' Claims in the Privatisation Process (the "Citizens' Claims Law"), which entered into force on 28 November 1997, began to apply on 27 February 1998, and was amended on 5 March 1999 (Official Gazette of the Federation of Bosnia and Herzegovina – hereinafter "OG FBiH" - nos. 27/97 and 8/99). These articles provided as follows:

Article 3:

"1. A person who has foreign currency savings in banks or bank business units located on the territory of the Federation of Bosnia and Herzegovina in an amount exceeding 100 KM, who was a citizen of the former Socialist Republic of Bosnia and Herzegovina and who, on 31 March 1991, was permanently residing in territory which is now in the Federation of Bosnia and Herzegovina acquires a claim against the Federation equal to the balance of his or her savings on 31 March 1992.

"2. The settlement of the claims of those individuals who were citizens of the former Socialist Republic of Bosnia and Herzegovina on 31 March 1991, but who are not permanently residing in the territory of the Federation, as well as other persons' claims against banks located on the territory of the Federation, shall be determined by a separate regulation in accordance with this law.

"3. Persons referred to in paragraph 1 of this Article whose foreign currency savings do not exceed 100 DEM will, upon their request, be reimbursed the amount of these savings by the bank.

"4. The claims referred to in paragraph 3 of this Article are payable after the expiration of a period of three months from the date of application of this Law."

Article 7:

"1. Claims specified in Article 3 of this Law are transferred by the bank to the unique account of the depositor.

"2. The manner of transfer of claims ... of those individuals who have their accounts in banks whose organisational units on the territory of the Federation have ceased to operate will be determined by a separate regulation passed by the Federal Ministry of Finance."

Article 11:

"1. The opening of a unique account is done ex officio on the basis of the JMBG ('jedinstveni matični broj građanina', the personal identification number) of the holder of a claim under this law.

"2. The individual's certificate shall correspond to the respective unique account."

Article 18:

"1. The claims registered in the unique account can be used in the privatisation process for a period of two years from the date of issuance of the unique account statement, and following the registration of a claim according to the specific categories.

> "2. Upon the expiration of the period in paragraph 1 of this Article, the claims in the unique account are extinguished."

155. Following the Chamber's decision in *Poropat and Others* in June 2000, the Federation enacted various amendments to these provisions.

156. On 2 November 2000, the Law Amending the Law on Determination and Realisation of Citizens' Claims in the Privatisation Process (OG FBiH no. 45/2000) entered into force. By this law, Article 18 was amended to provide that the occupancy right holder from Article 8a[2] of the Law on Sales of Apartments with An Occupancy Right can use their claims from the Unique Citizen's Account within three months from the date of the certifying signature on the purchase contract before the competent court. The amendment added a third paragraph to Article 18:

> "3. As an exception to the provision in paragraphs 1 and 2 of this Article, the occupancy right holders referred to in Article 8a of the Law on Sale of Apartments with Occupancy Right (Official Gazette of the Federation BiH, Nos. 27/97, 11/98, 22/99, and 7/00) may use the claims from the Unique Citizen's Account within three months since the date of verification of the signature on the contract of purchase at the competent court."

157. A further amendment to paragraph 1 of Article 18 entered into force on 8 February 2002. That amendment changed the general time limit for use of certificates from two years to four years, such that the entire Article, as amended, reads as follows:

> "1. The claims registered in the Unique Citizen's Account can be used in the privatisation process for a period of *four years* from the date of issuance of the unique account statement, following the registration of each particular claim.
>
> "2. Upon the expiration of the period in paragraph 1 of this Article, the claims in the unique account are extinguished.
>
> "3. As an exception to the provision in paragraphs 1 and 2 of this Article, the occupancy right holders referred to in Article 8a of the Law on Sale of Apartments with Occupancy Right (Official Gazette of the Federation BiH, Nos. 27/97, 11/98, 22/99, and 7/00) may use the claims from the Unique Citizen's Account within three months since the date of verification of the signature on the contract of purchase at the competent court."

(Emphasis added.)

158. In addition to these changes to the Citizens' Claims Law, the Federation has enacted additional amendments to the privatisation process to lessen the plight of holders of old foreign currency savings. On 2 November 2000, the Law Amending the Law on Privatisation of Companies (OG FBiH no. 45/2000) entered into force. This law amended Article 28 to place certificates based on old foreign currency savings on equal footing with cash. The old version of Article 28 provided:

> "1. The sale referred to in Article 26[3] of this law is realised with an obligatory payment in cash of at least 35 per cent of the agreed sale price.
>
> "2. For any amount paid in cash in excess of 35 per cent of the sale price, a discount of 8 per cent may be given."

The new version provides as follows:

> "1. The sale referred to in Article 26 of this law is realised with an obligatory payment in cash *or certificates based upon old foreign currency savings* of at least 35 per cent of the agreed sale price.
>
> "2. For any amount paid in cash *or certificates based upon old foreign currency savings* in excess of 35 per cent of the sale price, a discount of 8 per cent may be given."

[2] The referenced Article 8a governs the purchase of abandoned apartments by occupancy right holders.
[3] The referenced Article 26 regulates the sale of companies in the small-scale privatisation process.

(Emphases added.)

159. The Law Amending the Law on Privatisation of Companies (OG FBiH no. 61/01) amends Article 27(1). The old version provided:

> "The small-scale privatisation in the sense of Article 26 of this Law is conducted through a public sale which the enterprise is obliged to prepare and register with the competent agency within twelve months from the date of entry into force of this law."

The new version provides as follows:

> "The small-scale privatisation in the sense of Article 26 of this Law is conducted through a public sale which the enterprise is obliged to prepare and register with the competent agency *within the time limit determined by the Agency of the Federation, and also within the time limit for citizens' claims as set forth the Law on Determination and Settlement of Citizens' Claims in the Privatisation Process (vouchers, etc.).*"

(Emphasis added.)

160. The Law Amending the Law on Sales of Apartments with Existing Occupancy Right entered into force on 8 January 2002 (after the date of the Federation Constitutional Court decision). The new Article 24 of this Law equates certificates based on old foreign currency savings with cash. The old version provided:

> "Payment of the purchase price of the apartment shall be done by one of the means of payment, as follows:
>
> (a) cash;
> (b) certificates based on citizens' claims, regulated by special regulations.
>
> In case of payment in cash, the price of an apartment shall be reduced by 20% of the determined purchase price."

The new version provides:

> "Payment of the purchase price of the apartment shall be done by one of the means of payment, as follows:
>
> (a) cash;
> (b) certificates based on citizens' claims, regulated by special regulations.
>
> In case of payment in cash *or by vouchers based on old foreign currency savings*, the price of an apartment shall be reduced by 20% of the determined purchase price."

(Emphasis added.)

161. The Federation stated in a letter to the Human Rights Chamber dated 8 December 2000, regarding its implementation of the *Poropat and Others* decision, that it,

> "through competent Ministries and agencies, leads activities to inform citizens on the importance of visiting banks to give their unique personal number in order to enable the transfer of their old foreign currency savings to the unique account and the issuance of certificates to enable them to participate in the privatisation process which is in process, because there is no way for citizens of Bosnia and Herzegovina—old foreign currency savings owners—to realise their claims on those grounds in any way but the privatisation process."

E. The Decision of the Constitutional Court of the Federation of Bosnia and Herzegovina

162. On 8 January 2001, the Constitutional Court of the Federation of Bosnia and Herzegovina determined that Articles 3, 7, 11, and 18 of the Citizens' Claims Law were not in accordance with the

Constitution of the Federation of Bosnia and Herzegovina. The court found that these articles were in violation of Article 1 of Protocol No. 1 to the Convention and therefore contravened Article II.A.2(1)(k) of the Constitution of the Federation of Bosnia and Herzegovina, as well as Amendment 5 thereto. The Court, in its decision, did not mention the previous amendments to the laws of 2 November 2000. The Court did not order any specific amendments to the law or otherwise provide for transitional arrangements under which the relevant articles should be applied.

163. The Constitutional Court's decision states:

> "The Constitution of the Federation of Bosnia and Herzegovina in its Article II.A.2.(1)(k) and the Amendment V thereof establish that the Federation shall ensure the application of the highest level of internationally recognized rights and freedoms set forth in the documents listed in the Annex of this Constitution....
>
> "Deciding on the constitutionality of Articles 3, 7, 11, and 18 of the Law on Determination and Realisation of Citizen's Claims in the Privatisation Process with regard to the mentioned constitutional provisions and Article 1 paragraph 1 of the Protocol No. 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Court established that the provisions of Articles 3, 7, 11, and 18 are not in accordance with the Constitution of the Federation of Bosnia and Herzegovina."

164. The Federation Constitutional Court's decision was published in the Official Gazette of the Federation of Bosnia and Herzegovina, number 7, on 9 March 2001.

165. Article 12(b) of part IV(c) of the Federation Constitution provides that if the Federation Constitutional Court

> "determines that a law or regulation or proposed law or regulation of the Federation or of any Canton or of any municipality is not in accord with this Constitution, such law or proposed law shall not remain or enter into force, except if altered in such a manner as specified by the Court or unless the Court specifies some transitional arrangements which may not extend to a period in excess of six months."

166. The Federation of Bosnia and Herzegovina filed an appeal to the Constitutional Court of Bosnia and Herzegovina on 14 May 2001, challenging the decision of the Federation Constitutional Court. On appeal, the Federation argues, *inter alia*: (1) That the Federation Constitutional Court should not have decided the matter because the Chamber had earlier issued a final and binding decision on the same subject; and (2) That the decision of the Federation Constitutional Court contains no reasoning explaining why the subject provisions are unconstitutional.

167. The Constitutional Court of Bosnia and Herzegovina has not yet issued a decision in this case.

168. Article 75 of the Rules of Procedure of the Constitutional Court of Bosnia and Herzegovina provides:

> "The Court may, until the final decision has been made, fully or partially suspend the execution of decisions, laws (acts), or individual acts (temporary measures), if their execution may have detrimental consequences that cannot be overcome.
>
> "The Court shall revoke an interim measure when it has ascertained that reasons for which it was taken have ceased to exist."

169. The Constitutional Court of Bosnia and Herzegovina has not suspended the execution of the decision of the Federation Constitutional Court.

170. Article 384 of the Constitution of the former SFRY provided that:

> "If the Constitutional Court of Yugoslavia establishes that the federal, republic, or autonomous law is not harmonized with the Constitution of the SFRY, or that a republic or autonomous law

> is contrary to the federal law, the Constitutional Court of Yugoslavia shall establish this by its decision that shall be delivered to the competent assembly.
>
> "The competent assembly shall be obliged to harmonize, within six months from the date of delivery of the decision of the Constitutional Court of Yugoslavia, the law with the Constitution of the SFRY or to remove contradictions between the republic or autonomous law and the federal law.
>
> "Upon the claim of the competent assembly, the Constitutional Court of Yugoslavia may extend the time limit for harmonization of the law for not longer than six months.
>
> "If within the ordered time limit the competent assembly does not harmonize the law with the Constitution of the SFRY, or does not remove the contradictions between the republic or autonomous law and the federal law, the provisions of the law that are not harmonized with the Constitution of the SFRY, that is the provisions of the republic or autonomous law that are in contradiction with the federal law, shall no longer be in force and the Constitutional Court of Yugoslavia shall establish this by its decision."

171. Article 386 of the Constitution of the former SFRY provided that:

> "Laws that have been ruled out ... shall not be applied to relations created before the date of publication of the decision of the Constitutional Court of Yugoslavia if they have not been validly solved by that date."

172. Procedures similar to those of the former SFRY were followed in the Socialist Republic of Bosnia and Herzegovina. *See, e.g.*, Decision no. 137/86 of 9 November 1989 (Official Gazette of the Socialist Republic of Bosnia and Herzegovina – hereinafter "OG SRBiH" - no. 4/90), in which the Constitutional Court of Bosnia and Herzegovina, on the basis of Article 395, paragraph 4 of the Constitution of the Socialist Republic of Bosnia and Herzegovina, declared that a law ceased to be in force after the Assembly allowed the time limit for harmonisation to expire.

173. In response to the decision of the Federation Constitutional Court, the Federation has indicated that, following a proposal of the Federal Ministry of Finance, it intended to amend only two of the four articles found unconstitutional. Despite this limited pronouncement, two and one-half years after the decision of the Constitutional Court, no responsive legislative changes have yet been finalised.

V. COMPLAINTS

174. The applicants generally complain that their right to peaceful enjoyment of their possessions, as guaranteed by Article 1 of Protocol No. 1 to the Convention, has been violated. Numerous applicants also complain that their right to a fair hearing within a reasonable time before an independent and impartial tribunal, as guaranteed by Article 6 of the Convention, has been violated. A few applicants assert violations of various articles of the Universal Declaration of Human Rights.

175. All of the present applicants seek full payment of their total foreign currency savings, and many specifically seek payment of interest. They also seek compensation for mental suffering, costs of proceedings before domestic courts and the Chamber, and other expenses. Some of the applicants ask the Chamber to order passage of legislation under which old foreign currency savings are declared unqualified private property without any limitation.

VI. SUBMISSIONS OF THE PARTIES

A. Bosnia and Herzegovina

1. As to the facts

176. Bosnia and Herzegovina asserts that the problem of old foreign currency savings exists in all countries of the former SFRY and that no state has resolved the problem in an adequate manner. Further, no country has guaranteed payment of old foreign currency savings to citizens.

177. Bosnia and Herzegovina concedes that, after achieving independence, it did regulate the issue of old foreign currency savings.

178. Bosnia and Herzegovina asserts that all old foreign currency savings were deposited on the account of the SFRY at National Bank of Yugoslavia. According to Bosnia and Herzegovina, these deposits totalled USD 13 billion on 31 December 1990 and shrank to USD 1.5 billion on 31 December 1991. Bosnia and Herzegovina asserts that these foreign currency reserves were hidden from the former republics, including Bosnia and Herzegovina.

2. As to admissibility

179. Bosnia and Herzegovina asserts that the Chamber should declare the applications inadmissible *ratione personae* insofar as they are directed against it. According to Bosnia and Herzegovina, competence for these matters lies exclusively with the Entities. Further, Bosnia and Herzegovina asserts that it did not block payment on the accounts and did not take over any guarantees to pay old foreign currency savings to citizens. Further, the Chamber cannot consider cases involving savings relating to banks outside the territory of Bosnia and Herzegovina. Bosnia and Herzegovina asserts that the old foreign currency savings problem should be solved as a succession issue.

180. Bosnia and Herzegovina further argues that the applications should be declared inadmissible for failure to exhaust domestic remedies. According to Bosnia and Herzegovina, the applicants have not used all legal means available to them in the domestic courts. Such means include a number of ordinary and extraordinary remedies as provided for in the Law on Civil Procedure. Bosnia and Herzegovina asserts that, through these available remedies, the applicants could realise the same relief they request in their applications before the Chamber.

181. Bosnia and Herzegovina further asserts that the applications should be declared inadmissible for failure to comply with the six-month rule.

182. Bosnia and Herzegovina further argues that the Chamber should declare the applications inadmissible *ratione temporis* because any human rights violations occurred before the entry into force of the Agreement.

183. Bosnia and Herzegovina argues that, following Article VIII(2)(d) of Annex 6, the Chamber may not address these applications because depositors in Ljubljanska Banka have already initiated a dispute before the European Court of Human Rights, and that case is substantially the same as the present applications.

3. As to the merits

184. Bosnia and Herzegovina argues that the Chamber should await a final decision of the domestic courts before deciding on the merits of these applications. Alternatively, the possibility exists to solve the old foreign currency savings problems through public debt legislation or the privatisation process, through which citizens could be fully compensated. In the circumstances, Bosnia and Herzegovina argues that its actions with regard to old foreign currency savings have been justified and there has been no violation of human rights.

B. The Federation of Bosnia and Herzegovina

1. As to the facts

185. The Federation concedes that the present applicants are all holders of old foreign currency savings accounts. According to the Federation, these accounts were held at Central Profit Banka

(Privredna Banka), Unionbanka (Jugobanka), Ljubljanska Banka d.d. Sarajevo (Ljubljanska Banka), and Deposit Banka (InvestBanka). Each case involves bank branch offices located within the territory of the Federation of Bosnia and Herzegovina.

186. The Federation reports that two of the applicants — Fehim Zvizdić (case no. CH/98/449) and Milana Vujisić (case no. CH/99/2215) — personally requested that their foreign currency savings be transferred to a Unique Citizen's Account (see paragraphs 77 and 130 above).

187. The Federation further reports that the foreign currency savings book of Dragomir Vukašinović (case no. CH/98/1303) bears a 4 September 1992 stamp from Jugobanka Beograd for one of his transactions.

2. As to admissibility

188. The Federation of Bosnia and Herzegovina objects to the admissibility of the present applications.

189. The Federation asserts that the subject matter has already been resolved by the Chamber's decisions in *Poropat and Others* and *Todorović and Others*, and the Federation's subsequent compliance with those decisions. According to the Federation, payments for proceeding expenses were made to the applicants and the Chamber's order in *Poropat and Others* regarding the privatisation programme has been partially met by amendments to the laws. The Federation further asserts that the Chamber's orders in *Todorović and Others* have been complied with in large part, and that the Federal Ministry of Finance has initiated the process of amending the laws that were declared unconstitutional by the Federation Constitutional Court. According to the Federation, a draft law was adopted by the House of Peoples of the Federation Parliament on 23 July 2002, but has yet to be considered by the House of Representatives due to the changes in government following the 2002 elections. When this new law is adopted, the Federation claims, it will have complied fully with the Chamber's orders in *Poropat and Others* and *Todorović and Others*. The Federation further reports that a state-level commission for frozen foreign currency savings was appointed on 16 April 2003 during the session of the Council of Ministers. The reported task of this commission is to address the governments of the Republic of Slovenia and Serbia and Montenegro to resolve issues related to frozen foreign currency savings at Ljubljanska Banka d.d. Ljubljana and Investbanka d.d. Belgrade. Finally, the Federation claims that it has already taken certain steps and will take future actions to ensure that all outstanding liabilities based on old foreign currency savings will become public debt of the state, to be paid with simple minimal interest over the next ten to fifteen years. For all these reasons, the Federation feels the applications should be dismissed pursuant to Article VIII(3)(b) of the Agreement as matters that have already been resolved.

190. For the same reasons, the Federation argues that the applications are inadmissible under Article VIII(2)(b) of the Agreement because they raise identical questions that the Chamber has already decided in its previous decisions, an apparent *res judicata* argument that the Federation characterises as a *ratione materiae* objection.

191. The Federation also appears to argue that the applications are manifestly ill-founded and should be dismissed pursuant to Article VIII(2)(c), without providing specific reasoning to support this conclusion.

192. The Federation further asserts that the issue of "frozen" old foreign currency savings accounts can only be resolved at the state level, apparently arguing that the applications are therefore inadmissible *ratione personae*.

193. The Federation argues that two of the cases — Fehim Zvizdić (case no. CH/98/449) and Milana Vujisić (case no. CH/99/2215) — should be struck out pursuant to Article VIII(3)(b) of the Agreement because the applicants personally requested that their foreign currency savings be transferred to a Unique Citizen's Account (*see* paragraphs 77 and 130 above) and the matter has therefore been resolved.

194. The Federation further argues that the case of Dragomir Vukašinović (case no. CH/98/1303) should be dismissed for lack of legal standing because one transaction in his foreign currency savings book bears the stamp of a bank branch outside of Bosnia and Herzegovina.

3. As to the merits

195. The Federation makes no arguments regarding the merits of these applications in its written observations.

C. The Applicants

1. As to admissibility

196. The applicants argue that the Federation's arguments against admissibility of the applications are all groundless. They believe, despite the Federation's arguments, that the problem has not been resolved.

2. As to the merits

197. The applicants assert ongoing violations of their property rights. They consider that, with regard to old foreign currency savings, the respondent Parties have not acted honourably and the privatisation laws were an attempt to cheat citizens out of their savings, and that these laws should be abolished. They assert that the respondent Parties have done everything to delay providing relief to old foreign currency savers, including failing to comply with the relevant decisions of the Federation Constitutional Court and the Human Rights Chamber. They believe the respondent Parties intend to delay and obstruct implementation of the Chamber's decisions while waiting for the expiration of the Chamber's mandate. They view the Federation's promise of a systemwide solution as an attempt to buy more time, and they favour individual relief instead. They believe the problem should be resolved through public debt, as has been done in other countries of the former SFRY, and that the reimbursement period should not exceed five years. They assert that the extended ten- to fifteen-year payback period proposed by the Federation is unacceptable due to the advanced age of many old foreign currency savers. They further propose the use of succession funds, privatisation proceeds, and international loans to reimburse old foreign currency savers.

198. The applicants further assert that the court cases that have been pursued have taken extraordinary and unreasonable lengths of time and that these delays have been due to obstruction by the courts and the respondent Parties. They generally believe it is not possible for old foreign currency savings depositors to obtain relief in the domestic courts.

VII. OPINION OF THE CHAMBER

A. Admissibility

199. Before examining the merits of the applications, the Chamber shall decide whether to accept them, taking into account the admissibility criteria set out in Article VIII(2) of the Agreement. Under Article VIII(2)(a), the Chamber shall consider whether effective remedies exist and, if so, whether the applicants have demonstrated that they have been exhausted, and whether the applicants have demonstrated that the application was filed within six months from the date on which a final decision was taken. According to Article VIII(2)(b), it shall not address any application that is substantially the same as a matter which has already been examined by the Chamber. Under Article VIII(2)(c), the Chamber shall dismiss any application which it considers incompatible with the Agreement. Under Article VIII(3)(b) of the Agreement, the Chamber may reject or strike out an application on the ground that the matter has been resolved.

1. Competence *ratione personae*

200. As a general matter, the Chamber recalls that its jurisdiction under Article II(2) of the Agreement extends to alleged or apparent human rights violations where such a violation is alleged or appears to have been committed by one or several of the Parties to the Agreement. Having regard to the complexity of the legal and constitutional arrangements of Bosnia and Herzegovina, the Chamber considers that it would be unreasonable to expect applicants to be able in all circumstances to

address the correct respondent Party. For this reason, the Chamber has consistently held that it is not restricted by the applicant's choice of respondent Party. It has, on several occasions, examined applications in regard to a respondent Party designated by the Chamber itself (*see, e.g.*, *Poropat and Others*, paragraphs 132-33).

201. Having regard to the above, the Chamber will consider all of the present applications against both Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina.

(a) Responsibility of Bosnia and Herzegovina

202. The Chamber will consider whether and to what extent the regulation of matters relevant to the present applications falls within the responsibility of each respondent party.

203. The Chamber recalls that in *Poropat and Others* and *Todorović and Others*, it concluded that it was competent *ratione personae* to consider the applications in regard to Bosnia and Herzegovina in regard to Article 1 of Protocol No. 1 to the Convention on the grounds that the Republic of Bosnia and Herzegovina had adopted laws and regulations addressing the issue of foreign currency savings and thereby implicitly recognised its responsibility for those savings (*Poropat and Others*, paragraph 142, *Todorović and Others*, paragraph 96).

204. The Chamber considers that Bosnia and Herzegovina remains responsible for finding an overall solution to the frozen bank accounts problem. Bosnia and Herzegovina is involved in state-level negotiations regarding the responsibilities of foreign-based banks (like Ljubljanska Banka and Unionbanka, the former Jugobanka), economic succession rights, and other matters that affect old foreign currency savings account holders, including the present applicants. The Chamber thus finds that these applications are admissible against Bosnia and Herzegovina in regard to Article 1 of Protocol No. 1 to the Convention.

205. As to the court proceedings initiated by some of the applicants, and the allegations of lack of access to court by others, the Chamber notes that these exclusively concern the judiciary of the Federation. The Chamber therefore finds the applications inadmissible against Bosnia and Herzegovina in regard to Article 6 of the Convention.

(b) Responsibility of the Federation of Bosnia and Herzegovina

206. The Federation claims that it cannot be held responsible for possible violations in the present cases.

207. The Chamber recalls that the laws governing banking, Citizen's Claims, and privatisation applicable in the territory of the Federation of Bosnia and Herzegovina have all been enacted by the Federation, and the authorities designated to implement the legislation are all institutions of the Federation. Further, the applicants' and other plaintiffs' legal actions in regard to foreign currency savings accounts have been examined by courts with jurisdiction only in the territory of the Federation. The Federation of Bosnia and Herzegovina is responsible in the present cases for regulatory measures, the decision of the Federation Constitutional Court, and other actions taken in so far as they have affected the applicants' position in regard to the banks and, in particular, to the savings deposited with the banks.

208. The Chamber concludes that it is competent *ratione personae* to consider the present applications in regard to the Federation of Bosnia and Herzegovina.

(c) Responsibility of the Republika Srpska

209. The applicants in case nos. CH/98/784 (E.D) and CH/98/785 (B.D.) list the Republika Srpska as a respondent Party.

210. The Chamber notes, however, that the applicants have claims against banks located on the territory of the Federation. They have not alleged that the Republika Srpska has violated any of their

rights, nor can the Chamber, of its own motion, find that any events relating to their applications involve the responsibility of the Republika Srpska.

211. The Chamber therefore decides to declare these applications inadmissible so far as directed against the Republika Srpska.

2. Matter already resolved

212. The Federation of Bosnia and Herzegovina also asserts that the present applications should be rejected on the grounds that the subject matter has already been resolved by the Chamber's decisions in *Poropat and Others* and *Todorović and Others* and the Federation's subsequent compliance with those decisions through existing amendments to its laws and prospective future actions.

213. The applicants, however, do not feel that the matter has been resolved. And the Chamber notes that, following the amendments, there are still no provisions in the Citizens' Claims Law indicating that an individual is free to dispose of his or her savings in any other way than to have them converted into privatisation certificates. The laws, as amended, continue to provide for the compulsory transfer of foreign currency savings from the bank to the Unique Citizen's Account. The applicants remain unable to obtain payment from their accounts. Thus, the interference remains, and the matter has not been resolved.

214. In sum, the Chamber further considers that the current state of the law affecting old foreign currency savings, following the decision of the Federation Constitutional Court, raises issues that have not yet been resolved. The Chamber therefore will not reject the present applications under Article VIII(3)(b) of the Agreement.

3. *Res Judicata*

215. The Federation of Bosnia and Herzegovina claims that, under Article VIII(2)(b), the Chamber is prevented from examining the present cases because they are substantially the same as a matter which has already been examined by the Chamber. Specifically, the Federation asserts that the Chamber's decisions regarding the same issues in *Poropat and Others* and *Todorović and Others* preclude consideration of the present applications.

216. The Chamber recalls that the principle of *res judicata* provides that a final judgement rendered by a court of competent jurisdiction on the merits of a case is conclusive as to the rights of those parties involved and constitutes an absolute bar to a subsequent action involving the same claim. This principle is reflected in Article VIII(2)(b) of the Agreement, which provides that the Chamber "shall not address any application which is substantially the same as a matter which has already been examined by the Chamber or has already been submitted to another procedure of international investigation or settlement." The Chamber's decisions in *Poropat and Others* and *Todorović and Others*, however, did not involve any of the present applicants; thus, the principle of *res judicata* could not attach to them.

217. Article VIII(2)(b) of the Agreement does not apply in this case to divest the Chamber of its power to consider these applications, regardless of the similar previous applications before the Chamber.

4. Manifestly ill-founded

218. The Federation argues that the present applications should be dismissed as manifestly ill-founded.

219. The Federation provides no support for this argument, and the Chamber considers that the present applications raise legitimate issues compatible with the Agreement and within the Chamber's competence. Accordingly, the Chamber rejects the suggestion that they must be dismissed as manifestly ill-founded pursuant to Article VIII(2)(c).

5. Exhaustion of domestic remedies

220. Bosnia and Herzegovina asserts that domestic remedies have not been exhausted by the applicants because they have not used all legal means available to them in the domestic courts. Such means include a number of ordinary and extraordinary remedies provided for in the Law on Civil Procedure.

221. The Chamber recalls that twelve of the present applicants have initiated domestic court proceedings in attempts to have cash disbursed from their savings accounts. None of them has so far been successful. The Chamber further takes into account that numerous proceedings remain pending after periods of more than five years.

222. Having regard to the above, the Chamber considers that there are no effective remedies available to the applicants that they should be required to exhaust. In these circumstances, the Chamber is not precluded from considering the applications.

6. Six-months rule

223. Bosnia and Herzegovina argues that the applications are inadmissible under Article VIII(2)(a) of the Agreement because they were not lodged within six months after the date of any final decision in the applicants' cases. Each of the alleged violations, however, consists of a continuing situation, the six-month limit can have no application until the situation comes to an end, which it has not. The Chamber therefore concludes that the applications are not inadmissible under Article VIII(2)(a).

7. Lis alibi pendens

224. Bosnia and Herzegovina claims that the Chamber is prevented from examining the present cases on account of an identical application pending before the European Court of Human Rights.

225. The Chamber recalls that Article 35, paragraph 2(b) of the Convention — on which Article VIII(2)(b) is modelled — prevents the European Court of Human Rights from dealing with a petition that is substantially the same as a matter that has already been submitted to another procedure of international investigation or settlement. The European Commission on Human Rights — which, before the reform of the Convention system on 1 November 1998, examined the admissibility of applications under the identical Article 27, paragraph 1(b) — applied the concept of "substantially same application" in a very restrictive manner and found itself prevented from dealing with a petition only if, *inter alia*, the applicant in the other international procedure was identical to the one that had introduced the petition to the Commission (*Poropat and Others*, paragraph 149).

226. The Chamber notes that, whatever issue is the subject matter of the application lodged with the European Court, neither the applicants nor the respondent Parties in the present cases are identical to those involved in that application.

227. It follows that it has not been shown that an application identical to or substantially the same as the present cases is pending before another international body. This objection is accordingly rejected.

8. Conclusion as to admissibility

228. In case nos. CH/98/784 (E.D.) and CH/98/785 (B.D.), the Chamber declares the applications inadmissible insofar as they are directed against the Republika Srpska.

229. As no other ground for declaring the cases inadmissible has been established, the Chamber declares all of the applications admissible under Article 1 of Protocol No. 1 to the Convention in respect of Bosnia and Herzegovina and in their entirety in respect of the Federation of Bosnia and Herzegovina.

B. Merits

230. Under Article XI of the Agreement, the Chamber will next address the question of whether the facts established above disclose any breaches by the respondent Parties of their 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 by the Convention and its Protocols.

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

231. The applicants complain that their property rights under Article 1 of Protocol No. 1 to the Convention have been violated. This provision reads as follows:

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

232. The applicants assert that their rights have been violated by the banks' refusal to disburse the foreign currency savings and the conversion of those savings into privatisation certificates. Further, they assert that the actions taken by the Federation fail to establish a fair balance between public and private interests, and the result is a continuing violation of their property rights.

233. Bosnia and Herzegovina asserts that its actions with regard to old foreign currency savings have been justified and there has been no violation of human rights. The Federation of Bosnia and Herzegovina has made no arguments regarding the merits of these applications in its written observations.

(a) The existence of "possessions" under Article 1 of Protocol No. 1

234. The Chamber first finds, as it did in *Poropat and Others* and *Todorović and Others*, that the applicants' claims against the banks based on their foreign currency savings constitute "possessions" within the meaning of Article 1 of Protocol No. 1 to the Convention (*Poropat and Others*, paragraph 161; *Todorović and Others*, paragraph 121). It must therefore be determined whether the applicants' right to peacefully enjoy these possessions has been violated.

(b) General considerations

235. The Chamber recalls that, as stated in the *Poropat and Others* decision (quoting the case law of the European Court of Human Rights), Article 1 of Protocol No. 1 to the Convention comprises three distinct rules:

> "the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers deprivation of possessions and subjects it to certain conditions; the third rule, stated in the second paragraph, recognises that the Contracting States are entitled, amongst other things, to control the use of property in accordance with the general interest.... The three rules are not, however, 'distinct' in the sense of being unconnected. The second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule."

James and Others v. the United Kingdom (judgement of 21 February 1986, Series A no. 98, paragraph 37).

236. It must be determined in each case whether a "fair balance" has been struck between the demands of the general interest of the community and the requirements of the protection of the individuals' fundamental rights. Thus, there must be a reasonable relationship of proportionality between the means employed and the aim sought to be realised. The requisite balance will not be

found if the persons concerned have had to bear an individual and excessive burden. The Chamber recalls that the foreign currency savings accounts raise complex issues of great economic importance and therefore, as the Chamber found in *Poropat and Others* and *Todorović and Others*, the respondent Parties enjoy a wide margin of appreciation in dealing with these matters (*Poropat and Others*, paragraph 163, *Todorović and Others*, paragraph 123).

(c) Alleged violation by the Federation of Bosnia and Herzegovina

237. In considering the merits of these cases against the Federation of Bosnia and Herzegovina, the Chamber must decide whether, in light of developments since its decisions in *Poropat and Others* and *Todorović and Others*, the legal situation in the Federation regarding old foreign currency savings continues to constitute a violation of Article 1 of Protocol No. 1 to the Convention.

238. In the *Poropat and Others* decision, the Chamber stated: "While not overlooking the general interest involved, including the need to regulate the settlement of these savings in the context of economic difficulties of the Federation and the Banks, the Chamber finds that the measures do not strike a 'fair balance' between that interest and the protection of the applicants' property rights and that they, thus, fall outside the Federation's margin of appreciation." (*Poropat and Others*, paragraph 192). The Chamber pointed out several shortcomings of the privatisation program:

a. The limited two-year validity of the privatisation certificates;
b. The unequal treatment afforded cash and certificates;
c. The uncertainty regarding the future status of foreign currency savings claims that have not been registered in the Unique Citizen's Account and the claims that have been so registered but are not used in the privatisation process.

(*Poropat and Others*, paragraphs 186-87, 190).

239. The Chamber found that these issues had to be solved by the Federation in amending its privatisation program. The Chamber considered that it was for the Federation to find, within its margin of appreciation, the appropriate means to achieve the required "fair balance" of interests (*Poropat and Others*, paragraph 204).

240. The Chamber recognises that, between 2 November 2000 and 8 February 2002, the Federation amended various provisions of the Citizens' Claims Law in an effort to address the shortcomings of the privatisation programme and comply with the Chamber's order in *Poropat and Others*. The Federation government and legislature have taken appreciable steps toward implementation of the Chamber's decision.

241. The Chamber notes, however, that the intervening decision of the Federation Constitutional Court has called the continuing efficacy of these laws into question. By its decision of 8 January 2001, that Court determined that key provisions of the Citizens' Claims Law were not in accordance with the Constitution of the Federation of Bosnia and Herzegovina.

242. No curative legislative amendments have been enacted, and no other concrete actions have been taken to resolve the old foreign currency savings situation since the decision of the Federation Constitutional Court.

243. Despite the pronouncement of the Federation Constitutional Court, the relevant provisions of the Citizens' Claims Law continue to be applied in the Federation. This is apparent from the fact that the applicants' situations have not changed following the Constitutional Court decision.

(i) Whether the Federation continues to interfere with the applicants' rights

244. In determining whether the Federation of Bosnia and Herzegovina has interfered with the applicants' rights under Article 1 of Protocol No. 1 to the Convention, the crucial question is whether the current state of the law and practice regarding the applicants' old foreign currency savings accounts adequately secures those rights. The Chamber will have regard to the current state of the privatisation programme in practice and whether the applicants or other depositors of foreign currency savings have succeeded in their attempts to realise their property rights in those funds.

245. In *Poropat and Others* and *Todorović and Others*, the Chamber found interference with the applicants' rights under Article 1 of Protocol No. 1 to the Convention based on legislation that relieved the banks of their contractual obligations toward the applicants and made it impossible for the applicants to withdraw their money. (*Poropat and Others*, paragraphs 170-77; *Todorović and Others*, paragraphs 130-33). As a practical matter, the same situation obtains today. The Chamber notes that, following the amendments, there are still no provisions in the Citizens' Claims Law indicating that an individual is free to dispose of his or her savings in any other way than to have them converted into privatisation certificates. The laws, as amended, continue to provide for the compulsory transfer of foreign currency savings from the bank to the Unique Citizen's Account. The applicants, and presumably other depositors, have been, and continue to be, unable to have money disbursed from their accounts. Thus, the interference found in *Poropat and Others* continues, at least *de facto*, even though *de jure* the relevant legislation is no longer in force.

246. The interference is exacerbated by the applicants' inability to obtain relief in the courts (see paragraph 27 above).

247. Having regard to the above, the Chamber concludes that the privatisation programme, with its restrictions on foreign currency savings, as currently administered by the Federation of Bosnia and Herzegovina, continues to interfere with the property rights of individual savers, including the present applicants.

(ii) Whether the interference has been justified

248. The Chamber will next consider whether the interference created by the prevailing legal situation has been justified under the second paragraph of Article 1 of Protocol No. 1 to the Convention. The Chamber notes, in this regard, that the Federation continues to apply the relevant legislation establishing control of the use of the applicants' property. Control of use of property must be "in accordance with the general interest" and have some basis in law. Moreover, it must be determined whether a "fair balance" has been struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights.

(α) Purpose of the interference

249. The Chamber concludes, without question, that the legislative measures taken by the Federation have been pursued in accordance with the general interest. In this regard, the Chamber notes the economic difficulties of the Federation and the banking system. It is clearly in the general interest to attempt to administer citizens' property claims in a manner designed to protect the banking system from collapse.

(β) Lawfulness of the interference

250. The Chamber observes that the legal basis for the interference in question, if there is one, must be found in the provisions of the Citizens' Claims Law and the related privatisation laws.

251. The Chamber notes first that the Federation Constitutional Court has declared Articles 3, 7, 11, and 18 of the Citizens' Claims Law—the provisions essential to the scheme of conversion of old foreign currency savings into certificates—unconstitutional. Thus, the laws on which the Federation's

control of use of the applicants' property is based are *de jure* no longer in force, but *de facto* continue to be applied.

252. There is ample authority in domestic law and court procedural rules to support the conclusion that, following the decision of the Federation Constitutional Court, Articles 3, 7, 11, and 18 of the Citizens' Claims Law are no longer in effect. Article 12(b) of part IV(c) of the Federation Constitution provides that any law deemed not in accordance with the Constitution shall not remain in force "unless the Court specifies some transitional arrangements which may not extend to a period in excess of six months." The Federation Constitutional Court, in its decision, does not specify any transitional arrangements regarding its decision on the Citizens' Claims Law. Under the circumstances, the law should have been deprived of its effect *ex nunc*—from the moment of the Court's decision.

253. The Chamber notes that, on 14 May 2001, the Federation government appealed against the decision of the Federation Constitutional Court to the Constitutional Court of Bosnia and Herzegovina. Article 75 of the Rules of Procedure of The Constitutional Court of Bosnia and Herzegovina provides that this higher court may suspend the execution of temporary measures, laws, and decisions, such as the decision of the Federation Constitutional Court. The Constitutional Court of Bosnia and Herzegovina has not, however, suspended execution of the Federation Constitutional Court's decision. It follows that the decision of the Federation Constitutional Court is still in force, and the relevant provisions of the Citizens' Claims Law are not.

254. The Chamber has also considered whether the historical practice in the former Constitutional Court of Yugoslavia could support the Federation's assertion that the provisions declared unconstitutional are still in force. Article 384 of the Constitution of the former SFRY provided that, if a law was declared inconsistent with the Constitution, the legislature would be allowed six months (with opportunity for extension) to amend the provision and harmonise it with the Constitution. Only after the expiration of the amendment time limit, and following a second decision of the Constitutional Court, would the existing law be deprived of its effect. Similar laws and practice applied to the Constitutional Court of the Socialist Republic of Bosnia and Herzegovina (*see* paragraph 172, *supra*). There is no apparent legal basis, however, for applying this former SFRY practice to the current situation.

255. If, as the plain text of Article 12(b) of the Federation Constitution suggests, the relevant provisions of the Citizens' Claims Law ceased to be in effect from the time of the Federation Constitutional Court's decision, then the ongoing interference with the applicants' property rights is without basis in law and cannot be justified.

256. If, on the other hand, as the respondent Party appears to argue, the relevant provisions of the Citizens' Claims Law continued in effect after the Federation Constitutional Court's decision, other relevant factors undermine the lawfulness of the interference. First, even if one assumes *arguendo* that the Federation Constitutional Court silently intended to allow for transitional arrangements, the six-month time limit placed on those arrangements by Article 12(b) of part IV(c) of the Federation Constitution has long since expired.[4] Moreover, the Federation has indicated that, following the proposal of the Federal Ministry of Finance, it intends to amend only two of the four articles of the Citizens' Claims Law found unconstitutional. In any case, more than two and one-half years after the decision of the Federation Constitutional Court, no responsive legislative changes have been enacted.

257. Having regard to the above, the Chamber will consider whether the interference strikes a fair balance between the general interest and the applicants' private property rights.

[4] The applicable time limits under the practice of the former SFRY would also have expired, even if an extension had been granted.

(γ) Proportionality of the interference

258. As was pointed out by the European Court of Human Rights in the *James and Others v. the United Kingdom* judgement, the second paragraph of Article 1 of Protocol No. 1 has to be construed in the light of the general principle set out in the first sentence of this Article. This sentence has been interpreted by the Court as including the requirement that a measure of interference should strike a "fair balance" between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights.

259. The Chamber recognises the Federation's amendments to various relevant laws since the decision and order in *Poropat and Others*. The Federation amended the Law on Privatisation of Companies and the Law on Sales of Apartments with Existing Occupancy Right to ensure the equal treatment of certificates and cash. The Federation also amended the Citizens' Claims Law to extend the time limit for using certificates to purchase apartments. It also extended the time limit for using certificates generally from two to four years.

260. The Chamber further takes notice of the activities in which the Federation states it is presently engaged, specifically its promised prospective legislative actions and the establishment of a commission to resolve issues related to certain foreign banks. To date, however, none of these steps has yielded concrete results that impact upon the proportionality of the interference.

261. The Chamber notes again that, taken together, the decision of the Federation Constitutional Court, the lack of responsive legislative action, and the continued application of the Citizens' Claims Law have led to a state of legal confusion with regard to the applicants' old foreign currency savings accounts. There is no justification for the current uncertainty, which leaves the applicants' claims to their property in a state of oblivion and neglect. Meanwhile, as the privatisation process moves forward without clarification of the law, the potential consequences of the applicants' insistence on their property rights become more severe.

262. The inaction following the Federation Constitutional Court's decision has created a protracted state of legal uncertainty and confusion that cannot provide a legal basis for the continuing interference with the applicants' property rights. The failure to address the issue serves no legitimate public purpose, and it does not fall within the Federation's considerable margin of appreciation, no matter how compelling the public interest involved may be.

263. Even in the absence of the Federation Constitutional Court judgement, however, an unacceptable atmosphere of legal uncertainty would exist. Based on the provisions of the Citizen's Claims Law and other Federation authorities, the Chamber concluded in *Poropat and Others* (paragraphs 171-177) that the transfer of old foreign currency savings to certificates in the privatisation process was mandatory, and that the banks relied upon Federation legislation in refusing to pay out the savings in question. Thus, the privatisation process was the only means for old foreign currency savings account holders to utilise their savings. Indeed, the Federation informed the Chamber that "there is no way for citizens of Bosnia and Herzegovina—old foreign currency savings owners—to realise their claims on those grounds in any way but the privatisation process" (see paragraph 161 above).

264. In subsequent submissions to the Chamber, however, both Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina have argued that the old foreign currency savings problem can only be resolved through succession and the public debt, contrary to the early statements limiting any solution to the privatisation process. Similarly inconsistent statements emerge from the decisions of the domestic courts, some of which rely upon foreign exchange legislation, some on privatisation legislation, and others on a future solution through public debt (see, e.g., paragraphs 37-39 and 52 above). Such inconsistent and irreconcilable representations can only engender public confusion. As a result of receiving mixed messages from the media, many old foreign currency savings holders may not even know whether their savings have been automatically transferred to their Unique Citizen's Account or not (and whether their claims have thereby expired, or are about to expire) or whether compensation for their old foreign currency savings will be offered through a public debt scheme.

265. For those applicants whose savings were in fact transferred to their Unique Citizen's Account pursuant to the 1997 Citizen's Claims Law (e.g., case nos. CH/98/449 and CH/99/2215), the situation is particularly acute. They have been placed in the untenable position of being time-pressured by law to utilise their life savings in the privatisation process, including selling them for less than five percent of their nominal value on the secondary market, or suffer the consequences, while they have been simultaneously exposed to statements by public officials that old foreign currency savings liabilities will be resolved through public debt or succession funds.

266. Here again, the conduct of the Federation has led to a state of legal and public confusion for which there is no justification.

267. Having regard to the above circumstances, the Chamber considers that the situation in the Federation of Bosnia and Herzegovina in respect of the old foreign currency savings, taken as a whole, places an individual and excessive burden on many depositors, including the current applicants. The Chamber recognises the Federation's efforts to strike a "fair balance" through amendments to the applicable laws. Those efforts, however, compose only part of the picture. Whatever the potential impact of those amendments, their efficacy has been called into question by the decision of the Federation Constitutional Court. The Chamber finds that the resulting state of legal uncertainty — the continued application of the laws contrary to the Federation Constitutional Court's decision, the lack of any timely responsive amendment to those laws, and the apparent unavailability of relief in the domestic courts — creates a disproportionate interference with the applicants' property rights.

268. In conclusion, there has been a violation by the Federation of Bosnia and Herzegovina of the applicants' rights to peaceful enjoyment of their possessions under Article 1 of Protocol No. 1 to the Convention.

(d) Alleged violation by Bosnia and Herzegovina

269. The Chamber considers, as it did in *Poropat and Others* and *Todorović and Others*, that Bosnia and Herzegovina remains generally responsible for issues related to old foreign currency savings accounts, and that the state's earlier failure to take adequate action left foreign currency savings holders with no legal basis to claim reimbursement of their savings (*see Poropat and Others*, paragraphs 164-69; *Todorović and Others*, paragraphs 153-54). Following the same reasoning, Bosnia and Herzegovina bears responsibility for the violations of Article 1 of Protocol No. 1 to the Convention alleged in the present cases. And, although not directly involved in the actions that have created the current state of legal uncertainty, Bosnia and Herzegovina remains involved in state-level negotiations regarding matters that may affect the applicants, such as the responsibilities of foreign-based banks (like Ljubljanska Banka and Unionbanka) and economic succession rights generally.

270. Like the Federation, Bosnia and Herzegovina, through its statements and inactivity, has contributed to the legal uncertainty surrounding this issue. Although the Succession Agreement has not entered into force and succession negotiations have not yielded any results, public statements that the old foreign currency savings problem will be resolved through public debt or succession funds have undoubtedly produced some public confusion. Meanwhile, the Constitutional Court of Bosnia and Herzegovina has failed, for two and one-half years, to issue a decision on the appeal of the Federation Constitutional Court's judgement.

271. Accordingly, as it did in *Poropat and Others* and *Todorović and Others*, the Chamber finds that there has been a violation by Bosnia and Herzegovina of the applicants' right to peaceful enjoyment of their possessions under Article 1 of Protocol No. 1 to the Convention.

2. Article 6 of the Convention

272. In light of the reasons for finding the violations of Article 1 of Protocol No. 1 to the Convention above, the Chamber finds that it is not necessary to consider the present applications under Article 6 of the Convention. This finding also applies to the application of Dragan Prečanica (case no. CH/98/1084), whose requests for enforcement of his court judgements preceded the entry into force of the Agreement.

VIII. REMEDIES

273. Under Article XI(1)(b) of the Agreement, the Chamber shall address the question of what steps are to be taken by the respondent Party to remedy breaches of its obligations under the Agreement. In this respect, the Chamber may consider issuing orders to cease and desist, awarding monetary relief (for pecuniary and non-pecuniary injuries), and prescribing provisional measures.

274. All the applicants claim compensation for the full amount of their old foreign currency savings. They also variously seek interest, reimbursement of expenses of proceedings before the domestic courts and the Chamber, and compensation for mental suffering in the amount of KM 1000.00 per applicant for ill-treatment by the banks and the respondent Parties. Numerous applicants request the Chamber to order a legislative remedy that will provide them with full property rights in their old foreign currency savings.

275. In the circumstances, the Chamber finds it appropriate to order the Federation of Bosnia and Herzegovina to establish within six months, through appropriate legislation or regulations, a clear legal framework by which old foreign currency savings holders are provided concrete and reliable information regarding the prospective treatment of their old foreign currency savings, in a manner that takes into account the general interest without placing an excessive individual burden on the applicants.

276. The Chamber will also order the respondent Parties to pay each of these applicants — except Dragan Prečanica (case no. CH/98/1084), whose remedy shall be governed by paragraph 280 below — within one month of the date of delivery of this decision, 2000 KM or the full balance of his or her old foreign currency savings, whichever is less, the cost to be borne equally between the respondent Parties. The amounts of these payments shall be deducted from any future recovery of old foreign currency savings to which the applicants may become entitled.

277. The Chamber clarifies that it does not make this Order on the basis of an assumption that, under the Convention, 2000 KM is an adequate amount to be paid to the applicants. The adequate payment may be more or less than this amount.

278. As the Chamber has explained in *Poropat and Others* and *Todorović and Others*, what the applicants are entitled to under Article 1 of Protocol No. 1 to the Convention is a clear legal framework that takes into account the general interest without placing an excessive individual burden on the applicants. The applicants have the right to know, from the respondent Parties, whether the use of certificates in the privatisation process is the only way they can obtain something of value for their old foreign currency savings. The applicants are entitled, under the Convention, to know whether Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina intend to respect statements made by officials and even in legislation and court judgements that the issue of old foreign currency savings will be addressed through the public debt of the respondent Parties. If so, the applicants are entitled to know what percentage of their savings they can expect to recoup and within what time frame.

279. The respondent Parties have failed, over the last seven and one-half years, to provide a clear answer to these questions and they have also failed to act upon the decisions of the Chamber and of the Federation Constitutional Court. Under the circumstances, the Chamber finds it appropriate to order the respondent Parties to finally provide a clear legislative solution and — as an equitable remedy — to pay the present applicants the sums determined above.

280. The Chamber further orders the Federation of Bosnia and Herzegovina to take all necessary steps to ensure the enforcement of the applicant Dragan Prečanica's judgements ordered by the First Instance Court I in Sarajevo (see paragraph 111 above), no later than one month from the date of delivery of this decision, i.e. by 7 December 2003. Should the Federation not ensure enforcement of the judgements by that date, the Chamber finds it appropriate to order the Federation to pay the amounts that its authorities should have forced Ljubljanska Banka and Jugobanka to pay to the applicant, along with any and all interest accrued on those amounts, no later than 7 January 2004.

B. Costs of Proceedings

281. The Chamber further orders the respondent Parties to pay the applicants compensation for the expenses of the proceedings before the Chamber in the amount of 200 KM for each applicant, this cost to be borne equally between the respondent Parties.

282. The Chamber further orders the respondent Parties to pay the applicants simple interest at a rate of 10 (ten) per cent per annum on the sums to be paid under paragraphs 276, 280, and 281 or on any unpaid portion thereof from the expiry of the period set for such payments until the date of final settlement of all sums due to the applicants under those paragraphs.

283. Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina shall report to the Human Rights Commission within the Constitutional Court on the steps taken to comply with the above orders within six months from the date of delivery of this decision.

IX. CONCLUSIONS

284. For the above reasons, the Chamber decides:

1. unanimously, to declare the applications admissible against Bosnia and Herzegovina with regard to Article 1 of Protocol No. 1 to the Convention;

2. unanimously, to declare the applications inadmissible against Bosnia and Herzegovina with regard to Article 6 of the Convention;

3. unanimously, to declare applications CH/98/784 and CH/98/785 inadmissible in their entirety against the Republika Srpska;

4. unanimously, to declare the applications admissible in their entirety against the Federation of Bosnia and Herzegovina;

5. unanimously, that the Federation of Bosnia and Herzegovina has violated all the applicants' rights to peaceful enjoyment of their possessions under Article 1 of Protocol No. 1 to the European Convention on Human Rights by placing an individual and excessive burden on the applicants with regard to their old foreign currency savings, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Human Rights Agreement;

6. by 12 votes to 2, that Bosnia and Herzegovina has violated all the applicants' rights to peaceful enjoyment of their possessions under Article 1 of Protocol No. 1 to the Convention by failing to take adequate action in regard to the old foreign currency savings to secure the applicants' rights under that provision, Bosnia and Herzegovina thereby being in breach of Article I of the Agreement;

7. unanimously, that it is not necessary to consider the applications under Article 6 of the European Convention on Human Rights;

8. unanimously, to order the Federation of Bosnia and Herzegovina to establish within six months, i.e. by 7 May 2004, through appropriate legislation or regulations, a clear legal framework by which old foreign currency savings holders are provided concrete and reliable information regarding the prospective treatment of their old foreign currency savings, in a manner that takes into account the general interest without placing an excessive individual burden on the applicants;

9. by 11 votes to 3, to order Bosnia and Herzegovina to pay each of these applicants — except Dragan Prečanica (case no. CH/98/1084) — by 7 December 2003, 1000 KM or one-half of the full balance of his or her old foreign currency savings, whichever is less;

10. by 13 votes to 1, to order the Federation of Bosnia and Herzegovina to pay each of these applicants — except Dragan Prečanica (case no. CH/98/1084) — by 7 December 2003, 1000 KM or one-half of the full balance of his or her old foreign currency savings, whichever is less;

11. unanimously, in case no. CH/98/1084, to order the Federation of Bosnia and Herzegovina to take all necessary steps to ensure the enforcement of Mr. Prečancica's judgements as ordered by the First Instance Court in Sarajevo on 30 December 1991 and 17 March 1992, not later than 7 December 2003; and, should the Federation not ensure enforcement of the judgements by that date, the Chamber orders the Federation to pay the amounts that its authorities should have forced Ljubljanska Banka and Jugobanka to pay to the applicant, along with any and all interest accrued on those amounts, no later than 7 January 2004;

12. by 12 votes to 2, to order Bosnia and Herzegovina to pay each applicant 100 KM for the expenses of proceedings before the Chamber, not later than 7 December 2003;

13. unanimously, to order the Federation of Bosnia and Herzegovina to pay each applicant 100 KM for the expenses of proceedings before the Chamber, not later than 7 December 2003;

14. unanimously, to order the respondent Parties to pay the applicants simple interest at a rate of 10 (ten) per cent per annum on the amounts due from them on the sums awarded in conclusions nos. 9 through 13 or any unpaid portion thereof from the expiry of the periods set for such payments until the date of final settlement of all sums due to the applicants under those conclusions; and

15. unanimously, to order Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina to report to the Human Rights Commission within the Constitutional Court by 7 May 2004 on the steps taken to comply with the above orders.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the Chamber