DECISION ON ADMISSIBILITY AND MERITS
(delivered on 11 May 2001)

CASE No. CH/98/575

Jasmin ODOBAŠIĆ

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 8 May 2001, with the following members present:

Ms. Michèle PICARD, President
Mr. Dietrich RAUSCHNING, Vice President
Mr. Hasan BALIĆ
Mr. Želimir JUKA
Mr. Miodrag PAJIĆ
Mr. Andrew GROTRIAN

Mr. Peter KEMPEES, Registrar
Ms. Olga KAPIĆ, Deputy Registrar

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

Adopts the following decision pursuant to Article XI of the Agreement and Rule and 52 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. This case concerns the attempts of the applicant, a citizen of Bosnia and Herzegovina of Bosniak descent, to regain possession of a parcel of land in Prnjavor upon which stands a building he used partly for living space and partly for business purposes. The applicant lived in and possessed these premises until 27 February 1994, when he was forcibly removed by local police. The following day, the Municipal Secretariat for Business, Urban Planning, and Finance of Municipality Prnjavor leased the premises to a private company. Over the course of the next several years, the applicant requested repossession of his property, but various organs of the Prnjavor Municipality did not respond favourably. However, in April 2000 the premises were finally returned to the applicant.

2. The case raises issues under Article 1 of Protocol No. 1 to the European Convention on Human Rights and Article 8 of the Convention.

II. PROCEEDINGS BEFORE THE CHAMBER

3. The application was introduced on 23 April 1998 and registered on 15 May 1998.

4. On 13 July 1999, the Chamber transmitted the case to the respondent Party for its observations, in particular, with respect to Article 8 of the Convention, Article 1 of Protocol No. 1 to the Convention, Article 2 of Protocol 4 to the Convention, and Article II(2)(b) of Annex VI in conjunction with Article 6 of the International Covenant on Economic, Social and Cultural Rights.

5. On 13 September 1999, the Chamber received the respondent Party's written observations, and on 18 October 1999, the applicant's reply thereto, in which the applicant restated the request originally made in his application for compensation for pecuniary and non-pecuniary damage. Thereafter, on 20 January 2000, the respondent Party submitted supplemental observations including observations on the applicant's claim for compensation.

6. The Chamber scheduled a public hearing in this case for 5 April 2000, but later the Chamber learned from the OSCE that the applicant had received a decision dated 2 March 2000 from the Republika Srpska, Ministry of Refugees and Displaced Persons, Prjnavor Department, recognising that the applicant had the right to repossess the premises in question. Moreover, by letter dated 27 March 2000, the respondent Party informed the Chamber that the premises would be delivered to the applicant by 1 May 2000. Accordingly, the Chamber postponed the public hearing.

7. Commencing in April 2000, the Chamber attempted to facilitate a friendly settlement in this case. On August 21, 2000, the Chamber relayed a settlement offer proposed by the applicant to the respondent Party, but no settlement has been reached between the parties.

8. On 12 January, 6 February, and 8 May 2001, the Chamber considered the admissibility and merits of the application. On 8 May 2001, it adopted the present decision.

III. ESTABLISHMENT OF THE FACTS

9. The facts of the case as they appear from the submissions of the Parties and the documents in the case file may be summarised as follows. The facts are substantially undisputed.

10. This case concerns a certain parcel of land located in Prnjavor at Avde Tešnjaka no. 1 (now Ulica Branka Radičevića) on which stands a building that the applicant used for housing and business purposes. On 24 February 1982, the applicant received approval from the Municipal Secretariat for Economy and Finances of the Municipality Prnjavor by procedural decision no. 04/9-360-63_82 for construction of a house and business premises building on parcel no. 708/1, new number 373/3, land books excerpt no. 2014 of the Cadaster Municipality Prnjavor. This approval further states that the applicant had a priority right to use the land in question for construction of a building partly for

housing and partly for business. On 12 June 1990, the Municipal Secretariat for Economy and Finances of the Municipality Prnjavor issued procedural decision no. 07-360-194/90, which established that the applicant's construction of the building partly for housing and partly for business purposes was "in proper technical order [and] may be used." The applicant lived in the building along with his seven-member family and conducted his business on the premises.

11. On 27 February 1994, the applicant was forcibly removed from his house in Prnjavor, taken to the local police station, beaten by three policemen, and then released. The police kept the applicant's keys to his business premises. The following day, the Municipal Secretariat for Business, Urban Planning and Finance for the Prnjavor Municipality entered into a contract to lease the applicant's business premises to the private company "Brana" Kremna owned by Ms. Z.M. Under the terms of this lease contract, the lessee, Ms. Z.M., agreed to pay to the lessor, the Prnjavor Municipality represented by the Municipal Secretariat for Business, Urban Planning and Finance, monthly rent in the amount of 300 DEM to use the business premises located at Ulica Branka Radičevića in Prnjavor. Nothing in the case file indicates that the Prnjavor Municipality ever declared the applicant's premises abandoned, either before or after it leased the premises to Ms. Z.M.

12. The applicant alleges that at the end of May 1994, he requested return of his premises. Following this request, members from his family were beaten by the police and expelled from Prnjavor. After the signing of the Dayton Agreement, the applicant tried to enter his business premises, but a tenant (about whom the Chamber has received no further information) was in possession of them. The Chamber presumes from the information in its case file that this tenant possessed the premises pursuant to an arrangement with the company "Brana" Kremna or Ms. Z.M., the lessee of the premises under the lease agreement with the Prnjavor Municipality, as described in paragraph 11 above. In December 1997, the applicant requested the return of his business premises from the Municipal Assembly of Prnjavor, but, according to the applicant, the President of the Executive Board refused this request.

13. The applicant alleges that he did not apply to domestic courts because he feared additional battery by local authorities.

14. On 9 June 1997, the applicant submitted request no. 2023092 for repossession of his property to the Annex 7 Commission for Real Property Claims of Displaced Persons and Refugees (hereinafter "CRPC"). On 24 October 2000 (after he regained possession of his apartment, see paragraph 16 below), the applicant received a decision in his favour from CRPC confirming that he was the *bona fide* possessor of his premises and that he has the right to enter into possession of his premises in accordance with the applicable law.

15. On 1 February 1999, the applicant submitted request no. 05-050-33-369/99 for repossession of his premises to the Ministry for Refugees and Displaced Persons of the Republika Srpska, Prnjavor Department. On 2 March 2000, the applicant received a favourable procedural decision (no. 05-050-33-369-1/00) in response to his request. This decision states that "the abandoned business premises located in Prnjavor at Avde Tešnjaka no. 1 (now Branka Radičevića Street) … shall be returned into possession of the owner Odobašić (Mustafe) Jasmin." The decision further establishes "that the applicant is the owner of the requested real estates—business premises; that the applicant was a good possessor of the requested real estates—business premises on 30 April 1991; that the mentioned business premises were at the disposal of the Public Company for Administration and Maintenance of business premises of the Republika Srpska, Prnjavor."

16. On 26 May 2000, the applicant wrote to the Chamber and confirmed that on 20 April 2000, he regained possession of his property. However, the applicant alleges that the temporary occupant ruined his possessions and property.

IV. RELEVANT LEGAL PROVISIONS

A. Decree on the Accommodation of Refugees and Other Persons

17. The Decree on the Accommodation of Refugees and Other Persons in the Territory of the Republika Srpska (Official Gazette of the Republika Srpska – hereinafter "OG RS" – no. 27/93) entered into force on 1 January 1994. The provisions relevant to this decision remained in force until 1 October 1995, when that decree was superseded by the Decree on Accommodation of Refugees (OG RS, no. 19/95). As set forth in Article I, this Degree regulated "the criteria and the method of allocating for temporary use, abandoned accommodation objects, business and other premises... ."

18. According to Articles 8 and 12, the competent municipal body shall grant temporary use of accommodation and business premises for the following properties: "vacated apartments (privately or socially-owned) for which it has been found out that they have been temporarily or permanently vacated by their occupants and members of their households," "houses vacated by their owners, i.e., users," "summer cottages not occupied by their owners or users," and "business premises where business activities have not been carried out for more than 30 days." The allocation of these properties must be conducted in accordance with priorities established in Article 11 of the Decree. The Decree further requires the municipal body to provide certain record keeping on allocated property, including a register of objects and monthly reports (see Articles 12-20).

B. Law on Use of Abandoned Property

19. The Law on Use of Abandoned Property (OG RS, nos. 3/96, 8/96, 21/96) ("the 1996 law") was adopted by the National Assembly of the Republika Srpska on 27 February 1996. It established a legal framework for the administration of abandoned property. Accordingly, it defined what forms of property were considered abandoned and set out the categories of persons to whom abandoned property may be allocated. The provisions of the 1996 law, insofar as they are relevant to the present case, are summarised below.

20. Article 2 defines "abandoned property" as real and personal property which has been abandoned by its owners or persons holding use rights and which is entered in the register of abandoned property. Various types of property may be considered abandoned real property, including residential houses, apartments (both privately and socially owned), and "other business and housing premises".

21. Article 3 states that abandoned property is to be temporarily protected and managed by the Republika Srpska. To this end, the Ministry is obliged, in Article 4, to establish commissions to carry out this task. These commissions, pursuant to Article 6, issue decisions on the allocation of abandoned property. Article 7 provides that the preparation of registers of abandoned property is to be carried out by the appropriate administrative bodies in each municipality.

22. Article 11 states that refugees and displaced persons given the use of abandoned property are "ensured" that owners of houses and economic facilities have abandoned or are not using the property and that no business has been conducted on business premises for over 30 days. Moreover, Article 15 provides that "abandoned flats, houses and other abandoned housing facilities shall be allocated exclusively to refugees and displaced persons and persons without accommodation as a result of war activities...". However, the use of abandoned business premises is regulated under a separate law, according to Article 18.

23. Articles 39-42 set out the terms upon which an owner of abandoned property may seek to regain possession of it. Article 39 states as follows: "The owner of abandoned property, in the event of permanent return, may claim the right to return of his property, or the right to a fair reimbursement within the context of a settlement between the Republika Srpska, the Federation of Bosnia and Herzegovina and the Republic of Croatia."

24. Article 40 provides in pertinent part that if the owner of abandoned property seeks return of his property pursuant to Article 39 and the person to whom the property has been allocated has his

own property in the Federation of Bosnia and Herzegovina or the Republic of Croatia, then the property shall be returned to the owner within 30 days from the day the owner returns to his property or at the latest 60 days if compensation is due to the temporary user for reconstruction.

C. Law on Cessation of Application of the Law on Use of Abandoned Property

25. The Law on Cessation of Application of the Law on Use of Abandoned Property of 11 December 1998 (Official Gazette of the Republika Srpska, nos. 38/98, 41/98, 12/99, 31/99), as amended by the High Representative Decision of 27 October 1999 (hereinafter "the 1998 law"), establishes a detailed framework for persons to regain possession of property considered to be abandoned. The 1998 law entered into force on 19 December 1998 and supersedes the 1996 law. According to Article 1, it applies to "all real property, including privately-owned business premises, privately-owned houses and privately-owned apartments, and apartments with occupancy right which were vacated since 30 April 1991, whether or not the real property or apartment was declared abandoned: provided that the owner, possessor or user lost possession of the real property or the occupancy right holder lost possession of the apartment before 19 December 1998."

26. Under Article 2 of the 1998 law, "any occupancy right or contract on use made between 1 April 1992 and 19 December 1998 is cancelled." Article 3 gives the owner, possessor or user of real property who abandoned such property the right to repossess it and enjoy it on the same terms as he or she did before 30 April 1991 or the date it become abandoned. Article 4 states that the terms "owner", "possessor" or "user" shall mean the persons who had such status under the applicable legislation at the time the property concerned became abandoned or when such persons first lost possession of the property, in the event that the property was not declared abandoned.

27. The owner, possessor or user of property subject to the 1998 law may file a claim at any time for repossession of his abandoned property pursuant to Article 7. Article 8 of the 1998 law clarifies that such "a claim for repossession of real property, including privately-owned business premises, privately-owned houses and privately-owned apartments, including any real property which is or was at any time used partly or wholly for business purposes" may be filed with the Ministry of Refugees and Displaced Persons in the municipality where the property is located. Pursuant to Article 9, the competent body of the Ministry of Refugees and Displaced Persons "shall" issue a decision on a claim for repossession of real property within 30 days from receipt of the claim. Moreover, Article 10 provides that proceedings for the repossession of property shall, unless otherwise specified, be carried out in accordance with the Law on General Administrative Proceedings and treated as an expedited procedure. However, unless otherwise provided in the 1998 law, Article 11 states that the claimant may not request a date for return of possession of the property earlier than 90 days after the claimant submitted his application.

V. COMPLAINTS

28. The applicant complains of deprivation of his private property rights and, indirectly, discrimination based on his ethnic origin. More specifically, he alleges an ongoing violation of Article 1 of Protocol 1 to the Convention, Article 8 of the Convention, and Article 2 of Protocol 4 to the Convention. He seeks repossession of his house and business premises. He further seeks compensation for pecuniary and non-pecuniary damage.

VI. SUBMISSIONS OF THE PARTIES

29. In its observations on the admissibility and merits of the application, the Republika Srpska primarily argues that the application is inadmissible. The respondent Party alleges that the applicant did not exhaust domestic legal remedies because he could have sought enforcement of his rights under the Law on Civil Proceedings before competent courts in the Republika Srpska. Moreover, the respondent Party notes that since the competence of the Chamber *ratione temporis* applies only to consideration of human rights violations occurring after 14 December 1995, the Chamber should not consider the applicant's allegations of events occurring in February 1994. The respondent Party

further contends, in its reply to the applicant's claim for compensation, that because the applicant filed a claim for repossession with the Commission for Real Property Claims, the Chamber should reject the application as concerning the same subject matter pending before another competent international human rights body or a Commission established under the Annexes to the General Framework Agreement. Lastly, the respondent Party argues that the applicant's claim for compensation is ill-founded.

30. With respect to the merits, the respondent Party concedes that the human rights of the applicant were violated. The respondent Party states in its observations of 13 September 1999: "From the application, especially from the part that relates to the statement of facts, it appears that the human rights of the applicant were violated on 27 and 28 February 1994 and that the mentioned violations lasted all throughout the war, and that the application was submitted [to the Chamber] on 23 April 1998, which means almost two and a half years after the cessation of the war, ..."

31. The applicant maintains his complaint. He points out that he requested repossession of his property through various organs of the Republika Srpska, as described more fully above. Further, he alleges a continuing violation of his property rights because, as of the time of his application and initial submissions to the Chamber, he had not gained repossession of his property.

VII. OPINION OF THE CHAMBER

A. Admissibility

32. Before considering the merits of the case the Chamber must decide whether to accept it, taking into account the admissibility criteria set out in Article VIII(2) of the Agreement. According to Article VIII(2)(a), the Chamber must consider whether effective remedies exist and whether the applicant has demonstrated that they have been exhausted.

1. Exhaustion of domestic remedies

33. In the *Onić* case (case no. CH/97/58, decision on admissibility and merits, delivered on 12 February 1999, paragraph 38, Decisions January-July 1999), the Chamber held that the domestic remedies available to an applicant "must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness. ...[M]oreover, ... in applying the rule on exhaustion it is necessary to take realistic account not only of the existence of formal remedies in the legal system ... concerned but also of the general legal and political context in which they operate as well as of the personal circumstances of the applicants."

34. The Republika Srpska has argued that in this case the applicant should have sought enforcement of his rights under the Law on Civil Proceedings before competent courts in the Republika Srpska. However, the Supreme Court of the Republika Srpska has previously stated that matters concerning abandoned property are within the sole competence of the Ministry for Refugees and Displaced Persons, and such issues could only be decided in administrative proceedings and not by the courts.

35. Consequently, having recourse to the courts does not appear to be an effective remedy, as the Chamber has previously held (*see, e.g.,* cases nos. CH/98/659 *et al*., *Pletilić and others,* Decision on Admissibility and Merits, delivered on 10 September 1999, paragraphs 151–152, Decisions August-December 1999).

36. The Chamber notes that on 1 February 1999, the applicant properly applied to the Ministry for Refugees and Displaced Persons in Prnjavor under the 1998 law to regain possession of his house and business premises. One year after the date when the Ministry should have issued its decision, the applicant received a favourable decision. Thus, the applicant did utilize proper domestic remedies to try to regain possession of his house and business premises. The applicant cannot be held responsible for the failure of the Ministry to adhere to the time limits for issuing decisions set by

the applicable law. The Chamber finds, under the circumstances, that the requirements of Article VIII(2)(a) of the Agreement have been met.

2. *Lis alibi pendens*

37. The Chamber notes that the respondent Party argues that the applicant filed a claim for repossession with the Commission for Real Property Claims of Displaced Persons and Refugees established by Annex 7 to the Agreement (CRPC), and as a result, the Chamber should not address the application. Article VIII(2)(d) of the Agreement provides that the "Chamber may reject or defer further consideration if the application concerns a matter currently pending before any other international human rights body responsible for the adjudication of application or the decision of cases, or any other Commission established by the Annexes to the General Framework Agreement."

38. In this case, the applicant finally obtained repossession of his house and business premises on 20 April 2000 following a favourable decision on 2 March 2000 from the Ministry for Refugees and Displaced Persons in Prnjavor. He did later, on 24 October 2000, also receive a decision in his favour from CRPC, after he had already repossessed his premises. Accordingly, the Chamber finds it consistent with the objective of human rights to declare the application admissible and issue a decision without further delay.

B. Merits

39. Under Article XI of the Agreement, the Chamber must next address the question whether the facts established above disclose a breach by the respondent Party of its obligations under the Agreement. Under Article I of the Agreement, the Parties are obliged to "secure to all persons within their jurisdiction the highest level of internationally recognised human rights and fundamental freedoms", including the rights and freedoms provided for in the Convention and the other treaties listed in the Appendix to the Agreement.

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

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

41. Article 1 of Protocol No. 1 to the Convention provides 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."

42. The applicant alleges that his rights guaranteed by this provision have been violated. Other than arguing that the application is inadmissible, the respondent Party did not submit any observations under this provision, although, as quoted above, the respondent Party did state in general that the applicant's human rights appeared to have been violated.

43. The Chamber notes that the applicant is the owner of the building in question which he used for housing and business purposes. Accordingly, the Chamber considers that the applicant's rights in respect of the building in question constitute his "possession" for the purposes of Article 1 of Protocol No. 1 to the Convention.

44. Since the Prnjavor Municipality evicted the applicant from his premises and leased the premises to a private company prior to the entry into force of the Agreement, the Chamber has no competence *ratione temporis* to examine these events. However, after the Dayton Agreement became effective on 14 December 1995, the applicant repeatedly tried to regain possession of his property. In December 1997 he appealed, unsuccessfully, to the Municipal Assembly of Prnjavor. In February 1999 he initiated administrative proceedings in Prnjavor seeking repossession, and finally, he obtained a favourable decision from the Ministry for Refugees and Displaced Persons on 2 March 2000. The applicant regained possession of his premises on 20 April 2000. However, according to the lease contract of 28 February 1994, until the applicant regained possession, rent was payable to the Prnjavor Municipality on the applicant's premises in the amount of 300 DEM per month.

45. The Chamber considers that the allocation and lease of the premises by the Prnjavor Municipality to the private company on 28 February 1994 without any legal finding that the premises were abandoned and the failure of the authorities of the Republika Srpska to allow the applicant to regain possession of his property constitute an "interference" with his right to peaceful enjoyment of his possession. This interference was ongoing after the entry into force of the Dayton Agreement and until 2 March 2000, when the applicant finally obtained a decision returning possession of his property to him.

46. The Chamber must therefore examine whether this interference can be justified. For this to be the case, it must be in the public interest and subject to conditions provided for by law.

47. The respondent Party does not dispute that the applicant is the rightful owner of the premises in question. In fact, in the decision issued by the Ministry for Refugees and Displaced Persons in Prnjavor on 2 March 2000, the Ministry confirms that the applicant is the owner of the premises and was a good possessor of the premises on 30 April 1991. Nonetheless, the Prnjavor Municipality forcibly removed the applicant from his premises and leased the premises to a private company in exchange for monthly rent. According to the material in the case file, the property cannot be considered "abandoned property" under the 1996 law or the 1998 law. As a result, the lease agreement under which the private company occupied the property and the Municipality's continuing control over the property after the Dayton Agreement entered into force and until 2 March 2000 were not "subject to conditions provided for by law".

48. In addition, the Ministry did not issue its decision on the applicant's request for repossession in a timely manner. Under Article 9 of the 1998 law, the Ministry shall issue a decision on a claim for repossession of real property within 30 days from receipt of the claim. The applicant filed his claim for repossession with the Ministry on 1 February 1999, but the Ministry did not issue its decision on that claim until 2 March 2000. This was one year after the time limit for issuing such decision expired on 2 March 1999 under the 1998 law. Accordingly, the Ministry failed to act "subject to conditions provided for by law", which resulted in the applicant being deprived of his premises for one year longer than mandated by law.

49. Since the respondent Party's interference with the applicant's right to enjoyment of his possessions was not subject to conditions provided for by law, it is not necessary for the Chamber to examine whether it was in the public interest.

50. In conclusion, the Chamber finds the respondent Party has violated the applicant's right to peaceful enjoyment of his possessions as guaranteed by Article 1 of Protocol 1 to the Convention.

2. Article 8 of the Convention

51. Article 8 provides as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> "2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

52. The applicant claims his property rights guaranteed by Article 8 of the Convention have been violated. Apart from its observations on admissibility of the application, the respondent Party submitted no observations under this provision.

53. The Chamber notes that the applicant and his family lived in the house and worked in the business premises until February 1994, when the applicant was forcibly removed. The Chamber has previously held that persons seeking to regain possession of properties they lost possession of during the war retain sufficient links with those properties for them to be considered their "home" within the meaning of Article 8 of the Convention (*see, e.g.*, case no. CH/98/777, *Pletilić,* decision on admissibility and merits, delivered on 8 October 1999, paragraph 74, Decisions August-December 1999). The Chamber therefore considers the part of the building used by the applicant for living space as his "home" for this purpose.

54. Since the Prnjavor Municipality evicted the applicant from his premises and leased the premises to a private company prior to the entry into force of the Agreement, the Chamber has no competence *ratione temporis* to examine these events. However, as explained above, after the Dayton Agreement became effective, the occupation of his premises continued even though the property cannot be considered to have been abandoned under either the 1996 or 1998 laws. Moreover, the applicant repeatedly tried to regain possession of his property. Finally, on 2 March 2000, he obtained a favourable decision from the Ministry and was granted the right to repossess his property.

55. The Chamber considers that the acquiescence of the authorities of the respondent Party in the allocation and lease of the property to a third party and the failure of the authorities of the respondent Party to allow the applicant to regain possession of his property constitute an "interference" with his right to respect for his private and family life and his home. This interference was ongoing after the entry into force of the Dayton Agreement and until 2 March 2000, when the applicant finally obtained a decision returning possession of his property to him.

56. The Chamber must therefore examine whether this interference has been in accordance with paragraph 2 of Article 8 of the Convention. For an interference to be justified under the terms of paragraph 2 of Article 8 of the Convention, the interference must be "in accordance with the law", serve "a legitimate aim" enumerated in the paragraph, and be "necessary in a democratic society" for the furtherance of that aim. If any one of these conditions is not satisfied, then there is a violation of Article 8 (*Kevešević*, case no. CH/97/46, decision on admissibility and merits of 10 September 1998, Decisions and Reports 1998, pp. 214-216).

57. The Chamber has found, in the context of its examination of the case under Article 1 of Protocol 1 to the Convention, that the actions of the authorities of the Republika Srpska in acquiescing to the allocation and leasing of the applicant's property to the private company without legal basis and failing to permit the applicant to regain possession of his property in a timely manner were not subject to conditions provided for by law. This is in itself sufficient to justify a finding that the interference with the applicant's right to respect for his private and family life and his home as guaranteed by Article 8 of the Convention is not "in accordance with the law" either.

58. Accordingly, there has been a violation of the right of the applicant to respect for his private and family life and his home as guaranteed by Article 8 of the Convention.

VIII. REMEDIES

59. Under Article XI(1)(b) of the Agreement, the Chamber must address the question of what steps shall be taken by the respondent Party to remedy the established breaches of the Agreement.

60. The Chamber notes that the applicant was granted the right to repossess his property on 2 March 2000, and he in fact regained possession of his property on 20 April 2000.

61. The applicant submitted a claim for compensation for pecuniary damage in the amount of 300 KM per month since December 1995 and non-pecuniary damage in an unspecified amount. In its observations on this claim, the respondent Party argued only that the claim was ill-founded.

62. For the illegal use of his business premises since December 1995, the applicant seeks damages in the amount of 300 KM per month accruing since December 1995 through April 2000 when he finally obtained repossession of his premises. According to the lease agreement between the Prnjavor Municipality and the private company, this amount is equal to the rent payable on the applicant's property. The Chamber finds it appropriate to award the applicant 15.600 KM, which represents 300 KM per month commencing on 1 January 1996 through 30 April 2000. In addition, the Chamber finds it appropriate to award the applicant the sum of 3120 KM, which represents interest on the rent payable under the lease for this time period.

63. With respect to the applicant's claim for non-pecuniary damages, the Chamber finds it appropriate to award the applicant 2000 KM in respect of the suffering he experienced while he attempted to regain possession of his home.

64. Additionally, the Chamber awards simple interest at an annual rate of 10% on the sums awarded to be paid to the applicant in paragraphs 62 and 63 above. Interest shall be paid as of one month from the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure on each sums awarded or any unpaid portion thereof until the date of settlement in full.

IX. CONCLUSION

65. For these reasons, the Chamber decides as follows:

a) by 5 votes to 1, to declare the application admissible;

b) by 5 votes to 1, that there has been a violation of the applicant's right to peaceful enjoyment of his possessions within the meaning of Article 1 of Protocol 1 to the Convention, the Republika Srpska thereby being in breach of Article 1 of the Agreement;

c) by 5 votes to 1, that there has been a violation of the applicant's right to respect for his home within the meaning of Article 8 of the Convention, the Republika Srpska thereby being in breach of Article 1 of the Agreement;

d) by 5 votes to 1, to order the Republika Srpska to pay to the applicant, as soon as this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure, the sum of 18.720 KM (Convertible Marks) in compensation for pecuniary damage for illegal use of his property;

e) by 5 votes to 1, to order the Republika Srpska to pay to the applicant, as soon as this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of

Procedure, the sum of 2000 KM in compensation for non-pecuniary damage for illegal use of his home;

f) unanimously, to dismiss the remainder of the applicant's claims for relief;

g) by 5 votes to 1, to order the Republika Srpska to pay to the applicant simple interest at an annual rate of 10% (ten per cent) over the sums awarded or any unpaid portion thereof from the date set for payment until the date of settlement in full; and

h) unanimously, to order the Republika Srpska to report to the Chamber within one month from the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure on the steps taken by it to comply with the above orders.

(signed)
Peter KEMPEES
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel