DECISION ON ADMISSIBILITY AND MERITS
(delivered on 11 January 2002)

Case no. CH/98/704

JOVANKA KOVAČEVIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 8 January 2002 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. Ulrich GARMS, Registrar
Ms. Olga KAPIĆ, Deputy Registrar

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

Adopts the following decision pursuant to Article VIII(2) and Article XI of the Agreement as well as Rules 52, 57 and 58 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The applicant owned a house and business premises (hereinafter "the house") built on socially owned land in the Municipality of Sanski Most. In October 1995 the applicant left Sanski Most due to the hostilities. On 19 December 1995 the house burnt down completely in a fire. The remaining ruins were removed. In 1997 the Municipality classified the plots on which the applicant's house had stood before the fire to be undeveloped building land. In 1998 the Municipality allocated the plots to S. K. and allowed S. K. to build on the plots in question, thereby ignoring the applicant's priority right to reconstruct the house on the land. The applicant applied to the Municipality to stop the ongoing construction works on the plots. However, no such order was passed and S. K. meanwhile has built a house on the plots in question. The applicant died on 28 November 1998. Her daughter pursues the case.

2. The case mainly raises issues under Article 1 of Protocol No. 1 to the European Convention of Human Rights (hereinafter "the Convention").

II. PROCEEDINGS BEFORE THE CHAMBER

3. The application was introduced via the Human Rights Ombudsperson for Bosnia and Herzegovina and registered on 10 July 1998. It included a request for provisional measures asking the Chamber to order the respondent Party to take the necessary steps to stop all ongoing construction on the plots kč 759, 760, registered in the possession list (PL) 1089 of cadasteral municipality (KO) of Sanski Most. On 16 July 1998 the Chamber refused the request for provisional measures and decided to transmit the case to the respondent Party for its observations.

4. The case was transmitted to the respondent Party on 11 August 1998. On 29 September 1998 the respondent Party requested an extension of the time-limit fixed for the observations on admissibility and merits.

5. On 19 October 1998 the Chamber informed the applicant that the respondent Party had not submitted observations on admissibility and merits within the time-limit and afforded the applicant the possibility to submit a compensation claim.

6. On 10 November 1998 the Chamber received from applicant further observations containing further information and a compensation claim. The applicant asked for allocation of another building plot in Sanski Most and 426.000 Convertible Marks (Konvertibilnih Maraka, hereinafter "KM") as compensation for the burnt-down house.

7. On 2 February 1999 the applicant's further information and compensation claim was transmitted to the respondent Party for observations. On 18 May 1999 the daughter submitted a letter to the Chamber pointing out the urgency of the case.

8. On 10 March 2000 the Chamber received a letter and further documents from the daughter.

9. On 15 March 2000 the Chamber received observations on admissibility and merits from the respondent Party. On 23 March 2000 these were transmitted to the daughter who replied submitting observations on 17 April 2000.

10. On 2 April 2001 the Chamber received additional information from the respondent Party and an up-date on the compensation claim of the daughter now asking for a total of 846,000 KM. On 20 April 2001 the Chamber transmitted the compensation claim to the respondent Party. On 3 May 2001 the applicant's daughter submitted new documents. The respondent Party sent additional observations on the compensation claim which were received on 19 May 2001. On 29 May 2001 the Chamber received additional information from the respondent Party.

11. On 25 September 2001 the Chamber requested additional information from both Parties which was received on 8 October 2001 from the applicant and on 19 October 2001 from the respondent Party.

12. On 8 February 2000, 9 March 2001, 10 October 2001, 9 November 2001 and 6 December 2001 and on 7 and 8 January 2002 the Chamber considered the admissibility and merits of the application. On 8 January 2002 the Chamber adopted the present decision.

III. FACTS OF THE CASE

13. The applicant owned a house and business premises used as a café and restaurant built on socially owned land in the Municipality of Sanski Most (hereinafter "the Municipality"), cadasteral plots no. 759 and 760, registered in the possession list (PL 1089) in the cadasteral municipality (KO) of Sanski Most (hereinafter "the plots"). During the hostilities, in October of 1995, the applicant, who is a citizen of Bosnia and Herzegovina of Serb ethnic origin, left Sanski Most for Banja Luka.

14. On 19 December 1995 the house burnt down completely. The report of the Army of Bosnia and Herzegovina of 20 December 1995, which investigated the fire, established that construction workers who were working in the building had made a big fire in the fireplace on the evening of 19 December 1995, a cold winter night. They left the building at around 7 p.m. when they thought that the fire was weak enough to be left without surveillance. Probably as a result of a blocked chimney wooden constructions in the house caught fire. The house and all other facilities completely burnt down in spite of efforts of local people, members of the military and the fire brigade to extinguish the fire. A police investigation into the cause of the fire was carried out but no-one was found criminally responsible for the incident. It remains unclear who had employed the workers to do construction work in the house. Subsequently, the remaining ruins were removed from the plots.

15. In the period after the 1992-95 war, the Municipality was faced with massive destruction of housing due to the hostilities. This resulted in problems of finding suitable living space for a growing number of refugees. On 5 February 1997 the Municipality therefore formed a commission to determine the right to use city building land. The commission allowed the allocation of undeveloped building land to the citizens of Sanski Most even at the cost of holders of pre-war rights over this land. However, the reallocation was only possible under the condition that the land in question was socially owned and undeveloped.

16. By procedural decision of 7 June 1997 the applicant was deprived of her right to use the building land and the Municipality classified the land which the applicant's house had stood on as undeveloped building land. The fact that the applicant had a right to reconstruct the house on the same plots according to Article 43 paragraph 2 of the Law on Building Land (see paragraph 31 below) was ignored. It remains unclear whether the Municipal organ was aware of the fact that there had been the applicant's house on the plots before the fire of 19 December 1995 and that it had not been undeveloped land.

17. On 27 April 1998 the Municipality allocated the plots to S. K. and on 6 June 1998 it passed a procedural decision to allow S. K. to build on the plots in question. S. K. paid 10,710 KM for the right to use the land.

18. Already on 4 June 1998, the applicant had filed a request to the Municipality to stop any construction on the plots. However, in accordance with his permit, S. K. started construction works and built a house with a roof, water and electricity and also business premises on the plots. The applicant allegedly in due course orally addressed the Municipality several times, but never received any response from the Municipal organs in charge of the issue.

19. The applicant died in November 1998. Her daughter and heir pursues the case before all relevant bodies, including the Human Rights Chamber.

20. On 28 January 2000, upon a request of the daughter, the Cantonal Court in Bihać passed a judgment annulling the first instance procedural decision of 7 June 1997 in which the applicant was deprived of her right over the plots and which had declared that the Municipality had all rights over the plots. In its decision the Court referred to the High Representative's decision of 26 May 1999. This decision states that all socially owned land which was after 6 April 1992 *inter alia* used by

natural persons for residential purposes and business activities may not be disposed of by the authorities of the Entities or Bosnia and Herzegovina. Any such decision made by the authorities of the Entities after 6 April 1992, which affects the rights of refugees and displaced persons, shall be null and void, unless a third party has undertaken lawful construction work.

21. On 2 September 1999, the applicant's daughter initiated proceedings before the Municipal Court in Sanski Most asking for the hand-over of the plots. The daughter requested only the transfer of the plots, including the newly built house of S.K., but did not make an alternative claim for compensation in case a transfer of the plots was rejected. On 6 April 2000 the Municipal Court in Sanski Most passed a judgment rejecting the claim. The daughter then submitted an appeal to the Cantonal Court in Bihać which was refused on 21 December 2000.

22. The competent administrative body in Sanski Most awaited the outcome of the court proceedings (described in paragraph 21 above) before it took action in order to give effect to the judgment of the Cantonal Court in Bihać of 28 January 2000 annulling the procedural decision of the Municipality of 7 June 1997, as requested by the applicant.

23. On 4 May 2001 the competent municipal authority of Sanski Most passed a decision to deprive the applicant's daughter of the rights over the plots. It thereby acknowledged the fact, that S.K. had in the meantime built on the land. The decision was based on the idea, that as the land was no longer undeveloped, the applicant's daughter could not exercise the right to reconstruct a house on the plots.

24. On 24 May 2001, in accordance with the Law on Expropriation, a public hearing for the determination of the compensation due to the applicant's daughter for the loss of her rights over the plots was to be held in Sanski Most at the site of the plots in the presence of the husband of the applicant's daughter. However, as he was not duly authorized, the hearing was postponed to 13 June 2001.

25. On 13 June 2001 a new hearing was held. The husband of the daughter, this time duly authorized, explained that he did not want to discuss compensation issues but merely repeated the claim for repossession of the plots. Thus, as no compensation could be agreed upon, in accordance with Article 77 of the Law on Expropriation, the case was transferred to the Municipal Court in Sanski Most for the determination of a fair compensation. The case is still pending before the Municipal Court.

IV. RELEVANT LEGISLATION

A. The Law on Building Land

26. The Law on Building Land (Official Gazette of SRBiH, nos. 34/86, 1/90, 29/90) was applied in the former Socialist Republic of Bosnia and Herzegovina and in the Republic of Bosnia and Herzegovina and is still applied in Federation of Bosnia and Herzegovina. The Decree with the Force of Law on Amendments to the Law on Building Land (Official Gazette of RBiH, no. 3/93) was confirmed as law on the basis of the Law on Confirming the Decrees with the Force of Law (Official Gazette of RBiH, no. 13/94).

27. The Law on Building Land regulates the conditions, the manner and the time of cessation of the proprietary rights over the land in cities/towns and settlements/housing projects of urban character and other areas envisaged for residential and other construction, compensation for that land, principles of developing and utilising the building land in social ownership (Article 1).

28. The Law on Building Land provides that no right of ownership can exist over building land in a city or town (Article 4). Building land cannot be alienated from social ownership, but rights defined by law may be gained over it (Article 5). The municipality governs and disposes of building land subject to conditions provided by law and regulations issued pursuant to the law (Article 6). Rights in respect of building land shall be asserted in proceedings before a regular court if not otherwise stated by law (Article 11).

29. The former owner of building land transferred into social ownership enjoys a temporary right to use land not yet used for construction, a priority right to use land not yet built on for the purpose of construction as well as a permanent right to use building land already used for construction as long as the building continues to exist on the land (Article 21(1) and (3) and Article 40(1)).

30. The permanent right to use the land may be transferred, alienated, inherited or mortgaged only together with the building. In case of expropriation of the building, the procedural decision on expropriation shall terminate the previous owner's right of permanent use of the land under the building and of the land serving for the regular use of the building (Article 42).

31. Subject to the above-mentioned possibility of expropriation, the permanent right to use the land lasts as long as the building remains on it. If the building is removed on the basis of a decision of a competent organ because of its deterioration, or is destroyed by *vis major*, its owner has the priority right to use the land for construction on condition that an urban development plan envisages the construction of a building. The owner of a building who removes it in order to build a new one has a similar priority right to use the land, again provided that the relevant plan envisages such construction (Article 43).

32. The previous right holder over building land on which no facilities stand and whose land is taken over has the right to compensation. He acquires the right to compensation as soon as the decision of the Municipality to take over his land becomes legally valid. The compensation shall be paid by the Municipality in which the land is situated. The compensation shall be determined and paid as set out in the provisions of the Law on Expropriation (Article 44).

B. The Law on Expropriation

33. The Law on Expropriation ("OG SRBiH" no. 12/87, 38/89, 4/90 and "OG RBiH" no. 15/94) establishes the legal framework for expropriation. According to Article 44 of the Law on Building Land, the provisions concerning compensation in the Law on Expropriation are also applicable when the priority right to use the building land is taken away.

34. In Chapter VII the law sets out the regulations in regard to compensation for expropriated property. In Articles 50 to 74 the Law provides for a detailed regime on how to calculate the appropriate compensation in regard to different kinds of property, e.g., forests, orchards, fertile and infertile land or buildings. Article 49 sets out the general rule, namely that the market price shall be the determining factor in establishing the compensation to be paid for the expropriated land.

35. Articles 75 to 87 prescribe the proceedings in regard to the determination of compensation. According to Article 75, once the procedural decision on expropriation becomes effective the competent administrative organ of the municipality must without delay hold a hearing to effect an agreement on compensation for the real property. This public hearing should be prepared by an exchange of written proposals and information between all parties concerned. Article 76 states that any agreement reached must contain the form of compensation and the amount to be paid. It also must contain a time-frame within which the beneficiary has to fulfil his obligations. Both parties must sign a record of the agreement. This signed record has the force of an enforceable procedural decision.

36. Article 77 concerns the case that the parties fail to reach an agreement on the compensation. In that event the beneficiary may all the same try to pay the owner the sum offered as compensation in the expropriation proceedings. He must do so within 15 days of the offer. If the owner refuses to accept the money, the beneficiary can deposit the money with the court on behalf of the owner within 10 days after the refusal.

37. If no agreement on compensation is reached within two months of the date on which the procedural decision on expropriation becomes effective, the competent administrative organ of the municipality shall transmit the procedural decision and all the files to the competent regular court of the area in which the expropriated property is located for determination of the compensation (Article 79). The transmitted files should include evidence of any payment made by the beneficiary in

accordance with Article 77.

38. The competent court shall then decide *ex officio* in extra-judicial proceedings on the amount of compensation. The court shall take into account the amount of compensation paid in similar cases in the same area where an agreement has actually been reached, provided that an agreement was reached in a majority of cases (Article 80).

39. Should the court find that the amount deposited by the beneficiary in the expropriation procedure is not sufficient for an equitable compensation for the value of the property at the time of the deposit of the money, the court shall determine how much compensation remains to be paid (Article 81).

40. Article 85 of the Law on Expropriation provides that the beneficiary is obliged to pay the compensation to the former owner within 15 days after the court decision enters into force. In case the pervious owner refuses to accept the compensation, it must be paid into a deposit at the court within another 10 days. If the beneficiary fails to do so he must pay legal interest on the amount to the previous owner.

C. Decision of the High Representative of 26 May 1999

41. On 26 May 1999 a decision of the High Representative came into force according to which "state property including former socially-owned property may not be disposed of (including allotment, transfer, sale, giving for use or rent) by the authorities of the Entities or Bosnia and Herzegovina if it was used on April 6, 1992 ... by natural persons for residential purposes and business activities...." In addition the decision states that: "any decision referred to in the previous paragraph made by the authorities of the Entities after 6 April 1992, which affects the rights of refugees and displaced persons shall be null and void, unless a third party has undertaken lawful construction work. Any decision, agreement or transaction concluded in violation of this Decision shall be null and void."

V. COMPLAINTS

42. The applicant claims a violation of her rights under Articles 1 of Protocol No. 1 (peaceful enjoyment of possessions) to the Convention and of Article 6 of the Convention ("fair trial" "within a reasonable time"), on the ground that the respondent Party did not order a stop of the construction works on the plots for which the applicant claims a priority building right.

VI. SUBMISSIONS OF THE PARTIES

A. The respondent Party

43. As to the admissibility of the application, the respondent Party states that the Chamber is not competent *rationae materiae* as this case should be solved by the Commission for Displaced Persons and Refugees (hereinafter the "CRPC"). In addition, it argues that the case is inadmissible as the applicant has not exhausted the available domestic remedies because she did not apply to the CRPC.

44. In regard to the merits of the case the respondent Party claims that there has been no violation of the applicant's rights. Article 6 was not violated because, in light of the complexity of the case, the decision of the Cantonal Court in Bihać ending the administrative dispute in favour of the applicant by annulling the decision of the Municipality constitutes a decision within a reasonable time. In its observations on the compensation claim, the respondent Party states that the applicant has the right to a fair compensation in accordance with Article 44 of the Law on Building Land and the Law on Expropriation for the loss of her priority building right. If she is not satisfied with the compensation awarded she can go before the competent courts. The respondent Party is of the opinion that it cannot be held responsible for the fire and hence does not need to compensate the applicant for the value of the house.

B. The applicant

45. The applicant maintains her complaints. As to the exhaustion of local remedies, the applicant states that she was not obliged to apply to the CRPC.

VII. OPINION OF THE CHAMBER

A. Admissibility

46. In accordance with Article VIII(2) of the Agreement,

> "the Chamber shall decide which applications to accept ... and shall take into account the following criteria:
> (a) Whether effective remedies exist, and that the applicant has demonstrated that they have been exhausted ...
> ...and ..
> (d) The Chamber may reject or defer further consideration if the application concerns a matter currently pending before any other international human rights body responsible for the adjudication of applications or the decision of cases, or any other Commission established by the Annexes to the General Framework Agreement."

47. In the present case, the respondent Party states that the Chamber is not competent *rationae materiae* as the case should have been dealt with by the CPRC and that in addition the applicant did not exhaust domestic remedies as she should have addressed the CRPC.

48. The Chamber notes that in the present case the applicant chose to apply to the Chamber and not to the CRPC. The applicant primarily alleges an interference with her priority building right as protected by Article 1 of Protocol No. 1 to the Convention, a right which is included among the rights and freedoms guaranteed under the Agreement. In accordance with its well-established case law (see, e.g., case no. CH/96/17, *Blentić,* decision on admissibility and merits of 3 December 1997, paragraphs 17-21 and 30-32, Decisions on Admissibility and Merits March 1996-December 1997; case no. CH/98/752 et al., *Bašić et al.,* decision on admissibility and merits of 10 December 1999, paragraphs 133-135, Decisions August-December 1999) the Chamber is competent *rationae materiae* to deal with applications concerning such alleged violations of property rights.

49. In regard to the claim that the applicant has not exhausted domestic remedies because she did not apply to the CRPC, the Chamber recalls its previous decision of 9 July 1999 in the case CH/98/659 *Pletilić and 19 others* (paragraphs 156-161, Decisions July-December 1999). In this decision the Chamber explicitly found that an applicant is not required to apply to the CRPC in order to comply with the requirement to exhaust domestic remedies set out in Article VIII(2)(a) of the Agreement. The existence of Article VIII(2)(d) of the Agreement illustrates that the requirement to exhaust "effective remedies" referred to in Article VIII(2)(a) of the Agreement does not include recourse to other Commissions established by the Agreement.

50. The Chamber further finds that no grounds for declaring the case inadmissible have been established. Accordingly, the case is to be declared admissible.

B. Merits

51. Under Article XI of the Agreement the Chamber must next address the question whether this case discloses a breach by the respondent Party of its obligations under the Agreement. Article I of the Agreement provides that the Parties shall secure to all persons within their jurisdiction the highest level of internationally recognised human rights and fundamental freedoms, including the rights and freedoms provided in the Convention and the other international agreements listed in the Appendix to the Agreement.

1. Article 1 of Protocol No. 1 to the Convention (right to property)

52. The applicant claims that the allocation of the plots to S. K. by the Municipality amounts to a violation of her right as protected by Article 1 of Protocol No. 1 to the Convention.

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

54. Article 1 of Protocol No. 1 thus contains three rules. The first is the general principle of peaceful enjoyment of possessions. The second rule covers deprivation of property and subjects it to the requirements of public interest and conditions laid out in law. The third rule deals with control of use of property and subjects this to the requirement of the general interest and domestic law. It must be determined in respect of all of these situations whether a fair balance was struck between the demands of the general interest of the community and the requirements of the protection of the individual applicant's fundamental rights (see case no. CH/96/17, *Blentić,* decision of 5 November 1997, paragraph 31, Decisions on Admissibility and Merits 1996-1997).

a. Possessions within the meaning of Article 1 of Protocol No. 1

55. The Chamber notes that the right to use the plots for reconstruction purposes is an enforceable right with an economic value which is to be considered a "possession" of the applicant for the purposes of Article 1 of Protocol No. 1. (see case no. CH/99/2656 *Islamic Community in BiH*, decision of 6 December 2000, paragraph 111, Decisions July-December 2000). The Chamber will now examine whether in the present case the applicant had such a right.

56. Article 43 of the Law on Building Land stipulates that in case a building has not been expropriated but destroyed either by *vis major* or by decision of the competent authority in view of its poor state of repair, its owner retains a priority right to use the land for construction, on condition that a regulatory plan or urban development plan envisages the construction of a building over which one can have a property right.

57. The Chamber recalls that v*is major* may be defined as any natural occurrence or act committed by a human being which could not have been foreseen or prevented and causes damage. For a natural occurrence or an act committed by a human being to qualify as *vis major* it is necessary: (1) that the occurrence is external to the dispute between the parties but influences their legal relationship; (2) that the occurrence was impossible to predict or prevent; and (3) that the occurrence has harmful consequences either in terms of causing damage or in preventing a party from complying with its obligations (*Pravni leksikon* (legal dictionary), *Savremena administracija*, Belgrade 1970, p. 1289).

58. The destruction of the house was completely outside the control of the applicant, who lived in Banja Luka at the time of the fire. The fire broke out as the result of a chain of unpredictable and unfortunate events: the wooden beams and then the entire house caught fire probably because of a blocked chimney that caused flames to reach out of the fire-place. The cause of the destruction may therefore included in the legal term *vis major*.

59. The second condition set in Article 43 is also met: Once the house was destroyed the right to use that land for new construction depends on whether the regulatory plan or general urban plan envisages such structures. The fact that the applicant's house used to stand on the plots until 17 December 1995 and that S. K. could obtain a valid building permit for the plots illustrates the existence of such an urban plan or regulatory plan. The Chamber is therefore satisfied that the

applicant has a priority right to use the plots under Article 43 of the Law on Building Land. Moreover, also the decision of the Cantonal Court in Bihać of 28 January 2001 confirms that the applicant has such a priority building right.

60. The Chamber finds that in the present case the applicant has a right to use the plots for reconstruction purposes which is to be considered a "possession" of the applicant for the purposes of Article 1 of Protocol No. 1. The Chamber must next consider whether the respondent Party has interfered with the applicant's possessions.

b. Interference

61. The Chamber finds that the Municipality's decision of 7 June 1997 to deprive the applicant of her right to priority use, the decision of 27 April 1998 to allocate the plots to S.K., the decision of 6 June 1998 to issue a building permit in favour of S.K. and the subsequent failure of the respondent Party's authorities to stop S.K.'s construction works on the site, interfered with the applicant's enjoyment of her possessions. As a result, the applicant's priority building right became *de facto* void because S.K. erected a house on the plots. The actions of the respondent Party must therefore be considered to constitute a *de facto* deprivation of the applicant's possessions within the meaning of the second rule of Article 1 of Protocol No. 1.

62. Any deprivation of possessions must always be of public interest and subject to conditions provided for by law. The Chamber will now examine whether these conditions were followed in the case of the applicant.

c. Lack of justification

63. The Chamber notes that the procedural decision of 7 June 1997 was annulled on 28 January 2000 by the Cantonal Court in Bihać. On 4 May 2001 the competent municipal authority of Sanski Most passed a decision to deprive the applicant's daughter of the rights over the plots. The attempt to compensate the applicant's daughter for the loss of the priority building right over the plots is still pending before the Municipal Court in Sanski Most.

64. In the context of the procedural decision of 7 June 1997 to deprive the applicant of her priority building right and to transfer to the Municipality the right to reallocate the land, the Chamber recalls the decision of the High Representative of 26 May 1999. This decision declares that state property, including former socially-owned property, may not be disposed of (including allotment, transfer, sale, giving for use or rent) by the authorities of the Entities or Bosnia and Herzegovina if it was used "on April 6, 1992 by natural persons for residential purposes and business activities"... and that "any decision referred to in the previous paragraph made by the authorities of the Entities after April 6, 1992 which affects the rights of refugees and displaced persons shall be null and void, unless a third party has undertaken lawful construction work." The procedural decision of 7 June 1997 falls within the scope of the decision of the High Representative, in particular in light of the fact that the applicant, a refugee, expressed her wish to return to Sanski Most.

65. In addition the applicant, and respectively her daughter, have not yet received any compensation for the *de facto* deprivation of their priority right to reconstruct a house on the plots. Compensation is an essential factor when assessing whether the deprivation was justified.

66. The Chamber notes that according to Article 44 of the Law on Building Land in conjunction with the relevant Articles in the Law on Expropriation, the applicant is entitled to receive compensation. The respondent Party in its submission of 19 May 2000 admits that such a claim exists. Article 1 of Protocol No. 1 embodies the principle that a fair balance between the interests of the State and the possessor must be struck. Compensation terms are material to the assessment of whether a fair balance has been struck between the various interests at stake and whether or not a disproportionate burden has been imposed on the person who has been deprived of his possessions (see, e.g., European Court on Human Rights, *Lithgow et al. v. The United Kingdom,* judgment of 18 July 1986, Series A no. 102, paragraphs 109, 120).

67. The Chamber finds that the fact that the respondent Party took over the applicant's priority right to build on the plots without compensation and the subsequent failure of the respondent Party's authorities to act upon the request of the applicant and to stop the construction works constitute an unjustified deprivation of the applicant's right which results in a violation of the right to the peaceful enjoyment of possessions under Article 1 of Protocol No. 1 to the Convention.

2. Article 6 of the Convention

68. The applicant complains of a violation of her rights guaranteed by Article 6, paragraph 1 of the Convention. That provision reads, in relevant part, 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 ...."

69. The Chamber has already decided that the case primarily raises issues under Article 1 of Protocol No. 1 to the Convention. It considers that, in light of the finding of a violation of that Article, it is not necessary for it to examine the case under Article 6 of the Convention.

VIII. REMEDIES

70. Under Article XI(1)(b) of the Agreement the Chamber must next address the question what steps shall be taken by the respondent Party to remedy breaches of the Agreement which it has found, including orders to cease and desist, monetary relief (including pecuniary and non-pecuniary damages), and provisional measures.

71. The Chamber notes that the applicant on 10 November 1998 submitted a compensation claim. She asks to be allocated in the Sanski Most area other plots of building land of 600 square metres and in addition to be compensated 426,000 KM for the value of her house, i.e. 1,500 KM per square metre for a total surface of 284 square metres. She does, however, not claim in that submission that the respondent Party can be held directly responsible for the fire and subsequent destruction of the house. In the up-date of her compensation claim of 2 April 2000 the applicant's daugther asks in addition for 300,000 KM for lost income (60,000 KM a year), 60,000 KM for mental pain and 60,000 KM for the land taken.

72. The Chamber considers it appropriate to order the respondent Party to allocate to the applicant's daughter, within three months from the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure, plots of city building land in the Municipality of Sanski Most that are of equivalent size, value and quality as the plot which the applicant had a priority right to use.

73. The Chamber does not consider it appropriate to compensate the applicant in money for the loss of land in light of the fact because it will order the respondent Party to allocate plots of city building land in the Municipality of Sanski Most that are of equivalent value and quality as the plots over which the applicant had a priority right to use.

74. Lastly, the Chamber does not consider it appropriate to order the respondent Party to pay the applicant, respectively her daughter, compensation for the value of the house that burnt down and compensation for lost profit due to the fact that the applicant could not use the business premises destroyed by the fire. The responsibility of the respondent Party for the fire and the subsequent destruction of the house could not be established, nor does the applicant claim and substantiate that such a responsibility exists.

IX. CONCLUSION

77. For the above reasons, the Chamber decides,

1. unanimously, to declare the application admissible;

2. unanimously, that there has been a violation of the applicant's right to peaceful enjoyment of her possessions as protected under Article 1 of Protocol No. 1 to the Convention, because the respondent Party, the Federation of Bosnia and Herzegovina, disregarded the applicant's priority building right without compensating the applicant for the loss of her right and allocated the land to a third party, the respondent Party thereby being in violation of Article I of the Agreement;

3. unanimously, that there is no need to examine the case under Article 6 of the Convention;

4. unanimously, to order the respondent Party to allocate to the applicant's daughter, within three months from the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure, a plot of city building land in the Municipality of Sanski Most of equivalent size, value and quality as the plots which the applicant had a priority right to use;

5. unanimously, to reject the remainder of the applicant's claim for compensation;

6. unanimously to order the respondent Party to report to the Chamber by 11 April 2002 on the steps taken to comply with the above order.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Giovanni GRASSO
President of the Second Panel