DECISION ON THE ADMISSIBILITY AND MERITS

DELIVERED ON 11 JUNE 1999

CASE No. CH/98/636

Nenad MILJKOVIĆ

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 13 May 1999 with the following members present:

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

Mr. Leif BERG, 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 Articles VIII(2) and XI of the Agreement and Rules 52, 57 and 58 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The applicant is a citizen of Yugoslavia of Serb descent. He and his family occupy a house located at Gavrila Principa Street 29 ("the house") in Banja Luka, Republika Srpska. On 19 September 1994, the applicant and his wife entered into a rental agreement with the owner of the house, who is of Bosniak descent, and who was leaving Banja Luka. On 19 May 1998, the Commission for the Accommodation of Refugees and the Administration of Abandoned Property in Banja Luka ("the Commission"), a department of the Ministry for Refugees and Displaced Persons ("the Ministry") declared the applicant to be an illegal occupant of the house and ordered him to vacate it within three days under threat of forcible eviction.

2. The case raises issues principally under Articles 8 and 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and under Article 1 of Protocol No.1 to the Convention.

II. PROCEEDINGS BEFORE THE CHAMBER

3. The application was referred to the Chamber by the Office of the Human Rights Ombudsperson for Bosnia and Herzegovina ("the Ombudsperson") on 21 May 1998 and registered on the same day.

4. The applicant requested that the Chamber order a provisional measure, namely for the respondent Party to take all necessary action to prevent his eviction from the house.

5. On 21 May 1998, the President of the Chamber ordered, pursuant to Rule 36(2) of the Rules of Procedure, the respondent Party to refrain from evicting the applicant from the house. The order stated that it would remain in force until the Chamber has given its final decision in the case, unless it was withdrawn by the Chamber before then.

6. On 10 June 1998 the Chamber decided, pursuant to Rule 49(3)(b) of the Rules of Procedure to transmit the application to the respondent Party for observations on its admissibility and merits. Under the Chamber's Order concerning the organisation of the proceedings in the case, such observations were due by 2 August 1998.

7. No observations were received from the respondent Party.

8. On 19 October 1998, the applicant was requested to submit a written statement and any claim for compensation or other relief which he wished to make. This statement, which did not contain a claim for compensation, was received by the Chamber on 19 November 1998, within the time-limit laid down by the Chamber's Order concerning the organisation of the proceedings in the case. In this statement, the applicant informed the Chamber that on 19 August 1998 he had entered into a new contract with the owner for the rental of the house.

9. On 20 January 1999, the applicant's written statement was transmitted to the Agent of the respondent Party. It was also sent to the Ombudsperson, who was invited to submit any written observations which she wished to make on the case. On 29 January 1999, the Ombudsperson informed the Chamber that she would not intervene in the case.

10. The Second Panel deliberated upon the admissibility and merits of the application on 9 February, 13 March and 14 April 1999. On 13 May 1999, the Second Panel adopted the present decision.

III. ESTABLISHMENT OF THE FACTS

A. The particular facts of the case

11. The facts of the case as they appear from the applicant's submissions and the documents in the case file have not been contested by the respondent Party and may be summarised as follows.

12. The applicant, together with his family, is the occupier of a house located at Gavrila Principa No. 29 in Banja Luka, Republika Srpska. On 19 September 1994, the applicant and his wife entered into a contract with the owner of the house, Mr. H.J., a Bosniak who left Banja Luka after 6 April 1992 (exact date unknown). The main terms of this contract were that it was valid for an indefinite time or until the owner or members of his family returned to Banja Luka. No rent was payable under the contract. The contract was terminable upon 30 days notice. It was prepared by a lawyer practising in Banja Luka. The applicant and his family have occupied the house continuously since then.

13. On 19 May 1998, the Commission issued a decision declaring the applicant to be an illegal occupant of the house under Article 10 of the Law on the Use of Abandoned Property (see paragraph 20 below). This decision ordered the applicant to vacate the house within three days of the date of delivery, under threat of forcible eviction. The applicant received this decision on 20 May 1998. He appealed to the Ministry on 21 May 1998, on the basis that he could not be considered to be an illegal occupant of the house as he had entered into a contract with the owner which entitled him to use it. The applicant has not received any response to this appeal to date. On the basis of the information available to the Chamber, the house was never formally declared abandoned by being entered into the register of abandoned property as required by Article 6 of the law (see paragraphs 18 and 19 below).

14. On 19 August 1998, the applicant, his wife and the owner of the house entered into a further contract, under which the applicant and his wife are entitled to live in the house. The other relevant terms of the contract are as follows: the applicant and his wife must keep the house in good condition and are responsible for the payment of all utility bills in respect of the house. There is no provision for the payment of rent under the contract. The contract is for an indefinite period of time, but may be terminated upon 30 days written notice. The contract was certified on the same date by the Secretariat for General Administration of the City of Banja Luka.

B. Relevant legislation

1. Constitution of the Republika Srpska

15. Article 56 of the Constitution of the Republika Srpska ("the Constitution") reads as follows:

> "In accordance with the law, rights of ownership may be limited or expropriated against payment of equal compensation."

16. This provision was supplemented on 11 November 1994 by Amendment XXXI, which reads as follows:

> "During the state of war, immediate danger of war or during the state of emergency the disposal of properties or use of property of legal or natural persons can be regulated by law."

2. The Law on the Use of Abandoned Property

17. The Law on the Use of Abandoned Property (Official Herald of the Republika Srpska, "OG RS", No. 3/96) ("the Law") was adopted by the National Assembly of the Republika Srpska on 21 February 1996. It was published in the Official Herald of the Republika Srpska on 26 February 1996 and entered into force the following day. It establishes a legal framework for the administration of abandoned property. Accordingly, it defines what forms of property are to be considered as abandoned and sets out the categories of persons to whom abandoned property may be allocated. The provisions of the Law, insofar as they are relevant to the present case, are summarised below.

18. Articles 2 and 11 of the Law define "abandoned property" as real and personal property which has been abandoned by its owners and which is entered in the minutes of abandoned property. Types of property which may be declared abandoned include apartments (both privately and socially owned) and houses.

19. Article 3 of the Law 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. Article 6 states that these commissions shall issue decisions on the allocation of abandoned property. The preparation of registers of abandoned property is to be carried out by the appropriate administrative bodies in each municipality.

20. Article 10 of the Law states that if a person enters into possession of abandoned property without a decision of the appropriate commission, that commission shall issue a decision ordering the person to leave the property concerned. An appeal may be lodged to the Ministry by the recipient within three days of its receipt. The lodging of an appeal to the Ministry does not suspend the execution of the decision.

21. Article 15 of the Law reads as follows:

> "Abandoned apartments, 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, in accordance with the following priorities:
>
> 1. to the families of killed soldiers
> 2. war invalids with injuries in categories I-V
> 3. war invalids with injuries in categories V-X
> 4. qualified workers of whom there is a lack in the Republika Srpska."

22. Article 15A of the Law (which was inserted by an amendment of 12 September 1996) adds a further category of persons to this list. This category is bearers of state honours, deputies of the National Assembly of the Republika Srpska and other officials of the Republika Srpska who have the status of refugees or displaced persons.

23. The Law also provides, in Article 17, for the accommodation of refugees and displaced persons in properties still occupied, if there is insufficient abandoned property available to accommodate them. This may be done in cases where the current occupiers of a property have over 15 square metres of space per household member.

24. Articles 39 and 40 of the Law set out the terms upon which the owner of a property which has been declared abandoned may seek to regain possession of it.

25. Article 49 of the Law reads as follows:

> "Lease agreements as well as agreements relating to the use and protection of abandoned apartments and other property entered into after 6 April 1992 between an owner or user who has left the territory of the Republika Srpska and other persons are null and void."

26. Article 53 of the Law reads as follows:

> "The owners or users of real and other property situated in the Republika Srpska who left the territory of the Republika Srpska after 6 April 1992 cannot deal with their property through an authorised person.
>
> Contracts or agreements referred to in the above paragraph relating to the disposal of real and other property concluded after the entry into force of this Law are invalid. In such situations, certification of the signatures of parties to such a contract may not be carried out by the responsible authorities.
>
> (...)"

27. Article 56 of the Law states that the procedure of allocation of abandoned property is to be carried out in accordance with the provisions of the Law on Administrative Procedures (Official List of the Socialist Federative Republic of Yugoslavia, "SL SFRY", No. 47/86), if not otherwise specified in the Law.

28. Under Article 62, the Law is to enter into force on the day after its publication in the Official Herald of the Republika Srpska.

3. The Law on the Cessation of the Application of the Law on the Use of Abandoned Property

29. The Law on the Cessation of the Application of the Law on the Use of Abandoned Property of 11 December 1998 (OG RS No. 38/98) establishes a detailed framework for persons to regain possession of property considered to be abandoned under the Law. It puts the Law on the Use of Abandoned Property out of force.

4. The Law on Administrative Procedures

30. The Law on Administrative Procedures was taken over as a law of the Republika Srpska. It governs all administrative proceedings. The provisions of this law, insofar as they are relevant to the present case, are summarised below.

31. Article 2 states that a law may, in exceptional cases, provide for a different administrative procedure than that provided for in the Law on Administrative Procedures. Under Article 3, all issues that are not regulated by a special law are to be regulated by the Law on Administrative Procedures.

32. Article 8 reads as follows:

> "(1) Before making a decision a party has to be given the opportunity to express his or her opinion on all the facts and circumstances that are of importance in making an administrative decision.
>
> (2) A decision may be made without hearing the opinion of a party only if provided by law."

33. Article 135(1) requires all relevant facts to be ascertained prior to the making of a decision. Under Article 247, a decision on an appeal must be made within two months of the lodging of such appeal.

5. The Law on Administrative Disputes

34. Under Articles 3 and 18 of the Law on Administrative Disputes (OG RS No. 12/94), the Supreme Court of the Republika Srpska has general jurisdiction over administrative disputes. Under Article 25(1), if an administrative organ does not issue a decision on an appeal within 60 days of its being lodged, the applicant may lodge a reminder to the organ. If no decision is issued within 7 days of the lodging of such a reminder, the applicant may initiate an administrative dispute.

6. The Decision on Cessation of State of War and Immediate Threat of War

35. The Decision on Cessation of State of War and Immediate Threat of War (OG RS No. 15/96) was adopted on 19 June 1996 and entered into force on 8 July 1996.

7. The Decree on Court Taxation

36. Tariff 23 of the Decree on Court Taxation (OG RS No. 7/97), issued on 2 April 1997, prescribes a fee of YUD 1,000 for the lodging of an administrative dispute.

IV. COMPLAINTS

37. The applicant complains that his rights to home and family life, to peaceful enjoyment of his possessions and to an effective remedy have been violated.

V. SUBMISSIONS OF THE PARTIES

38. The respondent Party has not made any submissions regarding the application.

39. The applicant maintains his complaint and also states that if he and his family were to be evicted from the house, the owner of the house would lose any possibility of ever returning to it. He also states that as he and his wife are unemployed, they would be unable to find alternative accommodation were they to be evicted from the house.

VI. OPINION OF THE CHAMBER

A. Admissibility

40. 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.

41. 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. The Chamber notes that the respondent Party has not suggested that there is any "effective remedy" available to the applicant for the purposes of Article VIII(2)(a) of the Agreement.

42. The applicant lodged an appeal to the Ministry against the decision of the Commission of 19 May 1998. However, the lodging of such an appeal does not have any suspensive effect.

43. The Chamber notes that there has been no decision on this appeal to date. It would have been open to the applicant to commence administrative proceedings before the Supreme Court of the Republika Srpska in respect of the failure of the Ministry to issue a decision on his appeal. Before doing so, he would have had to have lodged a reminder with the Ministry, which he has not done. The Ministry would then have a seven day period in which to issue its decision. The applicant could then have initiated an administrative dispute before the Supreme Court. However, the fee required for the initiation of an administrative dispute is YUD 1,000, which is approximately KM 90 at current rates.

44. As the Chamber noted in the case of *Onić v. Federation of Bosnia and Herzegovina* (Case No. CH/97/58, decision of 12 January 1999, paragraph 38), referring to the approach taken by the European Court of Human Rights in relation to the corresponding requirement in Article 26 of the Convention (presently Article 35 of the Convention, as amended by Protocol No. 11) the 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. In addition, when 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.

45. The Chamber notes that even if the applicant had sought to avail himself of the remedies available to him, he would have had no prospect of success. This is due to the retroactive declaration that rental agreements such as that entered into by the applicant were null and void under Article 49 of the Law (see paragraph 25 above). In addition, Article 53 of the Law prohibits persons who have left the territory of the Republika Srpska after 6 April 1992 from dealing with property through authorised persons (see paragraph 26 above). Both of these provisions apply in the present case. Accordingly, the applicant would have had no prospect of success if he had sought to avail himself of the remedies available to him. The Chamber accordingly considers that there is no effective remedy available to the applicant which he should be required to exhaust. Accordingly, there is no ground for rejecting the application under Article VIII(2)(a) of the Agreement.

46. The Chamber further finds that none of the other grounds for declaring the case inadmissible have been established. Accordingly, the case is to be declared admissible.

B. Merits

47. 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.

1. Article 8 of the Convention

48. In his application to the Chamber, the applicant claimed to be a victim of a violation of Article 8 of the Convention which reads, insofar as relevant, as follows:

> "Everyone has the right to respect for ..., his home ...
>
> 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."

49. The Chamber notes that the applicant has lived in the house since September 1994 together with his family. It is therefore clear that the house is to be considered as the applicant's "home" for the purposes of Article 8 of the Convention. The Chamber has already held that the threatened eviction of a person from their home constitutes an "interference by a public authority" with the exercise of the right to respect for home (*Turčinović v. Federation of Bosnia and Herzegovina*, Case No. CH/96/31, Decision of 11 March 1998, Decisions and Reports 1998, paragraph 20). The decision of the Commission of 19 May 1998 ordering the applicant's eviction from the house therefore constitutes an "interference by a public authority" with the applicant's right to respect for his home. This decision has not been revoked to date and accordingly the interference is ongoing.

50. In order to examine whether this interference has been justified under the terms of paragraph 2 of Article 8 of the Convention, the Chamber must examine whether it was "in accordance with the law", served a legitimate aim and was "necessary in a democratic society" (see the aforementioned decision in *Onić*, paragraph 48). There will be a violation of Article 8 if any one of these conditions is not satisfied.

51. The Chamber has held that the phrase "in accordance with the law" does not merely refer back to domestic law but also relates to the quality of the law, requiring it to be compatible with the rule of law, which is expressly mentioned in the preamble to the Convention (*Kevešević v. Federation of Bosnia and Herzegovina*, Case No. CH/97/46, Decision of 10 September 1998, Decisions and Reports 1998, paragraphs 52-53). To satisfy this requirement, the law must provide a measure of legal protection against arbitrary interferences by public authorities with the rights safeguarded by paragraph 1 of Article 8. More particularly, the law must be adequately accessible: the citizen must be able to have an indication that is adequate in the circumstances, of the legal rules applicable to a given case. Secondly, a norm cannot be regarded as a "law" unless it is formulated with sufficient precision to allow the citizen to regulate his conduct: he must be able – if need be with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail. Finally, the law must provide certain procedural safeguards against abuse (cf. ibidem, paragraph 53, with further references).

52. In the present case the decision of the Commission of 19 May 1998 referred to Article 10 of the Law pursuant to which the applicant was to be considered an illegal occupant of the house which he had, in September 1994, contracted to rent indefinitely. In the absence of any evidence to the contrary the Chamber must presume that the Commission considered his contract to fall within the scope of Articles 49 and 53 of the Law (see paragraphs 25 and 26 above), thereby having been retroactively annulled with the entry into force of the Law in February 1996. The Law thus rendered ineffective the applicant's legitimate reliance on a contract which was lawful at the time of its

conclusion. The interference with his right to respect for his home does not appear to have been foreseeable for the purposes of Article 8 of the Convention and the legal provisions underlying the Commission's decision to order the applicant's eviction does not appear to meet the standards of a "law" as this expression is to be understood for the purposes of Article 8 of the Convention.

53. In addition, the Chamber recalls the requirement inherent in Article 8 of the Convention that a "law" within the meaning of that provision should contain procedural safeguards against abuse. The Chamber notes that the applicant was ordered by the decision of the Commission to leave his home within three days, under threat of forcible eviction. The decision of the Commission was made under Article 10 of the Law. The applicant was entitled to lodge an appeal to the Ministry against this decision, which he duly did, but this did not have the effect of suspending the eviction. Consequently, the applicant was not afforded any real opportunity of challenging the decision ordering his eviction. This is also in contravention of the *lex generalis* applicable to the situation, the Law on Administrative Procedures (see paragraphs 30-33 above), Article 8 of which requires the administrative organ to give the parties the opportunity to express his or her opinion on the matter before reaching a decision. The Law therefore did not afford the applicant an effective procedural safeguard against possible abuse.

54. In the aforementioned circumstances the Chamber concludes that Article 8 of the Convention has been violated, given that the interference with the applicant's right to respect for his home was not "in accordance with the law" as required by paragraph 2 of Article 8.

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

55. The applicant complains that his right to peaceful enjoyment of his possessions has been violated as a result of the decision of the Commission ordering him to leave the house he is occupying. Article 1 of Protocol No. 1 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."

56. The Chamber must first consider whether the right the applicant obtained under the contracts he and his wife entered into with the owner of the house constitute a "possession" within the meaning of Article 1 of Protocol No. 1. The Chamber has previously noted that the European Court of Human Rights has given a wide interpretation to the concept of "possessions", holding that it covers a wide variety of rights and interests having economic value (*M.J. v. Republika Srpska*, Case No. CH/96/28, Decision of 3 December 1997, Decisions on Admissibility and Merits 1996–1997, paragraph 32).

57. The Chamber notes that the applicant's contractual right is of great value to him, granting as it does the right for he and his wife to occupy the house. This right therefore constitutes the applicant's "possession" within the meaning of Article 1 of Protocol No. 1.

58. Having established that the applicant's right to occupy the house constitutes his possession, the Chamber next finds that the decision of the Commission of 19 May 1998 declaring the applicant to be an illegal occupant and ordering him to vacate it within three days under threat of forceful eviction interfered with his right to peaceful enjoyment of that possession within the meaning of the first sentence of Article 1 of Protocol No. 1.

59. 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.

60. The Chamber notes that the house was never entered into the register of abandoned property, as required by Article 2 of the Law (see paragraphs 18 and 19 above). Accordingly, the

requirements of national law do not seem to have been adhered to and therefore the interference might not have been "subject to conditions provided for by law" as required by Article 1 of Protocol No. 1 to the Convention.

61. In considering whether a deprivation of property is compatible with Article 1 of Protocol No. 1 it is further necessary to consider whether the measure in question pursued a legitimate aim in the public interest and furthermore whether there was a reasonable relationship of proportionality between the means employed and the aim sought to be realised. There must be 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 and this will not be found if the individual in question has to bear "an individual and excessive burden". The national authorities enjoy a wide margin of appreciation in deciding what is in the public interest and for this decision not to be accepted, it must be "manifestly without foundation" (CH/96/3, 8 & 9 *Medan, Bastijanović and Marković v. Bosnia and Herzegovina and Federation of Bosnia and Herzegovina*, Decision of 3 November 1997, Decisions on Admissibility and Merits 1996-1997, paragraphs 35-36).

62. In the absence of any observations of the respondent Party, the Chamber presumes that the objective of the Law as applied in the applicant's case was to provide a solution for the accommodation needs of the large number of refugees and displaced persons on the territory of the Republika Srpska. This is without doubt a legitimate aim. It remains however to be considered whether there was a reasonable relationship of proportionality between the means employed and the objective sought to be achieved by the Law.

63. The Chamber notes that Article 49 of the Law (see paragraph 25 above) invalidates all contracts entered into after 6 April 1992 which concern the lease, use or maintenance of any type of property, the owner of which has left the Republika Srpska. The Article is so widely drafted as to annul retrospectively every single contract relating to any form of property concluded between 6 April 1992 and the date of entry into force of the Law entered into by any owner of such property who has left the Republika Srpska. As such, it constitutes a massive deprivation of possession, albeit for the purpose of its allocation to certain categories of persons.

64. Article 1 of Protocol No. 1 to the Convention in general requires the payment of reasonable compensation upon deprivation of possession of property. There are exceptions to this general rule, which require the existence of exceptional circumstances (see, e.g., *Holy Monasteries v. Greece*, judgment of the European Court of Human Rights of 9 December 1994, Series A 301-A, page 35, paragraph 71). Such circumstances might include a state of war, an imminent threat of war or a state of emergency.

65. The Chamber notes that Article 56 of the Constitution of the Republika Srpska allows for the control of the use of property, including dispossession, upon payment of compensation. Amendment XXXI to the Constitution, adopted on 11 November 1994 (see paragraph 16 above), allows for the regulation of the use or disposal of property during a state of war, an imminent threat of war or a state of emergency. However, on 19 June 1996 (see paragraph 35 above), the Government of the Republika Srpska decided that a state of war, imminent threat of war or a state of emergency no longer existed in the Republika Srpska. Nor has any state of emergency been declared in the Republika Srpska. Accordingly, Amendment XXXI to the Constitution could not be relied upon to justify the continued application of Article 49 of the Law in the applicant's case. It follows that the general constitutional provision in Article 56 of the Constitution (see paragraph 15 above) remains applicable, as does the general principle relating to payment of compensation upon deprivation of property. As noted above, Article 56 of the Constitution allows the control of property rights upon payment of compensation. The Law, however, does not contain any provision for the payment of compensation and no such compensation has been offered.

66. The Chamber has held in *Medan* (*sup. cit.,* paragraph 37) that legislation that retroactively nullifies contractual rights "must be regarded as a particularly serious form of interference with property rights. It involves an infringement of the principle of the rule of law ... and carries the danger of undermining legal security and certainty." Such legislation can therefore only be justified by cogent reasons. The Chamber recognises the serious housing problems facing the Republika Srpska, exacerbated by the large number of refugees and displaced persons on its territory (approximately

400,000 in 1996). However, it considers that the retroactive nullification by the Law of the applicant's contract without provision for the payment of any compensation caused him to bear an individual and excessive burden. Accordingly, there is no reasonable relationship of proportionality between the aim of providing accommodation for refugees and displaced persons and the Law as applied in the case of the applicant.

67. The Chamber concludes therefore that the retroactive nullification of the applicant's rental contract by the Law violated his rights under Article 1 of Protocol No. 1 to the Convention.

3. Article 13 of the Convention

68. The applicant alleges that his right to an effective remedy has been violated. This may be understood as referring to Article 13 of the Convention, which provides as follows:

> "Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

69. Article 13 "guarantees the availability of a remedy at national level to enforce the substance of the Convention rights in whatever form they may happen to be secured in the domestic legal order" (*Saša Galić v. Federation of Bosnia and Herzegovina*, Case No. CH/97/40, Decision of 12 June 1998, Decisions and Reports 1998, paragraph 54).

70. The Chamber notes that it has found violations of the applicant's rights as guaranteed by Article 8 and Article 1 of Protocol No. 1 to the Convention. The applicant clearly had an arguable claim that his rights as protected under those provisions had been violated and accordingly he was entitled to an effective remedy at national level in respect of those claims. The respondent Party did not suggest that there was any remedy in the domestic law that would enable the applicant to seek redress for the violations of his rights found by the Chamber.

71. The Chamber notes that the applicant could have lodged an appeal to the second instance organ within the Ministry. One of the required elements of "effectiveness" in the context of Article 13 is institutional effectiveness, which means that a decision maker must be independent of the authority at fault for the alleged or actual violation. This is clearly not the case, as such an appeal would be determined by the Ministry, which itself (through the Commission) made the decision giving rise to the violation. The next procedural step for the applicant would be to initiate an administrative dispute before the Supreme Court of the Republika Srpska. To do so, however, the applicant would have been required to pay a fee of YUD 1,000 (see paragraphs 36 and 43 above). In view of the fact that the applicant is currently unemployed, this is an extremely large sum of money for him to have to pay. It cannot therefore be considered that this remedy is an effective one for the applicant. In addition, for the reasons set out at paragraph 45 above, even if the applicant had initiated an administrative dispute before the Supreme Court, it would have had no prospect of success due to the provisions of Article 49 and 53 of the Law. The Supreme Court does not have the power to declare laws to be unconstitutional.

72. Accordingly, the Chamber considers that the rights of the applicant as guaranteed by Article 13 of the Convention have been violated.

VII. REMEDIES

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

74. The applicant requested the Chamber to issue an order to the respondent Party to the effect that he would be allowed to remain in the house.

75. The Chamber notes that the Law has been put out of force by the adoption of the Law on the Cessation of the Application of the Law on the Use of Abandoned Property. However, this does not of itself remove the threat to the applicant that he would be evicted, as the new Law does not put out of force decisions ordering evictions under the Law.

76. The Chamber therefore considers it appropriate to order the respondent Party to revoke the decision of the Ministry declaring the applicant to be an illegal occupant and ordering him under threat of eviction to vacate the house in question and to take no further steps to disturb the applicant's occupancy of the house in accordance with the terms of his contract with the owner.

VIII. CONCLUSION

77. For the above reasons, the Chamber decides,

1. unanimously, to declare the application admissible;

2. unanimously, that the decision of the Commission for the Resettlement of Refugees and the Administration of Abandoned Property in Banja Luka of 19 May 1998 declaring the applicant an illegal occupant and ordering him, under threat of eviction, to vacate the house he currently occupies constitutes a violation of his right to respect for his home within the meaning of Article 8 of the Convention, the Republika Srpska thereby being in breach of Article I of the Agreement;

3. unanimously, that the decision of the Commission for the Resettlement of Refugees and the Administration of Abandoned Property in Banja Luka of 19 May 1998 declaring the applicant an illegal occupant and ordering him, under threat of eviction, to vacate the house he currently occupies, constitutes a violation of his right to peaceful enjoyment of his possessions within the meaning of Article 1 of Protocol No. 1 to the Convention, the Republika Srpska thereby being in breach of Article I of the Agreement;

4. unanimously, that the lack of an effective remedy to the applicant at the national level against the decision of the Commission for the Resettlement of Refugees and the Administration of Abandoned Property in Banja Luka of 19 May 1998 declaring the applicant an illegal occupant and ordering him, under threat of eviction, to vacate the house he currently occupies, constitutes a violation of his right to an effective remedy in domestic law within the meaning of Article 13 of the Convention;

5. unanimously, to order the Republika Srpska to take all necessary steps to revoke the decision of the Commission for the Resettlement of Refugees and the Administration of Abandoned Property in Banja Luka of 19 May 1998 and to allow the applicant to enjoy undisturbed occupancy of the house in accordance with the terms of his contract with the owner of 19 August 1998, and

6. unanimously, to order the Republika Srpska to report to it by 11 September 1999 on the steps taken by it to comply with the above order.

(signed)
Leif BERG
Registrar of the Chamber

(signed)
Giovanni GRASSO
President of the Second Panel