DECISION ON ADMISSIBILITY AND MERITS
(delivered on 10 October 2003)

Case no. CH/99/2627

Fehim JUSUFOVIĆ

against

BOSNIA AND HERZEGOVINA
and
THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 8 October 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 Article VIII(2) and Article XI of the Agreement and Rules 52, 57 and 58 of its Rules of Procedure:

I. INTRODUCTION

1. The case concerns the attempts of the applicant to settle his rights with respect to a plot of land situated in Devetak near Tuzla. Underlying the application appears to be a family feud over a piece of land. In 1957 the applicant, who is now a pensioner, and two of his brothers were given several plots of land by his father and grandmother. However, the partition of one piece of real estate between the brothers involved a series of administrative and judicial actions in the course of which the applicant allegedly was deprived of his rights.

2. Central to the applicant's complaints is the refusal of the competent administrative authority to register him as the possessor of the piece of land in question on the ground that the applicant had no established rights over the land. In 1991, the applicant filed a claim to that end, and despite orders of the second instance administrative body, to date the applicant's claim has neither been rejected nor accepted.

3. The application raises issues under Article 6 paragraph 1 of the European Convention on Human Rights ("the Convention") and under Article 1 of Protocol No. 1 to the Convention.

II. PROCEEDINGS BEFORE THE CHAMBER

4. The application was introduced on 24 June and registered on 29 June 1999. On 17 December 1999, the case was transmitted to Bosnia and Herzegovina and to the Federation of Bosnia and Herzegovina as respondent Parties.

5. Bosnia and Herzegovina sent written observations on 16 February 2000, and the Federation of Bosnia and Herzegovina sent written observations on 15 February 2000. The applicant replied on 21 March 2000. Further submissions from him were received on 4 July, 18 July and 10 November 2000, 16 February and 26 June 2001, 23 January and 28 March 2002, and 7 January and 13 May 2003.

6. The Chamber deliberated on the admissibility and merits of the case on 2 July, 3 September and 8 October 2003. On the latter date, it adopted the present decision.

III. ESTABLISHMENT OF THE FACTS

7. The applicant's father, Omer Jusufović, and his grandmother, Hanka Gradaškić, were the owners of real estate located in Devetak, registered in the cadastral books of Devetak in the Municipality of Lukavac. On 1 March 1957, they disposed of this land by a contract of donation in favour of the applicant and his brothers, Hasib and Nezib Jusufović. The contract provided that in return, the donors would be entitled to use the land until their death. There were five plots of land given to the applicant for his own benefit. One piece of land, however, registered as cadastral lot no. 684, was allocated to the applicant and his two brothers jointly; the contract stipulating that they should be entitled to it "in equal parts". There were no further provisions regulating the partition of the land.

8. On 20 June 1969, the Municipal Court in Lukavac issued a decision on division of lot no. 684, based on an agreement reached by the parties and on a survey of the land. According to this decision, the applicant was allocated a part of that land specified as lot no. 550/20, which was agricultural land and covered an area of 4090 square meters. The decision became final and binding on 9 February 1970. Subsequently, the applicant was registered as the owner of this land in the land books of Devetak.

9. In 1975, a new cadastral operating system based on air-survey was introduced. The applicant asserts that in the course of the adaptation of the cadastral record books that followed the survey, the disputed plot of land was mistakenly written off of his possession. However, he always continued to use the land. In the domestic proceedings he initiated thereafter, he sought to correct this error.

10. It appears that in the mid-1980s, proceedings on the division of lot no. 684 were re-opened. On 24 January 1986, the Court of First Instance in Lukavac prohibited, as a provisional measure, that the applicant, his father, or the wife of his deceased brother Hasib dispose of lot no. 684 pending the final division of the plot.

11. In November 1986, the applicant started to construct on the part of lot no. 684 that was allocated to him by the decision of the Municipal Court in Lukavac of 20 June 1969. Thereupon, the applicant's brother, Omer Jusufović, initiated court proceedings against the applicant regarding the alleged "disturbance of possessions". In a decision of 31 August 1988, the Court of First Instance in Lukavac rejected the claim, holding that the plaintiff had not shown that the disputed land was in his possession already at the time when the construction work started. On 19 January 1990, the same Court, for the same reasons as in its decision reached on 31 August 1988, rejected another claim initiated by the applicant's brother. The Court emphasised that the question of ownership was a different issue to be decided on in separate proceedings. On 16 August 1990, the Higher Court in Tuzla confirmed the first instance decision of 19 January 1990.

12. On 15 October 1990, the President of the Court of First Instance in Lukavac issued an order to the Municipal Cadastral Office that the applicant be registered as a possessor of lot no. 1920 in the cadastral record books. However, the applicant was never so registered.

13. On 19 February 1991, the applicant submitted a claim to the Municipal Administration for Geodetic and Real Estate Affairs – Municipal Cadastral Office – (hereinafter: "the Municipal Administration") in Lukavac to be registered as the possessor of the land at issue based upon the final and binding decision of Higher Court in Tuzla. It was rejected on 15 April 1991. On 31 January 1992, the Republic Administration for Geodetic and Property Law Affairs (hereinafter: "the Republic Administration"), as the second instance body, quashed the first instance decision and referred the case back to the Municipal Administration for renewed proceedings. The Republic Administration emphasised that it was the task of the administrative organs, not of the courts, to ascertain disputed facts on the ground. A time-limit of 30 days was set for the Municipal Administration to issue a new decision.

14. The Municipal Administration never reached a decision on the claim. In a letter of 11 August 1993 addressed to the applicant, the Municipal Administration stated that the ongoing armed conflict made it impossible to process the applicant's claim. After the cessation of hostilities, the applicant complained to the now competent Federal Administration for Geodetic and Property Law Affairs (hereinafter: "the Federal Administration"). On 25 July 1996 and again on 28 May 1997, the Federal Administration requested the Municipal Administration to provide it with reasons why, in over four years, renewed proceedings had not been conducted. According to a written statement of the Ministry of Justice of the Tuzla Canton of 13 August 1999, the proceedings initiated upon applicant's request were in progress but had not lead to a decision yet.

15. On 6 January 1999, the applicant initiated an administrative dispute before the Supreme Court of the Federation of Bosnia and Herzegovina because of the "silence of the administration". On 9 June 1999, the Supreme Court, sitting as the 'Panel for Administrative Disputes', ordered the Federal Administration to issue a decision in the applicant's case within 30 days. On 24 August 1999, the Federal Administration ordered the Municipal Administration to issue a procedural decision upon the applicant's request within a time-limit of 15 days, thereby complying with the decision passed by the Republic Administration on 31 January 1992. The Municipal Administration never issued such a decision.

16. In addition, the applicant claims that the order for provisional measures issued by the Court of First Instance in Lukavac on 24 January 1986 (see paragraph 10 above) was not respected and that a part of lot no. 684 was sold by his brother. In the meantime, third parties apparently started construction work on the plot. In 1989, 1991 and 1999, the applicant filed claims with the Urban-Construction Inspection in Lukavac (hereinafter: "the Inspection") with a view to stopping the ongoing construction work on what he claims to be his land. All these attempts have failed, and as of his last intervention in 1999, there was not even a reply. On 18 May 2001, the Cantonal Court in Tuzla rejected the applicant's "silence of the administration" complaint, stating that the competence to

decide on the applicant's appeal had shifted to the newly-established Federal Ministry for Physical Planning and Environmental Matters (hereinafter: "the Ministry").

IV. RELEVANT LEGISLATION

A. The Law on Administrative Procedure

17. Under Article 216 of the Law on Administrative Procedure (Official Gazette of the Federation of Bosnia and Herzegovina – hereinafter "OG FBiH" – nos. 2/98 and 48/99), the competent first instance administrative organ has to issue a decision within 30 days upon receipt of a request. Paragraph 3 of Article 216 provides for an appeal to the administrative appellate body if a decision is not issued within this time-limit (appeal against the "silence of the administration").

18. Article 243 paragraph 2 of the same Law provides that the second instance administrative body shall conduct the proceedings and solve the matter by its own decision if it finds that the reasons for which a decision was not made by the first instance organ within the deadline of 30 days were not justified. Exceptionally, if the second-instance body finds that the proceedings will be faster and more efficiently solved by the first-instance body, then it shall order that body to do so.

B. The Law on Administrative Disputes

19. Article 1 of the Law on Administrative Disputes (OG FBiH nos. 2/98 and 8/00) provides that the courts shall decide in administrative disputes on the lawfulness of second-instance administrative acts concerning rights and obligations of citizens and legal persons.

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

V. COMPLAINTS

21. The applicant claims that his property rights as protected by Article 1 of Protocol No. 1 to the Convention, as well as to a determination of this right within a reasonable time, as guaranteed under paragraph 1 of Article 6 of the Convention, have been violated.

VI. SUBMISSIONS OF THE PARTIES

A. The respondent Parties

1. Bosnia and Herzegovina

22. In its observations of 16 February 2000, Bosnia and Herzegovina objects to bearing any responsibility for the acts complained of by the applicant on the ground that they fall within the competence of the Federation of Bosnia and Herzegovina.

2. The Federation of Bosnia and Herzegovina

23. The Federation of Bosnia and Herzegovina, in its observations of 15 February 2000, is of the opinion that the Chamber should not consider the application as the acts complained of do not fall within the Chamber's competence *ratione temporis*. With a view to establishing his right of ownership, it states the applicant could have initiated civil proceedings before the Municipal Court in Lukavac. As the applicant has failed to do so, the application should be declared inadmissible for non-exhaustion of domestic legal remedies.

24. As to the merits of the case, the Federation of Bosnia and Herzegovina claims that Article 6 paragraph 1 of the Convention was not violated, and that the time that elapsed since the applicant lodged his request was of a reasonable duration. According to the Federation, it is evident that an administrative dispute cannot be successful in the absence of clear proof of possession, and that the applicant had not shown his rights to the administration. As part of the respondent Party's observations, a statement issued by the Municipal Administration in Lukavac of 21 January 2000 is attached. It explains that this body could not issue the procedural decision requested by the applicant because "the applicant had no established rights over those plots", and that he should have established them in civil court proceedings.

B. The applicant

25. The applicant, in his various submissions, claims that he has made every effort to avail himself of the domestic remedies on the Municipal, Cantonal and Entity level alike, but that he is still unable to settle his rights that have already been confirmed by a decision dated 16 August 1990 issued by the Higher Court in Tuzla. The applicant complains that he was deprived of the land in question on purpose and alleges that corruption was in play when the land was written off. According to him, his state of health is deteriorating, and he cannot wait much longer for the matter to be solved.

VII. OPINION OF THE CHAMBER

A. Admissibility

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

1. Concerning events before 14 December 1995

27. The Chamber notes that the applicant's complaints relate to a set of administrative proceedings concerning his rights over a piece of land introduced before the organs of the then existing Socialist Republic of Bosnia and Herzegovina in 1986 and thus to events which occurred before 14 December 1995, which is the date when the Agreement entered into force. In accordance with generally accepted principles of law, the Agreement cannot be applied retroactively (see case no. CH/96/3, *Medan v. Bosnia and Herzegovina and The Federation of Bosnia and Herzegovina*, decision on admissibility of 4 February 1997, Decisions on Admissibility and Merits 1996-1997). The Chamber must confine its examination of the case to considering whether the human rights of the applicant have been violated or threatened with violation since that date (see case no. CH/96/30, *Damjanović v. The Federation of Bosnia and Herzegovina*, decision on admissibility of 11 April 1997, paragraph 13, Decisions on Admissibility and Merits 1996-1997).

28. Consequently, the applicant's complaints insofar as they relate to events before 14 December 1995 must be declared inadmissible *ratione temporis*, within the meaning of Article VIII(2)(c) of the Agreement. Insofar as the applicant complains that his rights have been violated after the entry into force of the Agreement, his complaints are within the competence of the Chamber *ratione temporis* and are not incompatible with the Agreement.

2. Responsibility of Bosnia and Herzegovina

29. The Chamber further notes that the applicant directs his application against Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina. However, recalling the above finding that the part of the application relating to events prior to 14 December 1995 is inadmissible *ratione temporis*, the applicant has not provided any indication that Bosnia and Herzegovina is responsible for the actions he complains of after that date. The competencies of Bosnia and Herzegovina are set out in Article III of the Constitution of Bosnia and Herzegovina, contained in Annex 4 to the General Framework Agreement. These do not include matters relating to property rights and the proceedings establishing them. Accordingly, this matter is within the competence of the Entities, in this case the Federation of Bosnia and Herzegovina.

30. Consequently, the case does not raise any issues engaging the responsibility of Bosnia and Herzegovina and therefore, the case is to be declared inadmissible *ratione personae* as against that respondent Party.

3. *Ratione materiae*

31. The Chamber recalls that, according to the case-law of the European Court of Human Rights, the "possession" protected under Article 1 of Protocol No. 1 to the Convention can only be "an existing possession" (see Eur. Court HR, *Van der Mussele v. Belgium*, judgment of 23 November 1983, Series A no. 70, paragraph 48) or, at least, an asset which the applicant has a "legitimate expectation" to obtain (see Eur. Court HR, *Pressos Compania Naviera S.A. and Others v. Belgium*, judgment of 20 November 1995, Series A no. 222, paragraph 31).

32. The Chamber notes that it has previously decided that in order to be a "legitimate expectation" constituting a protected possession, the applicant's prospect would have to be based on legislation in force or on a valid administrative act (see case no. CH/98/1040, *Živojnović v. Bosnia and Herzegovina and The Federation of Bosnia and Herzegovina*, decision on admissibility of 9 October 1999, paragraph 21, Decisions on Admissibility and Merits August - December 1999).

33. In the present case, the applicant's claim to the land is based on his expectation that the domestic administrative organs will eventually restore his right to possess the land that the applicant claims to have had prior to 1975. However, this right is subject to dispute from the side of the applicant's family. As regards the partition of the disputed lot no. 684 between the applicant and his brothers, the Chamber is of the opinion that this question is essentially one of private law. It is not within the competence of the Chamber to establish whether the events relating to the division of the land indeed deprived the applicant of an existing possession, but it is for the domestic organs to establish whether or not the applicant has such a right. The Chamber recalls that it has stated on several occasions that it is not within its competence to substitute its own assessment of the facts and application of the law to that of the domestic courts (see, *e.g.*, case no. CH/99/2565, *Banović v. The Federation of Bosnia and Herzegovina*, decision on admissibility of 8 December 1999, paragraph 11, Decisions August-December 1999; and case no. CH/00/4128, *DD "Trgosirovina" Sarajevo (DDT) v. The Federation of Bosnia and Herzegovina*, decision on admissibility of 6 September 2000, paragraph 13, Decisions July-December 2000).

34. As the outcome of the proceedings before the domestic administrative organs is uncertain, the Chamber is of the opinion that the applicant's claim does not amount to a "legitimate expectation" constituting a protected possession under Article 1 of Protocol No. 1 to the Convention. It follows that the applicant's complaints in this respect are inadmissible as incompatible *ratione materiae*, within the meaning of Article VIII(2)(c) of the Agreement.

4. Requirement to exhaust effective domestic remedies

35. As regards the applicant's complaint that the administrative proceedings conducted in his case have lasted for an unreasonable amount of time, the Federation of Bosnia and Herzegovina has not sought to claim that there is any remedy available to the applicant against the failure of the domestic administrative organs to issue a final decision in his proceedings, and the Chamber for its part is not aware of any such remedy.

36. Accordingly, the Chamber does not consider that there is any effective remedy available for the purposes of the applicant's complaint that he should be required to exhaust.

5. Conclusion as to admissibility

37. No other grounds for declaring the case inadmissible have been put forward or are apparent. Accordingly, the application will be declared admissible insofar as directed against the Federation of Bosnia and Herzegovina relating to events after 14 December 1995 with regard to the complaint that

the administrative proceedings in the applicant's case have not been conducted within a reasonable time. The remainder of the application will be declared inadmissible.

B. Merits

38. Under Article XI of the Agreement the Chamber must next address the question whether the facts found disclose a breach by the Federation of Bosnia and Herzegovina 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 6 of the Convention

39. The Chamber will now examine the question whether there has been a violation of Article 6 of the Convention in that the administrative proceedings in the applicant's case have not been determined within a reasonable time. The relevant part of Article 6 paragraph 1 of the Convention provides as follows:

> "In the determination of his civil rights and obligations …, everyone is entitled to a … hearing within a reasonable time …"

40. Preliminarily, the Chamber notes that the applicant's complaint, first and foremost, relates to the conduct of administrative authorities. The question arises whether the proceedings aiming at registration of his right of possession before the Municipal Administration in Lukavac can be viewed as a "determination of his civil rights", within the meaning of paragraph 1 of Article 6 of the Convention.

41. In the *Ringeisen* case (*Ringeisen v. Austria*, judgment of 16 July 1971, paragraph 94, Series A no. 13), the European Court of Human Rights has held that:

> "the character of the legislation which governs how the matter is to be determined (civil, commercial, administrative law, *etc.*) and that of the authority which is invested with jurisdiction in the matter (ordinary court, administrative body, *etc.*) are … of little consequence [for the purposes of Article 6 paragraph 1 of the Convention]".

42. The Chamber notes that preceding the eventual entry of the applicant as possessor of the land in question into the land books, a certain administrative procedure has to be followed. Accordingly, the Chamber finds that the outcome of these administrative proceedings is decisive for the applicant's rights under private law and that they, therefore, constitute a "determination of his civil rights", within the meaning of Article 6 paragraph 1 of the Convention.

43. In establishing the length of the proceedings, the Chamber has to determine the period of time relevant for the guarantee provided by Article 6 paragraph 1 of the Convention. The Chamber reiterates that, considering its competence *ratione temporis,* it can assess the reasonableness of the length of proceedings only with regard to the period after 14 December 1995. It may, however, take into account what stage the proceedings had reached and how long they had lasted before that date (see case no. CH/00/4295, *Osmanagić v. The Federation of Bosnia and Herzegovina*, decision on admissibility and merits of 5 March 2002, paragraph 49).

44. The Chamber recalls that on 19 February 1991, the applicant submitted a claim for registration of his right of possession with regard to the lot in question to the Municipal Administration in Lukavac. The Municipal Administration never decided on the request, be it to the benefit or to the detriment of the applicant, although it was repeatedly ordered to do so by the second instance body, the Republic Administration, which became later the Federal Administration. The latter authority itself was obliged to decide on the matter by the Supreme Court of the Federation of Bosnia and Herzegovina on 9 June 1999, but the Federal Administration passed this duty on to the Municipal Administration, which failed to react. Taken together, these proceedings have thus lasted for more than twelve years now. When the Agreement entered into force, they had already lasted for almost

five years.

45. The reasonableness of the length of proceedings is to be assessed having regard to the criteria laid down by the Chamber, namely the complexity of the case, the conduct of the applicant and of the relevant authorities and the other circumstances of the case (see case no. CH/97/54, *Mitrović v. The Federation of Bosnia and Herzegovina*, decision on admissibility of 10 June 1998, paragraph 10, Decisions and Reports 1998, with further references to the case-law of the European Court of Human Rights).

46. The Federation of Bosnia and Herzegovina has not made an argument to the effect that the applicant's case is very complex in nature. Instead, it stated, without further support, that the time that has elapsed in deciding on the applicant's request could be regarded as reasonable.

47. The Chamber notes that responsibility to decide in the applicant's case was put aside both by the Municipal Administration and the Federal Administration. Moreover, the Chamber finds that these events seem to reveal an unwillingness or an inability of the domestic authorities to reach a decision at all, regardless of factual and legal difficulties that might arise from the applicant's request. Accordingly, the Chamber cannot regard the period of time that elapsed in the instant case as reasonable.

48. It follows that there has been a violation of the applicant's rights as guaranteed by paragraph 1 of Article 6 of the Convention to have his civil rights determined in a reasonable time.

VIII. REMEDIES

49. Under Article XI(1)(b) of the Agreement the Chamber must next address the question what steps shall be taken by the Federation of Bosnia and Herzegovina to remedy breaches of the Agreement which it has found.

50. In the present case, the Chamber finds it appropriate to order the Federation of Bosnia and Herzegovina to take all necessary steps in order to ensure that the applicant's case, currently pending before the Municipal Administration in Lukavac, is determined in an expeditious manner.

51. Furthermore, the Chamber considers it appropriate to award a sum to the applicant in recognition of the sense of injustice he has suffered as a result of his inability to have his case decided within a reasonable time. Accordingly, the Chamber will order the respondent Party to pay to the applicant the sum of one thousand (1000) Convertible Marks ("*Konvertibilnih Maraka*"), 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, as compensation for non-pecuniary damages in recognition of his suffering as a result of his inability to have his case decided within a reasonable time.

52. Additionally, the Chamber further awards simple interest at an annual rate of 10% on the sum awarded to be paid to the applicant in the preceding paragraph. The 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 sum awarded or any unpaid portion thereof until the date of settlement in full.

IX. CONCLUSIONS

53. For the above reasons, the Chamber decides,

1. unanimously, to declare the application admissible insofar as directed against the Federation of Bosnia and Herzegovina relating to the length of the domestic administrative proceedings conducted after 14 December 1995;

2. unanimously, to declare inadmissible the remainder of the application;

3. unanimously, that there has been a violation of the applicant's right to a determination of his civil rights within a reasonable time under Article 6 paragraph 1 of the European Convention on Human Rights, the Federation thereby being in breach of Article I of the Human Rights Agreement;

4. unanimously, to order the Federation of Bosnia and Herzegovina, through its authorities, to take all necessary steps to ensure that the Municipal Administration in Lukavac decides on the applicant's claim as a matter of urgency;

5. unanimously, to order the Federation of Bosnia and Herzegovina to pay to the applicant, no later than one month after the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure, one thousand (1,000) Convertible Marks ("*Konvertibilnih Maraka*") by way of compensation for non-pecuniary damages;

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

7. unanimously, to order the Federation of Bosnia and Herzegovina to report to it or its successor institution no later than one month after the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure on the steps taken by it to comply with the above order.

Remedy: in accordance with Rule 63 of the Chamber's Rules of Procedure, as amended on 1 September 2003 and entered into force on 7 October 2003, a request for review against this decision to the plenary Chamber can be filed **within fifteen days** starting on the working day following that on which the Panel's reasoned decision was publicly delivered.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel