



**DECISION ON ADMISSIBILITY AND MERITS**  
**(delivered on 7 September 2001)**

**Case no. CH/97/114**

**Fatima RAMIĆ**

**against**

**THE FEDERATION OF BOSNIA AND HERZEGOVINA**

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 4 September 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. Ulrich GARMS, 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, Fatima Ramić, has been the occupancy right holder of an apartment at Nerkeza Smajlagića No. 17/XII (formerly Španskih boraca), Sarajevo, which she temporarily left in the late 1980s because her son needed treatment for his asthma in Croatia. The applicant's daughter continued to stay in the apartment and the applicant visited the apartment from time to time. On 20 May 1992 the applicant's daughter left the apartment due to the hostilities. The case concerns the applicant's attempts to regain possession of her apartment. Ms. Ramić has tried to repossess her apartment not only through competent local administrative bodies, but she has also lodged an application with the Commission for Real Property Claims of Displaced Persons and Refugees (hereinafter "CRPC"). In November 1998 CRPC issued a decision confirming the applicant's status as the occupancy right holder of the apartment at issue and finding that the applicant is entitled to regain possession of the apartment. In January 2000, the local administrative body issued a decision stating that the applicant left the apartment in 1989 and that the conditions in the Law on Amendments to the Law on Cessation of the Application of the Law on Abandoned Apartments (Official Gazette of the Federation of Bosnia and Herzegovina, No. 27/99, hereinafter "the new law") therefore had not been met (see paragraph 39 below).
2. The case 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 23 December 1997 and registered on the same day.
4. On 9 February 1999 the Chamber decided to transmit the application to the respondent Party for its observations on the admissibility and merits thereof. The respondent Party submitted its observations on 16 April 1999.
5. The applicants' further observations were submitted on 8 June 1999 and transmitted to the respondent Party. The respondent Party did not file any additional written observations.
6. On 4 October 1999 the Chamber received a copy of a CRPC decision from the applicant confirming that the applicant was the holder of the occupancy right over the apartment and that she had the right to repossess it.
7. On 14 March 2000 the Chamber received a copy of the procedural decision of the Administration of Housing Affairs of Sarajevo Canton of 19 January 2000 from the applicant. The decision rejected a request of the applicant of 27 April 1998 for repossession of her apartment.
8. On 5 June 2000 and 18 September 2000 the Chamber received letters from the applicant in which she informed the Chamber that she still had not regained possession of her apartment. On 30 November 2000 the Chamber transmitted both the letters to the respondent Party for its information.
9. On 30 November 2000 the Chamber sent a letter to the applicant asking her if she had submitted a request for enforcement of the CRPC decision and what steps she had taken against the decision of Administration for Housing Affairs of Sarajevo Canton dated 19 January 2000.
10. On 14 December 2000 the applicant informed the Chamber that she had submitted a request for enforcement of the CRPC decision on 16 October 2000. A copy of the request for enforcement was included.
11. On 22 February 2001 the Chamber sent a letter to the applicant asking her about the proceeding for the enforcement of the CRPC decision and whether she had regained possession over her apartment. Further the Chamber invited the applicant to specify in detail her claims for compensation or other relief.

12. On 6 March 2001 the Chamber received the applicant's response including her claims for compensation. The applicant informed the Chamber that her situation was unchanged.
13. On 8 June 2001 the applicant submitted a copy of a conclusion on permission of enforcement of the CRPC decision issued by Administration for Housing Affairs of Sarajevo Canton on 6 April 2001.
14. On 18 June 2001 the Chamber transmitted the documents and letters including the compensation claim, which it had received on 14 March 2000, 14 December 2000, 6 March 2001 and 8 June 2001 to the respondent Party for information and possible comments. No comments were received.
15. On 30 July 2001 the applicant informed the Chamber that she still had not been reinstated into her apartment.
16. On 2 and 3 July and 3 September 2001 the Chamber considered the admissibility and merits of the application. On 4 September 2001 the Chamber adopted the present decision.

### **III. FACTS**

#### **A. Domestic Proceedings.**

17. As of 27 July 1980, the applicant has been the occupancy right holder of an apartment in Nerkeza Smajlagića No. 17/XII (formerly Španskih boraca), Sarajevo. The applicant temporarily left the apartment in the late 1980s because her son needed treatment for his asthma in Croatia. The applicant's daughter continued to live in the apartment and the applicant visited the apartment from time to time. On 20 May 1992 the applicant's daughter left the apartment due to the hostilities.
18. On 18 April 1996 the City Secretariat for Housing Affairs in Sarajevo (the competent municipal organ, hereinafter the "Secretariat") declared the applicant's apartment permanently abandoned. On 10 September 1996 the allocation right holder (the Tobacco Company Sarajevo, hereinafter "the Company") allocated the apartment to its employee, Mr. H.O.
19. The applicant returned to Sarajevo in early 1997 and on 9 April 1997 she submitted a request to the company for her reinstatement into the apartment. By a letter of 2 May 1997 the Company answered the applicant that the request was ill-founded since the apartment had been permanently abandoned by a decision of the Secretariat.
20. By a letter of 12 May 1997 the applicant objected to the Company's letter by stating the reasons for her leaving the apartment, i.e. that she temporarily left the apartment because her son was very ill. On 4 June 1997 the Company repeated that her request for reinstatement was ill-founded.
21. On various dates in 1997 the applicant addressed herself to several Government institutions of the Federation of Bosnia and Herzegovina and institutions of Sarajevo Canton complaining about her inability to repossess her apartment.
22. On 27 April 1998 the applicant submitted a request, based on the Law on the Cessation of the Application of the Law on Abandoned Apartments (hereinafter "the new Law" –see paragraphs 36-45 below), to the Administration of Housing Affairs of Sarajevo Canton department Novi Grad (hereinafter "the Administration"), asking it to issue a decision confirming her occupancy right.
23. On 10 July 1998 the Administration issued a decision stating that the applicant, "holder of the occupancy right, is entitled to submit the request for reinstatement of the apartment". Further it is stated that upon the expiration of a 30 days time-limit, the case was to be delivered to the Cantonal organ in order to be decided upon. However, the Cantonal organ has never issued a decision.

24. On 7 December 1999 the Administration held a hearing.

25. On 19 January 2000 the Administration issued a new decision rejecting the applicant's request for repossession of the apartment of 27 April 1998. The Administration stated that the applicant left the apartment on 10 August 1989 and that the conditions of the new law had therefore not been met (see paragraph 39 below).

26. On 24 March 2000 the applicant filed an appeal against the decision of 19 January 2000 to the Ministry for Housing Affairs of Canton Sarajevo (hereinafter "the Ministry"). On 14 June 2000 the Ministry issued a decision refusing the applicant's appeal against the Administration's decision of 19 January 2000. The decision was not delivered to the applicant, and on 3 July 2000 the applicant submitted a "warning before suit" to the Ministry for its failure to issue a decision.

27. On 9 August 2000 the applicant submitted a request to the Administration for the issuance of a certificate regarding the condition of her apartment in order to get an extension of her permission to stay in the temporary accommodation in the Collective Center. The applicant received the requested certificate on 13 September 2000. It is stated that she was the occupancy right holder of the apartment and that another person was living there at that moment.

#### **B. Proceedings relating to the CRPC decision.**

28. In addition to her proceedings before the competent domestic organs, the applicant also filed a claim with CRPC. On 12 November 1998, CRPC issued a decision, no 201-2485-1/1, confirming the applicant's status as the occupancy right holder of the apartment in question. CRPC found that the applicant was entitled to regain possession of the apartment in accordance with Article 1 of Annex 7. It further put out of force all acts of judicial or administrative organs issued after 30 April 1991 terminating or limiting the occupancy right of the applicant to the apartment in question.

29. On 16 October 2000, the applicant filed a request for the execution of the CRPC decision to the Administration.

30. On 6 April 2001 the Administration issued a conclusion authorising the enforcement of the CRPC decision establishing that the applicant was allowed to regain possession of her apartment and that the current occupant had to vacate the apartment within 15 days. However, from the information available to the Chamber it appears that the applicant has still not been reinstated into her apartment.

### **IV. RELEVANT LEGAL PROVISIONS**

#### **A. The 1992 Law on Abandoned Apartments.**

31. The Law on Abandoned Apartments ("the old Law"), originally issued on 15 June 1992 as a decree with force of law, was adopted as law on 1 June 1994 and amended on various occasions (Official Gazette of the Republic of Bosnia and Herzegovina, Nos. 6/92, 8/92, 16/92, 13/94, 36/94, 9/95 and 33/95). The old Law governed the re-allocation of occupancy rights over socially-owned apartments which had been abandoned. On 4 April 1998, the old Law was repealed by the Law on the Cessation of the Application of the Law on Abandoned Apartments (Official Gazette of the Federation of Bosnia and Herzegovina, No. 11/98; hereinafter the "new Law"), which entered into force on that day.

32. Under Article 1 of the old Law an occupancy right was suspended if the holder of that right and the members of his or her household abandoned the apartment after 30 April 1991. Article 2 defined an apartment as abandoned if, even temporarily, it was not used by the occupancy right holder or the members of his or her household. Article 3 provided for some exceptions to this definition, including the following:

- a. if the holder of the occupancy right and members of his or her household had resumed using the apartment either within seven days from the issuing of the declaration on

the cessation of the state of war (if the holder of the right had been staying within the territory of the Republic of Bosnia and Herzegovina) or within fifteen days from the issuing of this declaration (if he or she had been staying outside that territory); or

b. if the holder of the occupancy right or members of his or her household had, within the terms of the requisite permission to stay abroad or in another place within the country, left the apartment for the purpose of effecting a private or business journey; had been sent as a representative of a state authority, enterprise, state institution or other organisation or association upon the request of, or with the approval of, a competent state authority; had been sent for medical treatment; or had joined the armed forces of the Republic of Bosnia and Herzegovina.

33. A state organ, a holder of an allocation right, a political organisation, a social organisation, an association of citizens or a housing board could initiate proceedings seeking to have an apartment declared abandoned. The competent municipal housing authority was to decide on a request to this end within 7 days and could also *ex officio* declare an apartment abandoned. Failing a decision within this time limit, the decision was to be made by the Minister for Urban Planning, Construction and Environment (Articles 4-6). Interested parties could challenge a decision by the municipal organ before the same Ministry, but an appeal had no suspensive effect.

34. An apartment declared abandoned could be allocated for temporary use to “an active participant in the fight against the aggressor against the Republic of Bosnia and Herzegovina” or to a person who had lost his or her apartment due to hostile action. Such temporary use could last up to one year after the date of the cessation of the imminent threat of war. A temporary user was obliged under the threat of eviction to vacate the apartment at the end of that period and to place the apartment at the disposal of the organ which allocated it (Articles 7-8).

35. If the holder of the occupancy right failed to resume using the apartment within the applicable time limit laid down in Article 3, read in conjunction with Article 10, he or she was regarded as having abandoned the apartment permanently. The resultant loss of the occupancy right was to be recorded in a decision by the competent authority (Article 10).

#### **B. The 1998 Law on the Cessation of the Application of the Law on Abandoned Apartments.**

36. The old Law was repealed by the Law on the Cessation of the Application of the Law on Abandoned Apartments (“the new Law”) which entered into force on 4 April 1998 and has been amended on several occasions thereafter (Official Gazette of the Federation of Bosnia and Herzegovina nos. 11/98, 38/98, 12/99, 18/99, 27/99 and 43/99).

37. According to the new Law, no further decisions declaring apartments abandoned are to be taken. The old Law and the regulations passed thereunder, as well as other regulations regulating the issue of abandoned apartments passed between 30 April 1991 and the entry into force of this law (i.e. 4 April 1998), which are being applied on the territory of the Federation, shall cease to be applied on the day of the entry into force of this law (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. Until 13 April 1999, all decisions which had created a new occupancy right pursuant to regulations issued under the old Law were also valid unless revoked. However, on that date, the High Representative decided that any occupancy right or contract on use made between 1 April 1992 and 7 February 1998 is cancelled. A person occupying an apartment on the basis of a cancelled occupancy right or decision on temporary occupancy is to be considered as 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.

38. The holder (or a member of his or her household) of an occupancy right in respect of an apartment which has been declared abandoned is referred to in the new Law as “the occupancy right holder” (Article 3(1)). The holder of a newly allocated occupancy right based either on a decision of the holder of the allocation right or on a contract is referred to as “the current occupant” (Article 3(6)).

39. According to Article 3(1) the occupancy right holder of an apartment declared abandoned or a member of his or her household shall have the right to return to it in accordance with Annex 7 of the General Framework Agreement which states that all refugees and displaced persons have the right to freely return to their homes of origin. Article 3(2) of the new Law states that persons who left their apartment between 30 April 1991 and 4 April 1998 shall be considered to be refugees and displaced persons under Annex 7 of the General Framework Agreement.

40. The occupancy right holder shall be entitled to seek his or her reinstatement into the apartment at a certain date which must not be earlier than 90 days and no later than one year from the submission of the claim (Articles 3, 4, and 7). The competent authority shall decide on such a repossession claim within 30 days (Articles 6-7). The decision shall be delivered to the occupancy right holder, the holder of the allocation right, and the current occupant within five days from its issuance. An appeal lies to the Cantonal Ministry for Housing Affairs within 15 days from the date of receipt of the decision. An appeal shall not suspend the execution of the decision (Article 8).

41. If the apartment is occupied without a legal basis or was vacant when the new Law entered into force, the occupancy right holder shall be granted repossession of the apartment without any restriction and any temporary user shall be evicted (Article 3(3)). A person who is temporarily occupying the apartment and whose housing needs are otherwise met shall vacate the apartment within 90 days from the decision pursuant to Article 6 (Article 3(4)).

42. The period within which the apartment must be vacated, in cases where a temporary occupant's housing needs are not otherwise met, shall not be shorter than 90 days from the issuance of the decision pursuant to Article 6 of the new Law. He or she shall be provided with accommodation by the administrative body on the territory of which she/he had her/his latest domicile or residence (Article 3(5)). However, in no event shall a failure of the responsible bodies to meet their obligations under Article 3, delay the attempts of “an occupancy right holder” to reclaim his or her apartment (Article 3(9)). In exceptional circumstances the deadline for vacating an apartment may be extended to up to one year if the municipality or the allocation right holder responsible for providing alternative accommodation provides the cantonal administrative authority with detailed documentation about the efforts to secure alternative accommodation and if the cantonal authority finds that there is documented lack of available housing. In every individual case, the requirements of the Convention and its Protocols must be met, and the occupancy right holder must be notified of the decision extending the deadline, including its reasoning, 30 days before the initial deadline expires (Article 7(3)).

43. According to Article 7, a decision within the meaning of Article 6 shall contain a confirmation that the claimant is the holder of the occupancy right; a decision granting repossession of the apartment to the occupancy right holder if the dwelling is temporarily occupied by someone else, is vacant, or is occupied without legal basis; a decision terminating the right of temporary occupancy if the apartment is in temporary use; a time limit by which a temporary user or another person occupying the apartment shall vacate it; and a decision as to whether the temporary user is entitled to accommodation in accordance with the Law on Housing Relations. Under Article 10 of the Instruction of 30 April 1998 on the Application of Article 4 of the new Law, the authority issuing the decision within the meaning of Article 6 of the new Law shall verify the status of the occupancy right; verify whether the apartment is uninhabitable, vacant, or occupied; and verify the status of any current occupant (illegal, temporary occupant, or person living in the apartment prior to 7 February 1998 on the basis of an occupancy right acquired before that date). Contracts on the use of apartments declared abandoned pursuant to regulations issued under the old Law and decisions on the allocation of such an apartment shall be null and void, if concluded or issued after 7 February 1998 (Article 16).

44. If “a person occupying the apartment” fails to comply voluntarily with a decision ordering him

to vacate the apartment, the competent administrative body shall take enforcement measures at the request of the occupancy right holder (Article 11).

45. Pursuant to Article 14, the occupancy right holder (and any other person affected by a decision issued under Article 7) may “at any time file a claim with [CRPC]”. Moreover, with regards to determining the rights and obligations of the occupancy right holder, a decision of CRPC is “final and binding” and “has the same power as a decision by any competent domestic body issued in accordance with this law.”

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

46. The General Framework Agreement for Peace in Bosnia and Herzegovina (“the General Framework 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 General Framework 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 Commission for Real Property Claims of Displaced Persons and Refugees (CRPC), was established.

47. 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). CRPC shall determine the lawful owner of the property – a concept which CRPC has construed to include an occupancy right holder - according to Article XII(1).

48. According to Article XII(7), decisions of CRPC are final, and any title, deed, mortgage, or other legal instrument created or awarded by CRPC shall be recognised as lawful throughout Bosnia and Herzegovina.

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

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

50. The Law on Implementation of the Decisions of the Commission for Real Property Claims of Displaced Persons and Refugees (OG FBiH 43/99 – hereinafter the “Law on Implementation”), which entered into force on 28 October 1999, regulates the enforcement of decisions of CRPC.

51. The administrative body responsible for property-related legal affairs in the municipality where the property is located shall enforce decisions of CRPC relating to real property owned by citizens (Article 3, paragraph 2). Decisions of 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). CRPC decisions shall be enforced if a request for the enforcement has been filed with 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).

52. 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 an 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, effective 28 October 2000). (Previously, the time limit had been one year.)

53. 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 the following:

1. in the 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 requestor of 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; and
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.

54. 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 11/98, 29/98, 27/99 and 43/99).

55. Article 7, paragraph 6 states that in case a requestor for enforcement has commenced proceedings for enforcement of a decision issued by the responsible administrative organ in relation to the same property or apartment under the new Law, and this person subsequently submits the decision of the CRPC for enforcement, the responsible administrative organ shall join the proceedings for enforcement of both decisions. The date on which the person commenced enforcement proceedings for the first decision shall be considered, for the purposes of this law, the date of submission of the request for enforcement.

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

57. 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 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 or her rights to the appellant since the date referred to in the dispositive of the CRPC decision (Article 12, paragraph 2).

58. 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 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).

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

59. Under Article 216, paragraph 1 of the Law on Administrative Proceedings (OG FBiH nos. 2/98, 48/99), the competent administrative organ must issue a decision to execute an administrative decision within 30 days of 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, as if the request were denied (appeal against "silence of the administration"). In order to commence execution of an administrative decision, Article 275, paragraph 1 states that the competent administrative organ shall adopt the conclusion on the permission of the execution of a decision. This conclusion shall state that the decision to be executed has become effective and shall outline 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 30 days after the decision has become effective.

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

60. Article 1 of the Law on Administrative Disputes (OG FBiH nos. 2/98, 8/00) provides that the courts shall decide administrative disputes on the lawfulness of second instance administrative acts concerning rights and obligations of citizens and legal persons.

61. 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, whether the appeal to it was against a decision or against the first instance organ's silence.

### **V. COMPLAINTS**

62. The applicant claims that her right to respect for her home as guaranteed by Article 8 of the European Convention and her right to peaceful enjoyment of possessions as guaranteed by Article 1 of Protocol No. 1 to the European Convention have been violated. The applicant also claims that she has been discriminated against.

### **VI. SUBMISSIONS OF THE PARTIES**

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

63. As to the admissibility of the case, the Federation stated on 16 April 1999 that the applicant has not even started to exhaust the domestic remedies. The Federation further stated that the new Law as well as the Law on Administrative Proceedings and the Law on Administrative Disputes, provide for the possibility to claim repossession of an apartment declared abandoned, and they have therefore provided an effective remedy which the applicant has not exhausted.

64. As for the merits, the Federation argued on 16 April 1999 that Article 8 of the Convention has not been violated since the applicant by her own will abandoned the apartment. The Federation further stated that Article 1 of Protocol No. 1 to Convention is not applicable because the applicant's occupancy right could not be regarded as a property right according to national legislation. In the alternative, it is argued that the interference with the applicant's property right was justified, given the need to provide alternative accommodation to a temporary occupant who could no longer inhabit his/her dwelling due to the hostilities. Furthermore, the Federation argued that there has been no violation of Article 14 of the Convention since that Article does not apply in isolation, i.e. since there has been no violation of any other Articles of the Convention, there has also not been a violation of Article 14 of the Convention.

**B. The applicant**

65. The applicant maintains her complaints and states that she did not leave her apartment permanently and that her daughter stayed in the apartment until 1992. Further, she states that she already submitted a request under the new Law for repossession of the apartment to the Administration on 27 April 1998 and that she still has not regained possession of her apartment.

**VII. OPINION OF THE CHAMBER**

**A. Admissibility**

66. 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.

67. 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), the Chamber considered this admissibility criterion in 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 the personal circumstances of the applicants.

68. In the present case the Federation objects to the admissibility of the application on the ground that the domestic remedies provided by the new law, by the Law on Administrative Proceedings and by the Law on Administrative Disputes have not been exhausted.

69. The Chamber notes that the applicant submitted a request for repossession of her apartment to the Administration under the new Law on 27 April 1998. The Administration issued one decision on 10 July 1998 and one decision on 19 January 2000. The applicant has filed an appeal to the Ministry against the decision of the Administration of 19 January 2000. The Ministry issued a decision on 14 June 2000. Consequently the Federation's statement of 15 April 1999, that the applicant has not started to exhaust domestic remedies, is not correct.

70. The Chamber further notes that the applicant also filed an application to CRPC with a view to being reinstated into her apartment. CRPC issued a decision on 12 November 1998 confirming the applicant's status as the occupancy right holder of the apartment, from which it follows that she was entitled to seek the removal of the temporary occupant and to repossess the apartment. However, this decision has not been enforced despite the applicant's enforcement request to the competent administrative organ, which was pending for over 7 months before a conclusion was issued. According to Article 7 of the Law on Implementation the competent administrative organ was obliged to issue a conclusion on permission of enforcement within a period of 30 days from the date when the request for enforcement was submitted. According to the information available to the Chamber the CRPC decision has still not been enforced even though a conclusion on enforcement of it has been issued.

71. The Chamber notes that it is still open to the applicant to make further attempts to have the Administration's decision of 10 July 1998 and the CRPC decision enforced. However the applicant 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 issue and enforce decisions 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 issue and enforce the decisions, will treat the decisions of the courts with any greater respect.

72. 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 pursue any further remedy provided by domestic law.

73. Regarding the applicant's claim of discrimination the Chamber notes that the applicant has not submitted any evidence to support her allegations that she has been discriminated against. The Chamber is therefore of the opinion that this part of the application is unsubstantiated and thus manifestly ill-founded.

74. The Chamber further finds that no other ground for declaring the case inadmissible has been established. Accordingly, the case is to be declared admissible in respect of Article 8 of the European Convention and Article 1 of Protocol 1 to the European Convention and inadmissible as manifestly ill-founded in respect of the applicant's claim of discrimination.

## **B. Merits**

75. 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**

76. The relevant portion of Article 8 of the Convention provides as follows:

"1. Everyone 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 is 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."

77. The Chamber notes that the applicant lived in the apartment and used it as her home from 1980 until she temporarily left it in August 1989 to accompany her sick child for medical treatment in Croatia. The hostilities, thereafter, prevented her return. 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 dwellings 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 1999, paragraph 48, Decisions, January-July 1999; and case no. CH/97/46, *Kevešević*, decision on the merits, delivered on 10 September 1998, paragraphs 39-42, Decisions and Reports 1998). Further, the applicant's daughter, as a member of the household, continued to stay in the apartment until such time as she was forced to leave in 1992 due to the hostilities.

78. 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.

79. It is the Federation's assertion that the applicant abandoned the apartment of her own will and that the Federation has not by a single action contributed to her abandoning it.

80. The Chamber notes that it is correct that the respondent Party did not cause the applicant to leave her apartment. However, the authorities of the Federation have, by their decision to declare the apartment abandoned and by their failure to deal effectively, in accordance with Federation law, with the applicant's requests for repossession and her request for enforcement of the decision in her

favour by the CRPC, prevented the applicant from regaining possession of her apartment. It follows that there is an ongoing interference with the applicant's right to respect for her home.

81. The Chamber must therefore examine whether these interferences have been in accordance with paragraph 2 of Article 8 of the Convention.

82. According to Article XII(7) of Annex 7 to the General Framework Agreement decisions issued by the CRPC are final and are to be recognised as lawful throughout Bosnia and Herzegovina. Article 14 of the new Law states that a decision of the CRPC is "final and binding". Additionally, Article 14 of the new Law provides that a decision of the CRPC has the force of a decision of the competent domestic authorities made in accordance with the law. It follows, in the Chamber's opinion, that any decision of a domestic authority that is given after a CRPC decision and is incompatible with it is unlawful unless it falls within the narrowly defined category of cases for which deviation from a CRPC decision is possible under the law (see Article 10 paragraph 2 of the Law on Implementation).

83. The Chamber notes that on 12 November 1998 the CRPC issued a decision confirming the applicant's status as the occupancy right holder, from which it follows that she was entitled to seek removal of the temporary occupant and to repossess the apartment. It follows that the Administration should not have been unaware of this decision. Nonetheless, the Administration, deciding on the applicant's request for repossession of 27 April 1998, issued a new decision on 19 January 2000 rejecting the applicant's request, which it was not legally entitled to do. Already for this reason it cannot be said that the interference constituted by this decision was "in accordance with the law".

84. Moreover, under Article 216, paragraph 1 of the Law on Administrative Proceedings, the competent administrative organ must issue a decision to execute an administrative decision within 30 days of the receipt of a request to this effect. In other words the latest date on which the respondent Party should have issued a conclusion on the Administration's decision is 30 days after 10 July 1998, i.e. 9 August 1998. The failure of the competent administrative organ to decide upon the applicant's enforcement request is not "in accordance with the law" either.

85. The Chamber notes that the applicant also filed a request to CRPC with a view to being reinstated into her apartment. As indicated above, the CRPC issued a decision on 12 November 1998 confirming the applicant's status as the occupancy right holder of the apartment, from which it follows that she was entitled to seek removal of the temporary occupant and to repossess the apartment. On 16 October 2000, the applicant submitted a request for the execution of the CRPC decision under the Law on Implementation. According to Article 7 of the Law on Implementation, the competent administrative organ was obliged to issue a conclusion authorising the execution of the decision within 30 days of the date of the request for such enforcement. The Administration issued a conclusion authorizing the enforcement of the CRPC decision on 6 April 2001, which is almost 7 months after the applicants request, i.e. almost 6 months after the time-limit expired. Accordingly, the failure of the competent administrative organ to decide upon the applicant's requests within the time-limit was not "in accordance with the law".

86. 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**

87. The applicant also complains that her right to peaceful enjoyment of her possessions has been violated as a result of her inability to regain possession of her apartment in a timely manner. Article 1 of Protocol No. 1 provides 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.”

88. It is the Federation’s assertion that paragraph 1 of this Article protects ownership and that an occupancy right is not the same as ownership. Further, the respondent Party states that it is in the “public interest” to place a family without a home into an abandoned apartment.

89. The Chamber notes that the applicant is the holder of the occupancy right over the apartment in question. 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]...”.

90. Accordingly, the Chamber considers that the applicant’s right in respect of the apartment constitutes a “possession” in the meaning of Article 1 of Protocol No. 1 to the Convention.

91. The Chamber considers that by the decision of the authorities of the Federation to declare the apartment abandoned and their failure to allow the applicant to regain possession of her apartment in a timely manner constitutes an “interference” with her right to peaceful enjoyment of that possession. This interference is ongoing as the applicant, according to the information available to the Chamber, still does not enjoy possession of the apartment.

92. The Chamber must therefore examine whether this interference could 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.

93. As the Chamber noted in the context of its examination of the case under Article 8 in relation to the proceedings before the domestic organs, the Administration issued a decision rejecting the applicant’s request for repossession of her apartment. This decision is contrary to the CRPC decision which was issued over one year earlier. As the Chamber noted above, Article XII(7) of Annex 7 to the General Framework Agreement states that decisions issued by the CRPC are final and are to be recognised as lawful throughout Bosnia and Herzegovina. Further, Article 14 of the new Law states that CRPC decisions are final and binding. In the present case the Administration issued a decision which was incompatible with the CRPC decision. Accordingly, the issuance of that decision is contrary to the law.

94. Moreover, the Chamber noted that the Law on Administrative Proceedings provides in Article 216, paragraph 1 that the competent administrative organ must issue a decision to execute an administrative decision within 30 days of the receipt of a request to this effect. In the present case no such a decision has been issued in relation to the decision of the Administration of 10 July 1998. Accordingly, the failure of the competent administrative organ to decide upon the applicant’s request is contrary to the law.

95. Furthermore, as the Chamber noted likewise in the context of its examination of the case under Article 8 of the Convention in relation to the CRPC proceedings, Article 7 of the Law on Implementation states that the competent administrative organ is obliged to issue a conclusion authorising the execution of the CRPC decisions within 30 days of the date of a request for such enforcement. In the present case the conclusion was issued more than 7 months after the request was submitted. Accordingly, the failure of the competent administrative organ to decide upon the applicant’s request within the prescribed time-limit is contrary to the law.

96. These findings are in themselves 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.

97. As the interference with the applicant's right to peaceful enjoyment of her possessions is not subject to conditions provided by law, it is not necessary for the Chamber to examine whether it was in the public interest or proportionate to the aim pursued.

98. In conclusion, there has been a violation of the right of the applicant's right to peaceful enjoyment of her possessions as guaranteed by Article 1 of Protocol No. 1 to the Convention.

### **VIII. REMEDIES**

99. 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 breaches of the Agreement established. 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.

100. In her submissions, the applicant requested that she be enabled to regain possession of the apartment. In addition, the applicant claims compensation for her furniture that has been used by Mr. H.O., compensation for moral damage since her daughter was allegedly raped in 1992, compensation for her legal fees and for tickets for traveling 3-4 times per month and compensation for the mental pain she is suffering as a result of living on 12 square meters in a Collective Centre. The applicant did not mention any specific sums.

101. The respondent Party did not submit observations on the applicant's claim for compensation.

102. The Chamber considers it appropriate to order the respondent Party to take all necessary steps to enforce the CRPC decision and to enable the applicant to regain possession of her apartment.

103. Article XI(3) of the Agreement provides: "subject to review as provided in paragraph 2 of Article X, the decisions of the Chamber shall be final and binding". Thus, a decision of the Chamber does not become final and binding until the provision in Article XI(3) of the Agreement has been met, that is, in particular, until after the Chamber decides upon any motions for request for review filed in accordance with the Chamber's Rules of Procedure.

104. However, Article XI(1) of the Agreement states that "the Chamber shall promptly issue a decision, which shall address: ... (b) what steps shall be taken by the Party to remedy such breach, including ... provisional measures." The Chamber interprets this provision in the sense that it is authorised to order the respondent Party to take certain steps without further delay, that is, before the decision becomes final and binding pursuant to Article XI(3) of the Agreement, in order to remedy breaches of the Agreement.

105. Since the applicant in the present case has, for a long time, been unable to regain possession of her apartment due to the failure of the respondent Party to reinstate her in a timely manner, the Chamber finds it appropriate to exercise its powers granted under Article XI(1)(b) of the Agreement to order the respondent Party to reinstate the applicant without further delay, and at the latest within one month after the date on which the present decision is delivered, regardless of whether either party files a motion to review the decision under Article X(2) of the Agreement.

106. With regard to possible compensatory awards the Chamber considers it appropriate to award a sum to the applicant in recognition of the sense of injustice she has suffered as a result of her inability to regain possession of her apartment in a timely manner, especially in view of the fact that the applicant took all necessary steps to repossess her apartment under two separate procedures.

107. 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 in a timely manner.

108. Further, the Chamber considers it appropriate to order the respondent Party to compensate the applicant for the loss of use of the apartment and moveable property therein for each month she has been forced to live in alternative accommodation. The Chamber considers it appropriate that this sum should be KM 200 per month and payable from 10 July 1998 (the date of the initial decision of the Administration which failed to respond to the applicant's request for repossession) up to and including September 2001, amounting to a total of KM 7800. This monthly 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.

109. The Chamber considers it appropriate in the present case to order the respondent Party to pay the sums mentioned in paragraphs 107 and 108 no later than one month from the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure.

110. With regard to the applicant's claim for compensation for moral damage because her daughter was allegedly raped in 1992, the Chamber notes that this claim is not related to the facts of the present case. This claim must therefore be rejected.

111. With regard to the applicant's claim for compensation for her legal fees and for tickets for traveling 3-4 times per month, the Chamber notes that the applicant has failed to submit any evidence that she actually incurred these expenses, nor has she submitted any information as to their quantum. This claim must therefore be rejected.

112. Additionally, the Chamber awards simple interest at an annual rate of 10% on the sums awarded to be paid to the applicant in paragraphs 107 and 108 above. Interest shall be paid as of one month from the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure on each sums awarded or any unpaid portion thereof until the date of settlement in full.

## **IX. CONCLUSION**

113. For the above reasons, the Chamber decides,

1. unanimously, to declare the application admissible insofar as it relates to Article 8 of the European Convention and Article 1 of Protocol No. 1 to the European Convention ;
2. unanimously, to declare the application inadmissible as manifestly ill-founded insofar as it relates to the applicant's claim that she has been discriminated against;
3. unanimously, that the non-enforcement of the CRPC decision as well as the respondent Party's failure to allow the applicant to regain possession of her apartment in a timely manner and in particular the issuing of a decision by the Administration which was incompatible with the CRPC decision, 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 I of the Agreement;
4. unanimously, that the non-enforcement of the CRPC decision as well as the respondent Party's failure to allow the applicant to regain possession of her apartment in a timely manner and in particular the issuing of a decision by the Administration which was incompatible with the CRPC decision, 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 I of the Agreement;
5. unanimously, to order the respondent Party to reinstate the applicant into her apartment without further delay, and at the latest on 7 October 2001;

6. unanimously, to order the respondent Party to pay to the applicant, no later than one month from the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure, the sum of KM 2000 (two thousand Convertible Marks) in respect of non-pecuniary damage;
7. unanimously, to order the respondent Party to pay to the applicant, no later than one month from the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure, the sum of 7800 (seven thousand eight hundred Convertible Marks) as compensation for the loss of use of the apartment and moveable property therein during the time the applicant was forced to live in alternative accommodation;
8. unanimously, to order the Federation to pay to the applicant KM 200 (two hundred Convertible Marks) for each further month that she continues to be forced to live in alternative accommodation as from 1 October 2001 until the end of the month in which she is reinstated, each of these monthly payments to be made within 30 days from the end of the month to which they relate;
9. 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 after the expiry of one month from the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure until the date of settlement in full;
10. unanimously, to dismiss the remainder of the applicants' claims for remedies; and
11. unanimously, to order the respondent Party to report to it by one month from the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure on the steps taken by it to comply with the above orders.

(signed)  
Ulrich GARMS  
Registrar of the Chamber

(signed)  
Giovanni GRASSO  
President of the Panel