DECISION ON ADMISSIBILITY AND MERITS

(delivered on 10 October 2003)

Case no. CH/99/2315

Suada HADŽISAKOVIĆ

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 2 September 2003 with the following members present:

Ms. Michèle PICARD, President
Mr. Miodrag PAJIĆ, Vice-President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
Mr. Rona AYBAY
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 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 VIII(3) and XI of the Agreement and Rules 49(3), 52, 57, and 58 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. This case concerns the attempts of the applicant, a woman of Bosniak origin, to gain protection from the authorities of the Republika Srpska after she was forcibly and illegally expelled from her pre-war apartment in Banja Luka by a military police officer of the Republika Srpska. In response to her myriad requests for protection, including to the local police and the courts, the authorities of the Republika Srpska took little action. In the end, whilst she regained possession of her pre-war apartment, she was deprived of all her moveable property left in her apartment.

2. Finally, on 25 September 2000, the First Instance Court in Banja Luka issued a judgment in the applicant's favour awarding her compensation for her alienated moveable property. However, then the applicant learned that the defendant has no adequate property for an inventory and auction from which the applicant could gain payment of the judgment. To date none of the applicant's moveable property has been returned to her, she has received no compensation for it, and the authorities of the Republika Srpska have not pursued criminal proceedings against the person the civil court declared responsible for alienating her moveable property.

3. The application raises issues under Article 1 of Protocol No. 1 (right to peaceful enjoyment of possessions) to the European Convention on Human Rights (the "Convention"), Article 6 paragraph 1 of the Convention (right to a court), Article 13 of the Convention (right to an effective remedy), and discrimination in the enjoyment of these rights under Article II(2)(b) of the Agreement.

II. PROCEEDINGS BEFORE THE CHAMBER

4. The application was submitted on 3 August 1999 and registered on the same day. The applicant is represented by Igor Sjerikov, a lawyer practicing in Banja Luka.

5. On 25 May 2000, the Chamber transmitted the application to the respondent Party for its observations on the admissibility and merits under Article 6 of the Convention, Article 1 of Protocol No. 1 to the Convention, and discrimination under Article II(2)(b) of the Agreement.

6. On 7 August 2000, the respondent Party submitted its observations on admissibility and merits. On 18 September 2000, the applicant submitted her observations in reply, along with claims for compensation for pecuniary and non-pecuniary damages. On 3 November 2000, the respondent Party submitted its observations on the applicant's claims for compensation.

7. On 10 August 2001 and 2 November 2001, the applicant or her representative submitted additional observations and information. On 12 October 2001, the respondent Party submitted further observations and information.

8. On 13 May 2002, 20 December 2002, and 27 March 2003, the applicant's representative submitted letters urging the Chamber to issue a decision as soon as possible.

9. On 27 May 2003, the Chamber requested the parties to submit additional information, and on 10 June 2003, it requested the respondent Party to submit copies of the court files in both the relevant civil and criminal proceedings. On 29 May 2003, the applicant's representative submitted the requested information. On 10 June 2003, the respondent Party responded to the Chamber's letter, and on 1 July 2003, it submitted selected portions of the court files in the civil proceedings. The respondent Party did not submit any portions of the court files in the relevant criminal proceedings.

10. The Chamber deliberated on the admissibility and merits of the application on 8 May 2000, 4 and 5 June 2003, 4 July 2003, and 2 September 2003. It adopted the present decision on admissibility and merits on the latter date.

III. STATEMENT OF THE FACTS

A. Proceedings concerning possession of the applicant's pre-war apartment

11. The applicant, who is of Bosniak origin, is the occupancy right holder over an apartment located at Ulica Gavrila Principa 7 in Banja Luka, the Republika Srpska. Prior to the events in question, she had lived in this apartment since 1966.

12. On 15 September 1995, the applicant was forcibly expelled from her apartment by Ostoja Vasilić (O.V.), a displaced person from Baraci of Serb origin. According to the applicant, O.V. was employed as a military police officer of the Repubika Srpska at the time of the events in question. As she had no other place to live, she resided in an orphanage with other Bosniaks, who also had been evicted from their homes in Banja Luka. Thereafter, she found accommodation with friends in Banja Luka. From 1995 to 1997 the applicant "was practically living on the street, in an impossible situation". The applicant states that she immediately informed the police about her forcible eviction, but they "did not take any steps and acted as if it were something normal".

13. On 27 November 1995, the applicant initiated a lawsuit before the First Instance Court in Banja Luka requesting repossession of her pre-war apartment. On 30 April 1996, the First Instance Court issued a judgment in the applicant's favour. It ordered the defendant, O.V., to vacate the applicant's apartment and to hand over possession of it to the applicant "together with all moveable property" and to compensate the applicant for the costs of the proceedings, within fifteen days from the date the decision became final and binding, on threat of forcible eviction.

14. On 26 June 1996, the First Instance Court in Banja Luka issued a procedural decision on enforcement allowing the applicant to repossess her pre-war apartment and ordering the defendant, O.V., immediately to vacate the apartment. The First Instance Court in Banja Luka scheduled the eviction of O.V. for the following dates: 19 September 1996, 4 October 1996, 6 November 1996, 14 April 1997, 14 July 1997, 19 August 1997, and 29 September 1997. The first five scheduled evictions were unsuccessful because the local police merely informed the applicant that O.V. refused to vacate the apartment and the police took no further action.

15. According to the minutes, the eviction of O.V. from the applicant's apartment finally occurred on 29 September 1997, with police assistance and a locksmith. The applicant regained possession of her apartment, which was then empty of all moveable property, on the same day.

B. Proceedings concerning return of or compensation for moveable property

16. On 27 December 1995, the applicant made a list of all moveable property she left in her pre-war apartment. This statement was verified before the Municipal Secretariat for General Administration in Banja Luka. According to the applicant, all her moveable property was new or in good condition.

17. Upon the applicant's request and on an unknown date in early 1996, the First Instance Court in Banja Luka made an inventory list of the moveable property in the applicant's pre-war apartment. The illegal occupant, O.V., was using the apartment at this time. For the most part, the applicant's verified list of moveable property corresponds to the Court's inventory list. However, the inventory list states that the defendant, O.V., claims that all major items and furniture in the apartment belong to him and not to the applicant.

18. On 6 March 1996, the applicant initiated proceedings before the First Instance Court in Banja Luka requesting it to order O.V. to return possession of the moveable property he had taken from her, and she attached a copy of the inventory list to her lawsuit. With the same lawsuit, the applicant requested the Court to issue an order for a provisional measure aimed at preventing O.V. from disposing of the moveable property mentioned in the inventory list. The applicant noted that "as the defendant may sell the mentioned items, there exists a danger that realisation of the claim may be prevented". It appears that the Court did not respond to the request for a provisional measure.

19. As explained above, on 29 September 1997, O.V. was finally evicted from the applicant's apartment, with police assistance. According to the minutes, "moveable items were taken out of the disputed apartment and handed over to the debtor. Not a single item remained in the apartment."

20. On 5 May 1998, the applicant initiated another lawsuit before the First Instance Court in Banja Luka, changing her request by seeking to be compensated for damages for her alienated moveable property in the amount of 20,000 *Deutsche Marks* ("DEM"), equivalent to 120,000 *Yugoslav Dinars* ("YUD"), plus legal interest. The applicant noted that "the defendant showed, through his conduct, that he has no intention of returning the furniture and other items taken from the plaintiff's apartment". She further stated that she would withdraw her lawsuit if O.V. returned her moveable property to her possession.

21. On 25 September 2000, the First Instance Court in Banja Luka found that O.V. is obliged to compensate the applicant for the moveable property he removed from her apartment, in the amount of 120,000 YUD (which is, according to the applicant's calculation, 36,363 DEM), plus legal interest calculated as from 6 August 1998. The Court explained that "before moving out of the apartment, the defendant removed all the claimant's furniture and accessories from the apartment". Moreover, the defendant showed no intention to return this alienated moveable property to the applicant. On 16 December 2000, the judgment became final and binding.

22. On 26 February 2001, the applicant filed a request for enforcement of the judgment of 25 September 2000 to the First Instance Court in Mrkonjić Grad. On 8 May 2001, the First Instance Court in Mrkonjić Grad, which was territorially competent due to O.V.'s residency, issued a procedural decision ordering enforcement through inventory, valuation, and sale of O.V.'s property in order to compensate the applicant.

23. On 21 May 2001, the applicant withdrew her request for enforcement pending before the First Instance Court in Mrkonić Grad. She offered no explanation for this request.

24. On 28 May 2001, O.V. filed a request for renewal of proceedings before the First Instance Court in Banja Luka. He complained that he had never received the judgment of the First Instance Court in Banja Luka of 25 September 2000 and that he only learned about it when he received the procedural decision on enforcement of the First Instance Court in Mrkonjić Grad of 8 May 2001.

25. On 30 May 2001, O.V. lodged a complaint against the procedural decision on enforcement of 8 May 2001 to the First Instance Court in Mrkonjić Grad. O.V. informed the Court that he has no property that could be subjected to a sale by auction. Thereafter, according to the applicant's representative, the Court suspended the enforcement proceedings due to lack of adequate property for an inventory and auction from which the applicant could gain payment of the judgment.

26. On 22 April 2002, the First Instance Court in Mrkonjić Grad issued a procedural decision terminating the enforcement that had been ordered on 8 May 2001 because the applicant withdrew her request for enforcement (see paragraph 23 above). The applicant has the right to submit a new proposal for enforcement, although the Chamber is not aware whether or not she has done so. It appears that the enforcement proceedings continued, however.

27. On 10 September 2002, the First Instance Court in Mrkonjić Grad issued a procedural decision rejecting the applicant's claim for exemption of court taxes. After the applicant objected to this decision, the First Instance Court in Mrkonjić Grad issued a procedural decision on 14 November 2002 rendering out of force the earlier procedural decision, thereby exempting the applicant from the payment of court taxes in the enforcement proceedings.

28. On 4 June 2003, the First Instance Court in Banja Luka issued a procedural decision rejecting as ill-founded O.V.'s request for renewal of proceedings concluded by the final and binding court judgment of 25 September 2000 (see paragraph 24 above).

C. Criminal proceedings against the illegal occupant

29. The applicant initiated criminal charges against O.V. with the Public Prosecutor's Office in Banja Luka for the criminal offence of aggravated theft, as defined in Article 148 paragraph 3 — special part — of the Criminal Code of the Republika Srpska (Official Gazette of the Republika Srpska nos. 22/00 and 37/01). The case was registered, but she alleges that the prosecutor's office took no action and she was verbally informed that the criminal charges were rejected. The respondent Party claims that "as the relevant evidence and information that the charged person committed this criminal act were not collected, the charge was rejected" and the applicant did not further pursue an investigation.

30. Since the respondent Party submitted no documents in response to the Chamber's request for the file in the criminal proceedings (see paragraph 9 above), the Chamber has no further information about these proceedings.

IV. PROCEEDINGS BEFORE THE OMBUDSPERSON FOR BOSNIA AND HERZEGOVINA

31. Meanwhile, on 9 October 1996, the applicant introduced an application to the Human Rights Ombudsperson for Bosnia and Herzegovina against the Republika Srpska. The Ombudsperson opened an investigation under Article 1 of Protocol No. 1 and Articles 6 and 13 of the Convention "as regards the applicant's complaints that she had been unable to enjoy her possessions because of the failure of the authorities to enforce the judgment of the Court of First Instance of 30 April 1996 and that she had no effective remedy in this respect" (case no. (B)62/96, *Hadžisaković v. The Republika Srpska*, report of the Ombudsperson of 21 August 1997, paragraph 20).

32. On 21 August 1997, the Ombudsperson adopted her report on application no. (B)62/96. In response to the applicant's complaints that "she cannot return to her apartment because of the inaction of the police", the Ombudsperson found that:

> "[T]he local police of Banja Luka have consistently failed to fulfil their obligation to respond to requests from the court for police assistance at evictions.... Furthermore, the situation never would have arisen had the original eviction orders been enforced. Finally, the Ombudsperson notes that the court has continued to fix eviction dates for almost one year. In these circumstances, the Ombudsperson considers that the continued inability of the applicant to return to her property is a consequence of the failure to enforce the first eviction orders..." (case no. (B)62/96, *Hadžisaković v. The Republika Srpska*, report of the Ombudsperson of 21 August 1997, paragraph 30).

33. Accordingly, the Ombudsperson found that the failure of the authorities of the Republika Srpska to enforce the judgment of 30 April 1996 "constituted a failure to secure the applicant's peaceful enjoyment of her possessions as guaranteed by Article 1 of Protocol No. 1 to the Convention" (*id.* at paragraph 38), as well as a violation of the applicant's rights under Article 6 of the Convention (*id.* at paragraph 35). The Ombudsperson recommended that the Republika Srpska take the following actions: 1) issue detailed guidelines to the police of Banja Luka regarding their obligations to enforce judgments of the court in accordance with the relevant domestic law; 2) ensure that the occupant of the applicant's apartment is evicted so as to enable the applicant to return to her apartment; and 3) pay to the applicant a nominal sum of 500 *Deutsche Marks* as compensation for non-pecuniary damage (*id.* at paragraph 46).

34. On 7 May 1998, the Agent of the Republika Srpska informed the Ombudsperson that it had complied with the first two recommendations, but not the third recommendation regarding the payment of compensation. The Ombudsperson acknowledged receipt of such information on 18 May 1998. The Chamber has no further information regarding the Republika Srpska's compliance with the Ombudsperson's recommendations.

V. RELEVANT LEGAL PROVISIONS

A. Law on Regular Courts of the Republika Srpska

35. In accordance with Article 18 of the Law on Regular Courts (Official Gazette of the Republika Srpska — hereinafter "OG RS" — no. 6/93), the first instance court issuing a procedural decision on enforcement shall be entrusted with the enforcement of such procedural decision.

B. Law on Enforcement Procedure of the former Socialist Federal Republic of Yugoslavia

36. The Law on Enforcement Procedure of the former Socialist Federal Republic of Yugoslavia (Official Gazette of the Socialist Federal Republic of Yugoslavia nos. 20/78-673, 6/82-149, 74/87-1742, 57/89-1440, 20/90-820, 35/92-589, Constitutional Court of Yugoslavia II N. 109/91 – OG SFRY no. 63/91-1030; amended by Official Gazette of the Republika Srpska nos. 17/93-670 and 14/94-534), as amended, was in force in the Republika Srpska during the applicable time period for the present case. It sets out a detailed regime for the enforcement of court decisions, and the Chamber quotes the relevant provisions from this Law below. The new Law on Enforcement Procedure of the Republika Srpska entered into force on 1 August 2003, and its Article 232 provides that the old Law is no longer applicable in the Republika Srpska (OG RS no. 59/03).

37. Article 2 of the Law on Enforcement Procedure states that enforcement is initiated at the request of the person in whose favour a court decision is issued. Article 3, with respect to "competencies", provides that the regular court shall carry out an enforcement. More specifically, Article 4 provides as follows:

> "The enforcement intended for the realisation of a pecuniary claim and for the assurance of such a claim shall be determined and carried out in the scope required for the payment in full, *i.e.* assurance of that claim."

38. With respect to enforceability of a decision, Article 18 paragraph 1 provides as follows:

> "A court decision or a decision issued in petty offence proceedings shall be enforceable if it is final and binding and if the time limit for voluntary fulfilment of the debtor's obligation has expired."

39. Article 10 of the Law on Enforcement Procedure states that "in enforcement proceedings, the court is obliged to act urgently".

40. Article 7 states that the competent court shall issue a procedural decision or conclusion on enforcement. Article 7 paragraph 3 provides that "the conclusion shall order the officer to enforce certain actions and shall decide on other issues in the management of the proceedings". According to Article 46 of the same Law, "the officer shall possess the authority to remove a person hindering enforcement proceedings, and, based upon the circumstances of the case, to request assistance from the competent body of the interior", *i.e.* the police.

C. Law on Internal Affairs of the Republika Srpska

41. For the purposes of the Law on Internal Affairs of the Republika Srpska, the relevant time period for the present case is 15 September 1995, when the applicant was expelled from her apartment, until 29 September 1997, when she regained possession of her apartment in the absence of any of her moveable property. The Chamber quotes below the relevant provisions of the consolidated text of the Law on Internal Affairs (OG RS no. 16/95) enacted by the Assembly of the Republika Srpska that were applicable during this time period. A new Law on Internal Affairs of the Republika Srpska entered into force on 1 July 1998, and its Article 95 provides that the old Law is no longer in force in the Republika Srpska (OG RS nos. 21/98, 18/99).

42. Article 10 of the Law on Internal Affairs (OG RS no. 16/95) provides that the police are obliged to assist the bailiff in the performance of his duties, as follows:

"Public security stations shall be obliged to offer assistance to provide the enforcement of affairs and tasks under the responsibility of other state bodies or enterprises and other legal persons in the exercise of their public authority as provided by the law if, during the performance of such affairs and tasks, physical resistance is encountered or if such resistance may be reasonably expected.

"The manner in and extent to which the assistance is to be provided, within the meaning of the preceding paragraph, shall be decided upon by the head of the public security station.

"When the head of the public security station estimates that, during the provision of the assistance set out in paragraph 1 of this Article, organised and mass resistance or the use of weapons may be expected to arise, s/he is obliged, prior to deciding as set out in the preceding paragraph, to obtain the consent of the Minister of Interior (the "Minister").

"The head of the public security centre shall decide whether or not to provide, in the territory of the municipality where such public security centre is seated, the assistance set out in paragraph 1 of this Article."

43. Article 37 of the Law on Internal Affairs (OG RS no. 16/95) further provides:

"Authorised officials are obliged to carry out the instructions of the Minister or head that are made with a view to carrying out the duties and the tasks of the State and protecting public security unless their performance would be contrary to the constitution and the law."

VI. COMPLAINTS

44. The applicant alleges violations of her rights protected by Article 1 of Protocol No. 1 to the Convention (right to peaceful enjoyment of her possessions) and Article 8 of the Convention (right to home) in connection with her forcible eviction from her pre-war apartment and the delay in being reinstated into possession of that apartment. As a result of this, she states: "I suffered great pain, fear, and suffering because I separated from my family, had to find a way to survive, and had to pay high costs for court proceedings and a lawyer". She further alleges violations of Article 13 of the Convention (right to an effective remedy) in connection with Article 1 of Protocol No. 1 and Article 8 and discrimination in the enjoyment of all of these rights.

45. With respect to the loss of her moveable property from her pre-war apartment, the application raises issues under Article 1 of Protocol No. 1 to the Convention and Article 6 paragraph 1 of the Convention. The applicant complains about the excessively long period of time her proceedings to recover her moveable property or to obtain compensation for such damage have been pending before the domestic courts. She further complains about the loss of her moveable property.

VII. SUBMISSIONS OF THE PARTIES

A. The respondent Party

46. In its observations of 7 August 2000, the respondent Party states, with no elaboration, that it disputes the facts as presented by the applicant in full. With respect to admissibility, the respondent Party argues that since the applicant repossessed her apartment on 29 September 1997, following the eviction of the illegal occupant, and she was awarded the costs of her civil proceedings, the case has been resolved. In addition, given that her civil proceedings for the return of or compensation for her alienated moveable property are still pending before the First Instance Court in Banja Luka, the respondent Party proposes that the application be declared inadmissible for non-exhaustion of domestic remedies. The respondent Party claims that those proceedings are still pending because the defendant, O.V., is not residing at the address set forth in the applicant's lawsuit and the court cannot conduct the proceedings without the address of the defendant. Moreover, the applicant failed

to pursue an investigation or to present relevant evidence in support of her criminal charges against O.V.

47. With respect to the merits, the respondent Party argues that the application is ill-founded. "Since the applicant has not demonstrated that domestic remedies were exhausted", Article 6 could not have been violated. Also, "it did not contribute to the applicant's loss of possession of her moveable property" and "its organs did not contribute to possible damage to the applicant's property". Therefore, the respondent Party could not have violated Article 1 of Protocol No. 1. In addition, the respondent Party submits that the applicant's compensation claims are ill-founded.

48. In its observations of 3 November 2000, the respondent Party contends that "the applicant abandoned her apartment, and her items along with it, with no influence from the respondent Party. Accordingly, the respondent Party or its bodies contributed in no way to the possible infliction of damages in this case". Consequently, the application should be declared manifestly ill-founded.

49. In its supplemental observations of 12 October 2001, the respondent Party further argues that the application should be declared inadmissible pursuant to Article VIII(2)(d) of the Agreement because the Human Rights Ombudsman for Bosnia and Herzegovina adopted a report on 21 August 1997 recommending that the Republika Srpska take certain actions to remedy violations of the applicant's human rights. As of 7 May 1998, the Republika Srpska had complied with two of the three recommendations of the Ombudsperson (see paragraph 34 above).

B. The applicant

50. In her observations of 18 September 2000, the applicant highlights that her lawsuits before the First Instance Court in Banja Luka "have been 'standing still' since 1996, with no certainty that they will be concluded". She characterises the respondent Party's observations as "manipulat[ing] the legal procedure".

51. With respect to the actions of the authorities of the respondent Party, the applicant explains:

> "I addressed the police, sought their protection, but they did not provide it. The person who expelled me from my apartment is Ostoja Vasilić, then a military police officer of the Republika Srpska. This person later took my moveable property from the apartment, and the police took no measures concerning that act, although I initiated criminal charges against that person. Later, during the court proceedings to retrieve my moveable property, I was unable to obtain his address, and even the authorities of the respondent Party, the Ministry of Interior, which holds such information, refused to provide me with the address. Such information might have been requested by the Court *ex officio*, but it also failed to do that. Thus, the statement that the respondent Party made no contribution is ill-founded, as my right to protection was denied, as well as the information that might have assisted me in obtaining such right on my own. The person who took my moveable property was actually a military police officer at the time, thus not making it impossible for the respondent Party to obtain his address or to act upon the criminal charges I initiated."

52. Consequently, the applicant contends that the respondent Party is responsible for the loss of her moveable property and for the suffering and anguish she experienced as a result of losing possession of her apartment and her moveable property, specifically: "the Ministry of Interior, which did nothing to protect me, the Prosecutor's Office, which did not pursue criminal proceedings against the person who threw me out onto the street and took my moveable property, and the courts — the First Instance Court in Banja Luka — which to date has not concluded the proceedings on my lawsuit".

53. In his supplemental observations of 10 August 2001, the applicant's representative explains that this case concerns the failure of the authorities of the respondent Party to fulfil their duties. "The plaintiff properly informed the police that she was being illegally thrown out of her apartment (*i.e.*, with no decision by the authorities) and that her belongings were being taken from the apartment thereafter, but nothing was done in response to this information". Consequently, the applicant suffered both pecuniary damages for the loss of her moveable property and non-pecuniary damages

for "humiliation and fear over a long period of time". According to the applicant's representative, Article 180 of the Law on Obligations does not provide the applicant with an effective domestic remedy since it was deleted from the relevant law in 1996 and not replaced by any similar provision. Therefore, the applicant has no remedy in domestic law to obtain compensation from the Republika Srpska for its failure to secure her protection from damage.

VIII. OPINION OF THE CHAMBER

A. Admissibility

54. Before considering the merits of the application, the Chamber must decide whether to accept it, taking into account the admissibility and other criteria set forth in Article VIII(2) and VIII(3) of the Agreement.

1. Strike out under Article VIII(3)(c) of the Agreement

55. In accordance with Article VIII(3) of the Agreement, "the Chamber may decide at any point in its proceedings to suspend consideration of, reject or strike out, an application on the ground that … (c) for any other reason established by the Chamber, it is no longer justified to continue the examination of the application; provided that such a result is consistent with the objective of respect for human rights."

56. The Chamber notes that in her application, the applicant complains about her forcible eviction from her pre-war apartment and the delay in being reinstated into possession of that apartment (see paragraph 44 above). However, the Chamber further notes that on 29 September 1997, the applicant was finally reinstated into possession of her apartment, albeit with all of her moveable property formerly therein removed. She also asks the Chamber to order the respondent Party to pay compensation to her in recognition of the damage, both pecuniary and non-pecuniary, suffered by her during the course of the time she was forced to find outside accommodation.

57. The Chamber recalls that under Article VIII(2)(e) of the Agreement, "the Chamber shall endeavour to give particular priority to allegations of especially severe or systematic violations and those founded on alleged discrimination on prohibited grounds". As the Chamber has explained in the case of *Vujičić v. the Federation of Bosnia and Herzegovina* (case no. CH/99/2198, decision to strike out of 10 October 2002, Decisions July—December 2002), there are presently thousands of undecided applications pending before the Chamber. Moreover, significant progress in the return and property law implementation process in Bosnia and Herzegovina has occurred (*id.* at paragraphs 15-16).

58. Taking into account that the applicant was reinstated into possession of her pre-war apartment, the Chamber considers that this alleged human rights violation was resolved. The Chamber recognises that valid reasons may underlie the applicant's request to maintain her claim for compensation. However, in the light of the considerations discussed above, the Chamber finds that "it is no longer justified to continue the examination of the application" within the meaning of Article VIII(3)(c) of the Agreement, insofar as it relates to the delay in reinstating the applicant into possession of her pre-war apartment. The Chamber moreover finds that this result is "consistent with the objective of respect for human rights", as this "objective" must be understood to embrace not only the individual applicant's human rights, but also the Chamber's more general mandate to assist the Parties in securing to all persons within their jurisdiction the highest level of internationally recognised human rights (Articles I and II of the Agreement). Therefore, the Chamber decides to strike out the part of the application concerning the delay in reinstating the applicant into possession of her pre-war apartment, pursuant to Article VIII(3)(c) of the Agreement.

2. *Lis alibi pendens* under Article VIII(2)(d) of the Agreement

59. The respondent Party objects to the admissibility of the application because the Human Rights Ombudsperson for Bosnia and Herzegovina has already considered the applicant's case and issued a report (case no. (B)62/96, *Hadžisaković v. The Republika Srpska*, report of the Ombudsperson of 21 August 1997, paragraph 20). "On these grounds the respondent Party opines that the Chamber should reject the application within the meaning of Article VIII(2)(d) of the Agreement".

60. The principle of *lis alibi pendens* generally prevents an applicant who has proceedings pending against a respondent Party in one court from having additional proceedings against the same respondent Party in another court on the same subject matter. This principle is reflected in Article VIII(2)(d) of the Agreement, which provides that "[t]he Chamber may reject or defer further consideration if the application concerns a matter currently pending before any other international human rights body responsible for the adjudication of applications or the decision of cases, or any other Commission established by the Annexes to the General Framework Agreement".

61. As the Chamber explained in the case of *Savka Kovačević v. the Federation of Bosnia and Herzegovina* (case no. CH/98/1066, decision on review of 8 October 2001, Decisions July—December 2001, paragraphs 46-47), Article VIII(2)(d) applies to matters currently pending before other international human rights bodies or other Commissions established by the Annexes to the General Framework Agreement. Article VIII(2)(d), by its express terms, applies only to matters "currently pending". In this case, the Ombudsperson adopted her report on 21 August 1997. The case, therefore, cannot now be considered "currently pending" before the Ombudsperson, nor could it have been considered "currently pending" at the time the applicant filed it with the Chamber on 3 August 1999. Thus, Article VIII(2)(d) of the Agreement does not prevent the Chamber from considering the present application, even though the Ombudsperson had earlier considered the matter.

3. *Res judicata* and Article VIII(2)(b) of the Agreement

62. The Chamber will next consider the admissibility of the application under Article VIII(2)(b) of the Agreement, in the event the respondent Party intended to object on the grounds of *res judicata* because the Human Rights Ombudsperson for Bosnia and Herzegovina has already considered the applicant's case and issued a report (case no. (B)62/96, *Hadžisaković v. The Republika Srpska*, report of the Ombudsperson of 21 August 1997, paragraph 20).

63. Once again the Chamber recalls the case of *Savka Kovačević v. the Federation of Bosnia and Herzegovina* (case no. CH/98/1066, decision on review of 8 October 2001, Decisions July—December 2001, paragraph 40), in which it explained that "the principle of *res judicata* provides that a matter judicially decided in a final and binding decision is finally decided: that is, a final judgment rendered by a court of competent jurisdiction on the merits of a case is conclusive as to the rights of the parties and constitutes an absolute bar to a subsequent action involving the same claim. This principle is reflected in Article VIII(2)(b) of the Agreement, which provides that "[t]he Chamber shall not address any application which is substantially the same as a matter which has already been examined by the Chamber or has already been submitted to another procedure of international investigation or settlement."

64. The Chamber notes that the application before the Ombudsperson concerned the applicant's right to repossess her pre-war apartment and the failure of the authorities of the Republika Srpska to enforce the judgment of the First Instance Court in Banja Luka ordering the illegal occupant of her apartment to vacate it and relinquish possession to her (case no. (B)62/96, *Hadžisaković v. The Republika Srpska*, report of the Ombudsperson of 21 August 1997, paragraph 20). The Chamber has struck out this portion of the present application pursuant to Article VIII(3)(c) of the Agreement because the applicant finally repossessed her pre-war apartment on 29 September 1997 (see paragraph 58 above). Therefore, the report of the Ombudsperson addressed a different complaint than the one to be decided by the Chamber. Moreover, the report of the Ombudsperson contained only non-binding recommendations; thus, the principle of *res judicata* could not attach to it. Under

Article V of the Agreement, the Ombudsperson had no authority to issue final and binding decisions on the human rights allegations it considers (see *Kovačević*, decision on review of 8 October 2001, paragraph 41). Accordingly, neither the principle of *res judicata* nor Article VIII(2)(b) of the Agreement apply in this case to divest the Chamber of its power to consider the application, regardless of the previous application before the Ombudsperson and the Ombudsperson's report on that application.

4. Exhaustion of effective remedies under Article VIII(2)(a) of the Agreement

65. 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: (a) Whether effective remedies exist, and the applicant has demonstrated that they have been exhausted ...".

66. The respondent Party objects to the admissibility of the application on the grounds that the applicant has failed to exhaust the effective domestic remedies.

67. In *Blentić* (case no. CH/96/17, decision on admissibility and merits of 5 November 1997, paragraphs 19-21, Decisions on Admissibility and Merits 1996-1997), the Chamber considered this admissibility criterion in light of the corresponding requirement to exhaust domestic remedies in the former Article 26 of the Convention (now Article 35(1) of the Convention). The European Court of Human Rights (the "European Court") 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 European 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. In previous cases the Chamber has held that the burden of proof is on the respondent Party to satisfy the Chamber that there was a remedy available to the applicant both in theory and in practice (*see, e.g.*, case no. CH/96/21, *Čegar*, decision on admissibility of 11 April 1997, paragraph 12, Decisions March 1996-December 1997).

68. The Chamber notes that in the present case, the applicant has pursued every available avenue for protection of her moveable property left in her pre-war apartment when she was forcibly expelled from it by a military police officer of the Republika Srpska. First, she complained to the local police, who took no action. Then, on 27 December 1995, she prepared a list of her property, which was verified by the Municipal Secretariat for General Administration in Banja Luka. Next she asked the First Instance Court in Banja Luka to make an inventory list of her moveable property, which was performed. In that inventory list, the defendant O.V. claimed rights over most of the applicant's moveable property. On 6 March 1996, she initiated proceedings before the First Instance Court in Banja Luka seeking a judgment requiring O.V. to return her moveable property and further asking the Court to issue an order for a provisional measure protecting her moveable property. The Court failed to act upon her request for a provisional measure. On 29 September 1997, the applicant was reinstated into possession of her apartment (following the report of the Human Rights Ombudsperson for Bosnia and Herzegovina), which was, at that time, completely empty of all her moveable property. On 5 May 1998, she initiated a second lawsuit before the First Instance Court in Banja Luka requesting O.V. to compensate her for damages for her alienated moveable property. More than two years later, on 25 September 2000, the First Instance Court finally issued a judgment in her favour and against O.V. The applicant filed a request for enforcement of that judgment, and the First Instance Court in Mrkonjić Grad ordered the enforcement through inventory, valuation, and sale of O.V.'s property. However, then the applicant and the Court learned that O.V. had no property that could be subjected to a sale by auction. In other words, O.V. claims to be "judgment-proof". The applicant further pursued criminal charges against O.V., but it seems that the competent prosecutor's office took no action, or at least the Chamber has no evidence of any action being taken. The combined result is that to date the applicant has been deprived of all of her moveable property in the absence of any compensation.

69. The Chamber can envision no further domestic remedies that the applicant should be required to exhaust in order to protect her moveable property. Former Article 180 of the Law on Obligations of the Socialist Federal Republic of Yugoslavia might have provided the applicant with a domestic

remedy for compensation from the Republika Srpska, but this Article was deleted from the relevant law in 1996 and not replaced by any similar provision (OG RS no. 3/96).

70. Taking these facts into account, the Chamber concludes that the applicant has exhausted the available effective domestic remedies, within the meaning of Article VIII(2)(a) of the Agreement.

5. Conclusion as to admissibility

71. The Chamber declares admissible the part of the application alleging the respondent Party's failure to secure protection for the applicant's peaceful enjoyment of her moveable property left in her pre-war apartment after 14 December 1995, its failure to ensure her right to a court and right to an effective remedy in connection with the protection of her moveable property, and discrimination in connection with these rights under Article II(2)(b) of the Agreement. The Chamber strikes out the remainder of the application pursuant to Article VIII(3)(c) of the Agreement.

B. Merits

72. Under Article XI of the Agreement, the Chamber must next address the question of whether the facts established above disclose a breach by the Republika Srpska 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. Right to peaceful enjoyment of possessions (Article 1 of Protocol No. 1 to the Convention)

73. Article 1 of Protocol No. 1 to the Convention states 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."

74. Article 1 of Protocol No. 1 comprises three distinct rules. The first rule, which is of a general nature, enshrines the principle of peaceful enjoyment of property. It is set out in the first sentence of the first paragraph. The second rule covers deprivation of possessions and subjects it to the condition that the deprivation must be in the public interest and subject to conditions provided for by law and by the general principles of international law. It appears in the second sentence of the same paragraph. The third rule recognises that States are entitled, amongst other things, to control the use of property in accordance with the general interest, by enforcing such laws as they deem necessary for that purpose. It is contained in the second paragraph (see, *e.g.*, case no. CH/96/29, *Islamic Community*, decision on admissibility and merits of 11 June 1999, paragraph 190, Decisions January-July 1999).

75. The claim in the present case is that the authorities of the respondent Party failed to comply with their positive obligation to secure protection for the applicant's possessions against a continuing and unlawful interference with her moveable property by O.V. This aspect of the case should be examined under the first rule (case no. CH/96/27, *Rifat Bejdić v. the Republika Srpska*, decision on admissibility and merits delivered on 14 January 1998, Decisions and Reports 1998, paragraph 30).

a. Existence of a "possession"

76. The applicant alleges that she owned various moveable property, in new or good condition, which she was forced to leave behind in her pre-war apartment when she was forcibly expelled on 15 September 1995 by O.V., a military police officer of the Republika Srpska. None of this moveable property was returned to her, nor has she obtained any compensation for it. The applicant made efforts to verify the existence and extent of such moveable property, including preparing a detailed list that was verified by the Municipal Secretariat for General Administration in Banja Luka on 27 December 1995 and requesting and obtaining an inventory list from the First Instance Court in Banja Luka in early 1996. None of this moveable property remained in the apartment when the applicant was reinstated into possession of it on 29 September 1997.

77. Apart from its general objection (see paragraph 46 above), the respondent Party has not objected to the applicant's evidence concerning the extent, condition, and value of her moveable property. To the contrary, the First Instance Court in Banja Luka established in its final and binding judgment of 25 September 2000 that O.V. was obliged to compensate the applicant for the moveable property he removed from her apartment in the amount of 120,000 Yugoslav Dinars, plus legal interest (see paragraph 21 above). The Chamber accepts these established facts. Accordingly, the applicant has established the existence of "protected possessions" in the moveable property left in and alienated from her pre-war apartment.

b. Interference with a protected "possession"

78. There is no dispute that O.V. removed all the applicant's moveable property from her pre-war apartment prior to his eviction. The First Instance Court in Banja Luka, in its judgment of 25 September 2000, explained that "before moving out of the apartment, the defendant removed all the claimant's furniture and accessories from the apartment". The Court further found that the defendant showed no intention to return this alienated moveable property to the applicant. There is further no dispute that O.V. has not paid any compensation and moreover, that he has no property that could be the subject of a sale by auction in order to compensate the applicant.

79. However, in order to hold the respondent Party responsible for the alienation of the applicant's moveable property, the Chamber must identify specific actions or omissions of the respondent Party that contributed to the alienation. In this respect, the Chamber firstly notes that although the applicant requested the First Instance Court in Banja Luka to issue an order for provisional measures protecting her moveable property, it failed to act on that request. Secondly, after the First Instance Court in Banja Luka issued on 26 June 1996 the procedural decision on enforcement allowing the applicant to repossess her pre-war apartment, O.V. was not evicted until 29 September 1997, after seven attempts. The Ombudsperson specifically highlighted the passivity of the police at the first five of those scheduled evictions (see paragraph 32 above). This long period of delay in enforcing the decision in the applicant's favour provided O.V. with the opportunity to remove all the applicant's moveable property from the apartment, which he did. Thirdly, the minutes of O.V.'s eviction state that "moveable items were taken out of the disputed apartment and handed over to the debtor. Not a single item remained in the apartment". Thus, apparently the police allowed O.V. to remove moveable property at the time of his eviction, even though the applicant claimed ownership over all the moveable property in her pre-war apartment. Fourthly, the Court thereafter delayed until 25 September 2000 issuing a decision upon the applicant's lawsuit to obtain compensation for her alienated moveable property, further providing O.V. with the opportunity to dispose of the property, which he evidently did. As explained above, by the time the First Instance Court in Mrkonjić Grad sought to enforce the judgment against O.V. on 8 May 2001 through inventory, valuation, and sale of his property, O.V. was "judgment proof". He claims he has no property that could be subjected to a sale by auction. Finally, the Chamber notes that the respondent Party has provided no evidence that the prosecutor's office took any action in response to the criminal charges the applicant initiated against O.V. Rather, it has mistakenly attempted to argue that the applicant — the victim of the crime — was obliged to pursue the investigation against O.V., a former military police officer of the Republika Srpska, on her own (see paragraph 46 above).

80. In the Chamber's view, the sum total of the pattern of passivity and delays in the exercise of public responsibility to secure protection for the applicant's moveable property constitutes an

interference by the authorities of the Republika Srpska with her protected possessions. Had the authorities properly carried out their positive obligations, as also set forth in legislation of the Republika Srpska, O.V. would not have been able to so effectively deprive the applicant of all her moveable property, as well as her right to compensation. O.V.'s position as a military police officer of the Republika Srpska at the time of the events in question stands out as an aggravating factor in the passivity of the authorities of the Republika Srpska.

c. Fair balance test

81. This case involves the failure of the authorities of the Republika Srpska to satisfy the positive obligations to secure protection for the applicant's moveable property protected by Article 1 of Protocol No. 1 to the Convention. In the context of cases involving the positive obligations protected by Article 8 of the Convention (right to respect for private and family life and home), the European Court has explained that the State must satisfy the fair balance test, as follows:

> "Whether the present case be analysed in terms of a positive duty on the State to take reasonable and appropriate measures to secure the applicants' rights under paragraph 1 of Article 8 or in terms of an 'interference by a public authority' to be justified in accordance with paragraph 2, the applicable principles are broadly similar. In both contexts regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole; and in both contexts the State enjoys a certain margin of appreciation in determining the steps to be taken to ensure compliance with the Convention. Furthermore, even in relation to the positive obligations flowing from the first paragraph of Article 8, 'in striking [the required] balance the aims mentioned in the second paragraph may be of a certain relevance'" (Eur. Court HR; *Powell and Rayner v. United Kingdom*, judgment of 21 February 1990, Series A no. 172, paragraph 41 (citations omitted); *see also López Ostra v. Spain*, judgment of 9 December 1994, Series A no. 303-C, paragraph 51).

82. In order for an interference with a protected possession to be permissible and in compliance with the fair balance test, it must not only serve a legitimate aim in the public interest, but there must also be a reasonable relationship of proportionality between the means employed and the aim sought to be realised (Eur. Court HR, *James v. United Kingdom*, judgment of 21 February 1986, Series A no. 98-B, paragraph 50). Thus, the Court has recognised that running through the three distinct rules in Article 1 of Protocol No. 1 to the Convention is a "fair balance" test; that is, "the Court must determine whether a fair balance was struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. The search for this balance is inherent in the whole of the Convention and is also reflected in the structure of Article 1" (Eur. Court HR, *Sporrong and Lönnroth v. Sweden*, judgment of 23 September 1982, Series A no. 52, paragraph 69 (citation omitted)).

83. In this case, the respondent Party has offered no justification for how its failure to protect the applicant's property rights might have been in the public interest. The Chamber further can envision no such public interest on its own motion. To the contrary, in the Chamber's view, the total failure of the authorities of the Republika Srpska to protect the applicant from brutality and abuse against her property inflicted by O.V., a military police officer of the Republika Srpska, as well as to act upon her numerous requests for protection served only to harm the public interest further and to contribute to an atmosphere of distrust, criminality and terror.

84. Since the respondent Party has failed to satisfy the fair balance test contained within Article 1 of Protocol No. 1, it is unnecessary for the Chamber further to consider whether it has complied with the principle of lawfulness required by this Article as well.

d. Conclusion as to right to peaceful enjoyment of possessions

85. In conclusion, the Chamber finds that the respondent Party failed to comply with its positive obligation to secure protection for the applicant's moveable property after 14 December 1995, thereby violating her rights protected by Article 1 of Protocol No. 1 to the Convention.

2. Remaining complaints

86. Article 6 paragraph 1 of the Convention states 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. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice."

87. Article 13 of the Convention states as follows:

> "Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

88. Article II(2)(b) of the Agreement provides as follows:

> "[T]he Human Rights Chamber shall consider ... alleged or apparent discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status arising in the enjoyment of any of the rights and freedoms provided for in the international agreements listed in the Appendix to this Annex, where such violation is alleged or appears to have been committed by the Parties, including any official or organ of the Parties, Cantons, Municipalities, or any individual acting under the authority or such official or organ".

89. Taking into consideration its conclusion that the respondent Party has violated the applicant's right to peaceful enjoyment of her possessions, the Chamber decides that it is not necessary separately to examine the application under Article 6 paragraph 1 and Article 13 of the Convention or with respect to discrimination under Article II(2)(b) of the Agreement.

IX. REMEDIES

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

91. The applicant has set forth claims for compensation for pecuniary damages and non-pecuniary damages. She asks the Chamber to order the Republika Srpska to pay her compensation for pecuniary damages in the amount awarded to her in the final and binding judgment of 25 September 2000, including the legal interest stated therein as of 6 August 1998, due to the fact that O.V. is judgment-proof and she cannot collect this compensation from him. She further seeks compensation for her mental suffering in the amount of 10,000 Convertible Marks. The respondent Party submits that the applicant's compensation claims are ill-founded.

92. The Chamber recalls that it has found a violation of the applicant's right to peaceful enjoyment of her possessions protected by Article 1 of Protocol No. 1 to the Convention in that the Republika Srpska failed to satisfy its positive obligations to secure protection for her moveable property left in her pre-war apartment after 14 December 1995. The Chamber further recalls that

although the First Instance Court in Banja Luka issued a judgment in the applicant's favour on 25 September 2000, recognising her claim for compensation for her alienated moveable property against O.V., the applicant cannot collect her compensation because O.V. is judgment-proof. As the Chamber stated above, the pattern of passivity and delays in the exercise of public responsibility to secure protection for the applicant's moveable property allowed O.V. effectively to deprive the applicant of all her moveable property, as well as her right to compensation. This must now be remedied by the respondent Party, whose omissions contributed to this state of events.

93. Therefore, with respect to possible compensatory awards, the Chamber finds it appropriate to order the Republika Srpska to pay to the applicant, no later than one month after the date on which the present decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure, the compensation awarded to her in the final and binding judgment of the First Instance Court in Banja Luka of 25 September 2000 (no. P-2025/98), including the legal interest stated therein as of 6 August 1998, by way of compensation for pecuniary damages for the loss of her moveable property.

94. In recognition of the sense of injustice the applicant has suffered as a result of her inability to obtain protection for her moveable property from the authorities of the Republika Srpska, the Chamber will further order the respondent Party to pay to the applicant the sum of two thousand (2,000) Convertible Marks (*Konvertibilnih Maraka*) by way of compensation for non-pecuniary damages. This sum shall be paid to the applicant 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.

95. Additionally, the Chamber awards simple interest at an annual rate of 10% on the sums awarded to be paid to the applicant in paragraphs 93 and 94. Interest shall be paid as of 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 sums awarded or any unpaid portions thereof until the date of settlement in full.

X. CONCLUSIONS

96. For these reasons, the Chamber decides,

1. unanimously, to declare admissible the part of the application alleging the respondent Party's failure to secure protection for the applicant's peaceful enjoyment of her moveable property left in her pre-war apartment after 14 December 1995, its failure to ensure her right to a court and right to an effective remedy in connection with the protection of her moveable property, and discrimination in connection with these rights under Article II(2)(b) of the Agreement;

2. unanimously, to strike out the remainder of the application pursuant to Article VIII(3)(c) of the Agreement;

3. unanimously, that the Republika Srpska failed to comply with its positive obligations to secure protection for the applicant's moveable property after 14 December 1995, as protected by Article 1 of Protocol No. 1 to the European Convention on Human Rights, the Republika Srpska thereby being in breach of Article I of the Human Rights Agreement;

4. unanimously, that it is not necessary separately to examine the application under Article 6 paragraph 1 and Article 13 of the Convention or with respect to discrimination under Article II(2)(b) of the Agreement;

5. unanimously, to order the Republika Srpska to pay to the applicant, no later than one month after the date on which the present decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure, the compensation awarded to her in the final and binding judgment of the First Instance Court in Banja Luka of 25 September 2000 (no. P-2025/98), including the legal interest stated therein as of 6 August 1998, by way of compensation for pecuniary damages;

6. by 5 votes to 2, to order the Republika Srpska to pay to the applicant, no later than one month after the date on which the present decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure, two thousand (2,000) Convertible Marks ("*Konvertibilnih Maraka*") by way of compensation for non-pecuniary damages;

7. unanimously, to order the Republika Srpska to pay simple interest at the rate of 10% (ten percent) per annum over the above sums specified in conclusions 5 and 6 above, or any unpaid portion thereof, from the date of expiry of the one-month periods set for implementation of these conclusions until the date of settlement in full; and

8. unanimously, to order the Republika Srpska to report to it or its successor institution no later than two months after 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 orders.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel