



**DECISION ON THE ADMISSIBILITY AND MERITS**

(delivered on 6 April 2001)

**Case no. CH/97/73**

**Marija BOJKOVSKI**

**against**

**BOSNIA AND HERZEGOVINA**

**and**

**THE FEDERATION OF BOSNIA AND HERZEGOVINA**

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 2 April 2001 with the following members present:

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

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

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

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

## **I. INTRODUCTION**

1. The applicant is the occupancy right holder of an apartment in Sarajevo. The applicant left the apartment during the hostilities. The case concerns her attempts to regain possession of her apartment. The applicant has lodged an application to the Commission for Real Property Claims of Displaced Persons and Refugees (CRPC), which has issued a decision recognising her occupancy right. However, this decision has not been executed.
2. The cases raise issues primarily under Article 8 of the European Convention on Human Rights and under Article 1 of Protocol No. 1 to the Convention.

## **II. PROCEEDINGS BEFORE THE CHAMBER**

3. The application was introduced on 27 October 1997 and registered on 25 November 1997.
4. On 29 May 1998 the Chamber decided to transmit the application to the Federation of Bosnia and Herzegovina as respondent Party for observations on its admissibility and merits. The Federation submitted its observations on 29 June 1998.
5. The applicant's further observations, which did not include a claim for compensation, were received on 3 August 1998 and transmitted to the Federation for information. The applicant made further written submissions on 3 December 1998, 28 September 1999 and 20 December 2000. These observations were transmitted to the Federation for information. In her submission dated 20 December 2000, the applicant made a request for monetary compensation. This letter of the applicant was transmitted to the respondent Party on 5 January 2001. The respondent Party was asked by the Chamber in a letter dated 27 February 2001 to submit any observations in regard to the compensation claim no later than 12 March 2001, on which date a reply containing those observations was received by the respondent Party.
6. On 22 December 2000 the Chamber received certain information concerning the case from the CRPC, which on 1 February 2001 was transmitted to the parties for their information.
7. On 6 February, 7 March and 2 April 2001 the Chamber considered the admissibility and merits of the application and on 2 April the Chamber adopted the present decision.

## **III. FACTS**

### **A. The facts of the case**

8. On 4 September 1981 the applicant was allocated an apartment located at Kolodvorska 13 (formerly Darovalaca krvi) in Sarajevo by the Faculty of Philosophy in Sarajevo. She lived in the apartment until September 1994 when she left Sarajevo for reasons of her health and age.
9. On 27 May 1996 the applicant filed a claim for repossession of her apartment to the Sarajevo City Secretariat for Housing Affairs (the competent municipal organ at that time).
10. On 25 September 1997 she requested the CRPC to issue a decision recognising her occupancy right.
11. On 4 March 1999 the CRPC issued a decision (Decision No. 202-4743-1/1) recognising the applicant's occupancy right.
12. On 21 May 1999 the applicant filed a request for the execution of the CRPC decision to the Sarajevo Cantonal Ministry for Urban Planning and Housing and Communal Affairs, the competent organ. To date, she has not received any decision on this request.
13. On 24 January 2000 the Sarajevo Cantonal Administration for Housing Affairs, in separate proceedings initiated by the applicant, issued a decision confirming her occupancy right over the

apartment and ordering that it be returned into her possession. The current occupant of the apartment was ordered to vacate the apartment within 90 days of the date of the decision and was granted the right to alternative accommodation. This decision has not been enforced to date.

## **B. Relevant legal provisions**

### **1. The General Framework Agreement for Peace in Bosnia and Herzegovina – Annex 7, Agreement on Refugees and Displaced Persons.**

14. The General Framework Agreement for Peace in Bosnia and Herzegovina (the “Agreement”) was signed by the Republic of Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia (the “Parties”) in Paris on 14 December 1995. Annex 7 to the Agreement deals with refugees and displaced persons and in accordance with Article VII of Annex 7 an independent Commission for Displaced Persons and Refugees, later renamed the Commission for Real Property Claims of Displaced Persons and Refugees (CRPC), was established.

15. The CRPC shall receive and decide any claims for real property in Bosnia and Herzegovina, where the property has not voluntarily been sold or otherwise transferred since 1 April 1992, and where the claimant does not enjoy possession of that property (Article XI). The CRPC shall determine the lawful owner of the property – a concept which the CRPC has construed to include an occupancy right holder - according to Article XII(1). According to Article XII(7) the decisions of CRPC are final and any title, deed, mortgage, or other legal instrument created or awarded by the CRPC shall be recognised as lawful throughout Bosnia and Herzegovina.

16. The Parties shall cooperate with the work of the CRPC, and shall respect and implement its decisions expeditiously and in good faith (Article VIII).

### **2. The Law on Implementation of the Decisions of the Commission for Real Property Claims of Displaced Persons and Refugees.**

17. The Law on Implementation of the Decisions of the Commission for Real Property Claims of Displaced Persons and Refugees (Official Gazette of the Federation of Bosnia and Herzegovina hereinafter “OG FBiH” - 43/99, hereinafter “the Law on Implementation”, in force since 27 October 1999) regulates the enforcement of decisions of the CRPC.

18. The administrative body responsible for property-related legal affairs in the municipality where the property is located shall enforce decisions of the CRPC relating to real property owned by citizens (Article 3 paragraph 2). Decisions of the CRPC relating to an apartment for which there is an occupancy right shall be enforced by the administrative body for housing affairs in the municipality where the apartment is located (Article 3 paragraph 3). The CRPC decisions shall be enforced if a request for the enforcement has been filed to the relevant organ. The following persons are entitled to file such a request: the right holder specified in the CRPC decision and his/her heirs relating to real property owned by citizens (Article 4 paragraph 1) and relating to apartments for which there is an occupancy right; the occupancy right holder referred to in a CRPC decision and the persons who, in compliance with the Law on Housing Relations are considered to be members of the family household of the occupancy right holder (Article 4 paragraph 2).

19. The right to file a request for enforcement of a CRPC decision confirming a right to private property is not subject to any statute of limitation (Article 5 paragraph 1). The request for enforcement of a CRPC decision confirming occupancy right must be submitted within 18 months from the date when the CRPC decision was issued, or for decisions issued before this law entered into force, within 18 months from the entry into force of this law (Article 5 paragraph 2, as amended by the High Representative with effect from 28 October 2000. Before that the time-limit was one year).

20. The request for enforcement of a CRPC decision shall include two photocopies of the CRPC decision relating to real property owned by citizens, and three photocopies of the CRPC decision relating to the occupancy right (Article 6). The administrative organ responsible for the enforcement of a CRPC decision is obliged to issue a conclusion on the permission of enforcement within a period of

30 days from the date when the request for enforcement was submitted and shall not require any confirmation of the enforceability of the decision from CRPC or any other body (Article 7 paragraphs 1 and 2). The conclusion shall contain:

1. in case of property or apartments that have been declared abandoned, a decision terminating the municipal administration of the property;
2. a decision on repossession of the property or apartment by the right holder or other request for enforcement;
3. a decision terminating the right of the temporary user (where there is one) to use the property or apartment;
4. a time limit for the enforcee to vacate the property;
5. a decision on whether the enforcee is entitled to accommodation in accordance with applicable laws;
6. a requirement that the premises shall be vacated of all persons and possessions, other than those belonging to the person authorised to return into possession.

21. According to Article 7 paragraph 5 the time limit for vacating the house or apartment shall be the minimum time limit applicable under the Law on the Cessation of the Application of the Law on Abandoned Apartments (OG FBiH nos. 11/98, 38/98, 12/99, 18/99, 27/99 and 43/99) or the Law on the Cessation of the Application of the Law on Temporary Abandoned Real Property Owned by Citizens (OG FBiH nos. 11/98, 29/98, 27/99 and 43/99)

22. Article 9 states that a decision of the CRPC is enforceable against the current occupants of the property concerned, regardless of the basis on which they occupy it.

23. Under the terms of Article 10 paragraph 1, the right holder referred to in the CRPC decision and/or any other person who held a legal interest in the property or apartment at issue on the date referred to in the dispositive of the CRPC decision is entitled to submit a request for reconsideration to the CRPC, in accordance with CRPC regulations. Additionally, Article 10 paragraph 2 provides that a person with a legal interest in the property or apartment at issue which was acquired after the date referred to in the dispositive of the CRPC decision may lodge an appeal against the conclusion on permission of enforcement issued by the competent administrative organ. The appellant is required to prove that the right holder named in the Commission's decision voluntarily and lawfully transferred his/her rights to the appellant since the date referred to in the dispositive of the CRPC decision (Article 12 paragraph 2).

24. The enforcement of the CRPC decision shall not be suspended by the use of any legal remedy, except in the following two cases:

1. the competent administrative authority may suspend enforcement if it is notified by the CRPC that a request for reconsideration of the CRPC decision has been lodged in accordance with CRPC regulations (Article 11 paragraph 2);
2. the court before which an appeal lodged under Article 10 paragraph 2 is pending may suspend enforcement if a verified contract on the transfer of rights was made after 14 December 1995 (Article 12 paragraph 4).

### **3. The Law on Administrative Proceedings**

25. Under Article 216 paragraph 1 of the Law on Administrative Proceedings (OG FBiH no. 2/98) the competent administrative organ has to pass a decision to execute an administrative decision within 30 days upon the receipt of a request to this effect. Article 216 paragraph 3 provides for an appeal to the administrative appellate body if a decision is not issued within this time limit (appeal against "silence of the administration"). Article 275 states that the competent administrative organ shall adopt the conclusion on the permission of the execution of a decision stating that the decision has become effective and outlining the manner of execution. According to Article 275 paragraph 2

this conclusion shall be adopted without delay once the decision has become effective and no later than within 30 days after the decision became effective.

#### **4. The Law on Administrative Disputes**

26. Article 1 of the Law on Administrative Disputes (OG FBiH no. 2/98) provides that the courts shall decide in administrative disputes on the lawfulness of second-instance administrative acts concerning rights and obligations of citizens and legal persons.

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

#### **IV. COMPLAINTS**

28. The applicant complains of her inability to regain possession of the apartment.

#### **V. SUBMISSIONS OF THE PARTIES**

##### **A. The respondent Party**

29. The Federation, in its observations received on 29 June 1998, objects to the admissibility of the application on the ground that the available domestic remedies have not been exhausted. It claims that the Law on the Cessation of the Application of the Law on Abandoned Apartments provides a mechanism enabling persons who lost possession of their apartments to regain possession of them.

30. On the merits of the case, the Federation states that the applicant's rights were interfered with as a result of the necessity of providing accommodation for the large number of refugees and displaced persons and also because of the devastation caused to the housing stock in the country by the war. The Federation further states that any interference with the applicant's rights was carried out in accordance with relevant legal provisions. In conclusion, the Federation claims that its actions were in accordance with the Convention.

##### **B. The applicant**

31. The applicant maintains her complaint and points out that she has been seeking to regain possession of her apartment for over four years, without success.

#### **VI. OPINION OF THE CHAMBER**

##### **A. Admissibility**

32. Before considering the merits of this case the Chamber must decide whether to accept it, taking into account the admissibility criteria set out in Article VIII(2) of the Agreement.

33. The application was directed against both Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina. The Chamber will consider the admissibility of the case as against Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina separately.

##### **1. Bosnia and Herzegovina**

34. During the proceedings before the Chamber, the Chamber has not received any evidence which would tend to indicate that Bosnia and Herzegovina is responsible for any of the matters that

the applicant complains of. The competencies of Bosnia and Herzegovina are set out in Article III of the Constitution of Bosnia and Herzegovina, contained in Annex 4 to the Dayton Agreement. These do not include matters relating to the return of property to pre-war occupants or owners. Accordingly, this matter is within the competence of the Entities. Consequently, the case does not raise any issues engaging the responsibility of Bosnia and Herzegovina and therefore the case is to be declared inadmissible *ratione personae* as against that respondent Party.

## **2. Federation of Bosnia and Herzegovina**

35. The Chamber notes that the actions complained of by the applicant are within the competence of the Federation of Bosnia and Herzegovina.

36. According to Article VIII(2)(a) of the Agreement, the Chamber must consider whether effective remedies exist and whether the applicant has demonstrated that they have been exhausted. In the *Blentić* case (case no. CH/96/17, decision on admissibility and merits delivered on 3 December 1997, paragraphs 19-21, Decisions on Admissibility and Merits 1996-1997, with further references) the Chamber considered this admissibility criterion in the light of the corresponding requirement to exhaust domestic remedies in the former Article 26 of the Convention (now Article 35(1) of the Convention). The European Court of Human Rights has found that such remedies must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness. The Court has, moreover, considered that in applying the rule on exhaustion it is necessary to take realistic account not only of the existence of formal remedies in the legal system of the Contracting Party concerned but also of the general legal and political context in which they operate as well as of personal circumstances of the applicants.

37. In the present case the Federation objects to the admissibility of the application on the ground that the applicant has not exhausted the domestic remedies available to her. Whilst the appropriate laws afford remedies which might qualify as effective ones within the meaning of Article VIII(2)(a) of the Agreement in so far as the applicant is seeking to return to her apartment and faced with the authorities' inaction, the Chamber must ascertain whether, in the case now before it, these remedies can also be considered effective in practice.

38. The Chamber notes that the applicant filed a request to the CRPC with a view to being reinstated into her apartment. The CRPC issued a decision confirming the applicant's occupancy right, from which it follows that she is entitled to seek the removal of the temporary occupant from the apartment. However, this decision has not been enforced despite the applicant's enforcement request to the competent administrative organ, which has been pending for 21 months. Under Article 216 paragraph 1 of the Law on Administrative Proceedings the competent administrative organ had to pass a decision to execute an administrative decision within 30 days upon the receipt of a request to this effect. Article 7 of the Law on Implementation of the Decisions of the Commission for Real Property Claims of Displaced Persons and Refugees that came into force 27 October 1999 further reaffirmed the necessity of a speedy implementation, stating that the competent administrative organ is obliged to pass a conclusion on permission of enforcement within a 30-day time-limit from the submission of an request.

39. The Chamber notes that it is still open to the applicant to make further attempts to have her CRPC decision enforced. However she has already made repeated attempts to remedy her situation and they have been unsuccessful. Use of the remedies provided by the Law on Administrative Proceedings and by the Law on Administrative Disputes, even if successful, would also not remedy the applicant's complaints in so far as they relate to the failure of the authorities to enforce the CRPC decision within the time-limit prescribed by law. Furthermore, there is no reason to suppose that the responsible authorities, which have for a long period disregarded their legal obligations to enforce the CRPC decision, will treat the decisions of the courts with any greater respect.

40. In these circumstances the Chamber is satisfied that the applicant could not be required, for the purposes of Article VIII(2)(a) of the Agreement, to exhaust any further remedy provided by domestic law

41. The case was transmitted to the Federation for its observations on Article 6 of the Convention and also on the question of discrimination in the enjoyment of the rights of the applicant as guaranteed by Articles 1, 2 and 5 of the Convention on the Elimination of All Forms of Racial Discrimination, Articles 6 and 7 of the International Covenant on Economic, Social and Cultural Rights and also Articles 25 and 26 of the International Covenant on Civil and Political Rights.

42. In the course of the proceedings before the Chamber it has become clear that the case essentially involves the attempts of the applicant to return to her pre-war home. Therefore, the case raises issues under Article 8 of the European Convention on Human Rights and Article 1 of Protocol No. 1 to the Convention. These provisions guarantee the right to respect to one's home and to peaceful enjoyment of one's possessions respectively. This is reinforced by the fact that the Federation, in its observations on the case, dealt with it from the aspect of the applicant's attempts to regain possession of her pre-war home. The Chamber considers that in a case where it is clear that the case raises issues under particular provisions of the Agreement, the fact that it may not have been transmitted to the respondent Party specifically under those provisions does not preclude it from considering the case under those provisions. This is particularly the case where the respondent Party itself submitted observations on those provisions, as occurred in the present case.

43. The Chamber raised the issue of possible discrimination against the applicant of its own motion when transmitting the case to the Federation. During the proceedings before the Chamber, the applicant did not put forward any evidence tending to indicate that she had been discriminated against on any ground in the enjoyment of any of the rights and no other evidence of such nature has been submitted to the Chamber. Therefore the Chamber will not consider the case in relation to the question of discrimination in the enjoyment of any of the rights of the applicant as guaranteed by the Agreement.

44. The case is therefore to be declared admissible as against the Federation under Articles 6 and 8 of the Convention and under Article 1 of Protocol No. 1 thereto.

## **B. Merits**

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

### **1. Article 8 of the Convention**

46. Article 8 of the Convention reads, as far as relevant, as follows:

"1. Every one has the right to respect for...his home...

2. There shall be no interference by a public authority with the exercise of this right except such as in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

47. The applicant did not specifically complain of a violation of this provision. She complained in general of her inability to regain possession of her apartment. The Chamber considers this as a complaint relating to her right to respect for her home.

48. The Federation asserts that the interference with the applicant's rights relating to the apartment were of a temporary nature and were made necessary due to the prevailing circumstances in the country, and also that such interference was in accordance with the law. It further states that laws have been passed in the Federation which enable the applicant, as well as persons in a similar situation, to regain possession of their pre-war homes. The Federation therefore claims that there has been no violation of Article 8 of the Convention.

49. The Chamber notes that the applicant lived in the apartment and used it as her home until 1994. The Chamber has previously held that links that persons in similar situations as the applicant in the present case retained to their dwellings were sufficient for these to be considered to be their “homes” within the meaning of Article 8 of the Convention (see case no. CH/97/58, *Onić*, Decision on the admissibility and merits delivered on 12 February, Decisions January-July 1999, paragraph 48; and case no. CH/97/46, *Kevešević*, decision on the merits delivered on 10 September 1998, paragraphs 39-42, Decisions and Reports 1998).

50. It is therefore clear that the applicant’s apartment is to be considered as her home for the purposes of Article 8 of the Convention.

51. The Chamber notes that it is correct that legislation is in force in the Federation that theoretically enables persons to repossess their apartments. However, both the Chamber and the European Court of Human Rights have held that, although the object of Article 8 is essentially that of protecting the individual against arbitrary interference by the authorities, it may also give rise to positive obligations (see e.g. Case No. 96/17, *Blentić*, decisions on admissibility and merits, Decisions 1997, paragraph 27, *Marckx*, 1979 Series A No. 31 paragraph 31; *Airey*, 1979 Series A No. 32, paragraph 32; *Velosa Barreto*, 1995 Series A No. 334, paragraph 23). Therefore the Chamber considers that the Federation not only has to pass legislation but that the legislation also has to be implemented. Otherwise the legislation is not effective.

52. In the present case the Chamber recalls that the CRPC has issued a decision confirming the applicant’s right to repossess her apartment. The applicant has been unable to regain possession of her apartment due to the failure of the authorities of the Federation to deal effectively, in accordance with Federation law, with her request for the enforcement of the CRPC decision. It follows that the result of the inaction of the Federation is that the applicant cannot return to her home and that there is an ongoing interference with her right to respect for her home.

53. The Chamber must therefore examine whether this interference is in accordance with paragraph 2 of Article 8 of the Convention.

54. Under Article 216 paragraph 1 of the Law on Administrative Proceedings the competent administrative organ has to pass a decision to execute an administrative decision within 30 days upon the receipt of a request to this effect. This duty of the administrative organ to act speedily has been further stressed by the coming into force of Article 7 of the implementation law on 27 October 1999, that also sets a 30-day time-limit for implementation after the submission of the request. The applicant has still not received a decision on her request to have the CRPC decision enforced, despite the time-limit for this having expired in June 1999, 23 months ago. Accordingly, the failure of the competent administrative organ to decide upon the applicant’s request is not “in accordance with the law”.

55. As the interference with the applicant’s right to respect for her home referred to above is not “in accordance with the law”, it is not necessary for the Chamber to examine whether it pursued a “legitimate aim” or was “necessary in a democratic society”.

56. In conclusion, there has been a violation of the right of the applicant to respect for her home as guaranteed by Article 8 of the Convention

## **2. Article 1 of Protocol No. 1**

57. The applicant did not specifically complain of a violation of this provision. She complained in general of her inability to regain possession of her apartment. The Chamber considers this as a complaint relating to her right to peaceful enjoyment of her possessions, as guaranteed by Article 1 of Protocol No. 1, which 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.”

58. The Federation asserts that the interference with the applicant’s rights relating to the apartment were of a temporary nature and were made necessary due to the prevailing circumstances in the country, and also that such interference was in accordance with the law. It further states that laws have been passed in the Federation which enable the applicant, as well as persons in a similar situation, to regain possession of their pre-war homes. The Federation therefore claims that there has been no violation of the rights of the applicant as guaranteed by the Convention.

59. The Chamber notes that the applicant is the holder of the occupancy right over the apartment. The Chamber has previously held as follows (case no. CH/96/28, *M.J.*, decision on admissibility and merits delivered on 3 December 1997, paragraph 32, Decisions on Admissibility and Merits 1996-1997):

“...[A]n occupancy right is a valuable asset giving the holder the right, subject to the conditions prescribed by law, to occupy the property in question indefinitely. ... In the Chamber’s opinion it is an asset which constitutes a “possession” within the meaning of Article 1 [of Protocol No. 1]...”

60. Accordingly, the Chamber considers that the applicant’s rights in respect of the apartment constitute “possessions” for the purposes of Article 1 of Protocol No. 1 to the Convention.

61. The Chamber considers the failure of the authorities of the Federation to allow the applicant to regain possession of the apartment constitutes an “interference” with her right to peaceful enjoyment of that possession. This interference is ongoing as the applicant still does not enjoy possession of the apartment.

62. The Chamber must therefore examine whether this interference can be justified. For this to be the case, it must be in the public interest and subject to conditions provided for by law. This means that the deprivation must have a basis in national law.

63. As the Chamber noted, in the context of its examination of the case under Article 8 of the Convention, Article 216 of the Law on Administrative proceedings states that the competent administrative organ is obliged to issue a conclusion authorising the execution of the decision within 30 days of the date of a request for such enforcement. The coming into force of Article 7 of the Law on Implementation of the Decisions of the Commission for Real Property Claims of Displaced Persons and Refugees on 27 October 1999 further reaffirmed the necessity of a speedy implementation, giving a 30-day time-limit from the submission of a request for the implementation. Accordingly, the failure of the competent administrative organ to decide upon the applicant’s request is contrary to the law. This is in itself sufficient to justify a finding of a violation of the applicant’s right to peaceful enjoyment of her possessions as guaranteed by Article 1 of Protocol No. 1. Accordingly, the rights of the applicant under this provision have been violated.

### **3. Article 6 of the Convention**

64. The application was transmitted to the Federation for observations under Article 6 of the Convention which, insofar as relevant, provides as follows:

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

65. The Chamber, having regard to the other violations of the applicant's rights it has found, does not consider it necessary to examine the case under this provision.

## VII. REMEDIES

66. Under Article XI(1)(b) of the Agreement the Chamber must address the question of what steps shall be taken by the respondent Party to remedy the established breaches of the Agreement. In this connection the Chamber shall consider issuing orders to cease and desist, monetary relief as well as provisional measures. The Chamber is not necessarily bound by the claims of the applicant.

67. With regard to possible compensatory awards, the Chamber first recalls that in accordance with its order for proceedings in respective cases, the applicant was afforded the possibility of claiming compensation within the time-limit fixed by the Chamber. The applicant did not so, but in a further submission dated 20 December 2000, she requested that she be awarded compensation amounting to 4,500 *Konvertibilnih Maraka* ("KM") in respect of rent she had to pay from 1 December 1998 until 1 January 2001 as a sub-tenant. She did not submit any evidence to support this claim.

68. The Observations of the Federation as the respondent Party on this claim for compensation were received on 12 March 2001, within the time-limit set by the Chamber.

69. Regarding the claim for compensation of pecuniary damage the Federation is of the opinion that the claim is not substantiated as the applicant did not provide any documents to support it. It should therefore be dismissed as ill-founded.

70. The respondent Party further expresses the view that the claim for compensation of non pecuniary damage should also be rejected. The reason given is that the claim is incomplete as the applicant has not specified any amount. The Federation submits in addition that it did not prevent the applicant from returning to her apartment and thus cannot to be held responsible for the psychological harm allegedly suffered by the applicant. In this context the Federation argues that one must understand that certain administrative acts take their time and have been necessary in order that the applicant should be able to return into the possession of her apartment, and that alternative accommodation for the temporary occupant must be found first.

71. The Chamber notes that suspension of the implementation of CRPC decisions is not permitted save in certain exceptional circumstances defined by the Law on Implementation of the Decisions of the Commission for Real Property Claims. In the case here at issue such exceptional circumstances have not been established. For that reason, and considering also that the time-limit set by this Law for the implementation of the CRPC decision has been greatly exceeded, the Chamber considers that it should not allow implementation to be further delayed. It will therefore order that the respondent Party take all necessary steps to enforce the CRPC decision without further delay.

72. The Chamber considers it appropriate to award a sum to the applicant in recognition of the sense of injustice she has suffered as a result of her inability to regain possession of her apartment, especially in view of the fact that she has taken all necessary steps to have the CRPC decision enforced.

73. Accordingly the Chamber will order the respondent Party to pay to the applicant the sum of 2000 Convertible Marks (*Konvertibilnih Maraka*, "KM") in recognition of her suffering as a result of her inability to regain possession of her apartment.

74. In accordance with its decision in *Pletilić and others* (case no CH/98/659 et al., decision on admissibility and merits delivered on 10 September 1999, paragraph 238, Decisions August-December 1999), the Chamber considers that the sum of KM 100 is appropriate to compensate for the loss of use of the apartment and any extra cost for each month the applicant has been forced to live in alternative accommodation. The Chamber considers it appropriate that this sum should be payable from the date the time-limit for the competent municipal organ to issue a conclusion on the permission of enforcement of the CRPC decision expired, i.e. 30 days after the applicant lodged her

request. This sum should continue to be paid at the same rate until the end of the month in which the applicant regains possession of her apartment.

75. Under the terms of Rule 64 (2) of the Chamber's Rules of Procedure, a decision of a Panel which is reviewable is not final and binding as long as it remains possible to lodge a request for review, or until a request for review has been decided on if one is lodged. In the circumstances of the present case the Chamber is of the opinion that it would not be reasonable to allow the implementation of the present decision to be thus delayed. Making use of its powers under Article XI (1) (a) of the Agreement, the Chamber will therefore order the respondent Party, as a provisional measure, to carry out the orders addressed to it in the present decision within one month from the date of its delivery at a public hearing. Any interest that may be payable shall be calculated from the date of expiry of this one-month time-limit.

76. Additionally, the Chamber awards 10 % interest as of the date of expiry of the one month period set for the implementation of the present decision, on the sums awarded in paragraphs 73 and 74 or any unpaid portion thereof until the date of settlement in full.

### **VIII. CONCLUSION**

77. For the above reasons, the Chamber decides,

1. unanimously, to declare the application admissible against the Federation of Bosnia and Herzegovina;
2. unanimously, to declare the application inadmissible against Bosnia and Herzegovina;
3. unanimously, that the non-enforcement of the decision of the CRPC constitutes a violation of the right of the applicant to respect for her home within the meaning of Article 8 of the Convention, the Federation thereby being in breach of Article 1 of the Agreement;
4. unanimously, that the non-enforcement of the decision of the CRPC constitutes a violation of the right of the applicant to peaceful enjoyment of her possessions within the meaning of Article 1 of Protocol No. 1 to the Convention, the Federation thereby being in breach of Article 1 of the Agreement;
5. unanimously, that it is not necessary to rule on the complaint under Article 6 of the Convention;
6. unanimously, to order the Federation, to enable the applicant to regain possession of the apartment Kolodvorska 13 in Sarajevo, Municipality of Novo Sarajevo, without further delay.
7. unanimously, to order the Federation to pay to the applicant, the sum of 2000 KM in respect of non-pecuniary damage;
8. unanimously, to order the Federation to pay to the applicant the sum of 2300 KM as compensation for the loss of use of the apartment and for any extra costs during the time the applicant has been forced to live in alternative accommodation;
9. unanimously, to order the respondent Party, as a provisional measure, to carry out the orders set out in paragraphs 6, 7 and 8 of this Conclusion no later than 7 May 2001;
10. unanimously, to order the Federation to pay to the applicant KM 100 for each further month that she continues to be forced to live in alternative accommodation as from 6 April 2001 until the end of the month on which she is reinstated;
11. unanimously, to order the Federation to pay simple interest at the rate of 10 (ten) per cent per annum over the above sums or any unpaid portion thereof from the date of expiry of the above one-month periods until the date of settlement in full;

12. unanimously, to dismiss the remainder of the applicant's claim for remedies; and
13. unanimously, to order the Federation to report to it within one month of the date of this decision becoming final and binding within the meaning of Rule 66 of the Chamber's Rules of Procedure on the steps taken by it to comply with the above orders.

(signed)  
Peter KEMPEES  
Registrar of the Chamber

(signed)  
Michèle PICARD  
President of the First Panel