DECISION ON ADMISSIBILITY AND MERITS

(delivered on 4 July 2003)

Case nos. CH/99/1838, CH/99/1894, CH/99/1898, CH/99/1928, CH/99/1930, CH/99/1971, CH/99/2318, CH/99/2341, CH/00/3816, CH/00/3851, CH/01/7049, CH/01/7083, CH/01/7106 and CH/01/7209

Miroslav KARAN, Stevan ZELIĆ, Miroslav RADAK, Jasminko ČEHOBAŠIĆ, Petar MILETIĆ, Petar MILETIĆ, Nikola ŠAVIJA, M. K., Ilija JAKOVLJEVIĆ, Brane ČIČIĆ, Radovan PANIĆ, Uroš PAJČIN, Zoran MANDIĆ and Momčilo PAJČIN

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 6 June 2003 with the following members present:

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

Mr. Ulrich GARMS, Registrar
Ms. Olga KAPIĆ, Deputy Registrar
Ms. Antonia DE MEO, Deputy Registrar

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

Adopts the following decision pursuant to Article VIII(2) and Article XI of the Agreement and Rules 34, 52, 57 and 58 of its Rules of Procedure:

I. INTRODUCTION

1. The applicants are citizens of Bosnia and Herzegovina. During the armed conflict in Bosnia and Herzegovina, ten of the applicants were members of the Army of the Republika Srpska ("Vojska Republike Srpske" – VRS). However, three applicants never joined the armed forces. All applicants were arrested and detained by units of the Croat Defence Council ("Hrvatsko Vijeće Obrane" – HVO) prior to the conclusion of the General Framework Agreement. The applicants allege that during their detention, they were ill-treated and forced to work. Seven of twelve applicants are now apparently disabled. In the majority of cases, their eventual release took place before the cessation of hostilities and was achieved with the assistance of the International Committee of the Red Cross (hereinafter "the ICRC"). However, in some instances, the applicants were only released after the General Framework Agreement entered into force. As of today, the applicants live in various municipalities across the Republika Srpska.

2. In order to obtain compensation for pecuniary and non-pecuniary damages, some of the applicants have unsuccessfully applied to the Ministry of Justice of the Federation of Bosnia and Herzegovina, to the Federal Ministry of Defence or to ministries on the cantonal level. All of the applicants initiated court proceedings in order to obtain compensation before the Municipal Court II in Sarajevo. The Court has refused to decide on the claims. It declared itself incompetent and referred the applicants instead to the "Human Rights Commission" formed under Annex 6 of the General Framework Agreement.

3. The cases raise issues under Articles 3, 4, 5, 6 and 13 of the European Convention on Human Rights (hereinafter "the Convention").

II. PROCEEDINGS BEFORE THE CHAMBER

4. The applications were introduced to and registered by the Chamber between 12 February 1999 and 12 March 2001.

5. Petar Miletić submitted two application forms, received on 27 May 1999 and on 8 July 1999 respectively, registered under different case numbers. However, his second set of submissions provides additional information to the initial application.

6. The applicants Radovan Panić and Zoran Mandić had previously submitted applications to the Chamber (case nos. CH/99/1925 and CH/99/1926, respectively). On 12 January and on 8 February 2000, respectively, the Chamber declared the applications inadmissible for non-exhaustion of domestic remedies. In the case of Radovan Panić, his request for review of the Chamber's decision on admissibility was rejected on 8 September 2000.

7. On 10 December 2002, the Chamber transmitted the cases of all thirteen applicants to the respondent Party.

8. As regards the applications of Miroslav Karan, Stevan Zelić and Petar Miletić (case nos. CH/99/1838, CH/99/1894, CH/99/1930 and CH/99/1971), they were transmitted to the respondent Party under Articles 3, 4, 5, 6 and 13 of the Convention. Observations of the Federation regarding these applications were received on 14 February 2003. On 15 May 2003, the respondent Party submitted additional observations regarding the case of Petar Miletić. Stevan Zelić replied to the Federation's observations on 11 March 2003 and Petar Miletić did so on 20 March 2003.

9. The applications of Nikola Šavija, M.K., Ilija Jakolvljević, Uroš and Momčilo Pajčin (case nos. CH/99/2318, CH/99/2341, CH/00/3816, CH/01/7083 and CH/01/7209) were transmitted to the respondent Party under Article 6 of the Convention. The Federation sent its observations regarding these five applications on 10 January 2003. Nikola Šavija replied to the respondent Party's observations on 12 February 2003.

10. Concerning the applications of Miroslav Radak, Jasminko Čehobašić, Brane Čićić, Radovan Panić and Zoran Mandić (case nos. CH/99/1898, CH/99/1928, CH/00/3851, CH/01/7049 and

CH/01/7106), the Chamber decided to transmit them under Articles 3, 6 and 13 of the Convention. The Federation's observations were received on 14 February 2003. Additional observations regarding the case of Jasminko Čehobašić were received on 18 April 2003. Jasminko Čehobašić submitted letters on 12 March and on 12 May 2003, and Brane Čičić did so on 24 March 2003. On 13 March 2003, Radovan Panić and Zoran Mandić replied to the Federation's observations.

11. The Chamber deliberated on the admissibility and merits of the cases on 6 December 2002, on 6 May and on 6 June 2003. On the latter date, it adopted the present decision. Considering the similarity between the facts of the cases and the complaints of the applicants, the Chamber decided to join the present applications in accordance with Rule 34 of the Chamber's Rules of Procedure on the same day it adopted the present decision.

III. ESTABLISHMENT OF THE FACTS

A. The application of Miroslav KARAN, case no. CH/99/1838

12. The applicant, a member of the VRS, was arrested in Jajce by units of the HVO on 17 September 1995. He was detained there for four days and subsequently transferred to Livno and Mostar, where he was held in custody for short periods. Subsequently, he was brought to a prison in Sarajevo where he remained until his release on 21 April 1996.

13. On 9 February 1999, the applicant wrote to the Ministry of Defence of the Federation of Bosnia and Herzegovina, requesting to be compensated for the suffering during his detention. The Ministry of Defence answered on 19 February 1999, declaring itself incompetent to decide on the matter. Also, on 2 April 1999, the applicant inquired in writing to the Ministry of Justice of the Canton of Sarajevo about his claim. It appears that he never received a response. On 19 April 1999, the Federal Ministry of Interior refused to deal with the applicant's compensation claim.

14. In pursuance of his claim for compensation, on 14 June 1999, the applicant initiated civil proceedings before the Municipal Court II in Sarajevo against the Ministry of Justice of the Federation of Bosnia and Herzegovina, the Ministry of Defence of the Federation of Bosnia and Herzegovina and the Ministry of Interior of the Federation of Bosnia and Herzegovina (hereinafter "the Ministries"). On 1 February 2000, the Court declared itself "absolutely incompetent" to deal with the claim. It is noteworthy that the Court in its reasoning stated that not the Court, but the bodies established under Annex 6 to the General Framework Agreement were in charge of awarding compensation for human rights violations. The applicant's appeal, dated 25 December 2000, was rejected by the Municipal Court for being out of time. The Cantonal Court in Sarajevo on 13 December 2001 upheld this decision.

B. The application of Stevan ZELIĆ, case no. CH/99/1894

15. The applicant was a member of the VRS. He was arrested in a village near Jajce by units of the HVO on 13 September 1995. Until his release on 6 April 1996 he was detained in a prison in Mostar.

16. The applicant submitted a compensation claim to the Ministry of Defence of the Federation of Bosnia and Herzegovina on 7 April 1999. He also made a similar claim to the Ministry of Justice of the Hercegovina-Neretva Canton. It appears that there was no reaction to his claims.

17. On 21 October 1999, the applicant initiated court proceedings against the Ministries to receive compensation before the Municipal Court II in Sarajevo. The Court declared itself "absolutely incompetent" by a decision of 28 January 2000. Again, the applicant was advised to address the bodies established pursuant to the Agreement with his claim. The applicant appealed to the Cantonal Court on 15 February 2000, and on 23 June 2000, the Cantonal Court confirmed the decision of the first instance court.

C. The applications of Petar MILETIĆ, case nos. CH/99/1930 and CH/99/1971

18. The applicant, a member of the VRS, was arrested in Jajce by units of the HVO on 20 September 1995. Thereafter, he was transferred to prisons in Livno and in Mostar. On 6 April 1996, he was released from detention.

19. Apparently, the applicant did not submit a claim for compensation to any administrative body or Ministry.

20. On 27 May 1999, the applicant initiated proceedings against the Ministries to obtain compensation before the Municipal Court II in Sarajevo. The Court, on 10 June 1999, invited the applicant to further substantiate his action. On 25 June 1999, the applicant provided such further substantiation. On 25 February 2000, the Court rejected the applicant's claim because he had failed to notify the Court of his new mailing address.

D. The application of Nikola ŠAVIJA, case no. CH/99/2318

21. The applicant was arrested as a civilian in May 1992 and kept in detention in a prison in Livno until October 1992.

22. On 8 July 1999, the applicant initiated proceedings against the Ministries before the Municipal Court II in Sarajevo in order to achieve compensation for the detention. His claim was rejected on 19 November 1999, the Court stating that it was incompetent *ratione loci*. The applicant was referred to the courts in Livno, the place of his imprisonment. It appears that the applicant did not turn to the courts in Livno.

E. The application of M. K., case no. CH/99/2341

23. The applicant was a member of the VRS and arrested on 2 November 1994. He was detained in various prisons and camps in the areas of Livno and Mostar until his release on 25 May 1995.

24. On 3 September 1999, he filed a claim against the Ministries before the Municipal Court II in Sarajevo in order to be compensated. On 9 February 2000, that Court rejected the claim, declared itself "absolutely incompetent" and referred the applicant to the Human Rights Commission established under the Agreement. The applicant's appeal to the Cantonal Court in Sarajevo of 24 February 2000 was rejected on 22 November 2002.

F. The application of Ilija JAKOVLJEVIĆ, case no. CH/00/3816

25. The applicant, a member of the VRS, was injured in the fighting around Kupres and arrested there on 2 November 1994. He was provided medical assistance in hospitals in Livno and Tomislavgrad; after his recovery he remained in detention in a camp near Mostar. His was released on 24 May 1995.

26. On 21 September 1999, the applicant filed a lawsuit against the Ministries claiming compensation with the Municipal Court II in Sarajevo. That Court on 21 April 2000 declared itself "absolutely incompetent" to decide on the claim, instead referring the applicant to the bodies established under the Agreement. Upon the applicant's appeal, on 4 October 2002, the Cantonal Court in Sarajevo upheld the decision of the first instance court.

G. The application of Uroš PAJČIN, case no. CH/01/7083

27. The applicant was arrested as a civilian in Glamoč and held in a prison in Livno between 9 April and 14 May 1992. He was released with the assistance of the ICRC.

28. On 16 February 2001, the applicant filed a lawsuit against the Ministries claiming compensation with the Municipal Court II in Sarajevo. On 22 May 2001, the Municipal Court rejected the claim, stating that it was "absolutely incompetent" to deal with it and instead referring the applicant to the human rights bodies established pursuant to the Agreement. It appears that the applicant did not appeal against this decision.

H. The application of Momčilo PAJČIN, case no. CH/01/7209

29. As a civilian, the applicant was arrested in Livno on 28 April 1992 and was held in detention until his release on 19 July 1993.

30. On 20 June 2001, the applicant filed a lawsuit against the Ministries before the Municipal Court II in Sarajevo in order to be compensated for the time of his detention. On 28 June 2001, the Municipal Court declared itself "absolutely incompetent" to decide on the dispute. Instead, the Court indicated that the Human Rights Commission established pursuant to the Agreement could provide the applicant legal redress.

I. The application of Miroslav RADAK, case no. CH/99/1898

31. The applicant, a member of the VRS, was arrested near Jajce on 20 September 1995 and subsequently detained in a prison in Mostar. He was released with the assistance of the ICRC on 27 January 1996.

32. On 14 April 1999, the applicant submitted a compensation claim to the Federal Ministry of Defence and to the Ministry of Justice of the Hercegovina-Neretva Canton. It appears that there was no reaction to his claims.

33. On 12 July 1999, he instituted civil proceedings against the Ministries in order to obtain compensation with the Municipal Court II in Sarajevo. On 31 January 2000, the Municipal Court rejected the claim, stating that it was "absolutely incompetent" and instead referring the applicant to the bodies established pursuant to the Agreement. On 23 June 2000, the Cantonal Court in Sarajevo, deciding upon the applicant's appeal, upheld the decision of the first instance court.

J. The application of Jasminko ČEHOBAŠIĆ, case no. CH/99/1928

34. The applicant was arrested in Lušci Palanka on 7 October 1995 as a member of the VRS. He was detained first in a prison in Krupa and later in Bihać. On 27 January 1996, he was released with the assistance of the ICRC.

35. On 11 May 1999, the applicant initiated a lawsuit before the Municipal Court II in Sarajevo seeking compensation. On 24 November 1999, the Court decided to adjourn the proceedings. As the applicant did not file a request to continue the proceedings within a fixed time-limit of four months, the Municipal Court on 10 April 2000 declared the claim withdrawn.

K. The application of Brane ČIČIĆ, case no. CH/00/3851

36. The applicant, a member of the VRS, was arrested near Sanski Most on 17 September 1995 and detained in various prisons in Cazin and Bihać. On 27 January 1996, he was released with the assistance of the ICRC.

37. On an unknown date, the applicant applied to the Federal Ministry of Justice and requested compensation. In its reply of 17 June 1999, the Ministry referred the applicant to "the competent court" in order to pursue his claim.

38. On 1 July 1999, the applicant instituted proceedings against the Ministries before the Municipal Court II in Sarajevo aiming to obtain compensation. On 2 February 2000, the Court declared itself "absolutely incompetent" and rejected the claim. It appears that the applicant did not appeal against this decision.

L. The application of Radovan PANIĆ, case no. CH CH/01/7049

39. On 20 September 1995, the applicant, then a member of the VRS, was arrested in Livno. He was detained in prisons in Livno and in Mostar prior to his release on 27 January 1996.

40. On 20 May 1999, the applicant filed a lawsuit against the Ministries with the Municipal Court II in Sarajevo in order to obtain compensation. In a decision of 3 June 1999, the Court declared itself "absolutely incompetent" to consider the claim. Upon an appeal of the applicant, the Cantonal Court on 13 December 1999 confirmed the decision of the first instance court.

M. The application of Zoran MANDIĆ, case no. CH/01/7106

41. The applicant was arrested as a member of the VRS in Livno on 20 September 1995. Before he was released on 27 January 1996, he was detained in a prison in Mostar.

42. On 24 May 1999, the applicant lodged a claim against the Ministries before the Municipal Court II in Sarajevo in order to obtain compensation. On 7 February 2000, the Court declared itself "absolutely incompetent" to consider the claim. By a decision on the applicant's appeal of 8 December 2000, the Cantonal Court in Sarajevo upheld the decision of the Municipal Court.

IV. RELEVANT LEGISLATION

A. Annex 1A Agreement on the Military Aspects of the Peace Settlement to the General Framework Agreement

43. The General Framework Agreement and its Annexes came into force on 14 December 1995. Its Annex 1A regulates the military aspects of the peace agreement, which include provisions on the release and transfer of prisoners of war.

44. Article 1, paragraph 1 sets out the general obligations and reads as follows:

> "The Republic of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, and the Republika Srpska (hereinafter the "Parties") have agreed as follows:
>
> Article I: General Obligations
>
> 1. The Parties undertake to recreate as quickly as possible normal conditions of life in Bosnia and Herzegovina. They understand that this requires a major contribution on their part in which they will make strenuous efforts to cooperate with each other and with the international organizations and agencies which are assisting them on the ground. They welcome the willingness of the international community to send to the region, for a period of approximately one year, a force to assist in implementation of the territorial and other militarily related provisions of the agreement as described herein.
>   a. The United Nations Security Council is invited to adopt a resolution by which it will authorize Member States or regional organizations and arrangements to establish a multinational military Implementation Force (hereinafter "IFOR"). The Parties understand and agree that this Implementation Force may be composed of ground, air and maritime units from NATO and non-NATO nations, deployed to Bosnia and Herzegovina to help ensure compliance with the provisions of this Agreement (hereinafter "Annex"). The Parties understand and agree that the IFOR will begin the implementation of the military aspects of this Annex upon the transfer of authority from the UNPROFOR Commander to the IFOR Commander (hereinafter "Transfer of Authority"), and that until the Transfer of Authority, UNPROFOR will continue to exercise its mandate. …"

The Transfer of Authority from the UNPROFOR Commander to the IFOR Commander took place at the beginning of February 1996.

45. Article IX of Annex 1A to the General Framework Agreement deals with the question of prisoners of war. It reads as follows:

> "Prisoner Exchanges

1. The Parties shall release and transfer without delay all combatants and civilians held in relation to the conflict (hereinafter "prisoners"), in conformity with international humanitarian law and the provisions of this Article.
    a. The Parties shall be bound by and implement such plan for release and transfer of all prisoners as may be developed by the ICRC, after consultation with the Parties.
    b. The Parties shall cooperate fully with the ICRC and facilitate its work in implementing and monitoring the plan for release and transfer of prisoners.
    c. No later than thirty (30) days after the Transfer of Authority, the Parties shall release and transfer all prisoners held by them.
    d. In order to expedite this process, no later than twenty-one (21) days after this Annex enters into force, the Parties shall draw up comprehensive lists of prisoners and shall provide such lists to the ICRC, to the other Parties, and to the Joint Military Commission and the High Representative. These lists shall identify prisoners by nationality, name, rank (if any) and any internment or military serial number, to the extent applicable.
    e. The Parties shall ensure that the ICRC enjoys full and unimpeded access to all places where prisoners are kept and to all prisoners. The Parties shall permit the ICRC to privately interview each prisoner at least forty-eight (48) hours prior to his or her release for the purpose of implementing and monitoring the plan, including determination of the onward destination of each prisoner.
    f. The Parties shall take no reprisals against any prisoner or his/her family in the event that a prisoner refuses to be transferred.
    g. Notwithstanding the above provisions, each Party shall comply with any order or request of the International Tribunal for the Former Yugoslavia for the arrest, detention, surrender of or access to persons who would otherwise be released and transferred under this Article, but who are accused of violations within the jurisdiction of the Tribunal. Each Party must detain persons reasonably suspected of such violations for a period of time sufficient to permit appropriate consultation with Tribunal authorities. ...“

B. The Law on Criminal Procedure

46. The Law on Criminal Procedure (Official Gazette of the Socialist Federal Republic of Yugoslavia – hereinafter “OG SFRY” – nos. 26/86, 74/87, 57/89 and 3/90 and Official Gazette of the Republic of Bosnia and Herzegovina – hereinafter “OG RBiH” – nos. 2/92, 9/92, 16/92 and 13/92) governed criminal procedure in the Federation at the time of the applicants’ detention. Articles 541 and following articles governed compensation for unjustified detention.

47. Article 541(1) reads as follows:

> “ (1) An individual shall be entitled to compensation for damage because of an unjustified conviction if criminal sentence was pronounced on him and became final or if he was found guilty and released from punishment, but later on the basis of an extraordinary legal remedy the new proceeding was validly dismissed or a final verdict acquitted him of the charge or if the charge was dismissed, except in the following cases:
> ...”

48. Article 542(2) reads as follows:

> “Before submitting a claim for compensation for damages, the person concerned is obliged to address his request to the Administration authority of the Republic which is competent for legal matters.”

49. Article 543(1) reads as follows:

> “If a claim for compensation for damages is not accepted or no decision by the authority organ has been taken on it within three months since the date of submitting it, the person concerned may submit a complaint to a competent court for compensation for damages. If an agreement has been made in respect to a part of the claim, the damaged person concerned

may submit a complaint regarding the remainder of the claim."

50. Article 545(3) reads as follows:

> "The right to compensation for damage belongs also to a person who is, because of a mistake or the illegal act of an organ, deprived of his or her freedom or kept for a longer period of time under custody or in prison than would otherwise have been the case."

51. The above provisions were suspended from 2 June 1992 until 23 December 1996 by the Law on Application of the Law on Criminal Procedure (OG RBiH nos. 6/92, 9/92, 13/94 and 33/95). Since 23 December 1996 they became effective once again. This Law has been replaced by the new Law on Criminal Procedure (Official Gazette of the Federation of Bosnia and Herzegovina – hereinafter "OG FBiH" – no. 43/98), which entered into force on 28 November 1998.

52. In the new Law, the question of compensation is regulated under the heading "Procedure for Compensation of Damage, Rehabilitation and Exercise of Other Rights of Persons Convicted Without Justification and Imprisoned Without Due Cause". The relevant provisions read as follows:

53. Article 524:

> "(1) The right to compensation for damage shall expire 5 years from the date when the verdict in the first instance acquitting the accused of the charge or dismissing the charge became valid or the date when the decision in the first instance dismissing the proceeding became final; and if it occurred when a higher court was ruling on an appeal, from the date when the decision of the higher court was received.
>
> (2) Before filing with the court a plea for compensation for damage, the injured party must present his petition to the Federal Ministry of Justice so that agreement might be reached as to the existence of damage and the type and amount of compensation."

54. Article 525:

> "(1) If a petition for compensation for damage is not accepted or if the Federal Ministry of Justice does not render a decision concerning such petition within 3 months from the date when the petition was filed, the injured party may file a plea with the competent court for compensation for damages. If an agreement has been reached only concerning a part of the petition, the injured party may file suit with respect to the remainder of the claim.
>
> "(2) So long as the proceeding referred to in paragraph 1 of this Article persists, the statute of limitations envisaged in Article 524, paragraph 1, of this Law shall not run.
>
> "(3) The plea for compensation for damage shall be filed against the Federation."

55. Article 527

> "(1) An individual shall also be entitled to compensation for damage in the following cases:
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> 1. if he has been in custody, and a criminal proceeding was not instituted, or the proceeding has been dismissed by a decision that has become final, or he has been acquitted of the charge by a verdict that has become final, or the charge was dismissed;
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> 2. if he has served a prison sentence, but in a retrial or in response to a petition for protection of legality a shorter sentence than he has served is pronounced against him or a criminal sanction is pronounced against him which does not consist of imprisonment, or he is found guilty but released from punishment;
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> 3. if because of an error or illegal act by an authority he has been falsely arrested or kept for a prolonged period in custody or other institution for serving punishment or

measure;

4. if he has spent a longer time in custody than the prison sentence pronounced against him."

C. The Law on Obligations

56. Articles 195 and 200 of the Law on Obligations (OG SFRY nos. 29/78, 39/85 and 45/89 and OG RBiH nos. 2/92, 13/93 and 13/94) provide for the possibility to claim in civil proceedings pecuniary and non-pecuniary damages suffered in case of bodily injury or impaired health.

57. Article 195 reads as follows:

"(1) He, who inflicts bodily injury or impairs someone's health, is under an obligation to reimburse the medical expenses to that person and other necessary costs and expenses in this regard as well as the income lost because of that person's inability to work during the time of his or her medical treatment.

(2) If the injured person, due to his or her complete or partial inability to work, loses income, or his necessities increase permanently, or the possibilities of his or her further development or advancement are ruined or reduced, then the responsible person is under an obligation to pay to the injured person a fixed annuity as compensation for that damage."

58. Article 200 reads as follows:

"(1) For sustained physical pain, for mental suffering because of reduced quality of life, disfigurement, damaged reputation, honour, freedom or personality rights, death of a close person as well as fear, the court shall, if it finds that the circumstances of the case, especially the strength of pain and fear and their duration justify it, award a fair pecuniary compensation, regardless of the compensation for physical damages as well as in its absence.

(2) When deciding upon a compensation claim for non-pecuniary damages as well as the amount thereof, the court shall take into account the importance of the damaged asset and the purpose the compensation is aimed at, but also that it does not favour the aspirations incompatible with its nature and social purpose."

59. Article 371 reads as follows:

"Claims expire within the period of five years unless another limitation deadline is stated by the law."

V. COMPLAINTS

60. All the applicants complain of myriad physical and mental abuse while being detained. Among other things, they were allegedly tortured, forced to perform compulsory work and treated in a degrading and humiliating manner.

61. The applicants allege violations of the right not to be subjected to torture or to inhuman or degrading treatment (Article 3 of the Convention), the right not to be required to perform forced or compulsory labour (Article 4 paragraph 2 of the Convention) and the right to liberty and security of person (Article 5 of the Convention). They also allege that they have been discriminated against in the enjoyment of these rights (Article 14 of the Convention) and that they have been deprived of an effective remedy (Article 13 of the Convention). In addition, Momčilo Pajčin complains of a violation of his right to a fair trial, whereas Radovan Panić and Zoran Mandić allege a violation of their right to access to a court (Article 6 of the Convention).

62. As concerns compensation for pecuniary and non-pecuniary damages, the applicants request

that the Chamber order the respondent Party to award them monetary relief ranging from sums of 30,000 KM to 200,000 KM each. The applicant Brane Čičić does not explicitly request compensation.

VI. SUBMISSIONS OF THE PARTIES

A. The respondent Party

1. The applications of Miroslav Karan, Stevan Zelić and Petar Miletić (Case nos. CH/99/1838, CH/99/1894, CH/99/1930 and CH/99/1971)

63. The Federation suggests that these applications be declared inadmissible in the absence of a court judgment establishing individual criminal responsibility for the treatment suffered by the applicants. According to the respondent Party, it is necessary that such proceedings are conducted before compensation can be sought. As no statute of limitation applies to the prosecution of "war crimes", it would be possible to conduct criminal proceedings still today. Only upon conclusion of such proceedings, the applicants should have addressed the Federal Ministry of Justice to reach an agreement on compensation. In case an amicable resolution with the Federal Ministry is not reached, compensation proceedings before a court may be initiated. As the applicants have not followed this procedure, the respondent Party concludes that domestic legal remedies have not been exhausted.

64. With regard to the application of Petar Miletić, the Federation points out that the applicant only availed himself of domestic legal remedies after he submitted his application to the Chamber. Moreover, the rejection of his claim is apparently due to the fact that the applicant had failed to provide the Court of First Instance with his current address in order to be summoned to a hearing. It argues, therefore, that the applicant failed to exhaust domestic remedies in this respect as well. Furthermore, the Federation submits that his application should be declared inadmissible because he introduced it later than six months after his release in April 1996.

65. Regarding a possible violation of Articles 3, 5 and 13 of the Convention, the Federation directs the applicants to the domestic legal system in order to remedy any violation of the applicants' human rights that may have occurred. Furthermore, the respondent Party considers the factual submissions in the applications concerning a violation of Articles 3 and 4 of the Convention vague and unsubstantiated. The Federation reiterates its opinion that the rejection of the applicants' claims before the domestic courts was justified because criminal proceedings were never conducted, and that such proceedings constitute a prerequisite for any form of compensation. Since the applicants could have initiated such proceedings, also their right of access to a court under Article 6 of the Convention was not violated.

2. The applications of Nikola Šavija, M.K., Ilija Jakolvljević, Uroš and Momčilo Pajčin (Case nos. CH/99/2318, CH/99/2341, CH/00/3816, CH/01/7083 and CH/01/7209)

66. As regards the second set of applications, the respondent Party notes that some of the applicants have not appealed against the decision of the Municipal Court II in Sarajevo rendered as the court of first instance. Therefore, those applications should be declared inadmissible for non-exhaustion of domestic remedies. With respect to the applicants who availed themselves of an appeal, but were not successful, the respondent Party claims that extra-ordinary remedies were at the applicants' disposal. Since they have not used them, those applications should be declared inadmissible on the same ground.

67. As to the merits, the respondent Party considers the applications to be ill-founded with regard to a possible violation of Article 6 of the Convention. It submits that the courts can only decide on the applicants' compensation claim if there has been a preceding criminal investigation into the

allegations.

3. The applications of Miroslav Radak, Jasminko Čehobašić, Brane Čićić, Radovan Panić and Zoran Mandić (Case nos. CH/99/1898, CH/99/1928, CH/00/3851, CH/01/7049 and CH/01/7106)

68. The respondent Party also suggests that the third set of applications should be declared inadmissible. In these cases, the Federation notes that some the applicants have not addressed the Federal Ministry of Justice as prescribed by the relevant law. In the case of Jasminko Čehobašić, the rejection of his court claim apparently was following an omission on the part of the applicant. Moreover, the applicants have only availed themselves of domestic legal remedies after having submitted applications to the Chamber. For these reasons, the applications should all be declared inadmissible for non-exhaustion of domestic remedies. Cumulatively, the finding of inadmissibility could be based on non-compliance with the 'six-month rule'.

69. On the merits, the Federation argues that the applicants have not submitted sufficient evidence to prove that they have been tortured or ill-treated while being detained, as would be required to find a violation of Article 3 of the Convention. The respondent Party submits that Jasminko Čehobašić's bodily impairment results from injuries suffered during the armed conflict prior to his detention. Also, the Federation denies that the applicants' rights under Articles 6 and 13 of the Convention were violated. In support, it reiterates that compensation claims before the courts can not be processed before the conclusion of criminal proceedings against the perpetrators of the alleged ill-treatment.

B. The applicants

70. All applicants submit that they were arrested and detained without a legal basis.

71. The applicants Stevan Zelić, M.K., Momčilo Pajčin, Miroslav Radak and Jasminko Čehobašić submit that today they are 60% disabled, which they claim to be resulting from the ill-treatment they received while being detained. Petar Miletić apparently was injured during the critical period and not provided with sufficient medical care. Today, he is 50% disabled. The same is true for Brane Čičić.

VII. OPINION OF THE CHAMBER

A. Admissibility

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

1. Regarding the detention prior to 14 December 1995

73. In accordance with Article VIII(2) of the Agreement, "the Chamber shall decide which applications to accept.... In so doing, the Chamber shall take into account the following criteria: ... (c) The Chamber shall also dismiss any application which it considers incompatible with this Agreement, manifestly ill-founded, or an abuse of the right of petition."

74. The Chamber observes that all the applicants were arrested prior to 14 December 1995, the date on which the Agreement entered into force. The Chamber also notes, however, that the detention of some of the applicants lasted after this date, in some instances even until April 1996, a time subsequent to the entry into force of the Agreement. This detention constitutes an ongoing interference with the applicants' rights to personal liberty.

75. It follows that all the applications, insofar as they concern the arrest and the detention prior to 14 December 1995, are incompatible *ratione temporis* with the provisions of the Agreement, within

the meaning of Article VIII(2)(c). As a consequence, the Chamber declares inadmissible *ratione temporis* the applications of Nikola Šavija, M.K., Ilija Jakovljević, Uroš Pajčin and Momčilo Pajčin with regard to Article 5 of the Convention insofar as they relate to detention before the entry into force of the Agreement.

76. The alleged violations in the time subsequent to the entry into force of the Agreement on 14 December 1995, however, are within the Chamber's competence *ratione temporis.* Accordingly, the applications of Miroslav Karan, Stevan Zelić, Petar Miletić, Miroslav Radak, Jasminko Čehobašić, Brane Čičić, Radovan Panić and Zoran Mandić are admissible *ratione temporis* with regard to Article 5 of the Convention insofar as they relate to detention after the entry into force of the Agreement.

2. Violations of Articles 3 and 4 of the Convention and of discrimination

77. According to Article VIII(2)(c) of the Agreement, the Chamber shall also dismiss any application which it considers manifestly ill-founded. The Chamber notes that the applicants' complaints about torture, inhuman or degrading treatment (Article 3 of the Convention) and forced or compulsory labour (Article 4 of the Convention) are expressed only in general terms. The fact that some of the applicants today are disabled does not *per se*, *i.e.* in the absence of additional substantiation, allow for the inference that their disability is the result of ill-treatment during detention or of forced labour. This is particularly so because the applicants were active service members and participated in combat activities during the armed conflict.

78. In this respect, the Chamber notes that the applicants have failed to substantiate these complaints not only in their submissions to the Chamber, but also in their claims to the domestic authorities.

79. The lack of substantiation also applies to the allegation that the applicants have been discriminated against in the enjoyment of their rights.

80. For this reason, the Chamber declares all the applications inadmissible as regards the applicants' complaints of violations of Articles 3 and 4 of the Convention and of discrimination.

3. Requirement to exhaust effective domestic remedies

81. According to Article VIII(2)(a) of the Agreement, the Chamber must consider whether effective remedies exist and whether the applicants have demonstrated that they have been exhausted. In the *Onić* case (case no. CH/97/58, *Onić v. The Federation of Bosnia and Herzegovina*, decision on admissibility and merits of 12 February 1999, Decisions January-July 1999, paragraph 38), the Chamber held that it was necessary to take realistic account not only of the existence of formal remedies in the domestic system, but also of the general legal and political context in which they operate.

82. At the outset, the Chamber will identify the different acts that form the subject of the applicants' remaining complaints in order to establish whether the domestic legal system provided for any remedy and if so, whether the applicants have availed themselves of it.

83. Insofar as the applicants raise complaints about the very fact of their illegal detention (Article 5 paragraph 1 of the Convention), the Chamber notes that the respondent Party has not argued that during the time of detention there was any domestic remedy available that provided legal redress, *i.e.* that could have resulted in their release.

84. The Chamber will now jointly consider whether the applicants have failed to exhaust available and effective remedies with regard to their complaints under Article 5 paragraph 5 of the Convention (enforceable right to compensation), Article 6 of the Convention (right of access to a court) and Article 13 of the Convention (right to an effective remedy).

85. With regard to these complaints, the respondent Party objects to the admissibility of the applications on the ground that the applicants have not initiated criminal proceedings against the perpetrators of the alleged ill-treatment as a prerequisite for any claim for compensation brought

before the courts. The Federation adds that in two cases, the rejection of the claims can be attributed to the applicants' own non-compliance with procedural provisions of the applicable laws. In some instances, the applicants have also not made use of their right to an appeal.

86. As to the Federation's first argument, the Chamber notes that both the old Law on Criminal Procedure, and the analogous provisions of the new law, stipulate that anyone detained illegally is obliged to first address an administrative body before turning to the courts. The institution of criminal proceedings or even the finding of individual guilt as a preliminary step is not mentioned by any law. It should also be noted that only the Federation in its observations before the Chamber has made this argument. Neither the Federal Ministry of Justice nor the courts have made use of this argument in rejecting the applicants' claims.

87. The Chamber finally notes in this respect, that neither in any of the present cases, nor in any of the cases of unlawful detention and ill-treatment in detention considered by the Chamber in the past, has the Federation been able to present any evidence of a victim of unlawful detention having successfully pursued this remedy (see case no. CH/98/1373, *Bajrić v. The Federation of Bosnia and Herzegovina*, decision on admissibility and merits of 10 May 2002, paragraphs 70-72). Thus, pursuance of this remedy suggested by the Federation not only is not required by the law, it also does not offer any realistic prospect of success.

88. As to the Federation's second argument, the Chamber observes that some of the applicants have indeed not availed themselves of an appeal against the decision of the Municipal Court in their case. It also appears that in some instances, the unsuccessful outcome of the proceedings was the result of the applicants' non-compliance with procedural provisions. However, the Chamber notes that every single compensation claim submitted either to the first or second instance court has been rejected, certainly for different reasons, but irrespective of compliance or non-compliance with procedural requirements. The persistent refusal of the Municipal Court II and the Cantonal Court in Sarajevo to deal with the subject-matter of the applicants' claims hence reveals a consistent pattern of unwillingness to decide on compensation claims of detainees from the side of the former enemy. In taking realistic account not only of the existence of formal remedies, but also of the general legal and political context in which they operate, the Chamber concludes that appellate proceedings cannot be said to be effective and, therefore, the applicants could not be required to avail themselves of this remedy.

89. Furthermore, the respondent Party objects to the admissibility of various applications on the ground that the applicants have not availed themselves of domestic legal remedies *before* submitting their application to the Chamber. According to Article VIII(2)(a) of the Agreement, Chamber is obliged to consider whether the applicant has exhausted domestic legal remedies at the point in time when it reaches a decision as to the admissibility of the application. Therefore, the date when an application was introduced is relevant only to the determination of the 'six-month rule', but not to the issue of whether domestic legal remedies have been exhausted. No impediment as to the admissibility of these applications appears on this ground.

90. As an additional fact, the Chamber takes notice that at the time of the applicants' release in April 1996, the provisions of the Law on Criminal Procedure regulating entitlement for compensation were suspended (see paragraph 48 above). The Law remains silent as to whether claims could be brought in respect of alleged illegal detention prior to 23 December 1996 once the suspension had been lifted. The Chamber has previously found that this lack of precision in practice had a restrictive impact on an applicant to succeed in the pursuance of his or her rights (cases nos. CH/98/1027 and CH/99/1842, *R.G. and Matković v. The Federation of Bosnia and Herzegovina*, decision on admissibility and merits of 9 June 2000, Decisions January – July 2000, paragraph 117).

91. Taken together, these findings lead to the conclusion that the remedies available to the applicants to pursue their claims for compensation offered no reasonable prospect of success and therefore, they could not be required to exhaust them. Hence, the applications are not inadmissible on the ground of non-exhaustion of domestic remedies.

3. Compliance with the 'six-month rule'

92. According to Article VIII(2)(a) of the Agreement, the Chamber shall also consider whether the application has been filed within six months from such date on which the final decision was taken. The respondent Party has raised objections as regards Petar Miletić's and other applicants' compliance with the 'six-month rule' and submitted that the date of release from detention should be considered to be the "final decision" in their cases. The Chamber recalls that by April 1996, all the applicants had been released. However, they have not initiated domestic proceedings, be it with a ministry or before a court, until some time between 1999 and 2001. Their applications were introduced to the Chamber between 12 February 1999 and 12 March 2001.

93. The Chamber notes that according to the Agreement, the time-limit of six months commences with the date of the "final decision". The applicants' release from detention, however, can only be considered to be such a "final decision" in the absence of domestic remedies. The European Commission of Human Rights in *Laçin v. Turkey* (Decision of 15 May 1995, Decisions and Reports no. 81-A, page 81) has held that:

> "... special considerations could apply in exceptional cases where an applicant first avails himself of a domestic remedy and only at a later stage becomes aware, or should have become aware of the circumstances which make that remedy ineffective. In such a situation, the six months period might be calculated from the time when the applicant becomes aware or should have become aware of these circumstances."

94. The Chamber is of the opinion that such special circumstances are applicable in the present cases. Immediately after their release from detention, the legislation in force did not provide the applicants with any domestic remedy (see paragraph 48 above). It was only as of 23 December 1996, when the Law on Criminal Procedure, including the provisions regulating compensation for illegal detention, that this remedy was again applicable. Thereafter, all the applicants initiated either administrative or judicial proceedings, or both. However, as already discussed above, these proceedings did not prove to be effective. Therefore, the Chamber finds that the six-month period must be calculated from the date of the final court decision rejecting their claims, and not from the date of their release from detention.

95. Although some of the applicants have not availed themselves of appellate proceedings, the Chamber sees no reason to distinguish their cases in this respect. The overall similarity of the proceedings in these cases has made it abundantly clear that the domestic courts were simply not willing to deal with the substance of the requests. All of the applicants have submitted their applications to the Chamber within six months of the date when it must have become clear to them that the remedies they were pursuing offered no prospect of success.

96. It follows that the applications were lodged within the time-limit of six months after the final decision in their cases were taken, *i.e.* the date when their claims were finally rejected by the domestic courts, within the meaning of Article VIII(2)(a) of the Agreement.

5. Conclusion as to admissibility

97. As there are no other grounds for declaring the applications inadmissible, the Chamber concludes that the applications of Miroslav Karan, Stevan Zelić, Petar Miletić, Miroslav Radak, Jasminko Čehobašić, Brane Čičić, Radovan Panić and Zoran Mandić are admissible with regard to violations of Article 5 of the Convention, which allegedly occurred after the entry into force of the Agreement. All the applications are admissible under Articles 6 and 13 of the Convention. The remainder of the applications will be declared inadmissible.

B. Merits

98. Under Article XI of the Agreement the Chamber must next address the question of whether the facts found disclose a breach by the Federation 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 by the Convention and the other international agreements listed in the Appendix to the Agreement.

1. Article 5 of the Convention

99. Article 5 of the Convention provides, in relevant part, as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> (a) the lawful detention of a person after conviction by a competent court;
>
> (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligations prescribed by law;
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
>
> (d) the detention of a minor by lawful order for the purposes of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
>
> (e) the lawful detention of persons for the prevention of the spreading of infectious disease, of persons of unsound mind, alcoholics or drug addicts or vagrants;
>
> (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.
>
> ...
>
> 5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

(a) Lawfulness of the applicants˚ detention

100. The Chamber has already declared the cases of the applicants Miroslav Karan, Stevan Zelić, Petar Miletić, Miroslav Radak, Jasminko Čehobašić, Brane Čičić, Radovan Panić and Zoran Mandić admissible with regard to Article 5 of the Convention, as only these applicants were still in detention after the entry into force of the General Framework Agreement. As already found before, it is beyond the Chamber's competence *ratione temporis* to deal with this issue concerning applications where the detention and release of the applicants took place prior to 14 December 1995 (see paragraphs 70-73 above). The respondent Party has not made any arguments at all on the issue of the lawfulness of the applicants' detention.

101. The Chamber notes that applicants arrested as civilians were released before 14 December 1995. Those applicants still in detention as of that day were members of the VRS. It appears that they were detained solely as prisoners of war in the sense of the Convention (III) Relative to the Treatment of Prisoners of War (Geneva 1949, hereinafter: "Geneva Convention III") and that the deprivation of liberty and the detention of the applicants were not based on any criminal charges. The Chamber notes that Article 5 of the Convention does not provide for deprivation of liberty as a consequence of prisoner of war status. At the same time, the Chamber observes that the detention of prisoners of war in accordance with the applicable international and domestic law cannot be said to be unlawful. Accordingly, the Chamber finds that the legality of the applicants' detention in the time from 14 December 1995 until April 1996 must be assessed in the light of Article IX of Annex 1A to the General Framework Agreement, which regulates questions regarding prisoners of war (see also cases nos. CH/99/1900 and CH/99/1901, *D.S.* and *N.S. v. The Federation of Bosnia and Herzegovina*, decision on admissibility and merits of 12 April 2002, paragraphs 64 *et seq.*).

102. In the above-mentioned decision, the Chamber found that the detention of the applicants as prisoners of war in itself is not a violation of Article 5 of the Convention. The Chamber notes that Article 15 of the Convention recognises the concept of derogation from the obligations under the Convention in a time of war or other public emergency. The existence of Article IX of Annex 1A to the General Framework Agreement also recognises that in the first days after the end of the armed conflict people would still be held prisoners of war by all the formerly conflicting parties. Thus, on 14 December 1995 and in the immediate time thereafter, the detention of the applicants in the case at hand was lawful. The respondent Party was obliged to treat the applicants in accordance with their status as prisoners of war regulated by the Geneva Convention III, including the obligation to release them without delay after the cessation of active hostilities, an obligation that is further regulated in the present cases by Article IX of Annex 1A of the General Framework Agreement.

103. The Chamber recalls that Article IX of Annex 1A to the General Framework Agreement provides that the respondent Party was obliged to "release and transfer without delay all combatants and civilians held in relation to the conflict". The Article further sets a time-limit of not later than thirty (30) days after the Transfer of Authority (as defined in Article I, paragraph 1a of Annex 1A, see paragraphs 44-45 above) for the release and transfer of all prisoners.

104. The Chamber notes that with the expiry of the time-limits set out in Article IX of Annex 1A to the General Framework Agreement, justification for the applicants' detention could no longer be found under Annex 1A of the General Framework Agreement or under Article 15 of the Convention. Therefore, as of that date, the respondent Party had to comply with all obligations of the Convention set out in Article 5 of the Convention (see also the *D.S./N.S.* case, paragraph 73). No justification listed in paragraph 1 of Article 5, which allows for a deprivation of liberty in certain circumstances, applies in the applicants' cases.

105. In the present cases, the Chamber observes that the applicants Miroslav Radak, Jasminko Čehobašić, Brane Čičić, Radovan Panić and Zoran Mandić were released on 27 January 1996. Hence, the Chamber concludes that in these cases there has been no violation of Article 5 of the Convention. In the cases of the applicants Miroslav Karan, Stevan Zelić and Petar Miletić, their continuing detention from the first days of March 1996 until their release on 6 and 21 April 1996, respectively, constituted a violation of their rights under paragraph 1 of Article 5 of the Convention.

(b) Right to compensation for illegal detention

106. Having established that the applicants Miroslav Karan, Stevan Zelić and Petar Miletić were unlawfully detained, the Chamber will now address the complaints as regards the inability of these applicants to obtain compensation for their illegal detention as required by paragraph 5 of Article 5 of the Convention. This provision requires that national law provide for an enforceable right to compensation in respect of detention which is in contravention of the guarantees provided for in Article 5.

107. As the provisions of the Law on Criminal Procedure regulating entitlement for compensation were suspended at the time of the applicants' release, the Chamber observes that no enforceable right to compensation for the applicants' illegal detention was available to them until 23 December 1996, the date when the suspension was lifted (see paragraph 48 above). The law is unclear as to whether claims could be brought in respect of alleged illegal detention prior to 23 December 1996 once the suspension had been lifted (cases nos. CH/98/1027 and CH/99/1842, *R.G.* and *Matković v. The Federation of Bosnia and Herzegovina*, decision on admissibility and merits of 9 June 2000, Decisions January – July 2000, paragraph 117). The Chamber is of the opinion that, in order to comply with the requirements set out by Article 5 of the Convention, the respondent Party was under an obligation to provide an enforceable compensation mechanism for all cases in which prisoners of war were detained longer than until the first days of March 1996.

108. After 23 December 1996, the respondent Party submits, the applicants could have reported the incidents underlying their applications to the competent criminal investigating bodies, and on the basis of a finding of individual guilt, they could have settled their compensation claims with the Federal Ministry of Justice. In case of failure to react on the part of the Ministry, the applicants would have been entitled to initiate claims before the courts.

109. The Chamber observes that according to the Law on Criminal Procedure, compensation for unlawful detention must be claimed in a preliminary step before the Federal Ministry of Justice, and, when a mutual agreement cannot be reached, before the courts. The Chamber has already found above that this procedure in practice could not be regarded as an effective domestic legal remedy (see paragraph 88 above). It will now turn to the question of whether any of these elements could be considered an enforceable compensation mechanism, not only in theory but also in practice.

110. The institution of criminal proceedings, aimed at the establishment of individual guilt or absence thereof, clearly serves a different purpose. It may not be ascertainable by a criminal investigation who were the perpetrators, but it is an undisputed fact that the applicants were arrested by units of the HVO, and detained in prisons run by authorities of the Federation. To condition the enforcement of a compensation claim on an individual's conviction would therefore deprive the applicants of legal redress.

111. Next, the settlement of a claim for compensation with the Federal Ministry of Justice, which constitutes an *ex gratia* payment, again leaves the applicants without an enforcement mechanism. Thus, the only prospect of success would have been offered by the institution of civil proceedings, in this case before the Municipal Court II in Sarajevo. However, this Court has declared itself incompetent to decide on all the claims.

112. The Chamber concludes that the law enacted by the respondent Party and the practice of its bodies do not provide the applicants with an enforceable right to compensation for detention in violation of Article 5 of the Convention. Therefore, there has been a violation of the rights of the applicants Miroslav Karan, Stevan Zelić and Petar Miletić as guaranteed by paragraph 5 of Article 5 of the Convention.

2. Article 6 of the Convention

113. Paragraph 1 of Article 6 of the Convention reads, in relevant part:

> "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."

114. Although not all of the applicants have explicitly complained of a violation of Article 6, the Chamber will examine issues under this Article in relation to all the applications, considering that all the applicants have instituted compensation proceedings before the domestic courts and failed to achieve any redress. The respondent Party argues that Article 6 was not violated since the rejection of civil claims due to the court's asserted lack of competence was in accordance with domestic law.

115. The Chamber notes that all the applicants have filed claims in order to obtain compensation, partly for pecuniary damages, but for the most part for non-pecuniary distress suffered while in detention. In their submissions to the courts, they complain of ill-treatment and sometimes allege that they were forced to work. The Chamber is not in a position to assess whether these claims, if they were considered by the domestic courts, would have a prospect of success. In the current examination, it will restrict itself to the question of whether the persistent rejection of all claims for compensation by the domestic courts was in accordance with the guarantees contained in Article 6 of the Convention.

116. Whereas paragraph 5 of Article 5 of the Convention requires the respondent Party to provide some kind of enforceable compensation for unlawful detention, paragraph 1 of Article 6 deals specifically with the determination of "civil rights" by a court. The Chamber observes that it is settled jurisprudence of the European Court of Human Rights that Article 6 paragraph 1 of the Convention encompasses the right of access to a court (*Golder v. United Kingdom*, judgment of 21 February 1975, Series A no. 18, paragraphs 26 *et seq.*). The right of access means access in fact, as well as in law.

117. The Chamber further observes that in their actions lodged before the Municipal Court II in Sarajevo, the applicants sought compensation for damages, both pecuniary and non-pecuniary, arising from their unlawful detention, ill-treatment and forced labour. The compensation claims asserted by the applicants are governed by provisions of the Law on Criminal Proceedings and by the Law on Obligations. In order to fall within the scope of Article 6 paragraph 1 of the Convention, these proceedings would have to be considered the "determination of civil rights and obligations". As the European Court of Human Rights has held in *Georgiadis v. Greece* (judgment of 29 May 1997, Reports 1997 III, paragraph 35), the guarantee laid down in paragraph 1 of Article 6 applies to compensatory proceedings irrespective of the character of the domestic legislation and irrespective of the authority which is invested with jurisdiction over the matter. Against this background, the Chamber concludes that the applicants' cases were within the ambit of Article 6 paragraph 1 of the Convention.

118. The Chamber recalls once more that prior to 23 December 1996, the domestic legal system did not foresee any mechanism in order to file compensation claims for alleged illegal detention. After that date, the Law on Criminal Procedure provided for such claims in its Articles 542-545. At all times, individuals could be sued for ill-treatment and infliction of bodily impairment pursuant to Articles 195 and 200 of the Law on Obligations, limited in time to five years (see paragraph 56 above). However, as demonstrated above, in practice the applicants had no expectation that their legitimate claims would be solved by the administrative bodies of the Federation or by the courts.

119. In this context, the Chamber notes that both the Cantonal Court and the Municipal Court II in Sarajevo have only declared themselves not competent to deal with the claims asserted by the applicants. In declaring their lack of competence, these courts have directed the applicants to the Human Rights Commission created under Annex 6 to the General Framework Agreement, *i.e.* to the Office of the Ombudsperson for Bosnia and Herzegovina or to the Chamber. In the Chamber's view, this reveals a misunderstanding of the allocation of responsibility envisaged by the Agreement. Namely, according to Article I of the Agreement, it is the respondent Party's and its organs' obligation

> "... to secure to all persons within their jurisdiction the highest level of internationally recognised human rights and freedoms ...".

The Chamber's mandate as part of the Human Rights Commission is

> "... to assist in honoring their obligations under this Agreement".

120. Moreover, Article II(1) of the Constitution of Bosnia and Herzegovina and Article 2 of the Constitution of the Federation of Bosnia and Herzegovina stipulate that the respondent Party shall

> "... ensure the highest level of internationally recognised (human) rights and (fundamental) freedoms...",

including the right of access to a court. Pursuant to Article II(2) of the Constitution of Bosnia and Herzegovina and to Article 6 of the Constitution of the Federation of Bosnia and Herzegovina, the rights protected by the Convention are directly applicable in the Federation of Bosnia and Herzegovina and enjoy preference over all other laws. The courts addressed by the applicants accordingly had the competence and the obligation to determine whether the applicants have a right to be compensated not only with regard to the Law on Criminal Procedure and the Law on Obligations, but also with regard to the Convention.

121. According to Article VIII(2)(a) of the Agreement, the Chamber shall accept an application only if the applicant has demonstrated that he exhausted effective domestic remedies before filing the application. This rule reflects the general principle that the task of securing human rights is, in the first place, the responsibility of the parties to the Agreement. In no case can the Chamber's competence to consider alleged or apparent human rights violations release the courts of the respondent Party of their competence and duty to determine whether or not a person seeking compensation for unlawful detention or ill-treatment is entitled to the compensation claimed.

122. Under these circumstances, the Chamber concludes that the respondent Party has violated the right to access to court as guaranteed by Article 6 paragraph 1 of the Convention in all the present applicants' cases.

3. Article 13 of the Convention

123. In view of the finding of a violation under Article 6(1) of the Convention, the Chamber does not consider it necessary to examine whether there has been any violation of the applicants' rights under Article 13 of the Convention, given that the right of access under Article 6(1) of the Convention provides a stricter guarantee than Article 13 of the Convention (see also case no. CH/98/698, *Jusufović v. The Republika Srpska,* decision on admissibility and merits of 9 June 2000, Decisions January-June 2000, paragraph 101).

VIII. REMEDIES

124. Under Article XI(1) of the Agreement, the Chamber must next address the question of 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 injuries), and provisional measures.

125. The applicants request monetary compensation for pain and mental distress they underwent during their detention, and in some instances for pecuniary damages, ranging from the amount of 30,000 Convertible Marks (*Konvertibilnih Maraka*, "KM") to 200,000 KM. The Federation objects to the payment of any compensation and insists that no violations have occurred.

126. The Chamber notes that it has declared all the applications inadmissible insofar as the applicants complained of ill-treatment in detention and forced labour. It will therefore not award any compensation in this respect.

127. The Chamber also notes that it has not found a violation of the right of liberty and security of person in the cases of the applicants Miroslav Radak, Jasminko Čehobašić, Brane Čičić, Radovan Panić and Zoran Mandić. Again, in these cases it will therefore not award any compensation for the detention.

128. The Chamber has established that the applicants Miroslav Karan, Stevan Zelić and Petar Miletić have suffered a violation of their rights not to be arbitrarily deprived of their liberty, as protected by Article 5 paragraph 1 of the Convention. This violation is of a very serious nature, despite the fact that the period of time relevant for the finding of a breach of Article 5 paragraph 1 of the Convention is relatively short, compared with the overall duration of their detention. Moreover, the Federation is responsible for withholding from these applicants any enforceable compensation mechanism pursuant to Articles 5 paragraph 5 of the Convention.

129. The Chamber further notes that the respondent Party denied all applicants the right of access to a court for the determination of their "civil rights" pursuant to Article 6 paragraph 1 of the Convention.

130. With respect to the denial of access to a court, the Chamber will make an order to the respondent Party to the effect that the applicants are immediately provided with access to a court so that their various claims of ill-treatment, forced labour, unlawful detention and resulting bodily impairment can be determined.

131. As regards the claims for compensation, the Chamber will order the respondent Party to pay all applicants compensation for the sense of injustice suffered as a consequence of being denied access to a court in the amount of 2,000 KM each. With respect to the applicants Miroslav Karan, Stevan Zelić and Petar Miletić, the Chamber will additionally order the respondent Party to compensate them for the illegal detention and the denial of an enforcement mechanism in the amount of 3,000 KM each. This amount is to be paid within 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.

132. The Chamber further awards simple interest at an annual rate of 10% as of the date of expiry of the one-month period set in the previous paragraph for the implementation of the present decision or any unpaid portion thereof until the date of settlement in full.

IX. CONCLUSIONS

133. For the above reasons, the Chamber decides,

1. unanimously, to declare the applications of Miroslav Karan, Stevan Zelić, Petar Miletić, Miroslav Radak, Jasminko Čehobašić, Brane Čičić, Radovan Panić and Zoran Mandić admissible in relation to the complaints under Articles 5 of the Convention insofar as they relate to detention since the entry into force of the Agreement;

2. unanimously, to declare all the applications admissible under Articles 6 and 13 of the Convention;

3. unanimously, to declare the remainder of the applications inadmissible;

4. unanimously, that the detention of the applicants Miroslav Radak, Jasminko Čehobašić, Brane Čičić, Radovan Panić and Zoran Mandić until 27 January 1996 did not constitute a violation of their right to liberty and security of person as guaranteed by Article 5 paragraph 1 of the Convention;

5. unanimously, that the detention of the applicants Miroslav Karan, Stevan Zelić and Petar Miletić from the beginning of March 1996 to 6 and 21 April 1996, respectively, constituted a violation of their right to liberty and security of person as guaranteed by Article 5 paragraph 1 of the Convention, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Agreement;

6. unanimously, that the failure of the respondent Party to provide an effective mechanism to compensate the applicants Miroslav Karan, Stevan Zelić and Petar Miletić for being victims of detention in contravention of Article 5 paragraph 1 of the Convention constitutes a violation of their right to have an enforceable right to compensation as guaranteed by Article 5 paragraph 5 of the Convention, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Agreement;

7. unanimously, that the rejection of the claims filed by all applicants before the civil courts constitutes a violation of their right to have access to a court for the determination of their civil rights as guaranteed by Article 6 paragraph 1 of the Convention, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Agreement;

8. unanimously, that it is not necessary to examine the applications under Article 13 of the Convention;

9. unanimously, to order the Federation of Bosnia and Herzegovina to take all necessary action to provide the applicants with access to a court, thereby ensuring that their various claims can be determined;

10. unanimously, to order the Federation of Bosnia and Herzegovina to pay to the applicants Nikola Šavija, M.K., Ilija Jakovljević, Uroš Pajčin and Momčilo Pajčin, Miroslav Radak, Jasminko Čehobašić, Brane Čičić, Radovan Panić and Zoran Mandić, within 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, the sum of 2,000 KM (two thousand Convertible Marks) each, by way of compensation for non-pecuniary damage;

11. unanimously, to order the Federation of Bosnia and Herzegovina to pay to the applicants Miroslav Karan, Stevan Zelić and Petar Miletić, within 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, the sum

of 5,000 KM (five thousand Convertible Marks) each, by way of compensation for non-pecuniary damage;

12. unanimously, that simple interest at an annual rate of 10 % (ten per cent) will be payable on the sums awarded in conclusions 10 and 11 above from the expiry of the one-month period set for such payment until the date of final settlement of all sums due to the applicants under this decision; and

13. unanimously, to order the Federation of Bosnia and Herzegovina to report to it within 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 on the steps taken by it to comply with the above orders.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel