



DECISION ON THE ADMISSIBILITY AND MERITS

DELIVERED ON 11 JUNE 1999

CASE No. CH/98/800

Ljiljana GOGIĆ

against

THE REPUBLIKA SRPSKA

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

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

Mr. Leif BERG, Registrar
Ms. Olga KAPIĆ, Deputy Registrar

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

Adopts the following decision pursuant to Articles VIII(2) and XI of the Agreement and Rules 52, 57 and 58 of the Chamber’s Rules of Procedure:

I. INTRODUCTION

1. The applicant is a citizen of Bosnia and Herzegovina. She occupies a house located at Milana Tepića 64 in Kozarska Dubica, which she uses as a business premises ("the premises"). On 26 February 1990, the applicant entered into a rental agreement with the owner of the premises. They concluded a further contract on 4 September 1995, which is valid for a period of five years from 30 August 1995. On 3 July 1998, the Commission for the Accommodation of Refugees and the Administration of Abandoned Property in Kozarska Dubica ("the Commission"), a department of the Ministry for Refugees and Displaced Persons ("the Ministry") declared the applicant to be an illegal occupant of the premises and ordered her to vacate them within three days under threat of forcible eviction.

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

II. PROCEEDINGS BEFORE THE CHAMBER

3. The application was introduced on 24 July 1998 and registered on the same day.

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

5. On 27 July 1998 the President of the Second Panel ordered, pursuant to Rule 36(2), the respondent Party to refrain from evicting the applicant from the premises. The order stated that it would remain in force until the Chamber has given its final decision in the case, unless it was withdrawn by the Chamber before then.

6. On 10 September 1998 the Second Panel decided, pursuant to Rule 49(3)(b) of the Rules of Procedure, to transmit the application to the respondent Party for observations on its admissibility and merits. Under the Chamber's Order concerning the organisation of the proceedings in the case, such observations were due by 18 October 1998. It also decided to request the applicant to submit certain further factual information, which was received on 6 October 1998.

7. On 11 October 1998, the Human Rights Ombudsperson for Bosnia and Herzegovina ("the Ombudsperson") informed the Registrar of the Chamber that she did not wish to intervene in the proceedings before the Chamber.

8. No observations were received from the respondent Party.

9. On 20 November 1998, the applicant was requested to submit a written statement and any claim for compensation or other relief which she wished to make. No reply was received within the one-month time-limit laid down by the Chamber's Order concerning the organisation of the proceedings in the case. On 25 January 1999, the Registry wrote to the applicant again, reminding her that her reply was overdue. Her statement, which did not contain a claim for compensation, was received by the Chamber on 2 February 1999.

10. On 5 February 1999, the applicant's written statement was transmitted to the Agent of the respondent Party for information.

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

III. ESTABLISHMENT OF THE FACTS

A. The particular facts of the case

12. 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.

13. The applicant occupies a house located at Milana Tepića 64, Kozarska Dubica, Republika Srpska, in which she operates a shop. On 26 February 1990, the applicant entered into a rental contract with Z.Ć., the owner of the premises. The main terms of this contract were that it was valid for a period of five years. The applicant was obliged to pay YUD 500 (approximately KM 45 at current rates) per month to the owner as rent. The contract was certified by the Municipality of Bosanska Dubica, as it was then called. The parties entered into a further contract concerning the premises on 4 September 1995. This contract is valid from 30 August 1995 until 30 August 2000. A monthly rent of YUD 100 is payable under this contract. The applicant still occupies the premises.

14. On 3 July 1998, the Commission issued a decision declaring the applicant to be an illegal occupant of the premises under Article 10 of the Law on the Use of Abandoned Property (see paragraph 20 below). This decision ordered the applicant to vacate the premises within three days of the date of delivery, under threat of forcible eviction. The applicant received this decision on 23 July 1998. She appealed to the Ministry on 24 July 1998, on the basis that she could not be considered to be an illegal occupant of the premises as she had entered into a contract with the owner which entitled her to use it. The applicant has not received any response to this appeal to date. She was orally informed by an unidentified person that she would be evicted from the premises on 27 July 1998. This eviction was not carried out. The applicant still occupies the premises.

B. Relevant legislation

1. Constitution of the Republika Srpska

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

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

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

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

2. The Law on the Use of Abandoned Property

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

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

19. Article 3 of the Law states that abandoned property is to be temporarily protected and managed by the Republika Srpska. To this end, the Ministry is obliged, in Article 4, to establish commissions to carry out this task. Article 6 states that these commissions shall issue decisions on

the allocation of abandoned property. The preparation of registers of abandoned property is to be carried out by the appropriate administrative bodies in each municipality.

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

21. Article 15 of the Law reads as follows:

“Abandoned apartments, houses and other abandoned housing facilities shall be allocated exclusively to refugees and displaced persons and persons without accommodation as a result of war activities, in accordance with the following priorities:

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

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

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

24. Article 18 of the Law states that the utilisation of abandoned business premises shall be regulated by a separate law.

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

26. Article 49 of the Law reads as follows:

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

27. Article 53 of the Law reads as follows:

“The owners or users of real and other property situated in the Republika Srpska who left the territory of the Republika Srpska after 6 April 1992 cannot deal with their property through an authorised person.”

Contracts or agreements referred to in the above paragraph relating to the disposal of real and other property concluded after the entry into force of this Law are invalid. In such situations, certification of the signatures of parties to such a contract may not be carried out by the responsible authorities.

(...)”

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

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

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

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

4. The Law on Administrative Procedures

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

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

33. Article 8 reads as follows:

“(1) Before making a decision a party has to be given the opportunity to express his or her opinion on all the facts and circumstances that are of importance in making an administrative decision.

(2) A decision may be made without hearing the opinion of a party only if provided by law.”

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

5. The Law on Administrative Disputes

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

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

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

7. The Decree on Court Taxation

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

IV. COMPLAINTS

38. The applicant complains that her rights to respect for home and to work have been violated.

V. SUBMISSIONS OF THE PARTIES

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

40. The applicant maintains her complaint and requests that she be allowed to continue to occupy the premises.

VI. OPINION OF THE CHAMBER

A. Admissibility

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

42. According to Article VIII(2)(a), the Chamber must consider whether effective remedies exist and whether the applicant has demonstrated that they have been exhausted. The Chamber notes that the respondent Party has not suggested that there is any “effective remedy” available to the applicant for the purposes of Article VIII(2)(a) of the Agreement.

43. The applicant lodged an appeal to the Ministry against the decision of the Commission of 3 July 1998. However, the lodging of such an appeal does not have any suspensive effect.

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

45. As the Chamber noted in the case of *Onić v. Federation of Bosnia and Herzegovina* (Case No. CH/97/58, Decision of 12 January 1999, paragraph 38), referring to the approach taken by the European Court of Human Rights in relation to the corresponding requirement in Article 26 of the Convention (presently Article 35 of the Convention, as amended by Protocol No. 11) the remedies available to an applicant must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness. In addition, when applying the rule on exhaustion it is necessary to take realistic account not only of the existence of formal remedies in the legal system concerned but also of the general legal and political context in which they operate as well as of the personal circumstances of the applicants.

46. The Chamber notes that even if the applicant had sought to avail herself of the remedies available to her, she would have had no prospect of success. This is due to the retroactive declaration that rental agreements such as that entered into by the applicant were null and void under Article 49 of the Law (see paragraph 26 above). In addition, Article 53 of the Law prohibits persons who have left the territory of the Republika Srpska after 6 April 1992 from dealing with property through authorised persons (see paragraph 27 above). Both of these provisions apply in the present case. Accordingly, the applicant would have had no prospect of success if she had sought to avail herself of the remedies available to her. The Chamber accordingly considers that there is no effective remedy available to the applicant which she should be required to exhaust. Accordingly, there is no ground for rejecting the application under Article VIII(2)(a) of the Agreement.

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

B. Merits

48. 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

49. In her application to the Chamber, the applicant claimed to be a victim of a violation of the right to respect for her home. This right is guaranteed by Article 8 of the Convention which reads, insofar as relevant, as follows:

“Everyone has the right to respect for ..., his home ...

There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

50. The Chamber notes that the applicant has occupied the premises, which is actually a house located in a residential area, since 1990. The question arises as to whether the premises can be considered to be the applicant’s “home” for the purposes of Article 8 of the Convention. She does not actually reside in the premises. However, she operates a shop there which is the sole source of income for herself and her child. This shop, which the applicant has operated from the premises for over eight years, must be considered to be an integral part of her life, both economically and socially. The Chamber therefore considers that it is appropriate to interpret the word “home” in the context of Article 8 of the Convention to include the premises concerned in the present case. Furthermore, this view is supported by the case-law of the European Court of Human Rights. In *Niemietz v. Germany*, (judgment of 16 December 1992, Series A No. 251–B, paragraphs 30–31), that Court held that “generally, to interpret the word ... ‘home’ as including certain professional or business activities or premises would be consonant with the essential object and purpose of Article 8 ...”. In addition, *General Comment 16(32)* on Article 17 of the 1966 International Covenant on Civil and Political Rights states that the word “home” “should be understood as the place where a person lives or carries out his habitual profession”. Although not considering the concept in the context of Article 8 of the Convention, this observation is useful in interpreting the notion of “home” generally.

51. The Chamber concludes, therefore, that the premises in question are to be considered as the applicant’s “home” for the purposes of Article 8 of the Convention.

52. The Chamber has already held that the threatened eviction of a person from his or her home constitutes an “interference by a public authority” with the exercise of the right to respect for home (*Turčinović v. Federation of Bosnia and Herzegovina*, Case No. CH/96/31, Decision of 11 March 1998, Decisions and Reports 1998, paragraph 20). The decision of the Commission of 3 July 1998 ordering the applicant’s eviction from the premises therefore constitutes an “interference by a public authority” with the applicant’s right to respect for her home. This decision has not been revoked to date and accordingly the interference is ongoing.

53. 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.

54. The Chamber has held that the phrase “in accordance with the law” does not merely refer back to domestic law but also relates to the quality of the law, requiring it to be compatible with the rule of law, which is expressly mentioned in the preamble to the Convention (*Kevešević v. Federation of Bosnia and Herzegovina*, Case No. CH/97/46, Decision of 10 September 1998, Decisions and Reports 1998, paragraph 52). To satisfy this requirement, the law must provide a measure of legal protection against arbitrary interferences by public authorities with the rights safeguarded by paragraph 1 of Article 8. More particularly, the law must be adequately accessible: the citizen must

be able to have an indication that is adequate in the circumstances, of the legal rules applicable to a given case. Secondly, a norm cannot be regarded as a “law” unless it is formulated with sufficient precision to allow the citizen to regulate his conduct: he must be able – if need be with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail. Finally, the law must provide certain procedural safeguards against abuse (cf. *ibidem*, paragraph 53, with further references).

55. In the present case the decision of the Commission of 3 July 1998 referred to Article 10 of the Law pursuant to which the applicant was to be considered an illegal occupant of the premises which she had contracted to rent in February 1990 with a five-year extension agreed on in September 1995. In the absence of any evidence to the contrary the Chamber must presume that the Commission considered her contract to fall within the scope of Articles 49 and 53 of the Law (see paragraphs 25 and 26 above), thereby having been retroactively annulled with the entry into force of the Law in February 1996. The Law thus rendered ineffective the applicant’s legitimate reliance on a contract which was lawful at the time of its conclusion and extension. The interference with her right to respect for her home does not appear to have been foreseeable for the purposes of Article 8 of the Convention and the legal provisions underlying the Commission’s decision to order the applicant’s eviction does not appear to meet the standards of a “law” as this expression is to be understood for the purposes of Article 8 of the Convention.

56. In addition, the Chamber recalls the requirement inherent in Article 8 of the Convention that a “law” within the meaning of that provision should contain procedural safeguards against abuse. The Chamber notes that the applicant was ordered by the decision of the Commission to leave her home within three days, under threat of forcible eviction. The decision of the Commission was made under Article 10 of the Law. The applicant was entitled to lodge an appeal to the Ministry against this decision, which she duly did, but this did not have the effect of suspending the eviction. Consequently, the applicant was not afforded any real opportunity of challenging the decision ordering his eviction. This is also in contravention of the *lex generalis* applicable to the situation, the Law on Administrative Procedures (see paragraphs 31-34 above), Article 8 of which requires the administrative organ to give the parties the opportunity to express his or her opinion on the matter before reaching a decision. The Law therefore did not afford the applicant an effective procedural safeguard against possible abuse.

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

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

58. The applicant did not specifically allege a violation of her rights as protected by Article 1 of Protocol No. 1 to the Convention. The Chamber raised it *proprio motu* when transmitting the case to the respondent Party for its observations on the admissibility and merits of the case. 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.”

59. The Chamber must first consider whether the right the applicant obtained under the contracts she entered into with the owner of the house constitute a “possession” within the meaning of Article 1 of Protocol No. 1. The Chamber has previously noted that the European Court of Human Rights has given a wide interpretation to the concept of “possessions”, holding that it covers a wide variety of rights and interests having economic value (*M.J. v. Republika Srpska*, Case No. CH/96/28, Decision of 7 November 1997, Decisions on Admissibility and Merits 1996–1997, paragraph 32).

60. The Chamber notes that the applicant’s contractual right is of great value to her, granting as

it does the right for her to occupy the premises and accordingly to operate her shop from there. This right therefore constitutes the applicant's "possession" within the meaning of Article 1 of Protocol No. 1.

61. Having established that the applicant's right to occupy the premises constitutes her possession, the Chamber next finds that the decision of the Commission of 3 July 1998 declaring the applicant to be an illegal occupant and ordering her to vacate the premises within three days interfered with her right to peaceful enjoyment of that possession within the meaning of the first sentence of Article 1 of Protocol No. 1.

62. 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.

63. The Chamber notes that the premises was never entered into the register of abandoned property, as required by Article 2 of the Law (see paragraphs 18 and 19 above). Accordingly, the requirements of national law do not seem to have been adhered to and therefore the interference might not have been "subject to conditions provided for by law" as required by Article 1 of Protocol No. 1 to the Convention.

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

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

66. The Chamber notes that Article 49 of the Law (see paragraph 26 above) invalidates all contracts entered into after 6 April 1992 which concern the lease, use or maintenance of any type of property, the owner of which has left the Republika Srpska. The Article is so widely drafted as to annul retrospectively every single contract relating to any form of property concluded between 6 April 1992 and the date of entry into force of the Law on the Use of Abandoned Property (*sup. cit.*) entered into by any owner of such property who has left the Republika Srpska. As such, it constitutes a massive deprivation of possession, albeit for the purpose of its allocation to certain categories of persons.

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

68. The Chamber notes that Article 56 of the Constitution of the Republika Srpska allows for the control of the use of property, including dispossession, upon payment of compensation. Amendment XXXI to the Constitution, adopted on 11 November 1994 (see paragraph 16 above), allows for the regulation of the use or disposal of property during a state of war, an imminent threat of war or a state of emergency. However, on 19 June 1996 (see paragraph 36 above), the Government of the

Republika Srpska decided that a state of war, imminent threat of war or a state of emergency no longer existed in the Republika Srpska. Nor has any state of emergency been declared in the Republika Srpska. Accordingly, Amendment XXXI to the Constitution could not be relied upon to justify the continued application of Article 49 of the Law in the applicant's case. It follows that the general constitutional provision in Article 56 of the Constitution (see paragraph 15 above) remains applicable, as does the general principle relating to payment of compensation upon deprivation of property. As noted above, Article 56 of the Constitution allows the control of property rights upon payment of compensation. The Law, however, does not contain any provision for the payment of compensation and no such compensation has been offered.

69. The Chamber has held in *Medan (sup. cit., paragraph 37)* that legislation that retroactively nullifies contractual rights "must be regarded as a particularly serious form of interference with property rights. It involves an infringement of the principle of the rule of law ... and carries the danger of undermining legal security and certainty." Such legislation can therefore only be justified by cogent reasons. The Chamber recognises the serious housing problems facing the Republika Srpska, exacerbated by the large number of refugees and displaced persons on its territory (approximately 400,000 in 1996). However, it considers that the retroactive nullification by the Law of the applicant's contract without provision for the payment of any compensation caused her to bear an individual and excessive burden. Accordingly, there is no reasonable relationship of proportionality between the aim of providing accommodation for refugees and displaced persons and the Law as applied in the case of the applicant.

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

3. The right to work

71. The applicant complained in her application to the Chamber that her right to work had been violated. Article II(2) of the Agreement provides that the Chamber shall consider alleged or apparent violations of human rights as provided for in the Convention, as well as discrimination on certain specified grounds in relation to the enjoyment of any of the rights and freedoms provided for in the international agreements listed in the Appendix to the Agreement. A number of these agreements provide protection in relation to the right to work. However, for these agreements to be applicable in a particular case, there must be an allegation or indication that the applicant has been discriminated against in the enjoyment of such rights on one of the specified grounds.

72. In the present case, the applicant has not claimed that she has been discriminated against on any ground. Nor is there any indication that this has been the case. Accordingly, the Chamber finds no violation of the Agreement in this respect.

VII. REMEDIES

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

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

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

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

VIII. CONCLUSION

77. For the above reasons, the Chamber decides,

1. unanimously, to declare the application admissible;
2. unanimously, that the decision of the Commission for the Resettlement of Refugees and the Administration of Abandoned Property in Kozarska Dubica of 3 July 1998 declaring the applicant an illegal occupant and ordering her, under threat of eviction, to vacate the premises she currently occupies, constitutes a violation of her right to respect for her home within the meaning of Article 8 of the Convention, the Republika Srpska thereby being in breach of Article I of the Agreement;
3. unanimously, that the decision of the Commission for the Resettlement of Refugees and the Administration of Abandoned Property in Kozarska Dubica of 3 July 1998 declaring the applicant an illegal occupant and ordering her, under threat of eviction, to vacate the premises she currently occupies, constitutes a violation of her right to peaceful enjoyment of her possessions within the meaning of Article 1 of Protocol No. 1 to the Convention, the Republika Srpska thereby being in breach of Article I of the Agreement;
4. unanimously, that there has been no violation of the Agreement in respect of the applicant's right not to be discriminated against in the enjoyment of her right to work;
5. unanimously, to order the Republika Srpska to revoke the decision of the Commission for the Resettlement of Refugees and the Administration of Abandoned Property in Kozarska Dubica of 3 July 1998 and to allow the applicant to enjoy undisturbed occupancy of the premises in accordance with the terms of her contract with the owner of 4 September 1995; and
6. unanimously, to order the Republika Srpska to report to it by 11 September 1999 on the steps taken by it to comply with the above order.

(signed)
Leif BERG
Registrar of the Chamber

(signed)
Giovanni GRASSO
President of the Second Panel