DECISION ON ADMISSIBILITY AND MERITS
(delivered on 9 March 2001)

Case no. CH/99/3050

MUHAMED MUJAGIĆ

against

BOSNIA AND HERZEGOVINA
and
THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the second panel on 6 February 2001 with the following members present:

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

Mr. Peter KEMPEES, Registrar
Ms. Olga KAPIĆ, Deputy Registrar

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

Adopts the following decision pursuant to Article VIII(2) and Article XI of the Agreement as well as Rules 52, 57 and 58 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The applicant is a citizen of Bosnia and Herzegovina. He is the owner of a house in Sarajevo where he ran a business.

2. On 28 June 1993 the driver of an Army vehicle lost control of the steering wheel, went off the road and crashed into the applicant's house and damaged the front part of the business premises on the ground floor. The applicant sued the Army of Bosnia and Herzegovina for damages. Three successful judgments in the applicant's favour issued by the First Instance Court I or the Municipal Court I in Sarajevo, respectively, were annulled on appeal by the High Court or Cantonal Court in Sarajevo, respectively,[1] and were referred back to the lower court for rehearing. The fourth successful judgment in the applicant's favour issued by the Municipal Court I in Sarajevo is now pending on appeal before the Cantonal Court in Sarajevo. These proceedings have been going on for more than five years to date.

II. PROCEEDINGS BEFORE THE CHAMBER

3. The application was submitted on 22 October 1999 and registered on 25 October 1999. The application was lodged against both Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina.

4. The Chamber first considered the case on 11 January 2000. The case was transmitted to the Federation of Bosnia and Herzegovina on 20 January 2000. On 20 March 2000 the Chamber received its written observations.

5. On 6 April 2000 the Chamber received a letter from the applicant in which he complained that top politicians as well as persons at the "very top" of the BiH Army were involved in his case and had applied pressure on the Cantonal Court in Sarajevo to annul the judgments of the lower courts and to refer the case back for rehearing.

6. The Chamber again considered the case on 7 June 2000. On 22 June 2000 the Chamber asked the applicant to substantiate his allegations made on 6 April 2000. On 14 July 2000 his answer was received. The applicant stated that a friend who had informed him about the reason why he thought the Cantonal Court in Sarajevo was biased had moved to the United States half a year earlier. For this reason he could not submit evidence to support his claim.

7. On 13 October 2000, the Chamber again considered the case. On 8 December 2000 the applicant informed the Chamber that on 10 October 2000 the Municipal Court **I** in Sarajevo had decided in his favour for the fourth time.

8. On 6 February 2001 the Chamber adopted the present decision.

III. ESTABLISHMENT OF THE FACTS

9. On 28 June 1993 a car belonging, according to the applicant, to the Army of the Republic of Bosnia and Herzegovina (ARBiH), smashed into the applicant's house. On 15 August 1995 the applicant brought proceedings before the First Instance Court I in Sarajevo against the Republic of Bosnia and Herzegovina—ARBiH.

10. The First Instance Court I in Sarajevo issued a judgment on 29 January 1996 allowing the applicant's claim. In its decision the First Instance Court I in Sarajevo established that the damage to the applicant's premises had been caused by a Volkswagen Golf with the military license plate OS

[1] In the Canton of Sarajevo before 8 March 1997, the lower courts were called the First Instance Court I and the First Instance Court II and the appellate court was called the High Court. After 8 March 1997, in accordance with Article 24 of the Law on Courts (Official Gazette of the Canton Sarajevo, No. 3/97) which entered into force on that date, the lower courts are now called the Municipal Court I and the Municipal Court II, respectively, and the appellate court is now called the Cantonal Court, respectively.

(indicating the Armed Forces) 0156, driven by a member of the military. However, according to the respondent Party, the damage could not have been caused by a vehicle belonging to the ARBiH because on the list of registered motor vehicles of the ARBiH, a Lada Samara 1500 was registered with the license plate in question. Therefore, the Federation of Bosnia and Herzegovina— Federal Ministry of Defense, represented by the Attorney's Office of the Federal Ministry of Defense (hereinafter the Federal Ministry of Defense), then the respondent Party by virtue of having taken over responsibility for the former ARBiH, appealed.

11. The High Court of Sarajevo allowed the appeal on 27 November 1996 and referred the case back to the First Instance Court I in Sarajevo. The reason for referring the case for retrial was the irregular composition of the court during the public hearing because the lay judges were not present at any of the hearings.

12. The Municipal Court I in Sarajevo again issued a judgment in favour of the applicant on 20 October 1997. The grounds were the same as those of its judgment of 29 January 1996. The Federal Ministry of Defense appealed again.

13. The Cantonal Court in Sarajevo again allowed the appeal on 28 April 1998. In its appeal, the Federal Ministry of Defense stated that the license plate OS 0156 was the registration number of a Lada Samara 1500 which belonged to the regional headquarters of the territorial defense. The reason for referring the case back to the lower court once again was that, according to the Cantonal Court in Sarajevo, the Municipal Court I in Sarajevo had not properly evaluated the evidence, as it had not sufficiently considered the question *by which car* the damage had been caused.

14. The Municipal Court I in Sarajevo issued a judgment in favour of the applicant for the third time on 27 April 1999. The Federal Ministry of Defense asserted that at the time of the accident all Army vehicles were marked "Army of RBiH" and not "OS of RBiH" and such new plates marked "Army of RBiH" were introduced already on 5 December 1992. All "OS RBiH" license plates on Army vehicles were then withdrawn from use and destroyed no later than 1 April 1993. The Municipal Court I in Sarajevo again established that the damage was caused by a Volkswagen Golf with a military license plate, driven by a military person. In its reasoning the court found that the plates could have been forged and that therefore the responsibility for damage fell to the respondent Party since it should have secured regular control over its vehicles and plates. The Federal Ministry of Defense again appealed.

15. On 22 February 2000 the Cantonal Court in Sarajevo allowed the appeal on the same grounds as those of its judgment of 28 April 1998, and referred the case back to the Municipal Court I in Sarajevo. It turned out, however, that the license plate OS 0156 was the registration number of a Lada Samara 1500 which was in use by the regional headquarters of the territorial defense BiH and had never been removed or stolen from the car. It therefore found that the possibility of unauthorized use of license plates "OS" was not relevant to the responsibility of the respondent Party. It further noted that the judgment of the Municipal Court I does not provide valid reasons which were relevant for the decision.

16. On 10 October 2000 the Municipal Court I in Sarajevo for the fourth time issued a judgment in favour of the applicant, again based on the same grounds relied on previously.

17. It appears from the judgments of 29 January 1996 and 20 October 1997 by the Court of First Instance I and the Municipal Court I, respectively, that both judgments were issued by panels of exactly the same composition. The same is true of the judgments of 27 April 1999 and 10 October 2000 by the Municipal Court I. The presiding judge was also the same for all judgments.

18. On 23 November 2000 the applicant appealed, and on 5 December 2000 the Federal Ministry of Defense also appealed. These appeals are still pending.

IV. RELEVANT DOMESTIC LAW

A. Law on Civil Procedure [2]

19. Article 348 paragraph 1 reads as follows:

"The second-instance court, at the session of the panel or on the basis of a hearing, may reject the appeal as out of time, incomplete or not allowed, may reject the appeal as ill-founded and confirm the first instance judgment, annul this judgment and return the case to the first instance court for retrial, annul this judgment and reject the appeal or alter the first instance judgment.

The second-instance court may also annul the judgment if the party requests it to be altered, and may alter it if the party requests it to be annulled."

20. Article 351 provides as follows:

"The second-instance court shall annul the first instance judgment by its procedural decision if it finds a substantial violation of provisions of the civil procedure and shall return the case to the same first instance organ or shall give it to the competent first instance court for the purpose of holding a new main hearing. In this procedural decision the second instance organ shall also decide which of the conducted acts affected by a substantial violation of provisions of civil procedure shall be annulled.

If the provisions of Article 336 paragraphs 2(3) and (11) of this law have been violated during the procedure before the first instance court, the second instance court shall annul the first instance judgment and reject the complaint.

If the provisions of Article 336 paragraph 2(10) of this law have been violated during the proceedings before the first instance court, the second-instance court shall, according to nature of that violation, annul the first instance judgment and return the case to the competent first instance organ or shall annul the first instance judgment and reject the complaint."

21. Article 352 reads as follows:

"By its procedural decision the second-instance court shall annul the first instance judgment and return the case to that court for retrial if it considers that the latter should hold a new main hearing before the first instance court for establishing the correct facts, unless it decides to hold a hearing itself.

The second-instance court shall also act in this way if the party did not challenge the judgment due to a wrongly and incompletely established factual background, if during the proceedings reasonable suspicion arises that the facts upon which the first instance judgment is based have been established incorrectly.

If the second-instance court, sitting at the session of the panel or at the hearing, finds that new facts should be established or new evidence taken for the purpose of a correct establishment of the factual background, it shall annul the first instance judgment and return the case to the first instance court for rehearing."

22. Article 353 reads as follows:

"When the second-instance court annuls the first instance judgment and returns the case to the same court for rehearing it can order the holding of a new main hearing before another panel."

23. Article 355 reads as follows:

[2] Official Gazette of the Federation of BIH", No. 42/98

"By its judgment the second-instance court shall alter the first instance judgment:

1) if, on the basis of the hearing, it establishes a different factual background than the one set out in the first instance judgment;
2) if the first instance court misinterpreted documents or incorrectly admitted evidence and if the decision of the first instance court is based only upon such evidence;
3) if the first instance court, on the basis of the facts it established, reached an incorrect conclusion on the existence of other facts and if the judgment is based upon such facts;
4) if it considers that the factual background set out in the first instance judgment has been established correctly and the court misapplied substantive law."

24. Article 357 reads as follows:

"In the reasoning of the judgment or the procedural decision, the second instance court should decide which complaints are important for reaching a decision and should indicate its reasons taken into account ex officio.

If the first instance judgment is annulled due to substantial violations of provisions of civil procedure, it should be stated in the reasoning which provisions have been violated and what these violations consists of.

If the first instance judgment is annulled and the case returned to the first instance court for retrial for the purpose of a correct establishment of the factual background, it shall indicate the failings in the establishment of the factual background, i.e. the reasons why the new facts and evidence are important and why they are relevant for making a correct decision."

25. Article 359 provides as follows:

"The first instance court shall be obliged to take all civil proceedings and to consider all disputable issues which the second-instance court pointed out in its procedural decision.
The parties are entitled to present new facts and proffer new evidence at the new main hearing.

If the judgment is annulled due to the fact that it was issued by a court which lacked competence, the new hearing before the first instance court shall be held under the provisions applicable for holding of the main hearing in case of a change of the panel (Article 315 paragraph 3)."

B. The Constitution of Bosnia and Herzegovina

26. Article III paragraph 3 (a) of the Constitution of Bosnia and Herzegovina (Annex 4 to the General Framework Agreement for Peace in Bosnia and Herzegovina) prescribes that all governmental functions and competencies which are not expressly given to the institutions of Bosnia and Herzegovina are assigned to the Entities. This includes the judiciary. Thus, the Federation of Bosnia and Herzegovina has taken over the responsibility for the Municipal Court I in Sarajevo and the Cantonal Court in Sarajevo.

V. COMPLAINTS

27. The applicant alleges that his human rights have been violated because the national courts were not able to resolve "one simple case during a period of six years". The applicant also alleges that, because of various tricks and foul dealings by the judges of the Cantonal Court in Sarajevo, who in his contention support the BiH Army, the Cantonal Court in Sarajevo annulled the first instance judgment of the Municipal Court I in Sarajevo and referred the case back for rehearing three times in an "extremely partial, unobjective, unfair and legally unfounded manner". The applicant complains that the judges of the Cantonal Court in Sarajevo are biased. He alleges that top politicians are involved in his case and apply pressure on the Cantonal Court in Sarajevo to annul the first instance judgments in his favour and to refer the case back for rehearing. Concerning the alleged lack of impartiality, he states that he cannot prove his allegation.

VI. SUBMISSIONS OF THE PARTIES

A. The respondent Party, the Federation of Bosnia and Herzegovina

28. In relation to admissibility, the respondent Party, the Federation of Bosnia and Herzegovina, first points out that the business space on the ground floor of the applicant's house was damaged on 28 June 1993, i.e., before the entry into force of the General Framework Agreement for Peace in Bosnia and Herzegovina. Thus, the respondent Party is of the opinion that the Chamber is not competent *ratione temporis*.

29. Secondly, the respondent Party states that the applicant did not exhaust the available domestic remedies. It states that the applicant could have pursued the following domestic remedies:

> "a) a complaint to the first instance court pursuant to Articles 170 - 180 of the Law on Civil Procedure ("Official Gazette of the Federation of BIH", No. 42/98); and
> b) an appeal of the First Instance judgment as an ordinary remedy under Article 330 of the Law on Civil Procedure ("Official Gazette of the Federation of BIH", No. 42/98)."

30. As to the merits of the case, the respondent Party first disputes that the judges of the Cantonal Court in Sarajevo were biased when deciding the applicant's case.

31. Referring to the alleged violation of the applicant's right to a trial within a reasonable time, the respondent Party stresses on the one hand that the applicant's house was damaged on 28 June 1993, but the applicant did not file suit before the First Instance Court I in Sarajevo to obtain compensation until 15 August 1995 (i.e., more than two years later). On the other hand, the respondent Party declares that the court regularly scheduled and held hearings. It points out that the applicant did not produce any relevant argument to prove that the intention of the court was to delay the proceedings.

B. The applicant

32. In relation to the requirement to exhaust domestic remedies, the applicant states that there was no need for him to appeal against the judgments of the First Instance Court I and the Municipal Court I, respectively, in Sarajevo because he was satisfied with them.

33. As regards the merits, the applicant alleges that a member of the BiH Armed Forces in camouflage uniform seriously damaged the business premises on the ground floor of his house. Moreover, the applicant states in his application to the Chamber that the civil proceedings have been pending for "more than six years".

34. The applicant further alleges that the judges of the Cantonal Court in Sarajevo did not fulfill the requirement of impartiality. In his letter of 14 July 2000, the applicant states that he could not submit any relevant evidence in relation to his allegation that "top" politicians as well as persons at the "very top" of the BiH Army are involved in his case and apply pressure on the Cantonal Court in Sarajevo to annul the first instance judgments in his favour and refer the case back for rehearing. He

points out that he learned this from an acquaintance who worked in the Cantonal Court in Sarajevo. However, this acquaintance has moved to the United States and is unavailable.

VII. OPINION OF THE CHAMBER

A. Admissibility

35. Before considering the merits of the case the Chamber must decide whether to accept the case taking into account the admissibility criteria set out in Article VIII (2) of the Agreement. According to Article VIII (2) (c), the Chamber shall dismiss any application which it considers incompatible with the Agreement. According to Article VIII (a) of the Agreement the Chamber shall take into account whether effective remedies exist and whether the applicant has demonstrated that they have been exhausted.

1. Competence *ratione temporis*

36. The Chamber will first address the question whether it is competent *ratione temporis*. In accordance with generally accepted principles of law, the Agreement cannot be applied retroactively. Accordingly, the Chamber is not competent to consider events that took place prior to 14 December 1995.

37. The applicant instituted civil proceedings with the First Instance Court I in Sarajevo on 15 August 1995. Most recently on 10 October 2000, the Cantonal Court in Sarajevo annulled the judgment of the Municipal Court I in Sarajevo and referred the case back to the lower court for rehearing for the fourth time.

38. The civil proceedings started prior to 14 December 1995, before the Dayton Agreement entered in to force. However, the proceedings have continued for over five years after this date. Thus, the alleged violation of the Agreement has also occurred after the Agreement entered into force. The Chamber finds that the application is compatible with the Agreement and comes within the competence of the Chamber *ratione temporis* insofar as it concerns events which took place after 14 December 1995.

2. Competence *ratione personae*

39. The applicant submitted his application against Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina.

40. The applicant filed his action before the First Instance Court I in Sarajevo before 14 December 1995. Nonetheless, the court proceedings continued after the Agreement entered into force and are still pending.

41. As of 14 December 1995 the case was pending in a court of the Federation of Bosnia and Herzegovina. According to Article I, Article III paragraph 1 (a-j), Article III paragraph 3 (a) of Annex 4 to the Agreement, Bosnia and Herzegovina cannot be held responsible for any violation of Article 6 of the European Convention on Human Rights and issues related to discrimination against the applicant in enjoyment of his right to a fair trial insofar as the matters complained of fall within the responsibility of the Federation of Bosnia and Herzegovina.

42. For these reasons, the Chamber decides that the application is inadmissible *ratione personae* insofar as it is directed against Bosnia and Herzegovina.

3. Requirement to exhaust effective domestic remedies

43. The Chamber will next address the question of whether the applicant has exhausted the effective domestic remedies.

44. Considering that this case concerns the applicant's claim to seek an effective remedy for damage to his premises, the respondent Party asserts that the applicant could have pursued the following domestic remedies:

> "a) a complaint to the first instance court pursuant to Articles 170 - 180 of the Law on Civil Procedure ("Official Gazette of the Federation of BIH", No. 42/98); and
> b) an appeal of the first instance judgment as an ordinary remedy under Article 330 of the Law on Civil Procedure ("Official Gazette of the Federation of BIH", No. 42/98)."

45. The First Instance Court I and Municipal Court I, respectively, in Sarajevo held in favour of the applicant four times. Consequently, there was no reason for the applicant to complain to the Municipal Court I in Sarajevo or to appeal against these judgments. The respondent Party has identified no other available remedies. Thus, in the present case there is no effective domestic remedy available to the applicant.

46. The Chamber concludes that the applicant has exhausted the available domestic remedies.

4. Requirement to substantiate claims

47. The applicant alleges that the judges of the Cantonal Court in Sarajevo are biased. He alleges that top politicians as well as persons at the very top of the Army of the Federation of Bosnia and Herzegovina are involved in his case and apply pressure on the Cantonal Court in Sarajevo to annul the first instance judgments in his favour and refer the case back to the lower courts for rehearing. However, the applicant has not submitted any relevant evidence in relation to his complaint inspite of the request made by the Chamber, because, he alleges, his acquaintance who informed him about this has moved to the United States and he cannot be found. Thus, the applicant has not substantiated his claims in this respect.

48. In these circumstances the applicant did not substantiate his claim concerning lack of impartiality and independence of the court, and this claim is declared inadmissible as manifestly ill-founded.

5. Conclusion as to admissibility

49. In conclusion, the Chamber finds that the application is inadmissible *ratione personae* against Bosnia and Herzegovina and admissible in part against the Federation of Bosnia and Herzegovina. The Chamber concludes that the application is compatible with the Agreement and comes within the competence of the Chamber *ratione temporis* insofar as it concerns events that took place after 14 December 1995. Moreover, the applicant has exhausted available domestic remedies. However, the Chamber further concludes that only the claim concerning the length of proceedings is admissible against the Federation of Bosnia and Herzegovina. The claim concerning lack of impartiality and independence of the court is inadmissible as manifestly ill-founded.

B. Merits

50. Under Article XI of the Agreement the Chamber must next address whether the facts disclose a breach by the Federation of its obligations under the Agreement. Under Article I of the Agreement, the Parties are obliged to "secure to all persons within their jurisdiction the highest level of internationally recognized 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 Annex 6 of the Agreement.

51. Under Article II(2) of the Agreement, the Chamber has competence to consider (a) alleged violations of human rights as provided in the Convention and its Protocols and (b) alleged or apparent discrimination arising in the enjoyment of the rights and freedoms provided for in the 16 international agreements listed in the Appendix (including the Convention), when such a violation is alleged or appears to have been committed by the Parties, including by any official or organ of the Parties, Cantons, Municipalities or any individual acting under the authority of such an official or organ.

52. The applicant alleges that there has been a violation of Article 6 of the European Convention on Human Rights because the proceedings in his case have not been determined within a reasonable time by an independent and impartial tribunal. In relevant part, Article 6 paragraph 1 provides as follows:

> "1. In the determination of his civil rights... , everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal...."

1. Right to a fair trial within a reasonable time

53. The applicant submits that the proceedings have been pending for over six years.

54. The respondent Party states that the proceedings have not been pending for over six years. It points out that the applicant initiated the civil proceedings first on 28 June 1995 and submitted his application before the Chamber on 22 October 1999. The respondent Party submits that the courts have functioned normally in the applicant's case and stresses that under Article 348 paragraph 1 of the Law on Civil Procedure, the second instance court may annul the judgment and refer the case back to the first instance court for retrial.

55. According to the European Court of Human Rights, the reasonableness of the length of the proceedings must be assessed in each case according to the particular circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case and the conduct of the applicant and of the relevant authorities (Eur. Court HR, *Reinhardt and Slimane-Kaid v. France*, judgment of 31 March 1998, Reports and Decisions 1998, page 27, paragraph 97).

56. In the present case, the length of time to be considered already amounts to more than five years from 14 December 1995 to the present and the proceedings are still pending.

57. During these five years, the case has been heard at first instance four times and on appeal three times. Thus, there appears not to have been a lack of activity, but rather an excess of it, which does not sit well with the principle *lites finiri oportet* (Eur. Court HR, *Bock v. Germany*, judgment of 29 March 1989, Series A no. 150, p. 22-23. paragraph 47).

58. The Chamber finds that there is nothing to indicate that the length of the proceedings was caused by the applicant.

59. The Chamber finds that the present case is not a complex one. The only matter to be determined in the present case is a simple question of fact.

60. The High Court and Cantonal Court, respectively, in Sarajevo annulled the first instance judgments and referred the case back to the first instance court for rehearing in accordance with Articles 348 paragraph 1, 351 paragraph 1, 352 of the Law on Civil Procedure. As the respondent Party correctly states, under Article 348 paragraph 1 of the Law on Civil Procedure, the second instance court may annul the judgment and refer the case back to the first instance court for retrial, but such a procedure does not absolve the courts from ensuring compliance with the requirement of Article 6 of the European Convention on Human Rights to conduct a fair trial within a reasonable time (Eur. Court HR, *Baraona v. Portugal,* judgment of 8 July 1987, Series A no. 122, p. 19, paragraph 48). The High Court and Cantonal Court in Sarajevo repeatedly referred the case back to the first instance court although it had, according to the Articles 348 paragraph 1 and 355, 352, 353 of the Law on Civil Procedure, the possibility to alter the first instance judgment, to hold a hearing itself or to order the holding of a new main hearing before another panel. Thus, the delays have been caused by the case having gone back and forth between the courts.

61. In this case, where the issue in dispute is not complex and the applicant's conduct is beyond reproach, the Chamber concludes that the respondent Party has violated Article 6 of the European Convention on Human Rights in relation to the requirement of a fair trial within a reasonable time.

VIII. REMEDIES

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

63. The Chamber finds it appropriate to order the Federation of Bosnia and Herzegovina to take all necessary steps to ensure that the litigation between the applicant and the Federal Ministry of Defense is brought to a conclusion without further delay and in any event no later than three months from the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure.

64. In the circumstances, the Chamber finds it appropriate to order the Federation of Bosnia and Herzegovina to pay to the applicant, not 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, 1,000 Convertible Marks (*Konvertibilnih Maraka*) by way of compensation for non-pecuniary damage.

65. In its decision on the claim for compensation of 16 March 1998 in the *Damajanović* case (CH/96/30, Decisions and Reports 1998), the Chamber ordered the payment of simple interest at an annual rate of 4% on compensation for damage paid after the expiry of the time-limit set for that purpose. The award of compensation for damage was expressed in German currency and 4% was the legal rate of default interest in Germany at that time. The Chamber considers that it should now award such interest at an annual rate of 10%, which more closely reflects the economic reality in Bosnia and Herzegovina. Interest at that rate should be paid as of the date of expiry of the one-month period set for implementation of the present decision and on the sum awarded in paragraph 64 or on any unpaid portion thereof until the date of settlement in full.

IX. CONCLUSIONS

66. For the reasons given above, the Chamber decides:

1. unanimously, to declare the complaint concerning the length of the proceedings admissible as against the Federation of Bosnia and Herzegovina;

2. unanimously, to declare the complaint in relation to the lack of independence and impartiality of the Cantonal Court in Sarajevo inadmissible as manifestly ill-founded;

3. unanimously, to declare the application inadmissible in its entirety as incompatible with the Agreement *ratione personae* insofar as it is directed against Bosnia and Herzegovina;

4. unanimously, that the applicant's right to a fair trial within a reasonable time guaranteed by Article 6 paragraph 1 of the Convention has been violated, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of Annex 6 to the Human Rights Agreement;

5. unanimously, to order the Federation of Bosnia and Herzegovina to take all necessary steps to ensure that the litigation between the applicant and the Federal Ministry of Defense is brought to a conclusion without further delay and in any event no later than three months from the date on which the decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure;

6. unanimously, to order the Federation of Bosnia and Herzegovina to pay the applicant, not 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, 1,000 (one thousand) Convertible Marks (*Konvertibilnih Maraka*) by way of compensation for non-pecuniary damage;

7. unanimously, to order the Federation of Bosnia and Herzegovina to pay simple interest at an annual rate of 10 (ten) per cent on the sum, or any unpaid portion thereof, awarded in conclusion 6

above after the expiry of the one-month period set in that conclusion for the payment of such sum until the date of settlement in full; and

8. unanimously, to order the Federation of Bosnia and Herzegovina to report to the Chamber not later than three months after the decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure, on the steps taken by it to give effect to this decision.

(signed)
Peter KEMPEES
Registrar of the Chamber

(signed)
Giovanni GRASSO
President of the Second Panel