# DECISION ON ADMISSIBILITY AND MERITS
**(delivered on 6 June 2003)**

**Case no. CH/99/3227**

**Tereza MILISAVLJEVIĆ**

**against**

**THE FEDERATION OF BOSNIA AND HERZEGOVINA**

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 7 May 2003 with the following members present:

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

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

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

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

## I. INTRODUCTION

1. The application concerns the applicant's attempts to obtain a suitable replacement apartment after her previous apartment was expropriated in accordance with the final and binding procedural decision by the Municipality of Novo Sarajevo of 24 June 1983. The applicant initiated proceedings before the administrative organs and the courts to achieve her right, but to date she has not been allocated a suitable replacement apartment by the beneficiary of the expropriation. Both the courts and the administrative organs have determined themselves incompetent to deal with her complaint.

2. The application raises issues under Articles 6, 8 and 13 of the European Convention on Human Rights (the "Convention") and Article 1 of Protocol No. 1 to the Convention.

## II. PROCEEDINGS BEFORE THE CHAMBER

3. The application was submitted on 24 November 1999 and registered on the same day.

4. On 21 March 2000, the Chamber transmitted the case to the respondent Party for its observations on admissibility and merits under Articles 6, 8, and 13 of the Convention and Article 1 of Protocol No. 1 to the Convention.

5. The respondent Party submitted its written observations on 22 May 2000. On 30 June 2000, the applicant submitted her written observations in reply, in which she also included a claim for compensation for non-pecuniary damages for mental suffering.

6. On 11 August 2000, 26 September 2000, 23 April 2001, 6 December 2001, and 17 February 2003, the respondent Party submitted additional written observations and information.

7. On 26 February 2003, the Chamber asked the respondent Party to submit any updated information. The respondent Party replied on 27 February 2003. The submissions of 17 and 27 February 2003 were transmitted to the applicant for her comment on 4 April 2003. She submitted additional information on 17 April 2003, and the respondent Party provided further additional information on 23 April 2003.

8. On 31 March 2003 and 7 May 2003, the Chamber deliberated on the admissibility and merits of the case. On the latter date, it adopted the present decision.

## III. FACTS

9. The applicant, a single mother with two children, lived in an apartment in her father's private house located at Neretvanska Street no. 10 in Sarajevo until January 1984, when she was evicted following an expropriation procedure. The expropriation procedure had commenced on 3 November 1981. On 24 June 1983, the Municipality of Novo Sarajevo issued a final and binding procedural decision by which it obliged the beneficiary of the expropriation (the Institute for Development of the City of Sarajevo) to provide the applicant with another apartment – a suitable replacement apartment – as specified in separate proceedings.

10. The beneficiary of the expropriation offered the applicant an apartment in the area of Alipašino Polje in Sarajevo; however, the applicant refused it because it was unsuitable. The Municipality of Novo Sarajevo confirmed that the offered apartment was not suitable in its procedural decision of 19 April 1983. Thereafter, the beneficiary of the expropriation did not offer the applicant another adequate apartment.

11. On 18 October 1983, the Municipality of Novo Sarajevo issued a conclusion on execution ordering the applicant's eviction from the apartment in Sarajevo but not mentioning the beneficiary's obligation to provide the applicant with a suitable replacement apartment. On 11 January 1984, the applicant was evicted from the apartment in Sarajevo. No other accommodation was provided for

her. On the same date, the beneficiary took possession of the real estate, including the private house where the applicant's apartment was located. Later, the house was demolished. The applicant claims that some of her movable property inside the apartment (*i.e.*, jewellery, furniture, *etc.*,) was removed from her apartment during the eviction, and she has not been able to retrieve it since then.

12. On 9 December 1983, the applicant appealed against the conclusion on execution of 18 October 1983 to the Republic Financial Secretariat— Administration for Property and Legal Affairs (the "Republic Secretariat") on the ground that the conclusion *de facto* cancelled the beneficiary's obligation to find her a suitable replacement apartment. On 23 May 1984, the Republic Secretariat refused the appeal and confirmed the cancellation of the beneficiary's obligation on the ground that the applicant already had an occupancy right.

13. On 27 June 1984, the applicant lodged an administrative dispute before the Administrative Court of the Socialist Republic of Bosnia and Herzegovina against the Republic Secretariat for annulment of the decision of 23 May 1984. On 17 October 1984, the Administrative Court dismissed this petition.

14. On 23 December 1984, the applicant submitted a request for review of legality to the Public Attorney of the Socialist Republic of Bosnia and Herzegovina concerning the decision of the Administrative Court of the 17 October 1984. On 6 March 1985, the Public Attorney filed a request for review of legality to the Supreme Court of the Socialist Republic of Bosnia and Herzegovina against the decision of 17 October 1984.

15. On 24 May 1985, the Supreme Court of the Socialist Republic of Bosnia and Herzegovina annulled the conclusion on execution of 18 October 1983, stating that a conclusion on execution could not change the merits of the decision it executes. By cancelling the beneficiary's obligation to find a suitable replacement apartment for the applicant, the executive body had acted outside its competence. Therefore, the Supreme Court ordered the executive body to re-issue its conclusion in accordance with the judgment.

16. On 3 September 1985, the Municipality of Novo Sarajevo issued a conclusion suspending the procedure of eviction because, on 18 September 1985[1], the Institute for Development of the City of Sarajevo had withdrawn its request for execution of the decision of 24 June 1983, although the eviction had already been carried out on 11 January 1984. The decision of the Municipality further stated that the applicant should refer to the beneficiary of the expropriation in order to be allocated a suitable replacement apartment, as that was the obligation of the beneficiary and not of the administrative body.

17. On 4 November 1985, the applicant appealed against the conclusion of 3 September 1985 to the Republic Secretariat claiming that the Municipality of Novo Sarajevo should be the body to allocate her a suitable replacement apartment. On 20 January 1986, the Republic Secretariat refused the appeal and referred the applicant once again to the Institute for the Development of the City of Sarajevo, as the beneficiary of the expropriation, in order to be allocated a suitable replacement apartment.

18. On 26 March 1986, the applicant lodged an administrative dispute before the Administrative Court of the Socialist Republic of Bosnia and Herzegovina against the Municipality of Novo Sarajevo, seeking annulment of the conclusion of 3 September 1985.

19. On 27 June 1986, the applicant addressed by letter both the beneficiary of the expropriation and the Municipality of Novo Sarajevo requesting them to allocate her a suitable replacement apartment in accordance with the expropriation decision. The beneficiary replied on 31 October 1986, stating that it was not competent for such a request and referring her to the Secretariat for Property and Legal Affairs of the Municipality of Novo Sarajevo. On 19 November 1986, the Municipality of Novo Sarajevo also denied being the competent body for such a request and instead

[1] The Chamber notes that although this date is illogical, it is the date mentioned in the conclusion of 3 September 1985.

referred her to the beneficiary of the expropriation, as it was obliged, in this case, to allocate the suitable replacement apartment.

20. The applicant then initiated an administrative dispute before the Supreme Court of the Socialist Republic of Bosnia and Herzegovina against the decision of the Republic Secretariat of 20 January 1986**,** seeking enforcement of the first administrative decision. On 15 January 1987, the Supreme Court rejected the lawsuit in administrative dispute proceedings because the beneficiary had withdrawn its request for enforcement and the administrative body had no other possibility but to suspend the execution. The Supreme Court further stated that besides the administrative procedure, the applicant could, if the beneficiary failed to fulfil its obligation established in the procedural decision on expropriation, initiate civil proceedings before the competent First Instance Court to secure the use of a suitable replacement apartment.

21. Following the Supreme Court ruling, on 6 April 1987, the applicant initiated civil proceedings before the First Instance Court I in Sarajevo against the Institute for Development of the City of Sarajevo (the beneficiary of the expropriation). On 18 November 1988, the First Instance Court I issued a judgment confirming the defendant's obligation to allocate the applicant a two-room apartment, with a surface of at least 60 square meters, in the area of the Municipality of Novo Sarajevo. On 12 May 1989, the Institute appealed against this decision to the Higher Court Sarajevo.

22. On 30 October 1990, the Higher Court Sarajevo issued a decision by which it cancelled the judgment of the First Instance Court I because it lacked jurisdiction *ratione materiae* and it returned the case to the First instance Court I for renewed proceedings.

23. On 4 December 1991, the First instance Court I in Sarajevo issued precisely the same decision as it had on 18 November 1988 (see paragraph 21 above). On 24 January 1992, the Institute appealed once again to the Higher Court Sarajevo. On 22 December 1993, the Higher Court decided once again to accept the appeal and return the case to the First Instance Court I for renewed proceedings.

24. In the renewed proceedings, on 29 April 1998, the Municipal Court I in Sarajevo[2] declared itself absolutely incompetent to decide this case on the basis of Article 31 paragraph 7 of the Law on Expropriation and stated that the administrative organ of the Municipality of Novo Sarajevo is the only competent organ for this matter. On 23 July 1998, the applicant appealed against this decision to the Cantonal Court. On 31 March 1999, the Cantonal Court upheld the decision of 29 April 1998. On 23 August 1999 and again on 10 January 2000, the applicant complained to the Federal Ministry of Justice concerning the decision of the Cantonal Court, but she has not received any response.[3]

[2] 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 Higher Court. After 8 March 1997, in accordance with Article 24 of the Law on Courts (Official Gazette of 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.

[3] According to Article 62 paragraph 2 of the Law on the Courts (Official Gazette of the Canton of Sarajevo no. 3/97), the Ministry of Justice of the Canton of Sarajevo is competent to examine citizen complains concerning the operation of cantonal and municipal courts. The Federal Ministry of Justice, under Article 65 paragraphs 3 and 4 of the Law on Administrative Procedure (Official Gazette of the Federation of Bosnia and Herzegovina nos. 2/98 and 48/99), was obligated to warn the applicant about its incompetence upon receipt of her submission, in case such submission was made in person, and to direct her to the competent authority. If the applicant continued insisting that her submission be received, then it was obligated to receive the submission, and, if it established its further incompetence, then to issue a conclusion rejecting the submission and to deliver such conclusion to the applicant immediately thereafter. If the submission was delivered through the postal service, then it was obligated to transmit it to the Cantonal Ministry of Justice, as the competent authority, and to inform the applicant of it. Neither the Federal Ministry nor the Cantonal Ministry of Justice may decide on appeals against court decisions.

25. For more than twenty years (since the final and binding procedural decision on expropriation of 24 June 1983 until the present), the applicant has been unable to achieve her right to be allocated a suitable replacement apartment after her previous apartment was expropriated.

26. Meanwhile, on 6 April 1987, the applicant also initiated proceedings before the First Instance Court II in Sarajevo to attempt to obtain compensation for the moveable property taken from her apartment in her father's house upon its expropriation. After various proceedings and appeals, on 15 January 2003, the Cantonal Court issued its judgment rejecting her appeal as ill-founded and confirming the judgment of the Municipal Court II of 23 November 2001. The judgment stated that although the applicant was notified of the eviction date, she took no action to protect and secure her moveable property. Moreover, the Cantonal Court found that the applicant failed to prove that the damage to her moveable property was caused by the respondent Party.

## IV. RELEVANT LEGAL PROVISIONS

### A. Law on Expropriation

27. The Law on Expropriation (Official Gazette of the Socialist Republic of Bosnia and Herzegovina — hereinafter "OG SRBiH" — nos. 12/87 (consolidated text), 38/89, 4/90; Official Gazette of the Republic of Bosnia and Herzegovina — hereinafter "OG RBiH" — no. 15/94), as amended, establishes the legal framework for an expropriation.

28. Under Article 10 the owner is entitled to just compensation ("equitable indemnity") for the expropriated property provided by the beneficiary of the expropriation. Just compensation may include alternative suitable premises for residential use or business purposes. It might equally include pecuniary compensation, whereby the value of the property shall be determined in accordance with the Law (see Articles 49–74). However, in the present case this provision does not apply because the applicant was the user rather than the owner of the expropriated property (the owner was her father).

29. Article 12 further provides that the beneficiary of the expropriation shall provide the previous owner residing in the expropriated building or apartment, prior to its demolition, the use of an alternative suitable apartment. Article 29(9) extends the right of the occupancy right holders to be provided substitute lodging by the expropriation beneficiary. It states as follows:

> "The procedural decision adopting the expropriation proposal, shall set out, *inter alia*: …
>
> 9. the obligation of the beneficiary of the expropriation to provide the occupancy right holders of the expropriated residential building or the expropriated apartment as a separate part of the building, *i.e.*, the expropriated business premises, prior to demolition of the building, with a suitable apartment, *i.e.*, business premises, for the purposes of Article 12 of this Law."

30. Article 31 paragraphs 5, 6, 7 further provide that:

> "The expropriated residential building or apartment as a separate part of the building and the expropriated business premises, may not be handed over into possession of the beneficiary of the expropriation, if the beneficiary of the expropriation fails to submit evidence that s/he provided a suitable apartment, *i.e.*, suitable premises, for the purposes of Article 12 of this Law, unless the parties agree otherwise.
>
> "In case of a dispute over the suitability of the apartment, and/or over whether it is possible to continue the performance of business operations in the business premises, a decision shall be made by the competent municipal administrative body.
>
> "An appeal submitted against the procedural decision from the preceding paragraph shall not postpone enforcement of the procedural decision on expropriation."

31. Article 27 paragraph 1 provides that procedural decisions on expropriation shall be issued in accordance with the Law on Administrative Procedure.

### B. Law on Administrative Procedure

32. Article 271 of the Law on Administrative Procedure of the Federation of Bosnia and Herzegovina (Official Gazette of the Federation of Bosnia and Herzegovina — hereinafter "OG FBiH" — nos. 2/98 and 48/99) provides that execution of administrative decisions shall be conducted against the person who is under the obligation to fulfil the obligation (obligee), and it shall be conducted *ex officio* or upon the proposal of a party to the proceedings. Under Article 274(1), an administrative execution shall be performed by the administrative body that made the decision in the first instance, unless a special provision specifies that another body shall perform it.

33. According to Article 283, when the execution of a decision relies upon a third party (obligee), who is under an obligation to allow something or to suffer something, the body conducting the execution shall force the obligee to fulfil the obligation by ordering a monetary fine to be paid by the obligee if the obligee acts contrary to his or her obligation. On the first occasion, this forcible monetary fine may not exceed 50 DM. Each subsequent monetary fine may be ordered again in the same amount. Further, the body conducting the execution may also warn the obligee of the application of forcible means if he or she fails to fulfil the obligation within a specified period. If the deadline is exceeded, the forcible means warned of shall be applied immediately and a new term shall be designated for the completion of the obligation, along with a warning of new, stronger, forcible means.

34. Article 284 allows for the use of "direct force" against the obligee if, after using the means provided for in Article 283, the execution is not carried out.

## V. COMPLAINTS

35. The applicant complains that she has not been allocated a suitable replacement apartment for her use, although her right to such apartment was declared in the procedural decision on expropriation of 24 June 1983 and confirmed several times thereafter. She further complains about the deprivation of her moveable property from her previous expropriated apartment. The applicant alleges violations of her rights to respect for her home and peaceful enjoyment of her possessions under Article 8 of the Convention and Article 1 of Protocol No. 1 to the Convention, as well as violations her right to a fair hearing within a reasonable time under Article 6 of the Convention and her right to an effective remedy under Article 13 of the Convention. She seeks compensation for physical and mental damages caused to her and her two children as a result of having no suitable replacement apartment since 1983.

## VI. SUBMISSIONS OF THE PARTIES

### A. The respondent Party

36. In its written observations, the respondent Party contests both the admissibility and merits of the application and asks the Chamber to declare the application inadmissible or to reject it as ill-founded. With respect to admissibility, the respondent Party opines that the Chamber is not competent *ratione temporis* because the alleged facts occurred prior to 14 December 1995, as the expropriation at issue occurred on 24 June 1983, according to the decision of the Municipality of Novo Sarajevo.

37. The respondent Party contends that the applicant's proceedings before the Municipal Court, Higher Court, and Cantonal Court in Sarajevo were held in accordance with the laws and procedures. It further states that the length of the proceedings was caused primarily by the applicant because she addressed bodies which were not competent to decide on the issue and this delayed the outcome of the proceedings. The administrative organs have exclusive competence over this case.

38. As to the applicant's compensation claim, the respondent Party suggests that if the Chamber finds a violation of the Convention, it should decline to award compensation for non-pecuniary damages. Moreover, the applicant's request for compensation for the alleged removal of her moveable property should be declared ill-founded as the applicant must establish in regular civil proceedings the existence of and responsibility for such damage before addressing the Chamber. The applicant has not shown that the alleged loss of or damage to her moveable property was directly caused by the respondent Party or any person acting on its behalf; therefore, the respondent Party cannot be held responsible for such damage. Further, the respondent Party notes that the applicant initiated a lawsuit before the First Instance Court II in Sarajevo in 1987 for compensation for damage for her destroyed and alienated movable property (see paragraph 26 above). According to the respondent Party, these proceedings are not progressing because the applicant failed to submit a request for continuation of the proceedings, which were suspended during the armed conflict. She also failed to appear at hearings scheduled on 12 January 2000 and 7 March 2000, and she did not submit a correct address to the court. Thus, the applicant has failed to exhaust available domestic remedies under the Law on Obligations (OG SRBiH nos. 2/92, 13/93, and 13/94) and the Law on Civil Proceedings (OG FBiH nos. 42/98 and 3/99) with respect to her claim for compensation for her moveable property.

### B. The applicant

39. In her observations, the applicant complains that all the proceedings in her case have been unduly delayed, especially during the period from 19 April 1983 to 6 April 1987. She further complains that during the proceedings (*i.e.*, procedural decisions of the Higher Court of 22 December 1992 and 11 January 1996; procedural decision of the First Instance Court I of 2 April 1996; procedural decision of the Higher Court of 12 November 1996; procedural decision of the Municipal Court of 29 April 1998; procedural decision of the Cantonal Court of 31 March 1999), the courts applied facts which were previously cleared up by the judgment of the Supreme Court of 24 May 1995.

40. With respect to the respondent Party's objection to the Chamber's competence *ratione temporis*, the applicant points out that on 24 August 1999, she lodged an appeal to the Federal Ministry of Justice, and that although she has been addressing all means available under the current domestic system, she continues to be prevented from using and enjoying a suitable replacement apartment as prescribed both in the decision of the Municipality of Novo Sarajevo and Article 12 read together with Article 29(9) of the Law on Expropriation.

41. Concerning her claim for loss of movable property, the applicant highlights that she commenced her first court action in August 1984 before the First Instance Court I against the Institution for Development and the Municipality of Novo Sarajevo requesting pecuniary compensation for stolen and destroyed moveable property. On 6 April 1987, she initiated a new action before the First Instance Court II.

## VII. OPINION OF THE CHAMBER

### A. Admissibility

42. 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(2) of the Agreement. According to Article VIII(2)(a), the Chamber shall consider whether effective domestic remedies exist and whether the applicant has demonstrated that they have been exhausted. Article VIII(2)(c) states that the Chamber shall dismiss any application which it considers incompatible with the Agreement, manifestly ill-founded or an abuse of the right of petition.

### 1. Compatibility *ratione temporis*

43. The respondent Party has objected to the admissibility of the application because the facts alleged occurred prior to 14 December 1995 and thus fall outside the competence of the Chamber *ratione temporis*.

44. The Chamber notes that the Agreement is only applicable to human rights violations alleged to have occurred subsequent to its entry into force on 14 December 1995. However, in its case-law, the Chamber has made a distinction between instantaneous acts occurring prior to 14 December 1995 and acts giving rise to a continuing violation of human rights after 14 December 1995. Moreover, the Chamber may consider as background information evidence of events occurring prior to 14 December 1995 insofar as they are relevant to the allegation of a continuing violation of human rights after 14 December 1995 (case no. CH/97/67, *Zahirović*, decision on admissibility and merits of 10 June 1999, paragraphs 104-108, Decisions January—July 1999).

45. In previous cases, the Chamber has held that the expropriation of property occurring prior to 14 December 1995 is an instantaneous act that does not give rise to a continuing violation (*see, e.g.*, case no. CH/98/411, *O.R.*, decision on admissibility of 13 March 1999, paragraph 8, Decisions January—July 1999). Moreover, as the Chamber stated in the *Živojnović* case, "deprivation of ownership or another right *in rem* is in principle an instantaneous act and does not produce a continuing interference with a property right of the applicant" (case no. CH/98/1040, *Živojnović*, decision on admissibility of 9 October 1999, paragraph 17, Decisions August—December 1999).

46. Applying these principles, the expropriation of the applicant's apartment pursuant to the decision of the Municipality of Novo Sarajevo of 24 June 1983 is outside the Chamber's competence *ratione temporis*. However, the applicant in the present case does not complain about the expropriation *per se*. Rather, she complains that the beneficiary of the expropriation has failed to fulfil its obligation to provide her with a suitable replacement apartment and she has been unable through proceedings before the domestic bodies to obtain enforcement of this right bestowed upon her in the decision of the Municipality of Novo Sarajevo of 24 June 1983. The Chamber will, therefore, determine whether the applicant's alleged prospect of obtaining possession of a suitable replacement apartment constitutes a protected possession, the interference with which could give rise to a continuing violation of Article 1 of Protocol No. 1 to the Convention after 14 December 1995.

47. The first paragraph of Article 1 of Protocol No. 1 to the Convention reads 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."

48. The Chamber recalls that, according to the jurisprudence of the European Court of Human Rights, a protected "possession" can only be an "existing possession" (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 (case no. CH/98/1040, *Živojnović*, decision on admissibility of 9 October 1999, paragraph 20, Decisions August—December 1999). The Chamber is of the opinion that in order to be such a "legitimate expectation" constituting a protected possession, the applicant's prospect should be based upon a valid administrative act or upon legislation in force (*id.* at paragraph 21). However, in this case, such a valid administrative act — the decision of the Municipality of Novo Sarajevo of 24 June 1983 — and applicable legislation — Article 12 read together with Article 29(9) of the Law on Expropriation — provided the applicant with a legitimate expectation to a suitable replacement apartment. As she alleges that a suitable replacement apartment has not been provided to her to date, she alleges a continuing violation of her rights protected by Article 1 of Protocol No. 1 to the Convention, which continues to the present day.

49. In addition to her inability to possess a suitable replacement apartment, the applicant also complains that she has unsuccessfully pursued domestic proceedings and remedies to obtain enforcement of her right to a suitable replacement apartment after 14 December 1995. Such complaints raise claims under Articles 6 and 13 of the Convention, which, to the extent they continued after 14 December 1995, also fall within the Chamber's competence *ratione temporis*.

### 2. Right to respect for home

50. In connection with her inability to possess a suitable replacement apartment, the applicant alleges a violation of her right to respect for her home, guaranteed under Article 8 of the Convention. However, as the suitable replacement apartment has not yet been allocated to the applicant, she has never lived in this apartment or used it as her home. Accordingly, her legitimate expectation in this suitable replacement apartment cannot raise any issues with respect to Article 8 of the Convention. It follows that this part of the application is manifestly ill-founded, within the meaning of Article VIII(2)(c) of the Agreement.

### 3. Loss of and damage to moveable property

51. In her application, the applicant has complained about the loss of and damage to moveable property left in her apartment when she was evicted from it on 11 January 1984. The respondent Party objects to the admissibility of this claim on the grounds that the applicant has not shown that the alleged loss of or damage to her moveable property was directly caused by the respondent Party or any person acting on its behalf, and in addition, the applicant has not exhausted the effective domestic remedies for this claim.

52. Firstly, as explained above, the Agreement is only applicable to human rights violations alleged to have occurred subsequent to its entry into force on 14 December 1995 and 11 January 1984 is clearly prior to that date. Moreover, the Chamber agrees with the respondent Party that the applicant has not established that the alleged loss of or damage to her moveable property was directly caused by the respondent Party or any person acting on its behalf. Absent substantiation, such claim is manifestly ill-founded, and the respondent Party cannot be held responsible for this damage or loss. It follows that this part of the application is inadmissible under Article VIII(2)(c) of the Agreement.

53. Taking into account that the admissibility criteria set forth in Article VIII(2)(c) of the Agreement are not satisfied, it is not necessary for the Chamber to consider whether the applicant has exhausted domestic remedies with respect to her moveable property claim.

### 4. Conclusion as to admissibility

54. In summary, with respect to the time period after 14 December 1995, the Chamber declares the application admissible in relation to Articles 6 and 13 of the Convention and Article 1 of Protocol No. 1 to the Convention, insofar as relating to the applicant's claim for a suitable replacement apartment. The Chamber declares the application inadmissible in relation to Article 8 of the Convention, the applicant's claim for loss of and damage to moveable property, and events and proceedings occurring prior to 14 December 1995.

## B. Merits

55. Under Article XI of the Agreement, the Chamber must next address the question of whether the facts established above disclose a breach by the respondent Party of its obligations under the Agreement. Under Article 1 of the Agreement, the parties are obliged to "secure to all persons within their jurisdiction the highest level of internationally recognised human rights and fundamental freedoms," including the rights and freedoms provided for in the Convention.

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

56. 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."

57. 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).

#### a. Existence of a "possession"

58. As the Chamber explained above, a protected "possession" is an "existing possession" (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 (case no. CH/98/1040, *Živojnović*, decision on admissibility of 9 October 1999, paragraph 20, Decisions August—December 1999; *see also* Eur. Court HR, *Pine Valley Developments Ltd. And Others v. Ireland*, judgment of 29 November 1991, Series A no. 222, paragraph 51; Eur. Court HR, *Pressos Compania Naviera S.A. and Others v. Belgium*, judgment of 20 November 1995, Series A no. 332-B, paragraph 31).

59. In the procedural decision of the Municipality of Novo Sarajevo of 24 June 1983, which was issued in accordance with the applicable law, the beneficiary of the expropriation was obliged to provide the applicant with a suitable replacement apartment. Such right of the applicant to use a suitable replacement apartment was not of a temporary nature, but rather, of an indefinite nature. Thus, in the present case, the valid administrative act — the decision of the Municipality of Novo Sarajevo of 24 June 1983 — and the applicable legislation — Article 12 read together with Article 29(9) of the Law on Expropriation — provided the applicant with a legal right and a "legitimate expectation" to be allocated a suitable replacement apartment for her use (see paragraph 48 above).

60. Moreover, the Chamber recalls that the concept of "possessions" within the meaning of Article 1 of Protocol No. 1 is autonomous, and the essential characteristic is the acquired economic value of the individual interest (*see, e.g.*, Eur. Court HR, *Van Marle v. Netherlands*, judgment of 26 June 1986, Series A no. 101, paragraph 41; *Pressos Compania Naviera S.A. v. Belgium*, judgment of 20 November 1995, Series A no. 332-B, paragraph 31). The applicant's right to indefinitely use a suitable replacement apartment after her former place of residence was expropriated is clearly a valuable economic asset.

61. Accordingly, the Chamber finds that the applicant had a protected "possession" in her right to a suitable replacement apartment, within the meaning of Article 1 of Protocol No. 1 to the Convention.

**b. Interference with a protected "possession"**

62. In its observations of 22 May 2000, the respondent Party confirmed that "no court decision refuted the applicant's right to be allocated a suitable apartment on the basis of the expropriated real estate". None the less, it is undisputed that the final and binding procedural decision on expropriation of the Municipality of Novo Sarajevo of 24 June 1983, in which the applicant was granted the right to a suitable replacement apartment, has neither been carried out nor enforced by the competent authorities. The applicant has pursued her right through various administrative and court proceedings, to no avail. It follows that the failure of the authorities to take the necessary measures to enforce the procedural decision and to effectively secure the applicant's right to peaceful enjoyment of her possessions, since 14 December 1995 when the Agreement entered into force, has interfered with her uncontested right.

**c. Fair balance test**

63. In order for an interference with a protected possession to be permissible, 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)).

64. In the present case, the respondent Party has argued that the reason why the applicant has not yet been allocated a suitable replacement apartment is because she directed her actions in pursuit of enforcement of her right to incompetent bodies. According to the respondent Party, the administrative bodies rather than the judicial bodies have the exclusive competence over this matter, but the applicant failed to pursue such administrative proceedings.

65. The Chamber notes that initially the applicant pursued administrative dispute proceedings before the Administrative Court and administrative proceedings before the Municipality of Novo Sarajevo. The Administrative Court dismissed her petition, and the Municipality of Novo Sarajevo referred her to the Institute for Development of the City of Sarajevo as the beneficiary of the expropriation (see paragraphs 13, 16-17 above). The Institute for Development, for its part, maintained that the Municipality was competent. Thereafter, the applicant pursued various judicial proceedings to attempt to enforce her right to a suitable replacement apartment. In 1987, acting on the advice of the Supreme Court of the Socialist Republic of Bosnia and Herzegovina, the applicant initiated civil proceedings against the Institute for Development before the First Instance Court I in Sarajevo. Those proceedings were concluded on 31 March 1999, when the Cantonal Court upheld the decision of 29 April 1998 of the Municipal Court I in Sarajevo (see paragraphs 21-24 above). Having no other available avenues for appeal, the applicant complained to the Federal Ministry of Justice to exercise its authority to supervise the lawful work of the courts. It never responded to her complaint (see paragraph 24 above). Thus, after twelve years of judicial proceedings, initiated upon the advice of the Supreme Court, the applicant has no competent body to turn to for enforcement of her right to be allocated a suitable replacement apartment. In total, the applicant has diligently pursued various domestic proceedings for twenty years (see paragraphs 12-25 above). It seems absurd to the Chamber that after all these long years of proceedings, in which each body referred the applicant to yet another "competent" body for enforcement of an uncontested right, the respondent Party now claims that the applicant bears the responsibility for failing to pursue the correct administrative proceedings.

66. The Chamber observes that the respondent Party has not identified any public interest served by its failure to ensure the applicant's right to use a suitable replacement apartment, and the Chamber cannot, on its own, envision such a public interest. Instead, the respondent Party attempts to shift the burden for enforcing the final and binding procedural decision of 24 June 1983 onto the

applicant. It is significant that the applicant gained her right to use a suitable replacement apartment as the result of the expropriation of her father's property, where she resided at the time. For twenty years, the beneficiary has had the use of the expropriated property, while the applicant has not been allocated a suitable replacement apartment and thus has not had her housing needs met. In the Chamber's view, the excessive burden placed upon the applicant to attempt to realise her uncontested and enforceable right to a suitable replacement apartment since 14 December 1995 has not been in any way proportional or fair.

67. Taking into account that the Chamber has found that the interference with the applicant's protected possession was not proportional, it is not necessary for the Chamber to further consider whether the interference was in accordance with the law.

#### d. Conclusion as to Article 1 of Protocol No. 1 to the Convention

68. Therefore, the Chamber finds that the respondent Party unjustifiably interfered with the applicant's protected possession in that it failed to ensure her right to a suitable replacement apartment since 14 December 1995. The respondent Party has thus violated the applicant's right protected by Article 1 of Protocol No. 1 to the Convention.

### 2. Article 6 of the Convention

69. 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. …"

#### a. Right to a fair hearing within a reasonable time

70. Noting that the various proceedings concern the applicant's right to be allocated a suitable replacement apartment, which the Chamber has already found to qualify as a protected possession (see paragraph 61 above), the Chamber finds that these proceedings relate to the determination of the applicant's "civil rights and obligations", within the meaning of Article 6 paragraph 1 of the Convention. Accordingly, that provision is applicable to the proceedings in the present case.

71. The first step in establishing the length of the proceedings is to determine the period of time to be considered. The Chamber recalls that the European Court of Human Rights has held that Article 6 applies also to enforcement proceedings. The European Court has held that the enforcement proceedings constitute a second stage, which should be considered in assessing the duration of proceedings under Article 6 paragraph 1 (see Eur. Court HR, *Martins Moreira v. Portugal*, judgment of 26 October 1988, Series A no. 143; Eur. Court HR, *Silva Pontes v. Portugal*, judgment of 23 April 1994, Series A no. 286 A). The Chamber finds that, considering its competence *ratione temporis,* it can assess the reasonableness of the length of the 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.

72. In the present case, the applicant's attempts to be allocated a suitable replacement apartment for her use had already lasted more than twelve years when the Agreement entered into force. The expropriation proceedings before the Municipality of Novo Sarajevo were concluded on 24 June 1983 with the issuance of the final and binding procedural decision on expropriation by which the Municipality obliged the beneficiary of the expropriation (the Institute for Development of the City of Sarajevo) to find a suitable replacement apartment for the applicant. The remaining proceedings, thus, relate to the execution of that decision. Such proceedings were underway when the Agreement entered into force on 14 December 1995, and they are still pending today as the applicant has still not realised her right to be allocated a suitable replacement apartment.

73. Since 24 June 1983, no steps have been taken to enforce such decision. Instead, on 18 October 1983, the Municipality of Novo Sarajevo issued a conclusion on execution *de facto*

cancelling the beneficiary's obligation to allocate the applicant a suitable replacement apartment. This decision was annulled on 24 May 1985 by the Supreme Court of the Socialist Republic of Bosnia and Herzegovina. On 3 September 1985, the Municipality of Novo Sarajevo issued another conclusion stating that the applicant could refer to the beneficiary of the expropriation to be allocated a suitable replacement apartment, as that was the obligation of the beneficiary and not of the administrative body. On 27 June 1986, the applicant addressed both the beneficiary of the expropriation and the Municipality of Novo Sarajevo, requesting that both execute the expropriation decision and thereby allocate her a suitable replacement apartment. However, shortly thereafter, both the beneficiary of the expropriation and the Secretariat for Property and Legal Affairs of the Municipality of Novo Sarajevo replied that they were not the competent bodies to enforce the decision at issue. The applicant then initiated an administrative dispute. On 15 January 1987, the Supreme Court of the Socialist Republic of Bosnia and Herzegovina rejected the lawsuit in that administrative dispute and also directed the applicant to initiate civil proceedings against the beneficiary of the expropriation. She initiated such proceedings on 6 April 1987. The applicant received two judgments in her favour by the First Instance Court I of Sarajevo, and the beneficiary of the expropriation appealed both. Then, on 29 April 1998, in the third renewed proceedings, the Municipal Court I in Sarajevo declared itself incompetent because the administrative organ of the Municipality of Novo Sarajevo is the only competent body. The applicant appealed, and the Cantonal Court upheld the decision of the Municipal Court on 31 March 1999. The applicant then complained to the Federal Ministry of Justice, but it did not respond to her. In summary, the applicant has pursued numerous proceedings before both the administrative and judicial bodies to attempt to enforce her right to a suitable replacement apartment for some twenty years, and each body, in the end, has declared itself incompetent to deal with her request and referred her elsewhere, in a vicious circle.

74. 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, e.g.,* case no. CH/97/54, *Mitrović*, decision on admissibility of 10 June 1998, paragraph 10, Decisions and Reports 1998, with reference to the corresponding case-law of the European Court of Human Rights).

75. The Chamber notes that the only issue in the various administrative and judicial proceedings over the past twenty years has been enforcement of the applicant's uncontested right to be allocated a suitable replacement apartment, as granted to her in the final and binding decision on expropriation of 24 June 1983. All the courts and organs considering the applicant's case have confirmed her right to be allocated a suitable replacement apartment. Each, however, has declared itself incompetent to perform the enforcement. This matter does not in any way seem to the Chamber to be so complex as to require twenty years of proceedings.

76. The respondent Party alleges that the delay in the proceedings was, in part, due to the fault of the applicant because by addressing the Municipal Court, the Higher Court, and the Cantonal Court in Sarajevo, she addressed incompetent bodies and this delayed the enforcement proceedings. The respondent Party noted that the administrative organs have exclusive competence over this case to conduct separate special proceedings, as the courts instructed them.

77. However, the Chamber notes that two different sets of proceedings were carried out simultaneously in the present case: on the one hand, administrative proceedings related to the expropriation conducted by administrative organs in accordance with the Law on Administrative Procedure and the Law on Expropriation; and on the other hand, civil proceedings initiated by the applicant under the Code of Civil Procedure and the substantive law against the beneficiary of the expropriation before the courts. Indeed, the applicant initiated such civil proceedings before the First Instance Court in Sarajevo following the decision of the Supreme Court of the Socialist Republic of Bosnia and Herzegovina of 15 January 1987. In that decision, the applicant was advised additionally to initiate the civil proceedings before the competent First Instance Court to secure the use of a suitable replacement apartment if the beneficiary of the expropriation failed to fulfil its obligation. Thus, the applicant pursued both administrative and judicial proceedings, both to no avail.

78. As to the conduct of the applicant, it is clear to the Chamber that she has pursued the various procedures available to her in an expeditious and diligent manner. The Chamber cannot find

any evidence that any conduct of the applicant has served to prolong the proceedings. On the contrary, from the case file it can be concluded that the applicant made all possible attempts to obtain enforcement of her right to a suitable replacement apartment.

79. As to the conduct of the authorities of the respondent Party, however, in the Chamber's view they have not met their responsibility to ensure that the proceedings have been expedited in a reasonable time. Each interpreted its competence so as to refer the applicant elsewhere, without considering the broader picture that the applicant was left with no competent authority to enforce her uncontested right. The Chamber need not establish which of the various bodies was responsible to enforce the procedural decision of 24 June 1983, but surely, one was competent. To the extent that the proceedings have lasted for twenty years, and the authorities of the respondent Party have not resolved this issue and in fact enforced the applicant's right to be allocated a suitable replacement apartment, they have unnecessarily delayed the proceedings. Moreover, given that the matter concerned the applicant's right to be allocated a suitable replacement apartment after her residence in her father's house was expropriated, the Chamber notes that a speedy outcome of the proceedings would have been of particular importance to the applicant and her children.

80. With specific reference to the proceedings that have taken place since 14 December 1995, the Chamber notes that the court proceedings were pending until 31 March 1999, twelve years after they were initiated and over three years after the Agreement entered into force. In the Chamber's opinion, in view of the prior background of confusion and delay in this case, it was incumbent upon the courts and the other authorities involved in the case to act with particular expedition to resolve the case. They failed to do so.

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

**b. Right to a court**

82. The Chamber recalls that the European Court of Human Rights has held, where a decision of a tribunal is within its scope, Article 6 applies also to the enforcement proceedings of that decision (Eur. Court HR, *Scollo v. Italy*, judgment of 29 September 1995, Series A no. 315C; Eur. Court HR, *Hornsby v. Greece*, judgment of 19 March 1997, Reports of Judgments and Decisions 1997-II, pages 510-511). In the *Hornsby* case the European Court explained that Article 6 embodies the right to a court, as follows:

> "that right would be rendered illusory if a Contracting State's domestic legal system allowed a final binding judicial decision to remain inoperative to the detriment of one party. It would be inconceivable that Article 6 should prescribe in detail procedural guarantees afforded to litigants without protecting the implementation of judicial decisions, to construe Article 6 as being concerned exclusively with access to a court and the conduct of proceedings would be likely to lead to situations incompatible with the principle of the rule of law which the Contracting States undertook to respect when they ratified the Convention. Execution of a judgement given by any court must therefore be regarded as an integral part of the trial for the purposes of Article 6; moreover the Court has already accepted this principle in cases concerning the length of proceedings" (*id.* at paragraph 40).

83. In the *Scollo* case the Court found that prolonged delay in the enforcement of a judgment entitling the applicant to possession of an apartment had involved a breach of Article 6 of the Convention, because the inertia of the competent administrative authorities engaged the responsibility of the State (*Scollo* at paragraphs 44 -45). In the *Hornsby* case it found that, by failing over a period of five years to take the necessary measures to comply with a judicial decision, the relevant authorities had deprived the provisions of Article 6 paragraph 1 of the Convention of all useful effect; therefore, there was a breach of Article 6 (*Hornsby* at paragraph 45). The Chamber has applied these principles as well (case no. CH/96/28, *M.J.,* decision on admissibility and merits delivered on 3 December 1997, paragraph 35, Decisions on Admissibility and Merits 1996-1997;

case no. CH/97/17, *Blentic*, decision on admissibility and merits of 5 November 1997; case no. CH/99/1859, *Jelicic*, decision on admissibility and merits of February 2000).

84. In the Chamber's view, the facts of the present application are analogous. For twenty years the applicant has unsuccessfully pursued enforcement of her right to be allocated a suitable replacement apartment, and for twenty years the authorities of the respondent Party have, for one reason or another, failed to take the necessary steps to enforce the procedural decision of 24 June 1983. Thus, this case is a tragic yet classic example of how the inertia of the competent authorities has, up until today, rendered illusory the valuable right granted to the applicant in the expropriation proceedings. All the while, as the beneficiary of the expropriation has had the use of the expropriated property.

85. Therefore, the Chamber finds that the respondent Party also violated the applicant's right to a court guaranteed by Article 6 paragraph 1 of the Convention by failing to enforce since 14 December 1995 the final and binding procedural decision granting her the right to be allocated a suitable replacement apartment.

### 3. Article 13 of the Convention

86. Article 13 of the Convention provides 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."

87. Taking into consideration its conclusion that the respondent Party has violated the applicant's rights protected by Article 6 paragraph 1 of the Convention, the Chamber decides that it is not necessary separately to examine the application under Article 13 of the Convention.

## VIII. REMEDIES

88. 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. The Chamber is not necessarily bound by the applicant's claims.

89. The applicant requested compensation for physical and mental damages as a result of her inability to obtain possession of a suitable replacement apartment after her former apartment in her father's house was expropriated pursuant to the procedural decision of 24 June 1983. Since that time, she and her children have lived without a suitable replacement apartment, to which she is entitled. The applicant also seeks compensation for legal costs and expenses incurred by her brother, Ladislav Bombek, who represented her in all her domestic proceedings, in the amount of 50 KM per day since 11 January 1984. The respondent Party objects to the applicant's compensation claims and suggests that the Chamber decline to award her any compensation for non-pecuniary damages.

90. The Chamber notes that it has found a violation of the applicant's right to peaceful enjoyment of her possessions, as protected by Article 1 of Protocol No. 1 to the Convention, in that the authorities of the respondent Party have failed for twenty years and ever since the Agreement entered into force on 14 December 1995 to ensure her right to be allocated a suitable replacement apartment. The Chamber has also found a violation of the applicant's right to a court and right to a hearing within a reasonable time, as protected by Article 6 paragraph 1 of the Convention, in that the authorities of the respondent Party have failed for twenty years and ever since the Agreement entered into force to enforce the final and binding procedural decision of 24 June 1983 entitling the applicant to be allocated a suitable replacement apartment.

91. Since the applicant has, for a very long time, been unable to exercise her right to be allocated a suitable replacement apartment due to the failure of the authorities of the respondent Party to enforce that right in a timely manner, the Chamber finds it appropriate to order the respondent Party to allocate, or to cause the beneficiary of the expropriation (the Institute for Development of the City of Sarajevo or its legal successor, the Institute for Development of Canton Sarajevo) to allocate, to the applicant a suitable replacement apartment without further delay, and at the latest within 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.

92. With regard to possible compensatory awards, the Chamber considers it appropriate to award a sum to the applicant in recognition of the sense of injustice she has suffered as a result of her inability to exercise her right to be allocated a suitable replacement apartment since the Agreement entered into force on 14 December 1995. In this regard, the Chamber especially notes that this right has been confirmed by each court considering the applicant's case, and it has been admitted by the respondent Party as well. None the less, for twenty years, and ever since 14 December 1995, there has been no enforcement of the right, causing, without question, needless suffering to the applicant and her children.

93. Accordingly, the Chamber will order the respondent Party to pay to the applicant the sum of 3000 Convertible Marks (*Konvertibilnih Maraka*, "KM") in non-pecuniary damages in recognition of the sense of injustice she has suffered as a result of her inability to be allocated a suitable replacement apartment and to have such right enforced within a reasonable time. 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.

94. In accordance with its decision in *Turundžić and Frančić* (case nos. CH/00/6143 and CH/00/6150, decision on admissibility and merits of 5 February 2001, paragraph 70, Decisions January—June 2001), the Chamber considers it appropriate to order the respondent Party to compensate the applicant for the loss of use of the suitable replacement apartment, to which she was entitled for an unlimited duration. The Chamber considers it appropriate that this sum should be KM 200 per month, payable from the date the Agreement entered into force, as the Chamber cannot award compensation for damages accruing prior to 14 December 1995. Thus, from December 1995 through June 2003, the total amount is 18,200 KM (200 KM per month for 91 months), payable 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. The sum of 200 KM per month should continue to be paid to the applicant thereafter until the end of the month in which the applicant is allocated and is given legal possession of a suitable replacement apartment, such sum to be paid to the applicant at the end of each respective month.

95. The Chamber further awards simple interest at an annual rate of 10% as of the date of expiry of the one-month periods set in paragraphs 93 and 94 above for the implementation of the present decision, and on each of the sums awarded in paragraphs 93 and 94 or any unpaid portion thereof until the date of settlement in full.

## IX. CONCLUSIONS

96. For these reasons, the Chamber decides,

1. unanimously, to declare inadmissible the parts of the application in relation to the applicant's claims under Article 8 of the European Convention on Human Rights, for the loss of and damage to moveable property, and for events and proceedings occurring prior to 14 December 1995;

2. unanimously, to declare admissible the remainder of the application in relation to Articles 6 and 13 of the Convention and Article 1 of Protocol No. 1 to the Convention;

3. unanimously, that there has been a violation of the applicant's right to peaceful enjoyment of possessions guaranteed by Article 1 of Protocol No. 1 to the Convention with regard to the failure of the authorities to give effect to her right to be allocated a suitable replacement

apartment, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Human Rights Agreement;

4. unanimously, that there has been a violation of the applicant's rights guaranteed under Article 6 paragraph 1 of the Convention with regard to the length of proceedings and right to a court, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Agreement;

5. unanimously, that it is not necessary separately to examine the application under Article 13 of the Convention;

6. unanimously, to order the Federation of Bosnia and Herezgovina to allocate, or to cause the beneficiary of the expropriation (the Institute for Development of the City of Sarajevo or its legal successor, the Institute for Development of Canton Sarajevo) to allocate, to the applicant a suitable replacement apartment without further delay, and at the latest within 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;

7. unanimously, to order the Federation of Bosnia and Herzegovina to pay to the applicant, no later than one month after the date on which the present decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure, three thousand (3,000) Convertible Marks ("*Konvertibilnih Maraka*") by way of compensation for non-pecuniary damages;

8. unanimously, to order the Federation of Bosnia and Herzegovina to pay to the applicant two hundred Convertible Marks (200 KM) per month for the loss of use of the suitable replacement apartment, payable from the date the Agreement entered into force on 14 December 1995 until the end of the month in which the applicant is allocated and is given legal possession of a suitable replacement apartment: in the total amount of eighteen thousand two hundred Convertible Marks (18,200) from December 1995 through June 2003, payable 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; plus two hundred Convertible Marks (200 KM) per month thereafter until the end of the month in which the applicant is allocated and is given legal possession of a suitable replacement apartment, such sum to be paid to the applicant at the end of each respective month;

9. unanimously, to order the Federation of Bosnia and Herzegovina to pay simple interest at the rate of 10% (ten percent) per annum over the above sums specified in conclusions 7 and 8 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;

10. unanimously, to dismiss the remaining claims for compensation; and

11. unanimously, to order the Federation of Bosnia and Herzegovina to report to it no later than three 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