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

Case no. CH/98/916

Nebojša TOMIĆ

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 admissibility and merits of 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 lived until May 1992 in an apartment in Tuzla, Bosnia and Herzegovina, over which he held an occupancy right. In May 1992 he left his apartment for an anticipated one-day trip to Belgrade from which he did not immediately return due to the outbreak of the hostilities in Tuzla. Pursuant to the Law on Abandoned Apartments the apartment was thereafter temporarily allocated to other persons. In August 1998 the applicant initiated proceedings before the competent administrative authorities to regain possession of his apartment. After more than three years of proceedings the applicant's occupancy right was eventually confirmed on 2 August 2001 by a decision under the 1998 Law on the Cessation of the Application of the Law on Abandoned Apartments. However, this decision has not been enforced up to date.

2. This case involves issues under Articles 6 and 8 of the European Convention on Human Rights, Article 1 of Protocol No. 1 to the Convention and Article II(2)(b) of the Agreement.

II. PROCEEDINGS BEFORE THE CHAMBER

3. The application was submitted to the Chamber on 1 September 1998 and was registered on the same day.

4. Upon request of the Chamber, the applicant submitted further information and documents on 6 November 1998.

5. On 18 January 1999 the Chamber invited the Federation of Bosnia and Herzegovina to submit observations in writing on the admissibility and merits of the case. The Federation submitted its observations on 18 March 1999.

6. In accordance with the Chamber's order for the proceedings, the applicant was afforded the possibility of replying to the respondent Party's observations and, in that connection, to claim compensation. On 8 May 1999 the Chamber received the applicant's reply, which did not contain any claim for compensation. Further observations were received from the applicant 8 October 2001, and were transmitted to the respondent Party on 14 November 2001.

7. On 6 December 2001, 7 January and 8 January 2002 the Chamber deliberated on the admissibility and merits of the case and adopted the present decision on the latter date.

III. ESTABLISHMENT OF THE FACTS

8. The facts of the case, as they appear from the application, the respondent Party's submissions and the documents in the case-file may be summarised as follows.

9. The applicant holds the occupancy right over an apartment located at Ismeta Mujezinovića 17 (Sjenjak D-3/8) in Tuzla. On 14 May 1992 he left Tuzla for a trip to Belgrade with his family. Due to the outbreak of the hostilities, the applicant was not able to return to Tuzla.

10. On 4 March 1993 the Public Health Institute in Tuzla allocated the apartment to other persons, who, on 11 March 1993 concluded a contract with the Department for Housing and Public Affairs of Local Communities of the Municipality Tuzla ("the Department for Housing") for use of the apartment on the ground that the apartment had been declared abandoned pursuant to the Law on Abandoned Apartments (see paragraphs 15 - 19 below).

11. On 26 August 1998 the applicant submitted a request to the Department for Housing for confirmation of his occupancy right and to regain possession of the apartment.

12. On 27 August 1999 the applicant filed an appeal to the Ministry for Physical Planning and Environment in Tuzla, because he had not yet received a decision from the Department for Housing.

13. On 2 August 2001 the Department for Housing eventually confirmed the applicant's occupancy right by a decision under the Law on the Cessation of the Application of the Law on Abandoned Apartments (see paragraphs 20-26 below), which had entered into force on 4 April 1998. The applicant initiated proceedings for the enforcement of the decision on 22 August 2001.

14. According to the correspondence from the applicant received 8 October 2001, there have not been any developments in the enforcement proceedings.

IV. Relevant legislation

A. The Law on Abandoned Apartments

15. The Law on Abandoned Apartments ("the old law"), originally issued on 15 June 1992 as a decree with force of law, was adopted as law on 1 June 1994. It was amended on several occasions (Official Gazette of the Republic of Bosnia and Herzegovina – hereinafter "OG RBiH" – nos. 6/92, 8/92, 16/92, 13/94, 36/94, 9/95 and 33/95). It governed the re-allocation of occupancy rights over socially-owned apartments that had been abandoned.

16. According to the old law, an occupancy right expired if the holder of the right and the members of his or her household had abandoned the apartment after 30 April 1991 (Article 1). An apartment was considered abandoned if, even temporarily, it was not used by the occupancy right holder or members of the household (Article 2).

17. Proceedings aimed at having an apartment declared abandoned could be initiated by a state authority, a holder of an allocation right (i.e. a juridical person authorised to grant permission to use an apartment), a political or a social organisation, an association of citizens or a housing board. Except for certain exceptions not relevant to the present application, the competent municipal housing authority was to decide on a request to this end within seven days and could also *ex officio* declare an apartment abandoned (Article 4). Failing a decision within this time-limit, it was to be made by the Ministry for Urban Planning, Housing and Environment. Interested parties could challenge a decision by the municipal organ before the same ministry but an appeal had no suspensive effect (Article 5).

18. An apartment declared abandoned could be allocated for temporary use to "an active participant in the fight against the aggressor of the Republic of Bosnia and Herzegovina" or to a person who had lost his or her apartment due to hostilities (Article 7). Such temporary use could last up to one year after the date of the cessation of the imminent threat of war. A temporary user was obliged to vacate the apartment at the end of that period and to place it at the disposal of the authority that had allocated it (Article 8).

19. The occupancy right holder was to be regarded as having abandoned the apartment permanently if he or she failed to resume using it either within seven days (if he or she had been staying within the territory of the Republic of Bosnia and Herzegovina) or within fifteen days (if he or she had been staying outside that territory) from the publication of the Decision on the Cessation of the State of War (OG RBiH no. 50/95, published on 22 December 1995). The resultant loss of the occupancy right was to be recorded in a decision by the competent authority (Article 10 compared to Article 3 paragraph 3).

B. The Law on the Cessation of the Application of the Law on Abandoned Apartments

20. The old law was repealed by the Law on the Cessation of the Application of the Law on Abandoned Apartments ("the new law") which entered into force on 4 April 1998 and has been amended on several occasions thereafter (Official Gazette of the Federation of Bosnia and Herzegovina – hereinafter "OG FBiH" – nos. 11/98, 38/98, 12/99, 18/99, 27/99 and 43/99).

21. According to the new law, no further decisions declaring apartments abandoned are to be taken (Article 1). All administrative, judicial and other decisions terminating occupancy rights based on regulations issued under the old law are invalid. Nevertheless, decisions establishing a right of temporary occupancy shall remain effective until revoked in accordance with the new law. Until 14 April 1999, also all decisions which had created a new occupancy right pursuant to regulations issued under the old law were valid unless revoked. However, on that date, the High Representative decided that any occupancy right or contract on use made between 1 April 1992 and 7 February 1998 is cancelled. A person occupying an apartment on the basis of a cancelled occupancy right or decision on temporary occupancy is to be considered as a temporary user (Article 2). Also contracts and decisions made after 7 February 1998 on the use of apartments declared abandoned are invalid. Any person using an apartment on the basis of such a contract or decision is considered to be occupying the apartment without any legal basis (Article 16).

22. The occupancy right holder of an apartment declared abandoned has a right to return to the apartment in accordance with Annex 7 of the General Framework Agreement (Article 3 paragraphs 1 and 2). Persons using the apartment without any legal basis shall be evicted immediately or at the latest within 15 days (Article 3 paragraph 3). A temporary user who has alternative accommodation is to vacate the apartment within 15 days of the date of delivery (before 1 July 1999 within 90 days of the date of issuance) of the decision on repossession (Article 3 paragraph 4). A temporary user without alternative accommodation is given a longer period of time (at least 90 days) within which to vacate the apartment. In exceptional circumstances, this deadline may be extended for up to one year if the municipality or the allocation right holder responsible for providing alternative accommodation submits detailed documentation regarding its efforts to secure such accommodation to the cantonal administrative authority for housing affairs and that authority finds that there is a documented absence of available housing, as agreed upon with the Office of the High Representative. In such a case, the occupancy right holder must be notified of the decision to extend the deadline and the basis therefor 30 days before the original deadline expires (Article 3 paragraph 5 compared with Article 7 paragraphs 2 and 3).

23. With a few exceptions not relevant to the present application, the time-limit for an occupancy right holder to file a claim for repossession expired 15 months after the entry into force of the new law, i.e. on 4 July 1999 (Article 5 paragraph 1). If no claim was submitted within that time-limit, the occupancy right is cancelled (Article 5 paragraph 3).

24. Upon receipt of a claim for repossession, the competent authority, normally the municipal administrative authority for housing affairs, had 30 days to issue a decision (Article 6) containing the following parts (Article 7 paragraph 1):

1. a confirmation that the claimant is the occupancy right holder;
2. a permit for the occupancy right holder to repossess the apartment, if there was a temporary user in the apartment or if it was vacant or occupied without a legal basis;
3. a termination of the right of temporary use, if there was a temporary user in the apartment;
4. a time-limit during which a temporary user or another person occupying the apartment should vacate it; and
5. a finding as to whether the temporary user was entitled to accommodation in accordance with the Law on Taking Over the Law on Housing Relations.

25. Following a decision on repossession, the occupancy right holder is to be reinstated into his apartment not earlier than 90 days, unless a shorter deadline applies, and no later than one year from the submission of the claim (Article 7 paragraphs 2 and 3). Appeals against such a decision could be lodged by the occupancy right holder, the person occupying the apartment and the allocation right holder and should be submitted to the cantonal ministry for housing affairs within 15 days from the date of receipt of the decision. However, an appeal has no suspensive effect (Article 8).

26. If the person occupying the apartment refuses to comply with an order to vacate it, the competent administrative body shall forcibly evict him or her at the request of the occupancy right holder (Article 11). If the occupancy right holder, without good cause, fails to reoccupy the apartment within certain time-limits, his or her occupancy right may be terminated in accordance with the procedures established under the new law and its amendments (Article 12).

C. The Law on Administrative Proceedings

27. Under Article 275 of the Law on Administrative Proceedings (OG FBiH no. 2/98) the competent administrative organ has to issue a decision to execute an administrative decision within 30 days upon receipt of a request to this effect. Article 216 paragraph 3 provides for an appeal to the administrative appellate body if a decision is not issued within this time limit (appeal against "silence of the administration").

D. The Law on Administrative Disputes

28. Article 1 of the Law on Administrative Disputes (OG FBiH no. 2/98) provides that the courts shall decide in administrative disputes on the lawfulness of second instance administrative acts concerning rights and obligations of citizens and legal persons.

29. Article 22 paragraph 3 provides that an administrative dispute may be instituted also if the administrative second instance organ fails to render a decision within the prescribed time limit, whether the appeal to it was against a decision or against the first instance organ's silence.

V. COMPLAINT

30. The applicant complains that his rights guaranteed by Articles 6 and 8 of the Convention and Article 1 of Protocol No. 1 to the Convention have been violated, and that he has been discriminated against in violation of Article II(2)(b) of the Agreement.

VI. SUBMISSIONS OF THE PARTIES

A. The respondent Party

31. As to the admissibility of the case, the Federation states that the applicant has not yet exhausted the available domestic remedies. It points out that under the Law on Administrative Proceedings and Article 22 paragraph 3 of the Law on Administrative Disputes (see above paragraphs 27 and 29), the applicant could have initiated court proceedings against the inactivity of the administration upon his request for execution.

32. The Federation also argues that the application should be declared inadmissible on the ground that it was not submitted within six months of the final decision in the applicant's case, as provided by Article VIII(2)(a) of the Agreement.

33. As for the merits under Article 6, the respondent Party states that an unreasonable length of time has not passed in the administrative proceeding, and that the applicant has not commenced any court proceedings. Therefore it finds that there can be no violation of Article 6.

34. With regard to Article 8, the Federation argues that it is not responsible for the applicant having left his apartment, and that the respondent Party is committed to take all necessary steps to enable him to return, and to the return of refugees and internally displaced persons in general.

35. With regard to Article 1 of Protocol No. 1 to the Convention, the respondent Party submits that the applicant abandoned his possessions on his own motion. Therefore, it is argued that the interference with the applicant's possessions was justified, given the need to provide alternative accommodation to a temporary occupant, who could no longer inhabit his dwelling due to the hostilities.

36. The respondent Party did not submit observation with regard to Article II(2)(b) of the Agreement.

B. The applicant

37. The applicant maintains his complaint, pointing out that the proceedings to reinstate him into his apartment have been pending since August, 1998, and that the respondent Party has failed to enforce the decision confirming his occupancy right.

VII. OPINION OF THE CHAMBER

A. Admissibility

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

1. Exhaustion of Effective Domestic Remedies

39. According to Article VIII(2)(a) of the Agreement, the Chamber must consider whether effective remedies exist and whether the applicant has demonstrated that they have been exhausted. In the *Blentić* case (case no. CH/96/17, *Blentić*, decision on admissibility and merits delivered on 3 December 1997, paragraphs 19-21, Decisions on Admissibility and Merits 1996–1997, with further references) the Chamber considered this admissibility criterion in the light of the corresponding requirement to exhaust domestic remedies in Article 26 of the Convention (presently Article 35 of the Convention, as amended by Protocol No. 11 to the Convention). The European Court of Human Rights has found that such remedies must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness. The Court has, moreover, considered that in applying the rule on exhaustion it is necessary to take realistic account not only of the existence of formal remedies in the legal system of the Contracting Party concerned but also of the general legal and political context in which they operate as well as of the personal circumstances of the applicants.

40. In the present case the Federation objects to the admissibility of the application on the ground that the domestic remedies provided by the Law on Administrative Proceedings and by the Law on Administrative Disputes have not been exhausted. Whilst these laws afford remedies which might in principle qualify as effective ones within the meaning of Article VIII(2)(a) of the Agreement in so far as the applicant is seeking to return to his apartment and faced with the authorities' inaction, the Chamber must ascertain whether, in the case now before it, these remedies can also be considered effective in practice.

41. The Chamber first notes that the applicant indeed initiated proceedings in August 1998 under the new law with a view to being reinstated into his apartment. The domestic authorities remained silent in the face of his application for three years. Further, the resultant decision of 2 August 2001 confirming his occupancy right and ordering the temporary occupant to vacate the apartment within 15 days has not been executed despite the applicant's enforcement request which has also been pending since August 2001. Nor has the respondent Party shown the documented existence of any exceptional circumstances within the meaning of Article 7 paragraph 3 of the new law which have warranted an extension of the temporary occupant's deadline for vacating the apartment. At any rate, it has not been shown that the applicant was notified within the time-limit stipulated in Article 7 paragraph 3 of any decision to that end.

42. In these particular circumstances the Chamber is satisfied that the applicant could not be required to exhaust, for the purposes of Article VIII(2)(a) of the Agreement, any further remedy provided by domestic law.

2. The Six-Month Rule

43. The Federation also objects to the admissibility on the ground that the application was not filed within six months from the date of the final decision in the applicant's case. However, in this instance there has not yet been any final decision infringing upon the applicant's rights. Rather, the

applicant complains of the failure of the authorities to respond to his attempts to regain possession of his apartment and the more than three years of inaction on the part of the respondent Party in this regard. Accordingly the time for the running of the six-month period has not yet begun, and this objection to the admissibility of the application is therefore ill-founded.

3. Whether the Application is Manifestly Ill-Founded

44. As previously noted, the applicant complains that he has been discriminated against in the enjoyment of his rights as protected by Article II(2)(b) of the Agreement.

45. While the respondent Party did not provide any arguments in response to this claim, the applicant also has not provided any evidence which would tend to indicate that he has been discriminated against in the enjoyment of any of his rights. Nor can the Chamber of its own motion find any such evidence. The allegation has not been substantiated by the applicant, and the Chamber therefore finds that this claim is manifestly ill-founded and inadmissible.

46. As no other ground for declaring the case inadmissible has been established, the Chamber declares the application admissible with respect to the allegations concerning Articles 6 and 8 of the Convention, and inadmissible regarding the claim of discrimination (see paragraph 45).

B. Merits

47. Under Article XI of the Agreement the Chamber must next address the question whether the facts established above disclose a breach by the respondent Party of its obligations under the Agreement. Under Article I of the Agreement the Parties are obliged to "secure to all persons within their jurisdiction the highest level of internationally recognised human rights and fundamental freedoms", including the rights and freedoms provided for in the Convention.

1. Article 8 of the Convention

48. Article 8 of the Convention reads, as far as relevant, as follows:

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

49. It is the Federation's assertion that it was necessary in the public interest to declare the apartment abandoned and to allocate it temporarily to other persons in need of housing.

50. The Chamber notes that at the end of the hostilities the applicant was prevented from returning to his pre-war apartment as it had been temporarily allocated to other persons. In March 1993 the apartment was also declared abandoned. As from 1998 the applicant has attempted to regain possession of the apartment. However, even after the issuance of the decision of 2 August 2001 by the Department of Housing confirming his occupancy right, the Federation has still failed to reinstate the applicant into possession of his home.

51. The Chamber has already found that the links which an applicant facing similar difficulties retained to his dwelling sufficed for this to be considered his "home" for the purposes of Article 8 paragraph 1 of the Convention (see, *inter alia*, the decisions in case no. CH/97/46, *Kevešević*, decision on the merits delivered on 10 September 1998, paragraphs 39-42, Decisions and Reports 1998, and case no. CH/97/58, *Onić*, decision on admissibility and merits delivered on 12 February 1999, paragraph 48, Decisions January-July 1999, with ample reference to the jurisprudence of the European Court of Human Rights). The Chamber furthermore considers that there has been an ongoing interference with the present applicant's right to respect for his home.

52. In order to determine whether this interference has been justified under the terms of paragraph 2 of Article 8, 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 *Kevešević* decision, paragraphs 47-58). There will be a violation of Article 8 if any one of these conditions is not satisfied.

53. In so far as the present case relates to the application of the new law, the Chamber recalls its above findings relating to the admissibility of the case (see paragraph 41). It is true that the applicant received a decision pursuant to the new law, confirming his occupancy right. The current occupants of his apartment were ordered to vacate the apartment within 15 days. In spite of the applicant's enforcement request pursuant to Article 11 of the new law the decision in the applicant's favor has not been executed. As the Chamber has already noted, it has not been shown that the applicant was notified, at least 30 days before the end of the current occupants' 15-day period for vacating the apartment, of any documented exceptional circumstances warranting an extension of the latter time-limit. Therefore, there is an ongoing violation of Article 8 of the Convention as the procedure followed by the respondent Party under the new law has not been "in accordance with the law" based both upon the three-year silence of the authorities in the face of the proceedings initiated by the applicant, and due to the subsequent failure to enforce his occupancy right once recognized (see case no. CH/97/42, *Eraković*, decision on admissibility and merits delivered on 15 January 1999, paragraph 51, Decisions January-July 1999). The Chamber would add that under Article 3 paragraph 9 of the new law it is explicitly stipulated that a failure of, for example, the cantonal authorities to meet their obligations under Article 3 shall not hamper the possibility of an occupancy right holder (such as the applicant) to reclaim an apartment.

54. Accordingly, the Chamber concludes that Article 8 of the Convention has been violated, given the failure of the authorities to respond to the applicant's proceedings for three years and the failure to execute the decision of 2 August 2001 effectively entitling the applicant to return to his dwelling.

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

55. The applicant complains that his right to peaceful enjoyment of his possessions has been and continues to be violated as a result of the decision declaring his apartment abandoned and, following the procedural decision of 2 August 2001, of the effective prevention of his return into the apartment. Article 1 of Protocol No. 1 to the Convention provides as follows:

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

56. The Federation argues that there has been no violation of Article 1 of Protocol No. 1, as the temporary allocation of the applicant's apartment to the other persons was necessary in the public interest so as to solve an urgent housing problem.

57. In previous cases, the Chamber has already found that an occupancy right can indeed be regarded as a "possession", it being a valuable asset giving the holder the right, subject to the conditions prescribed by the law, to occupy an apartment indefinitely (see case no. CH/96/28, *M.J.*, decision on admissibility and merits delivered on 3 December 1997, paragraph 32, Decisions on Admissibility and Merits 1996–1997, and the aforementioned *Kevešević* decision, paragraph 73). In those cases the Chamber recalled, *inter alia*, that the European Court of Human Rights has given a wide interpretation to the concept of "possessions", holding that this notion covers a wide variety of rights and interests with an economic value (see, e.g., Eur.Court HR, *Van Marle v. the Netherlands* judgment of 26 June 1986, Series A no. 101, page 13, paragraph 41; and *Pressos Compania Naviera S.A. v. Belgium* judgment of 20 November 1995, Series A no. 332, page 21, paragraph 31).

58. The Chamber has further found that a decision declaring abandoned an apartment over which someone enjoyed an occupancy right and the allocation thereof to another person amounted to a *de facto* expropriation. The Chamber has also established that the rule contained in the second sentence of the first paragraph of Article 1 of Protocol No. 1, subjecting the deprivation of possessions to certain conditions, applies to such a *de facto* expropriation (see the above-mentioned *Kevešević* decision, paragraphs 73 to 78).

59. The applicant's grievance under this provision includes the three-year silence of the authorities in the face of his attempts to regain possession of his apartment, and extends to the failure of the authorities to enforce the decision entitling him to return to his apartment. The Chamber has already noted (in paragraphs 51 and 53 above) that this non-enforcement is not in compliance with the new law. In addition to the violation stemming from the refusal to allow the applicant to return to his apartment for want of recognition of his occupancy right, there has thus been a continuing violation of his right to the peaceful enjoyment of his possessions within the meaning of Article 1 of Protocol No. 1 in so far as the procedure under the new law has not been "subject to the conditions provided for by law" either (cf. the aforementioned *Eraković* decision, paragraph 60).

60. Accordingly, the Chamber concludes that Article 1 of Protocol 1 to the Convention has been violated, given the failure of the authorities to respond to the applicant's proceedings for three years and the failure to execute the decision of 2 August 2001 effectively entitling the applicant to return to his dwelling.

3. Article 6 of the Convention

61. Article 6 of the Convention, insofar as relevant, provides 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…"

62. Noting that the proceedings which are still pending concern the applicant's occupancy right over the apartment in question, the Chamber finds that these proceedings relate to his "civil rights" within the meaning of Article 6 paragraph 1 and that the provision is accordingly applicable to the present case (see paragraph 57 above).

63. The Chamber considers that the case raises the question of whether the proceedings have been expedited with reasonable speed. A determination of the reasonableness of the length of proceedings is based on the complexity of the case, the conduct of the applicant and the authorities, and the matter at stake for the applicant (see, e.g. case no. CH/97/54, *Mitrović*, decision on admissibility of 10 June 1998, paragraph 10, Decisions and Reports 1998).

64. The issue underlying the proceedings over the last three years is whether the applicant is entitled to regain the occupancy right and possession of the apartment in question. The Chamber cannot find this issue to be so complex as to require more than three years to decide. Further, there is no evidence that any conduct of the applicant has served to prolong the proceedings. On the contrary, the applicant has made at least two attempts to speed up the proceedings and have action taken by the relevant bodies.

65. Instead, the authorities have failed to act upon the requests of the applicant within reasonable time frames. First, there was a failure to act upon the applicant's initial request for three years. Second, the authorities have further failed to act upon the decision of 2 August 2001 to reinstate the applicant into his apartment within the time frame established by law.

66. Finally, the Chamber notes that a speedy outcome of this matter would have been of particular importance to the applicant, given that the question concerned his home and property.

67. In view of the above, the Chamber finds a violation of Article 6 paragraph 1 of the Convention in that the proceedings in the applicant's case have not been determined within a reasonable time.

VIII. REMEDIES

68. Under Article XI paragraph 1 (b) of the Agreement the Chamber must address the question 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 (including pecuniary and non-pecuniary injuries) as well as provisional measures.

69. The Chamber recalls that in accordance with its order for the proceedings in this case the applicant was afforded the possibility of claiming compensation within the time limit fixed for any reply to observations submitted by a respondent Party. The applicant has not lodged any such claim, but has only requested that he be reinstated into his apartment.

70. The Chamber therefore considers it appropriate to order the Federation to take all necessary steps to enable the applicant, whose occupancy right has already been confirmed, to regain possession of his apartment.

71. Article XI(3) of the Agreement provides: "subject to review as provided in paragraph 2 of Article X, the decisions of the Chamber shall be final and binding". Thus, a decision of the Chamber does not become final and binding until the provision in Article XI(3) of the Agreement has been met, that is, in particular, until after the Chamber decides upon any motions for requests for review filed in accordance with the Chamber's Rules of Procedure.

72. However, Article XI(1) of the Agreement states that "the Chamber shall promptly issue a decision, which shall address: ... (b) what steps shall be taken by the Party to remedy such breach, including ... provisional measures". The Chamber interprets this provision in the sense that it is authorised to order the respondent Party to take certain steps without further delay, that is, before the decision becomes final and binding pursuant to Article XI(3) of the Agreement, in order to remedy breaches of the Agreement.

73. Since the applicant in the present case has, for a long time, been unable to regain possession of his apartment due to the failure of the respondent Party to reinstate him in a timely manner, the Chamber finds it appropriate to exercise the powers granted under Article XI(1)(b) of the Agreement to order the respondent Party to reinstate the applicant without further delay, and at the latest within one month after the date on which the present decision is delivered, regardless of whether either party files a motion to review the decision under Article X(2) of the Agreement.

74. In addition the applicant is awarded the sum of 3000 Convertible Marks (*Konvertibilnih Maraka*, "KM") on account of non-pecuniary damages in recognition of his suffering as a result of his inability to regain possession of his apartment, to be paid no later than one month from the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure. As the Chamber has held in *Pletilić and others* (cases nos. 98/659 et al., decision on admissibility and merits of 9 July 1999, paragraph 236, Decisions August-December 1999), Article XI(1)(b) of the Agreement does not preclude the Chamber from ordering a remedy which has not been requested by an applicant.

75. The Chamber further awards simple interest at an annual rate of 10% as of the date of expiry of the one-month period following the date on which this decision becomes final and binding within the meaning of Rule 66 of the Chamber's Rules of Procedure, and on any unpaid portion of the sum awarded in paragraph 74 until the date of settlement in full.

IX. CONCLUSIONS

76. For the above reasons, the Chamber decides,

1. unanimously, to declare the application admissible with regard to the claims brought under Articles 6 and 8 and Article 1 of Protocol No. 1 to the Convention;

2. unanimously, to declare the application inadmissible with regard to the complaint of discrimination;

3. unanimously, that the refusal to allow the applicant to return to his apartment due to the prolonged failure to respond to the applicant's request for reinstatement and the failure to enforce the decision of 2 August 2001 confirming his occupancy right constitute a violation by the Federation of Bosnia and Herzegovina of his right to respect for his home within the meaning of Article 8 of the European Convention on Human Rights, the Federation thereby being in breach of Article I of the Human Rights Agreement;

4. unanimously, that the refusal to allow the applicant to return to his apartment due to the prolonged failure to respond to the applicant's request for reinstatement and the failure to enforce the decision of 2 August 2001 confirming his occupancy right also constitute a violation by the Federation of Bosnia and Herzegovina of his right to peaceful enjoyment of his possessions within the meaning of Article 1 of Protocol No. 1 to the Convention, the Federation thereby being in breach of Article I of the Agreement;

5. unanimously, that the failure to respond to the applicant's request for reinstatement into his apartment for three years constitute a violation by the Federation of Bosnia and Herzegovina of his right to a hearing within a reasonable time within the meaning of Article 6 of the European Convention on Human Rights, the Federation thereby being in breach of Article I of the Human Rights Agreement;

6. unanimously, to order the Federation of Bosnia and Herzegovina to reinstate the applicant into his apartment without further delay, and at the latest on 11 February 2002;

7. unanimously, to order the Federation of Bosnia and Herzegovina to pay to the applicant, 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, the sum of 3000 KM on account of non-pecuniary damages for the loss of the use of his apartment;

8. unanimously, to order the Federation of Bosnia and Herzegovina to pay simple interest at the rate of 10 (ten) percent per annum over the above sum or any unpaid portion thereof from the date of expiry of the above one-month period until the date of settlement in full; and

9. unanimously, to order the Federation of Bosnia and Herzegovina to report to it, within three months from the date on which the present decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure, on the steps taken by it to comply with the above order.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Giovanni GRASSO
President of the Second Panel