DECISION ON THE MERITS
(delivered on 11 February 2000)

Case no. CH/98/697

Bakir DŽONLIĆ

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 12 January 2000 with the following members present:

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

Mr. Anders MÅNSSON, Registrar
Ms. Olga KAPIĆ, Deputy Registrar

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

Adopts the following decision pursuant to Articles VIII(2) and XI of the Agreement and Rules 57 and 58 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The case concerns the attempts of the applicant, a citizen of Yugoslavia of Bosniak descent, to regain full possession of a house he owns in Banja Luka. He and his father currently live there, as well as two families of displaced persons from the Federation of Bosnia and Herzegovina. The applicant has initiated various administrative and judicial proceedings to have these persons evicted from his house, so far without success.

2. The case raises issues under Articles 6 and 8 of the European Convention on Human Rights and under Article 1 of Protocol No. 1 to the Convention.

II. PROCEEDINGS BEFORE THE CHAMBER

3. On 15 June 1998 the application was forwarded to the Chamber by the Human Rights Ombudsperson for Bosnia and Herzegovina, at the request of the applicant. It was registered on the same day.

4. On 14 September 1998 the applicant requested that the Chamber order the Republika Srpska as a provisional measure to evict the R. and B. families from the house. On 15 October 1998 the Chamber refused this request. On the same day it decided to transmit the application to the respondent Party for its observations on its admissibility and merits. No such observations have been received, however.

5. On 18 January 1999 the applicant was requested to submit his further observations and any claim for compensation or other relief he wished to make. These were received on 21 January 1999 and transmitted to the respondent Party the following day. The respondent Party was requested to submit observations on the claim for compensation submitted by the applicant but did not do so.

6. On 13 May 1999 the Chamber declared the case admissible. This decision was sent to the Parties on 25 August 1999. On 3 and 4 November 1999 and 12 January 2000 the Chamber considered the merits of the application. On the latter date it adopted the present decision.

III. ESTABLISHMENT OF THE FACTS

A. The particular facts of the case

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

8. The applicant is a citizen of Yugoslavia of Bosniak descent. He and his father live in the applicant's house in Banja Luka, at Milana Rakića 17.

9. In August 1995 two families, R. and B., displaced from Drvar in the Federation of Bosnia and Herzegovina entered into the house without the permission of the applicant's father, who at that time was the owner of the house and occupied it. He was left with the use of one room in the house. These persons did not have any decision of any authority purporting to entitle them to occupy the property.

10. On 20 November 1997 the applicant came to Banja Luka from Yugoslavia in order to care for his father who had become ill. On the same day the applicant's father gifted him the house. The applicant is registered as the owner of the house and currently resides in one part of it, together with his father.

11. The applicant complains that the R. and B. families harass him and his father. On 19 July 1998 the applicant reported one such incident to the local police, who intervened with the other occupants of the house. The applicant states that the harassment stopped for a couple of weeks,

when it resumed again. He has not reported further such incidents to the police, as he claims that they would not take any action. The applicant also complains that the R. and B. families refuse to contribute towards the expenses of the house (electricity, etc.) and that he alone is required to pay for these costs.

12. On 13 February 1998 the Commission for the Accommodation of Refugees and Displaced Persons in Banja Luka, a department of the Ministry for Refugees and Displaced Persons allocated the "surplus housing space" in the applicant's house to the R. and B. families. These decisions were stated to be based on Article 17 of the Law on the Use of Abandoned Property, which allows the Commission to allocate, under certain conditions, surplus space in residential buildings to refugees or displaced persons. On 24 February 1998 the applicant appealed to the Ministry against these decisions, which on 14 April 1998 refused his appeal as ill-founded.

13. On 23 June 1998 the applicant initiated an administrative dispute before the Supreme Court of the Republika Srpska. According to the information available to the Chamber there have been no developments in these proceedings to date.

14. On 8 December 1997 the applicant and his father initiated proceedings against the R. and B. families before the Court of First Instance in Banja Luka, alleging disturbance of possession and requesting that they be ordered to vacate it. On 9 March 1998 the Court suspended the proceedings in the case as proceedings concerning the issue were pending before the Ministry. These proceedings are still pending before the Court.

15. On 5 February 1998 the applicant initiated further proceedings against the R. and B. families before the Court, seeking that they be ordered to vacate the house. According to the information available to the Chamber there have been no developments in these proceedings to date.

16. On 2 February 1999 the applicant received confirmation from the Banja Luka office of the Administration for Geodetic and Property-Legal Services of the Republika Srpska that his property had never been declared abandoned.

17. On 9 March 1999 the applicant applied under the Law on the Cessation of Application of the Law on the Use of Abandoned Property to regain possession of the property. On 23 April 1999, after the expiry of the legally-prescribed time-limit for the issuance of a decision by the competent organ, the applicant appealed against the failure to issue a decision in his case.

18. On 27 May 1999 the Commission ordered the applicant's house to be returned into his possession. This decision ordered the R. family to vacate the house within 90 days. It did not make any reference to the B. family. The R. family appealed against this decision and on 27 October 1999 the Ministry, acting as the second instance organ, refused the appeal.

19. On 18 June 1999 the applicant requested that the R. family be also ordered to vacate the house. He claims that he was orally informed by officials of the Commission that this was not necessary, as the decision clearly ordered the return of the property into his possession. On 31 August 1999 the applicant submitted a request for enforcement of the decision of 27 May 1999 to the Commission. This has not occurred to date and the R. and B. families still occupy the house.

B. Relevant legislation

1. Constitution of the Republika Srpska

20. Article 121 of the Constitution of the Republika Srpska 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."

2. The Law on the Use of Abandoned Property

21. 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 established a legal framework for the administration of abandoned property. Accordingly, it defined what forms of property were to be considered as abandoned and set out the categories of persons to whom abandoned property could be allocated. The provisions of that law, insofar as they are relevant to the present case, are summarised below.

22. 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 records of abandoned property. Types of property which could be declared abandoned include apartments (both privately and socially owned) and houses.

23. Article 3 states that abandoned property is to be temporarily protected and managed by the Republika Srpska. To this end, the Ministry is obliged, under 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.

24. Article 17 states that if refuges and displaced persons cannot be accommodated in the types of property set out in Article 11, they will be provided with temporary accommodation in certain residential properties. These properties are those in which each family member living there has in excess of 15 square metres living space. Article 17 provides that such properties shall be allocated in the following order:

- firstly, properties where the owners or users have not complied with their compulsory military or work obligations;
- secondly, properties where members of the household left the territory of the Republika Srpska; and
- thirdly, other properties where there is additional space.

25. Article 17 does not state that such properties be entered into the register of abandoned property or other official record.

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

26. 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"), as amended, establishes a detailed framework for persons to regain possession of property considered to be abandoned. It puts the old law out of force.

27. Article 3 gives the owner, possessor or user of real property who abandoned such property the right to repossess it and enjoy it on the same terms as he or she did before 30 April 1991, or the date 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 or when such persons first lost possession of the property, in the event that the property was not declared abandoned.

28. Article 6 concerns the arrangements to be made for persons who are required to vacate property (described as "temporary users") in order to allow the previous owner, possessor or user to return.

29. The responsible body shall determine, within the thirty-day time-limit for deciding upon a request for repossession of property, whether the temporary user is entitled under the new law to be provided with alternative temporary accommodation. If it determines that this is the case, the

relevant body of the Ministry (i.e. the local Commission) shall provide the temporary user with appropriate accommodation before the expiry of the deadline for him or her to vacate the property concerned.

30. Any failure of the responsible authority to provide alternative accommodation for a temporary user cannot delay the return of the owner, possessor or user of such property.

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

32. 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.

33. Article 10 states that proceedings concerning return of property shall, unless otherwise specified, be carried out in accordance with the Law on General Administrative Proceedings and treated as an expedited procedure.

34. 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 or 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, which shall be agreed upon by the Office of the High Representative. The relevant Commission must also provide detailed documentation to the Ministry regarding the lack of available alternative accommodation to the Ministry.

35. Article 12 requires that the decision of the Commission be delivered to the current occupants of the property concerned. An appeal may be lodged against a decision within fifteen days of its receipt. However, the lodging of an appeal does not suspend the execution of the decision.

36. 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"). In the event that an application by a claimant has been rejected by the responsible body (i.e. the local Commission) on either formal or material grounds, the proceedings before the responsible body may be suspended pending the final decision of the Annex 7 Commission, if the Annex 7 Commission so requests. Any decision of the Annex 7 Commission shall be enforced by the appropriate authorities of the Republika Srpska.

37. Article 26 states that claims for repossession of property may also be filed by persons whose property was reallocated pursuant to, amongst others, Article 17 of the Law on the Use of Abandoned Property.

38. Article 29 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 no. 1/99 and entered into force on 21 January 1999. An amended instruction was contained in a decision of the High Representative dated 27 October 1999 and entered into force on 28 October 1999.

4. The Law on General Administrative Proceedings

39. The Law on General Administrative Proceedings (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.

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

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

42. 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.

43. 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.

44. 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.

45. Under Article 277(1), administrative execution shall be carried out by the administrative body which issued the first instance decision, unless a different procedure is provided for by law.

46. Article 286 states that if the person against whom execution is ordered does not comply with the decision, the administrative body which made the decision shall ensure the execution of the decision. The administrative body shall warn the person against whom execution is ordered that if he or she does not comply with the decision within a specified period that forceful means shall be employed to ensure execution of the decision. If he or she fails to comply with the decision within this specified period, the threatened means shall be applied and further stronger, means shall be threatened.

47. Article 287 provides for the use of direct force to ensure the execution of a decision which cannot be executed using the procedure provided for under Article 286 above.

IV. COMPLAINTS

48. The applicant complains of violations of his rights to property, to respect for his home and family life, of his right to liberty and of his right to personal security.

49. The Chamber has interpreted the applicant's complaints as relating to his right to a fair trial in the determination of his civil rights and obligations as guaranteed by Article 6 of the Convention, to his right to respect for his home as guaranteed by Article 8 of the Convention and to his right to peaceful enjoyment of his possessions as guaranteed by Article 1 of Protocol No. 1 to the Convention.

V. SUBMISSIONS OF THE PARTIES

50. The respondent Party has not made any submissions at all regarding the application.

51. The applicant maintains his complaint. He states that he has tried every possible avenue to regain full possession of his property without success. He claims that the authorities of the Republika Srpska act in an obstructive manner, by delaying his various proceedings and issuing incorrect decisions, all with the aim of denying him his rights.

VI. OPINION OF THE CHAMBER

52. Under Article XI of the Agreement the Chamber must 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 6 of the Convention

53. The applicant did not specifically claim that his rights as protected by Article 6 of the Convention had been violated. However, the Chamber raised this issue of its own motion when it transmitted the application to the respondent Party.

54. Article 6 of the Convention reads 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 ...."

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

56. The Chamber recalls that it has held 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. case no. CH/98/659 *et al., Pletilić and others,* decision on admissibility and merits delivered on 10 September 1999, paragraph 191, Decisions August-December 1999).

57. The Chamber notes that the applicant, together with his father, initiated proceedings before the Municipal Court in Banja Luka on 8 December 1997, alleging disturbance of possession and requesting that the other occupants be ordered to vacate the property. On 9 March 1998 the Court suspended the proceedings in the case, as proceedings concerning the issue were pending before the Ministry. These proceedings are still pending before the Court. As the Chamber has previously noted, the courts of the Republika Srpska have a practice of suspending consideration of claims for repossession of abandoned and other property, holding that such questions are to be determined by administrative proceedings before the Ministry.

58. On 5 February 1998 the applicant initiated further proceedings in the same matter which are still pending before the Court.

59. The Chamber notes that Article 121 of the Republika Srpska 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 20 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 Chamber has previously found that in the absence of a specific statement to that effect, the old law did not remove court jurisdiction over property that was considered to be abandoned (see *Pletilić and others,* sup. cit., paragraph 194).

60. Nevertheless, the practical effect of the decision of the Court of 9 March 1998 is that it is impossible for the applicant to have the merits of his civil action against the current occupants of his property determined by a tribunal within the meaning of Article 6 paragraph 1 of the Convention. Accordingly, there has been a violation of his right to effective access to court as guaranteed by Article 6 paragraph 1 of the Convention.

2. Article 8 of the Convention

61. The applicant alleged a violation of his right to respect for his private and family life. The Chamber has interpreted this as an allegation of a violation of his rights as protected by Article 8 of the Convention. Article 8 reads as follows:

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

62. The Chamber notes that the applicant has lived in the house since November 1997, when he came to Bosnia and Herzegovina to look after his ill father. The Chamber therefore considers that the house is his "home" for the purposes of Article 8 of the Convention. He has expressed his wish to bring his family to live with him, but states that he is unable to do so due to the fact that the R. and B. families live there. The case involves an issue concerning the applicant's right to respect for his family life as guaranteed by Article 8 of the Convention.

63. The R. and B. families did not enter into the house in accordance with a decision of the Ministry or other body of the Republika Srpska, but rather forcibly entered into it in August 1995. On 13 February 1998 the Commission in Banja Luka issued decisions entitling those families to occupy the house.

64. On 27 May 1999, after proceedings initiated by the applicant, the Commission ordered the applicant's house to be returned into his possession (see paragraph 19 above). The law of the Republika Srpska contains a detailed regime for the execution of administrative decisions, set out in the Law on Administrative Proceedings (see paragraphs 39-47 above). This regime provides for the application of various methods to ensure that administrative decisions are complied with.

65. Despite this, the decision of the Commission of 27 May 1999 still has not been complied with. The applicant has sought execution of the decision, without success. In any event, the responsibility for ensuring compliance with administrative decisions lies with the body which issues the decision, in this case the Commission. However, according to the information available to the Chamber it has not taken any of the steps required by the law of the Republika Srpska to ensure the execution of its decision. The failure of the authorities of the Republika Srpska to implement the decision of the Commission constitutes an interference with the right of the applicant to respect for his home, as it has prevented him from enjoying possession of all of it. In addition, the applicant claims that the actions of the respondent Party constitute an interference with his right to respect for his family life, as his wife and child have not been able to join him in Banja Luka. This, he claims is because of the lack of space available to him in his home. The respondent Party has not contested this claim and the Chamber has no reason to doubt that it is true.

66. In conclusion, the decisions of the Commission of 13 February 1998 entitling the R. and B. families to live in the applicant's house and the failure of the respondent Party to enforce the decision of the Commission of 27 May 1999 constitute interferences with the applicant's right to respect for his home and family life. The Chamber must therefore consider whether these interferences can be justified in accordance with the terms of paragraph 2 of Article 8 of the Convention.

67. For an interference to be justified under the terms of paragraph 2 of Article 8 of the Convention, it must be "in accordance with the law", serve a legitimate aim and be "necessary in a democratic society". There will be a violation of Article 8 if any one of these conditions is not satisfied.

68. The Chamber has noted above that the law of the Republika Srpska provides for enforcement of administrative decisions by the issuing body. The administrative body which issued the decision in the present case, the Commission, has however not taken any steps to enforce its decision of 27 May 1999. The Chamber has held that the right to respect for one's home as guaranteed by Article 8 of the Convention also imposes an obligation upon the Parties to effectively secure the enjoyment of this right. This includes the existence of an enforcement mechanism to protect the rights of an individual e.g. the restoration of property constituting his or her home (see, e.g., case no. CH/96/28, *M.J.*, decision on admissibility and merits delivered on 3 December 1997, paragraph 26, Decisions on Admissibility and Merits 1996-1997). The *M.J.* case concerned a situation where the applicant had been illegally evicted from his home. However, the Chamber considers that the opinion of the Chamber in that case applies equally to the present case where the applicant only enjoys partial possession of the property.

69. In the present case the Commission has taken no steps to have its decision of 27 May 1999 enforced, despite the fact that it is obliged to do so by the law of the Republika Srpska. This failure cannot be justified under the second paragraph of Article 8 and therefore constitutes a violation of the applicant's right to respect for his home and family life. In view of this finding, the Chamber does not consider it necessary to examine the justification of the decisions of the Commission of 13 February 1998.

70. In conclusion there has been a violation of the right of the applicant to respect for his right to home and family life as guaranteed by Article 8 of the Convention.

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

71. The applicant complains that his right to property has been violated. The Chamber has interpreted this as an allegation of a violation of his right to peaceful enjoyment of his possessions as guaranteed by Article 1 of Protocol No. 1 to the Convention. This provision reads as follows:

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

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

73. The Chamber finds that the property concerned constitutes the applicant's "possession" within the meaning of Article 1 of Protocol No. 1 as he is the owner of the property.

74. The Chamber considers that the failure to enforce the decision of the Commission of 27 May 1999 entitling the applicant to regain full possession of his property constitutes an "interference" with his right to peaceful enjoyment of the property. This interference is ongoing as the applicant still does not enjoy full possession of his property.

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

76. The Chamber has found, in the context of its examination of the case under Article 8 of the Convention, that the failure of the Commission to implement its decision of 27 May 1999 was not in accordance with the law. This is in itself sufficient to justify a finding of a violation of the applicant's right to peaceful enjoyment of his possessions as guaranteed by Article 1 of Protocol No. 1. Accordingly, the rights of the applicant as guaranteed by this provision have been violated.

VII. REMEDIES

77. 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.

78. The Chamber considers it appropriate to order the respondent Party to take all necessary steps to enable the applicant to regain full possession of his property without further delay. The decision of the Commission of 27 May 1999 should be fully implemented without delay.

79. The applicant has submitted a claim for compensation. The respondent Party did not submit any observations on this claim.

80. In his claim for compensation the applicant requests compensation for the following matters:

- For the use of the property by the R. and B. families since the date they entered into possession of the property until the date of the decision of the Commission entitling them to occupy it, in the amount of 250 Convertible marks (*Konvertibilnih Maraka*, "KM") per month, totalling KM 7,500;

- For the use of the property by the R. and B. families since the date of the decision of the Commission entitling them to occupy it, in the amount of KM 250 per month;

- For lost movable and immovable property. The applicant claims that the families which occupy his property have stolen or damaged a significant amount of his property. The applicant lodged a request with the Commission for them to make a list of such property, which they have not done. The applicant claims that this engages their responsibility and that therefore the Republika Srpska is responsible for the property damaged by the R. and B. families. The applicant does not specify the value or type of property which he claims has been damaged or stolen.

81. The applicant also asks to be compensated for utility costs incurred by the R. and B. families and requests that such costs be calculated on the date of his regaining full possession of the property and for compensation for the additional costs he has incurred as a result of the fact that he and his family are forced to live separately.

82. The applicant also requests compensation for mental suffering caused by regular threats, inhuman and degrading treatment by the occupants, the R. and B. families.

83. Regarding the applicant's claim for compensation for the use of his property by the R. and B. families, the Chamber notes that they did not occupy the applicant's house with the approval of any authority of the Republika Srpska until 13 February 1998 when the Commission allowed them to occupy it. Accordingly, the Republika Srpska cannot be held responsible for their use of the house prior to that date. On 27 May 1999 the Commission ordered the house to be returned into the applicant's possession and ordered the R. family to vacate it (see paragraph 18 above). The Chamber recognises that the authorities of the respondent Party require a reasonable length of time to ensure the execution of decisions of this type. In the present case, the Chamber considers that a period expiring on 31 July 1999, i.e. approximately two months, is reasonable to allow the respondent Party sufficient time to ensure the execution of the decision. The Chamber considers that after the expiry of this period, i.e. as from 1 August 1999, the applicant should be awarded compensation for the use of his house by the R. and B. families. The applicant requested a sum of KM 250 per month under this head. The respondent Party has not contested this sum and the Chamber considers it an appropriate amount to award the applicant for the use of the property by the R. and B. families.

84. In respect of utility costs, the Chamber considers, for the same reasons as above, that the applicant should be awarded the sum of KM 30 per month for the same period.

85. For the above reasons the Chamber will order the respondent Party to pay to the applicant the sum of KM 250 per month for the occupation by the R. and B. families of the house and KM 30 per month in respect of utility costs caused by such occupation, as from 1 August 1999, until the end of the month in which the applicant regains full possession of his house.

86. Concerning the applicant's claim for lost property, the Chamber notes that he has not supplied any details of any such property. It cannot therefore award him any sum in respect of this claim, which is totally unsubstantiated.

87. Regarding the applicant's claim for moral damages, the Chamber does consider it appropriate to award him a sum under this head. The applicant has undoubtedly suffered stress as a result of the fact that he has to share his home with hostile strangers, while trying to care for his ill father. This stress would doubtless have been compounded by his inability to live together with his wife and family. The Chamber considers that the Republika Srpska can only be considered to be responsible for this stress as and from the passing of a reasonable time after the decision of the Commission of 27 May 1999. The Chamber therefore considers that a reasonable sum to award the applicant in respect of moral suffering is KM 2,000. It will accordingly award the applicant this sum. Additionally, the Chamber awards 4% (four per cent) interest as of the date of expiry of the period set for the implementation of the present decision, on the above sum.

VIII. CONCLUSION

88. For the above reasons, the Chamber decides,

1. by 5 votes to 1, that the impossibility for the applicant to have the merits of his civil action determined by a tribunal constitutes a violation of his right to effective access to court within the meaning of Article 6 of the European Convention on Human Rights, the Republika Srpska thereby being in breach of Article I of the Human Rights Agreement;

2. by 5 votes to 1, that there has been a violation of the right of the applicant to respect for his home and family life within the meaning of Article 8 of the Convention, the Republika Srpska thereby being in breach of Article I of the Agreement;

3. by 5 votes to 1, that there has been a violation of the right of the applicant to peaceful enjoyment of his possessions within the meaning of Article 1 of Protocol No. 1 to the Convention, the Republika Srpska thereby being in breach of Article I of the Agreement;

4. unanimously, to order the Republika Srpska, as soon as possible and in any event no later than one month after the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure, to take all necessary steps to ensure the enforcement of the decision of the Commission for the Accommodation of Refugees and the Administration of Abandoned Property in Banja Luka of 27 May 1999 ordering that the applicant be entitled to regain full possession of his house;

5. by 5 votes to 1, to order the Republika Srpska to pay to the applicant, within one month of the date of the present decision becoming final in accordance with Rule 66 of the Chamber's Rules of Procedure, the sum of 1,960 (one thousand nine hundred and sixty) Convertible Marks as compensation for the occupation of his house by the R. and B. families and the utility costs incurred by such occupation in respect of the period from 1 August 1999 until 29 February 2000;

6. by 5 votes to 1, to order the Republika Srpska to pay to the applicant, as compensation for the occupation of his house by the R. and B. families and the utility costs incurred by such occupation, within two months of the date of the applicant regaining full possession of his house, the sum of 280 (two hundred and eighty) Convertible Marks in respect of each full month from 1 March 2000 until the date he regains such possession;

7. by 5 votes to 1, to order the Republika Srpska to pay to the applicant, within one month of the date of the present decision becoming final in accordance with Rule 66 of the Chamber's Rules

of Procedure, the sum of 2,000 (two thousand) Convertible Marks as compensation for moral suffering;

8. unanimously, to reject the remainder of the applicant's claim for compensation as unsubstantiated,

9. by 5 votes to 1, to order that simple interest at an annual rate of four per cent will be payable on the sum awarded in conclusions 5, 6 and 7 above after the expiry of the period set in those conclusions for the payment of such sums; and

10. unanimously, to order the Republika Srpska to report to it, within two weeks of the expiry of the time-limit referred to in conclusion 4 above, on the steps taken by it to comply with the above orders.

(signed)
Anders MÅNSSON
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel