



**DECISION ON ADMISSIBILITY AND MERITS**  
(delivered on 10 May 2002)

**Cases nos.**  
**CH/00/6444, CH/00/6506, CH/00/6511**  
**and CH/00/6513**

**Nedo and Saveta TRKLJA, Envera-Vera ĐIKIĆ, Salko and Katarina OVČINA,**  
**Manojlo and Danica AVDALOVIĆ**

**against**

**THE FEDERATION OF BOSNIA AND HERZEGOVINA**

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 11 April 2002 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 applicants are citizens of Bosnia and Herzegovina. Two of the applicants are of Bosniak origin, four of the applicants are of Serb origin and one of the applicants is of Croat origin, married to an applicant of Bosniak origin. They are all pre-war occupancy right holders of apartments in the municipalities Mostar West ("Zapad") and Mostar Southwest ("Jugozapad"). The cases concern the applicants' attempts to regain possession of their apartments. 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. 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 case primarily raises issues of discrimination in relation to Articles 6, 8 and 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and Article 1 of Protocol No. 1 to the Convention as well as under Articles 14, 17 and 26 of the International Covenant on Civil and Political Rights ("ICCPR"). The applications also raise issues in relation to the aforementioned Convention provisions in isolation.

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

3. The applications were introduced on 30 November 2000 and registered on 2 December 2000. The applicants are represented by the American Refugee Committee, Legal Aid Center.

4. On 16 November 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 14 and 18 December 2001.

5. Observations in reply by the applicants were received on 29 January 2002.

6. On 5 March and 11 April 2002 the Chamber considered the admissibility and merits of the applications. On 11 April 2002 the Chamber decided to join the applications and adopted the present decision.

## **III. FACTS**

### **1. Case no. CH/00/6444 Neđo and Saveta Trklja**

7. The applicant Mr. Neđo Trklja is the pre-war occupancy right holder over an apartment located at Splitska No. 72, Municipality Mostar-Zapad. The applicants, who are husband and wife and of Serb origin, left the apartment in 1992.

8. On 2 December 1997 the applicant Mr. Neđo Trklja requested the CRPC to issue a decision confirming his occupancy right.

9. On 9 December 1999 the CRPC issued a decision (Decision No.101-2850-1/1) confirming Mr. Neđo Trklja occupancy right.

10. On 22 March 2000 the applicant Mr. Neđo Trklja filed a request for the execution of the CRPC decision to the Department for Physical Planning, Construction and Housing, Communal Management of the Municipality Mostar-Zapad. On 19 November 2001 that Department issued a conclusion on the enforcement of the CRPC decision. However, the applicants have not regained possession of the apartment.

11. The applicants have also initiated other proceedings before domestic organs to regain possession of their apartment.

**2. Case no. CH/00/6506 Envera-Vera Đikić**

12. The applicant, who is of Bosniak origin, is the pre-war occupancy right holder over an apartment located at 8 Dalmatinskog Korpusa No. 2, Municipality Mostar-Jugozapad. The applicant left the apartment in 1993.

13. On 21 July 1997 the applicant requested the CRPC to issue a decision confirming her occupancy right.

14. On 9 December 1999 the CRPC issued a decision (Decision No.101-1933-1/1) confirming the applicant's occupancy right.

15. On 28 February 2000 the applicant filed a request for the execution of the CRPC decision to the Department for Physical Planning, Construction and Housing, Communal Management of the Municipality Mostar-Jugozapad. On 5 January 2001 that department issued a conclusion on the enforcement of the CRPC decision. However, the applicant has still not regained possession of her apartment.

16. The applicant has also initiated other proceedings before domestic organs to regain possession of her apartment.

**3. Case no. CH/00/6511 Salko and Katarina Ovčina**

17. The applicant Mr. Salko Ovčina is the pre-war occupancy right holder over an apartment located at Kralja Tomislava No. 75 (formerly Avenija No. 75), Municipality Mostar-Zapad. The applicants, who are husband and wife and of Bosniak (Mr. Salko) and Croat (Mrs. Katarina) origin, left the apartment in March 1993.

18. On 5 August 1997 the applicant Mr. Salko Ovčina requested the CRPC to issue a decision confirming his occupancy right.

19. On 28 October 1999 the CRPC issued a decision (Decision No.102-1542-1/1) confirming Mr. Salko Ovčina's occupancy right.

20. On 9 February 2000 the applicant Mr. Salko Ovčina filed a request for the execution of the CRPC decision to the Department for Physical Planning, Construction and Housing, Communal Management of the Municipality Mostar-Zapad. However, as of the date of this decision, the applicants have not received a conclusion on the enforcement of the CRPC decision.

21. The applicants have also initiated other proceedings before domestic organs to regain possession of their apartment.

**4. Case no. CH/00/6513 Manojlo and Danica Avdalović**

22. The applicant Mr. Manojlo Avdalović is the pre-war occupancy right holder over an apartment located at Hrvatske mladeži No. 6 (formerly Ulica Omladinska No. 6), Municipality Mostar-Jugozapad. The applicants, who are husband and wife and of Serb origin, left the apartment in 1992.

23. On 4 October 1997 the applicant Mr. Manojlo Avdalović requested the CRPC to issue a decision confirming his occupancy right.

24. On 28 October 1999 the CRPC issued a decision (Decision No.102-1273-1/1) confirming Mr. Manojlo Avdalović's occupancy right.

25. On 13 January 2000 the applicant Mr. Manojlo Avdalović filed a request for the execution of the CRPC decision to the Department for Physical Planning, Construction and Housing, Communal Management of the Municipality Mostar-Jugozapad. On 1 August 2000 that Department issued a

conclusion on the enforcement of the CRPC decision. However, the applicants have still not regained possession of their apartment.

26. The applicants have also initiated other proceedings before domestic organs to regain possession of their apartment.

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

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

27. 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.

28. 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)).

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

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

30. 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, 51/00 and 56/01 – hereinafter “the Implementation Law”) regulates the enforcement of decisions of the CRPC. It entered into force on 28 October 1999.

31. 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).

32. 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 (Article 5 paragraph 2).

33. 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 enforcer to vacate the property;
5. a decision on whether the enforcer 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.

34. 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)

35. 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.

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

36. The Law on the Cessation of the Application of the Law on Abandoned Apartments (“the new law”) entered into force on 4 April 1998 and has been amended on several occasions thereafter (Official Gazette of the Federation of Bosnia and Herzegovina – hereinafter “OG FBiH” – nos. 11/98, 38/98, 12/99, 18/99, 27/99, 43/99, and 56/01).

37. The occupancy right holder of an apartment declared abandoned has a right to return to the apartment in accordance with Annex 7 of the General Framework Agreement (Article 3 paragraphs 1 and 2). Persons using the apartment without any legal basis shall be evicted immediately or at the latest within 15 days (Article 3 paragraph 3). A temporary user who has alternative accommodation is to vacate the apartment within 15 days of the date of delivery (before 1 July 1999 within 90 days of the date of issuance) of the decision on repossession (Article 3 paragraph 4). A temporary user without alternative accommodation is given a longer period of time (at least 90 days) within which to vacate the apartment. In exceptional circumstances, this deadline may be extended for up to one year if the municipality or the allocation right holder responsible for providing alternative accommodation submits detailed documentation regarding its efforts to secure such accommodation to the cantonal administrative authority for housing affairs and that authority finds that there is a documented absence of available housing, as agreed upon with the Office of the High Representative. In such a case, the occupancy right holder must be notified of the decision to extend the deadline and the basis therefor 30 days before the original deadline expires (Article 3 paragraph 5 compared to Article 7 paragraphs 2 and 3). The competent administrative authorities and responsible officers or persons shall be fined if they violate some provisions of the law, *inter alia*, if they do not order the vacating of the apartment in accordance with Article 3 paragraphs 3 and 4 of the Law (Article 18f).

38. Article 18f of the Law provides:

“The competent administrative authority shall be fined 1000 to 5000 KM for the following minor offences:

1. if it does not take into account the presumption that persons who have left their apartments 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 for Peace in Bosnia and Herzegovina, as set out in Article 3, paragraphs 1 and 2 of

- the Law;
- 2. if it does not order the vacating of the apartment within 15 days in accordance with Article 3, paragraphs 3 and 4 of the Law;
- 3. if it fails to process an eviction request because one of the parties filed an appeal against the prior decision, as set out in Article 8, paragraph 3 of the Law;
- 4. if it fails to hand over the apartment in accordance with Article 9 of the Law;

[...] The responsible person in the competent administrative authority shall be fined 200 to 1000 KM for the violation of paragraph 1 of this Article.”

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

39. 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**

40. 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.

41. 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**

42. The applicants claim that the following rights have been violated: their rights to respect for their home as guaranteed by Article 8 of the Convention and Article 17 of the ICCPR, 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 and Article 14 of the ICCPR, the right to an effective remedy as guaranteed by Article 13 of the Convention, the right to equal treatment before the law without any discrimination as guaranteed by Article 26 of the ICCPR and the right not to be discriminated against in the enjoyment of the above mentioned rights.

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

#### **1. The Federation of Bosnia and Herzegovina**

43. The Federation 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.

44. As to the merits of the complaints 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.

45. With regard to the applicants’ claims that they have been discriminated against the respondent Party states that the applicants have not stated what the discrimination consisted of and that a violation of the applicants’ rights not to be discriminated against is not apparent from the case

files. The respondent Party further states that the mere allegation that the applicants have been discriminated against is not sufficient for finding a violation.

## **2. The applicants**

46. The applicants state in their applications that the failure of the competent administrative organ to decide upon their requests to be reinstated into their apartments is a violation of Articles 6, 8 and 13 of the Convention, Article 1 of Protocol No. 1 to the Convention and Articles 2, 14, 17 and 26 of the ICCPR.

47. In their response to the respondent Party's observations the applicants maintain their claims.

48. In substantiating their claims that they have been discriminated against the applicants submitted the following statements in their applications:

### **a. The American Refugee Committee, Legal Aid Center**

49. The applicants are represented by the American Refugee Committee, Legal Aid Center ("ARC-LAC"). In the applications the ARC-LAC describes their experience of how the competent administrative organs in West and Southwest Mostar are handling claims for repossession of apartments and houses. These statements were transmitted to the respondent Party which did not challenge them. The relevant parts of the statements are as follows:

*"During several meetings housing officials, informed ARC lawyers that they, the housing officials, were under instructions from higher authorities, including the mayor, not to process any claims for apartment decisions and not to return any property to minority occupancy right holders..."*

*In the April 17<sup>th</sup> 2000 meeting, Ms. [R.C.] also indicated that the municipality considered the property cases to be political and therefore they would not seek a legal solution as the municipality was obligated to do by law. In a meeting on May 29<sup>th</sup> 2000 with [R.C.] and [Z.M.], the heads of housing Mostar West and Mostar Southwest municipalities, they directly referred to the lack of instructions by the mayor of their municipality that would allow them to process cases..."*

*These experiences illustrate a disturbing pattern of discrimination by authorities against minorities attempting to reclaim their property. When the municipal staff say they are under instructions not to process any minority claims and data show that these claims are not being processed, a pattern of differential treatment for minority housing applicants, like the applicants in this case, becomes clear."*

### **b. International Crisis Group report of 19 April 2000**

50. The applicants submitted parts of a report on Mostar written by the International Crisis Group ("ICG"). These parts of the ICG report were submitted to the respondent Party who has not challenged the information. The relevant parts of the report are as follows:

*"Politics, not rule of law, govern the return process in Mostar. The policy of the ruling Croat HDZ party with regard to minority, especially Bosniak returns to west Mostar is to maintain the demographic "purity" of the three Croat majority municipalities for territorial reasons. This policy has included obstructing the return of Croat displaced persons from west Mostar to central Bosnia and east Mostar. Despite six years of agreeing to minority return and pledging to implement Annex Seven, the actions and statements of HDZ officials and the pathetic return figures demonstrate this policy..."*

*The statistics on implementation of the property laws support these conclusions. In the three Croat majority municipalities of Mostar, a total of 6,044 claims for socially owned property and 463 claims for private property had been filed by July of 1999. Of these 6,507 claims,*

*the housing authorities have signed only a hand-full of claims in which the Double Occupancy Commission confirmed that the current occupant has alternate accommodation. No evictions have taken place without good will of the current occupant. The majority of outstanding claims are in municipality Southwest, where there exist a backlog of approximately 4,500 unprocessed claims. Under existing law, these should all have been processed, and the pre-war occupant should have received notification within 30 days. The municipality currently lacks a mayor and a head of the housing department to sign decisions, and the housing office employs only two staff members.”*

## **VII. OPINION OF THE CHAMBER**

### **A. Admissibility**

51. 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.

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

53. 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.

54. 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 who are seeking to return to their apartments 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.

55. The Chamber notes that the applicants filed requests to the CRPC with a view to being reinstated into their apartments. The CRPC issued decisions confirming their occupancy rights, from which it follows that they are entitled to seek the removal of the temporary occupants from the apartments. However, some applicants' enforcement requests to the competent administrative organ are still pending after 26 months, some others have received a conclusion authorising the execution between 5 and 15 months ago without being reinstated into their apartments yet.

56. 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.

57. 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.

58. 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.

59. The Chamber further finds that no other ground for declaring the cases inadmissible has been established. Accordingly, the Chamber declares the applications admissible.

## **B. Merits**

60. Under Article XI of the Agreement the Chamber must next address the question whether the facts found disclose a breach by the Federation 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 by the Convention and the other international agreements listed in the Appendix to the Agreement.

61. Under Article II of the Agreement, the Chamber has competence to consider (a) alleged or apparent violations of human rights as provided in the Convention and its Protocols and (b) alleged or apparent discrimination arising in the enjoyment of the rights and freedoms provided for in the 16 international agreements listed in the Appendix (including the Convention), where such a violation is alleged or appears to have been committed by the Parties, including by any official or organ of the Parties, Cantons, Municipalities or any individual acting under the authority of such an official or organ.

62. The Chamber has considered the present case under Article II(2)(b) of the Agreement in relation to Articles 8 and 13 of the Convention, Article 1 of Protocol No. 1 to the Convention and Articles 17 and 26 of ICCPR. The Chamber has further considered the case under Article II(2)(a) of the Agreement in relation to the said provisions of the Convention in isolation.

63. The Chamber has repeatedly held (see case no. CH/97/45, *Hermas*, decision on admissibility and merits of 16 January 1998, paragraph 82, Decisions and Reports 1998; case no. CH/98/756, *D.M.*, decision on admissibility and merits of 13 April 1999, paragraph 68, Decisions January-July 1999 and case no. CH/97/67, *Zahirović*, decision on admissibility and merits of 10 June 1999, paragraph 115, Decisions January-July 1999) that the prohibition of discrimination is a central objective of the Agreement to which the Chamber must attach particular importance. It will therefore first consider whether the applicants were discriminated against.

### **1. Discrimination in the enjoyment of the applicants’ right to equal protection of the law, to respect for their homes and to the peaceful enjoyment of their possessions.**

64. Article 17 of the ICCPR provides:

“1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.”

65. Article 26 of the ICCPR reads as follows:

“All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property birth, or other status.”

66. Article 8 of the Convention provides, as far as relevant, as follows:

“1. Everyone has the right to respect for his ... family life, 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 ...for the protection of the rights and freedoms of others.”

67. 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.”

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

69. The Chamber notes that the applicants are holders of occupancy rights over apartments in which they lived until such times as they were forced to leave. In accordance with the constant jurisprudence of the Chamber (see, e.g., case no. CH/98/777, *Pletilić*, decision on admissibility and merits of 9 September 1999, paragraph 74 and 88, Decisions August-December 1999 and case no. CH/98/457, *Anušić*, decision on admissibility and merits of 10 October 2000, paragraph 66 and 77, Decisions August-December 2000), these occupancy rights are assets which constitute a “possession” within the meaning of Article 1 of Protocol No. 1 of the Convention, and the apartments of the applicants are to be considered their homes within the meaning of Article 8 of the Convention as well as Article 17 of the ICCPR.

70. The applicants allege that the systematic policy of obstructing minority returns in the municipalities of Mostar Zapad and Mostar Jugozapad constitutes discrimination, on the grounds of their ethnic origin, in the enjoyment of their rights to protection of their homes and possessions as well as in their right to equal protection of the law within the meaning of Article 26 of the ICCPR and their right to an effective remedy within the meaning of Article 13 of the Convention.

71. The Chamber observes that Article 26 of the Covenant sets out an independent right to equality before the law and equal protection of the law (see case no. CH/97/41, *Marčeta*, decision on admissibility and merits of 3 April 1998, paragraph 61 et seq., Decisions and Reports 1998). In the present case the Chamber notes that the applicants have filed requests for the execution of the CRPC decisions to the competent administrative organs, before which they may assert their right to equal and effective protection of the law, as guaranteed under Article 26 of the Covenant.

72. In examining whether there has been discrimination contrary to the Agreement, the Chamber has consistently found it necessary first to determine whether the applicants were treated differently from others in the same or relevantly similar situation. Any differential treatment is to be deemed discriminatory if it has no reasonable and objective justification; that is, if it does not pursue a legitimate aim or if there is no reasonable relationship of proportionality between the means employed and the aim sought to be realised. There is a particular onus on the respondent Party to justify differential treatment which is based on any of the grounds explicitly enumerated in the relevant provisions, including religion or national origin. In previous cases, the Chamber has taken the same approach (see the above-mentioned *Zahirović* decision, paragraph 133 et seq., *Hermas* decision, paragraphs 86 et seq., *Đ.M.*, paragraph 92 and *Kevešević* decision, paragraph 92).

73. In the present case, the unchallenged statements submitted by the applicants before the

Chamber (see paragraphs 49-50 above) establish that the competent administrative and political organs in the municipalities of Mostar Zapad and Mostar Jugozapad pursue a deliberate policy of preventing minority returns by, *inter alia*, not processing the claims of persons of Bosniak and Serb origin, including persons of mixed marriages, to repossess their pre-war apartments.

74. The Chamber recalls that the applicants' occupancy rights over the apartments have been confirmed by the CRPC already in 1999 and are not in dispute. Nevertheless, their attempts to regain possession over their apartments have been unsuccessful for a long period of time, notwithstanding that they have taken all necessary steps to repossess them.

75. The respondent Party has not suggested any justification for the differential treatment in issue as compared to persons of Croat origin, and the Chamber cannot, of its own motion, find any such justification. On the contrary, the uncontested policy of the ruling Croat HDZ party to maintain the demographic "purity" of the three Croat majority municipalities in itself constitutes a systematic pattern of discrimination against persons of Bosniak and Serb origin, including persons of mixed marriages. Accordingly, the applicants have been discriminated against in the enjoyment of their rights under Article 26 of the ICCPR to equal protection of the law and an effective remedy before a national authority within the meaning of Article 13 of the Convention. The discrimination found has also barred the applicants from returning to their homes and property within the meaning of Article 8 of the Convention, Article 1 of Protocol No. 1 to the Convention as well as Article 17 of the ICCPR.

76. The Chamber concludes that the applicants have been discriminated against in the enjoyment of their rights under Articles 17 and 26 of the ICCPR and Articles 8 and 13 of the Convention and Article 1 of Protocol No. 1 to the Convention.

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

77. As the Chamber has already stated above (see paragraph 69), the applicants' apartments are to be considered as their homes for the purposes of Article 8 of the Convention.

78. 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.

79. The Chamber noted in *Blentić v. The Republika Srpska*, (case no. CH/96/17, decision on admissibility and merits of 3 December 1997, paragraph 26, Decisions 1996-97) and *Đ.M. v. the Federation of Bosnia and Herzegovina* (above-mentioned, paragraph 90) that although the object of Article 8 is essentially that of protecting the individual against arbitrary interference by public authorities, it may also give rise to positive obligations, which are inherent in an effective respect for the rights which it guarantees, and that, in this context, a fair balance must be struck between the general interest and the interests of the people concerned. The Chamber held that the authorities of the respondent Party had failed to take effective, reasonable and appropriate measures to deal with the difficulties posed by an assembly of people obstructing the applicant's return to his home. The police had remained completely passive and no attempt had been made to prosecute those responsible for the obstruction. Such a situation was incompatible with the rule of law and had therefore violated Article 8.

80. In the present case the Chamber finds that the passivity shown by the municipal authorities in response to the applicants' various petitions aiming at them being able to re-enter apartments which are indisputably theirs amounts to a lack of respect for their "home" within the meaning of Article 8(1) of the Convention. The respondent Party has made no attempt to justify this lack of respect. Nor can the Chamber find any such justification of its own motion. The Chamber therefore concludes that the applicants' rights under Article 8 of the Convention in isolation have also been violated.

### **3. Article 1 of Protocol No. 1 to the Convention**

81. The Chamber has already recognised (see paragraph 69 above) that the applicants' rights in respect of the apartments constitute "possessions" for the purposes of Article 1 of Protocol No. 1 to the Convention.

82. The Chamber recalls that Article 1 of Protocol No. 1 contains three rules. The first is the general principle of peaceful enjoyment of possessions. The second rule covers deprivation of property and subjects it to the requirements of public interest and conditions laid out in law. The third rule deals with control of use of property and subjects this to the requirement of the general interest and domestic law. It must be determined in respect of all of these situations whether a fair balance was struck between the demands of the general interest of the community and the requirements of the protection of the individual applicant's fundamental rights (see, e.g., the aforementioned *Blentić* decision, loc.cit., paragraphs 31-32). Although States Parties to the Convention enjoy a wide margin of appreciation in judging what is in the general interest, that judgement must not be manifestly without reasonable foundation (see Eur. Court H.R., *James and Others v. the United Kingdom* judgement of 21 February 1986, Series A no. 98, p. 32, paragraph 46). In the assessment of whether an applicant has had to bear "an individual and excessive burden" it is also of relevance whether he has had the possibility of effectively challenging the measure taken against him (see Eur. Court HR., *Hentrich v. France* judgement of 22 September 1994, Series A No. 296-A, p. 21, paragraph 49). Article 1 of Protocol No. 1 to the Convention may, like other Convention guarantees, give rise to positive obligations on the authorities to provide effective protection for the individual's rights (see, e.g, the aforementioned *D.M.* decision, loc. cit., paragraph 95 and the case law of the European Court referred to therein). Such positive obligations may include the provision of necessary assistance in the recovery of property by means of eviction.

83. The Chamber is here concerned with a failure by the authorities to protect the applicants against a continuing unlawful occupation of their possessions within the meaning of the first sentence of the first paragraph of Article 1 of Protocol No. 1. The Chamber finds, for essentially the same reasons as it has given in relation to Article 8 of the Convention, that this failure of the authorities to assist the applicants in recovering their property also amounts to a breach of their rights under Article 1 of Protocol No. 1 in isolation.

### **4. Article 13 of the Convention**

84. As the Chamber has recalled in *Galić v. The Federation of Bosnia and Herzegovina*, Article 13 guarantees the availability of a remedy at national level to enforce the substance of the Convention rights in whatever form they may happen to be secured in the domestic legal order. For Article 13 to apply, it is not necessary for an applicant to show an actual violation of another one of his Convention rights; it is sufficient that he has an arguable claim that such a violation has occurred (Case no. CH/97/40, decision on merits of 8 June 1998, Decisions and Reports 1998, p. 149, et seq., paragraph 53 et seq., with further reference to case law of the European Court).

85. "Effectiveness" in the context of Article 13 comprises four elements: institutional effectiveness, which requires that a decision-maker be independent of the authority at fault for the alleged or actual violation; substantive effectiveness, which requires that the applicant be able to raise the substance of the right at issue before the national authority before which he is seeking the remedy; remedial effectiveness, which requires that the national authority be capable of finding a violation of the right or rights of the applicant which are at issue and material effectiveness, which requires that any remedy the applicant may have awarded in his favour be such that the applicant may take effective advantage of it.

86. The present applicants clearly had arguable claims that their rights had been violated and accordingly they were entitled to an effective remedy in respect of those claims. The Chamber has already found that there has been no sufficient response to the applicants' various claims and petitions to the administrative authorities. It follows that in this respect there has also been a violation of Article 13 of the Convention in isolation.

## 5. Article 6 of the Convention and Article 14 of the ICCPR

87. Article 6 paragraph 1 of the Convention provides, as far as relevant, 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. ...”

88. Article 14 of the ICCPR provides, as far as relevant for the present case:

“1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to fair and public hearing by a competent, independent and impartial tribunal established by law.”

89. The Chamber, considering that it has found violations of the applicants' rights protected by Article 13 of the Convention and Articles 17 and 26 of the ICCPR and that the applicants have been discriminated against, does not consider it necessary to examine the cases under Article 6 of the Convention and Article 14 of the ICCPR.

## VIII. REMEDIES

90. 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.

91. In their submissions the applicants request that they be enabled to regain possession of their apartments. In addition, the applicants in each of the cases request KM 2000 as compensation for mental suffering and for the injustice they claim to have suffered and compensation for the rent they have been forced to pay for their accommodation pending their return to their apartments. Further, the applicants seek the application of the penalties under the Law on Cessation of the Application of the Law on Abandoned Apartments, for officials who have failed to carry out their legal duties. Under Article 18f of this law, responsible officers or persons in an administrative body who block returns may be fined up to KM 1000 for their actions.

92. The Federation, in its observations, argued that the claims for compensation, which were submitted by the applicants, were ill-founded or unsubstantiated and in any case excessive. The Federation was further of the opinion that the Chamber should follow its case law and reject the applicants' claim for the application of the penalties under the Law on Cessation of the Application of the Law on Abandoned Apartments.

93. Since the applicants in the present case have, for a long time, been unable to regain possession of their apartments due to the failure of the respondent Party to reinstate them 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 applicants 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.

94. 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, on merely discriminatory grounds.

95. Accordingly, the Chamber will order the respondent Party to pay to each of the applicants in each registered case the sum of 2000 Convertible Marks (*Konvertibilnih Maraka*, “KM”) in

recognition of their particular suffering as a result of their inability to regain possession of their apartments and to be discriminated against.

96. 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 applicants lodged their requests up to and including April 2002. 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.

97. With regard to the applicants' suggestion of sanctions under Article 18f of the Law on Cessation of the Application of the Law on Abandoned Apartments, the Chamber considers it appropriate to order the respondent Party to take all necessary measures to ensure the respect and implementation of Article 18f of the Law, including investigations and appropriate penalties for the officers and other persons responsible for the systematic policy of discrimination and obstruction of minority returns.

98. 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 93 for the implementation of the present decision, and on each of the sums awarded in paragraphs 95 and 96 or any unpaid portion thereof until the date of settlement in full.

## **IX. CONCLUSION**

99. For the above reasons, the Chamber decides,

1. unanimously, to declare the applications admissible;
2. unanimously, that the applicants have been discriminated against in the enjoyment of their rights under Articles 8 and 13 of the Convention, Article 1 of Protocol No. 1 to the Convention and Articles 17 and 26 of the ICCPR, the respondent Party thereby being in violation of Article I of the Agreement;
3. 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 Human Rights Agreement;
4. 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;
5. unanimously, that the absence of an effective response to the applicants' various claims and petitions to the administrative authorities constitutes a violation of Article 13 of 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 of the Convention and 14 of the ICCPR;
7. unanimously, to order, in accordance with its powers granted under Article XI(1)(b) of the Agreement, the Federation to reinstate the applicants without further delay, and at the latest by 10 June 2002, regardless of whether either party files a motion to review the decision under Article X(2) of the Agreement;

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 Mr. Neđo and Ms. Saveta Trklja, the applicants in case CH/00/6444, KM 6800 (six thousand eight hundred), composed of KM 2000 by way of compensation for non-pecuniary damage and KM 4800 by way of compensation for the loss of use of their home;

to Ms. Envera-Vera Đikić, the applicant in case CH/00/6506, KM 7000 (seven thousand), composed of KM 2000 by way of compensation for non-pecuniary damage and KM 5000 by way of compensation for the loss of use of her home;

to Mr. Salko and Ms. Katarina Ovčina, the applicants in case CH/00/6511, KM 7000 (seven thousand), composed of KM 2000 by way of compensation for non-pecuniary damage and KM 5000 by way of compensation for the loss of use of their home;

to Mr. Manojlo and Ms. Danica Avdalović, the applicants in case CH/00/6513, KM 7200 (seven thousand two hundred), composed of KM 2000 by way of compensation for non-pecuniary damage and KM 5200 by way of compensation for the loss of use of their home;

9. unanimously, to order the Federation to pay to the applicants in each registered case KM 200 for each further month that they remain excluded from their apartments as from May 2002 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 order the Federation to take all necessary measures to ensure the respect for and the implementation of Article 18f of the Law on Cessation of the Application of the Law on Abandoned Apartments;

12. unanimously, to dismiss the remainder of the applicants' claims for remedies; 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)  
Giovanni GRASSO  
President of the Second Panel