DECISION ON ADMISSIBILITY AND MERITS

(delivered on 11 May 2001)

Case no. CH/00/5408

Mina SALIHAGIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 8 May 2001 with the following members present:

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

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

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

Adopts the following decision pursuant to 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 case concerns the applicant's attempts to retain possession of an apartment situated in Tešanj over which she concluded a purchasing contract that was registered in the public land books. The authorities of the Federation have sought to evict the applicant from the apartment which she owns.

2. The case primarily raises issues 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 21 July 2000 and registered on the same day. In her application the applicant requested the Chamber to issue an order for a provisional measure to prevent the enforcement of a decision to evict her from the apartment in question.

4. On 25 July 2000 the acting President of the Second Panel issued an order requesting the respondent Party, as a provisional measure, to prevent the taking of any steps to evict the applicant from the apartment. On the same day the application was transmitted to the respondent Party for its observations on the admissibility and merits of the application.

5. The respondent Party submitted its observations on 26 July 2000, 25 August 2000, 13 November 2000 and 5 April 2001.

6. The applicant's further observations were received on 4 October 2000 and 3 April 2001, and were transmitted thereafter to the respondent Party.

7. On 6 April 2001 the Chamber considered the admissibility and merits of the application and on 8 May 2001 adopted the present decision.

III. FACTS

8. The applicant is a physician living in Tešanj, where she works in a healthcare centre. On 1 October 1986 she obtained the occupancy right over an apartment (hereinafter "the first apartment") in Tešanj (Krndija TKD 2/9), which was allocated to her by her employer.

9. On an unspecified date, the applicant moved from the first apartment into another apartment (hereinafter "the second apartment") which is also located in Tešanj (Krndija 3/2). The structure and surface of both apartments is identical. The first apartment is located on the fourth floor and the second apartment on ground floor. The reason that the applicant chose to exchange apartments is because her husband, who has health problems, is not comfortable climbing stairs.

10. During 1993 the applicant submitted a request to the Healthcare Centre, the owner of both apartments and the employer of the applicant, to transfer her occupancy right from the first apartment to the second apartment which had been declared abandoned. On 2 February 1998 the applicant's employer allocated the second apartment to her and, on 3 February 1998, the Municipal Department for Urban Planning and Housing Affairs of the Municipality Tešanj confirmed the applicant's right to use it.

11. On 16 February 2000 the Municipal Department for Urban Planning and Housing Affairs of the Municipality Tešanj renewed the applicant's right to use the second apartment. The purpose of that decision was to reconfirm the applicant's right, which would otherwise have been cancelled by new housing laws.

12. On the next day, 17 February 2000, the applicant concluded a purchase contract with her employer over the second apartment. The contract was approved by the Public Attorney, and on 22

February 2000 the Municipal Court in Tešanj proceeded with the registration of the applicant's ownership of the second apartment in the land books.

13. On 4 October 1999, that is, before the events reflected in paragraphs 11 and 12 above, the applicant had already lodged a request to repossess her first apartment. On 20 June 2000, the Municipal Department for Urban Planning and Housing Affairs of the Municipality Tešanj issued a procedural decision allowing the applicant's re-instatement into that apartment. The temporary user vacated it on 18 July 2000 due to this decision. Since then the first apartment has been vacant.

14. On the same day, 20 June 2000, the Municipal Department also issued a decision annulling its previous decision of 16 February 2000 and terminated the applicant's right to temporary use of the second apartment. Although the pre-war occupant of the second apartment had requested re-instatement, he had lodged his claim out of time and was therefore not re-instated. The decision of 20 June 2000 reasoned that the applicant was a multiple user for the purpose of the Law on the Cessation of the Application of the Law on Abandoned Apartments because she had another apartment at her disposal, where she had already lived before 1 April 1992. The applicant lodged an appeal against this decision on 30 June 2000.

15. On 10 July 2000 the Municipal Department issued a decision allowing the eviction of the applicant from the second apartment. The eviction was scheduled for 25 July 2000 at 11 a.m. The Chamber then issued an order for provisional measure prohibiting the eviction and the applicant, in fact, has not been evicted.

16. On 26 March 2001, the Ministry for Urban Planning, Transport, Communication and Environment of Zenica-Doboj Canton rejected the applicant's appeal against the annulment of the Municipal Department of Tešanj decision of 20 June 2000 on the use of the second apartment.

IV. RELEVANT LEGAL PROVISIONS

A. The Law on the Legal Relations of Property

17. Article 38 of the Law on the Legal Relations of Property (Official Gazette of the Federation of Bosnia and Herzegovina – hereinafter "OG FBiH" – no. 6/98) states that the right to ownership of real estate shall be acquired on the basis of a legal arrangement and by registration of the right into the public land books, provided that the right holder is *bona fide*. The *bona fides* of the person seeking registration shall be presumed in the absence of proof to the contrary.

B. The Law on Land Books

18. The Law on Land Books of 1930 sets out the legal rules applicable with regard to property registration. The Law of Land Books has been interpreted to encompass the principle that everything registered in the land books is presumed to be correct and complete. Under the principle of legality, changes or corrections of registration are permitted based upon the submission of appropriate, legally valid documentation. Appropriate documentation may include both public and private sources, such as decisions issued in civil, extrajudiciary or administrative proceedings and private contracts.

19. According to section 68 of the Law on Land Books, a person who claims to be entitled to land book registration as the owner of real estate is permitted to insert a note in the land book that the ownership of the particular property is in dispute.

C. The Law on Sale of Apartments with an Occupancy Right

20. According to Article 8 of the Law on Sale of Apartments with an Occupancy Rights (OG FBiH nos. 27/97, 11/98, 22/99, 27/99 and 7/00), an occupancy right holder shall be considered to be a) the person to whom the apartment was allocated for use by the owner and who signed a contract on use of the apartment, or b) the person to whom the apartment was allocated by a final and

binding judicial decision and for whom this right was recognised by the act of a competent body in accordance with the Law on Housing Relations.

21. Article 27 of the Law on Sale of Apartments with Occupancy Right provides that the ownership right to an apartment shall be acquired upon registration of that right in the land books.

D. The Law on the Cessation of the Application of the Law on Abandoned Apartments

22. The Law on the Cessation of the Application of the Law on Abandoned Apartments ("the new Law") entered into force on 4 April 1998 and has been amended on several occasions thereafter (OG FBiH nos. 11/98, 38/98, 12/99, 18/99, 27/99 and 43/99). The new Law repealed the former Law on Abandoned Apartments.

23. According to the new Law, the competent authorities may make no further decisions declaring apartments abandoned (Article 1). All administrative, judicial and other decisions terminating occupancy rights based on regulations issued under the old law are invalid. Nevertheless, decisions establishing a right of temporary occupancy shall remain effective until revoked in accordance with the new Law. According to Article 2, paragraph 3 of the new Law all occupancy rights or contracts on use made between 1 April 1992 and 7 February 1998 were cancelled. A person occupying an apartment on the basis of a cancelled occupancy right or decision on temporary occupancy was to be considered a temporary user (Article 2). Also contracts and decisions made after 7 February 1998 on the use of apartments declared abandoned are invalid. Any person using an apartment on the basis of such a contract or decision is considered to be occupying the apartment without any legal basis (Article 16).

24. Pursuant to Article 2, paragraph 4 of the new Law, a temporary user who does not have other accommodation available has the right to a new contract on use for the apartment, provided the occupancy right of the former occupant is cancelled under Article 5 of the new Law or the claim of the former occupant to repossess the apartment is rejected by the competent authority in accordance with the new Law.

25. Article 5 of the new Law sets a deadline for the submission of claims by previous occupancy right holders for repossession of apartments declared abandoned. According to paragraph 1 of Article 5, the claim must be filed within fifteen months from the date of the entry into force of the new Law, i.e. by 4 July 1999. The only exception to this deadline is for cases meeting the conditions of paragraph 2 where the deadline shall be 4 October 1999.

26. The occupancy right holder of an apartment declared abandoned has a right to return to the apartment in accordance with Annex 7 to the General Framework Agreement (Article 3, paragraphs 1 and 2). A temporary user whose housing needs are otherwise met shall be obliged to move out of the apartment that he/she has been using within 15 days of the date of delivery (before 1 July 1999, within 90 days of the date of issuance) of the decision on repossession of the occupancy right holder (Article 3, paragraph 4). A temporary user with the right to alternative accommodation is given a longer period of time (at least 90 days) within which to vacate the apartment (Article 3, paragraph 5). In exceptional circumstances, this deadline may be extended up to one year if the municipality or the allocation right holder responsible for providing alternative accommodation submits detailed documentation regarding its efforts to secure such accommodation to the cantonal administrative authority for housing affairs and that authority finds that there is a documented absence of available housing, as agreed upon with the Office of the High Representative.

27. Upon receipt of a claim for repossession, the competent authority, normally the municipal administrative authority for housing affairs, has 30 days to issue a decision (Article 6) containing the following parts (Article 7, paragraph 1):

1. a confirmation that the claimant is the occupancy right holder;
2. a permit for the occupancy right holder to repossess the apartment, if there was a temporary user in the apartment or if it was the vacant or occupied without a legal basis;
3. a termination of the right of temporary use, if there was a temporary user in the apartment;

4. a time-limit during which a temporary user or another person occupying the apartment should vacate it; and
5. a finding as to whether the temporary user is entitled to accommodation in accordance with the Law on Housing Relations.

28. Following a decision on repossession, the occupancy right holder is to be re-instated into his apartment not earlier than 90 days, unless a shorter deadline applies, and no later than one year from the submission of the repossession claim (Article 7, paragraphs 2 and 3). Appeals against such a decision may be lodged by the occupancy right holder, the person occupying the apartment, or the allocation right holder and should be submitted to the cantonal ministry for housing affairs within 15 days from the date of receipt of the decision. However, appeals have no suspensive effect (Article 8).

29. If the person occupying the apartment refuses to comply with an order to vacate it, the competent administrative body shall forcibly evict him or her at the request of the occupancy right holder (Article 11). If the occupancy right holder, without good cause, fails to reoccupy the apartment within certain time-limits, his or her occupancy right may be terminated in accordance with the procedures established under the new Law and its amendments (Article 12).

30. Article 18 e of the new Law provides that while processing the request for temporary use of an apartment, the competent organ shall determine where the temporary user lived on 30 April 1991, in what capacity he/she occupied that apartment on 30 April 1991, and whether it is possible to live in that apartment.

E. The Law on Administrative Proceedings

31. According to Article 223 paragraph 3 of the Law on Administrative Proceedings (OG FBiH nos. 2/98 and 48/99) the competent cantonal body shall decide on an appeal against decisions made by a municipal head or municipal and city departments for administration, if cantonal laws do not declare other bodies to be competent.

F. The Law on Administrative Disputes

32. 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.

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

V. COMPLAINTS

34. The applicant alleges a violation of her right to property, her right to respect for her home and her right to a fair hearing. She claims that her right to use the second apartment could not be terminated because she bought this apartment and is registered as the owner of it in the land books of the municipal court. She claims that the matter could only be determined in court proceedings. Therefore no eviction should be carried out.

VI. SUBMISSIONS OF THE PARTIES

A. The respondent Party

35. In its observations, received on 25 August 2000, the Federation objects to the admissibility of the application on the ground that the domestic remedies provided by the Law on Administrative Proceedings and by the Law on Administrative Disputes have not been exhausted.

36. As to the merits of the complaint, the respondent Party contends that the proceedings and the renewal of the contract are not in accordance with the new Law. According to its observations the applicant did not have the right to renew the contract of February 1998 under which the Healthcare Centre permitted the exchange of the apartments in Tešanj. The procedural decision of 16 February 2000, which renewed the applicant's right to use the apartment, was issued contrary to the provisions of Article 18 e of the new Law. Consequently, the administrative authority acted correctly when it set aside this procedural decision by terminating the right of the applicant to temporary use of the second apartment. Furthermore, Article 18 d of that law provides that if an occupancy right was terminated for a previous occupancy right holder, the temporary occupant does not have the right to renew his or her contract. Instead, the apartment shall be placed under the administration of the municipal organ.

37. Further, the respondent Party states in its observations that as in the present case the occupancy right of the previous occupancy right holder was terminated because he did not, within the legal time-limit, submit a request for reinstatement, the second apartment had to be given back for the disposal of the municipality. Since the applicant had no right to renew the contract pursuant of Article 18 e of the law, she had to vacate the second apartment and to move back into the vacant apartment she was living in on 30 April 1991.

38. The Federation announces in its final observations that it will initiate proceedings before the Municipal Court in Tešanj to annul the applicant's land book registration.

B. The applicant

39. The applicant maintains her complaints and claims that the Municipality of Tešanj issued two entirely conflicting decisions within a very short period of time and thereby created a situation of legal uncertainty. The applicant states that she did not receive any reply until April 2001 regarding the appeal she filed with the Ministry of Urbanism. Therefore the remedies listed by the Agent cannot be seen as effective. If the Chamber had not intervened in the case she would already have been evicted from the second apartment which she purchased. She further argues that Article 18 e of the new Law is applicable only in cases concerning refugees who seek to return to their homes. As the previous occupant did not apply to return, she exchanged the apartments under the Law on Housing Relations. Furthermore the law invoked by the respondent Party was not in force at that time. Finally she asks the Chamber to issue a decision allowing her to stay in the second apartment she purchased and leaving the second apartment, which she left after the exchange, at the disposal of the Municipality.

VII. OPINION OF THE CHAMBER

A. Admissibility

1. Admissibility as regards Article 1 of Protocol No. 1 and Article 8 of the Convention

40. 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.

41. 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, with further references, Decisions on Admissibility and Merits 1996-1997) 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 Chamber 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 Chamber 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 applicant.

42. In the present case the Federation objects to the admissibility of the application on the grounds that the domestic remedies provided by the Law on Administrative Proceedings and by the Law on Administrative Disputes have not been exhausted. These laws afford remedies which might, in principle, qualify as effective within the meaning of Article VIII(2)(a) of the Agreement. In so far as the applicant is seeking to prevent her eviction from the apartment registered in her name and to have her ownership rights over it recognised, the Chamber must, however, ascertain whether, in the case now before it, these remedies can also be considered effective in practice.

43. The Chamber notes that the applicant filed the application for an order for provisional measures to the Chamber to prevent her from being evicted from the second apartment. The respondent Party has failed to show to the Chamber's satisfaction that the applicant had available to her a prompt domestic remedy to prevent the eviction. To the contrary, the Federation still assumes that the threatened eviction was in accordance with the law and should have been enforced.

44. The Chamber further notes that the applicant made attempts to remedy her situation and that they have remained unsuccessful until the present date. On 26 March 2001 the Ministry for Urban Planning, Transport, Communication and Environment of Zenica-Doboj Canton rejected the applicant's appeal against the annulment of the decision by which the contract on the use of the second apartment was renewed by the Municipal Department of Tešanj. Use of the remedies provided by the Law on Administrative Proceedings and by the Law on Administrative Disputes therefore could not have remedied the applicant's complaints in so far as they relate to the authorities' actions to evict her from the apartment she claims to be the owner of. The decision to evict her from her apartment would have been enforced, had the Chamber not given its order for provisional measures to prevent it. Therefore the Chamber considers all available and effective remedies exhausted.

2. Admissibility as regards Article 6 of the Convention

45. The applicant claims that her right to a fair hearing before the administrative authorities in Tešanj and Zenica as guaranteed under Article 6 of the Convention has been violated. However, she has not supplied any evidence to indicate that she sought to make use of any remedy to which that Article would be applicable.

46. Accordingly, the application is inadmissible as manifestly ill-founded insofar as it concerns the applicant's alleged violation of Article 6 of the Convention.

3. Conclusion on Admissibility

47. The Chamber concludes that the application is admissible insofar as it alleges violations of the applicant's right to respect for her home and her right to peaceful enjoyment of her possessions, as guaranteed by Article 8 of the European Convention and by Article 1 of Protocol No. 1 to the European Convention and inadmissible for the remainder.

B. Merits

48. Under Article XI of the Agreement, the Chamber must next address 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 1 of Protocol No. 1

49. The applicant complains that her right to peaceful enjoyment of her possessions has been violated as a result of the threatened eviction and the termination of use of the second apartment. Article 1 of Protocol No. 1 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."

50. According to Article 8 of the Law on Sale of Apartments with Occupancy Right, an occupancy right holder shall be considered to be the person to whom the apartment was allocated for use by the owner and who signed a contract on use of the apartment and for whom this right was recognised by the act of a competent body. Accordingly, after the applicant's employer and the owner of the apartments permitted the exchange of apartments and the Municipal Service for Urban Planning and Housing Affairs of the Municipality Tešanj confirmed the applicant's contract to use the second apartment, the applicant became the occupancy right holder of this apartment pursuant to Article 8 of this law.

51. On 17 February 2000 the applicant concluded a purchase contract with her employer, who was at that time the owner of the second apartment. The contract was approved by the Public Attorney and on 22 February 2000 the Municipal Court in Tešanj proceeded with the registration of the applicant's ownership over the apartment in the land books.

52. Under the law applicable to the transaction, *i.e.* Article 38 of the Law on the Legal Relations of Property and Article 27 of the Law on Sale of Apartments with Occupancy Right, the ownership right was acquired by the applicant on the basis of the purchase contract with the Healthcare Centre as the previous owner of the apartment and by registration in the public land books. No evidence has been submitted that either the applicant or the Healthcare Centre was not *bona fide* with regard to the transaction.

53. Therefore, without prejudice to the possibility that the applicant's title may later be affected by a lawful decision of a competent court, the Chamber considers for the purposes of the case before it that the applicant from the time of registration is the owner of the second apartment in accordance with the domestic law. As such, the apartment concerned constitutes her "possession" within the meaning of Article 1 of Protocol No. 1 to the Convention.

54. The Chamber considers that the Federation authorities' attempted eviction of the applicant from her apartment constituted an "interference" with her right to peaceful enjoyment of that possession.

55. 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 and that the law concerned must be both accessible and sufficiently precise.

56. With regard to the Law on the Land Books of 1930, certain legal rules of the land registration rights must be applied. Everything registered in the land books is presumed to be correct and complete. Under the principle of legality, a change or a correction of the registration may be permitted upon production of a document establishing a valid legal basis. The documents on which the registration is requested may be public, such as decisions issued in civil, extrajudiciary or administrative proceedings, or private, such as contracts.

57. It is a fact that the applicant is the current registered owner of the apartment. Whether or not the purchase of the second apartment was in accordance with the law, unless and until the land book is corrected, the applicant is entitled as a matter of Federation law to exercise the registered ownership rights.

58. However, the Law on Land Books of 1930 provides sufficient means to protect a person allegedly entitled to registration as the owner against the actions of a registered person. The alleged

owner is entitled to insert a note in the land book to the effect that the ownership of the registered person is in dispute. As a result, the *bona fide* acquisition of the real estate by a third person is prevented.

59. In addition, no emergency situation can be found or has been asserted by the Federation that could possibly justify the eviction of the registered owner. The Chamber notes that it is curious that the respondent Party initiated proceedings to evict the applicant from the apartment of which she is the registered owner when there is no other person whatsoever seeking her eviction or claiming ownership rights to the second apartment. No provision in the domestic law can be regarded as a basis for the eviction. As the applicant has vacated the other, identical apartment a long time ago and this other apartment has been vacant since 18 July 2000, she cannot any longer be considered as a multiple user.

60. The attempted eviction of the applicant is therefore contrary to the law. This is in itself sufficient to justify a finding of a violation of her 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.

2. Article 8 of the Convention

61. 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 expect 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."

62. The Chamber notes that the applicant lives in the second apartment and uses it as her home. It is therefore clear that the applicant's apartment is to be considered her home for the purposes of Article 8 of the Convention.

63. In the present case the Chamber considers that the decision to evict the applicant from the second apartment constitutes an interference with her right to respect for her home.

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

65. The Chamber has already found that the actions of the authorities were not subject to conditions provided for by law. It follows that the interference with the applicant's right to respect for her home, which was directly based on these actions, was not "in accordance with the law" either. Accordingly, it is not necessary for the Chamber to examine whether the interference pursued a "legitimate aim" or was "necessary in a democratic society".

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

VIII. REMEDIES

67. 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 regard the Chamber shall, *inter alia*, consider issuing orders to cease and desist and monetary relief as well as provisional measures.

68. The Chamber considers it appropriate to order the respondent Party to take all necessary steps to secure the applicant's ownership of the second apartment and to prevent her eviction as long as the apartment is registered as her property.

69. The applicant claims KM 3,000 for non-pecuniary damage based on her suffering due to the fear that she could be evicted.

70. 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 the proceedings against her, especially in view of the fact that she sustained fear and suffering due to her threatened eviction. Accordingly, the Chamber will order the respondent Party to pay to the applicant not later than 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 the sum of 1000 Convertible Marks (one thousand Konvertibilnih Maraka, "KM") for non-pecuniary damage.

71. 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 sum awarded in paragraph 70.

IX. CONCLUSION

72. For the above reasons, the Chamber decides,

1. unanimously, to declare inadmissible the applicant's complaint under Article 6 of the Convention;

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

3. unanimously, that the failure of the Federation, despite the entry in the land book of the applicant's title, to respect the applicant's ownership of the apartment located in Tešanj (Krndija 3/2) constitutes a violation of her right 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;

4. unanimously, that the attempted eviction of the applicant from the apartment in Tešanj (Krndija 3/2) constitutes a violation of her right to respect her home within the meaning of Article 8 of the Convention, the Federation thereby being in breach of Article 1 of the Agreement;

5. by 6 votes to 1, to order the respondent Party to take all necessary steps to secure the applicant's ownership of the apartment located in Tešanj (Krndija 3/2) and to prevent her eviction as long as the applicant is registered in the land book as the owner;

6. unanimously, to order the Federation to pay to the applicant, within one month from the date of this decision becoming final and binding in accordance with Rule 66 of the Chamber's Rules of Procedures, the sum of KM 1000 (one thousand Convertible Marks) in respect of non-pecuniary damage;

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

8. unanimously, to order the Federation to report to it within one month of the date of this decision becoming final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure on the steps taken by it to comply with the above orders.

(signed)
Peter KEMPEES
Registrar of the Chamber

(signed)
Giovanni GRASSO
President of the Second Panel

Annex Partly dissenting opinion of Mr. Manfred Nowak

ANNEX

In accordance with Rule 61 of the Chamber's Rules of Procedure, this Annex contains the partly dissenting opinion of Mr. Manfred Nowak.

PARTLY DISSENTING OPINION OF MR. MANFRED NOWAK

I voted against one conclusion in which the Chamber ordered the respondent Party to secure the applicant's ownership of her apartment and to prevent her eviction "as long as the applicant is registered in the land books as the owner" (cf. paragraphs 68 and 72 (5)). This limitation of the Chamber's order is related to the Federation's announcement that it will initiate proceedings before the Municipal Court in Tešanj to annul the applicant's land book registration on the ground that the applicant allegedly is a "multiple user" (paragraph 38 in conjunction with paragraph 14).

I would consider such legal action by the Federation as highly arbitrary and violating her right to property for the following reasons:

On 4 October 1999, the applicant lodged a request for her re-instatement into possession of the first (vacant) apartment, but until 16 February 2000 she did not receive any decision concerning this matter. As the applicant during that time had no other accommodation available and the previous occupancy right holder of the second apartment did not submit a request of repossession, the Municipality renewed the contract on use of this apartment in accordance with Article 2 paragraph 4 of the Law on Cessation of the Application of the Law on Abandoned Apartments.

The renewal of the contract did not violate rights of the previous occupancy right holder of the second apartment because he did not submit a request for reinstatement within the legal time limit. Pursuant to Article 5 of the Law on Cessation, the last deadline for the submission of claims for repossession of apartments which had been declared abandoned for previous occupancy right holders was 4 October 1999.

On 20 June 2000 the Service for Urban Planning and Housing Affairs of the Municipality Tešanj issued a procedural decision allowing for the applicant's reinstatement into the first apartment. With this decision rendered, the applicant began to be treated as a so-called multiple user.

On the same day the Municipal Service also issued a decision annulling its previous decision of 16 February 2000 and terminated the applicant's right of temporary use of the second apartment. The decision reasoned that the applicant was a multiple user for the purpose of Article 2, paragraph 4 of the Law on the Cessation of the Application of the Law on Abandoned Apartments. Pursuant to that law, the municipality reasoned that the applicant had another apartment (the first apartment) at her disposal, where she had already lived before 1 April 1991. The renewal of the contract of the second apartment was therefore regarded by the municipality as contrary to the law and had to be annulled.

I cannot agree with the argument of the Federation that the applicant could be regarded as a multiple user. The agent of the respondent Party stated in her observations on 25 August 2000 that the restoration of the contract on use of the second apartment was not in accordance with Article 18 e of the Law on Cessation. This provision provides that in processing the request for temporary use of an apartment, the competent organ shall determine where the temporary user lived on 30 April 1991; in what capacity he/she occupied that apartment on 30 April 1991; and whether it is possible to live in that apartment. After the renewal of the applicant's right of use of the second apartment, the purchase and the registration of this apartment and due to the fact that the applicant did not take possession of the first apartment, which is still uninhabited and empty, she did not pursue any claims to the first apartment. In the applicant's observations, submitted on 4 October 2000, she stated that she requested the Chamber to issue a decision allowing her to stay in the flat she purchased and allocating the other apartment to the disposal of the Municipality. In addition she asked that she not be regarded as a multiple user.

Furthermore, I wish to emphasise the fact that the respondent Party did not try to carry out the eviction on behalf of the previous occupancy right holder who lost his occupancy right over that apartment, nor for any other appropriate reason. The stated intention of the Federation to initiate court proceedings to annul the applicant's land book registration does, therefore, not pursue any legitimate aim that could possibly justify any further interference with the applicant's right to enjoy her property. It would certainly have been more appropriate and proportionate for the Federation to take possession of the vacant apartment, the structure and surface of which is identical to the one owned by the applicant. For these reasons, I cannot agree that the Chamber, at least implicitly, seems to encourage the Federation to pursue its legal actions aimed at depriving the applicant of her registered ownership rights.

(signed)
Manfred Nowak