



**DECISION ON ADMISSIBILITY AND MERITS**  
(delivered on 11 January 2002)

**Cases nos.**

**CH/99/2030, CH/99/2544, CH/00/4644, CH/00/4952,  
CH/00/5290, CH/00/5584, CH/00/6236, CH/00/6315, CH/00/6401,  
CH/00/6565, CH/00/6587, CH/00/6590 and CH/01/7098**

**Milka RUDIĆ, Verica SIMIĆ, Radojka NEDIMOVIĆ, Sofija TROGRLIĆ,  
Ognjen ŠEKARA, Ljubica MITRIĆ, Milan PREDOJEVIĆ, Njegoslav VUKOTIĆ,  
Cvijan MILOVAC, Danilo NEDIĆ, Velibor VUJOVIĆ, Ivica DŽAKULA and  
Radojka PETROVIĆ**

**against**

**BOSNIA AND HERZEGOVINA**  
**and**  
**THE FEDERATION OF BOSNIA AND HERZEGOVINA**

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 7 December 2001 with the following members present:

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

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 applicants are citizens of Bosnia and Herzegovina. They are all pre-war occupancy right holders of apartments or owners of houses in Sarajevo, Municipalities Novo Sarajevo, Novi Grad, Centar or Ilidža. The cases concern the applicants' attempts to regain possession of their apartments or houses. All applicants have lodged applications to the Commission for Real Property Claims of Displaced Persons and Refugees (CRPC), which has issued decisions confirming their occupancy rights or ownership as the case may be. However, the competent authorities have failed to execute those decisions. The relevant facts of the individual cases are set out in Section III below.
2. The cases raise issues under Articles 6, 8 and 13 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 applications were introduced and registered between 8 April 1999 and 7 March 2001.
4. Between 17 January 2001 and 26 March 2001 the Chamber sent letters to the applicants asking them to inform the Chamber as to whether the situation was still the same as described in their applications. The applicants who had used the Chambers "old" application forms were also invited to specify in detail their claims for compensation or other relief. Furthermore, in the cases in which the applicants had filed requests for provisional measures the Chamber rejected the requests.
5. Between 5 April 2001 and 17 May 2001 the Chamber asked CRPC for verification that the information supplied by the applicants was correct. Between 17 April 2001 and 6 June 2001 the Chamber received the requested confirmation from the CRPC.
6. Between 7 May 2001 and 22 June 2001 the Chamber transmitted the applications to the Federation of Bosnia and Herzegovina as the respondent Party for observations on the admissibility and merits thereof. The respondent Party submitted its observations between 21 June 2001 and 23 July 2001.
7. Further observations by the applicants were received between 26 July 2001 and 26 September 2001.
8. On 4 December 2001 the Chamber considered the admissibility and merits of the applications and decided to join the applications. On 7 December 2001 the Chamber adopted the present decision.

## **III. FACTS**

### **1. Case no. CH/99/2030 Milka Rudić**

9. The applicant is the pre-war occupancy right holder over an apartment located at Koševo 6/III (formerly Kralja Tomislava 6/III) in Municipality Centar. The applicant left the apartment in November 1992.
10. On a date unknown to the Chamber the applicant requested the CRPC to issue a decision confirming her occupancy right.
11. On 17 December 1998 the CRPC issued a decision (Decision No. 201-3084-1/1) confirming the applicant's occupancy right.
12. On 14 June 1999 the applicant filed a request for the execution of the CRPC decision to the Administration for Housing Affairs of Canton Sarajevo. However, as of the date of this decision, the applicant has not received a conclusion on the enforcement of the CRPC decision.

13. The applicant has also initiated other proceedings before domestic administrative and/or judicial organs to regain possession of her apartment.

**2. Case no. CH/99/2544 Verica Simić**

14. The applicant is the pre-war occupancy right holder over an apartment located at Semira Frašte 13/8 (formerly Tetovska 13/8) in Municipality Novi Grad. The applicant left the apartment on 8 April 1995.

15. On 17 November 1997 the applicant requested the CRPC to issue a decision confirming her occupancy right.

16. On 21 March 2000 the CRPC issued a decision (Decision No. 204-970-1/1) confirming the applicant's occupancy right.

17. On 23 May 2000 the applicant filed a request for the execution of the CRPC decision to the Administration for Housing Affairs of Canton Sarajevo. However, as of the date of this decision, the applicant has not received a conclusion on the enforcement of the CRPC decision.

18. The applicant has also initiated other proceedings before domestic administrative and/or judicial organs to regain possession of her apartment.

**3. Case no. CH/00/4644 Radojka Nedimović**

19. The applicant is the pre-war occupancy right holder over an apartment located at Ante Babića 1/6 in Municipality Novi Grad. The applicant left the apartment 1994.

20. On a date unknown to the Chamber the applicant requested the CRPC to issue a decision confirming her occupancy right.

21. On 5 August 1999 the CRPC issued a decision (Decision No.302-2445-1/1) confirming the applicant's occupancy right.

22. On 24 January 2000 the applicant filed a request for the execution of the CRPC decision to the Administration for Housing Affairs of Canton Sarajevo. However, as of the date of this decision, the applicant has not received a conclusion on the enforcement of the CRPC decision. According to the respondent Party an eviction of the temporary occupant was scheduled for 31 October 2001. However, it appears that the eviction was not carried out and that the applicant has still not regained possession of her apartment.

23. The applicant has also initiated other proceedings before domestic administrative and/or judicial organs to regain possession of her apartment.

**4. Case no. CH/00/4952 Sofija Trogrlić**

24. The applicant is the pre-war occupancy right holder over an apartment located at Behdžeta Mutevelića 87 (formerly Rave Janković 87) in Municipality Novo Sarajevo. The applicant left the apartment during the 1992-95 war.

25. On a date unknown to the Chamber the applicant requested the CRPC to issue a decision confirming her occupancy right.

26. On 8 June 1999 the CRPC issued a decision (Decision No. 303-3328-1/1) confirming the applicant's occupancy right.

27. On 14 February 2000 the applicant filed a request for the execution of the CRPC decision to the Administration for Housing Affairs of Canton Sarajevo. However, as of the date of this decision, the applicant has not received a conclusion on the enforcement of the CRPC decision.

28. The applicant has also initiated other proceedings before domestic administrative and/or judicial organs to regain possession of his apartment.

**5. Case no. CH/00/5290 Ognjen Šekara**

29. The applicant is the owner of a house located at Trebinjska 115 in Municipality Novi Grad. The applicant left the house during the 1992-95 war.

30. On a date unknown to the Chamber the applicant filed a request to the CRPC for repossession of his property.

31. On 28 October 1999 the CRPC issued a decision (Decision No. 302-2439-1/1) confirming that the applicant was the *bona fide* possessor of the property on 1 April 1992.

32. On 8 December 1999 the applicant filed a request for the execution of the CRPC decision to the Administration for Housing Affairs, Reconstruction and Cadaster of the Municipality Novi Grad, Sarajevo. An eviction of the temporary occupant was scheduled for 25 July 2001. However, the eviction was never carried out and the applicant has still not regained possession of his property.

33. The applicant has also initiated other proceedings before domestic administrative and/or judicial organs to regain possession of his house.

**6. Case no. CH/00/5584 Ljubica Mitrić**

34. The applicant is the pre-war occupancy right holder over an apartment located at Žrtava Fašizma 4 in Municipality Novi Grad. The applicant left the apartment in 1992.

35. On a date unknown to the Chamber the applicant requested the CRPC to issue a decision confirming her occupancy right.

36. On 9 December 1999 the CRPC issued a decision (Decision No. 512-1262-1/1) confirming the applicant's occupancy right.

37. On 16 February 2000 the applicant filed a request for the execution of the CRPC decision to the Administration for Housing Affairs of Canton Sarajevo. On 1 June 2001 the applicant received a conclusion on the enforcement of the CRPC decision from the Administration for Housing Affairs of Canton Sarajevo. However, the applicant has still not been reinstated into her apartment.

38. The applicant has also initiated other proceedings before domestic administrative and/or judicial organs to regain possession of her apartment.

**7. Case no. CH/00/6236 Milan Predojević**

39. The applicant is the owner of a house located at Blažuj 78 in Municipality Ilidža. The applicant left the house during the 1992-95 war.

40. On a date unknown to the Chamber the applicant filed a request to the CRPC for repossession of his property.

41. On 12 November 1999 the CRPC issued a decision (Decision No. 701-798-1/1) confirming that the applicant was the *bona fide* possessor of the property on 1 April 1992.

42. On 25 April 2000 the applicant filed a request for the execution of the CRPC decision to the Service for Abandoned Real Estate, Housing and Utilities Affairs Municipality Ilidža. On 6 September 2000 the applicant received a conclusion on the enforcement of the CRPC decision issued by the Service for Abandoned Real Estate, Housing and Utilities Affairs Municipality Ilidža. However, the applicant has still not regained possession of his house.

43. The applicant has also initiated other proceedings before domestic administrative and/or judicial organs to regain possession of his house and land.

**8. Case no. CH/00/6315 Njegoslav Vukotić**

44. The applicant is the pre-war occupancy right holder over an apartment located at Prijedorska 11 (formerly Prijedorska 60) in Municipality Novi Grad. The applicant left the apartment in 1992.

45. On a date unknown to the Chamber the applicant requested the CRPC to issue a decision confirming his occupancy right.

46. On 4 March 1999 the CRPC issued a decision (Decision No. 511-814-1/1) confirming the applicant's occupancy right.

47. On 19 September 1999 the applicant filed a request for the execution of the CRPC decision to the Administration for Housing Affairs of Canton Sarajevo. However, as of the date of this decision, the applicant has not received a conclusion on the enforcement of the CRPC decision.

48. The applicant has also initiated other proceedings before domestic administrative and/or judicial organs to regain possession of his apartment.

**9. Case no. CH/00/6401 Cvijan Milovac**

49. The applicant is the pre-war occupancy right holder over an apartment located at Emila Zole 8/IV in Municipality Novi Grad. The applicant left the apartment during the 1992-95 war.

50. On 5 January 1998 the applicant requested the CRPC to issue a decision confirming his occupancy right.

51. On 8 June 1999 the CRPC issued a decision (Decision No. 302-3987-1/1) confirming the applicant's occupancy right.

52. On 21 January 2000 the applicant filed a request for the execution of the CRPC decision to the Administration for Housing Affairs of Canton Sarajevo. However, as of the date of this decision, the applicant has not received a conclusion on the enforcement of the CRPC decision.

53. The applicant has also initiated other proceedings before domestic administrative and/or judicial organs to regain possession of his apartment.

**10. Case no. CH/00/6565 Danilo Nedić**

54. The applicant is the pre-war occupancy right holder over an apartment located at Trg ZAVNOBiH-a 4/IV in Municipality Novi Grad. The applicant left the apartment in April 1993.

55. On a date unknown to the Chamber the applicant requested the CRPC to issue a decision confirming his occupancy right.

56. On 1 February 2000 the CRPC issued a decision (Decision No. 202-3214-1/1) confirming the applicant's occupancy right.

57. On 4 April 2000 the applicant filed a request for the execution of the CRPC decision to the Administration for Housing Affairs of Canton Sarajevo. However, as of the date of this decision, the applicant has not received a conclusion on the enforcement of the CRPC decision.

58. The applicant has also initiated other proceedings before domestic administrative and/or judicial organs to regain possession of his apartment.

**11. Case no. CH/00/6587 Velibor Vujović**

59. The applicant is the pre-war occupancy right holder over an apartment located at Semira Frašte 16/VI (formerly Tetovska 16/VI) in Municipality Novi Grad. The applicant left the apartment during the 1992-95 war.

60. On a date unknown to the Chamber the applicant requested the CRPC to issue a decision confirming his occupancy right.

61. On 17 December 1998 the CRPC issued a decision (Decision No. 303-2826-1/1) confirming the applicant's occupancy right.

62. On 9 December 1999 the applicant filed a request for the execution of the CRPC decision to the Administration for Housing Affairs of Canton Sarajevo. However, as of the date of this decision, the applicant has not received a conclusion on the enforcement of the CRPC decision.

63. The applicant has also initiated other proceedings before domestic administrative and/or judicial organs to regain possession of his apartment.

**12. Case no. CH/00/6590 Ivica Džakula**

64. The applicant is the pre-war occupancy right holder over an apartment located at Olimpijska 32/II in Municipality Novi Grad. The applicant left the apartment in December 1993.

65. On a date unknown to the Chamber the applicant requested the CRPC to issue a decision confirming his occupancy right.

66. On 8 October 1998 the CRPC issued a decision (Decision No.103-782-1/1) confirming the applicant's occupancy right.

67. On 11 December 2000 the applicant filed a request for the execution of the CRPC decision to the Administration for Housing Affairs of Canton Sarajevo. However, as of the date of this decision, the applicant has not received a conclusion on the enforcement of the CRPC decision.

68. The applicant has also initiated other proceedings before domestic administrative and/or judicial organs to regain possession of his apartment.

**13. Case no. CH/01/7098 Radojka Petrović**

69. The applicant is the pre-war occupancy right holder over an apartment located at Salke Lagumdžije 3/VI (formerly Danka Mitrova 3/VI) in Municipality Novi Grad. The applicant left the apartment during the war.

70. On a date unknown to the Chamber the applicant requested the CRPC to issue a decision confirming her occupancy right.

71. On 12 September 2000 the CRPC issued a decision (Decision No. 301-1333-1/1) confirming the applicant's occupancy right.

72. On 10 November 2000 the applicant filed a request for the execution of the CRPC decision to the Administration for Housing Affairs of Canton Sarajevo. However, as of the date of this decision, the applicant has not received a conclusion on the enforcement of the CRPC decision.

73. The applicant has also initiated other proceedings before domestic administrative and/or judicial organs to regain possession of her apartment.

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

##### **1. The General Framework Agreement for Peace in Bosnia and Herzegovina – Annex 4, Constitution of Bosnia and Herzegovina**

74. 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 4 to the General Framework Agreement, entitled Constitution of Bosnia and Herzegovina, deals, among other things, with the responsibilities of and relations between the institutions of Bosnia and Herzegovina and its Entities.

75. The following matters are the responsibility of the institutions of Bosnia and Herzegovina: foreign policy, foreign trade policy, customs policy, monetary policy as provided in Article VII of the Constitution of Bosnia and Herzegovina, finances of the institutions and for the international obligations of Bosnia and Herzegovina, immigration policy and regulation, refugee policy and regulation, asylum policy and regulation, international and inter-Entity criminal law enforcement including relations with Interpol, establishment and operation of common and international communications facilities, regulation of inter-Entity facilities and air traffic control (Article III, paragraph 1).

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

76. Annex 7 to the General Framework Agreement, entitled Agreement on Refugees and Displaced Persons, deals with refugees and displaced persons. 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.

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

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

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

79. The Law on Implementation of the Decisions of the Commission for Real Property Claims of Displaced Persons and Refugees (Official Gazette of the Federation of Bosnia and Herzegovina 43/99 – hereinafter “the Implementation Law”) regulates the enforcement of decisions of the CRPC.

80. The administrative body responsible for property-related legal affairs in the municipality where the property is located shall enforce decisions of the CRPC relating to real property owned by citizens (Article 3 paragraph 2). Decisions of the CRPC relating to an apartment for which there is an occupancy right shall be enforced by the administrative body for housing affairs in the municipality where the apartment is located (Article 3 paragraph 3). The CRPC decisions shall be enforced if a request for the enforcement has been filed to the relevant organ. The following persons are entitled to file such a request: the right holder specified in the CRPC decision and his or 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).

81. 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 with effect from 28 October 2000). Before that, the time limit was one year.

82. The administrative organ responsible for the enforcement of a CRPC decision is obliged to issue a conclusion on the permission of enforcement within a period of 30 days from the date when the request for enforcement was submitted and shall not require any confirmation of the enforceability of the decision from CRPC or any other body (Article 7 paragraphs 1 and 2). The conclusion shall contain:

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

83. 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 (Official Gazette of the Federation of Bosnia and Herzegovina 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 (Official Gazette of the Federation of Bosnia and Herzegovina nos. 11/98, 29/98, 27/99 and 43/99)

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

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

85. Under Article 216 of the Law on Administrative Proceedings (Official Gazette of the Federation of Bosnia and Herzegovina no. 2/98) the competent administrative organ has to issue a decision within 30 days upon receipt of a request to this effect. Article 216 paragraph 3 provides for an appeal to the administrative appellate body if a decision is not issued within this time-limit (appeal against "silence of the administration").

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

86. Article 1 of the Law on Administrative Disputes (Official Gazette of the Federation of Bosnia and Herzegovina 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.

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



## V. COMPLAINTS

88. Each of the applicants claims that one or more of the following rights have been violated: the right to respect for their home as guaranteed by Article 8 of the Convention, the right to peaceful enjoyment of possessions as guaranteed by Article 1 of Protocol No. 1 to the Convention, the right to a hearing within reasonable time as guaranteed by Article 6 of the Convention, the right to an effective remedy as guaranteed by Article 13 of the Convention and the right not be discriminated against as guaranteed by Article 14 of the Convention.

## VI. SUBMISSIONS OF THE PARTIES

### A. The Federation of Bosnia and Herzegovina

89. The Federation objects, in its observations received on 21 June 2001, to the admissibility of the applications 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. In the case of Ivica Džakula (CH/00/6590) the respondent Party also argues that the application should be declared inadmissible on the ground of *lis alibi pendens*, because the applicant filed an application with the Ombudsperson for Bosnia and Herzegovina on 15 March 1999.

90. As to the merits of the complaint relating to the applicants' right to respect for their homes as protected by Article 8 of the Convention and the applicants' property rights as protected by Article 1 of Protocol No. 1 to the Convention, the respondent Party is of the opinion that there has been no violation, because it has passed legislation which enables all persons to repossess their property.

### B. The applicants

91. The applicants maintain their complaints.

## VII. OPINION OF THE CHAMBER

### A. Admissibility

92. 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.

93. Three of the applicants, Radojka Nedimović (CH/00/4644), Velibor Vujović (CH/00/6587) and Milan Predojević (CH/00/6236) directed their applications against both Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina. The Chamber will consider the admissibility of the applications as against Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina.

#### 1. Bosnia and Herzegovina

94. During the proceedings before the Chamber, the Chamber has not received any evidence which would tend to indicate that Bosnia and Herzegovina is responsible for any of the matters that Radojka Nedimović (CH/00/4644), Velibor Vujović (CH/00/6587) and Milan Predojević (CH/00/6236) complain of. The competencies of Bosnia and Herzegovina are set out in Article III of the Constitution of Bosnia and Herzegovina, contained in Annex 4 to the General Framework Agreement. These do not include matters relating to the return of property to pre-war occupants or owners. Accordingly, this matter is within the competence of the Entities. Consequently, the cases do not raise any issues engaging the responsibility of Bosnia and Herzegovina and therefore are to be declared inadmissible *ratione personae* as against that respondent Party.

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

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

### **(a) Exhaustion of effective domestic remedies**

96. According to Article VIII(2)(a) of the Agreement, the Chamber must consider whether effective remedies exist and whether the applicants have demonstrated that they have been exhausted. In the *Blentić* case (case no. CH/96/17, decision on admissibility and merits of 5 November 1997, paragraphs 19-21, Decisions on Admissibility and Merits 1996-1997, with further references) the Chamber considered this admissibility criterion in the light of the corresponding requirement to exhaust domestic remedies in the former Article 26 of the Convention (now Article 35(1) of the Convention). The European Court of Human Rights has found that such remedies must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness. The Court has, moreover, considered that in applying the rule on exhaustion it is necessary to take realistic account not only of the existence of formal remedies in the legal system of the Contracting Party concerned but also of the general legal and political context in which they operate as well as of personal circumstances of the applicants.

97. In the present cases the respondent Party objects to the admissibility of the applications 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. Whilst these laws afford remedies which might qualify as effective ones within the meaning of Article VIII(2)(a) of the Agreement in so far as the applicants are seeking to return to their apartments or houses and are faced with the authorities' inaction, the Chamber must ascertain whether, in the cases now before it, these remedies can also be considered effective in practice.

98. The Chamber notes that the applicants filed requests to the CRPC with a view to being reinstated into their apartments or houses. The CRPC issued decisions confirming their occupancy rights and ownership, from which it follows that they are entitled to seek the removal of the temporary occupants from the apartments or houses. However, those decisions have not been enforced despite the applicants' enforcement requests to the competent administrative organ, which have been pending between 11 and 29 months.

99. The Chamber further notes that according to Article 7 of the Implementation Law the competent administrative organ is obliged to issue a conclusion on the enforcement within a period of 30 days from the date when the request for enforcement is submitted. The Chamber interprets this provision to require the competent administrative organ, in cases in which the applicant filed a request for enforcement before the Implementation Law entered into force, to issue a conclusion on the enforcement at the latest 30 days after the date on which the Implementation Law entered into force, i.e. 30 days after 28 October 1999.

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

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

**(b) Lis alibi pendens**

102. Regarding the respondent Party's argument that the application of Ivica Džakula (CH/00/6590) should be declared inadmissible on the ground of *lis alibi pendens* because the applicant had filed an application with the Ombudsperson for Bosnia and Herzegovina, the Chamber notes that the respondent Party, in its observations, also informs the Chamber that the Ombudsperson issued a report in December 1999 recommending the respondent Party to reinstate the applicant into his apartment.

103. The Chamber has previously held as follow (see case no. CH/98/1066, *Kovačević*, decision on review of 8 October 2001, paragraph 37 and 65):

"...the fact of the applicant's previous application to the Ombudsperson and the Ombudsperson's subsequent Report on that application does not *ipso facto* divest the Chamber of its jurisdiction to determine Ms. Kovačević application."

"The additional failure of the respondent Party to implement the Ombudsperson's Report presents an aggravating feature which increases the seriousness of these violations ..."

104. The Chamber notes that in the case of Ivica Džakula (CH/00/6590) the recommendation in the Ombudsperson's report has remained unobserved. Accordingly, the Chamber does not consider the fact that Ivica Džakula (CH/00/6590) has filed an application to the Ombudsperson and the fact that the Ombudsperson has issued a report are grounds for declaring the application inadmissible.

**(c) Admissibility of the discrimination complaint**

105. Regarding the claims of Verica Simić (CH/99/2544), Cvijan Milovac (CH/00/6401), Ljubica Mitrić (CH/00/5584), Milan Predojević (CH/00/6236) and Radojka Petrović (CH/01/7098) that they have been discriminated against, the Chamber notes that the applicants have not submitted any evidence to support their allegations. The Chamber is therefore of the opinion that this part of the application is unsubstantiated and manifestly ill-founded.

**(d) Conclusion as to admissibility**

106. The Chamber further finds that no other ground for declaring the cases inadmissible have been established. Accordingly, the applications are to be declared admissible in so far as directed against the Federation of Bosnia and Herzegovina, except for the complaints of discrimination, and inadmissible in so far as directed against Bosnia and Herzegovina.

**B. Merits**

107. 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**

108. Article 8 of the Convention, insofar as relevant, provides:

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

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

109. The Chamber notes that all of the applicants have lived in the apartments or houses and used them as their homes until such times as they were forced to leave. The Chamber has previously held that links that persons in similar situations as the applicants in the present cases retained to their dwellings were sufficient for them 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 of 12 January 1999, Decisions January-July 1999, paragraph 48; and case no. CH/97/46, *Kevešević*, decision on the merits of 15 July 1998, paragraphs 39-42, Decisions and Reports 1998).

110. It is therefore clear that the applicants’ apartments or houses are to be considered as their homes for the purposes of Article 8 of the Convention.

111. It is the respondent Party’s assertion that it has passed legislation which enables all persons to repossess their property and that therefore there has been no violation of Article 8 of the Convention.

112. The Chamber notes that legislation is in force in the Federation that in theory enables persons to repossess their property. However, both the Chamber and the European Court of Human Rights have held that, although the object of Article 8 is essentially that of protecting the individual against arbitrary interference by the authorities, it may also give rise to positive obligations (see e.g. case No. 96/17, *Blentić v. Republika Srpska*, decisions on admissibility and merits of 5 November 1997, Decisions 1997, paragraph 27, Eur. Court HR, *Marckx v. Belgium*, judgement of 13 June 1979, Series A no. 31, paragraph 31; Eur. Court HR, *Airey v. Ireland*, judgement of 9 October 1979, Series A no. 32, paragraph 32; Eur. Court HR, *Velosa Barreto v. Portugal*, judgement of 21 November 1995, Series A no. 334, paragraph 23). Therefore the Chamber considers that the respondent Party not only has to pass legislation but that the legislation also has to be implemented. Otherwise the legislation is not effective.

113. In the present cases the Chamber recalls that the CRPC has issued decisions confirming the applicants’ right to repossess their apartments or houses. The applicants have been unable to regain possession of their apartments or houses due to the failure of the authorities of the Federation to deal effectively, in accordance with Federation law, with their requests for the enforcement of the CRPC decisions. It follows that the result of the inaction of the respondent Party is that the applicants cannot return to their homes and that there is an ongoing interference with the applicants’ right to respect for their homes.

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

115. According to Article 7 of the Implementation Law, the competent administrative organ is obliged to issue a conclusion authorising the execution of the decision within 30 days from the date of the request for such enforcement. If a request for enforcement was filed before the Implementation Law entered into force, the Chamber interprets Article 7 of that Law to require the competent administrative organ to issue a conclusion at the latest 30 days after the date on which that law entered into force, i.e. 30 days after 28 October 1999. The applicants have still not received a decision on their requests to have the CRPC decisions enforced, despite the time-limit for this having expired between 10 and 24 months ago. Accordingly, the failure of the competent administrative organ to decide upon the applicants’ requests is not “in accordance with the law”.

116. As the interference with the applicants’ right to respect for their home referred to above is not “in accordance with the law”, it is not necessary for the Chamber to examine whether they pursued a “legitimate aim” or were “necessary in a democratic society”.

117. In conclusion, there has been a violation of the rights of the applicants’ to respect for their home as guaranteed by Article 8 of the Convention.

## 2. Article 1 of Protocol No. 1

118. The applicants complain that their rights to peaceful enjoyment of their possessions have been violated as a result of their inability to regain possession of their apartments or houses. 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.”

119. It is the respondent Party’s assertion that it has passed such legislation, which enables all persons to repossess their property, and that the applicants were not deprived of their rights to return into possession of their property.

120. The Chamber notes that the applicants are the owners of houses or the holders of occupancy rights over apartments. The Chamber finds that the houses concerned constitute the applicants’ “possessions” within the meaning of Article 1 of Protocol No. 1 to the Convention. Regarding the occupancy rights over apartments, 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]...”

121. Accordingly, the Chamber considers that the applicants’ rights in respect of the apartments also constitute “possessions” for the purposes of Article 1 of Protocol No. 1 to the Convention.

122. The Chamber considers the failure of the authorities of the respondent Party to allow the applicants to regain possession of the apartments or houses constitutes an “interference” with the right to peaceful enjoyment of that possession. This interference is ongoing as the applicants still do not enjoy possession of the apartments or houses.

123. 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.

124. As the Chamber noted, in the context of its examination of the case under Article 8 of the Convention, Article 7 of the Implementation Law states that the competent administrative organ is obliged to issue a conclusion authorising the execution of the decision within 30 days from the date of a request for such enforcement. If the request for enforcement was filed before the Implementation Law entered into force, the Chamber interprets Article 7 of that Law to require the competent administrative organ to issue a conclusion at the latest 30 days after the date on which that Law entered into force, i.e. 30 days after 28 October 1999. It follows that the failure of the competent administrative organ to decide upon the applicants’ requests is contrary to the law. This is in itself sufficient to justify a finding of a violation of the applicants’ right to peaceful enjoyment of their possessions as guaranteed by Article 1 of Protocol No. 1. Accordingly, the right of the applicants under this provision has been violated.

### **3. Articles 6 and 13 of the Convention**

125. Article 6 of the Convention, insofar as relevant, provides as follows:

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

126. Article 13 of the Convention provides as follows:

“Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

127. Some of the applicants also allege violation of their rights as guaranteed by one or both of these provisions.

128. The Chamber, considering that it has found violations of the applicants' rights projected by Article 8 of the Convention and Article 1 of Protocol No. 1 to the Convention, does not consider it necessary to examine the cases under Articles 6 and 13 of the Convention.

### **VIII. REMEDIES**

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

130. In their submissions the applicants request that they be enabled to regain possession of their apartments or houses. In addition, some of the applicants request compensation for one or more of the following reasons: compensation for mental suffering and for the injustice they claim to have suffered, compensation for the rent they have been forced to pay for their accommodation pending their return to their apartments or houses, compensation for legal costs, compensation for travel costs and compensation for their destroyed movable property. Verica Simić (CH/99/2544) requests the Chamber to order the respondent Party, as a provisional measure, to make an inventory list of her moveable property in her apartment and to establish the state of the apartment. Further she asks the Chamber to prohibit any disposal of her moveable property and apartment until she has been reinstated.

131. The Federation, in its observations, argued that the claims for compensation, which were submitted by some of the applicants, were ill-founded or unsubstantiated and in any case excessive.

132. The Chamber considers it appropriate to order the Federation to take all necessary steps to enforce the CRPC decisions without further delay and at latest within one month from the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure.

133. With regard to possible compensatory awards the Chamber considers it appropriate to award a sum to the applicants in recognition of the sense of injustice they have suffered as a result of their inability to regain possession of their apartments or houses, especially in view of the fact that they have taken all necessary steps to have the CRPC decisions enforced.

134. Accordingly, the Chamber will order the respondent Party to pay to each of the applicants the sum of 1200 Convertible Marks (*Konvertibilnih Maraka*, “KM”) in recognition of their suffering as a result of their inability to regain possession of their apartments or houses. In the particular circumstances at hand, the Chamber will also award the applicants who did not make specific claims for compensation the same sum. As the Chamber held in *Pletilić and others* (cases nos. CH/98/659

et al., decision on admissibility and merits of 9 July 1999, paragraph 236, Decisions August-December), Article XI(1)(b) of the Agreement does not preclude the Chamber from ordering a remedy which has not been requested by an applicant.

135. In accordance with its decision in *Turundžić and Frančić* (cases nos. CH/00/6143 and CH/00/6150, decision on admissibility and merits of 5 February 2001, paragraph 70), the Chamber considers it appropriate to order the respondent Party to compensate the applicants for the loss of use of their homes. The Chamber considers it appropriate that this sum should be KM 200 per month and payable from the date the time-limit for the competent administrative organ to issue a conclusion on the enforcement of the CRPC decision expired, i.e. 30 days after the applicant lodged his request up to and including November 2001. In the cases in which the applicants filed the request for enforcement before the Implementation Law entered into force, the Chamber considers it appropriate that this sum should be payable from 30 days after the Implementation Law entered into force, i.e. 30 days after 28 October 1999, up to and including November 2001. This sum should continue to be paid at the same rate until the end of the month in which the applicants regain possession of their apartments or houses.

136. With regard to the claims for compensation for destruction and deprivation of movable property in the apartments or houses, the Chamber notes that it has previously held that where it has not been shown that the alleged loss of or damage to property was directly caused by the respondent Party or any person acting on its behalf, the respondent Party cannot be held responsible (see, e.g., case no. CH/97/42, *Eraković*, decision on admissibility and merits of 14 January 1999, paragraph 65, Decisions January-July 1999). In the present cases no such responsibility can be established. The Chamber will therefore not award any compensation in this respect.

137. With regard to Velibor Vujović (CH/00/6587) claim for compensation for legal costs, the Chamber notes that the applicant has submitted evidence that he has paid a lawyer KM 200 for his assistance. However, this sum relates to the proceedings initiated before the domestic organs and not to the proceeding before the Chamber. The Chamber will therefore not award any compensation in this respect.

138. With regard to the other applicants' claim for compensation for their legal costs, the Chamber notes that they have failed to submit any evidence that they actually incurred these expenses. The Chamber will therefore not award any compensation in this respect.

139. With regard to the applicants' claim for compensation for their travel costs, the Chamber notes that they have failed to submit any evidence that they actually incurred these expenses. The Chamber will therefore not award any compensation in this respect.

140. With regard to Verica Simić's request for an order of provisional measures, the Chamber notes that the applicant has the opportunity to request the domestic organs to make an inventory list, to establish the state of the apartment and to prohibit any disposal of the applicant's moveable property and the apartment until she has been reinstated. The Chamber will therefore reject the applicant's request for provisional measures. If the competent domestic authorities fail to take reasonable steps to protect the property of Ms. Simić, then responsibility of the respondent Party for any damage might arise.

141. The Chamber further awards simple interest at an annual rate of 10% as of the date of expiry of the one-month period set in paragraph 132 for the implementation of the present decision, and on each of the sums awarded in paragraphs 134 and 135 or any unpaid portion thereof until the date of settlement in full.

## **IX. CONCLUSION**

142. For the above reasons, the Chamber decides,

1. unanimously, to declare the applications inadmissible against Bosnia and Herzegovina;

2. unanimously, to declare the applications admissible against the Federation of Bosnia and Herzegovina under Articles 6, 8 and 13 of the European Convention on Human Rights and under Article 1 of Protocol No. 1 thereto;
3. unanimously, to declare the claims of Verica Simić (CH/99/2544), Cvijan Milovac (CH/00/6401), Ljubica Mitrić (CH/00/5584), Milan Predojević (CH/00/6236) and Radojka Petrović (CH/01/7098) that they have been discriminated against inadmissible as manifestly ill-founded;
4. unanimously, that the non-enforcement of the decisions of the Commission for Real Property Claims of Displaced Persons and Refugees (CRPC) constitutes a violation of the right of the applicants to respect for their homes within the meaning of Article 8 of the Convention, the Federation thereby being in breach of Article I of the Agreement;
5. unanimously, that the non-enforcement of the decisions of the CRPC constitutes a violation of the right of the applicants to peaceful enjoyment of their 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;
6. unanimously, that it is not necessary to rule on the complaints under Article 6 and Article 13 of the Convention;
7. unanimously, to order the Federation to enable the applicants to regain possession of their apartments or houses without further delay and at the latest one month after the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure;
8. unanimously, to order the Federation to pay to the applicants, no later than one month after the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure:

to Ms. Milka Rudić the applicant in case CH/99/2030: 6000 (six thousand) Convertible Marks (*Konvertibilnih Maraka*, "KM"), composed of KM 1200 by way of compensation for non-pecuniary damage and KM 4800 by way of compensation for the loss of use of her home;

to Ms. Verica Simić the applicant in case CH/99/2544: KM 4600 (four thousand six hundred), composed of KM 1200 by way of compensation for non-pecuniary damage and KM 3400 by way of compensation for the loss of use of her home;

to Ms. Radojka Nedimović the applicant in case CH/00/4644: KM 5400 (five thousand four hundred), composed of KM 1200 by way of compensation for non-pecuniary damage and KM 4200 by way of compensation for the loss of use of her home;

to Ms. Sofija Trogrlić the applicant in case CH/99/4952: KM 5200 (five thousand two hundred), composed of KM 1200 by way of compensation for non-pecuniary damage and KM 4000 by way of compensation for the loss of use of her home;

to Mr. Ognjen Šekara the applicant in case CH/00/5290: KM 5600 (five thousand six hundred), composed of KM 1200 by way of compensation for non-pecuniary damage and KM 4400 by way of compensation for the loss of use of his home;

to Ms. Ljubica Mitrić the applicant in case CH/00/5584: KM 5200 (five thousand two hundred), composed of KM 1200 by way of compensation for non-pecuniary damage and KM 4000 by way of compensation for the loss of use of her home;

to Mr. Milan Predojević the applicant in case CH/00/6236: KM 4800 (four thousand eight hundred), composed of KM 1200 by way of compensation for non-pecuniary damage and KM 3600 by way of compensation for the loss of use of his home;



to Mr. Njegoslav Vukotić, the applicant in case CH/00/6315: KM 6000 (six thousand), composed of KM 1200 by way of compensation for non-pecuniary damage and KM 4800 by way of compensation for the loss of use of his home;

to Mr. Cvijan Milovac the applicant in case CH/00/6401: KM 5400 (five thousand four hundred), composed of KM 1200 by way of compensation for non-pecuniary damage and KM 4200 by way of compensation for the loss of use of his home;

to Mr. Danilo Nedić the applicant in case CH/00/6565: KM 4800 (four thousand eight hundred), composed of KM 1200 by way of compensation for non-pecuniary damage and KM 3600 by way of compensation for the loss of use his home;

to Mr. Velibor Vujović the applicant in case CH/00/6587: KM 5600 (five thousand six hundred), composed of KM 1200 by way of compensation for non-pecuniary damage and KM 4400 by way of compensation for the loss of use of his home;

to Mr. Ivica Džakula the applicant in case CH/00/6590: KM 3200 (three thousand two hundred), composed of KM 1200 by way of compensation for non-pecuniary damage and KM 2000 by way of compensation for the loss of use of his home;

to Ms. Radojka Petrović the applicant in case CH/01/7098: KM 3400 (three thousand four hundred), composed of KM 1200 by way of compensation for non-pecuniary damage and KM 2200 by way of compensation for the loss of use of her home;

9. unanimously, to order the Federation to pay to each of the applicants KM 200 for each further month that they remain excluded from their apartments or houses as from December 2001 until the end of the month in which they are reinstated, each of these monthly payments to be made within 30 days from the end of the month to which they relate;

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

11. unanimously, to dismiss the remainder of the applicants' claims for compensation;

12. unanimously, to reject Verica Simić's (CH/99/2544) request for an order of provisional measures; and

13. unanimously, to order the Federation to report to it no later than one month after 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)  
Ms. Michèle PICARD  
President of the First Panel