DECISION ON ADMISSIBILITY AND MERITS
(delivered on 11 October 2002)

Cases no. CH/97/104, CH/97/106, CH/97/107, CH/98/374, CH/98/386, CH/99/2997, and CH/00/4358

Brankica TODOROVIĆ, Smaila HODŽIĆ, Azra HADŽIĆ, Remsa MULALIĆ-RAPO, Žanka ILIĆ, Milenko VIŠNJEVAC, and Mihailo JANKOVIĆ

against

BOSNIA AND HERZEGOVINA
and
THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 7 October 2002 with the following members present:

Ms. Michèle PICARD, President
Mr. Giovanni GRASSO, Vice-President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
Mr. Rona AYBAY
Mr. Želimir JUKA
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Manfred NOWAK
Mr. Miodrag PAJIĆ
Mr. Vitomir POPOVIĆ
Mr. Viktor MASENKO-MAVI
Mr. Andrew GROTRIAN
Mr. Mato TADIĆ

Mr. Ulrich GARMS, Registrar
Ms. Olga KAPIĆ, Deputy Registrar

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

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

I. INTRODUCTION

1. The applicants are citizens of Bosnia and Herzegovina. Before the dissolution of the Socialist Federal Republic of Yugoslavia (SFRY), they deposited foreign currency with commercial banks in that country. Because of a growing shortage of such currency and other economic problems, the withdrawal of money from these "old" foreign currency savings accounts was progressively restricted by legislation enacted during the 1980s and early 1990s.

2. Following the armed conflict in Bosnia and Herzegovina, the applicants' requests to withdraw money from their foreign currency savings accounts were all rejected, either without stated reasons or with reference to legislation enacted by the SFRY, the Republic of Bosnia and Herzegovina, or the Federation of Bosnia and Herzegovina.

3. Some of the applicants initiated court proceedings to obtain access to their foreign currency savings, but these actions have all been unsuccessful so far. Although one applicant did obtain a judgement in his favor, he was subsequently informed by the Minister of Finance of the Federation of Bosnia and Herzegovina that the judgement could not be enforced.

4. According to legislation enacted by the Federation of Bosnia and Herzegovina in 1997 and 1998, in particular the Law on Determination and Settlement of Citizen's Claims in the Privatisation Process (hereinafter "the Citizens' Claims Law"), claims based on the old foreign currency savings accounts were to be resolved in the process of privatisation of socially and publicly owned property. Under the Citizens' Claims Law, the balances of foreign currency savings were to be recorded in a "Unique Citizen's Account" maintained by the Federal Payment Bureau. Instead of paying out the savings, the Bureau issued certificates in a commensurate amount. According to the relevant legal provisions, these certificates can be used in the privatisation process to purchase apartments, municipal business premises, shares of enterprises, or other assets. This procedure was designed to settle Citizen's Claims in a way that would protect the public debt payment system and the banking system from collapse.

5. On 9 June 2000, the Chamber delivered its Decision on Admissibility and Merits in CH/97/48 et al., *Poropat and Others v. Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina*, involving similarly situated applicants. The Chamber decided that, with regard to frozen foreign currency savings accounts, Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina had violated the applicants' rights to peaceful enjoyment of their possessions under Article 1 of Protocol 1 to the European Convention on Human Rights ("the Convention"). The Chamber ordered, *inter alia*, that the Federation of Bosnia and Herzegovina should "amend the privatisation program so as to achieve a fair balance between the general interest and the protection of the property rights of the applicants as holders of old foreign currency savings accounts."

6. Between 2 November 2000 and 8 February 2002, the Federation amended various provisions of the Citizens' Claims Law in an effort to comply with the Chamber's order in *Poropat and Others*.

7. On 8 January 2001, the Constitutional Court of the Federation of Bosnia and Herzegovina determined that Articles 3, 7, 11, and 18 of the Citizens' Claims Law—provisions essential to the scheme of conversion of old foreign currency savings into certificates—were not in accordance with the Constitution of Bosnia and Herzegovina.

8. It appears that the banks have transferred old foreign currency savings to the Unique Citizen's Account for most, if not all, of the present applicants. Six of the seven applicants have attempted to withdraw their old foreign currency savings without success. The one remaining applicant did not bother to make a withdrawal attempt because her funds had already been transferred to certificates at the Payment System Institute. None of the applicants has meaningfully participated in the privatisation process. One applicant attempted to use his certificates to purchase business premises, but could not because he was unable to satisfy the cash participation requirement.

9. The applications raise issues in regard to the applicants' rights to peaceful enjoyment of their possessions under Article 1 of Protocol No. 1 to the Convention and their right to a fair hearing within a reasonable time under Article 6 of the Convention.

II. PROCEEDINGS BEFORE THE CHAMBER

10. Ms. Brankica Todorović and Ms. Smaila Hodžić submitted their applications (nos. CH/97/104 and CH/97/106, respectively) against Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina on 2 December 1997. Their applications were registered on 12 December 1997. Ms. Azra Hadžić lodged her application (no. CH/97/107) against Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina on 5 December 1997, and her application was registered on 12 December 1997. Applicants Hodžić, Todorović, and Hadžić are represented by their lawyer, Ms. Senija Poropat. Ms. Remsa Mulalić-Rapo submitted her application (no. CH/98/374) against the Federation of Bosnia and Herzegovina on 23 February 1998, and it was registered on the same day. Ms. Zanka Ilić's application (no. CH/98/386) against the Federation of Bosnia and Herzegovina was received and registered on 26 February 1998. Mr. Milenko Višnjevac lodged his application (no. CH/99/2997) on 11 October 1999, and it was registered on 12 October 1999. Mr. Višnevac's application lists only Ljubljanska Banka as the respondent party. Mr. Mihailo Janković's application (no. CH/00/4358) against Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina was received and registered on 27 April 2000.

11. On 9 May 2001, the Chamber decided to transmit three of the present applications (nos. CH/98/374, CH/98/386, and CH/00/4358) to Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina for their observations on the admissibility and merits. On 6 July 2001, the Federation submitted its written observations regarding these cases. The Chamber did not receive any observations from Bosnia and Herzegovina.

12. On 17 January 2002, the Chamber transmitted three more of the present applications (nos. CH/97/104, CH/97/106, and CH/97/107) to the respondent Parties for their observations on the admissibility and merits.

13. On 18 February 2002, the Chamber received from the Federation of Bosnia and Herzegovina its written observations on the admissibility and merits in cases CH/97/104, CH/97/106, and CH/97/107. The Chamber has not received any observations from Bosnia and Herzegovina in these cases.

14. On 6 March 2002, the Chamber decided to put additional questions to the parties in the six cases that had been transmitted. Specifically, by correspondence dated 20 March 2002, the Chamber asked the respondent Parties: (1) if they considered that the provisions declared unconstitutional by the Constitutional Court of the Federation remained in force, and if so, on what grounds; (2) whether the use of certificates issued for foreign currency savings transferred to the Unique Citizen's Account in the privatisation process continued; and (3) whether foreign currency savings with the Ljubljanska Banka were transferred to the Unique Citizen's Account. On the same date, the Chamber asked the applicants: (1) whether they had tried to make use of their certificates in the privatisation process; (2) whether, in light of the decision of the Constitutional Court of the Federation, they had tried to obtain disbursement of their foreign currency savings from the banks; and (3) whether, in light of the decision of the Constitutional Court of the Federation, they had filed a lawsuit to obtain disbursement of their savings from the banks.

15. On 22 April 2002, the Chamber received from the Federation its further written observations in the six cases previously transmitted.

16. On 24 April 2002, the Chamber wrote to the Federation, reiterating certain questions from the Chamber's inquiry of 20 March 2002 that had not been answered in the Federation's submission of 22 April 2002.

17. On 24 April 2002, the Chamber received additional information from the Federation in case number CH/97/106 (Smaila Hodžić) regarding Ljubljanska Banka.

18. On 29 April 2002, in response to its letter of 24 April 2002, the Chamber received from the Federation further written observations in the six cases previously transmitted. The Chamber has not received any observations from Bosnia and Herzegovina in these cases.

19. On 5 June 2002, the Chamber transmitted case number CH/99/2997 (Milenko Višnevac) to Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina. The Chamber received written observations from the Federation of Bosnia and Herzegovina on 21 June 2002; it did not receive any observations from Bosnia and Herzegovina. On 26 June 2002, the Chamber transmitted the written observations of the Federation of Bosnia and Herzegovina to the applicant. On 11 July 2002, the Chamber received additional written observations from Mr. Višnjevac through his attorney, Halil Mušinović of Vogošća. These additional observations were subsequently transmitted to the Federation of Bosnia and Herzegovina on 24 July 2002.

20. The Chamber deliberated on the admissibility and merits of the applications on 11 October 2001 and 5 February, 6 March, 8 May, 6 July, 5 September, and 7 October 2002. On the latter date, it decided to join the applications and adopted the present decision.

III. FACTS

A. The facts of the individual cases

1. Case no. CH/97/104, Brankica Todorović

21. Ms. Todorović's application relates to three frozen bank accounts at the Unionbanka Sarajevo (formerly Jugobanka Sarajevo). The amounts concerned are approximately DEM 2,940 and FRF 10,709.

22. Ms. Todorović initiated proceedings before the Court of First Instance I in Sarajevo on 27 June 1997 against Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, and Unionbanka. According to the Federation, the court issued a procedural decision on 25 January 2002 stating that the action was considered to be withdrawn because the authorised representative of the plaintiff did not appear at scheduled proceedings. Apparently a motion for reinstatement was filed, and the matter remains pending.

23. Ms. Todorović, out of fear of losing her money, registered certificates in 1998. She later tried to annul that action, but the bank would not allow it. She has not spent her certificates because she believes she would get an insignificant return on their value.

2. Case no. CH/97/106, Smaila Hodžić

24. Ms. Hodžić's application relates to a frozen bank account at the Ljubljanska Banka d.d. Sarajevo. The amount concerned is approximately USD 1,380. Ljubljanska Banka d.d. Sarajevo has allegedly refused to disburse the deposited money to the applicant.

25. On 8 July 1997, Ms. Hodžić initiated proceedings in the Court of First Instance I in Sarajevo against the Ljubljanska Banka, Bosnia and Herzegovina, and the Federation of Bosnia and Herzegovina. The court registered the claim but has scheduled no other proceedings in the case since it was filed.

26. Ms. Hodžić subsequently withdrew her action, by her submission dated 23 June 1999, because she was convinced that her money would never be returned. A document from the Municipal Court I Sarajevo, dated 4 February 2002, states that

> "the Municipal Court I Sarajevo in the legal matter of the plaintiff Smaila Hodžić from Vogošća, represented by the lawyer Senija Poropat from Vogošća, against the State of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, and Ljubljanska Banka d.d. Sarajevo, because of debt, on 14 June 2000 issued a procedural decision no.: P-1001/2000 withdrawing the action in the legal matter."

27. By its letter dated 28 January 2002, Ljubljanska Banka d.d. Sarajevo informed the Federation of Bosnia and Herzegovina that it had, on 28 April 1998, transferred Smaila Hodžič's complete old foreign currency savings to the Payment System Institute in the form of a certificate so that she could participate in the privatisation process.

28. By its letter dated 29 March 2002, Ljubljanska Banka d.d. Sarajevo confirmed that, on 28 April 1998, it transferred a total amount of DEM 5,562.91 to the Unique Citizen's Account on behalf of Ms. Hodžić in the form of a certificate.

3. Case No. CH/97/107, Azra Hadžić

29. Ms. Hadžić's application concerns a frozen bank account at Ljubljanska Banka d.d. Sarajevo. The amount involved is approximately DEM 5,830 (held in USD and ATS).

30. On 13 March 1997, Ms. Hadžić initiated proceedings before the Court of First Instance I in Sarajevo. There have apparently been no developments in that proceeding since it was filed.

31. Some time after 8 January 2001, Ms. Hadžič attempted to withdraw her old foreign currency savings from Ljubljanska Banka because her family faces a difficult financial situation. According to her statement, she was ridiculed and told she would not get her money.

4. Case no. CH/98/374, Remsa Mulalić-Rapo

32. Ms. Mulalić-Rapo has one foreign currency account in the former Jugobanka Sarajevo, now Unionbanka Sarajevo. As of 9 February 1998, her savings in that account were recorded in the amount of DEM 11,640.93.

33. The applicant also has two foreign currency accounts in the Ljubljanska Banka d.d. Sarajevo. As of 21 April 1998, her savings in the first account were recorded in the amount of DEM 30,748.92. On the same date, her savings in the second account were recorded in the amount of DEM 1,398.51.

34. According to the applicant, she has not attempted to withdraw her old foreign currency savings because they are held in certificates in the Payment System Institute.

35. On 19 November 1999, Ms. Mulalić-Rapo received a statement from the Unique Citizen's Account recording her claims on the basis of old foreign currency savings in the amount of DEM 43,112.76.

36. The applicant has not initiated any proceedings to attempt to have her assets transferred back to her bank accounts because she would not know where to direct such legal action. Accordingly, she has sought relief from the Chamber.

37. As of 30 March 2002, the situation regarding Ms. Mulalić-Rapo's old foreign currency savings remained unchanged from that stated above.

5. Case no. CH/98/386, Žanka Ilić

38. Ms. Ilić has two foreign currency savings books issued by the former Jugobanka Sarajevo, now Unionbanka Sarajevo. On 11 January 1994, her savings in the first account were recorded in the following amounts: ATS 381.71, CHF 6,783.95, USD 4,123.30, and DEM 104,088.76. Her savings in the second account were recorded in the amounts of DEM 67,984.01 and USD 2,032.89. The date of this record on the second account is not legible in the records provided to the Chamber.

39. According to Ms. Ilić, her old foreign currency savings are held in certificates registered in her Unique Citizen's Account. She has not been allowed to withdraw her money, nor has she been informed by the bank that the funds held in certificates would be returned to her bank account.

40. Ms. Ilić has not initiated any domestic court proceedings.

41. As of 1 April 2002, the situation regarding Ms. Ilić's old foreign currency savings remained unchanged from that stated above.

6. Case no. CH/99/2997, Milenko Višnjevac

42. Mr. Višnjevac's application concerns a frozen bank account at Ljubljanska Banka d.d. Sarajevo. As of 3 February 1992, the amounts involved were approximately ASD 3,192.00, USD 370.74, and DEM 103.99.

43. Mr. Višnjevac attempted to withdraw his deposits of old foreign currency savings in order to travel abroad for medical treatment, but the bank denied his withdrawal request.

44. Mr. Višnjevac then sought relief in the domestic courts and obtained a judgement ordering Ljubljanska Banka d.d. Sarajevo to pay out the old foreign currency savings to the account holder. On 22 November 1993, the First Instance Court of Sarajevo ("Osnovni Sud") ruled that Ljubljanska Banka was obligated to pay Mr. Višnjevac 2000 DEM, converted from funds in his old foreign currency savings account. After appeals were exhausted, Mr. Višnjevac requested enforcement of the judgement from the First Instance Court of Sarajevo. On 27 April 1999, that court issued a procedural decision permitting enforcement of the judgement. Ljubljanska Banka appealed, but its appeals were rejected by the First Instance Court of Sarajevo on 14 November 2000 and by the Cantonal Court in Sarajevo on 20 December 2000. Mr. Višnjevac was still unable to obtain payment from the bank, however.

45. In a letter dated 22 March 2001, the Federation Minister of Finance informed Mr. Višnjevac that the court judgement he obtained against Ljubljanska Banka was not enforceable. Specifically, the letter states that

> "it is not possible to execute valid court judgements against Ljubljanska Banka d.d. Sarajevo or any other bank in the Federation of BiH. Also, there is no organ or authority that could order payment on that basis."

46. On 24 May 2002, Mr. Višnjevac renewed his request for enforcement before the Municipal Court in Sarajevo. Specifically, he asked for execution of payment of cash in the amount of EUR 1,022.58 and that the Ljubljanska Banka be required to submit a record of his account to the court. (The bank had previously refused to provide such a record to Mr. Višnjevac.) Also on 24 May 2002, Mr. Višnjevac informed the Municipal Court in Sarajevo that he was appealing the non-enforcement of his judgement to the Constitutional Court of Bosnia and Herzegovina pursuant to Article VI.3(b) of the Constitution of Bosnia and Herzegovina.

7. Case no. CH/00/4358, Mihailo Janković

47. Mr. Janković has a foreign currency savings book issued by the former Jugobanka Sarajevo, now Unionbanka Sarajevo. His savings as of 10 February 1998 were recorded in the amount of DEM 13,147.37, as certified by the bank.

48. Beginning in 1992 and continuing through the date of his application, Mr. Janković attempted on several occasions to withdraw his old foreign currency savings, but Unionbanka informed him that it did not have means to pay those deposits and, further, that it would not calculate interest on such deposits. The bank stated that these funds had been transferred to the Payment System Institute as Citizen's Claims in the privatisation process in the form of certificates.

49. Mr. Janković states that he and his family have suffered from their inability to use his old foreign currency savings, which he would use to rent business premises or to fulfill everyday needs.

50. Mr. Janković attempted to use his certificates for the purchase of small business premises, but was unsuccessful because he did not have enough money to satisfy the 35% cash participation requirement in the law at that time and because, under the law, certain other categories of participants in the tender were afforded priority treatment.

51. On 25 March 2002, Mr. Janković inquired of Mr. Esad Bektijašević, Director of the Sector for Public Transactions of Unionbanka Sarajevo, whether, in light of the Federation Constitutional Court's decision, he could withdraw his old foreign currency savings from his account. He was told that would not be possible because the old foreign currency savings assets had been written off the bank's balance sheets in accordance with applicable regulations.

52. Mr. Janković has not initiated any domestic court proceedings.

53. As of 27 March 2002, Mr. Janković's situation regarding his old foreign currency savings had not changed from that stated above.

IV. RELEVANT LEGAL PROVISIONS

A. The privatisation laws and amendments

54. The basic legal provisions enabling the transfer of old foreign currency savings to the Unique Citizen's Account for use in the privatisation process appear in Articles 3, 7, 11, and 18 of the Citizens' Claims Law, which entered into force on 28 November 1997, began to apply on 27 February 1998, and was amended on 5 March 1999 (Official Gazette of the Federation of Bosnia and Herzegovina – hereinafter "OG FBiH" - nos. 27/97 and 8/99). These articles provided as follows:

> Article 3:
>
> "1. A person who has foreign currency savings in banks or bank business units located on the territory of the Federation of Bosnia and Herzegovina in an amount exceeding 100 KM, who was a citizen of the former Socialist Republic of Bosnia and Herzegovina and who, on 31 March 1991, was permanently residing in territory which is now in the Federation of Bosnia and Herzegovina acquires a claim against the Federation equal to the balance of his or her savings on 31 March 1992.
>
> "2. The settlement of the claims of those individuals who were citizens of the former Socialist Republic of Bosnia and Herzegovina on 31 March 1991, but who are not permanently residing in the territory of the Federation, as well as other persons' claims against banks located on the territory of the Federation, shall be determined by a separate regulation in accordance with this law.
>
> "3. Persons referred to in paragraph 1 of this Article whose foreign currency savings do not exceed 100 DEM will, upon their request, be reimbursed the amount of these savings by the bank.
>
> "4. The claims referred to in paragraph 3 of this Article are payable after the expiration of a period of three months from the date of application of this Law."
>
> Article7:
>
> "1. Claims specified in Article 3 of this Law are transferred by the bank to the unique account of the depositor.
>
> "2. The manner of transfer of claims ... of those individuals who have their accounts in banks whose organisational units on the territory of the Federation have ceased to operate will be determined by a separate regulation passed by the Federal Ministry of Finance."
>
> Article 11:
>
> "1. The opening of a unique account is done ex officio on the basis of the JMBG ('jedinstveni matični broj građanina', the personal identification number) of the holder of a claim under this law.
>
> "2. The individual's certificate shall correspond to the respective unique account."
>
> Article 18:

> "1. The claims registered in the unique account can be used in the privatisation process for a period of two years from the date of issuance of the unique account statement, and following the registration of a claim according to the specific categories.
>
> "2. Upon the expiration of the period in paragraph 1 of this Article, the claims in the unique account are extinguished."

55. Following the Chamber's decision in *Poropat and Others*, the Federation enacted various amendments to these provisions. In the Federation's view, these amendments remedy the shortcomings identified by the Chamber in *Poropat and Others*, including the unequal treatment of certificates and cash, and the time limitations on the use of certificates (*see* the above-mentioned *Poropat and Others* decision, paragraphs 186-87).

56. On 2 November 2000, the Law Amending the Law on Determination and Realisation of Citizens' Claims in the Privatisation Process (OG FBiH no. 45/2000) entered into force. By this law, Article 18 was amended to provide that the occupancy right holder from Article 8a[1] of the Law on Sales of Apartments with Existing Occupancy Right can use their claims from the Unique Citizen's Account within three months from the date of the certifying signature on the purchase contract before the competent court. The amendment added a third paragraph to Article 18:

> "3. As an exception to the provision in paragraphs 1 and 2 of this Article, the occupancy right holders referred to in Article 8a of the Law on Sale of Apartments with Occupancy Right (Official Gazette of the Federation BiH, Nos. 27/97, 11/98, 22/99, and 7/00) may use the claims from the Unique Citizen's Account within three months since the date of verification of the signature on the contract of purchase at the competent court."

57. In its observations dated 18 February 2002, the Federation informed the Chamber that a further amendment to paragraph 1 of Article 18 had entered into force on 8 February 2002. That amendment changed the general time limit for use of certificates from two years to four years, such that the entire article, as amended, reads as follows:

> "1. The claims registered in the Unique Citizen's Account can be used in the privatisation process for a period of *four years* from the date of issuance of the unique account statement, following the registration of each particular claim.
>
> "2. Upon the expiration of the period in paragraph 1 of this Article, the claims in the unique account are extinguished.
>
> "3. As an exception to the provision in paragraphs 1 and 2 of this Article, the occupancy right holders referred to in Article 8a of the Law on Sale of Apartments with Occupancy Right (Official Gazette of the Federation BiH, Nos. 27/97, 11/98, 22/99, and 7/00) may use the claims from the Unique Citizen's Account within three months since the date of verification of the signature on the contract of purchase at the competent court."

(Emphasis added.)

58. In addition to these changes to the Citizens' Claims Law, the Federation has enacted additional amendments to the privatisation process to lessen the plight of holders of old foreign currency savings. On 2 November 2000, the Law Amending the Law on Privatisation of Companies (OG FBiH no. 45/2000) entered into force. This law amended Article 28 to place certificates based on old foreign currency savings on equal footing with cash. The old version of Article 28 provided:

> "1. The sale referred to in Article 26[2] of this law is realised with an obligatory payment in cash of at least 35 per cent of the agreed sale price.
>
> "2. For any amount paid in cash in excess of 35 per cent of the sale price, a discount of 8 per cent may be given."

[1] The referenced Article 8a governs the purchase of abandoned apartments by occupancy right holders.
[2] The referenced Article 26 regulates the sale of companies in the small-scale privatisation process.

The new version provides as follows:

> "1. The sale referred to in Article 26 of this law is realised with an obligatory payment in cash *or certificates based upon old foreign currency savings* of at least 35 per cent of the agreed sale price.
>
> "2. For any amount paid in cash *or certificates based upon old foreign currency savings* in excess of 35 per cent of the sale price, a discount of 8 per cent may be given."

(Emphases added.)

59. The Law Amending the Law on Privatisation of Companies (OG FBiH no. 54/00) amends Article 27(1). The old version provided:

> "The small-scale privatisation in the sense of Article 26 of this Law is conducted through a public sale which enterprise is obliged to prepare and register with the competent agency within twelve months from the date of entry into force of this law."

The new version provides as follows:

> "The small-scale privatisation in the sense of Article 26 of this Law is conducted through a public sale which enterprise is obliged to prepare and register with the competent agency *within the time limit determined by the Agency of the Federation but within the time limit for citizens' claims as set forth the Law on Determination and Settlement of Citizens' Claims in the Privatisation Process (vouchers, etc.)."*

(Emphasis added.)

60. In its observations dated 18 February 2002, the Federation further informed the Chamber that the Law Amending the Law on Sales of Apartments with Existing Occupancy Right entered into force on 8 February 2002 (after the date of the Federation Constitutional Court decision). The new Article 24 of this Law equates certificates based on old foreign currency savings with cash. The old version provided:

> "Payment of the purchase price of the apartment shall be done by one of the means of payment, as follows:
>
> (a) cash;
> (b) certificates based on citizens' claims, regulated by special regulations.
>
> In case of payment in cash, the price of an apartment shall be reduced by 20% of the determined purchase price."

The new version provides:

> "Payment of the purchase price of the apartment shall be done by one of the means of payment, as follows:
>
> (a) cash;
> (b) certificates based on citizens' claims, regulated by special regulations.
>
> In case of payment in cash *or by vouchers based on old foreign currency savings*, the price of an apartment shall be reduced by 20% of the determined purchase price."

(Emphasis added.)

61. The Federation states in its letter dated 8 December 2000 that it,

> "through competent Ministries and agencies, leads activities to inform citizens on the importance of visiting banks to give their unique personal number in order to enable the transfer of their old foreign currency savings to the unique account and the issuance of certificates to enable them to participate in the privatisation process which is in process, because there is no way for citizens of Bosnia and

> Herzegovina— old foreign currency savings owners— to realise their claims on those grounds in any way but the privatisation process."

B. The Decision of the Constitutional Court of the Federation of Bosnia and Herzegovina

62. On 8 January 2001, the Constitutional Court of the Federation of Bosnia and Herzegovina determined that Articles 3, 7, 11, and 18 of the Citizens' Claims Law were not in accordance with the Constitution of the Federation of Bosnia and Herzegovina. The court found that these articles were in violation of Article 1 of Protocol No. 1 to the Convention and therefore contravened Article II.A.2(1)(k) of the Constitution of the Federation of Bosnia and Herzegovina, as well as Amendment 5 thereto. The Court, in its decision, did not mention the previous amendments to the laws of 2 November 2000. The Court did not order any specific amendments to the law or otherwise provide for transitional arrangements under which the relevant articles should be applied.

63. The Constitutional Court's decision states:

> "The Constitution of the Federation of Bosnia and Herzegovina in its Article II.A.2.(1)(k) and the Amendment V thereof establish that the Federation shall ensure the application of the highest level of internationally recognized rights and freedoms set forth in the documents listed in the Annex of this Constitution....
>
> "Deciding on the constitutionality of Articles 3, 7, 11, and 18 of the Law on Determination and Realisation of Citizen's Claims in the Privatisation Process with regard to the mentioned constitutional provisions and Article 1 paragraph 1 of the Protocol No. 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Court established that the provisions of Articles 3, 7, 11, and 18 are not in accordance with the Constitution of the Federation of Bosnia and Herzegovina."

64. The Federation Constitutional Court's decision was published in the Official Gazette of the Federation of Bosnia and Herzegovina, number 7, on 9 March 2001.

65. Article 12(b) of part IV(c) of the Federation Constitution provides that if the Federation Constitutional Court

> "determines that a law or regulation or proposed law or regulation of the Federation or of any Canton or of any municipality is not in accord with this Constitution, such law or proposed law shall not remain or enter into force, except if altered in such a manner as specified by the Court or unless the Court specifies some transitional arrangements which may not extend to a period in excess of six months."

66. The Federation of Bosnia and Herzegovina filed an appeal to the Constitutional Court of Bosnia and Herzegovina on 14 May 2001, challenging the decision of the Federation Constitutional Court. On appeal, the Federation argues, *inter alia*: (1) That the Federation Constitutional Court should not have decided the matter because the Chamber had earlier issued a final and binding decision on the same subject; and (2) That the decision of the Federation Constitutional Court contains no reasoning explaining why the subject provisions are unconstitutional.

67. The Constitutional Court of Bosnia and Herzegovina has not yet issued a decision in this case.

68. Article 75 of the Rules of Procedure of the Constitutional Court of Bosnia and Herzegovina provides:

> "The Court may, until the final decision has been made, fully or partially suspend the execution of decisions, laws (acts), or individual acts (temporary measures), if their execution may have detrimental consequences that cannot be overcome.
>
> "The Court shall revoke an interim measure when it has ascertained that reasons for which it was taken have ceased to exist."

69. The Constitutional Court of Bosnia and Herzegovina has not suspended the execution of the decision of the Federation Constitutional Court.

70. Article 384 of the Constitution of the former SFRY provided that:

> "If the Constitutional Court of Yugoslavia establishes that the federal, republic, or autonomous law is not harmonized with the Constitution of the SFRY, or that a republic or autonomous law is contrary to the federal law, the Constitutional Court of Yugoslavia shall establish this by its decision that shall be delivered to the competent assembly.
>
> "The competent assembly shall be obliged to harmonize, within six months from the date of delivery of the decision of the Constitutional Court of Yugoslavia, the law with the Constitution of the SFRY or to remove contradictions between the republic or autonomous law and the federal law.
>
> "Upon the claim of the competent assembly, the Constitutional Court of Yugoslavia may extend the time limit for harmonization of the law for not longer than six months.
>
> "If within the ordered time limit the competent assembly does not harmonize the law with the Constitution of the SFRY, or does not remove the contradictions between the republic or autonomous law and the federal law, the provisions of the law that are not harmonized with the Constitution of the SFRY, that is the provisions of the republic or autonomous law that are in contradiction with the federal law, shall no longer be in force and the Constitutional Court of Yugoslavia shall establish this by its decision."

71. Article 386 of the Constitution of the former SFRY provided that:

> "Laws that have been ruled out ... shall not be applied to relations created before the date of publication of the decision of the Constitutional Court of Yugoslavia if they have not been validly solved by that date."

72. Procedures similar to those of the former SFRY were followed in the Socialist Republic of Bosnia and Herzegovina. *See, e.g.*, Decision no. 137/86 of 9 November 1989 (Official Gazette of the Socialist Republic of Bosnia and Herzegovina – hereinafter "OG SRBiH" - no. 4/90), in which the Constitutional Court of Bosnia and Herzegovina, on the basis of Article 395, paragraph 4 of the Constitution of the Socialist Republic of Bosnia and Herzegovina, declared that a law ceased to be in force after the Assembly allowed the time limit for harmonization to expire.

73. In response to the decision of the Federation Constitutional Court, the Federation has indicated, in its observations dated 29 April 2002 that, following the proposal of the Federal Ministry of Finance, it intends to amend only two of the four articles found unconstitutional. Further, twenty-one months after the decision of the Constitutional Court, no responsive legislative changes have been finalized.

V. COMPLAINTS

74. The applicants complain that their right to peaceful enjoyment of their possessions, as guaranteed by Article 1 of Protocol No. 1 to the Convention, and their right to a fair hearing within a reasonable time before an independent and impartial tribunal, as guaranteed by Article 6 of the Convention, have been violated.

VI. SUBMISSIONS OF THE PARTIES

A. Bosnia and Herzegovina

75. Bosnia and Herzegovina has not submitted any observations to the Chamber in these cases.

B. The Federation of Bosnia and Herzegovina

1. As to admissibility

76. The Federation of Bosnia and Herzegovina objects to the admissibility of the present applications. The Federation asserts that the subject matter has already been resolved by the Chamber's decision in *Poropat and Others*, and the Federation's subsequent compliance with that decision through amendments to its laws. Therefore, the respondent Party feels the applications should be declared inadmissible pursuant to Article VIII(2)(b) of the Agreement as "substantially the same as a matter that has already been examined by the Chamber." In the alternative, the Federation suggests that the applications be dismissed pursuant to Article VIII(2)(c) of the Agreement as manifestly ill-founded.

77. With regard to applicants Todorović, Hodžić, and Hadžić, the Federation asserts that their applications should be declared inadmissible pursuant to Article VIII(2)(c) of Annex 6 to the Agreement as being "manifestly ill-founded and an abuse to the right of petition." The Federation further states that, because these applicants had their old foreign currency savings transferred to certificates enabling them to take part in the privatisation process, the Chamber should strike out the applications on the ground that the matter has been resolved. Finally, the Federation asserts that Ms. Hodžić's application should be declared inadmissible for failure to exhaust effective remedies, in that she only filed an action with the Court of First Instance in Sarajevo and did not take any other steps to exhaust available remedies.

78. With regard to the applicant Milenko Višnjevac, the Federation of Bosnia and Herzegovina argues that his application is inadmissible under Article VIII(2)(a) of the Agreement because it was lodged more than six months after 19 January 1994, the date the 22 Novermber 1993 judgement of the Municipal Court was affirmed by the Higher Court. The application was filed on 11 October 1999.

2. As to the merits

(a) Article 1 of Protocol No. 1 to the Convention

79. The Federation of Bosnia and Herzegovina considers the present applications to be ill-founded on the merits. While the Federation appears to concede that the old foreign currency savings of the applicants constitute possessions within the meaning of Article 1 of Protocol No. 1 to the Convention, it disputes any unlawful interference with the applicants' rights in this property. The Federation asserts that its legislative measures serve legitimate aims and that, through amendments to the privatisation programme, it has remedied the systemic shortcomings highlighted in the Chamber's decision in *Poropat and Others*. The Federation asserts that, through these amendments, it has achieved a fair balance between the general interest and the property rights of holders of old foreign currency savings. Thus, in the Federation's view, it has not violated Article 1 of Protocol No. 1 to the Convention, and it is only up to the applicants to submit to the privatisation process to realise their property rights. The Federation states that the compensation claims of the applicants should be rejected because it has complied with the orders of the Chamber in *Poropat and Others* and thereby established a fair balance between the relevant interests. In this regard, the Federation asserts that the violation of Article 1 of Protocol No. 1 to the Convention found in *Poropat and Others* was not directly based on the inability of the applicants to withdraw money, but rather on the Federation's failure to strike a fair balance between the relevant interests, which it has remedied.

80. The Federation further states that it has *de facto* equalised the value of the old foreign currency savings with cash and thereby provided the applicants free disposal of their funds for use in

the privatisation process. Thus, the Federation asserts, it could not have violated the applicants' property rights.

81. The Federation considers the provisions declared unconstitutional by the decision of the Constitutional Court of the Federation still to be in force. It appears that the Federation considers that the decision of the Constitutional Court created an obligation to change the provisions, but did not vacate them with immediate effect.

82. With regard to the Ljubljanska Banka, whose headquarters are located in Slovenia, the Federation states that negotiations are under way between Bosnia and Herzegovina and Slovenia concerning the ownership and responsibility for the liabilities of Ljubljanska Banka d.d. Sarajevo.

83. According to a letter of 29 March 2002 from Ljubljanska Banka d.d. Sarajevo, submitted by the Federation, Ljubljanska Banka transferred the old foreign currency savings of Smaila Hodžić (the applicant in CH/97/106) to the Unique Citizen's Account on 28 April 1998 in the amount of DEM 5,562.91. According to the Federation, the law obligating banks to transfer all old foreign currency savings claims to the Unique Citizen's Account did not exclude any bank and therefore included Ljubljanska Banka d.d. Sarajevo.

84. The Federation, in its observations submitted 22 April 2002, attached a letter dated 22 March 2001 from the Federation Minister of Finance to Milenko Višnjevac (the applicant in CH/29/2997). In this letter, as reflected in paragraph 45 above, the Minister of Finance informs Mr. Višnjevac that the court judgement he has obtained against Ljubljanska Banka is not enforceable. Specifically, the letter states that

> "it is not possible to execute valid court judgements toward Ljubljanska Banka d.d. Sarajevo or any other bank in the Federation of BiH. Also, there is no organ or authority that could order payment on that basis."

(b) Article 6 of the Convention

85. The Federation of Bosnia and Herzegovina asserts that it has complied with the criteria imposed by Article 6 of the Convention. Specifically, the Federation states that its constitutional provisions regarding the tenure of judges guarantee a fair hearing before an impartial and independent tribunal, and that its laws governing civil procedure guarantee a public hearing.

86. With regard to applicant Smaila Hodžić, the Federation states that, because the Ljubljanska Banka d.d. Sarajevo transferred her old foreign currency savings to a certificate and because she withdrew her legal action before the First Instance Court in Sarajevo, the Federation could not have violated Article 6 of the Convention to her detriment.

3. Claims for compensation

87. Regarding certain applicants' claims for compensation of legal expenses for the proceedings before the Chamber, the Federation asserts that such claims against it should be rejected because, pursuant to Rule 43 of the Chamber's Rules of Procedure, such expenses shall be borne either by the party or the Chamber.

C. The Applicants

1. As to admissibility

88. The applicants submit that responsibility for the alleged violation of their rights can be attached to both Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina because of the principles of state succession of liabilities and the ownership of the banks. As regards the Federation of Bosnia and Herzegovina, they allege that the Citizens' Claims Law recognises, in its provisions, that the Federation is the main debtor in respect of the old foreign currency savings accounts.

2. As to the merits

89. The applicants claim that the refusal to disburse their foreign currency savings and the conversion of those savings into privatisation certificates violate their property rights. They submit, further, that the actions taken by the Federation have not rectified the violation of Article 1 of Protocol No. 1 to the Convention, and that a fair balance between private and public interests has not been struck. In this regard, they refer to the fact that they have received certificates although they wished to have money disbursed from their accounts. One applicant states that she has not spent her certificates because she believes she would get an insignificant return on their face value.

90. On 22 November 2000, the Chamber received a letter from Mr. Janković, stating his belief that the Federation's actions in amending its laws have not secured the protection of the rights of the owners of old foreign currency savings. According to Mr. Janković, the amendments to the Law on Privatisation of Companies made it possible to use the certificates only in the process of so-called small-scale privatisation, which he believes is finished in the Federation. Therefore, he believes the amendments "represent the deception of owners of foreign currency." Mr. Janković further states that it is not possible to use old foreign currency savings for the purchase of business premises administered by municipalities (according to Article 29 of the Law on Privatisation of Companies), and that it is only possible for depositors with larger amounts of foreign currency savings to include themselves in the process of the public sale of companies. Finally, Mr. Janković believes there are no serious signs or announcements that, in the process of the purchase of apartments, the discount would be available for the holders of old foreign currency savings because this process is also nearly completed.

91. The applicants also point out their personal difficulties. For example, Mr. Janković states that he and his family have suffered from their inability to use his old foreign currency savings, which he would use to rent business premises or fulfill everyday needs. Ms. Hadžič also asserts that her family faces a difficult financial situation. Mr. Višnjevac states that he attempted to withdraw a portion of his old foreign currency savings to obtain medical treatment overseas. The bank's refusal of his withdrawal requests and the Federation's failure to enforce a court judgement in his favour have prevented him from receiving this medical treatment, from which he claims a violation of his human rights.

92. As to the domestic court proceedings, the applicants with pending cases assert that there have been unjustified delays. The applicants have expressed their general frustration that, six years after the end of the armed conflict, there has been no appropriate and complete resolution to the problem of old foreign currency savings. At least one applicant believes the Federation is attempting to buy time through its inaction.

VII. OPINION OF THE CHAMBER

A. Admissibility

93. Before examining the merits of the applications, the Chamber shall decide whether to accept them, taking into account the admissibility criteria set out in Article VIII(2) of the Agreement. Under Article VIII(2)(a), the Chamber shall consider whether effective remedies exist and, if so, whether the applicants have demonstrated that they have been exhausted. According to Article VIII(2)(b), it shall not address any application that is substantially the same as a matter which has already been examined by the Chamber. Under Article VIII(2)(c), the Chamber shall dismiss any application which it considers incompatible with the Agreement. Under Article VIII(3)(b) of the Agreement, the Chamber may reject or strike out an application on the ground that the matter has been resolved.

1. Competence *ratione personae*

(a) Responsibility of Bosnia and Herzegovina

94. The Chamber will consider whether and to what extent the regulation of matters relevant to the present applications falls within the responsibility of each respondent party. The Chamber notes that the State of Bosnia and Herzegovina has submitted no observations whatsoever regarding these cases, and thus has raised no objections to admissibility.

95. The Chamber recalls that in *Poropat and Others* it concluded that it was competent *ratione personae* to consider the applications in regard to Bosnia and Herzegovina on the grounds that the Republic of Bosnia and Herzegovina had adopted laws and regulations addressing the issue of foreign currency savings and thereby implicitly recognized its responsibility for those savings (*Poropat and Others*, paragraph 142).

96. The Chamber considers that Bosnia and Herzegovina remains responsible for finding an overall solution to the frozen bank accounts problem. Bosnia and Herzegovina is involved in state-level negotiations regarding the responsibilities of foreign-based banks (like Ljubljanska Banka and Unionbanka, the former Yugobanka), economic succession rights, and other matters that affect old foreign currency savings account holders, including the present applicants. The Chamber thus finds that these applications are admissible against Bosnia and Herzegovina in regard to Article 1 of Protocol No. 1 to the Convention.

97. As to the court proceedings initiated by some of the applicants, and the allegations of lack of access to court by others, the Chamber notes that these exclusively concern the judiciary of the Federation. The Chamber therefore finds the applications inadmissible against Bosnia and Herzegovina in regard to Article 6 of the Convention.

(b) Responsibility of the Federation of Bosnia and Herzegovina

98. The Federation claims that it cannot be held responsible for possible violations in the present cases.

99. The Chamber recalls that the laws governing banking, Citizen's Claims, and privatisation applicable in the territory of the Federation of Bosnia and Herzegovina have all been enacted by the Federation, and the authorities designated to implement the legislation are all institutions of the Federation. Further, the applicants' and other plaintiffs' legal actions in regard to foreign currency savings accounts have been examined by courts with jurisdiction only in the territory of the Federation. The Federation of Bosnia and Herzegovina is responsible in the present cases for regulatory measures, the decision of the Federation Constitutional Court, and other actions taken in so far as they have affected the applicants' position in regard to the banks and, in particular, to the savings deposited with the banks.

100. The Chamber concludes that it is competent *ratione personae* to consider the present applications in regard to the Federation of Bosnia and Herzegovina.

(c) The respondent Party in case no. CH/99/2997

101. The Chamber notes that Mr. Višnjevac, in his application, specifies only Ljubljanska Banka as the respondent party. As Ljubljanska Banka is not a Party to the Agreement, it is not a proper respondent within the Chamber's jurisdiction established by Article II(2) of the Agreement. The Chamber recalls, however, that it has consistently held that it is not restricted by the applicant's choice of respondent party, and that it will examine applications in regard to a respondent Party designated by the Chamber itself. The Chamber will thus consider Mr. Višnjevac's application as against Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina.

2. Exhaustion of effective domestic remedies

102. The Federation argues that domestic remedies have not been exhausted by the applicants.

103. The Chamber recalls that applicants Todorović, Hodžić, and Hadžić initiated court proceedings in 1997 in attempts to have money disbursed from their foreign currency savings accounts. None of the applicants has succeeded thus far. Mr. Višnjevac also sought relief in the domestic courts, and he received a judgement on the merits in his favor. He was subsequently informed by the Minister of Finance, however, that his judgement could not be enforced.

104. The only other domestic court case to come to a conclusion is that of Ms. Hodžič, which was not examined on the merits, but was dismissed by a procedural decision concluding that the action had been withdrawn by the applicant. The Chamber notes, however, that Ms. Hodžič apparently withdrew her action based on her belief that she would never get her money back.

105. It appears then that no court proceedings initiated in order to obtain disbursement of old foreign currency savings have been successful. In most cases, the actions have languished in the courts for periods of years with no movement whatsoever. In the only case where an applicant has received a decision on the merits, his favorable court judgement was subsequently deemed unenforceable.

106. Having regard to these attempts by the applicants to achieve redress through the court system, the Chamber considers that there are no effective remedies available to these applicants that they should be required to exhaust. Under the circumstances, the failure of Ms. Mulalić-Rapo, Ms. Ilić, and Mr. Janković to initiate such proceedings, and the withdrawal by Ms. Hodžić of her action, do not preclude the Chamber from examining their applications.

3. *Res Judicata*

107. The Federation of Bosnia and Herzegovina claims that, under Article VIII(2)(b), the Chamber is prevented from examining the present cases because they are substantially the same as a matter which has already been examined by the Chamber. Specifically, the Federation asserts that the Chamber's decision regarding the same issues in *Poropat and Others* precludes consideration of the present applications.

108. The Chamber recalls that the principle of *res judicata* provides that a final judgement rendered by a court of competent jurisdiction on the merits of a case is conclusive as to the rights of those parties involved and constitutes an absolute bar to a subsequent action involving the same claim. This principle is reflected in Article VIII(2)(b) of the Agreement, which provides that the Chamber "shall not address any application which is substantially the same as a matter which has already been examined by the Chamber or has already been submitted to another procedure of international investigation or settlement." The Chamber's decision in *Poropat and Others*, however, did not involve any of the present applicants; thus, the principle of *res judicata* could not attach to it.

109. Article VIII(2)(b) of the Agreement does not apply in this case to divest the Chamber of its power to consider these applications, regardless of the similar previous applications before the Chamber.

4. Matter already resolved

110. The Federation of Bosnia and Herzegovina also asserts that the present applications should be rejected on the grounds that the subject matter has already been resolved by the Chamber's decision in *Poropat and Others* and the Federation's subsequent compliance with that decision through amendments to its laws.

111. The applicants, however, do not feel that the matter has been resolved by the changes to the legislation. The Chamber notes that, following the amendments, there are still no provisions in the Citizens' Claims Law indicating that an individual is free to dispose of his or her savings in any other

way than to have them converted into privatisation certificates. The laws, as amended, continue to provide for the compulsory transfer of foreign currency savings from the bank to the Unique Citizen's Account. The applicants remain unable to obtain payment from their accounts. Thus, the interference remains, and the matter has not been resolved.

112. The Chamber further considers that the current state of the law affecting old foreign currency savings, following the decision of the Federation Constitutional Court, raises new issues that have neither been considered nor resolved by the Chamber. The Chamber therefore will not reject the present applications under Article VIII(3)(b) of the Agreement.

5. Manifestly ill-founded

113. The Federation argues that the present applications should be dismissed as manifestly ill-founded and an abuse of the right of petition.

114. The Chamber considers that the present applications raise legitimate issues compatible with the Agreement and within the Chamber's competence. Accordingly, the Chamber rejects the suggestion that they must be dismissed as manifestly ill-founded pursuant to Article VIII(2)(c).

6. Six-months rule in case no. CH/99/2997

115. With regard to the applicant Milenko Višnjevac, the Federation of Bosnia and Herzegovina argues that his application is inadmissible under Article VIII(2)(a) of the Agreement because it was lodged more than six months after the date of the final decision in the applicant's case. According to the Federation, the final court decision occurred on 19 January 1994, and the application was filed on 11 October 1999. This analysis ignores the subsequent enforcement proceedings initiated by Mr. Višnjevac, which concluded on 20 December 2000. In any case, the applicant complains of his continuing inability to have his judgement enforced. Because the alleged violation consists of a continuing situation, the six-month limit can have no application until the situation comes to an end, which it has not. The Chamber therefore concludes that the application is not inadmissible under Article VIII(2)(a).

7. Conclusion as to admissibility

116. As no other ground for declaring the cases inadmissible has been established, the Chamber declares the applications admissible under Article 1 of Protocol No. 1 to the Convention in respect of Bosnia and Herzegovina and in their entirety in respect of the Federation of Bosnia and Herzegovina.

B. Merits

117. Under Article XI of the Agreement, the Chamber will next address the question of whether the facts established above disclose any breaches by the respondent Parties of their 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 its Protocols.

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

118. The applicants complain that their property rights under Article 1 of Protocol No. 1 to the Convention have been violated. This provision 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.
>
> "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."

119. The applicants assert that their rights have been violated by the banks' refusal to disburse the foreign currency savings and the conversion of those savings into privatisation certificates. Further, they assert that the actions taken by the Federation fail to establish a fair balance between public and private interests, and the result is a continuing violation of their property rights.

120. The Federation asserts that it has in fact balanced the private and public interests fairly through amendments to the relevant legislation governing the privatisation process. The Federation maintains that this legislation continues to be in effect and that it protects the applicants and other depositors from losing their possessions.

(a) The existence of "possessions" under Article 1 of Protocol No. 1

121. The Chamber first finds, as it did in *Poropat and Others*, that the applicants' claims against the banks based on their foreign currency savings constitute "possessions" within the meaning of Article 1 of Protocol No. 1 to the Convention, a point the Federation appears to concede. It must therefore be determined whether the applicants' right to peacefully enjoy these possessions has been violated.

(b) General considerations

122. The Chamber recalls that, as stated in the *Poropat and Others* decision (quoting the case law of the European Court of Human Rights), Article 1 of Protocol No. 1 to the Convention comprises three distinct rules:

> "the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers deprivation of possessions and subjects it to certain conditions; the third rule, stated in the second paragraph, recognises that the Contracting States are entitled, amongst other things, to control the use of property in accordance with the general interest.... The three rules are not, however, 'distinct' in the sense of being unconnected. The second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule."

James and Others v. the United Kingdom (judgement of 21 February 1986, Series A no. 98, paragraph 37).

123. It must be determined in each case whether a "fair balance" has been struck between the demands of the general interest of the community and the requirements of the protection of the individuals' fundamental rights. Thus, there must be a reasonable relationship of proportionality between the means employed and the aim sought to be realised. The requisite balance will not be found if the persons concerned have had to bear an individual and excessive burden. The Chamber recalls that the foreign currency savings accounts raise complex issues of great economic importance and therefore, as the Chamber found in *Poropat and Others*, the respondent Parties enjoy a wide margin of appreciation in dealing with these matters (*Poropat and Others*, paragraph 163).

(c) Alleged violation by the Federation of Bosnia and Herzegovina

124. In considering the merits of these cases against the Federation of Bosnia and Herzegovina, the Chamber must decide whether, in light of developments since its decision in *Poropat and Others*, the legal situation in the Federation regarding old foreign currency savings continues to constitute a violation of Article 1 of Protocol No. 1 to the Convention.

125. In the *Poropat and Others* decision, the Chamber stated: "While not overlooking the general interest involved, including the need to regulate the settlement of these savings in the context of economic difficulties of the Federation and the Banks, the Chamber finds that the measures do not strike a 'fair balance' between that interest and the protection of the applicants' property rights and that they, thus, fall outside the Federation's margin of appreciation." (*Poropat and Others*, paragraph 192). The Chamber pointed out several shortcomings of the privatisation program:

a. The limited two-year validity of the privatisation certificates;
b. The unequal treatment afforded cash and certificates;
c. The uncertainty regarding the future status of foreign currency savings claims that have not been registered in the Unique Citizen's Account and the claims that have been so registered but are not used in the privatisation process.

(*Poropat and Others*, paragraphs 186-87, 190).

126. The Chamber found that these issues had to be solved by the Federation in amending its privatisation program. The Chamber considered that it was for the Federation to find, within its margin of appreciation, the appropriate means to achieve the required "fair balance" of interests (*Poropat and Others*, paragraph 204).

127. The Chamber recognizes that, between 2 November 2000 and 8 February 2002, the Federation amended various provisions of the Citizens' Claims Law in an effort to address the shortcomings of the privatisation programme and comply with the Chamber's order in *Poropat and Others*. The Federation government and legislature have taken appreciable steps toward implementation of the Chamber's decision.

128. The Chamber notes, however, that the intervening decision of the Federation Constitutional Court has called the continuing efficacy of these laws into question. By its decision of 8 January 2001, that Court determined that key provisions of the Citizens' Claims Law were not in accordance with the Constitution of the Federation of Bosnia and Herzegovina.

129. Despite the pronouncement of the Federation Constitutional Court, the relevant provisions of the Citizens' Claims Law continue to be applied in the Federation. This is apparent from the fact that the applicants' situations have not changed following the Constitutional Court decision. Mr. Janković specifically inquired whether he could withdraw his funds in light of the Court's decision, and he was told that would not be possible.

(i) Whether the Federation continues to interfere with the applicants' rights

130. In determining whether the Federation of Bosnia and Herzegovina has interfered with the applicants' rights under Article 1 of Protocol No. 1 to the Convention, the crucial question is whether the current state of the law and practice regarding the applicants' old foreign currency savings accounts adequately secures those rights. The Chamber will have regard to the current state of the privatisation programme in practice and whether the applicants or other depositors of foreign currency savings have succeeded in their attempts to realise their property rights in those funds.

131. In *Poropat and Others*, the Chamber found interference with the applicants' rights under Article 1 of Protocol No. 1 to the Convention based on legislation that relieved the banks of their contractual obligations toward the applicants and made it impossible for the applicants to withdraw their money. (*Poropat and Others*, paragraphs 170-77). As a practical matter, the same situation remains today. The Chamber notes that, following the amendments, there are still no provisions in the Citizens' Claims Law indicating that an individual is free to dispose of his or her savings in any other way than to have them converted into privatisation certificates. The laws, as amended, continue to provide for the compulsory transfer of foreign currency savings from the bank to the Unique Citizen's Account. The applicants, and presumably other depositors, have been, and continue to be, unable to have money disbursed from their accounts. Thus, the interference found in *Poropat and Others* continues, at least *de facto*, even though *de jure* the relevant legislation is no longer in force (*see* paragraph 136 *et seq.*, *infra*).

132. The interference is exacerbated by the applicants' inability to obtain relief in the courts. Four of the present applicants initiated court proceedings in attempts to have money disbursed from their accounts. So far, only Mr. Višnjevac has received a judgement on the merits, which was in his favor. Mr. Višnjevac was informed, however, by the Minister of Finance, that his judgement cannot be enforced.

133. Having regard to the above, the Chamber concludes that the privatisation programme, with its restrictions on foreign currency savings, as currently administered by the Federation of Bosnia and Herzegovina, continues to interfere with the property rights of individual savers, including the present applicants.

(ii) Whether the interference has been justified

134. The Chamber will next consider whether the interference created by the prevailing legal situation has been justified under the second paragraph of Article 1 of Protocol No. 1 to the Convention. The Chamber notes, in this regard, that the Federation continues to apply the relevant legislation establishing control of the use of the applicants' property. Control of use of property must be "in accordance with the general interest" and have some basis in law. Moreover, it must be determined whether a "fair balance" has been struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights.

(α) Purpose of the interference

135. The Chamber concludes, without question, that the legislative measures taken by the Federation have been pursued in accordance with the general interest. In this regard, the Chamber notes the economic difficulties of the Federation and the banking system. It is clearly in the general interest to attempt to administer citizens' property claims in a manner designed to protect the banking system from collapse.

(β) Lawfulness of the interference

136. The Chamber observes that the legal basis for the interference in question, if there is one, must be found in the provisions of the Citizens' Claims Law and the related privatisation laws.

137. The Chamber notes first that the Federation Constitutional Court has declared Articles 3, 7, 11, and 18 of the Citizens' Claims Law—the provisions essential to the scheme of conversion of old foreign currency savings into certificates—unconstitutional. Thus, the laws on which the Federation's control of use of the applicants' property is based are *de jure* no longer in force, but *de facto* continue to be applied.

138. There is ample authority in domestic law and court procedural rules to support the conclusion that, following the decision of the Federation Constitutional Court, the Citizens' Claims Law is no longer in effect. Article 12(b) of part IV(c) of the Federation Constitution provides that any law deemed not in accordance with the Constitution shall not remain in force "unless the Court specifies some transitional arrangements which may not extend to a period in excess of six months." The Federation Constitutional Court, in its decision, does not specify any transitional arrangements regarding its decision on the Citizens' Claims Law. Under the circumstances, the law should have been deprived of its effect *ex nunc*—from the moment of the Court's decision.

139. The Chamber notes that the Federation government has appealed against the decision of the Federation Constitutional Court to the Constitutional Court of Bosnia and Herzegovina. Article 75 of the Rules of Procedure of The Constitutional Court of Bosnia and Herzegovina provides that this higher court may suspend the execution of temporary measures, laws, and decisions, such as the decision of the Federation Constitutional Court. The Constitutional Court of Bosnia and Herzegovina has not, however, suspended execution of the Federation Constitutional Court's decision. It follows that the decision of the Federation Constitutional Court is still in force, and the relevant provisions of the Citizens' Claims Law are not.

140. The Chamber has also considered whether the historical practice in the former Constitutional Court of Yugoslavia could support the Federation's assertion that the provisions declared unconstitutional are still in force. Article 384 of the Constitution of the former SFRY provided that, if a law was declared inconsistent with the Constitution, the legislature would be allowed six months (with opportunity for extension) to amend the provision and harmonize it with the Constitution. Only after the expiration of the amendment time limit, and following a second decision of the

Constitutional Court, would the existing law be deprived of its effect. Similar laws and practice applied to the Constitutional Court of the Socialist Republic of Bosnia and Herzegovina (*see* paragraph 72, *supra*). There is no apparent legal basis, however, for applying this former SFRY practice to the current situation.

141. If, as the plain text of Article 12(b) of the Federation Constitution suggests, the relevant provisions of the Citizens' Claims Law ceased to be in effect from the time of the Federation Constitutional Court's decision, then the ongoing interference with the applicants' property rights is without basis in law and cannot be justified.

142. If, on the other hand, as the respondent Party appears to argue, the relevant provisions of the Citizens' Claims Law continued in effect after the Federation Constitutional Court's decision, other relevant factors undermine the lawfulness of the interference. First, even if one assumes *arguendo* that the Federation Constitutional Court silently intended to allow for transitional arrangements, the six-month time limit placed on those arrangements by Article 12(b) of part IV(c) of the Federation Constitution has long since expired.[3] Moreover, the Federation has indicated that, following the proposal of the Federal Ministry of Finance, it intends to amend only two of the four articles of the Citizens' Claims Law found unconstitutional. In any case, more than twenty-one months after the decision of the Federation Constitutional Court, no responsive legislative changes have been enacted.

143. The inaction following the Federation Constitutional Court's decision has created a protracted state of legal uncertainty and confusion that cannot provide a legal basis for the continuing interference with the applicants' property rights. The failure to address the issue serves no legitimate public purpose, and it does not fall within the Federation's considerable margin of appreciation, no matter how compelling the public interest involved may be.

144. Having regard to the above, the Chamber will consider whether the interference strikes a fair balance between the general interest and the applicants' private property rights.

(γ) Proportionality of the interference

145. As was pointed out by the European Court of Human Rights in the *James and Others v. the United Kingdom* judgement, the second paragraph of Article 1 of Protocol No. 1 has to be construed in the light of the general principle set out in the first sentence of this Article. This sentence has been interpreted by the Court as including the requirement that a measure of interference should strike a "fair balance" between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights.

146. The Chamber recognizes the Federation's amendments to various relevant laws since the decision and order in *Poropat and Others*. The Federation amended the Law on Privatisation of Companies and the Law on Sales of Apartments with Existing Occupancy Right to ensure the equal treatment of certificates and cash. The Federation also amended the Citizens' Claims Law to extend the time limit for using certificates to purchase apartments. It also extended the time limit for using certificates generally from two to four years

147. The applicants submit that the amendments to the laws, taken alone, still fail to strike a fair balance between general and private interests. The applicants argue that they have suffered unjustified and disproportionate hardship. Some assert that they would need the money deposited in their accounts to support their daily needs. None of the applicants has been able to realise their property interests in their old foreign currency savings accounts.

148. The Chamber notes again that, taken together, the decision of the Federation Constitutional Court, the lack of responsive legislative action, and the continued application of the Citizens' Claims Law have led to a state of legal confusion with regard to the applicants' old foreign currency savings accounts. There is no justification for the current uncertainty, which leaves the applicants' claims to their property in a state of oblivion and neglect. Meanwhile, as the privatisation process moves

[3] The applicable time limits under the practice of the former SFRY would also have expired, even if an extension had been granted.

forward without clarification of the law, the potential consequences of the applicants' insistence on their property rights become more severe.

149. Having regard to the above circumstances, the Chamber considers that the situation in the Federation of Bosnia and Herzegovina in respect of the old foreign currency savings, taken as a whole, places an individual and excessive burden on many depositors, including the current applicants. The Chamber recognizes the Federation's efforts to strike a "fair balance" through amendments to the applicable laws. Those efforts, however, compose only part of the picture. Whatever the potential impact of those amendments, their efficacy has been called into question by the decision of the Federation Constitutional Court. The Chamber finds that the resulting state of legal uncertainty—the continued application of the laws contrary to the Federation Constitutional Court's decision, the lack of any timely responsive amendment to those laws, and the apparent unavailability of relief in the domestic courts—creates a disproportionate interference with the applicants' property rights.

150. In conclusion, there has been a violation by the Federation of Bosnia and Herzegovina of the applicants' rights to peaceful enjoyment of their possessions under Article 1 of Protocol No. 1 to the Convention.

(iii) The failure to enforce the judgement in favour of Mr. Višnjevac in case no. CH/99/2997

151. Regarding the case of Mr. Višnjevac (case no. CH/99/2997), the Chamber finds that the applicant's claim against the bank based on his foreign currency savings constitutes a possession within the meaning of Article 1 of Protocol No. 1 to the Convention (*see* paragraph 121, *supra*).

152. Mr. Višnjevac's case concerns the failure of the authorities of the Federation of Bosnia and Herzegovina to enforce a court judgement in the applicant's favour. As the Chamber has previously held, Article 1 of Protocol No. 1 to the Convention imposes positive obligations on the Parties to provide effective protection for the rights of individuals. The Chamber considers that these obligations extend to the enforcement of court decisions (*see* case no. CH/99/1859, *Jeličić*, decision on admissibility and merits of 11 February 2000, paragraphs 22-27, Decisions January-June 2000). In Mr. Višnjevac's case, the failure of the respondent Party to enforce the judgement, along with the statement of the Minister of Finance that it will not be enforced, have prevented the applicant from realising the benefit of a valid court decision in his favour. Under these circumstances, the Chamber finds that the respondent Party has failed to secure the applicant's rights to peaceful enjoyment of his possessions. Thus, there has been a specific, additional breach of Mr. Višnjevac's rights as guaranteed by Article 1 of Protocol No. 1 to the Convention.

(d) Alleged violation by Bosnia and Herzegovina

153. The Chamber considers, as it did in *Poropat and Others*, that Bosnia and Herzegovina remains generally responsible for issues related to old foreign currency savings accounts, and that the state's earlier failure to take adequate action left foreign currency savings holders with no legal basis to claim reimbursement of their savings (*see Poropat and Others*, paragraphs 164-69). Following the same reasoning, Bosnia and Herzegovina bears responsibility for the violations of Article 1 of Protocol No. 1 to the Convention alleged in the present cases. And, although not directly involved in the actions that have created the current state of legal uncertainty, Bosnia and Herzegovina remains involved in state-level negotiations regarding matters that may affect the applicants, such as the responsibilities of foreign-based banks (like Ljubljanska Banka and Unionbanka) and economic succession rights generally. The Chamber further notes that Bosnia and Herzegovina has submitted no observations in these cases to argue why it should no longer bear responsibility.

154. Accordingly, as it did in *Poropat and Others*, the Chamber finds that there has been a violation by Bosnia and Herzegovina of the applicants' right to peaceful enjoyment of their possessions under Article 1 of Protocol No. 1 to the Convention.

2. Article 6 of the Convention

155. The applicants complain that they have not had a fair hearing under Article 6 of the Convention. Paragraph 1 of that Article reads, in relevant part:

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

(a) The failure to enforce the judgement in favour of Mr. Višnjevac in case no. CH/99/2997

156. The judgement obtained by Mr. Višnjevac in the First Instance Court of Sarajevo on 22 November 1993 is fully binding and enforceable. The judgement and Mr. Višnjevac's request for enforcement have been upheld by the courts of appeal.

157. The judgement has not been enforced, however, and Mr. Višnjevac remains unable to obtain payment from the bank. He has been informed by the Minister of Finance that the judgement cannot be enforced. Accordingly, Mr. Višnjevac appears to have no prospect of having the decision of the First Instance Court of 22 November 1993 enforced. This failure engages the responsibility of the Federation of Bosnia and Herzegovina, whose public bodies (including the courts) have taken no further steps to ensure enforcement of the valid judgement.

158. As the Chamber has held, the authorities' failure to take action to enforce a decision of a court deprives Article 6(1) of all useful effect (*see* the above-mentioned *Jeličić* decision, paragraph 27). Accordingly, there has been a violation of the applicant Višnjevac's right to a fair hearing in the determination of his civil rights as guaranteed by Article 6(1) of the Convention.

(b) Length of proceedings in case no. CH/97/107

159. The Chamber notes that there have been significant delays in the domestic proceedings. In the case of the applicant Hadžić, a domestic court proceeding has been pending for over five years, with no activity since 13 March 1997. The respondent Party, the Federation of Bosnia and Herzegovina, makes no claim that the applicant is in any way responsible for this delay or has otherwise failed to exhaust her remedies. Indeed, the Chamber finds no justification for this judicial procrastination. Because of such delays, the Chamber has concluded above that domestic remedies have not been effective. The Chamber further finds that these extended lags in Ms. Hadžić's judicial proceedings effect a continuing deprivation of her right to a fair hearing within a reasonable time. Accordingly, there has been a violation of the applicant Hadžić's rights as guaranteed by Article 6(1) of the Convention.

(c) Denial of access to court in the remaining cases

160. As the Chamber has consistently held, enforcement is a necessary component of effective access to courts. Without the possibility of enforcement, the rights guaranteed by Article 6(1) are rendered illusory. The Chamber has already found violations of Article 6(1) with regard to the applicants Hadžić and Višnjevac (*see* paragraphs 156-59). Considering the overall circumstances, the Chamber also finds a *de facto* denial of access to court by the respondent Party, in violation of Article 6(1) of the Convention, with regard to the applicants Todorović, Hodžić, Mulalić-Rapo, Ilić, and Janković.

(d) Conclusion

161. The Chamber therefore finds that there has been a violation by the Federation of Bosnia and Herzegovina of the applicants' rights under Article 6(1) of the Convention.

VIII. REMEDIES

162. Under Article XI(1)(b) of the Agreement, the Chamber shall address the question of what steps are to be taken by the respondent Party to remedy breaches of its obligations under the Agreement. In this respect, the Chamber may consider issuing orders to cease and desist, awarding monetary relief (for pecuniary and non-pecuniary injuries), and prescribing provisional measures.

163. All the applicants claim compensation for the full amount of their old foreign currency savings. Three of the applicants (Ms. Todorović, Ms. Hadzić, and Ms. Hodzić) specifically request awards of interest and reimbursement for costs of proceedings in addition to payment of their old foreign currency savings.

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

164. The Chamber orders the Federation of Bosnia and Herzegovina to remove the prevailing legal uncertainty by enacting, within six months from the date of delivery of this decision, relevant and binding laws or regulations that clearly address this problem in a manner compatible with Article 1 of Protocol No. 1 to the Convention, as interpreted in the Chamber's decision in *Poropat and Others* and the present decision. The actual method of resolving the situation and eliminating the prevailing legal uncertainty shall be determined by the respondent Party.

165. Measures to be considered might include, among other options, the following possibilities:

(1) Payment of old foreign currency savings, in whole or in part, to depositors upon demand, if the respondent Party has the means; or
(2) creation of public debt in the amount of old foreign currency savings not already spent in the privatisation process; or
(3) methods by which citizens may use their old foreign currency savings as the equivalent of cash inside or outside the privatisation process, such as for payment to public entities for goods and services including, but not limited to, utility bills, property, transportation, food, health care, housing and other personal expenses; or
(4) tax relief or tax credits; or
(5) enhanced pension rights (as are allowed other categories of citizens); or
(6) earmarking of proceeds from succession funds, enhanced tax collection enforcement, international aid, or other income streams to be used exclusively for repayment of old foreign currency savings holders.

The method or combination of methods chosen should be designed to reimburse each holder of old foreign currency savings for a substantial part of the total amount of his or her savings within a reasonable period of time.

166. The Chamber reserves the right to order additional remedies in this case after six months have passed from the date of the delivery of this decision, should it consider such course of action warranted in the light of the steps taken by the respondent Parties to give effect to this decision.

B. Article 6

167. The Chamber further orders the Federation of Bosnia and Herzegovina to take all necessary steps to ensure the enforcement of the applicant Višnjevac's judgement as ordered by the First Instance Court in Sarajevo on 22 November 1993 and upheld by the subsequent court rulings permitting enforcement of that valid court judgement, no later than 11 January 2003.

168. The Chamber further orders the Federation of Bosnia and Herzegovina to take all necessary steps to ensure an expeditious decision in the pending court case of Ms. Hadžić.

169. The Chamber further orders the Federation of Bosnia and Herzegovina to pay compensation to Ms. Hadžić, no later than 11 November 2002, in the amount of 1000 KM as moral damages for the delay in the domestic court proceedings.

170. The Chamber further orders the Federation of Bosnia and Herzegovina to pay compensation to Mr. Višnjevac, no later than 11 November 2002, in the amount of 1000 KM as moral damages for the failure to enforce his valid court judgement.

171. The Chamber further orders the Federation of Bosnia and Herzegovina to pay the applicants simple interest at a rate of 10 (ten) per cent per annum on the sums to be paid under paragraphs 169 and 170 or on any unpaid portion thereof from the expiry of the periods set for such payments until the date of final settlement of all sums due to the applicants under those paragraphs.

C. Costs of Proceedings

172. The Chamber further orders the respondent Parties to pay the applicants compensation for the expenses of the proceedings before the Chamber in the amount of 200 KM for each applicant, this cost to be borne equally between the respondent Parties.

173. The Chamber further orders the respondent Parties to pay the applicants simple interest at a rate of 10 (ten) per cent per annum on the sums to be paid under paragraph 172 or on any unpaid portion thereof from the expiry of the period set for such payments until the date of final settlement of all sums due to the applicants under that paragraph.

174. Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina shall report to the Chamber on the steps taken to comply with the above orders within six months from the date of delivery of this decision.

IX. CONCLUSIONS

175. For the above reasons, the Chamber decides:

1. unanimously, to declare the applications admissible against Bosnia and Herzegovina with regard to Article 1 of Protocol No. 1 to the Convention;

2. unanimously, to declare the applications inadmissible against Bosnia and Herzegovina with regard to Article 6 of the Convention;

3. unanimously, to declare the applications admissible in their entirety against the Federation of Bosnia and Herzegovina;

4. unanimously, that the Federation of Bosnia and Herzegovina has violated all the applicants' rights to peaceful enjoyment of their possessions under Article 1 of Protocol No. 1 to the European Convention on Human Rights by placing an individual and excessive burden on the applicants with regard to their old foreign currency savings, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Human Rights Agreement;

5. unanimously, that, in case no. CH/99/2997, the Federation of Bosnia and Herzegovina has violated the applicant Višnjevac's right to peaceful enjoyment of his possessions under Article 1 of Protocol No. 1 to the European Convention on Human Rights by taking no action to ensure the enforcement of his valid court judgement, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Agreement;

6. unanimously, that Bosnia and Herzegovina has violated all the applicants' rights to peaceful enjoyment of their possessions under Article 1 of Protocol No. 1 to the Convention by failing to take adequate action in regard to the old foreign currency savings to secure the applicants' rights under that provision, Bosnia and Herzegovina thereby being in breach of Article I of the Agreement;

7. unanimously, that, in case no. CH/99/2997, the Federation of Bosnia and Herzegovina has violated the applicant Višnjevac's right to a fair trial under Article 6(1) of the European Convention on

Human Rights by taking no action to ensure the enforcement of his valid court judgement, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Agreement;

8. by 13 votes to 1, that, in case no. CH/97/107, the Federation of Bosnia and Herzegovina has violated the applicant Hadžić's right to a fair trial within a reasonable time under Article 6(1) of the European Convention on Human Rights by allowing significant unjustified delays in the domestic court proceedings, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Agreement;

9. by 13 votes to 1, that, in case nos. CH/97/104, CH/97/106, CH/98/374, CH/98/386, and CH/00/4358, the Federation of Bosnia and Herzegovina has violated the rights of the applicants Todorović, Hodžić, Mulalić-Rapo, Ilić, and Janković to a fair trial under Article 6 of the European Convention on Human Rights by fostering a *de facto* denial of the right of access to court with regard to these matters, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Agreement;

10. unanimously, to order the Federation of Bosnia and Herzegovina to enact relevant and binding laws or regulations that clearly address this old foreign currency savings problem in a manner compatible with Article 1 of Protocol No. 1 to the Convention, as interpreted in *Poropat and Others* (cases no. CH/97/48, CH/97/52, CH/97/105, and CH/97/108) and this decision;

11. by 13 votes to 1, to order the Federation of Bosnia and Herzegovina to take all necessary steps to ensure an expeditious decision in the pending court case of Ms. Hadžić;

12. by 12 votes to 2, to order the Federation of Bosnia and Herzegovina to pay to the applicant Ms. Hadžić not later than 11 November 2002 the amount of 1000 KM (one thousand Convertible Marks) by way of compensation for non-pecuniary damages;

13. unanimously, to order the Federation of Bosnia and Herzegovina to take all necessary steps to ensure the enforcement of Mr. Višnjevac's judgement as ordered by the First Instance Court in Sarajevo on 22 November 1993, not later than 11 January 2003;

14. by 10 votes to 4, to order the Federation of Bosnia and Herzegovina to pay to the applicant Mr. Višnjevac not later than 11 November 2002 the amount of 1000 KM (one thousand Convertible Marks) by way of compensation for non-pecuniary damages;

15. unanimously, to order Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina to pay each applicant 200 KM for the expenses of proceedings before the Chamber, to be borne equally between the respondent Parties not later than 11 November 2002;

16. unanimously, to reserve the right to order additional remedies in this case after six months have passed from the date of the delivery of this decision;

17. unanimously, to order the respondent Parties to pay the applicants simple interest at a rate of 10 (ten) per cent per annum on the amounts due from them on the sums awarded in conclusions nos. 12, 14, and 15 or any unpaid portion thereof from the expiry of the periods set for such payments until the date of final settlement of all sums due to the applicants under those conclusions; and

18. unanimously, to order Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina to report to the Chamber by 11 April 2003 on the steps taken to comply with the above orders.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the Chamber