DECISION ON ADMISSIBILITY AND MERITS
(Delivered on 10 October 2003)

Cases no. CH/98/420, CH/00/5893, CH/02/9315, and CH/02/9852

Azra KUGIĆ, Đulan IVAZOVIĆ, Drago RADOVANOVIĆ, and M.M.

against

BOSNIA AND HERZEGOVINA
and
THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 4 September 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 Articles VIII and XI of the Agreement and Rules 34, 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. Before and during the armed conflict in Bosnia and Herzegovina, the applicants were largely unable to withdraw money from their accounts.

2. Following the dissolution of the SFRY, branch offices of banks were registered as new banks in the territory where they were located. In the case of Bosnia and Herzegovina, the Republika Srpska enacted numerous laws by which it established its own banking system, independent of the rest of the country. Newly-registered banks in the territory of the Republika Srpska apparently undertook all the rights and obligations of their predecessors (the former branch offices), in accordance with relevant legislation.

3. The applicants are all holders of old foreign currency savings accounts in bank branches located within the Republika Srpska.[1]

4. In accordance with various Republika Srpska legislative acts and government decisions, withdrawals of old foreign currency savings remained effectively frozen following the armed conflict in Bosnia and Herzegovina. Pursuant to privatisation legislation, in particular the Law on Privatisation of State Capital in Enterprises (Official Gazette of the Republika Srpska – hereinafter "OG RS" - no. 24/98) and the Law on Opening Balance Sheets in the Process of Privatisation of State Capital in Banks (OG RS nos. 24/98, 70/01), liability for citizens' old foreign currency savings was transferred from the banks to the Republika Srpska government, and claims based on those savings were to be resolved in the process of privatisation of socially and publicly owned property. Under this system, citizens may convert their old foreign currency savings into privatisation coupons which may be used to purchase shares of state-owned companies. Alternatively, old foreign currency savings may be converted into certificates which may be used to purchase state-owned apartments. This system has been designed to settle old foreign currency savings claims while protecting the banks and the general Republika Srpska economy from bankruptcy. Participation by old foreign currency savings holders is purely voluntary.

5. Only one of the applicants has participated in the privatisation process by using one portion of her old foreign currency savings to purchase a state-owned apartment and selling another portion as privatisation coupons on the "secondary market". The applicants generally desire to have access to their old foreign currency savings as cash, but their attempts to get money from their accounts have been unsuccessful. Some are in difficult financial situations and report that they need money from their old foreign currency savings to meet daily living expenses.

6. The applications raise issues in regard to the applicants' right to peaceful enjoyment of their possessions under Article 1 of Protocol No. 1 to the European Convention on Human Rights (the "Convention"), as well as discrimination in the enjoyment of that right; their right to a fair hearing within a reasonable time under Article 6 paragraph 1 of the Convention; and their right to an effective remedy under Article 13 of the Convention.

II. PROCEEDINGS BEFORE THE CHAMBER

7. The Chamber first considered two of the present cases on 6 September 2002.[2] At that time, the Chamber decided to transmit those applications, along with other similar applications, to the

[1] Although the branch offices are in the Republika Srpska, many of the banks involved had their main offices in the Federation of Bosnia and Herzegovina. Claims regarding accounts in branch offices located in the Republika Srpska cannot be made in the Federation of Bosnia and Herzegovina (see, e.g., Law on Determination and Settlement of Citizens' Claims in the Privatisation Process, Official Gazette of the Federation of Bosnia and Herzegovina – hereinafter "OG FBiH" - nos. 27/97, 8/99).

[2] Cases no. CH/98/420 (Azra Kugić) and CH/02/9315 (Drago Radovanović).

Republika Srpska and to Bosnia and Herzegovina for their written observations on the admissibility and merits. The Chamber also decided to reject the request for provisional measures in case no. CH/02/9315 (Drago Radovanović).

8. On 30 September 2002, the Chamber transmitted the present applications, among others, to the Republika Srpska and Bosnia and Herzegovina for their observations in relation to Articles 6 and 13 of the Convention and Article 1 of Protocol No. 1 to the Convention.

9. On 27 November 2002, the Chamber received written observations from the Republika Srpska. The Chamber transmitted the observations of the Republika Srpska to the applicants on 10 December 2002. On 26 December 2002, the Chamber received written responsive observations from the applicant in case no. CH/00/5893 (Đulan Ivazović), and on 30 December 2002, the Chamber received written responsive observations from the applicant in case no. CH/02/9315 (Drago Radovanović). The Chamber transmitted these observations to the Republika Srpska on 15 January 2003.

10. No written observations have been received from Bosnia and Herzegovina to date.

11. On 8 February 2003, the Chamber again considered the cases and decided to hold a public hearing.

12. On 7 March 2003, the Chamber again considered the cases and decided to engage Professor Dr. Dragoljub Stojanov of the University of Sarajevo as an expert witness. The Chamber subsequently provided Professor Stojanov with a list of detailed questions on economic aspects of the old foreign currency savings account problem in the Republika Srpska.

13. On 3 April 2003, the Chamber again considered the cases and decided to hold the public hearing in June 2003. The Chamber further decided to invite the Office of the High Representative (OHR) to participate as *amicus curiae* in these cases.

14. By its letter of 8 April 2003, the Chamber invited OHR to participate as *amicus curiae* and presented OHR with specific questions on legal and economic issues. By its letter of 16 April 2003, OHR agreed to fulfil the Chamber's request.

15. On 10 April 2003, the Chamber sent requests for additional information to the applicants. The Chamber subsequently received responses from the applicants on 18 April 2003, 23 April 2003, and 28 April 2003 in cases CH/02/9852 (M.M.), CH/00/5893 (Đulan Ivazović), and CH/02/9315 (Drago Radovanović), respectively.

16. On 5 May 2003, Professor Stojanov completed his written expert report and subsequently delivered it to the Chamber. The Chamber transmitted this report to the Republika Srpska on 16 May 2003, and to the applicants and Bosnia and Herzegovina on 19 May 2003.

17. On 8 May 2003, the Chamber again considered the cases and decided to hold the public hearing on 4 June 2003 and to summon witnesses.

18. On 9 May 2003, the Chamber sent a request for additional information to the respondent Parties.

19. On 14 May 2003, OHR submitted a written *amicus curiae* report to the Chamber. The Chamber transmitted this document to the applicants and respondent Parties on 23 May 2003. On 21 May 2003, the Chamber invited the OHR to participate in the public hearing. By its letter of 29 May 2003, OHR informed the Chamber that it would not participate in the public hearing.

20. On 4 June 2003, the Chamber held a public hearing in the Cantonal Court in Sarajevo. The applicants in cases no. CH/98/420 (Azra Kugić) and CH/02/9315 (Drago Radovanović) were personally present. The applicant in case no. CH/00/5893 (Đulan Ivazović), who died since the filing of his application, was represented by his son, Mr. Ermin Ivazović. The applicant in case no. CH/02/9852 (M.M.) was represented by her daughter, Ms. Jasna Hrustanović. Bosnia and

Herzegovina was represented by two of its agents, Mr. Jusuf Halilagić and Ms. Gordana Milovanović. The Republika Srpska was represented by its agent, Mr. Milan Dupor, who was assisted by Ms. Miroslava Simić, Head of the Department of Administration and Debt of the Republika Srpska Ministry of Finance; and Ms. Snježana Rudić, Head of the Department of Financial Markets of the Republika Srpska Ministry of Finance. The Chamber heard as witnesses Ms. Slobodanka Milašinović, a lawyer with the Republika Srpska Directorate for Privatisation; Mr. Svetozar Nišić, President of the Association of Republika Srpska Citizens with Old Foreign Currency Savings Accounts; Mr. Dragutin Đurić, legal representative of the Association of Republika Srpska Citizens with Old Foreign Currency Savings Accounts; and the expert witness, Professor Dragoljub Stojanov of the University of Sarajevo.

21. On 4 June 2003, following the public hearing, the Chamber deliberated on the cases and decided to request additional information from the parties. The Chamber again considered the cases on 8 June 2003.

22. On 2 July 2003, the Chamber requested additional information from the applicant in case no. CH/98/420 (Azra Kugić). On 7 July 2003, the Chamber received responsive information from Ms. Kugić. On 8 July 2003, the Chamber transmitted this information to the Republika Srpska.

23. On 16 July 2003, the Chamber transmitted the application in case no. CH/00/5893 (Đulan Ivazović) to the Republika Srpska in relation to possible discrimination in the enjoyment of the right to peaceful enjoyment of possessions under Article 1 of Protocol No. 1 to the Convention. The Chamber also requested additional information from the Republika Srpska regarding the applicants' citizenship. On 11 August 2003, the Chamber received a reply from the Republika Srpska, stating that it could not objectively satisfy the request for information.

24. The Chamber again considered the cases on 4 September 2003 and adopted the present decision. Considering the similarities between the facts of the cases and the complaints of the applicants, the Chamber decided to join the present applications in accordance with Rule 34 of the Chamber's Rules of Procedure on the same day it adopted the present decision.

III. FACTS

25. The applicants are all holders of old foreign currency savings accounts in bank branches located within the Republika Srpska. In each case, the applicant has been unable to access the funds in his or her old foreign currency savings.

A. The facts of the individual cases

1. Case no. CH/98/420, Azra Kugić

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

27. The applicant was born in Prijedor and formerly worked as a nurse in Libya, where she earned foreign currency. Beginning on 6 November 1986, she deposited funds to her foreign currency savings book in Jugobanka Sarajevo, Gradiška Branch Office.

28. The applicant states that she tried to withdraw foreign currency funds from her savings book in the Gradiška Branch Office in 1990, but she was informed orally that payment of foreign currency was suspended. She states that, after many efforts and pleas, with an explanation that her father had died, she succeeded in withdrawing 1,000.00 United States Dollars (USD). According to a copy of an excerpt from her foreign currency savings book, the applicant also withdrew USD 306.96 on 29 May 1992.

29. On 12 December 1997, the applicant addressed the Unionbanka d.d. Sarajevo (the legal successor of Jugobanka in the Federation of Bosnia and Herzegovina), claiming payment of her foreign currency savings and outstanding interest, but the bank would not accept her claim. She

alleges that Unionbanka answered her orally that her money is in the Kristal Banka in Banja Luka (the legal successor of Jugobanka in the Republika Srpska).

30. Ms. Kugić sold a portion of her old foreign currency savings on the secondary market. In the transaction, executed on 24 October 2002, she exchanged USD 10,002.92 (approximately 20,000.00 Convertible Marks (*Konvertibilnih Maraka*, KM)) for KM 9,600.00. She reports that she entered into this transaction out of necessity and received 46 percent of the face value of this portion of her savings.

31. Ms. Kugić also used a portion of her old foreign currency savings to purchase an apartment for her mother and herself. In this transaction, which took place on 26 November 2002, she used USD 1,633.39 of her savings to cover a portion of the purchase price.

32. Ms. Kugić currently has USD 14,483.92 remaining on her savings deposit books.

33. The applicant sought relief in the domestic courts. On 26 November 2002, the First Instance Court in Gradiška issued a judgement (no. P-161/02) ordering Kristal Banka AD Banja Luka to pay Ms. Kugić the full remainder of her old foreign currency savings (USD 14,483.92), with interest beginning 1 July 1998, along with KM 80.00 for costs of proceedings. The court based its decision on Articles 1035 and 1036 of the Law on Obligations. Kristal Banka AD Banja Luka appealed against this decision to the District Court in Banja Luka on 25 December 2002 (case no. 02-6-1158/02), but the case was not transferred from the First Instance Court to the District Court in Banja Luka until 28 May 2003. No decision has yet been taken by the Banja Luka District Court.

34. The applicant has made contradictory statements as to whether she is a citizen of the Republika Srpska. The Republika Srpska has informed the Chamber that it cannot objectively state whether the applicant is a citizen of the Republika Srpska for purposes of participation in the privatisation program.

35. The applicant states that her financial situation is extremely difficult and that she does not have sufficient funds for living.

2. Case No. CH/00/5893, Đulan Ivazović

36. The application was submitted to the Chamber on 10 October 2000 and registered on the same day.

37. Đulan Ivazović had been employed as a woodcutter in Germany, and he deposited funds in two foreign currency savings accounts in the Sokolac branch office of Privredna Banka d.d. Sarajevo from 11 February 1980 until 20 March 1991. The account balances were 20,006.60 *Deutsche Marks* (DEM) and DEM 10,050.09, respectively, for a total amount of DM 30,056.69.

38. The original applicant, Đulan Ivazović, died and his son, Ermin Ivazović, is continuing the proceedings as the applicant before the Chamber. He resides in Sarajevo.

39. The applicant states that neither he nor his father were citizens of the Republika Srpska. The Republika Srpska has informed the Chamber that it cannot objectively state whether the applicant or his father are citizens of the Republika Srpska for purposes of participation in the privatisation program. The applicant does not hold an occupancy right over an apartment in the Republika Srpska, and he would not be interested in purchasing an apartment in the Republika Srpska, even if the law allowed for it. He states that he wants his money back in cash, not coupons or certificates, and he has not converted his money into coupons or certificates in the privatisation process.

40. The applicant has not addressed any domestic or international institutions to realise his claims.

3. Case No. CH/02/9315, Drago Radovanović

41. Beginning in 1977, the applicant deposited funds in his foreign currency savings book at Privredna Banka Sarajevo, Branch Office Bijeljina. The applicant deposited funds into three old foreign currency savings accounts from 4 October 1977 until 13 August 1998, from 30 June 1981 until 13 August 1998, and from 18 July 1989 until 13 August 1998. The applicant also states that his wife saved money from 15 April 1986 until 13 August 1998. The total amount of his savings is approximately 150,000.00 Swiss Francs (CHF), which the applicant characterises as his and his wife's life savings.

42. The applicant lives and works in Lausanne, Switzerland; he states that he is also a citizen of the Republika Srpska. The Republika Srpska has informed the Chamber that it cannot objectively state whether the applicant is a citizen of the Republika Srpska for purposes of participation in the privatisation program.

43. The applicant states that he expected to get his money back after the cessation of the armed conflict in Bosnia and Herzegovina. He has not succeeded, however, in submitting a request for the return of his money because the PBS Bijeljina no longer exists, and the new Semberska Banka in Bijeljina has refused to accept his request. His requests for reinstatement of his old foreign currency savings account have all been rejected.

44. For the purpose of securing the return of his old foreign currency savings, the applicant has addressed numerous domestic and international institutions and individuals: the United Nations High Commission for Refugees (UNHCR) in Banja Luka, the Human Rights Helsinki Committee for Bosnia and Herzegovina, the Bijeljina Municipality Assembly, the Federation of Bosnia and Herzegovina Ministry of Finance, the Republika Srpska Ministry of Finance, and numerous individual politicians. The applicant states that he has not addressed the domestic courts.

45. By letters dated 3 October 2001 and 7 January 2002, the Federation of Bosnia and Herzegovina Ministry of Finance replied to the applicant's letters regarding his frozen old foreign currency savings. In its letter of 3 October 2001, the Federation Ministry of Finance informed the applicant that, in both Entities, regulations regarding the resolution of the frozen bank accounts problem are being developed, with respect to the location of the banks in which citizens' old foreign currency savings have been deposited. The Ministry instructed the applicant to address the Ministry of Finance of the Republika Srpska. By its letter of 7 January 2002, the Federation Ministry informed the applicant that under Article 3 of the Law on Determination and Realisation of Citizens' Claims in the Privatisation Process (OG FBiH nos. 27/97, 8/99, 45/00, 54/00 and 32/01), persons who held old foreign currency savings in the territory of the Federation of Bosnia and Herzegovina are entitled to a claim against the Federation based on the account's status on 31 March 1992. The letter states that, because the Privredna Banka Sarajevo Branch Office in Bijeljina is located in the Republika Srpska, the applicant cannot realise his claims in the Federation of Bosnia and Herzegovina. According to regulations in force, the Federation is not required to make a record of old foreign currency savings of banks and branch offices located in the territory of the Republika Srpska. The letter further states that laws are being prepared at the Bosnia and Herzegovina state level such that citizens' claims arising from old foreign currency savings would be taken over as public debt of the State, and that the applicant can stay informed of any developments through the media.

46. In its letter of 16 January 2002, the Republika Srpska Ministry of Finance replied to the applicant's request for payment of his old foreign currency savings. The Ministry informed the applicant that old foreign currency savings, according to current regulations, can be used to buy state capital in companies or to buy state-owned apartments, up to 60 percent of the value of the apartment. Further, for such purposes, old foreign currency savings may be transferred to other persons of the applicant's choice. The Ministry points out that payment of old foreign currency savings in cash is not possible before the enactment of a new law, and preparation of this law at the state level is in progress. The letter also states that issuance of the Law on Purchase of Business Premises and Garages is in progress, and the possibility of purchasing such property with old foreign currency savings is foreseen up to the full value of the property concerned.

47. The applicant states that he cannot meaningfully participate in the privatisation process because he lives outside Bosnia and Herzegovina. Although he once explored the possibility of purchasing shares in a certain company, he has not converted his money into coupons in the

privatisation process. And he does not hold an occupancy right over an apartment in the Republika Srpska.

48. The applicant states that he has received numerous telephone calls, both in Switzerland and in the Republika Srpska, from persons offering to purchase his old foreign currency savings at 50 to 55 percent of their nominal value.

4. Case No. CH/02/9852, M.M.

49. The application was submitted to the Chamber on 4 April 2002 and registered on the same day. During the public hearing, the applicant was represented by her daughter, Ms. Jasna Hrustanović.

50. The applicant, a resident of Banja Luka, is 82 years old and inherited her savings from her late husband, who died in 1994. She was displaced from Banja Luka in 1995 and returned in 1996. The funds in question had been deposited in foreign currency savings books in the Banja Luka branch office of Privredna Banka d.d. Sarajevo from 21 June 1989 until 30 June 1998; and in the Banja Luka branch office of Jugobanka Sarajevo (now Unionbanka Sarajevo) from 28 December 1974 until 17 September 1992. The exact amounts are not stated.

51. The applicant has not addressed any domestic or international institutions to realise her claims.

52. The applicant has not participated in the privatisation process. She stated, however, that her savings in Jugobanka were automatically converted into certificates and that she hopes to have the money returned to her bank account. She holds an occupancy right over her apartment in Banja Luka and would like to purchase it.

B. Oral and written evidence by experts and witnesses

1. Mr. Dragoljub Stojanov, expert

53. Mr. Stojanov is Professor at the Faculty of Economic Sciences of the University of Sarajevo. Appointed as an expert by the Chamber, he submitted a written opinion dated 5 May 2003 and was heard at the public hearing on 4 June 2003.

a. Written opinion

54. Professor Stojanov stated that the Republika Srpska took on the issue of old foreign currency savings as the legal successor of the SFRY and the Socialist Republic of Bosnia and Herzegovina ("SRBiH"). The Republika Srpska has defined old foreign currency savings as the foreign currency savings deposits of citizens recorded in the balance statements of banks on the Republika Srpska territory on 31 December 1991, along with interest calculated through 30 June 1998. On that date, the total amount of old foreign currency savings was KM 1,444,658,746.00, and liability for this amount was transferred from the banks to the Ministry of Finance of the Republika Srpska pursuant to the Law on Opening Balance Sheets in the Process of Privatisation of State Capital in Banks (see paragraph 107 below). According to Professor Stojanov, the purpose of this liability transfer was the "cleaning" of the banks to facilitate their privatisation.

55. Regarding possible solutions to the old foreign currency savings issue, Professor Stojanov pointed out that the Republika Srpska, the Federation of Bosnia and Herzegovina, and the state of Bosnia and Herzegovina lack the economic potential to pay out the old foreign currency savings deposits, and this solution would likely cause rapid depreciation of the KM, a result prohibited by the International Monetary Fund. Alternatively, there had been some discussion of converting old foreign currency savings liabilities into public debt through the issuance of bonds, but the Republika Srpska chose instead to attempt to solve the problem through the privatisation process.

56. In the privatisation process, citizens' old foreign currency savings claims are recorded on a Unique Citizen's Account and can be transferred to: (1) coupons valid for partial payment for

apartments for which an occupancy right exists; or (2) certificates valid for purchases in the privatisation of state-owned enterprises. Old foreign currency savings holders therefore may choose to convert their savings partly or fully into privatisation coupons or certificates or hold them in their current form in hopes of future realisation of cash payment. According to Professor Stojanov, low expectations of future cash payment stimulate the conversion of old foreign currency savings into privatisation coupons or certificates.

57. With regard to the purchase of apartments, the use of old foreign currency savings transformed into certificates is limited to 60 percent of the purchase price. Further, the program provides for a 30 percent discount when apartments are purchased with cash, but no discount is given when certificates are used. According to Professor Stojanov, treating old foreign currency savings as the equivalent of cash in the privatisation of apartments would stimulate greater old foreign currency savings investment in this process.

58. With regard to the purchase of shares of state-owned companies in the privatisation process, the Republika Srpska's plan is to sell state-owned capital for cash and old foreign currency savings coupons. As of 11 April 2003, 432 of 1622 subjects of privatisation had been sold, and the total privatisation program income was KM 150,550,377.85. Of this, KM 123,999,246.85 came from old foreign currency savings. This sum represents approximately nine percent of the total old foreign currency savings on record as of 30 June 1998.

59. The deadline for use of coupons based on old foreign currency savings is two years (but see paragraph 105 below, showing amendments to the relevant law). If the coupons are not used within this period, they expire and their value cannot be returned to the holder's old foreign currency savings account. Further, the privatisation procedure requires that a deposit of between three and eight percent of the privatised capital's value be paid in cash (not coupons). The time limit and cash deposit requirements place privatisation coupon holders in an inferior position to persons holding cash.

60. According to Professor Stojanov, the prosperous economic conditions necessary to establish widespread demand for shares of enterprises are not likely to arise anytime in the next five years in the Republika Srpska. The largest subjects of privatisation will be the electricity, oil, and telecom enterprises, which will probably not be prepared for privatisation for several years. Due to their size, the privatisation of these enterprises will have to be carried out according to international community requirements and through strategic partnerships, which might limit the ability of individual old foreign currency savings holders to participate.

61. Professor Stojanov reported that a secondary market exists in which holders of old foreign currency savings can transfer them to privatisation coupons and sell those coupons at approximately 50 percent of their nominal value, a rate that is likely to drop in the future. This constitutes further evidence of the inequality of coupons with cash.

62. Due to prevailing economic circumstances, there is not great optimism regarding the amount of old foreign currency savings claims that can be resolved in the privatisation process. Professor Stojanov projects that old foreign currency savings holders might avail themselves of an additional KM 500 million in state-owned capital through investment of old foreign currency savings. This would leave approximately half of all old foreign currency savings unused in the privatisation process.

63. In Professor Stojanov's opinion, a combined approach including privatisation coupons and public debt would be optimal for Bosnia and Herzegovina and the Republika Srpska. The International Monetary Fund, however, does not currently permit Bosnia and Herzegovina or the Entities to incur additional public debt.

b. Evidence given at public hearing

64. Professor Stojanov expressed the opinion that, under Republika Srpska statutes, old foreign currency savings claims against the banks had been fully replaced by claims against the Republika Srpska.

65. Under Article 20 of the Law on Privatisation of State Capital in Enterprises (see paragraph 105 below), the old foreign currency savings claims of persons who are not citizens of the Republika Srpska are to be governed by separate regulations and compensated from the Restitution Fund. According to Professor Stojanov, the Republika Srpska Restitution Fund has to date been ineffective and is not likely to offer a realistic possibility of paying these claims in cash.

66. Regarding the provision of Republika Srpska law limiting old foreign currency savings holders' participation in the privatisation process to citizens of the Republika Srpska, Professor Stojanov expressed his opinion that this provision is discriminatory, illogical, and damaging to the privatisation process and economy of Bosnia and Herzegovina.

67. During the public hearing, Professor Stojanov supported allowing old foreign currency savings to offset utility bills as a small step toward resolving old foreign currency savings holders' claims. He stated that old foreign currency savings should be placed on equal footing with cash throughout the privatisation process. He further stated that it would be more logical for Bosnia and Herzegovina and the Entities to give higher priority to old foreign currency savings claims than to restitution.

68. Given the prevailing poor economic situation, slow business growth, and the restrictions imposed by the international community, he stated that it was not likely that sufficient funds would exist to pay out old foreign currency savings accounts in the coming decade. In these circumstances, he stated his opinion that old foreign currency savings holders in difficult economic conditions might be better off obtaining cash now instead of enduring the high risk of waiting for a better solution.

2. Ms. Slobodanka Milašinović, Lawyer, Republika Srpska Directorate for Privatisation

69. Ms. Milašinović described the Republika Srpska privatisation process as comprising four parts: (1) privatisation of state capital in companies, (2) privatisation of state capital in banks; (3) privatisation of state-owned apartments; and (4) privatisation of business premises and garages. As of 30 June 1998, the total value of state capital to be privatised was KM 8.6 billion. She stated that the privatisation of business premises and garages had not yet begun, but that, in general, the privatisation process is in its final phase, with the largest portion of state capital having already been privatised. The value of remaining non-privatised state capital is approximately KM 2.7 billion, and the value of remaining non-privatised state-owned apartments is approximately KM 125 million. The approximate value of business premises and garages expected to be privatised is KM 100 million.

70. Participation in the privatisation process is purely voluntary. In the privatisation of state capital in companies, accepted means of payment include vouchers allocated to citizens according to law, coupons based upon old foreign currency savings, and cash. Coupons based on old foreign currency savings have the same value as cash in this process, but a cash deposit ranging between three and ten percent of the purchase price is required. It is possible for several persons to conclude a contract and participate jointly in the privatisation process.

71. State capital in companies is offered for sale as follows: (1) 100 percent of companies valued less than KM 300,000.00; (2) 30 percent of mid-level companies; and (3) 65 percent of companies of strategic importance. In this latter category, Ms. Milašinović stated that the privatisation programs for Republika Srpska Telekom, Elektropriveda, and the railway system had not yet begun.

72. Ms. Milašinović stated that conversion of old foreign currency savings into privatisation coupons is limited to persons who were citizens of the Republika Srpska on 23 July 1998. In accordance with law, old foreign currency savings claims of non-citizens are to be regulated by a special act and compensated through the Restitution Fund. No such act has yet been passed; although a Law on Restitution was enacted, its operation was suspended. Ms. Milašinović stated that the Directorate for Privatisation has no data regarding the number or percentage of old foreign currency savings holders who are not citizens of the Republika Srpska.

73. Ms. Milašinović further stated that, according to law, the privatisation coupons must be used within two years of the date of their conversion from old foreign currency savings. She noted, however, that persons typically do not perform the conversion until they have made concrete plans for

participation in the privatisation process, such as the signing of a purchase contract. Therefore, in her opinion, the likelihood of coupons expiring is low.

74. Regarding the secondary market for privatisation coupons, Ms. Milašinović stated that such a market exists, that there are agencies performing mediation services, and that the current sale price fluctuates around 40 to 60 percent of the coupons' nominal value. The Directorate for Privatisation does not advise individuals regarding such sales.

75. In the privatisation of state-owned apartments, occupancy right holders have the right to purchase an apartment. Accepted means of payment are certificates based upon old foreign currency savings (limited to 60 percent of the purchase price) and cash. Ms. Milašinović stated her legal opinion that the citizenship requirement of Article 20 of the Law on Privatisation of State Capital in Companies applies only to sales of shares in companies and not to sales of state-owned apartments, which are regulated by a special law. She further stated her opinion that Article 20 is not discriminatory.

76. As of 11 May 2003, the amount of old foreign currency savings utilised in the privatisation process was approximately KM 124 million. Thus, approximately four percent of the total completed privatisation has been realised from old foreign currency savings.

3. Mr. Svetozar Nišić, President, Association of Republika Srpska Citizens with Old Foreign Currency Savings Accounts

77. Mr. Nišić stated that his organisation has more than 500 old foreign currency savings holders as members. He is not aware of any of them having purchased part of any company or business premise in the privatisation process. He stated that it was possible that some had used old foreign currency savings to purchase state-owned apartments. He further stated that participation in the privatisation process by many old foreign currency savings holders was not possible, due to the cash deposit requirement and other factors, and that many were forced by necessity to sell privatisation coupons at 40 to 50 percent of their value.

4. Mr. Dragutin Đurić, Lawyer, Legal Representative for the Association of Republika Srpska Citizens with Old Foreign Currency Savings Accounts

78. Mr. Đurić stated that the Association had filed many lawsuits for its old foreign currency savings holder members against the banks. Many of the lawsuits remain pending, and approximately ten percent of them had been decided in the member's favour. He stated that all judgements had been upheld by the higher instance courts and that some had also been upheld by the Supreme Court on review. None of the judgements in favour of old foreign currency savers appears to have been paid, however, and enforcement is not possible. He further stated that he had initiated proceedings before the Republika Srpska Constitutional Court to have the Law Postponing the Enforcement of Court Decisions Chargeable to the Budgetary Funds of the Republika Srpska Pertaining to Disbursement of Compensation for Pecuniary and Non-Pecuniary Damages Sustained Due to the War Hostilities as Well as Disbursement of Old Foreign Currency Savings Deposits (hereinafter the "Law on Postponement"; see paragraph 104 below) declared invalid under the Republika Srpska Constitution.

79. Mr. Đurić further stated that he had proposed to the Republika Srpska government to allow old foreign currency savings holders, who are otherwise unable to pay, to have electricity, water, and other utility bills deducted from their old foreign currency savings accounts. He stated that he has not received a response to that proposal.

80. Mr. Đurić stated that the Association had assisted some members in purchasing state-owned apartments through the privatisation process, but that such cases involved only ten percent of the Association's members. He further stated that participation in the privatisation of state capital in companies is allowed to old foreign currency savings holders by law, but as a practical matter they are excluded due to the cash deposit requirement. He stated that he has no information that any member of the Association had purchased any shares in state-owned companies in the privatisation process. Many members had received telephone calls, however, inviting them to sell their old foreign

currency savings for 40 to 50 percent of their value. He stated that such sales occur daily because people need the money to buy medicine and food.

C. *Amicus curiae* submission of the Office of the High Representative

81. On 14 May 2003, the OHR, acting as *amicus curiae* through its Department of Legal Affairs, provided the Chamber with a written report discussing various legal and economic aspects of the Republika Srpska old foreign currency savings claims.

82. According to the OHR, following the dissolution of the SFRY, branch offices of banks were registered as new banks in the territory where they were located. In the case of Bosnia and Herzegovina, the Republika Srpska enacted numerous laws by which it established its own banking system, independent of the rest of the country. Newly-registered banks in the territory of the Republika Srpska apparently undertook all the rights and obligations of their predecessors (the former branch offices), in accordance with relevant legislation.

83. According to OHR, the Framework Law on Privatisation of Enterprises and Banks in Bosnia and Herzegovina (hereinafter the "Framework Law"; see paragraph 99 below) clearly established the Entities' liability for claims against banks physically located on their territory. Further, the Republika Srpska Law on Opening Balance Sheets in the Process of Privatisation of the State Capital in Banks transferred each bank's old foreign currency savings claims to the Ministry of Finance, upon approval of that bank's privatisation program. According to OHR, this constitutes recognition by the Republika Srpska that it has taken on these liabilities. OHR states that old foreign currency savings claims against the Republika Srpska substitute for the claims against the banks.

84. OHR states that the Law on Postponement contains no provision of substantial law, but merely defines procedures postponing the execution of court decisions. According to OHR, individuals may still bring old foreign currency savings cases before Republika Srpska courts, since the Republika Srpska has never adopted legislation prohibiting such legal actions. Any remedy would be illusory, however, because the judgement could not be enforced.

85. Regarding the potential liability of Bosnia and Herzegovina in old foreign currency savings cases, OHR states that a 1992 Decree by the Republic of Bosnia and Herzegovina addressing the issue of old foreign currency savings is not applicable to the Republika Srpska, since it had established its own independent banking system. An obligation on Bosnia and Herzegovina exists, however, under Article III(1)(d) of the Constitution, which assigns responsibility for monetary policy to the State.

86. Regarding the privatisation program, OHR reports that conversion of old foreign currency savings into privatisation coupons is entirely voluntary. One drawback is that individuals with small amounts of savings may not be able to afford items offered in the privatisation process, and therefore might not be reasonably expected to participate.

87. Coupons based on old foreign currency savings, if used in the privatisation process, have the same value as the underlying savings. If traded on the secondary market, however, their actual value is approximately 40 percent of their nominal value. Coupons can be used toward the purchase of small- and medium-sized enterprises (i.e., enterprises valued at less than KM 300,000.00), and certificates can be used for up to 60 percent of the price of a state-owned apartment.

88. Various risks attend the conversion of old foreign currency savings into coupons. One risk is that the coupons will expire; the conversion cannot be undone, and after expiration of the two-year deadline, the coupons are cancelled and the underlying old foreign currency savings irrevocably lost. There are also risks in the investments, and the safest investment is in the privatisation of apartments.

89. As of April 2003, approximately 50 percent of small- and medium-sized enterprises had been privatised, and 57 percent of state-owned apartments had been privatised. The privatisation of business premises and garages had not yet begun, but this process offers another opportunity for investment of old foreign currency savings.

90. According to OHR, the amount of old foreign currency savings in the Republika Srpska is approximately KM 1.7 billion—equal to half of the Republika Srpska's gross domestic product and more than one and one-half times the Republika Srpska's annual budget. Of this amount, approximately KM 200 million had thus far been converted to coupons or certificates.

D. Other evidence obtained by the Chamber

1. Information from the Republika Srpska Directorate for Privatisation

91. The official web site of the Republika Srpska Directorate for Privatisation (the "Directorate") (www.rsprivatizacija.com, accessed 26 February 2003) stated the following:

> "Privatisation is the transformation of state capital into private property through a procedure established by law. It is an integral part of economic recovery of the Republika Srpska and the creation of a free market economy. Privatisation is also a means for the RS to settle liabilities toward its citizens. RS citizens will receive the right to a part of state property, and *holders of frozen foreign currency savings will have a chance to use their savings to purchase shares of enterprises undergoing privatisation.*"

(emphasis added). According to the Directorate, up to 30 percent of state capital in enterprises to be privatised will go for cash sale and coupons based on frozen foreign currency savings.

92. The Directorate's on-line "What is Privatisation" guide addressed foreign currency savings in a separate section:

> "What About FROZEN FOREIGN CURRENCY SAVINGS?
>
> "The new RS privatisation process also offers an opportunity to resolve claims for those with old frozen foreign currency savings. If you are a citizen of the Republika Srpska and have old foreign currency savings in a bank that is headquartered in the territory of the RS, you can receive a *coupon* for a part, or total, of the saving's original value (your choice). The value of the coupon will be expressed in KM. You can use the coupon to purchase shares of enterprises that are being privatised. You can also sell it, give it away, or transfer it to legal heirs.
>
> "Another option is to receive *certificates* in the future for the purchase of apartments and other state property that is currently not being privatised. You also may hold on to your frozen foreign currency savings with the possibility that other arrangements will be developed for compensation."

(emphasis in original).

2. The World Bank

93. According to a press release from the World Bank dated 5 February 2003, the privatisation process in the Republika Srpska is somewhat more advanced than that in the Federation of Bosnia and Herzegovina. The Republika Srpska government has provided all necessary ratifications at the governmental and parliamentary levels and is presenting no obstacles to the use of funds from the World Bank's Privatisation Technical Assistance Project.

94. Second and third groups of companies are now being prepared for privatisation. The next group will likely include five mining companies, and the third will likely include companies from the metal industry plus the Banja Luka airport. In addition, Telecom Srpske has accepted a 30 million European Union loan for assistance in the privatisation of that company, scheduled to be completed by the end of 2004. The Republika Srpska has also made some progress in developing the regulatory framework for private participation in the water sector and public utilities.

IV. RELEVANT LEGAL PROVISIONS

A. Republic of Bosnia and Herzegovina

95. Article 9 of the Decree with Force of Law on Foreign Exchange Transactions (Official Gazette of the Republic of Bosnia and Herzegovina – hereinafter "OG RbiH" – no. 2/92) provides, in relevant part:

> "The foreign currency on foreign currency savings accounts and foreign currency savings deposits is guaranteed by the Republic."

96. A Decision on Aims and Objectives of the Monetary Credit Policy, promulgated on 9 April 1995 (OG RBiH no. 11/95), provides, in relevant part:

> "Foreign currency savings of individuals deposited with the National Bank of Yugoslavia shall be permanently resolved by the enactment of a law on the public debt of the Republic by the end of the first half of the year 1995."

97. Article 7 of the Decision on Objectives and Tasks of Crediting and Monetary Policy (OG RbiH no. 13/96) states:

> "The matter of the foreign currency savings of citizens deposited with the former NBY, along with the interest accumulated on such savings, shall be resolved through the enactment of the law on public debt of Bosnia and Herzegovina or in another way, within the framework of the overall consolidation of debt of Bosnia and Herzegovina together with the international community."

B. Bosnia and Herzegovina

98. The Constitution of Bosnia and Herzegovina, set out in Annex 4 to the General Framework Agreement, provide, in so far as relevant to the present applications, the following:

> Article I – Bosnia and Herzegovina:
>
> "1. Continuation. The Republic of Bosnia and Herzegovina, the official name of which shall henceforth be 'Bosnia and Herzegovina', shall continue its legal existence under international law as a state …
>
> …"
>
> Article III – Responsibilities of and Relations Between the Institutions of Bosnia and Herzegovina and the Entities:
>
> "1. Responsibilities of the Institutions of Bosnia and Herzegovina. The following matters are the responsibility of the institutions of Bosnia and Herzegovina:

…

(d) Monetary policy as provided in Article VII.

…

3. Law and Responsibilities of the Entities and the Institutions.

(a) All governmental functions and powers not expressly assigned in this Constitution to the institutions of Bosnia and Herzegovina shall be those of the Entities.

…"

Article VII – Central Bank:

"There shall be a Central Bank of Bosnia and Herzegovina, which shall be the sole authority for issuing currency and for monetary policy throughout Bosnia and Herzegovina.

…"

99. On 22 July 1998 the High Representative in Bosnia and Herzegovina issued the Framework Law on Privatisation of Enterprises and Banks in Bosnia and Herzegovina. It entered into force the following day on an interim basis (Official Gazette of Bosnia and Herzegovina – hereinafter "OG BiH" – no. 14/98). It was finally adopted by the Parliamentary Assembly of Bosnia and Herzegovina on 19 July 1999 (OG BiH no. 12/99). The relevant provisions state:

Article 1:

"For the purpose of this Law:

"BH natural persons means citizens of [Bosnia and Herzegovina], irrespective of their place of residence.

…

"Citizens Claims means the right to compensation as part of the privatisation process in recognition of obligations as defined by Entity legislation.

…"

Article 2 paragraph 1:

"In accordance with the [General Framework Agreement], this Law expressly recognises the right of the Entities to privatise non-privately owned enterprises and banks located on their territory. …"

Article 3:

"1. The Entity parliaments shall adopt legislation, which is non-discriminatory, ensures maximum transparency and public accountability in the privatisation process and is in conformity with [the General Framework Agreement].

"2. The laws of the privatising Entity will cover only those assets and related liabilities located on its territory.

"3. The laws of the Entities shall regulate on a non-discriminatory basis which BH or foreign natural and legal persons have the right to acquire shares and property in the privatisation process in accordance with Article 3.1 of this Law.

"4. Criteria by which BH natural persons are entitled to Citizens Claims shall be based on the laws adopted by the Entities.

Such laws shall include BH natural persons who were citizens of the former Socialist Republic of [Bosnia and Herzegovina] and permanent residents on 31 March 1991 on the territory now falling within the privatising Entity. This includes refugees and displaced persons in accordance with Annex 7 to the [General Framework Agreement] as well as legal successors of dead and missing entitled persons."

Article 4 paragraph 2:

"Claims against enterprises and banks to be privatised shall be deemed as a liability of the privatising Entity."

C. The Republika Srpska

1. The Law on Foreign Currency Transactions

100. The Law on Foreign Currency Transaction in the Republika Srpska (OG RS no. 15/96) provides as follows:

Article 62

The authorised bank shall be obliged to perform account and pay interest in foreign currency or, upon the request of local or foreign natural person, in new dinars on the basis of foreign currency deposited on the foreign currency account or booklet.

Article 63

Domestic or foreign natural persons may withdraw currency from their foreign currency deposits or booklet.

Domestic or foreign natural persons may sell their claims on the basis of foreign currency deposited on their foreign currency deposit or booklet to a domestic or foreign natural or legal person through the authorised bank.

2. The Law Amending the Law on Foreign Currency Transactions

101. The Law Amending the Law on Foreign Currency Transactions in the Republika Srpska (OG RS no. 10/97) provides as follows:

Article 6.

After Article 137 the new Article 137a shall be inserted which shall read as follows:

Article 137a.

Provisions of Articles 62 and 63 of the Law shall not apply to the foreign currency savings owned by citizens deposited at business banks of the Republika Srpska before 6 April 1992.

The manner of payment and compensation of citizens, owners of the old foreign currency savings shall be regulated by a special law.

3. Decision on Suspension of Payment of "Frozen" Bank Accounts

102. The decision of the Government of the Republika Srpska, dated 3 May 1996 (OG RS no. 10/96), provided as follows:

Article 1.

"The payments of the "old" currency savings deposits (both principal and interest) shall temporarily be suspended."

Article 2.

"All judicial procedural decisions on enforcement made pursuant to the final and binding judgements concerning the payments of the "old" currency savings deposits may not be enforced until the enactment of legislation from Article 1 of this decision."

Article 3.

"The Ministry for Finance, Ministry of Justice and Administration and the People's Bank will prepare the legislation from Article 1 of this decision, once the conditions are met for such action."

Article 4.

"This decision shall enter into force on the day of its enactment, and will be publicised in the "Republika Srpska Official Gazette"."

103. The Constitutional Court of the Republika Srpska, in decision nos. U-36/96 and 49/96, dated 30 March 1999 (OG RS no. 22/99), ruled that the Decision on Suspension of Payment of "Frozen" Bank Accounts was not compatible with the Constitution of the Republika Srpska. The court ruled that the decision by the executive branch unconstitutionally infringed judicial power.

4. The Law Postponing the Enforcement of Court Decisions Chargeable to the Budgetary Funds of the Republika Srpska Pertaining to Disbursement of Compensation for Pecuniary and Non-Pecuniary Damages Sustained Due to the War Hostilities as Well as Disbursement of Old Foreign Currency Savings Deposits (hereinafter "Law on Postponement") (OG RS nos. 25/02, 20/03)

104. The Law on Postponement provides as follows:

Article 1.

"This law postpones the enforcement of court decisions chargeable to the budgetary funds of the Republika Srpska pertaining to disbursement of compensation for pecuniary and non-pecuniary damages sustained due to the war hostilities as well as disbursement of old foreign currency savings deposits, ... issued until the day this law came into force."

Article 2.

"The pecuniary and non-pecuniary damages sustained due to the war hostilities include the damages sustained due to the war hostilities in the Republika Srpska in the period 20 May 1992 through 19 June 1996."

"The old foreign currency savings include savings deposits of natural and legal persons at the banks having headquarters within the territory of the Republika Srpska that were on deposit in those banks as of 31 December 1991."

...

Article 3.

"This law shall be applied until the issuance of a law that will regulate the manner of meeting the obligations incurred on the basis of court decisions referred to in Article 1 of this law."

Article 4.

"This law also pertains to court decisions referred to in Article 1 of this law issued during the course of the moratorium in terms of the provision referred to in Article 3 of this law."

Article 5.

"This law enters into force on the eighth day from the date of its publishing in the "Official Gazette of the Republika Srpska."

5. The Law on Privatisation of State Capital in Enterprises

105. The Law on Privatisation of State Capital in Enterprises (OG RS nos. 24/98, 62/02, and 38/03) provides, in relevant part, as follows:

I - General provisions

Article 1.

"This Law regulates the terms and procedures of sale and transfer of the state capital in the enterprises in Republika Srpska to domestic and foreign individuals and legal entities (hereinafter referred to as privatisation).

"State capital within the meaning of this law is capital owned by the State in enterprises (hereinafter referred to as state capital)."

Article 2.

"The main principles of privatisation are public participation in privatisation with the equal rights of all the participants and right of participants in privatisation to make a choice with regard to investment of cash or vouchers into different enterprises."

* * *

Article 7.

"State capital in enterprises of strategic importance, including electric power production and distribution, railway, telecommunications, water supply, mining, forestry, public media, gambling, arms, military equipment industry and the other strategic enterprises determined by the Republika Srpska Government shall be privatised under this Law through specific privatisation programs approved by the Government, and in cases of unsuccessful tender, by sale based on special decisions of the Government.

"The privatisation of enterprises involved in electricity production and distribution, rail traffic, telecommunications, and the oil industry shall be performed with the prior consent of the National Assembly."

* * *

Article 9.

"State owned apartments, state capital in banks, other financial institutions, insurance companies, agricultural co-operatives, as well as other state property that is not subject to privatisation under this Law will be privatised in compliance with separate legislation."

* * *

II - Privatisation authorities

Article 11.

"The Directorate is the authority in charge of privatisation.

"The Directorate is subordinated in its activities to the Government."

Article 12.

"The Directorate performs the functions of seller of the state capital."

III - Buyers in course of privatisation

Article 13.

"Domestic and foreign individuals and legal entities can be buyers in course of privatisation."

* * *

IV - Means of payment in course of privatisation

Article 15.

"The means of payment in course of privatisation are as follows: Vouchers granted to the citizens based on this Law; Vouchers granted to the veterans, families of killed and missing in action soldiers and disabled veterans for the time period from August 17, 1990 until demobilisation in accordance with the Law on Rights of Soldiers, Disabled Veterans and Families of Killed and Missing in Action Soldiers ("Official Gazette of Republika Srpska" nos. 16/96 and 46/90) and to the persons who were under working obligation; Coupons issued in compensation for claims for frozen foreign currency accounts based on regulations approved by the Government; Cash."

V - Eligibility for vouchers

Article 16.

"Any person, who is a citizen of Republika Srpska, is entitled to vouchers."

Article 17.

"Veterans, families of killed and missing in action soldiers, disabled veterans and persons who were under working obligation are entitled to vouchers in addition to the vouchers granted to those entitled to them based on the provisions of the Article 16 of this Law.

"Criteria for distribution of additional number of vouchers from Paragraph 1 of this Article will be proposed by the Government and determined by the RS National Parliament."

Article 18.

"Number of vouchers granted based on Articles 16 and 17 of this Law is defined by the resolution of the Government."

Article 19.

"A person that has foreign currency savings in the bank with the domicile within the territory of the Republika Srpska and who is a citizen of Republika Srpska on the day this Law comes into force, is entitled to as follows: Coupons to buy shares based on the provisions of this Law; Certificates for privatisation of apartments and other state property that is not subject to privatisation based on this Law. An individual that is provided an opportunity to collect coupons in compliance with the provisions of this Article, can collect coupons for the total amount of his/her savings or, at his/her discretion, for any part of the savings. Number and value of coupons available for individuals referred to in Paragraph 1 of this Article is determined by the balance at the frozen foreign currency account on the day of registration of their rights."

Article 20.

"The realisation of the claims related to the foreign currency savings referred to in Article 19 of those who are not citizens of Republika Srpska will be governed by a separate regulation and compensated through the Restitution Fund."

Article 21.

"The claims for lost foreign currency savings are converted into DM according to the exchange rate on the day of realisation of the rights."

Article 22.

"Number of vouchers, as well as value of coupons, is recorded in electronic format at the Unique Privatisation Account of a citizen at the institution which conducts payment operations

of Republika Srpska (hereinafter referred to as institution for payment operations) according to the place of residence of the person. Vouchers and coupons can be transferred through inheritance, gift, sale or other way of disposal, in accordance with regulations defining their distribution and utilisation."

Article 23.

"The individuals granted vouchers and coupons based on the provisions of this Law will be promptly notified by the institution for payment operations about the balance of vouchers and coupons, as well as about the changes at their Unique Privatisation Account."

Article 24.

"Vouchers can only be used to purchase shares at the voucher offer."

Article 25.

"Vouchers may be used until the end of the voucher offer, and unused vouchers shall not be valid after that.

"Coupons based on old foreign currency savings may be used during the privatisation process of state capital under this Law."

* * * *

Prior to amendments of 15 October 2002, Article 25 of the law provided as follows:

Article 25.

"Vouchers and coupons can be used in the privatisation process for the duration of the time period of 2 years from their depositing into the Unique Privatisation Account.

"Upon the expiration of the time period defined in the Paragraph 1 of this Article, unused vouchers are extinguished. One can not regain the right over the relevant portion of the foreign currency savings, which was converted into coupons."

6. The Law on Privatisation of State Capital in Banks

106. The Law on Privatisation of State Capital in Banks (OG RS nos. 24/98, 5/99, 18/99, and 70/01) provides, in relevant part, as follows:

1. GENERAL PROVISIONS

Article 1.

"This law regulates the conditions and procedure of sale and transfer of the state-owned capital in banks to become property of domestic and foreign natural and legal persons (hereinafter: the privatisation)."

* * * *

7. The Law on Opening Balance Sheets in the Process of Privatisation of State Capital in Banks.

107. The Law on Opening Balance Sheets in the Process of Privatisation of State Capital in Banks (OG RS nos. 24/98 and 70/01) provides, in relevant part, as follows:

Article 1.

"This Law shall regulate conditions and procedures in the process of privatization of state capital in banks (hereinafter: the opening balance sheet) in accordance with the Law on Privatization of State Capital in Banks (hereinafter: the Law on Privatization)."

Article 2.

"The value of the state capital in banks shall be determined by the opening balance sheet.

"Any bank having at least 50% of state capital shown in the bank balance sheet capital structure shall produce an opening balance sheet.

"The opening balance sheet shall be produced based on the bank data as of June 30, 1998.

"The bank opening balance sheet figures regarding values of the bank property, receivables, payables, and capital shall be produced by applying procedures determined by this Law to the existing bank balance sheet as of June 30, 1998, based on the bookkeeping value.

"The bookkeeping value from par. 2 of this Article shall be understood as the value calculated on the basis of accounting regulations and standards valid on the day of their being applied."

* * *

2. THE PROCEDURE OF PRODUCING A BANK OPENING BALANCE SHEET

Article 6.

"The bank's passive sub-balance shall show the following values:

* * *

3. Payables against citizens foreign currency savings as of December 31, 1991; …."

* * *

Article 8.

"Payables against citizens' foreign currency savings from Article 6 item 3 of this Law, shall be taken out of the bank's books debiting receivables against deposited foreign currency citizens savings, i.e. placements on this basis."

* * *

Article 20.

"Objects, rights, capital and payables shown in the bank's passive sub-balance from Article 6 of this Law, shall be transferred to the Ministry upon the approval of the privatization program."

* * *

Article 24.

"Within 15 days upon the effective date of this Law, based on the Agency proposal, the Government shall prescribe the methodology which shall be applied in producing opening balance sheets."

Article 25.

"This Law shall come into force on the eighth day after its publication in the "Official Gazette of Republika Srpska"."

8. The Law on Citizenship of Republika Srpska

108. The Law on Citizenship of Republika Srpska (OG RS nos. 35/99, 17/00) provides, in pertinent part, as follows:

II - Acquisition of citizenship of Republika Srpska

* * *

Article 5.

"Citizenship of Republika Srpska is acquired:

1. by descent
2. by birth on the territory of Republika Srpska
3. by adoption
4. by naturalization
5. by international agreements."

* * *

III - Loss of citizenship of Republika Srpska

* * *

Article 18.

"Citizenship of Republika Srpska is lost:

1. by operation of law
2. by release
3. by renunciation
4. by withdrawal
5. by international agreements."

* * *

Article 20.

"Citizenship of Republika Srpska is lost by the voluntary acquisition of another citizenship, unless a bilateral agreement between BiH and that State, approved by the Parliamentary Assembly of BiH in accordance with Article IV (4)(d) of the Constitution of BiH, provides otherwise."

Article 21.

"Citizenship of Republika Srpska is lost by a child if, following full adoption, he or she acquires the citizenship of another State or of the Federation of Bosnia and Herzegovina."

V. Change of Entity citizenship

Article 31.

"A citizen of the Federation of Bosnia and Herzegovina with permanent residence in the territory of Republika Srpska acquires the citizenship of Republika Srpska, if he or she so wishes, provided the change of the residence has occurred after the Law on Citizenship of Bosnia and Herzegovina entered into force.

"Whenever a citizen of Republika Srpska acquires the citizenship of the Federation of Bosnia and Herzegovina, he or she will lose the citizenship of Republika Srpska, provided that the acquisition of the citizenship of the Federation of Bosnia and Herzegovina has taken place after the Law on Citizenship of Bosnia and Herzegovina entered into force.

"The competent authorities of Republika Srpska will inform the competent authorities of the Federation of Bosnia and Herzegovina about the acquisition and loss of citizenship in accordance with the previous paragraphs of this article."

* * *

VIII. Transitional and Final Provisions

Article 39.

"Citizens of Republika Srpska, in accordance with this Law are:

"1. All persons who in accordance with Article 1.(7).(c) of the Constitution of Bosnia and Herzegovina are citizens of Bosnia and Herzegovina and who:

- on April 6, 1992 were permanently resident in the territory that now belongs to Republika Srpska, unless they on 1 January 1998 were permanently resident in the Federation of Bosnia and Herzegovina.

- on April 6, 1992 were permanently resident in the territory that now belongs to the Federation of Bosnia and Herzegovina, but afterwards left that territory and their permanent residence on 1 January, 1998 was in Republika Srpska.

"2. All persons who in accordance with Article 1.(7).(c) of the Constitution of Bosnia and Herzegovina are citizens of Bosnia and Herzegovina and who on 1 January 1998 were resident abroad, if they before 6 April 1992 were permanently resident in the territory which now belongs to Republika Srpska, unless they have taken up permanent residence in or have opted for the Citizenship of the Federation of Bosnia and Herzegovina. The conditions and procedures for changing Entity citizenship by option are regulated by agreement between the Entities. The provisions of this agreement constitute an integral part of this Law. The right of option may only be exercised within 9 months after the conclusion of the aforementioned inter-Entity agreement. Such agreement shall be subject to verification by the National Assembly of Republika Srpska."

9. Law on the Privatisation of State-Owned Apartments

109. Article 33 of the Republika Srpska Law on the Privatisation of State-Owned Apartments (OG RS nos. 11/00, 18/01, 35/01, 16/02, and 47/02) allows for the purchase of apartments with old foreign currency savings, up to a maximum of 60 percent of the purchase price of the apartment:

"A buyer may purchase an apartment using his foreign currency savings or the foreign currency savings of his spouse, which have been deposited with banks in the Republika Srpska, up to 60 percent of the established purchase price of the apartment."

V. COMPLAINTS

110. The applicants complain that their right to peaceful enjoyment of their possessions, as guaranteed by Article 1 of Protocol No. 1 to the Convention, and their right to a fair hearing within a reasonable time before an independent and impartial tribunal, as guaranteed by Article 6 paragraph 1 of the Convention, have been violated.

111. The Chamber has also transmitted the application in case no. CH/00/5893 (Đulan Ivazović) to the Republika Srpska in relation to possible discrimination in the enjoyment of the right to peaceful enjoyment of possessions under Article 1 of Protocol No. 1 to the Convention.

VI. SUBMISSIONS OF THE PARTIES

A. Bosnia and Herzegovina

112. Bosnia and Herzegovina submitted no written observations in this case; its arguments discussed herein were all expressed orally during the public hearing.

1. As to admissibility

113. Bosnia and Herzegovina asserts that, with regard to its own position as respondent Party, the applications should be declared inadmissible *ratione temporis*.

2. As to the merits

114. Bosnia and Herzegovina asserts that any substantive obligations toward the applicants relate exclusively to the Republika Srpska. In this regard, Bosnia and Herzegovina urges the Chamber to follow its similar holding in case no. CH/97/48 et al., *Poropat and Others*, decision on admissibiility and merits delivered 9 June 2000, Decisions January-June 2000, and to find that it bears no responsibility towards the present applicants.

115. During the public hearing, the Agent for Bosnia and Herzegovina stated his opinion that the Republika Srpska's limitation of its privatisation process to Republika Srpska citizens denied rights to old foreign currency savings holders who had been displaced from the Republika Srpska, and therefore was not in accordance with Bosnia and Herzegovina's Framework Law on Privatisation of Enterprises and Banks in Bosnia and Herzegovina.

B. The Republika Srpska

1. As to the facts

116. The Republika Srpska does not dispute the facts stated in the applications. It states that payment of old foreign currency savings has merely been postponed until the promulgation of a law defining the revenue source and manner of settlement of these liabilities.

117. The Republika Srpska advised the Chamber that it could not objectively determine whether the applicants were citizens of the Republika Srpska on 23 July 1998, the operative date of the Law on Privatisation of State Capital in Enterprises. It asks the Chamber to rely on the applicants' statements on this question.

2. As to admissibility

118. The Republika Srpska argues that those applicants who have not initiated cases in the domestic courts have failed to exhaust domestic remedies as required by Article VIII(2)(a) of the Agreement. Further, the Republika Srpska asserts that those who did file domestic court cases failed to submit their applications to the Chamber within six months of the issuance of a decision. For these reasons, the Republika Srpska considers all of the applications inadmissible under Article VIII(2)(a).

3. As to the merits

119. The Republika Srpska does not contest the right of citizens to "old foreign currency savings", but states that payment has been postponed until enactment of a law which shall define the sources of revenue to be used and the manner of settlement of these liabilities.

120. According to the Republika Srpska, the old foreign currency savings issue is regulated by the Law on Opening Balance Sheets in the Process of Privatisation of State Capital in Banks (OG RS 70/01), the Law on Privatisation of State Capital in Banks (OG RS no. 24/98) (see paragraph 106), the Law on Privatisation of State Institutions (OG RS nos. 11/01, 18/01), the Law on Privatisation of State Capital in Enterprises (OG RS no. 24/98, 62/02, and 38/03), the Law Amending the Law on Foreign Currency Transactions (OG RS no. 10/97), and the Law on Postponement (OG RS no. 25/02 and 20/03).

121. According to the Republika Srpska, pursuant to this legislative scheme, the liabilities of banks in Republika Srpska territory based on old foreign currency savings have been transferred to the Republika Srpska. Specifically, the banks' old foreign currency savings obligations have been

transferred to the Republika Srpska Ministry of Finance. During the public hearing, however, the Republika Srpska's Agent stated that he did not necessarily accept the legal interpretation that claims against the banks had been fully replaced by claims against the Republika Srpska.

122. According to the Republika Srpska, Article 33 of the Law on the Privatisation of State-Owned Apartments (OG RS nos. 11/00 and 18/01) allows for the purchase of apartments with old foreign currency savings, up to a maximum of 60 percent of the purchase price of the apartment. During the public hearing, the Agent for the Republika Srpska stated his legal opinion that the citizenship requirement of Article 20 of the Law on Privatisation of State Capital in Enterprises applies only to sales of shares in companies and not to sales of state-owned apartments. The Republika Srpska's position is that the purchase of apartments is specifically regulated by the Law on Privatisation of State-Owned Apartments.

123. According to the Republika Srpska, Article 19 of the Law on Privatisation of State Capital in Enterprises (OG RS no. 24/98) provides for the purchase of company shares with old foreign currency savings.

124. According to the Republika Srpska, the Law Amending the Law on Foreign Currency Transactions (OG RS no. 10/97) forbids the payment of old foreign currency savings until the promulgation of a special law to regulate this issue.

125. Finally, according to the Republika Srpska, The Law on Postponement (OG RS no. 25/02) also forbids the payment of old foreign currency savings until the enactment of a new law governing such payment.

126. The Republika Srpska states that it operates under restrictions imposed by certain international institutions that are working to manage the Republika Srpska's overall economic situation, including the International Monetary Fund, the World Bank, and the European Union. According to the Republika Srpska, the position of these institutions is that the payment of old foreign currency savings cannot proceed until a strategy on reconciliation of old liabilities is developed, along with regulations governing the payment of old foreign currency savings liabilities to citizens throughout Bosnia and Herzegovina. The Republika Srpska cites numerous limitations placed upon it by these international institutions.

127. The Republika Srpska states that it does not contest the right of the applicants to their old foreign currency savings, but that payment of those savings has merely been postponed until the promulgation of a law defining the revenue source and manner of settlement of these liabilities. The Republika Srpska budget will not designate funds to be used for this purpose until the enactment of a law defining the sources of revenue to be used and the manner of settlement of these liabilities.

128. With regard to case no. CH/00/5893 (Đulan Ivazović), the Republika Srpska asserts that there has been no discrimination, and there is no differential treatment of similarly situated persons in the privatisation process.

C. The Applicants

1. As to admissibility

129. The applicants submit that responsibility for the alleged violations of their rights can be attached to both the Republika Srpska and Bosnia and Herzegovina based on the responsibility they have taken for old foreign currency savings and monetary policy, respectively, through relevant legislation they have enacted.

130. The applicants claim that, because it is legally impossible for them to obtain enforcement of a court judgement in their favour, no effective domestic remedies exist in their cases.

2. As to the merits

131. The applicants claim that the refusal to disburse their old foreign currency savings violates their property rights. They argue that, as a practical matter, the Republika Srpska privatisation process is not available to them, due to cash participation requirements and other factors. They assert that the privatisation process fails to strike a fair balance between private and public interests. They also point out personal difficulties arising from their inability to access their savings.

132. The applicants assert that their inability to obtain enforceable judgements in the domestic courts violates their right to access to court.

VII. OPINION OF THE CHAMBER

A. Admissibility

133. 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. The Chamber will first address the question whether the Chamber is competent, *ratione temporis*, to consider the case. Further, 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 application was filed within six months from the date on which a final decision was taken.

1. Competence *ratione temporis*

134. Bosnia and Herzegovina asserted, in the public hearing, that the present applications should not be considered against it because they are inadmissible *ratione temporis*. The Chamber recalls that, in accordance with generally accepted principles of international law, it cannot decide whether events occurring before the entry into force of the Agreement on 14 December 1995 involve violations of human rights (see, e.g., case no. CH/96/1, *Matanović*, decision on the merits delivered on 6 August 1997, paragraph 32, Decisions on Admissibility and Merits 1996-1997). The Chamber notes, however, that the violations alleged here are of an ongoing nature, and the applicants have been denied access to their old foreign currency savings during the period following the entry into force of the Agreement. The Chamber is thus competent *ratione temporis* to examine whether any act, or failure to act, by either respondent Party after 14 December 1995 constitutes a violation of the applicants' rights. Accordingly, the Chamber rejects the claim that the applications are inadmissible *ratione temporis*.

2. Exhaustion of effective domestic remedies

135. The Republika Srpska argues that the applicants have not exhausted effective domestic remedies. In this regard, the Chamber notes the provisions of the Republika Srpska Law on Postponement (see paragraph 104 above), presently in force, which prohibit the enforcement of any court judgement involving disbursement of old foreign currency savings deposits. As *amicus curiae* OHR has noted, this legislation renders any remedy illusory. Thus, regardless of whether the present applicants have initiated or exhausted domestic court proceedings, the Chamber considers that no effective remedies exist that they should be required to exhaust. In these circumstances, the Chamber is not precluded from examining the applications.

3. Six-months rule in case no. CH/98/420 (Azra Kugić)

136. The Republika Srpska further argues that, with regard to the one applicant who filed domestic court proceedings, the application is inadmissible under Article VIII(2)(a) of the Agreement because it was not lodged within six months after the date of any final decision in the applicant's case. The applicant filed her application with the Chamber prior to initiating domestic court proceedings, which remain pending, and which the Chamber has already decided need not be exhausted (see paragraph 134 above). Further, because the alleged violation 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 application is not inadmissible under Article VIII(2)(a).

4. Conclusion as to admissibility

137. As no other ground for declaring the cases inadmissible has been established, the Chamber declares the applications admissible in respect of both respondent Parties. The Chamber notes, however, that case no. CH/00/5893 (Đulan Ivazović) was only transmitted to the Republika Srpska with regard to discrimination and therefore will not be considered against Bosnia and Herzegovina in that respect.

B. Merits

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

138. 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."

139. The applicants assert that their rights have been violated by the banks' refusal to disburse their old foreign currency savings. They assert that they have deposited cash on their bank accounts, and that any solution different from paying out to them in cash the amount deposited violates their right to property. They accept that the Republika Srpska is in a difficult financial situation, but they submit that the current legal framework allows some individuals to enrich themselves at the expense of the public instead of striking a fair and reasonable balance between the public interest and their property rights.

140. The Republika Srpska asserts that it has in fact balanced the private and public interests fairly through its privatisation process. It asserts that the overall economic situation and restrictions imposed by the international community render its actions necessary to protect the Republika Srpska banking system and overall economy from collapse, and to protect the applicants' property rights.

141. Bosnia and Herzegovina argues that it bears no responsibility for the applicants' claims, and that these obligations relate exclusively to the Republika Srpska.

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

142. The Chamber first finds, as it did in *Poropat and Others* and *Todorović and Others*[3], 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, a point the respondent Parties appear to concede. It must therefore be determined whether the applicants' right to peacefully enjoy these possessions has been violated.

b. General considerations

143. 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:

[3] Case no. CH/97/104 et al., *Todorović and Others*, decision on admissibility and merits delivered 11 October 2002, Decisions July-December 2002.

> "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).

144. 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 old foreign currency savings accounts raise complex issues of great economic importance and therefore, as the Chamber found in *Poropat and Others*, the respondent Parties enjoy a wide margin of appreciation in dealing with these matters (see the above-mentioned *Poropat and Others* decisionparagraph 163).

c. Alleged violation by the Republika Srpska

145. In considering the merits of these cases against the Republika Srpska, the Chamber must decide whether the prevailing situation in the Republika Srpska regarding old foreign currency savings constitutes a violation of Article 1 of Protocol No. 1 to the Convention.

(1) Whether the Republika Srpska has interfered with the applicants' rights

146. In determining whether the Republika Srpska has interfered with the applicants' rights under Article 1 of Protocol No. 1 to the Convention, the crucial question is whether the situation as regards their right to withdraw money from their accounts has been changed by legislation enacted or other measures taken by the Republika Srpska. It is clear that the applicants are unable to withdraw or otherwise obtain money from their old foreign currency savings due to the application of Republika Srpska laws, most notably the Law Amending the Law on Foreign Currency Transactions (prohibiting payment of old foreign currency savings, see paragraph 101 above) and the Law on Opening Balance Sheets in the Process of Privatisation of State Capital in Banks (transferring liability for old foreign currency savings from the banks to the Republika Srpska Ministry of Finance, see paragraph 107 above). There is no question that these measures have severely restricted the applicants' right to peaceful enjoyment of their property.

147. The interference is exacerbated by the applicants' inability to obtain relief in the courts. The Law on Postponement (prohibiting enforcement of court decisions allowing disbursement of old foreign currency savings; see paragraph 104 above) presents the ultimate obstacle to the applicants' ability to obtain money from their accounts.

148. The Chamber notes that some opportunity to use old foreign currency savings exists through voluntary participation in the privatisation process. Old foreign currency savers can purchase shares of state-owned enterprises or business premises, purchase state-owned apartments (up to 60 percent of the purchase price), or sell privatisation coupons on the secondary market. There are no legal provisions, however, that allow an individual to dispose of his or her savings in any other way than to convert them into privatisation coupons or certificates. Only through conversion can an old foreign currency savings holder obtain something in the privatisation process or sell his or her old foreign currency savings on the secondary market.

149. Having regard to the above, the Chamber concludes that the measures contained in the legislation enacted by the Republika Srpska have interfered with the property rights of individual old foreign currency savings holders, including the present applicants.

(2) Whether the interference has been justified

150. The Chamber will next consider whether the interference created by the prevailing 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 Republika Srpska applies 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. 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.

(a) Legal basis for the interference

151. The Chamber considers that the primary restrictions on the applicants' access to their old foreign currency savings lie in the Law Amending the Law on Foreign Currency Transactions and the Law on Opening Balance Sheets in the Process of Privatisation of State Capital in Banks. Article 137a of the Law Amending the Law on Foreign Currency Transactions appears to have been intended to extinguish the banks' contractual obligations toward old foreign currency savings holders, and this conclusion is confirmed by Articles 6, 8, and 20 of the Law on Opening Balance Sheets. The Law on Postponement also interferes with the applicants' property rights. Having considered this legislation, the Chamber concludes that the interference with the applicants' property rights is therefore in accordance with domestic law.

(b) Purpose of the interference

152. The Chamber further concludes that the legislative measures taken by the Republika Srpska have been pursued in accordance with the general interest. In this regard, the Chamber notes the economic difficulties of the Republika Srpska and its banking system. Specifically, the Chamber notes the statement of OHR that the amount of old foreign currency savings in the Republika Srpska is approximately KM 1.7 billion — equal to half of the Republika Srpska's gross domestic product and more than one and one-half times the Republika Srpska's annual budget. And, as Professor Stojanov stated, payment of old foreign currency savings would rapidly depreciate the value of the KM, and international actors will not allow this or the creation of public debt to solve the problem. In these circumstances, it appears reasonable for the Republika Srpska to attempt to resolve the old foreign currency savings problem through its privatisation program.

153. It is clearly in the general interest to attempt to administer citizens' property claims in a manner designed to protect the economy and banking system from collapse. Thus, the Chamber concludes that the interference created by the relevant Republika Srpska legislation serves a beneficial purpose.

(c) Proportionality of the interference

154. 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.

155. The applicants submit that the laws fail to strike a fair balance between general and private interests. They assert that they have suffered hardships from not being able to obtain money from their old foreign currency savings.

156. The Republika Srpska asserts that the settlement of the foreign currency savings through the privatisation process strikes a fair balance between the general interest and the interests of the

individual savers. While recognising the existence of the claims, the Republika Srpska asserts that time and careful macroeconomic planning are required to achieve a solution.

157. The Chamber again recognises the Republika Srpska's wide margin of appreciation in determining what is in the general interest in a matter as complex as the present one, involving the settlement of more than KM 1.4 billion in private bank savings and the large-scale privatisation of socially-owned property. Still, the measures taken by the Republika Srpska must have a reasonable foundation and not impose an excessive burden on individual savers.

158. In the privatisation process, citizens' old foreign currency savings claims are recorded on a Unique Citizen's Account and can be transferred to: (1) certificates valid for partial payment for apartments for which an occupancy right exists; or (2) coupons valid for purchases in the privatisation of state-owned enterprises or business premises. Participation is purely voluntary. Old foreign currency savings holders might choose to partly or fully convert their savings to take advantage of these privatisation opportunities or to sell their coupons in the secondary market. Alternatively, they have the option of holding them in their current form in hopes of future realisation of cash payment.

159. The Chamber notes several positive aspects of the Republika Srpska privatisation process as it relates to old foreign currency savers. First, the program is voluntary and therefore offers savers a choice in the manner of dealing with their accounts. Second, there appears to be little risk related to the two-year expiration period for Coupons (see also paragraph 105 above, showing amendments to the relevant law). As Ms. Milašinović of the Republika Srpska Directorate for Privatisation explained, investors in the privatisation process typically execute a purchase contract before going through with the actual conversion of savings into coupons, thus minimising the risk that coupons will expire. Finally, savers may also choose to convert their savings to sell privatisation coupons on the secondary market, which, considering the overall economic situation in Bosnia and Herzegovina, offers a reasonable rate of return. While the Republika Srpska Directorate for Privatisation does not get involved in sales of privatisation coupons on the secondary market, such sales are clearly not illegal and are conducted openly in the Republika Srpska. As Professor Stojanov, OHR, and Ms. Milašinović have stated, the current value of privatisation coupons on the secondary market is approximately 40 to 60 percent of their nominal value, a figure consistent with the applicants' experience. Professor Stojanov opined, however, that this rate is likely to drop. Nonetheless, he noted that the Republika Srpska's privatisation process has been structured such that massive devaluation of privatisation coupons has not yet occurred, and he stated that the secondary market may provide the best option for some citizens to obtain some level of return on their old foreign currency savings.

160. At the same time, the Chamber notes that certain categories of old foreign currency savers might find it difficult to participate in the privatisation process. Persons with small levels of savings might not have sufficient assets to invest on their own, particularly as the process moves forward towards privatisation of larger businesses. Although Ms. Milašinović stated that persons can contract to participate jointly, the process appears to be more accessible to those with larger savings. Further, old foreign currency savings holders who lack sufficient funds to satisfy the cash deposit requirement (ranging between three and ten percent of the total purchase price) may find themselves excluded *de facto* from the privatisation process. Both the President and Legal Representative of the Association of Republika Srpska Citizens with Old Foreign Currency Savings Accounts stated that this was a serious hindrance to their members' participation in the process. Further, the privatisation of state-owned apartments is only open to those holding an occupancy right over such an apartment, a requirement that will exclude many savers from that option. Finally, Articles 19 and 20 of the Law on Privatisation of State Capital in Enterprises exclude persons who are not citizens of the Republika Srpska from participating in the privatisation process. The Republika Srpska Directorate for Privatisation was unable to state how many persons are affected by this, but it appears that such persons are fully excluded. Although the Republika Srpska contends that they may participate in the privatisation of state-owned apartments, this conclusion is not supported by the statutory language; and, in any case, non-citizens as a group are less likely to hold an occupancy right over an apartment in the Republika Srpska, as Entity citizenship is linked to the place of residence.

161. Having regard to the above, the Chamber will consider the individual circumstances of each applicant.

(i) Case no. CH/98/420 (Azra Kugić)

162. The Chamber notes that Ms. Kugić has twice participated in the Republika Srpska privatisation process by purchasing an apartment and by selling coupons in the secondary market. On 26 November 2002, she used USD 1,633.39 of her savings to cover a portion of the purchase price of an apartment for her mother and herself. Before that, on 24 October 2002, she exchanged USD 10,002.92 for coupons that she sold on the secondary market for KM 9600. The Chamber considers that, through these actions, Ms. Kugić has been able to realise some property rights in a portion of her old foreign currency savings, and the rest of those savings remain in her account. The Chamber acknowledges that the amount received in the secondary market is significantly lower than the nominal value of the coupons. Given the prevailing economic situation in Bosnia and Herzegovina, however, the Chamber considers that the actions of the Republika Srpska in respect of old foreign currency savings have struck a fair balance between the general interest and the protection of this applicant's individual rights.

163. Having regard to the above, the Chamber concludes that the Republika Srpska has not violated the applicant's right to peaceful enjoyment of her possessions under Article 1 of Protocol No. 1 to the Convention.

(ii) Case no. CH/00/5893 (Đulan Ivazović)

164. The Chamber notes that, according to Ermin Ivazović, neither he nor his father have been citizens of the Republika Srpska. The Republika Srpska has provided no information on the citizenship question and asks the Chamber to accept the representations of the applicants in this regard. Accordingly, the Chamber concludes that the applicant is not a citizen of the Republika Srpska. As such, following Articles 19 and 20 of the Law on Privatisation of State Capital in Enterprises, he is not entitled to coupons and is therefore currently excluded from participating in the privatisation process. Nor does he hold an occupancy right over an apartment in the Republika Srpska, so he is *de facto* excluded from the privatisation of state-owned apartments.[4]

165. Although under Article 20 of the Law on Privatisation of State Capital in Enterprises, the old foreign currency savings claims of persons who are not citizens of the Republika Srpska are to be governed by separate regulations and compensated from the Restitution Fund, no such separate regulations or Law on Restitution are currently in place, nor are they likely to be enacted anytime soon. In these circumstances, the applicant presently has no possibility of realising any rights in his old foreign currency savings.

166. Having regard to the above, the Chamber considers that the actions of the Republika Srpska in respect of old foreign currency savings fail to strike a fair balance between the general interest and the protection of the applicant's individual rights. The Chamber therefore concludes that the Republika Srpska has violated the applicant's right to peaceful enjoyment of his possessions under Article 1 of Protocol No. 1 to the Convention.

[4] There is some question as to whether *de jure* a non-citizen can obtain certificates to use toward the purchase of a state-owned apartment over which he has an occupancy right. Although this is prohibited by the plain language of Article 19, Ms. Milašinović and the Republika Srpska's Agent both testified that, with regard to apartment sales, this provision is pre-empted by the more specific Law on Privatisation of State-Owned Apartments, which does not limit the process to citizens. The state of the law on this particular issue is unclear at best.

(iii) Case no. CH/02/9315 (Drago Radovanović)

167. The Chamber notes that, although the applicant has not converted any of his old foreign currency savings to coupons, he has apparently explored the possibility of investing in companies in the Republika Srpska. Given the size of the applicant's savings, it appears that such participation in the privatisation process is an option available to him. The applicant has also received numerous offers to sell his old foreign currency savings at 50 to 55 percent of their nominal value. The Chamber again acknowledges that the rate of return in the secondary market is significantly lower than the nominal value of the savings. Nonetheless, this and other options are available to Mr. Radovanović. Given the prevailing economic situation in Bosnia and Herzegovina, the Chamber considers that the actions of the Republika Srpska in respect of old foreign currency savings have struck a fair balance between the general interest and the protection of the applicant's individual rights.

168. Having regard to the above, the Chamber concludes that the Republika Srpska has not violated the applicant's right to peaceful enjoyment of her possessions under Article 1 of Protocol No. 1 to the Convention.

(iv) Case no. CH/02/9852 (M.M.)

169. The Chamber notes that it has no information regarding the amount of the applicant's old foreign currency savings. The Chamber also has no information regarding any actions the applicant has taken to realise her rights through participation in the privatisation process, although it is stated that some of her savings were transferred into certificates. The applicant does hold an occupancy right over a Republika Srpska apartment that she would like to purchase, and the privatisation program would allow her to use old foreign currency savings for up to 60 percent of such a purchase. Having no further information regarding the applicant's situation, the Chamber cannot say that the actions of the Republika Srpska in respect of old foreign currency savings fail to strike a fair balance between the general interest and the protection of the applicant's individual rights.

170. Having regard to the above, the Chamber concludes that the Republika Srpska has not violated the applicant's right to peaceful enjoyment of her possessions under Article 1 of Protocol No. 1 to the Convention.

d. Alleged violation by Bosnia and Herzegovina

(1) Whether Bosnia and Herzegovina has interfered with the applicants' rights

171. The Chamber considers, as it did in *Poropat and Others*, that Bosnia and Herzegovina remains generally responsible for issues related to old foreign currency savings accounts. Bosnia and Herzegovina, between 1992 and 1996, adopted special legislation providing that the issue of old foreign currency savings was to be addressed by special regulation. The 1995 and 1996 Decisions (see paragraphs 96 and 97 above), which were applicable as the law of Bosnia and Herzegovina, more specifically stated that the issue was to be resolved within the overall consolidation of the public debt of the state. This legislation implicitly recognised the responsibility of Bosnia and Herzegovina for these savings.

172. The Chamber considers, as it did in *Poropat 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 the above-mentioned *Poropat and Others* decision, paragraphs 164-69). 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 interference, 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.

173. As a Party to the Agreement, Bosnia and Herzegovina is under a positive obligation to "secure" human rights, including the right to peaceful enjoyment of possessions. In determining to what extent Bosnia and Herzegovina holds such a positive obligation in the present cases, the Chamber considers its implicit recognition of responsibility for old foreign currency savings as well as the factual situation regarding the savings in question. Following the entry into force of the Agreement and the 1995 and 1996 Decisions, citizens continued to be unable to withdraw their old foreign currency savings. Bosnia and Herzegovina failed to take adequate action and left the depositors in a situation where there was no legal basis by which they could obtain reimbursement of their savings, either directly from the banks or indirectly from Bosnia and Herzegovina through payments on the public debt.

174. In these circumstances, the Chamber considers that, by failing to take adequate action, Bosnia and Herzegovina has interfered with old foreign currency savings holders' rights to peaceful enjoyment of their possessions.

(2) Whether the interference has been justified

(a) Case nos. CH/98/420 (Azra Kugić), CH/02/9315 (Drago Radovanović), and CH/02/9852 (M.M.)

175. The Chamber has found that Bosnia and Herzegovina failed to take adequate action. Nonetheless, having also found that the system in the Republika Srpska strikes a fair balance between the general and private interests of these three applicants, the Chamber concludes that Bosnia and Herzegovina's failure to take specific action regarding Republika Srpska old foreign currency savings cannot be regarded as a failure to secure the applicants' rights in these three cases.

176. Having regard to the above, the Chamber finds that there has been no 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.

(b) Case no. CH/00/5893 (Đulan Ivazović)

177. The Chamber has already found a violation by the Republika Srpska of the applicant's right to peaceful enjoyment of his property under Article 1 of Protocol No. 1 to the Convention (see paragraph 165 above), and the Chamber recalls that Bosnia and Herzegovina is also under an obligation to secure the applicant's rights. During the public hearing, Bosnia and Herzegovina's Agent took the position that the limitations against non-citizens contained in the Republika Srpska law are not in accordance with the Framework Law because they operate to deny rights to persons displaced from the Republika Srpska. Clearly, the Republika Srpska has enacted a privatisation system whereby the property rights of certain citizens of Bosnia and Herzegovina are not secured. In these circumstances, Bosnia and Herzegovina's obligation to secure the applicant's rights is implicated, and its failure to take adequate action provides no justification for the interference with the applicant's property rights.

178. Having regard to the above, the Chamber concludes that there has been a violation by Bosnia and Herzegovina of the applicant's right to peaceful enjoyment of his possessions under Article 1 of Protocol No. 1 to the Convention.

2. Discrimination by the Republika Srpska with regard to Article 1 of Protocol No. 1 to the Convention in case no. CH/00/5893 (Đulan Ivazović)

179. Under Article II of the Agreement, the Chamber has jurisdiction to consider (a) alleged or apparent violations of human rights as provided in the Convention and its Protocols and (b) alleged or apparent discrimination arising in the enjoyment of the rights and freedoms provided for in the sixteen international agreements (including the Convention itself) listed in the Appendix to the Agreement on any ground such as sex, race, colour, language, religion, political or other opinion, national or social

origin, association with a national minority, property, birth, or other status. The Chamber has repeatedly held that the prohibition of discrimination is a central objective of the General Framework Agreement to which it must attach particular importance.

(a) Impugned acts and omissions

180. Acts and omissions possibly implicating the responsibility of the Republika Srpska under the Agreement include generally the enactment of laws restricting the applicant's access to his old foreign currency savings (see paragraph 146 above) and, more specifically, Articles 19 and 20 of the Law on Privatisation of State Enterprises, which excludes the applicant from participating in the privatisation process because he is not a citizen of the Republika Srpska.

181. These acts affect the applicant's enjoyment of his property rights guaranteed by Article 1 of Protocol No. 1 to the Convention. The Chamber will therefore examine whether the Republika Srpska has secured protection of these rights without discrimination.

(b) Differential treatment and possible justification

182. The Chamber must first determine whether the applicant was treated differently from others in the same or similar situations. Any differential treatment is to be deemed discriminatory if it has no reasonable and objective justification, that is, if it does not pursue a legitimate aim or if there is no reasonable relationship or proportionality between the means employed and the aim sought to be realised. The burden is on the respondent Party to justify otherwise prohibited differential treatment based on grounds explicitly enumerated in Article II(2)(b) of the Agreement (see case no. CH/99/2696, *Brkić*, decision on admissibility and merits of 8 October 2001, paragraph 71, Decisions July-December 2001).

183. The original applicant, who is deceased, is represented by his son, Ermin Ivazović, in the proceedings before the Chamber. Neither the original applicant nor his son have ever been citizens of the Republika Srpska. Thus, pursuant to Articles 19 and 20 of the Law on Privatisation of State Enterprises, they are currently excluded from participation in the Republika Srpska privatisation process. The law stipulates that the claims of non-citizens are to be governed by separate legislation and reimbursed through the Restitution Fund. Such legislation has not been enacted, however, and the expert witness, Professor Stojanov, testified that the Restitution Fund is in a bad condition and will not likely contain enough assets to allow compensation of old foreign currency savers within the next five or ten years.

184. Presently, the applicant, as a non-citizen, cannot obtain coupons to buy shares of items sold in the privatisation process or to sell on the secondary market. Nor does he hold an occupancy right over an apartment in the Republika Srpska that he could purchase, even if this were allowed by law, as the Republika Srpska claims (see footnote 4 and accompanying text above).

185. It is clear, however, that Republika Srpska citizens holding old foreign currency savings do not bear the restrictions placed upon non-citizens and may freely participate in the offerings of the privatisation program or secondary market.

186. The Republika Srpska argues that it is illogical and unfair that it should have to undertake liabilities for the old foreign currency savings of non-citizens. It clearly has, however, through its legislative enactments, taken over the obligations for those savings. No provision in the relevant laws states that non-citizen's old foreign currency savings were excluded, for example, from the operation of the Law on Opening Balance Sheets in the Process of Privatisation of State Capital in Banks, transferring liability for those funds to the Ministry of Finance. As a consequence, non-citizens have as little access to their old foreign currency savings in the Republika Srpska as citizens.

187. The Republika Srpska further argues that Articles 15 and 19 of the Law on Privatisation of State Capital in Enterprises define a coupon as a "claim of a Republika Srpska citizen", and it asserts that a non-citizen could not hold such a claim. This interpretation is simply not supported by the text of the law. The only reference to Republika Srpska citizenship in Article 15, which lists acceptable means of payment in the privatisation process, relates to vouchers; the listing of coupons

for old foreign currency savings contains no reference to citizenship. Article 20 of the same law makes it clear that non-citizens can indeed have claims against the Republika Srpska by its reference to "claims related to the foreign currency savings ... of those who are not citizens of Republika Srpska...." Article 19, the provision at issue here, limits the entitlement of coupons to Republika Srpska citizens, but it says nothing about the limitation of "claims" to citizens, as the Republika Srpska claims.

188. The Republika Srpska further argued during the public hearing that the citizen requirement prevents persons from participating in privatisation programs of both the Republika Srpska and the Federation of Bosnia and Herzegovina. In the context of old foreign currency savings, however, this argument cannot hold. First, there is no legal possibility for the applicant to use his old foreign currency savings in the Federation privatisation process; they are held in a Republika Srpska bank, and jurisdiction over these funds, under both Republika Srpska and Federation law, lies exclusively with the Republika Srpska. Second, there is no possibility for the applicant to utilise his old foreign currency savings more than one time; once depleted, in the manner of the applicant's choosing, they will be gone. There is no mechanism by which, if allowed, he could use them once in the Republika Srpska and then use them again in the Federation of Bosnia and Herzegovina. This danger the Republika Srpska claims to guard against could not conceivably occur.

189. Simply put, the Republika Srpska assumed responsibility for banks operating within its territory, and later for the old foreign currency savings deposits in those banks, and it is the responsibility of the Republika Srpska to secure savers' rights to these deposits without discrimination. The system, as it stands, unnecessarily places non-citizens who hold the same property rights to their savings in an unequal position to realise those rights. There is no evidence in the record by which the Chamber can conclude that the differential treatment of non-citizen old foreign currency savers is justified.

190. The Chamber therefore concludes that the applicant has been discriminated against in the enjoyment of his property rights guaranteed by Article 1 of Protocol No. 1 to the Convention, the Republika Srpska thereby being in violation of its obligations under Article I of the Agreement to secure all persons within its jurisdiction, without discrimination on any ground, the rights guaranteed by the Convention.

191. Having found discrimination on the grounds of citizenship, the Chamber notes that the expert witness, Professor Stojanov, also expressed his opinion that Articles 19 and 20 of the Republika Srpska Law on Privatisation of State Enterprises are discriminatory, illogical, and damaging to the privatisation process and economy of Bosnia and Herzegovina. Further, Bosnia and Herzegovina's Agent took the position that the limitations against non-citizens contained in these provisions are not in accordance with Bosnia and Herzegovina's Framework Law because they operate to deny rights to persons displaced from the Republika Srpska. Indeed, the Framework law, in Article 3, requires that Entity privatisation laws and regulations be non-discriminatory.

192. The present applicant and his father do not appear to have been displaced persons. The Chamber notes, however, that Article 19 of the Law on Privatisation of State Enterprises holds great potential for discrimination against displaced persons, as they are the ones most likely to have lost (or never gained) Republika Srpska citizenship. The problem is particularly troubling where, as here, the disparate treatment carries with it a connotation of potential discrimination on ethnic grounds (see case no. CH/02/8923 et al., *Kličković et al.*, Decision on Admissibility and Merits delivered 10 January 2003, paragraph 89). Under Article 39 of the Republika Srpska Law on Citizenship, persons who had been residents of the territory now belonging to Republika Srpska but who permanently resided on the territory of the Federation of Bosnia and Herzegovina on 1 January 1998 are not citizens of the Republika Srpska. The likelihood that the majority of persons affected by this provision are of non-Serb ethnic origin is high. Under present privatisation laws, *de facto* ethnic discrimination with regard to their property rights in old foreign currency savings may be the result.

3. Article 6 of the Convention

193. The Chamber finds that it is not necessary to separately examine the applications under Article 6 of the Convention.

4. Article 13 of the Convention

194. The Chamber finds that it is not necessary to separately examine the applications under Article 13 of the Convention.

5. Conclusion on the Merits

195. For the foregoing reasons, the Chamber concludes that there has been no violation of the applicants' rights under Article 1 of Protocol No. 1 to the Convention in case nos. CH/98/420, CH/02/9315, and CH/02/9852 by the respondent Parties. In case no. CH/00/5983 (Đulan Ivazović), the Chamber concludes that there has been a violation of the applicant's right under Article 1 of Protocol No. 1 to the Convention by Bosnia and Herzegovina and the Republika Srpska, and that the Republika Srpska has discriminated against the applicant in the enjoyment of his right to peaceful enjoyment of his possessions as guaranteed by Article 1 of Protocol No. 1 to the Convention.

VIII. REMEDIES

196. 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.

197. The Chamber has found that, in case no. CH/00/5893 (Đulan Ivazović), the Republika Srpska and Bosnia and Herzegovina have violated the applicant's right to peaceful enjoyment of his property under Article 1 of Protocol No. 1 to the Convention, and that the Republika Srpska has discriminated against him in the enjoyment of his property rights under Article 1 of Protocol No. 1.

198. The applicant, like the other applicants, claims compensation for the full amount of his old foreign currency savings.

199. The Chamber finds it appropriate to order the Republika Srpska to take all necessary legislative and administrative actions, within six months from the date of delivery of this decision, to ensure that the applicant in case no. CH/00/5893, as a non-citizen of the Republika Srpska, is no longer discriminated against in his enjoyment of the rights guaranteed by Article 1 of Protocol No. 1 to the Convention. In particular, the Republika Srpska shall ensure that the applicant enjoys the same rights and options as the other applicants, who are citizens of the Republika Srpska, with regard to his old foreign currency savings.

200. The Chamber reserves the right to order additional remedies in this case after six months have passed from the date of delivery of this decision, should it consider such course of action warranted in light of the steps taken by the Republika Srpska to give effect to this decision.

201. The Republika Srpska shall report to the Chamber on the steps taken to comply with the above orders within six months from the date of delivery of this decision.

IX. CONCLUSIONS

202. For the above reasons, the Chamber decides:

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

2. unanimously, to declare the applications admissible in their entirety against the Republika Srpska;

3. unanimously, that, in cases CH/98/420 (Azra Kugić), CH/02/9315 (Drago Radovanović), and CH/02/9852 (M.M.), the Republika Srpska has not violated the applicants' rights to peaceful enjoyment of their possessions under Article 1 of Protocol No. 1 to the Convention;

4. unanimously, that, in case no. CH/00/5893 (Đulan Ivazović), the Republika Srpska has violated the applicant's right to peaceful enjoyment of his possessions under Article 1 of Protocol No. 1 to the Convention, the Republika Srpska thereby being in violation of Article I of the Agreement;

5. unanimously, that, in cases CH/98/420 (Azra Kugić), CH/02/9315 (Drago Radovanović), and CH/02/9852 (M.M.), Bosnia and Herzegovina has not violated the applicants' rights to peaceful enjoyment of their possessions under Article 1 of Protocol No. 1 to the Convention;

6. by 11 votes to 3, that, in case no. CH/00/5893 (Đulan Ivazović), Bosnia and Herzegovina has violated the applicant's right to peaceful enjoyment of his possessions under Article 1 of Protocol No. 1 to the Convention, Bosnia and Herzegovina thereby being in violation of Article I of the Agreement;

7. unanimously, that, in case no. CH/00/5893 (Đulan Ivazović), the Republika Srpska has discriminated against the applicant with regard to the enjoyment of his right to peaceful enjoyment of his property as guaranteed by Article 1 of Protocol No. 1 to the Convention, in conjunction with Article II(2)(b) of the Agreement, the Republika Srpska thereby being in violation of Article I of the Agreement;

8. unanimously, that it is not necessary to separately consider the cases under Article 6 of the Convention;

9. unanimously, that it is not necessary to separately consider the cases under Article 13 of the Convention;

10. unanimously, in case no. CH/00/5893 (Đulan Ivazović), to order the Republika Srpska to take all necessary legislative and administrative actions, within six months from the date of delivery of this decision, *i.e.* 10 April 2004, to ensure that the applicant, as a non-citizen of the Republika Srpska, is no longer discriminated against in his enjoyment of the rights guaranteed by Article 1 of Protocol No. 1 to the Convention; In particular, the Chamber orders the Republika Srpska to ensure that the applicant enjoys the same rights and options as the other applicants, who are citizens of the Republika Srpska, with regard to his old foreign currency savings;

11. unanimously, to reserve the right to order additional remedies in this case after six months have passed from the date of delivery of this decision, should it consider such course of action warranted in light of the steps taken by the Republika Srpska to give effect to this decision; and

12. unanimously, to order the Republika Srpska to report to the Chamber on the steps taken to comply with the above orders within six months from the date of delivery of this decision.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the Chamber