DECISION ON ADMISSIBILITY AND MERITS

(delivered on 10 September 1999)

Cases nos.
CH/98/659, CH/98/734, CH/98/750, CH/98/751, CH/98/753,
CH/98/824, CH/98/825, CH/98/826, CH/98/1100,
CH/98/1101, CH/98/1103, CH/98/1105,
CH/98/1106, CH/98/1107, CH/98/1108,
CH/98/1109, CH/98/1110, CH/98/1111, CH/98/1112,
and CH/98/1116

Esfak PLETILIĆ, Ibro DURAKOVIĆ, Refik KONIĆ, Husein SAMARDŽIĆ, Osman SMAJLOVIĆ, Redžo HUBIJAR, Osman ŠILJAK, Ziza GERZIĆ, Mehmed MUHAREMAGIĆ, Munib and Hatidža TABAKOVIĆ, Elmira and Naim ČEHAJIĆ, Refko BRADARIĆ, Slobodanka MILIĆ-TAIRI and Isan TAIRI, Avdo CRNOJEVIĆ, Bećo RAKOVIĆ, Muharem and Subha ŠABIĆ, Fuad MUJADŽIĆ, Ahmet MERDANOVIĆ, Sead ĆERIMOVIĆ, and Halima DIZDAREVIĆ

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 9 July 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. Mato TADIĆ

Mr. Anders MÅNSSON, Registrar
Ms. Olga KAPIĆ, 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(2) and XI of the Agreement and Rules 52, 57 and 58 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The applicants are citizens of Bosnia and Herzegovina, all except one of whom are of Bosniak descent (see paragraph 61 below). They are owners of real property in the Gradiška area in the Republika Srpska which they were forced to leave during the war. The great majority of these properties are occupied by refugees and displaced persons of Serb origin. Most of the applicants have now returned to the area.

2. The cases concern their attempts before various authorities of the Republika Srpska to regain possession of their property. The applicants have taken all or some of the following steps to this end: applying to the Commission for the Accommodation of Refugees and Administration of Abandoned Property ("the Commission") in Gradiška and the Ministry for Refugees and Displaced Persons ("the Ministry") under the Law on the Use of Abandoned Property which entered into force in February 1996 ("the old Law", see paragraphs 107-115 below); initiating proceedings before the Court of First Instance in Gradiška ("the Court"), applying to the Ministry under the Law on the Cessation of the Application of the Law on the Use of Abandoned Property which entered into force in December 1998 ("the new Law", see paragraphs 116-130 below) and applying to various political institutions of the Republika Srpska. The facts of each individual case are set out at Section III below.

3. The cases raises issues principally under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention"), under Article 1 of Protocol No. 1 to the Convention and under Article II(2)(b) of the Agreement.

II. PROCEEDINGS BEFORE THE CHAMBER

4. The applications were introduced between 14 May and 19 August 1998 and registered between 9 June and 19 August 1998. The applicants are all represented by Mr. Željko Čikić and Ms. Davorka Delić, lawyers employed by the legal assistance centre "Terra" in Gradiška.

5. A number of the applicants requested that the Chamber order the respondent Party as a provisional measure that they be allowed to regain possession of their properties. At its session in November 1998 the Second Panel of the Chamber decided to reject such requests where they were made and to transmit the cases to the respondent Party pursuant to Rule 49(3)(b) for its observations on their admissibility and merits. On 2 December 1998 the applications were so transmitted. The respondent Party did not submit any observations within the time-limit set by the Chamber.

6. On 4 February 1999, in accordance with the Chamber's order for the proceedings in the cases, the applicants were requested to submit any further observations or requests for compensation or other relief they wished to make. On 23 March 1999 all of the further observations received by the Chamber were sent to the respondent Party for its further observations.

7. On 19 March 1999 the observations of the respondent Party on the admissibility and merits of the cases were received by the Chamber, outside the time-limit set by the Chamber. On 14 May 1999 the Chamber decided to accept these observations notwithstanding this fact. On 13 April 1999 these observations were sent to the applicants and they were asked to submit any further observations they wished to make. On 19 April 1999 the representatives of the applicants submitted further observations to the Chamber in response to the respondent Party's observations of 19 March 1999.

8. On 13 April 1999 further observations of the respondent Party were received. These were sent to the representatives of the applicants on 29 April 1999.

9. On 14 May 1999 the Second Panel held a public hearing on the admissibility and merits of the cases at the Cantonal Court in Sarajevo. The applicants were represented by Mr. Čikić and Ms. Delić. The respondent Party was represented by its Agent, Mr. Stevan Savić. The Chamber heard

submissions by the representatives of both parties and also their replies to questions put by members of the Chamber. The Agent agreed to forward to the Chamber decisions of the Commission declaring the applicants' properties abandoned and a copy of a certain judgment of the Supreme Court of the Republika Srpska concerning the issue of the competence of the courts over abandoned property. The Chamber has received the decision of the Supreme Court of the Republika Srpska but not the decisions declaring the properties abandoned.

10. The Chamber deliberated on the admissibility and merits of the applications on 14 May and 7 and 8 June 1999. On 9 July 1999 it decided to join the consideration of the cases and adopted the present decision.

III. FACTS

A. The facts of the individual cases

1. Case no. CH/98/659 Esfak Pletilić

11. The applicant is the owner of land in Gradiška registered under parcel numbers 1407/41, 1409/3 and 1615/26 as evidenced by extract number 1095/4 from the Land Registry. A house and certain additional accessory buildings are situated on the land. In 1993 the applicant and his family left Gradiška. They returned to the area on 3 July 1997, having lived in Germany and (Bosanski) Petrovac in the Federation of Bosnia and Herzegovina in the meantime. The applicant's property is occupied by refugees of Serb origin from Croatia. The applicant has obtained an identity card ("*Lična Karta*") issued by the authorities of the Republika Srpska. This document is issued to permanent residents or citizens of the Republika Srpska and it constitutes proof of permanent residence in that Entity.

12. On 3 July 1997 the applicant applied to the Commission to regain possession of his property. He did not receive any reply. On 13 March 1998 he applied again to the Commission under the old Law to regain possession of his property. He made additional submissions regarding this application on 30 March 1998 and 28 and 30 April 1998. He has not received any decision.

13. On 14 May 1998 the applicant initiated proceedings against the current occupants of the property before the Court, seeking their eviction. On 21 May 1998 the Court rejected the proceedings on the ground that it was incompetent to deal with the matter. The reason given was that the property was within the sole jurisdiction of the Commission. The applicant appealed to the Regional Court in Banja Luka on 2 June 1998. The applicant has been informed that this appeal was transmitted to the Regional Court by the Court (in accordance with the appropriate procedure) on either 23 September or 6 October 1998 (the applicant was given different dates by court officials). On 26 February 1999 the Regional Court refused the applicant's appeal.

14. On 1 July 1998 the applicant regained possession of one of the out-buildings situated on the property. He has not yet regained possession of the house on the property.

15. On 5 January 1999 the applicant applied to the Commission under the new Law to regain possession of his property. On 17 March 1999 it issued a decision entitling him to reenter the property. The date set for such reentry was 5 April 1999. The applicant did not succeed in regaining possession of the property.

2. Case no. CH/98/734 Ibro Duraković

16. The applicant is the owner of land in Gradiška registered under parcel numbers 299/3, 299/5, 300, 315/2, 315/3, 323/3, 57/3, 57/2, 210 and 230, as evidenced by extract nos. 313/1, 746/4 and 111/8 (concerning three properties) from the Land Registry. On the land registered under extract 111/8 ("the third property"), two houses are situated, one of which is uncompleted. In 1993, the applicant and his family left Gradiška. They returned to Gradiška in 1997. The completed house situated on the third property is occupied by Bosnian Serb displaced persons.

In 1998 (exact date unknown) the applicant regained possession of the uncompleted house situated on the third property.

17. On 22 December 1997 the applicant applied to the Commission to regain possession of his properties. On three occasions between 18 and 24 March 1998 the Commission requested assistance from the Public Security Centre (police station) in Gradiška to enable the applicant and his family to regain possession of the property registered under extract no. 111/8 from the Land Registry. No such assistance was provided and accordingly the applicant was unable to regain possession of this property.

18. On 21 April 1998 the applicant applied again to the Commission under the old Law to regain possession of all three properties. He has not received any decision.

19. On 18 June 1998 the applicant initiated proceedings against the current occupants of the properties before the Court, seeking their eviction. On 18 September 1998 the Court rejected the proceedings on the ground that it was incompetent to deal with the matter. On 17 November 1998 the applicant's appeal against this decision was refused by the Regional Court in Banja Luka.

20. The applicant has applied to the Commission under the new Law to regain possession of his property. According to the latest information available to the Chamber, the applicant has not received any decision on this application to date.

3. Case no. CH/98/750 Refik Konić

21. The applicant is the owner of land in Gradiška registered under parcel number 1935/4 as evidenced by extract number 1284/3 from the Land Registry. A house and certain additional accessory buildings are situated on the land. The applicant left the area of Gradiška during the war and returned there after the war ended. He obtained an identity card ("*Lična Karta*") issued by the authorities of the Republika Srpska. The property was occupied by Bosnian Serb displaced persons from Zenica.

22. On 4 November 1997 the applicant applied to the Commission under the old Law to regain possession of his property. He made additional submissions regarding this application on 6 April and 5 May 1998. He has not received any decision.

23. On 15 June 1998 the applicant initiated proceedings against the current occupants of the property before the Court, seeking their eviction. On 20 November 1998 the Court rejected the proceedings on the ground that it was incompetent to deal with the matter. The reason given was that the property was within the jurisdiction of the Commission. The applicant appealed to the Regional Court in Banja Luka. According to the information provided to the Chamber, there has been no decision on this appeal to date.

24. The applicant applied to the Commission under the new Law to regain possession of his property. On 15 March 1999 it issued a decision entitling him to reenter the property. The date set for such reentry was 4 April 1999. The applicant did not succeed in regaining possession of the property on that date. He did succeed in regaining possession of the property soon after that date and currently occupies the property.

4. Case no. CH/98/751 Husein Samardžić

25. The applicant is the owner of land in Gradiška registered under parcel numbers 342/2, 257/3, 257/4 and 261/3 as evidenced by extract numbers 252/1 and 250/1 from the Land Registry. A house and certain additional accessory buildings are situated on the land. The applicant left the area of Gradiška during the war and returned there after the war ended. The applicant has obtained an identity card ("*Lična Karta*") issued by the authorities of the Republika Srpska. The property is occupied by Bosnian Serb displaced persons from Srbobran/Donji Vakuf.

26. On 29 April 1998 he applied to the Commission under the old Law to regain possession of his property. He made additional submissions regarding this application on 14 May and 2 June 1998. He has not received any decision.

27. The applicant has not initiated any court proceedings against the current occupants of the property seeking their eviction.

28. The applicant applied to the Commission under the new Law to regain possession of his property. On 18 March 1999 it issued a decision entitling him to reenter the property. The date set for such reentry was 5 May 1999. The applicant did not succeed in regaining possession of the property.

5. Case no. CH/98/753 Osman Smajlović

29. The applicant is the owner of land in Gradiška registered under parcel numbers 1187/1 and 1189/1 as evidenced by extract number 1940 from the Land Registry. A house and certain additional accessory buildings are situated on the land. The applicant left the area of Gradiška during the war and returned there after the war ended. The applicant has obtained an identity card ("*Lična Karta*") issued by the authorities of the Republika Srpska. The property is occupied by refugees of Serb origin from Croatia.

30. On 24 April 1998 he applied to the Commission under the old Law to regain possession of his property. He made additional submissions regarding this application on 22 May and 6 July 1998. He has not received any decision.

31. The applicant has not initiated any court proceedings against the current occupants of the property seeking their eviction.

32. On 26 January 1999 the applicant applied to the Commission under the new Law to regain possession of his property. On 29 March 1999 it issued a decision entitling him to reenter the property. The date set for such reentry was 29 June 1999. The applicant did not succeed in regaining possession of the property.

6. Case no. CH/98/824 Redžo Hubijar

33. The applicant is the owner of land in Gradiška registered under parcel numbers 2319/3 as evidenced by extract number 2010 from the Land Registry. A house and certain additional accessory buildings are situated on the land. The applicant left the area of Gradiška during the war and returned there on 24 March 1998. The applicant has obtained an identity card ("*Lična Karta*") issued by the authorities of the Republika Srpska. The property is occupied by refugees of Serb origin from Croatia.

34. On 23 April 1998 he applied to the Commission under the old Law to regain possession of his property. He made an additional submission regarding this application on 23 July 1998. He has not received any decision.

35. On 23 July 1998 the applicant initiated proceedings against the current occupants of the property before the Court, seeking their eviction. On 22 December 1998 the Court rejected the proceedings on the ground that it was incompetent to deal with the matter. The reason given was that the property was within the jurisdiction of the Commission. On 22 January 1999 the applicant appealed to the Regional Court in Banja Luka. According to the information provided to the Chamber, there has been no decision on this appeal to date.

36. On 22 January 1999 the applicant applied to the Commission under the new Law to regain possession of his property. On 29 March 1999 it issued a decision entitling him to reenter the property. The date set for such reentry was 28 June 1999. The applicant did not succeed in regaining possession of the property.

7. Case no. CH/98/825 Osman Šiljak

37. The applicant is the owner of land in Gradiška registered under parcel numbers 2082/2 and 2083/3 as evidenced by extract number 755 from the Land Registry. A house and certain additional accessory buildings are situated on the land. The applicant left Gradiška during the war and returned there on 29 June 1997. The applicant has obtained an identity card ("*Lična Karta*") issued by the

authorities of the Republika Srpska. The property is occupied by refugees of Serb origin from Croatia.

38. On 23 April 1998 he applied to the Commission under the old Law to regain possession of his property. He made additional submissions regarding this application on 14 May and 21 July 1998. He has not received any decision.

39. The applicant has not initiated any court proceedings against the current occupants of the property seeking their eviction.

40. On 21 January 1999 the applicant applied to the Commission under the new Law to regain possession of his property. On 5 April 1999 it issued a decision entitling him to reenter the property. The date set for such reentry was 5 July 1999. According to the latest information available to the Chamber, the applicant has not yet regained possession of the property.

8. Case no. CH/98/826 Ziza Gerzić

41. The applicant is registered as the part owner of land in Gradiška registered under parcel number 34313 as evidenced by extract number 265/5 from the Land Registry. A house and certain additional accessory buildings are situated on the land. The applicant was evicted by unknown persons from the property in August 1995 but remained in the Gradiška area. She has obtained an identity card ("*Lična Karta*") issued by the authorities of the Republika Srpska. The property is occupied by Bosnian Serb displaced persons from Srbobran/Donji Vakuf.

42. On 27 October 1997 she applied to the Commission under the old Law to regain possession of the property. She made additional submissions regarding this application on 30 June and 28 July 1998. She has not received any decision.

43. The applicant states that she initiated court proceedings against the current occupants of the property seeking their eviction. She has not provided the date of the initiation of such proceedings to the Chamber. There has been no decision on these proceedings to date.

44. The applicant applied to the Commission under the new Law to regain possession of her property. She states that she has not yet received a decision entitling her to regain possession of the property.

9. Case no. CH/98/1100 Mehmed Muharemagić

45. The applicant is the owner of land in Gradiška registered under parcel number 1588/5 as evidenced by extract number 1000 from the Land Registry. A house and certain additional accessory buildings are situated on the land. The applicant left the area of Gradiška during the war and returned there after it ended. The applicant has obtained an identity card ("*Lična Karta*") issued by the authorities of the Republika Srpska. The property is occupied by refugees of Serb origin from Croatia.

46. On 9 June 1998 he applied to the Commission under the old Law to regain possession of his property. He made an additional submission regarding this application on 5 August 1998. He has not received any decision.

47. On 5 August 1998 the applicant initiated proceedings against the current occupants of the property before the Court, seeking their eviction. On 16 November 1998 the Court rejected the proceedings on the ground that it was incompetent to deal with the matter. The reason given was that the property was within the jurisdiction of the Commission. On 22 December 1998 the applicant appealed to the Regional Court in Banja Luka. According to the information provided to the Chamber, there has been no decision on this appeal to date.

48. On 12 January 1999 the applicant applied to the Commission under the new Law to regain possession of his property. On 20 March 1999 it issued a decision entitling him to reenter the property. The date set for such reentry was 12 April 1999. The applicant did not succeed in regaining possession of the property.

10. Case no. CH/98/1101 Munib and Hatidža Tabaković

49. The applicants are the owners of land in Gradiška as evidenced by extract numbers 221, 313 and 529 from the Land Registry. A house and certain additional accessory buildings are situated on the land. The applicants left the area of Gradiška during the war and returned there after the war ended. The applicants have obtained identity cards ("*Lična Karta*") issued by the authorities of the Republika Srpska. The property was occupied by the Army of the Republika Srpska ("VRS") until 1998 (exact date unknown).

50. On 1 June 1998 they applied to the Commission under the old Law to regain possession of their property. They made an additional submission regarding this application on 26 June 1998. The applicants state that the Commission attempted to assist them in regaining possession of their properties, but the VRS refused to allow this to happen. The applicants claim that Mr. Drago Grubešić, Commander of the Gradiška Brigade of the VRS, demanded that they pay the sum of DM 7,000 in order for them to regain possession of their property. The applicants did not pay this sum of money.

51. The applicants regained possession of their property on their own initiative on 26 October 1998, after the VRS vacated it. They claim that it is in an extremely bad condition.

11. Case no. CH/98/1103 Elmira Ćehajić

52. The applicant is, together with her husband, the owner of land in Gradiška as evidenced by extract number 167 from the Land Registry. A house and certain additional accessory buildings are situated on the land. She is also, together with her brother, the part owner of land in Gradiška as evidenced by extract number 11 from the Land Registry ("the second property"). The second property is occupied by refugees of Serb origin from Croatia and it is this property which is the subject matter of the application to the Chamber.

53. The applicant left the area of Gradiška during the war and returned there on 22 May 1998. She has obtained an identity card ("*Lična Karta*") issued by the authorities of the Republika Srpska.

54. On 22 May 1998 the applicant applied to the Commission under the old Law to regain possession of both properties. She made an additional submission regarding this application on 11 June 1998. She has not received any decision.

55. On 5 August 1998 the applicant initiated proceedings against the current occupants of the second property before the Court, seeking their eviction. According to the information provided to the Chamber, there have been no developments in these proceedings to date.

56. On 31 December 1998 the applicant applied to the Commission under the new Law to regain possession of the second property. On 20 March 1999 it issued a decision entitling her to reenter the property. The date set for such reentry was 1 April 1999. The applicant did not succeed in regaining possession of the property.

12. Case no. CH/98/1105 Refko Bradarić

57. The applicant is the owner of land in Gradiška registered under parcel number 2285/9 as evidenced by extract number 113 from the Land Registry. A house and certain additional accessory buildings are situated on the land. The applicant left the area of Gradiška during the war and returned there after it ended. The applicant has obtained an identity card ("*Lična Karta*") issued by the authorities of the Republika Srpska. The property is occupied by refugees of Serb origin from Croatia.

58. On 24 June 1998 he applied to the Commission under the old Law to regain possession of his property. He made an additional submission regarding this application on 7 August 1998. He has not received any decision.

59. The applicant initiated proceedings against the current occupants of the property before the Court, seeking their eviction. On 23 November 1998 the Court rejected the proceedings on the

ground that it was incompetent to deal with the matter. The reason given was that the property was within the jurisdiction of the Commission. The applicant has appealed to the Regional Court in Banja Luka. According to the information provided to the Chamber, there has been no decision on this appeal to date.

60. On 4 January 1999 the applicant applied to the Commission under the new Law to regain possession of his property. On 20 March 1999 it issued a decision entitling him to reenter the property. The date set for such reentry was 5 April 1999. The applicant did not succeed in regaining possession of the property.

13. Case no. CH/98/1106 Slobodanka Milić-Tairi and Isan Tairi

61. The applicants are the owners of land in Gradiška registered under parcel number 1029/1 as evidenced by extract number 2440 from the Land Registry. A house and certain additional accessory buildings are situated on the land. The first applicant, who is of Serb origin and whose husband, the second applicant, is of Bosniak origin, left the area of Gradiška during the war and returned there after the war ended. She has obtained an identity card ("*Lična Karta*") issued by the authorities of the Republika Srpska. The property is occupied by refugees of Serb origin.

62. On 13 March 1998 the first applicant applied to the Commission under the old Law to regain possession of the property. She has not received any decision.

63. The applicants have not initiated any court proceedings against the current occupants of the property seeking their eviction.

64. On 3 April 1999 the first applicant applied to the Commission under the new Law to regain possession of the property. On 5 April 1999 it issued a decision entitling her to reenter the property. The date set for such reentry was 5 July 1999. The applicants did not succeed in regaining possession of the property.

14. Case no. CH/98/1107 Avdo Crnojević

65. The applicant is the owner of land in Gradiška registered under parcel numbers 2406/22, 2113 and 2114 as evidenced by extract numbers 58 and 972 from the Land Registry. A house and certain additional accessory buildings are situated on the land. The applicant left the area of Gradiška during the war and returned there after the war ended. The applicant has obtained an identity card ("*Lična Karta*") issued by the authorities of the Republika Srpska. The property is occupied by refugees or displaced persons of Serb origin.

66. On 21 May 1998 the applicant applied to the Commission under the old Law to regain possession of his property. He has not received any decision.

67. The applicant has not initiated any court proceedings against the current occupants of the property seeking their eviction.

68. On 10 March 1999 the applicant applied to the Commission under the new Law to regain possession of his property. On 5 April 1999 it issued a decision entitling him to reenter the property. The date set for such reentry was 5 July 1999. The applicant did not succeed in regaining possession of the property.

15. Case no. CH/98/1108 Bećo Raković

69. The applicant is the owner of land in Gradiška registered under parcel number 263/2 as evidenced by extract number 646 from the Land Registry. A house and certain additional accessory buildings are situated on the land. The applicant left the area of Gradiška during the war and returned there after it ended. He has obtained an identity card ("*Lična Karta*") issued by the authorities of the Republika Srpska. The property is occupied by refugees or displaced persons of Serb origin.

70. On 4 June 1998 he applied to the Commission under the old Law to regain possession of his

property. He made an additional submission regarding this application on 7 August 1998. He has not received any decision.

71. On 7 August 1998 the applicant initiated proceedings against the current occupants of the property before the Court, seeking their eviction. On 23 November 1998 the Court rejected the proceedings on the ground that it was incompetent to deal with the matter. The reason given was that the property was within the jurisdiction of the Commission. On 22 December 1998 the applicant appealed to the Regional Court in Banja Luka. According to the information provided to the Chamber, there has been no decision on this appeal to date.

72. On 18 January 1999 the applicant applied to the Commission under the new Law to regain possession of his property. On 17 March 1999 it issued a decision entitling him to reenter the property. The date set for such reentry was 18 April 1999. The applicant did not succeed in regaining possession of the property.

16. Case no. CH/98/1109 Muharem Šabić

73. The applicant is the owner of land in Gradiška registered under parcel numbers 1586, 2261/3, 2262 and 4216/1 as evidenced by extract number 620 from the Land Registry. A house and certain additional accessory buildings are situated on the land. The applicant left the area of Gradiška during the war and returned there after the war ended. The applicant has obtained an identity card ("*Lična Karta*") issued by the authorities of the Republika Srpska. The property is occupied by refugees or displaced persons of Serb origin.

74. On 1 July 1998 the applicant applied to the Commission under the old Law to regain possession of his property. He made a further submission regarding this application on 11 August 1998. He has not received any decision.

75. The applicant has not initiated any court proceedings against the current occupants of the property seeking their eviction.

76. On 29 December 1998 the applicant applied to the Commission under the new Law to regain possession of his property. On 20 March 1999 it issued a decision entitling him to reenter the property. The date set for such reentry was 29 March 1999. The applicant did not succeed in regaining possession of the property.

17. Case no. CH/98/1110 Fuad Mujadžić

77. The applicant is the owner of land in Gradiška registered under parcel number 1207/3 as evidenced by extract number 1006 from the Land Registry. A house and certain additional accessory buildings are situated on the land. The applicant left the area of Gradiška during the war and returned there after it ended. The applicant has obtained an identity card ("*Lična Karta*") issued by the authorities of the Republika Srpska. The property is occupied by a Bosnian Serb displaced person from Bugojno.

78. On 4 June 1998 he applied to the Commission under the old Law to regain possession of his property. He made additional submissions regarding this application on 2 July and 13 August 1998. He has not received any decision.

79. On 27 August 1998 the applicant initiated proceedings against the current occupants of the property before the Court, seeking their eviction. On 22 December 1998 the Court rejected the proceedings on the ground that it was incompetent to deal with the matter. The reason given was that the property was within the jurisdiction of the Commission. On 30 December 1998 the applicant appealed to the Regional Court in Banja Luka. According to the information provided to the Chamber, there has been no decision on this appeal to date.

80. On 30 December 1998 the applicant applied to the Commission under the new Law to regain possession of his property. On 20 March 1999 it issued a decision entitling him to reenter the property. The date set for such reentry was 4 April 1999. The applicant did not succeed in regaining possession of the property.

18. Case no. CH/98/1111 Ahmet Merdanović

81. The applicant is the owner of land in Gradiška registered under parcel number 2203/5 as evidenced by extract number 508 from the Land Registry. A house and certain additional accessory buildings are situated on the land. He is also the part owner of land in the area registered under parcel number 2202/2 as evidenced by extract number 1100 from the Land Registry.

82. The applicant and his family left the area of Gradiška during the war and returned there after the war ended. The applicant has obtained an identity card ("*Lična Karta*") issued by the authorities of the Republika Srpska. The property is occupied by Bosnian Serb displaced persons.

83. On 10 March 1998 the applicant applied to the Commission under the old Law to regain possession of his property. He made additional submissions regarding this application on 11 June and 13 August 1998. He has not received any decision.

84. The applicant has not initiated any court proceedings against the current occupants of the property seeking their eviction.

85. On 5 January 1999 the applicant applied to the Commission under the new Law to regain possession of his property. On 20 March 1999 it issued a decision entitling him to reenter the property. The date set for such reentry was 5 April 1999. The applicant did not succeed in regaining possession of the property.

19. Case no. CH/98/1112 Sead Ćerimović

86. The applicant is the owner of land in Gradiška registered under parcel number 2254/2 as evidenced by extract number 1783 from the Land Registry. A house and certain additional accessory buildings are situated on the land. The applicant and his family left the area of Gradiška during the war and returned there after the war ended. The applicant has obtained an identity card ("*Lična Karta*") issued by the authorities of the Republika Srpska. The property is occupied by Bosnian Serb displaced persons.

87. On 9 June 1998 the applicant applied to the Commission under the old Law to regain possession of his property. He has not received any decision.

88. The applicant has not initiated any court proceedings against the current occupants of the property seeking their eviction.

89. On 18 January 1999 the applicant applied to the Commission under the new Law to regain possession of his property. On 5 April 1999 it issued a decision entitling him to reenter the property. The date set for such reentry was 5 July 1999. The applicant did not succeed in regaining possession of the property.

20. Case no. CH/98/1116 Halima Dizdarević

90. The applicant is the owner of land in Gradiška registered under parcel number 1912/1 as evidenced by extract number 880 from the Land Registry. A house and certain additional accessory buildings are situated on the land. The applicant and her family left the area of Gradiška during the war and returned there after the war ended. The applicant has obtained an identity card ("*Lična Karta*") issued by the authorities of the Republika Srpska. The property is occupied by Bosnian Serb displaced persons from Bugojno.

91. On 19 June 1998 the applicant applied to the Commission under the old Law to regain possession of her property. She made an additional submission regarding this application on 18 August 1998. She has not received any decision.

92. The applicant has not initiated any court proceedings against the current occupants of the property seeking their eviction.

93. The applicant has applied to the Commission under the new Law to regain possession of her property. According to the latest information available to the Chamber, she has not yet received any decision on this application.

B. Relevant legal provisions

1. Constitution of Bosnia and Herzegovina

94. Article II of the Constitution of Bosnia and Herzegovina ("the BH Constitution"), entitled "Human Rights and Fundamental Freedoms", sets out the mechanism for the protection of human rights and fundamental freedoms within Bosnia and Herzegovina.

95. Article II(1) of the BH Constitution, entitled "Human Rights", reads as follows:

> "Bosnia and Herzegovina and both Entities shall ensure the highest level of internationally recognised human rights and fundamental freedoms. ...."

96. Article II(2) of the BH Constitution, entitled "International Standards", reads as follows:

> "The rights set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms shall apply directly in Bosnia and Herzegovina. These shall have priority over all other law."

97. Article II(4) of the BH Constitution, entitled "Non-Discrimination", reads as follows:

> "The enjoyment of the rights and freedoms (guaranteed by the BH Constitution) shall be secured to all persons in Bosnia and Herzegovina without discrimination 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."

98. Article II(5) of the BH Constitution, entitled "Refugees and Displaced Persons", reads as follows:

> "All refugees and displaced persons have the right freely to return to their homes of origin. ...."

99. Article II(6) of the BH Constitution, entitled "Implementation", reads as follows:

> "Bosnia and Herzegovina, and all courts, agencies, governmental organs, and instrumentalities operated by or within the Entities, shall apply and conform to the human rights and fundamental freedoms referred to in paragraph 2 above."

2. Constitution of the Republika Srpska

100. Title II of the Constitution of the Republika Srpska ("the RS Constitution") is entitled "Human Rights and Freedoms".

101. Article 10 of the RS Constitution reads as follows:

> "Citizens of the Republic are equal in the enjoyment of rights, freedoms and duties, they are equal before the law and shall enjoy legal protection irrespective of their race, sex, language, national origin, religion, social origin, birth, education, property status, political and other beliefs, social status or other personal attributes."

102. Article 16 of the RS Constitution reads as follows:

> "Everyone has the right to equal protection of their rights before the courts and other state organs and organisations.

Everyone has the right to appeal or otherwise institute legal proceedings against a decision concerning his rights or legal interests."

103. Article 17 of the RS Constitution reads as follows:

"Everyone has the right of redress for loss caused by illegal or unjust actions by official persons or state organs or institutions acting in an official capacity. …."

104. Article 56 of the RS Constitution reads as follows:

"In accordance with the law, rights of ownership may be limited or expropriated, subject to payment of fair compensation."

105. 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."

106. Article 121 of the RS Constitution reads as follows:

"The judicial function is performed by the Courts. The Courts are independent and decide upon the basis of the Constitution and laws.

The Courts protect human rights and freedoms, established rights and interests of legal entities and legality."

3. The Law on the Use of Abandoned Property

107. The Law on the Use of Abandoned Property (Official Gazette of the Republika Srpska – hereinafter "OG RS" – no. 3/96; "the old Law") was adopted by the National Assembly of the Republika Srpska on 21 February 1996. It was published in the OG RS 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. Its provisions, insofar as they are relevant to the present cases, are summarised below.

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

109. 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. 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.

110. Article 15 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:

- to the families of killed soldiers
- war invalids with injuries in categories I-V
- war invalids with injuries in categories V-X
- qualified workers of whom there is a lack in the Republika Srpska."

111. Article 15A (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.

112. Articles 39-42 set out the terms upon which the owner of a property which has been declared abandoned may seek to regain possession of it.

113. Article 39 reads 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."

114. Article 40 reads as follows:

> "In the event referred to in the previous Article, if the abandoned property or apartment has not been allocated for utilisation, it shall be possible for the owner to regain possession of the property or apartment within 15 days of the date of lodging the request for return of possession.
>
> If in the situation referred to in the previous Article the abandoned property or apartment has been allocated to someone whose own property or apartment is located in the Federation of Bosnia and Herzegovina or the Republic of Croatia, such property or apartment shall be returned to the owner:
>
> - within 30 days from the day the person who was the occupier of the property returns to his property or apartment
>
> - at the latest after 60 days have expired from the date of payment of compensation to the user of the property or apartment for the property he himself has abandoned as well as possible costs incurred by the previous user, or after the provision of suitable alternative accommodation. (....)"

115. Article 42 reads as follows:

> "The provisions of Articles 39-41 of this law shall be applied on the basis of reciprocity."

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

116. 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, "the new Law") establishes a detailed framework for persons to regain possession of property considered to be abandoned.

117. The new Law puts the old Law out of force.

118. Article 2 states that all decisions made under the old Law granting temporary or permanent rights to occupy property shall be treated as being of a temporary nature and shall remain effective until cancelled in accordance with the new Law.

119. 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/she did before 30 April 1991 or the date of its becoming 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.

120. Article 6 concerns the arrangements to be made for persons who are required to vacate

property in order to allow the previous owner, possessor or user to return. If such a person cannot, or does not wish to, return to his/her prewar home, and has not been provided with alternative temporary accommodation, the relevant body of the Ministry (i.e. the local Commission) shall provide that person with appropriate accommodation before the expiry of the deadline for him/her to vacate the property concerned.

121. If a person who temporarily occupies a property is to be evicted from it, and provides evidence that he/she applied to regain possession of his/her pre-war home, that person cannot be evicted until he/she can regain possession or freely dispose of his/her own home. An exception to this prohibition on eviction exists where the temporary occupant is provided with alternative accommodation within a period of one year of providing evidence of an application to regain possession of his/her own pre-war home.

122. If the person who is required to vacate the property has had his/her request to return to his/her property resolved, any failure of the responsible authority to provide alternative accommodation for such a person cannot delay the return of the owner, possessor or user of such property.

123. If a temporary occupier of abandoned property occupies that property without a legal basis, the Ministry is not obliged to provide him/her with alternative accommodation.

124. Article 7 states that the owner, possessor or user of real property shall have the right to submit a claim for repossession of his/her property at any time. Article 8 states that such claims may be filed with the responsible body of the Ministry (i.e. the local Commission). This Article also sets out the procedure for lodging of claims and the information that must be contained in such a claim.

125. Article 9 states that the responsible body of the Ministry shall be obliged to issue a decision to the claimant within thirty days from the receipt by it of a claim.

126. Article 10 states that proceedings concerning return of property shall, unless otherwise specified, be carried out in accordance with the Law on Administrative Procedures (see paragraphs 131-136 below) and treated as an expedited procedure.

127. Article 11 sets out the information that must be contained in a decision entitling an applicant to regain possession of property. This includes basic details concerning the applicant and property. A decision entitling a person to regain possession of his/her property may not set a time-limit for such repossession sooner than 90 days from the date of the decision, nor after the date for return requested by the applicant. The applicant may not request a date for return into possession of the property which is sooner than 90 days from the date of lodging of the application. If a property is not currently occupied, the owner, possessor or user may regain possession of it immediately upon receipt of a decision. The deadline for return may be extended to up to one year in exceptional circumstances. The relevant Commission must also provide detailed documentation to the Ministry regarding the lack of available alternative accommodation to the Ministry.

128. Article 13 states that a claimant for the return into possession of real property may at any time apply to the Commission for Real Property Claims of Refugees and Displaced Persons ("the Annex 7 Commission"). If this occurs, all other proceedings regarding the property, including those under Article 11, shall be stayed pending the final decision of the Annex 7 Commission. Any decision of the Annex 7 Commission shall be enforced by the appropriate authorities of the Republika Srpska.

129. Article 27 states that a decision made under Article 11 may be appealed to the Ministry within 15 days of receipt of such decision.

130. Article 29 of the law requires the Minister for Refugees and Displaced Persons to pass an instruction on the application of, *inter alia*, Articles 8 to 11 inclusive of the law. This instruction was published in OG RS 1/99 and entered into force on 21 January 1999. Article 6 of this instruction states that a person who has submitted a claim under the previously applicable regulations (i.e. under the old Law) and such claim has not yet been properly resolved should submit a new claim

under the new Law. However, if they do not do so, such previous claim shall constitute a valid claim under the new Law. If such previously submitted claim does not meet the requirements of the new Law, the applicant is to be requested to submit the additional information as prescribed by the new Law.

5. The Law on General Administrative Procedures

131. The Law on General Administrative Procedures (Official Gazette of the Socialist Federal Republic of Yugoslavia no. 47/86) 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.

132. 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 dealt with under the Law on General Administrative Procedures.

133. Chapter XVII (Articles 270 – 288) is concerned with the procedure for enforcement of rulings and conclusions.

134. Article 270 states that a decision issued in an administrative procedure shall be enforced once it has become enforceable. This occurs, for example, when the deadline for submission of any appeal expires without any such appeal having been submitted.

135. Article 274 states that execution of a decision shall be carried out against the person who is ordered to fulfil the relevant obligation. Execution may be conducted *ex officio* or at the request of a party to the proceedings. *Ex officio* execution shall occur when required by the public interest. Execution which is in the interest of one party shall be conducted at the request of that party.

136. Article 275 states that execution shall be carried out either through an administrative or court procedure, as prescribed by the law. The execution of decisions of the type concerned in the present case (i.e. of reinstatement to property) is to be carried out by an administrative procedure.

6. The Law on Administrative Disputes

137. 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.

7. The Law on Regular Courts

138. The Law on Regular Courts (OG RS nos. 22/96 and 25/96) regulates the court system in the Republika Srpska.

139. Article 2 of the law reads as follows:

> "Courts shall protect liberties and rights of citizens, lawfully established rights and interests of legal subjects and shall safeguard constitutionality and legality."

140. Article 17 of the law reads as follows;

> "Court of First Instance ("*Osnovni Sud*") shall be competent:
>
> (…)
>
> 2) in civil suits, to try at first instance;

a) civil legal disputes,
b) disputes in respect of disturbance of property
(….)."

141. Article 21 reads as follows;

"Regional Court ("*Okružni sud*") shall be competent:

1) to decide on appeals against decisions of basic courts and decisions of magistrates

(….)."

IV. COMPLAINTS

142. All of the applicants complain that their right to respect for, *inter alia*, their home as guaranteed by Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention"), has been violated. In addition, all of them complain that their right to peaceful enjoyment of their possessions, as guaranteed by Article 1 of Protocol No. 1 to the Convention, has been violated.

143. The applicants in all cases, except for case no. CH/98/734, also allege violations of their right to an effective remedy as guaranteed by Article 13 of the Convention and to freedom from discrimination, as guaranteed by Article 14 of the Convention.

V. FINAL SUBMISSIONS OF THE PARTIES

A. Respondent Party

144. The respondent Party submitted that the Chamber was not competent to decide upon the applications. It stated that the applications are, in essence, requests for the return of real property into their possession. Such claims should be decided by the Annex 7 Commission or the competent organ in the Republika Srpska under the new Law. The respondent Party further claimed that the applicants had not exhausted the domestic remedies available to them and that accordingly the Chamber should refuse to accept their applications in accordance with the terms of Article VIII(2)(a) of the Agreement.

145. In conclusion, the respondent Party submitted that the Chamber should refuse to accept the applications or postpone consideration of them until the domestic remedies available to the applicants had been exhausted.

B. The applicants

146. The applicants maintain their complaints. In addition, they state that they have exhausted all of the domestic remedies available to them. They denied that the applications should be decided solely by the Annex 7 Commission. They claim that they have the right under the new Law to regain possession of their property, but that they have been unable to realise this right due to the inaction of the authorities of the Republika Srpska.

VI. OPINION OF THE CHAMBER

A. Admissibility

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

1. Requirement to exhaust effective domestic remedies

148. According to Article VIII(2)(a), the Chamber must consider whether effective remedies exist and whether the applicants have demonstrated that they have been exhausted. The respondent Party contends that the cases should be declared inadmissible on this ground (see paragraph 144 above).

149. The Chamber notes that all of the applicants unsuccessfully applied to the relevant organ under the old Law to regain possession of their properties. Accordingly, they have all sought to avail themselves of this remedy.

150. In *Onić* (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."

151. The Chamber notes that the applicants in ten of the cases also initiated proceedings before the Court in Gradiška against the current occupants of their properties, seeking to regain possession of those properties (the specific situation in respect of each applicant is set out in Section III above). Those applicants who did not initiate such proceedings claimed that the reason for their not doing so was the fact that the Court declined to consider the cases on the ground that it did not have jurisdiction over abandoned property. Instead, such issues were within the sole competence of the Ministry, in accordance with the old Law. On 2 June 1999 the respondent Party submitted a copy of a decision of the Supreme Court of the Republika Srpska in a case brought by a person (who is not an applicant in any of the cases concerned in this decision) seeking to regain possession of property that had been allocated to a refugee or displaced person in accordance with the old Law. The Supreme Court held that matters concerning abandoned property were within the sole competence of the Ministry, as such issues should be decided by an administrative procedure. The Supreme Court found that the second instance court in the proceedings acted correctly in deciding that the matter could only be decided by the Ministry in administrative proceedings. At the public hearing held by the Chamber in the present cases, the Agent of the respondent Party stated that this position had been regularly applied by the courts in the Republika Srpska.

152. The Chamber considers that the fact that the Court has consistently declined jurisdiction and that the Supreme Court of the Republika Srpska also holds this view shows that the initiation, by the present applicants, of court proceedings seeking to regain possession of property either did not or would not have had any prospect of success either. It cannot therefore be considered to be an effective remedy which the applicants should be required to exhaust.

153. The Chamber notes that in all cases except one (Mr. and Ms. Tabaković in case no. CH/98/1101, where the applicants have regained possession of their property), the applicants have applied under the new Law to regain possession of their properties. A number of them have received decisions from the Commission, entitling them to regain possession of their properties. In no case, however, were the time-limits for such regaining of possession adhered to. In addition, according to the latest information available to the Chamber, only one of the applicants (Mr. Refik Konić in case no. CH/98/750) has succeeded in regaining possession of his property as a result of a decision issued under the new Law. The applicants in case no. CH/98/1101, Mr. and Ms. Tabaković, succeeded in regaining possession of their property without a decision of the Commission. The applicants in three cases have not yet received decisions under the new Law, despite the 30-day time-limit for the issuance of such a decision having expired.

154. As the Chamber noted in its decision in *Onić* (*sup. cit.,* paragraph 39), in the context of its examination of an analogous law adopted in the Federation of Bosnia and Herzegovina, a remedy such as that provided for by the new Law could in principle qualify as an effective one. It is not, however, for the Chamber to examine the effectiveness of the new Law in general, in isolation from the manner in which it is being applied by the authorities in the context of the cases before the Chamber.

155. In these circumstances, the Chamber finds that the applicants cannot be required to exhaust, for the purposes of Article VIII(2)(a) of the Agreement, any further remedy in this context provided for in domestic law.

2. Possibility of seizing the Annex 7 Commission

156. The respondent Party also claimed that the applications should be declared inadmissible as the applicants have not applied to the Annex 7 Commission seeking a decision on their request for the return of their property (see paragraph 144 above).

157. According to Article VIII(2)(d) of the Agreement

> "the Chamber may reject or defer further consideration of a case, if it concerns a matter currently pending before any other international human rights body responsible for the adjudication of applications or the decision of cases, or any other Commission established by the Annexes to the General Framework Agreement."

158. Article XI of Annex 7 to the General Framework Agreement for Peace sets out the mandate of the Annex 7 Commission. It reads as follows:

> "The Commission shall receive and decide any claims for real property in Bosnia and Herzegovina, where the property has not voluntarily been sold or otherwise transferred since April 1, 1992, and where the claimant does not now enjoy possession of that property. Claims may be for return of the property or for just compensation in lieu of return."

159. The above provision establishes a mechanism under which persons may be declared to be the lawful owners of real property and authorised to regain possession of that property. It is therefore an integral and extremely important part of the mechanism established by the General Framework Agreement for Peace for the return of refugees and displaced persons to their properties.

160. Article VIII(2)(d) of the Agreement enables the Chamber to declare an application inadmissible if the same matter is already pending before the Annex 7 Commission. However, in the present cases, none of the applicants has applied to the Annex 7 Commission, but have chosen instead to apply to the Chamber. Therefore, Article VIII(2)(d) is inapplicable in the present cases and they are therefore not inadmissible under that provision.

161. The Chamber further finds that none of the other grounds for declaring the cases inadmissible have been established. Accordingly, the cases are to be declared admissible.

B. Merits

162. 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

163. In their applications to the Chamber, all of the applicants claimed to be victims of a violation of Article 8 of the Convention which reads, insofar as relevant, as follows:

> "1. Everyone has the right to respect for ... his home ...
>
> 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."

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

165. The Chamber notes that all of the applicants had lived in the houses situated on their properties and used them as their homes until such times as they were forced to leave. The Chamber has previously held that links that persons in similar situations as the applicants in the present cases retained to their dwellings were sufficient for them to be considered to be their "homes" within the meaning of Article 8 of the Convention (see, e.g., the aforementioned *Onić* decision, paragraph 48; and case no. CH/97/46, *Kevešević*, decision on the merits delivered on 10 September 1998, paragraphs 39-42, Decisions and Reports 1998). In addition, the respondent Party did not contest that the properties were to be considered the applicants' homes.

166. It is therefore clear that the properties are to be considered as the applicants' "homes" for the purposes of Article 8 of the Convention.

167. The Chamber notes that all of the applicants were forced to leave their homes, either because they were evicted by private persons or because of fearing for their safety as a result of the hostilities. All except one of the properties were then occupied by refugees or displaced persons of Serb origin. The majority of these refugees or displaced persons occupied the properties concerned in accordance with decisions of the Commission issued in accordance with the old Law. The property of the remaining applicant (Mr. and Ms. Tabaković in case no. CH/98/1101) was occupied by the VRS. Therefore, the respondent Party was responsible for the interference with the rights of all of the applicants to respect for their homes. Only the applicants in cases nos. CH/98/750, Mr. Konić, and CH/98/1101, Mr. and Ms. Tabaković, have succeeded in regaining possession of their properties. Accordingly, the interference in the other 18 cases is ongoing. This applies also in cases nos. CH/98/659 and CH/98/734 (see paragraphs 11-15 and 16-20 above), where the applicants, Messrs. Pletilić and Duraković, have only regained possession of certain parts of their property.

168. 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.

169. The properties were considered to be abandoned in accordance with the old Law (see paragraphs 107-115 above). Moreover the applicants tried to regain possession of their properties in accordance with Articles 39 and 42 of the old Law. This law sought to provide for a regime for the administration of abandoned property in the Republika Srpska. In accordance with the provisions of this law, 19 of the properties (all except the property of Mr. and Ms. Tabaković, the applicants in case no. CH/98/1101) were occupied by refugees and displaced persons of Serb origin. The Chamber has received confirmation that 18 of the properties were allocated to those persons in accordance with decisions of the Ministry. In the remaining case (no. CH/98/826), the Chamber has not been able to obtain such confirmation. However, the Chamber notes that neither the Ministry, during the domestic proceedings initiated by the applicant, nor the respondent Party, during the proceedings before the Chamber, have sought to claim that the Ministry did not allocate the property concerned in this application. The Chamber accordingly finds that it was allocated to the current occupants by the Ministry.

170. The Chamber must decide whether the old Law can be considered to be a "law" in the context of Article 8(2) of the Convention.

171. The Chamber has previously held that the term "law" is related to certain qualitative criteria of a norm, requiring it to be compatible with the rule of law, which is expressly mentioned in the preamble to the Convention (see the aforementioned *Kevešević d*ecision, *loc. cit.*, paragraph 52).

172. In the above-mentioned *Kevešević* case, the Chamber held that the concept of the rule of law contains the following three elements: first, the law must be adequately accessible: a 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 with reasonable certainty the consequences of his actions. Thirdly, a law must provide safeguards against abuse.

173. The Chamber notes that the procedure for regaining of possession was set forth in Articles 39-42 of the old Law (see paragraphs 113-115 above). The precise effect of these Articles is unclear. For example, Article 39 allows for the regaining of possession of property within the context of an overall settlement between the Republika Srpska, the Federation of Bosnia and Herzegovina and the Republic of Croatia. The Article does not specify what the terms of any such settlement are to be and gives no guidance as to what, if any, procedures are to be followed prior to the conclusion of any such settlement. Article 40 is drafted in such a way as to render it practically impossible for an owner of property who is a refugee or internally displaced person to secure possession of it under the Law. Article 42 of the old Law states that Articles 37-41 are to be applied on the basis of reciprocity, without any explanation of how this is to be applied in practical terms. It is accordingly clear that the old Law did not enable a person seeking to regain possession of his or her property to establish what actions he or she must take to do so. The law also did not provide any safeguards against possible abuse, but was in itself a source of arbitrariness and abuse.

174. In conclusion, the Chamber finds that the legal provisions in question did not meet the standards required of a "law" under Article 8(2) of the Convention. This is in itself sufficient for there to be a finding that there has been, in all cases except no. CH/98/1101, a violation on these grounds of the applicants' rights as guaranteed by that provision.

175. The property of the applicants in case no. CH/98/1101, Mr. and Ms. Tabaković, was used by the VRS, apparently without any legal basis. The respondent Party has not sought to put forward any legal basis for this occupation and the Chamber is unable to find any of its own motion. Therefore the interference with this applicant's right to respect for his home cannot be considered to have been "in accordance with the law" and is therefore in violation of Article 8 on this basis.

176. There is therefore no requirement for the Chamber to examine whether the acts complained of pursued a "legitimate aim" or were "necessary in a democratic society".

177. In conclusion, the Chamber finds that there has been a violation by the respondent Party of the rights of all of the applicants to respect for their homes as guaranteed by Article 8 of the Convention. This violation is ongoing in 18 of the cases (i.e. in all those except cases nos. CH/98/750 and CH/98/1101) where the applicants have not yet regained possession of all of their property, despite the fact that the applicants in all 18 of these cases have sought to regain possession of their properties under the new Law.

178. The Chamber notes that the new Law has been adopted in order to remedy the violations caused by the old Law. However, at the present time there is not sufficient evidence to enable the Chamber to rule on the compliance of the new Law with the second paragraph of Article 8 of the Convention as the procedure provided for in the new Law is still ongoing in the majority of the present cases.

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

179. The applicants complain that their rights to peaceful enjoyment of their possessions have been violated as a result of their inability to regain possession of their properties. 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."

180. At the public hearing in the cases, the Agent of the respondent Party submitted that the respondent Party was not responsible for any violation of this Article, as all of its actions were taken in accordance with Annex 7 to the General Framework Agreement for Peace and in accordance with the appropriate domestic law.

181. The Chamber finds that the properties concerned constitute the applicants' "possessions" within the meaning of Article 1 of Protocol No. 1 to the Convention. All applicants are in fact exclusive or part owners of the properties.

182. The Chamber considers that the treatment of the applicants' properties in nineteen of the cases as abandoned by the authorities of the Republika Srpska and their allocation to third parties for use constitutes or constituted an "interference" with the applicants' rights to peaceful enjoyment of their possessions. In case no. CH/98/1101, where the applicant's property concerned was occupied by the VRS, this occupation was also such an interference.

183. In all of the cases except for the two where the applicants have regained possession of their properties (see paragraphs 24 and 51 above), the interference is still ongoing. This applies also in cases nos. CH/98/659 and CH/98/734 (see paragraphs 14 and 16 above), where the applicants, Messrs. Konić and Duraković, have only regained possession of certain parts of their property.

184. The Chamber must therefore examine whether the above interferences can be justified. For this to be the case, it must be in the public interest and subject to conditions provided for by law. This means that the deprivation must have a basis in national law and that the law concerned must be both accessible and sufficiently certain.

185. The Chamber has further found that the old Law does not meet the standards of a "law" in a democratic society (see paragraphs 170-174 above). This is in itself sufficient to warrant a finding that there has also been a violation of Article 1 of Protocol No. 1. This is also the case in case no. CH/98/1101, where the property of the applicants, Mr. and Ms. Tabaković, was occupied by the VRS. The respondent Party has not sought to claim that there was any legal basis for the occupation by the VRS of the property of the applicants in that case.

186. In conclusion, the Chamber finds that there has been a violation of the rights of all of the applicants to peaceful enjoyment of their properties as guaranteed by Article 1 of Protocol No. 1 to the Convention. Again, this violation is ongoing in 18 of the cases (i.e. in all those except cases nos. CH/98/750 and CH/98/1101) where the applicants have not yet regained possession of all of their property, despite the fact that the applicants in all 18 of these cases have sought to regain possession of their properties under the new Law.

187. The Chamber again notes that the new Law has been adopted in order to remedy the violations caused by the old Law. However, at the present time there is not sufficient evidence to enable the Chamber to rule on the compliance of the new Law with Article 1 of Protocol No. 1 to the Convention as the procedure provided for in the new Law is still ongoing in the majority of the present cases.

3. Article 6 of the Convention

188. The applicants did not specifically claim that their rights as protected by Article 6 of the Convention had been violated. However, in view of the fact that a number of the applicants complained of the conduct of the proceedings they had initiated at national level, the Chamber raised this issue *proprio motu* when it transmitted the applications to the respondent Party for its observations on their admissibility and merits.

189. Article 6 of the Convention reads, in relevant parts, as follows:

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

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

191. The Chamber recalls that the right to enjoyment of one's property is a civil right within the meaning of Article 6 of the Convention (see, e.g., Eur. Court HR, *Langborger v. Sweden* judgment of 22 June 1989, Series A. no 71, page 12, paragraph 23).

192. The Chamber notes that the applicants in ten of the cases initiated proceedings before the Municipal Court in Gradiška (the situation in respect of each applicant is set out in Section III above). The experience of the first applicant, Mr. Pletilić (case no. CH/98/659) is representative of the outcome of such proceedings. The applicant initiated his proceedings on 14 May 1998. On 21 May 1998 the Court rejected the case for lack of jurisdiction, stating that issues concerning the regaining of possession of abandoned property were within the sole jurisdiction of the Ministry. It stated further that the courts were not competent to deal with such issues. Mr. Pletilić then appealed to the Regional Court in Banja Luka, where his appeal is still pending. At the public hearing, the Agent of the respondent Party stated that the Supreme Court of the Republika Srpska had issued a decision in a case involving substantively identical facts, with the same finding as in the above judgment. The Supreme Court reasoned that it was more efficient for such issues to be dealt with through an administrative procedure rather than a judicial one (see paragraph 151 above).

193. Any other decisions issued by the courts in proceedings initiated by the present applicants have been phrased in substantively the same terms as that in the case of Mr. Pletilić. A number of the applicants have not yet received any decision to date.

194. The Chamber notes that Article 121 of the RS Constitution states that the establishment of legal rights and interests is the role of the courts. It also states that the courts shall decide upon the basis of, *inter alia*, the laws of the Republika Srpska (see paragraph 106 above). Accordingly, for any subject matter to be removed from their jurisdiction, this would have to be done by a law or other valid legal instrument. Such a removal would require a specific statement to this effect. The old Law states (in Article 3; see paragraph 109 above) that abandoned property is to be temporarily protected and managed by the Republika Srpska. This is done in practice through local Commissions established within the Ministry. However, there is no explicit statement that the courts no longer have jurisdiction. Accordingly, the Chamber does not consider that this is indeed the case.

195. Nevertheless, the practical effect of the decision of the Supreme Court is that it has been or would, for the time being at least, be impossible for the applicants to have the merits of their civil actions against the current occupants of their properties determined by a tribunal within the meaning of Article 6 paragraph 1. Accordingly, there has been a violation of the applicants' right to effective access to court as guaranteed by Article 6 paragraph 1 of the Convention.

4. Discrimination

196. All of the applicants, except in case no. CH/98/734, complained that they had been a victim of discrimination on the ground of national origin in the enjoyment of the rights guaranteed to them by the Convention. The Chamber will consider this allegation in the context of Article II(2)(b) of the Agreement, which states that the Chamber shall consider:

> "alleged or apparent discrimination 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 arising in the enjoyment of any of the rights and freedoms provided for in the international agreements listed in the Appendix to this Agreement ...."

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

198. The Chamber notes that it has already found violations of the rights of all of the applicants as protected by Articles 6 and 8 of the Convention and Article 1 of Protocol No. 1 to the Convention. It must now consider whether the applicants have suffered discrimination in the enjoyment of those rights.

199. In examining whether there has been discrimination contrary to the Agreement the Chamber recalls the jurisprudence of the European Court of Human Rights and the United Nations Human Rights Committee. As the Chamber noted in its decision in *Đ.M.* (case no. CH/98/756, decision on admissibility and merits delivered on 14 May 1999, paragraph 73, Decisions January-July 1999), these bodies have consistently found it necessary first to determine whether the applicant was treated differently from others in the same or relevantly 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 of proportionality between the means employed and the aim sought to be realised. There is a particular onus on the respondent Party to justify differential treatment which is based on any of the grounds explicitly enumerated in the relevant provisions, including religion or national origin. In previous cases, the Chamber has taken the same approach (see, e.g., case no. CH/97/45, *Hermas,* decision on admissibility and merits delivered on 18 February 1998, paragraphs 86 *et seq.*, Decisions and Reports 1998).

200. The Chamber recalls that the obligation on the Parties to the Annex 6 Agreement to "secure" the rights and freedoms mentioned in the agreement to all persons within their jurisdiction not only obliges a Party to refrain from violating those rights and freedoms, but also imposes on that Party a positive obligation to protect those rights (see the aforementioned decision in *Đ.M.*, paragraph 75). Analogous obligations are also contained in the Constitutions of Bosnia and Herzegovina and of the Republika Srpska (see paragraphs 97 and 101 above).

201. The Chamber notes that all of the applicants except one (an applicant of Serb origin filing the application together with her Bosniak husband - see paragraph 61 above) are of Bosniak origin.

202. The Chamber recalls that the applicants' ownership of the properties in question has never been in dispute. Nevertheless, with the exception of the applicants in cases nos. CH/98/750 and CH/98/1101, Mr. Konić and Mr. and Ms. Tabaković (see paragraphs 21-24 and 49-51 above), their attempts to seek assistance from the authorities in order to regain possession of their properties have been unsuccessful, both at the judicial and administrative level.

203. The Chamber notes that all of the applicants sought to regain possession of their properties under the old Law. The Chamber has considered this Law in the context of Article 8 of the Convention (see paragraphs 170-174 above) and concluded that it was drafted in such a way as to deny to refugees and displaced persons any real possibility of regaining possession of their properties.

204. The experience of the present applicants in their attempts to regain possession of their properties under this law only serves to reinforce this view. The Chamber notes that the effect of the old Law was to make it practically impossible for persons who were forced to leave their properties to regain possession of those properties. The effect of the old Law was therefore to reinforce the ethnic cleansing which occurred during the war.

205. Almost by definition all the persons who were forced to leave the territory of the Republika Srpska were members of a minority. Accordingly, those are the persons who will suffer as a result of the fact that the old Law did not provide any real possibility of regaining possession of property which those persons had been forced to leave as a result of the war. The old Law will not be used to prevent persons of Serb origin from returning to Gradiška, as they were not required to leave in the first place. On the contrary, the old Law serves to protect the persons of Serb origin who now occupy property which was considered abandoned under the old Law. Accordingly, the effect of the old Law is twofold: it prevents minority return and protects the position of persons of Serb origin who now occupy the properties concerned in the applications. The Chamber recognises the fact that those persons are themselves refugees and displaced persons and that they themselves would, if they were to seek to return to their homes, face the same sort of difficulties as faced by the current applicants. However, this cannot be used as a justification for the passage of the old Law and its application against minority returnees such as the present applicants.

206. In addition, the Chamber has found that the standpoint of the courts in the Republika Srpska (see paragraphs 192-195 above) was such as to deny the applicants their right of access to court. This denial was as a consequence of the application by the courts in the Republika Srpska of the old Law. The Chamber notes that the ownership of the properties has never been in question, a point

specifically acknowledged by the Agent of the respondent Party at the public hearing. Despite this, the applicants in only one of the cases have managed to regain possession of their property as a result of utilising the different remedies available to them. Accordingly, the evidence before the Chamber suggests that there is a pattern of discrimination consisting of the courts' and relevant authorities' failure to deal with claims for repossession of property lodged by returning Bosniaks, or of not enforcing decisions of the Commission rendered in favour of such persons against temporary occupants of Serb origin.

207. In conclusion, the Chamber finds that the passage and application of the old Law constitutes discrimination against the applicants in relation to their right to respect for their homes, to peaceful enjoyment of their possessions and of access to court. This discrimination has been based on the ground of association with a national minority in the case of the first applicant in case no. CH/98/1106, Ms. Milić–Tairi, and on the grounds of national origin in respect of all of the other applicants.

208. The Chamber concludes that the applicants have been discriminated against in the enjoyment of their rights under Articles 6 and 8 of the Convention and Article 1 of Protocol No. 1 to the Convention.

5. Article 13 of the Convention

209. All except one of the applicants (in case no. CH/98/734) alleges that their 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."

210. The Chamber does not consider it necessary to examine whether there has been a violation of the applicants' rights as guaranteed by Article 13. This is due to the findings the Chamber has made in its examination of the applications under Article 6 of the Convention (see paragraph 195 above).

VII. REMEDIES

211. 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. The Chamber is not necessarily bound by the claims of an applicant.

212. The Chamber considers it appropriate to order the respondent Party to take all necessary steps to enable the applicants, who have not already done so, to regain possession of their properties without further delay. In the cases where the applicants have already received decisions from the Commission entitling them to regain possession of their property, the respondent Party must take all necessary steps to enforce those decisions without further delay. In the cases where the applicants have applied under the new Law but have not yet received decisions, the respondent Party must take all necessary steps to ensure that decisions entitling the applicants to regain possession of their properties are issued without further delay and that such decisions are enforced as a matter of urgency.

213. With regard to possible compensatory awards, the Chamber first recalls that in accordance with its order for proceedings in the respective cases, all applicants were afforded the possibility of claiming compensation within the time-limit fixed by the Chamber. All of the applicants request that they be enabled to regain possession of their properties. In addition, they all, with the exception of the applicant in case no. CH/98/734, Mr. Duraković, requested compensation for mental suffering and for their inability to enjoy use of their properties.

214. Mr. Pletilić (CH/98/659) claimed compensation for mental suffering experienced by him and his wife due to their inability to return to their home in the sum of 5,000 German Marks (DEM). He also claimed compensation for the cost of renting another property, in the sum of DEM 200 per month for 18 months, totalling DEM 3,600. In addition, he claimed DEM 500 for relocation and painting costs.

215. Mr. Konić (CH/98/750) claimed compensation for mental suffering experienced by him and his wife due to their inability to return to their home in the sum of DEM 5,000. He also claimed compensation for the cost of renting another property, in the sum of DEM 200 per month for 17 months, totalling DEM 3,400. In addition, he claimed DEM 500 for relocation and painting costs.

216. Mr. Samardžić (CH/98/751) claimed compensation for mental suffering experienced by him and his wife due to their inability to return to their home in the sum of DEM 5,000. He also claimed compensation for the cost of renting another property, in the sum of DEM 200 per month for 10 months, totalling DEM 2,000. In addition, he claimed DEM 700 for relocation and painting costs.

217. Mr. Smajlović (CH/98/753) claimed compensation for mental suffering experienced by him and his wife due to their inability to return to their home in the sum of DEM 5,000. He also claimed compensation for the cost of renting another property, in the sum of DEM 200 per month for 14 months, totalling DEM 2,800. In addition, he claimed DEM 700 for relocation and painting costs.

218. Mr. Hubijar (CH/98/824) claimed compensation for mental suffering experienced by him and his family due to their inability to return to their home in the sum of DEM 7,500. He also claimed compensation for the cost of renting another property, in the sum of DEM 200 per month for 12 months, totalling DEM 2,400. In addition, he claimed DEM 700 for relocation costs.

219. Mr. Šiljak (CH/98/825) claimed compensation for mental suffering experienced by him and his wife due to their inability to return to their home in the sum of DEM 5,000. He also claimed compensation for the cost of renting another property, in the sum of DEM 200 per month for 9 months, totalling DEM 1,800. In addition, he claimed DEM 700 for relocation costs.

220. Ms. Gerzić (CH/98/826) claimed compensation for mental suffering experienced by her due to her inability to return to her home in the sum of DEM 2,500. She also claimed compensation for the cost of renting another property, in the sum of DEM 100 per month for 43 months, totalling DEM 4,300. In addition, she claimed DEM 500 for other costs.

221. Mr. Muharemagić (CH/98/1100) claimed compensation for mental suffering experienced by him and his wife due to their inability to return to their home in the sum of DEM 5,000. He also claimed compensation for the cost of renting another property, in the sum of DEM 200 per month for 7 months, totalling DEM 1,400. In addition, he claimed DEM 700 for relocation and painting costs.

222. Mr. and Ms. Tabaković (CH/98/1101) claimed compensation for costs of carrying out repairs to their property in the sum of DEM 20,000. They also claimed the sum of DEM 4,000 for mental suffering. In addition, they claimed compensation for the cost of renting another property, in the sum of DEM 200 per month for 5 months, totalling DEM 1,000.

223. Ms. Čehajić (CH/98/1103) claimed compensation for mental suffering experienced by her and her family due to their inability to return to their home in the sum of DEM 10,000. She also claimed compensation for the cost of renting another property, in the sum of DEM 200 per month for 7 months, totalling DEM 1,400. In addition, she claimed DEM 700 for relocation costs.

224. Mr. Bradarić (CH/98/1105) claimed compensation for mental suffering experienced by him and his wife due to their inability to return to their home in the sum of DEM 5,000. He also claimed compensation for the cost of renting another property, in the sum of DEM 200 per month for 9 months, totalling DEM 1,800. In addition, he claimed DEM 500 for relocation and painting costs.

225. Ms. Milić-Tairi and Mr. Tairi (CH/98/1106) claimed compensation for mental suffering experienced by them due to their inability to return to their home in the sum of DEM 5,000. They also

claimed compensation for the cost of renting another property, in the sum of DEM 200 per month for 12 months, totalling DEM 2,400. In addition, they claimed DEM 700 for relocation and costs of equipment.

226. Mr. Crnojević (CH/98/1107) claimed compensation for mental suffering experienced by him and his family due to their inability to return to their home in the sum of DEM 7,500. He also claimed compensation for the cost of renting another property, in the sum of DEM 200 per month for 12 months, totalling DEM 2,400. In addition, he claimed DEM 1,200 for relocation and painting costs.

227. Mr. Raković (CH/98/1108) claimed compensation for mental suffering experienced by him and his wife due to their inability to return to their home in the sum of DEM 5,000. He also claimed compensation for the cost of renting another property, in the sum of DEM 200 per month for 12 months, totalling DEM 2,400. In addition, he claimed DEM 700 for relocation and painting costs.

228. Mr. Šabić (CH/98/1109) claimed compensation for mental suffering experienced by him and his wife due to their inability to return to their home in the sum of DEM 5,000. He also claimed compensation for the cost of renting another property, in the sum of DEM 200 per month for 7 months, totalling DEM 1,400. In addition, he claimed DEM 800 for relocation and decoration costs.

229. Mr. Mujadžić (CH/98/1110) claimed compensation for mental suffering experienced by him and his wife due to their inability to return to their home in the sum of DEM 5,000. He also claimed compensation for the cost of renting another property, in the sum of DEM 200 per month for 22 months, totalling DEM 4,400. In addition, he claimed DEM 700 for relocation costs.

230. Mr. Merdanović (CH/98/1111) claimed compensation for mental suffering experienced by him and his family due to their inability to return to their home in the sum of DEM 10,000. He also claimed compensation for the cost of renting another property, in the sum of DEM 200 per month for 18 months, totalling DEM 3,600. In addition, he claimed DEM 800 for relocation costs.

231. Mr. Ćerimović (CH/98/1112) claimed compensation for mental suffering experienced by him and his family due to their inability to return to their home in the sum of DEM 10,000. He also claimed compensation for the cost of renting another property, in the sum of DEM 200 per month for 8 months, totalling DEM 1,600. In addition, he claimed DEM 500 for relocation costs.

232. Ms. Dizdarević (CH/98/1116) claimed compensation for mental suffering experienced by her and her husband due to their inability to return to their home in the sum of DEM 5,000. She also claimed compensation for the cost of renting another property, in the sum of DEM 200 per month for 20 months, totalling DEM 4,000. In addition, she claimed DEM 500 for relocation costs.

233. The respondent Party, in its observations on the claims for compensation which were received by the Chamber on 13 April 1999, argued that the claims for compensation were ill-founded and inadmissible. It referred to its observations on the admissibility and merits of the cases of 19 March 1999 (see paragraphs 144-145 above), in which it had contested the admissibility of the applications. It said that in accordance with Article VIII of Annex 7 to the General Framework Agreement for Peace in Bosnia and Herzegovina ("the General Framework Agreement for Peace"), the respondent Party was entitled to accommodate refugees and displaced persons in abandoned property, pending resolution of the ownership and possession of abandoned property by the Annex 7 Commission. Accordingly, as the applicants had not applied to the Annex 7 Commission, the respondent Party had acted fully in accordance with the General Framework Agreement for Peace.

234. The Chamber considers that it cannot reject the claims for compensation submitted by the applicants on the grounds suggested by the respondent Party, as it has not accepted analogous arguments relating to the admissibility of the applications (see paragraphs 148-160 above). As the two arguments are inextricably linked, the fact that the Chamber has not accepted them in relation to the admissibility of the applications precludes the Chamber from accepting them in relation to the claims for compensation.

235. The Chamber notes that 19 of the applicants have claimed sums for mental suffering

allegedly caused to them, and in most cases also to members of their families, as a result of their inability to regain possession of their properties. These sums vary from DEM 2,500 to DEM 10,000 and are based on a figure of DEM 2,500 per person in every household allegedly affected. The Chamber considers that such sums are excessive. The Chamber does however, consider it appropriate to award a sum to the applicants in recognition of the sense of injustice they have suffered as a result of their inability to regain possession of their properties, especially in view of the fact that they have all taken various steps to do so. The Chamber does not consider it appropriate to award sums under this head to members of the applicants' families; it can only award such sums to the applicants.

236. Accordingly, the Chamber will order the respondent Party to pay to each of the 19 applicants who claimed compensation the sum of 1,200 Convertible Marks (*Konvertibilnih Maraka,* "KM") in recognition of their suffering as a result of their inability to regain possession of their properties. In the particular circumstances at hand the Chamber will therefore also award the applicant in case no. CH/98/734, Mr. Duraković, the same sum, even though he did not claim compensation. Article XI(1)(b) of the Agreement does not preclude the Chamber from ordering a remedy which has not been requested by an applicant.

237. 19 of the applicants also claimed compensation for the rent they have been forced to pay for their accommodation pending their return to their properties. These sums are, in general, DEM 200 per month for each month that they have been required to pay such rent. The applicant in case no. CH/98/826, Ms. Gerzić, claimed the sum of DEM 100 per month under this head.

238. The Chamber considers that the sum of KM 100 per month is appropriate to award for each month that each of the applicants were forced to pay for alternative accommodation. The Chamber considers that this sum should be payable starting two months after the end of the month in which they lodged their first application to the Ministry to regain possession of their properties under the old Law. This is because the respondent Party cannot be considered to be at fault for the inability of the applicants to regain possession of their properties until a reasonable time had elapsed after the lodging of such applications. The Chamber recognises that there are considerable difficulties for the respondent Party in ensuring the right of persons to return to their pre-war homes, but considers that in cases where there is no dispute as to the ownership of the property concerned, two months from the date of lodging of an application for return is a reasonable time. This sum should continue to be paid at the same rate until the applicants regain possession of their properties, even after the delivery of the judgment.

239. All of the applicants, except the applicant in case no. CH/98/734, Mr. Duraković, claimed between DEM 500 and DEM 800 for relocation costs. Some of the applicants also included additional costs, such as repainting, under this head. The Chamber interprets these claims as relating to certain potential future costs the applicants may incur when they regain possession of their properties. These sums are not substantiated. Accordingly, the claims under these heads must be rejected.

240. In case no. CH/98/1101, the applicants, Mr. and Ms. Tabaković, claimed the sum of DEM 20,000 for repair costs to their house. These applicants' property was occupied by the VRS (see paragraphs 49-51 above). The Chamber considers that, in view of the fact that it has found it established (see paragraph 175 above) that the VRS occupied the applicants' property, it must be presumed that that organ of the respondent Party is responsible for the damage caused to it. At the public hearing, the representatives of the applicant were unable to state whether or not the damage caused had occurred prior to 14 December 1995, the date of entry into force of the Agreement. However, in view of the fact that the VRS occupied the property until at least early 1998, there is a further presumption that such damage, at least in part, occurred after the entry into force of the Agreement. The respondent Party has not offered any evidence that would rebut these presumptions. In addition, the applicants requested the authorities of the Republika Srpska to visit the property and assess the damage, but they failed to do so.

241. Accordingly, the Chamber finds that the damage caused to the property of the applicants in case no. CH/98/1101, Mr. and Ms. Tabaković, is, at least in part, the responsibility of the respondent Party. It is therefore appropriate to award the applicants compensation for such damage.

242. The Chamber must next consider the amount of compensation appropriate to award in this respect. The applicants, in their compensation claim received by the Chamber on 16 February 1999, stated that the house was not suitable for living. They stated further that it had no roof, doors, windows or water. In conclusion, they stated that the building on the property was completely demolished. The respondent Party did not contest this assessment. The Chamber, in view of the special circumstances of the case outlined in paragraph 240 above, considers it appropriate to award the applicants in case no. CH/98/1101 a reasonable sum for necessary repairs in the amount of KM 5,000.

243. Additionally, the Chamber awards 4% interest as of the date of expiry of the three-month period set for the implementation of the present decision, on the sums awarded in paragraphs 236, 238 and 242.

VIII. CONCLUSIONS

244. For the above reasons, the Chamber decides:

1. by 6 votes to 1, to declare the applications admissible;

2. by 6 votes to 1, that there has been a violation of the rights of the applicants to respect for their homes within the meaning of Article 8 of the Convention, the Republika Srpska thereby being in breach of Article I of the Agreement;

3. by 6 votes to 1, that there has been a violation of the rights of the applicants to peaceful enjoyment of their 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. by 6 votes to 1, that the impossibility for the applicants to have the merits of their civil actions against the current occupants of their property determined by a tribunal constitutes a violation of their right to effective access to court within the meaning of Article 6 of the Convention, the Republika Srpska thereby being in breach of Article I of the Agreement;

5. by 6 votes to 1, that the enactment of, and application by the authorities of the Republika Srpska of the Law on the Use of Abandoned Property in the applicants' cases constituted discrimination against them on the ground of national origin, and on the ground of association with a national minority in the case of the first applicant in case no. CH/98/1106, in the enjoyment of their rights as protected by Articles 6 and 8 of the Convention and Article 1 of Protocol No. 1 to the Convention;

6. unanimously, that it is not necessary to rule on the complaints under Article 13 of the Convention;

7. by 6 votes to 1, to order the Republika Srpska to enable the applicants who have not already done so to regain possessions of their properties (as described more particularly in respect of each applicant in Section III of this decision) without further delay;

8. by 6 votes to 1, to order the respondent Party:

   (a) to pay to the applicants within three months of the delivery of this decision the following sums:

   to Mr. Esfak Pletilić, the applicant in case no. CH/98/659: KM 3,500 (three thousand five hundred Convertible Marks), composed of KM 1,200 by way of compensation for mental suffering and KM 2,300 for rental payments he incurred in respect of paying for alternative accommodation;

   to Mr. Ibro Duraković, the applicant in case no. CH/98/734: KM 1,200 (one thousand two

hundred Convertible Marks) by way of compensation for mental suffering;

to Mr. Refik Konić, the applicant in case no. CH/98/750: KM 2,700 (two thousand seven hundred Convertible Marks), composed of KM 1,200 by way of compensation for mental suffering and KM 1,500 for rental payments he incurred in respect of paying for alternative accommodation;

to Mr. Husein Samardžić, the applicant in case no. CH/98/751: KM 2,600 (two thousand six hundred Convertible Marks), composed of KM 1,200 by way of compensation for mental suffering and KM 1,400 for rental payments he incurred in respect of paying for alternative accommodation;

to Mr. Osman Smajlović, the applicant in case no. CH/98/753: KM 2,600 (two thousand six hundred Convertible Marks), composed of KM 1,200 by way of compensation for mental suffering and KM 1,400 for rental payments he incurred in respect of paying for alternative accommodation;

to Mr. Redžo Hubijar, the applicant in case no. CH/98/824: KM 2,600 (two thousand six hundred Convertible Marks), composed of KM 1,200 by way of compensation for mental suffering and KM 1,400 for rental payments he incurred in respect of paying for alternative accommodation;

to Mr. Osman Šiljak, the applicant in case no. CH/98/825: KM 2,600 (two thousand six hundred Convertible Marks), composed of KM 1,200 by way of compensation for mental suffering and KM 1,400 for rental payments he incurred in respect of paying for alternative accommodation;

to Ms. Ziza Gerzić, the applicant in case no. CH/98/826: KM 3,200 (three thousand two hundred Convertible Marks), composed of KM 1,200 by way of compensation for mental suffering and KM 2,000 for rental payments she incurred in respect of paying for alternative accommodation;

to Mr. Mehmed Muharemagić, the applicant in case no. CH/98/1100: KM 2,400 (two thousand four hundred Convertible Marks), composed of KM 1,200 by way of compensation for mental suffering and KM 1,200 for rental payments he incurred in respect of paying for alternative accommodation;

to Mr. Munib and Ms. Hatidža Tabaković, the applicants in case no. CH/98/1101: KM 6,400 (six thousand four hundred Convertible Marks), composed of KM 1,200 by way of compensation for mental suffering, KM 200 for rental payments they incurred in respect of paying for alternative accommodation and KM 5,000 in respect of damage caused to their property while it was occupied by the Army of the Republika Srpska;

to Ms. Elmira and Mr. Naim Čehajić, the applicants in case no. CH/98/1103: KM 2,500 (two thousand five hundred Convertible Marks), composed of KM 1,200 by way of compensation for mental suffering and KM 1,300 for rental payments they incurred in respect of paying for alternative accommodation;

to Mr. Refko Bradarić, the applicant in case no. CH/98/1105: KM 2,400 (two thousand four hundred Convertible Marks), composed of KM 1,200 by way of compensation for mental suffering and KM 1,200 for rental payments he incurred in respect of paying for alternative accommodation;

to Ms. Slobodanka Milić-Tairi and Mr. Isan Tairi, the applicants in case no. CH/98/1106: KM 2,700 (two thousand seven hundred Convertible Marks), composed of KM 1,200 by way of compensation for mental suffering and KM 1,500 for rental payments they incurred in respect of paying for alternative accommodation;

to Mr. Avdo Crnojević, the applicant in case no. CH/98/1107: KM 2,500 (two thousand five

hundred Convertible Marks), composed of KM 1,200 by way of compensation for mental suffering and KM 1,300 for rental payments he incurred in respect of paying for alternative accommodation;

to Mr. Bećo Raković, the applicant in case no. CH/98/1108: KM 2,400 (two thousand four hundred Convertible Marks), composed of KM 1,200 by way of compensation for mental suffering and KM 1,200 for rental payments he incurred in respect of paying for alternative accommodation;

to Mr. Muharem and Ms. Subha Šabić, the applicants in case no. CH/98/1109: KM 2,300 (two thousand three hundred Convertible Marks), composed of KM 1,200 by way of compensation for mental suffering and KM 1,100 for rental payments they incurred in respect of paying for alternative accommodation;

to Mr. Fuad Mujadžić, the applicant in case no. CH/98/1110: KM 2,400 (two thousand four hundred Convertible Marks), composed of KM 1,200 by way of compensation for mental suffering and KM 1,200 for rental payments he incurred in respect of paying for alternative accommodation;

to Mr. Ahmet Merdanović,the applicant in case no. CH/98/1111: KM 2,700 (two thousand seven hundred Convertible Marks), composed of KM 1,200 by way of compensation for mental suffering and KM 1,500 for rental payments he incurred in respect of paying for alternative accommodation;

to Mr. Sead Ćerimović, the applicant in case no. CH/98/1112: KM 2,400 (two thousand four hundred Convertible Marks), composed of KM 1,200 by way of compensation for mental suffering and KM 1,200 for rental payments he incurred in respect of paying for alternative accommodation;

to Ms. Halima Dizdarević, the applicant in case no. CH/98/1116: KM 2,400 (two thousand four hundred Convertible Marks), composed of KM 1,200 by way of compensation for mental suffering and KM 1,200 for rental payments he incurred in respect of paying for alternative accommodation;

(b) to pay to those applicants who have not regained possession of their properties by 31 August 1999, within three months from the dates when they regain possession of their properties, the sum of KM 100 (one hundred Convertible Marks) per month from 1 September 1999 until the end of the month in which they regain possession of the properties;

(c) to pay simple interest at the rate of 4 (four) per cent per annum over the above sums or any unpaid portion thereof from the date of expiry of the above three-month periods until the date of settlement; and

9. by 6 votes to 1, to order the Republika Srpska to report to it by 10 December 1999 on the steps taken by it to comply with the above orders.

(signed)
Anders MÅNSSON
Registrar of the Chamber

(signed)
Giovanni GRASSO
President of the Second Panel

ANNEX

In accordance with Rule 61 of the Chamber's Rules of Procedure, this Annex contains the separate opinion of Mr. Vitomir Popović.

SEPARATE DISSENTING OPINION OF MR. VITOMIR POPOVIĆ

In the above cases, Esfak Pletilić and others, I have issued a separate dissenting opinion for the following reasons:

Article 8 paragraph 2 of the Human Rights Agreement provides for:

"The Chamber shall decide which applications to accept and in what priority to address them. In so doing, the Chamber shall take into account the following criteria:

a) Whether effective remedies exist, and the applicant has demonstrated that they have been exhausted and that the application has been filed with the Commission within six months from such date on which the final decision was taken;
b) …
c) …
d) The Commission shall 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 applications or the decision of cases, or any other Commission established by the Annexes to the General Framework Agreement."

In the present cases, it is not disputed that the applicants initiated proceedings before the Municipal Court in Gradiška against the current occupants of the properties seeking their eviction, that the Court rejected the complaint on the ground that it was incompetent to deal with those issues, that the appeals against those judgements have been filed to the Regional Court in Banja Luka and that there have been no decisions upon those appeals to date. In these cases, in which the first instance judgments were confirmed, the applicants were directed to achieve their rights to return of property before the competent Commission for Real Property Claims under Annex 7, and in accordance with the Law. Some of the applicants achieved their right to return of property.

Besides the aforementioned facts, it is an undisputed fact that the applicants have not filed compensation claims to the respondent Party and that the Chamber has not dealt with the issue of "moment of occurring damage", which is important from the aspect of *ratione temporis*.

There is no doubt that the Chamber has violated the regulations of Article 8 paragraphs (a) and (d) of the Human Rights Agreement and Article 1 of the same Agreement. The only right decision to be made by the Chamber should have been to reject the applications for non-exhaustion of domestic remedies, i.e. to reject them as premature.

(signed)
Prof. Dr. Vitomir Popović