



DECISION ON ADMISSIBILITY AND MERITS
(delivered on 4 April 2003)

Case no. CH/01/7728

V. J.

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 31 March 2003 with the following members present:

Ms. Michèle PICARD, President
Mr. Mato TADIĆ, Vice-President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
Mr. Želimir JUKA
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Giovanni GRASSO
Mr. Miodrag PAJIĆ
Mr. Manfred NOWAK
Mr. Vitomir POPOVIĆ
Mr. Viktor MASENKO-MAVI
Mr. Andrew GROTRIAN

Mr. Ulrich GARMS, Registrar
Ms. Olga KAPIĆ, Deputy Registrar
Ms. Antonia DE MEO, 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 present application concerns the eviction of the applicant from an apartment in Sarajevo. The applicant claims that she was the (co-)holder of the occupancy right already before the armed conflict in Bosnia and Herzegovina, that she was recognised as the occupancy right holder again in 1996 and that she purchased the apartment in 1999, subsequently registering herself as the owner in the land books. However, in June 1998 another person claiming to be the pre-war occupancy right holder of the same apartment applied for recognition of this status to the Commission for Real Property Claims of Displaced Persons and Refugees ("CRPC"). The CRPC issued a decision recognising S.M.'s claim in June 2000. In December 2000 S.M. requested the competent housing administration to enforce the CRPC decision and put him back into possession of the apartment. In March 2001 the applicant was ordered to vacate the apartment, which – after exhaustion of domestic appeals and requests for reconsideration of its decision to CRPC - she finally did in February 2002.

2. The applicant claims that the Federation of Bosnia and Herzegovina has violated her right to respect for her home under Article 8 of the European Convention on Human Rights and her right to peaceful enjoyment of possessions under Article 1 of Protocol No. 1 to the Convention. She also claims that she was denied a fair hearing in the administrative procedure and that the CRPC decision is "unlawful". The Organisation for Security and Co-operation in Europe ("OSCE"), which was invited by the Chamber to submit an *amicus curiae* brief, has submitted that the respondent Party is responsible for the failure of CRPC to give the applicant a fair hearing within the meaning of Article 6 of the Convention, or, in the alternative, for its failure to provide the applicant access to a court in order to obtain review of the CRPC decision.

II. PROCEEDINGS BEFORE THE CHAMBER

3. The application was introduced on 24 July 2001. The applicant requested the Chamber to order the respondent Party, as a provisional measure, to prevent the enforcement of a decision to evict her from the apartment in Grbavička 9/2 in Sarajevo (hereinafter "the apartment"). The applicant is represented by Mr. Ismet Mehić, a lawyer practising in Sarajevo.

4. On 8 October 2001 the Chamber rejected the request for provisional measures. At the same time it decided to transmit the application to the respondent Party for its observations on the admissibility and merits of the case.

5. On 18 December 2001 the Chamber invited the CRPC to act as *amicus curiae* in the present case and in the related case no. CH/01/8366 *Mimović v. the Federation of Bosnia and Herzegovina* (see paragraphs 1 above and 11-28 below). The CRPC submitted its *amicus curiae* brief on 28 February 2002. The Chamber transmitted the *amicus* brief to the parties. On 30 April 2002 CRPC submitted an "addendum" to its *amicus curiae* brief, which was transmitted to the parties as well.

6. On 3 April 2002 the Chamber also invited the Organisation for Security and Co-operation in Europe ("OSCE") to submit an *amicus curiae* brief concerning the applications. The Chamber received the brief by OSCE on 10 April 2002 and transmitted it to the parties.

7. The respondent Party submitted observations on 27 December 2001, as well as 20 February, 8 and 29 March and 1 April 2002.

8. The applicant made submissions to the Chamber on 4 December 2001 and 25 January and 19 February and 7 and 26 March 2002.

9. On 8 October 2001, 12 April 2002, 4 and 5 February, 3 and 31 March 2003 the Chamber considered the admissibility and merits of the application. It adopted the present decision on the latter date.

III. ESTABLISHMENT OF THE FACTS

10. The allegations of fact of the parties and *amici curiae* in this case relate to two different periods of time: the period before and during the armed conflict in BiH and the facts relating to the period after the entry into force of the Dayton Peace Agreement (DPA). While the facts relating to the first period are hotly disputed among the parties, the Chamber does not need to establish them for the purposes of this decision. The factual allegations of the parties relating to the second period have not been able to fully clarify the matter, but each party's statements have remained undisputed.

11. On 12 January 1990, Mr. D.J., then husband of the applicant (both citizens of Bosnia and Herzegovina of Croat origin), concluded a contract on use of the apartment with the competent housing authority. However, according to a statement made by D.J. at a hearing on 20 February 2001 before the Administration for Housing Affairs of the Canton Sarajevo ("the Administration"), the couple never moved into the apartment. S.M. (a citizen of Bosnia and Herzegovina of Serb origin), who also held an occupancy right for the apartment, apparently continued to live there. D.J. and the applicant were divorced on 8 May 1991. The reason for this situation appears to be that S.M. and his family were allocated the occupancy right over a larger apartment, and D.J. obtained the contract on use for S.M.'s apartment. However, the building in which S.M.'s new apartment was to be located had not been constructed yet, so that S.M. and his family remained in their old apartment and D.J. and the applicant could not move in.

12. The applicant states that during the armed conflict she could not live in Grbavica where the apartment is located. In 1996 the applicant entered into possession of the apartment, which was at that time abandoned and severely damaged, relying on the contract on use of the apartment of 12 January 1990.

13. On 6 September 1996, acting upon the applicant's request, the Municipal Court II Sarajevo issued a decision recognising the applicant as the occupancy right holder over the apartment. This decision is based on the contract on use of the apartment concluded with the housing authority by D.J. in 1990 and establishes that the applicant, as D.J.'s former wife, is entitled to succeed in the contract. On 10 September 1996 the applicant concluded a contract on use of the apartment with the Housing Fund of the City of Sarajevo. The applicant purchased the apartment on 18 January 1999 and registered her ownership with the land registry at the Municipal Court I of Sarajevo on 23 March 1999.

14. On 22 June 1998 S.M. filed a claim concerning the apartment with the Commission for Real Property Claims of Displaced Persons and Refugees ("CRPC"). On 13 June 2000 the CRPC issued a decision establishing that S.M. was the occupancy right holder over the apartment at issue on 1 April 1992.

15. On 23 October 2000 S.M. requested the Administration to enforce the CRPC decision.

16. On 15 December 2000 the applicant submitted a request to the CRPC for reconsideration of its decision of 13 June 2000. On 21 February 2001 the CRPC informed the Administration of the request for reconsideration and suggested that it suspend the enforcement of the CRPC decision pending resolution of the request for reconsideration.

17. On 13 March 2001 the Administration allowed the requested enforcement of the CRPC decision. It ordered the applicant to vacate the apartment within a 15 days time-limit from the date of delivery of the conclusion. According to the decision, the applicant is not entitled to an alternative accommodation, because she was a subtenant on 30 April 1991.

18. On 30 March 2001 the applicant filed an appeal against the conclusion on her eviction, arguing that she is the owner of the apartment.

19. On 12 June 2001 the CRPC rejected the request for reconsideration of its decision by the applicant as ill-founded. The CRPC held that the applicant did not enter into possession of the apartment as provided in Article 11 of the Law on Housing Relations.

20. On the same day, the applicant submitted another request for reconsideration of the CRPC decision.

21. On 11 September 2001 the Administration notified the applicant that her eviction from the apartment had been scheduled for 1 October 2001.

22. On 27 September 2001 OSCE intervened with the Novo Sarajevo Housing Department, arguing that the eviction should not be enforced as the applicant was registered as owner of the apartment. On 28 September 2001 the Novo Sarajevo Housing Department consulted with the Administration and it was agreed that the eviction would not be carried out. The Administration thereafter suspended the eviction of the applicant.

23. On 16 October 2001 the CRPC rejected the applicant's second request for reconsideration as inadmissible.

24. On the same day, the applicant filed criminal charges of "abuse of office or official capacity" and "infringement of the equality of citizens" against V.P., a staff lawyer of CRPC, with the Municipal Prosecutor, alleging that he had unlawfully exercised pressure on officials of the Administration. According to the applicant this resulted in the unlawful issuing of the eviction order. On 19 December 2001 the Municipal Prosecutor's Office informed the applicant that they would not prosecute the charges filed, as an investigation had resulted in the conclusion that there was no reasonable suspicion that the offence had been committed.

25. On 18 October 2001 the Cantonal Ministry for Housing Affairs issued its decision upon the appeal of the applicant against the conclusion on eviction (see paragraph 18 above). The Ministry ordered the suspension of the applicant's eviction until completion of the CRPC reconsideration of its decision (the applicant's second request for reconsideration had in fact already been rejected on 16 October 2001).

26. On a date unknown to the Chamber, the Administration scheduled the eviction of the applicant for 14 January 2002. The eviction was subsequently postponed, and rescheduled for 28 February 2002.

27. According to the undisputed statements of the applicant, on 26 February 2002 she learned that her eviction from the apartment had been scheduled for 28 February 2002. The applicant states that she learned about this through the respondent Party's submissions forwarded to her by the Chamber, as the authorities had in no way notified her of the fact and date of her eviction. On 28 February 2002 an Inspector of the Administration escorted by two policemen came to her apartment. The applicant and the Inspector agreed that she would hand over the keys to the apartment on 4 March 2002. On that date, when the Inspector returned to the apartment, the applicant informed him of the decision of the Ministry of 18 October 2001 suspending her eviction. The Inspector alleged that there was no such decision in his case-file. The Inspector then took over the keys to the apartment.

28. On 6 March 2002 the Administration reinstated S.M. into the apartment.

IV. RELEVANT LEGAL PROVISIONS

A. The Law on the Legal Relations of Property

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

B. Legislation on Land Books

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

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

32. On 21 October 2002, the High Representative issued the Decision on Enacting the Law on Land Registry in the Federation of BiH (Official Gazette of FBiH no. 58/02). The Law entered into force on 27 November 2002 and will be applied from 27 May 2003.

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

33. According to Article 7 of the Law on Sale of Apartments with an Occupancy Rights (OG FBiH nos. 27/97, 11/98, 22/99, 27/99, 7/00, 32/01 and 61/01), every occupancy right holder (with certain exceptions not relevant to the present case) is entitled to request the allocation right holder to sell him or her the apartment, and the allocation right holder is obliged to sell it.

34. Under Article 8 of the Law an occupancy right holder shall be considered to be a) the person to whom the apartment was allocated for use by the owner and who signed a contract on use of the apartment, or b) the person to whom the apartment was allocated by a final and binding judicial decision and for whom this right was recognised by the act of a competent body in accordance with the Law on Housing Relations.

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

D. The High Representative's Moratorium on the Sale of Apartments to Persons Who Acquired the Occupancy Right After 30 April 1991

36. On 5 November 1998 the High Representative imposed a Decision suspending decision-making on claims to apartments in the Federation for which a permanent occupancy right was issued after 30 April 1991, and imposing a moratorium on sale of apartments to persons who acquired their occupancy right after 30 April 1991, which entered into force on the same day. Article 2 of this decision provides:

“Under the provisions of the Law on Sale of Apartments with Occupancy Right (Official Gazette of the BiH Federation, No. 27/97), no contract on the sale of an apartment shall be concluded with an occupancy right holder who acquired his/her occupancy right since 30 April 1991.”

This Decision of the High Representative was forwarded to the competent domestic authorities and the media. However, it was never published in any official gazette.

E. The Law on Housing Relations

37. Article 11 of the Law on Housing Relations (Official Gazette of the Socialist Republic of Bosnia and Herzegovina no. 14/84, 12/87 and 36/89, and OG FBiH 11/98, 38/98, 12/99 and 16/99) provides that a person shall acquire an occupancy right on the date of legally moving into an apartment.

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

38. The Law on the Cessation of the Application of the Law on Abandoned Apartments (“the Law on Cessation”) entered into force on 4 April 1998 and has been amended on several occasions thereafter (OG FBiH nos. 11/98, 38/98, 12/99, 18/99, 27/99, 43/99, 31/01, 56/01 and 15/02). The Law on Cessation repealed the former Law on Abandoned Apartments.

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

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

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

41. Annex 7 to the General Framework Agreement (“GFAP”), entitled Agreement on Refugees and Displaced Persons, deals with refugees and displaced persons. Article I paragraph 1 of Annex 7 provides that:

“All refugees and displaced persons have the right freely to return to their homes of origin. They shall have the right to have restored to them property of which they were deprived in the course of the hostilities since 1991 and to be compensated for any property that cannot be restored to them. The early return of refugees and displaced persons is an important objective of the settlement of the conflict in Bosnia and Herzegovina. ...”

42. 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. 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)).

43. The Parties shall co-operate with the work of the CRPC, and shall respect and implement its decisions expeditiously and in good faith (Article VIII).

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

44. The Law on Implementation of the Decisions of the Commission for Real Property Claims of Displaced Persons and Refugees (OG FBiH 43/99, 51/00 and 56/01 – hereinafter the “Law on Implementation of CRPC Decisions”) regulates the enforcement of decisions of the CRPC.

45. 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).

46. 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.

47. Article 10 reads as follows:

“The right holder referred to in the Commission decision and/or any other person who held a legal interest in the property or apartment at issue on the date referred to in the dispositive of the Commission decision, is entitled to submit a request for reconsideration to the Commission, in accordance with Commission regulations.

A person with a legal interest in the property or apartment at issue which was acquired after the date referred to in the dispositive of the Commission decision, may lodge an appeal against the conclusion on permission of enforcement issued by the competent administrative organ, only as permitted by the provisions of this Law. The appeal procedure mentioned in this paragraph may not refute the regularity of the Commission decision. The regularity of the Commission decision may be reviewed only through the reconsideration procedures referred to in Article 11 of this Law.”

48. Article 11 (before its amendment in December 2001, see paragraph 49 below) read as follows:

“On receipt of a request for reconsideration, the Commission may notify the competent administrative organs responsible for the enforcement of the Commission decision of the pending request for reconsideration.

Once notified of the pending request for reconsideration by the Commission, the competent administrative organ shall suspend the enforcement of the Commission decision, until such time as it receives notification from the Commission of the outcome of the reconsideration.

In reference to the previous paragraph, the competent administrative organ shall not suspend the enforcement of the Commission decision, unless it has received official notification of the request for reconsideration from the Commission.

After examining the request for reconsideration, the Commission may:

- a. refuse to admit the request as being inadmissible, not submitted within due time or as submitted by an unauthorised person;
- b. reject the request as being unfounded;
- c. accept the request, revoke its previous decision and issue a new decision.

The decision of the Commission refusing or rejecting the reconsideration request shall be delivered to the person who requested the reconsideration. The decision of the Commission accepting the reconsideration request and revoking its previous decision shall be delivered to the person who requested the reconsideration and all other persons who received the original decision, and to the administrative organ responsible for enforcement.”

49. Article 12 read (before its amendment in December 2001, see paragraph 51 below) as follows:

“The appeal against the conclusion on permission of enforcement of the decision of the Commission, referred to in paragraph 2 of Article 10 of the Law, must be lodged before the competent administrative body that issued the conclusion on permission of enforcement, within 8 days from the date of delivery of the conclusion on permission of enforcement.

The responsible administrative body shall direct the appellant to initiate proceedings before the competent court within 30 days, to prove that the right holder named in the Commission’s decision voluntarily and lawfully transferred his/her rights to the appellant since the date referred to in the dispositive of the Commission’s decision.

Enforcement proceedings before the responsible administrative organ shall not be suspended pending the court’s decision.

As an exception to the previous paragraph, the competent court may make a specific order to suspend the enforcement proceedings before the responsible administrative organ if a verified contract on the transfer of rights was made after 14 December 1995.”

50. Article 13 reads:

“The competent court shall determine whether the transfer of rights to the appellant was conducted voluntarily and in accordance with the law.

If the transfer of rights was conducted between 1 April 1992 and 14 December 1995, and its validity is disputed by the respondent, the burden of proof shall lie on the party claiming to have acquired rights to the property under the transaction to establish that the transaction was conducted voluntarily and in accordance with the law.

If the validity of the transfer has been determined in previous proceedings which took place prior to the entry into force of this Law, the decision taken in the previous proceedings shall be null and void.

The court may make whatever orders are necessary to give effect to its decision, including orders setting aside legal transactions, orders for making or erasing entries in the appropriate public books/registers, and orders lifting any order for suspension of the administrative proceedings.

The relevant parties to the appeal shall notify the competent administrative body of the court’s decision.

The responsible administrative body shall resume enforcement proceedings as required, or discontinue proceedings in accordance with the court’s decisions.”

51. On 4 December 2001, the High Representative imposed the Decision on the Law on Amendments to the Law on Implementation of the Decisions of the Commission for Real Property Claims of Displaced Persons and Refugees, amending *inter alia* Articles 11 and 12 and inserting a new Article 12a. It entered in force eight days after the publication in the OG FBiH on 21 December 2001 (OG FBiH 56/01).

52. Relevant for the purposes of the present decision is the amended text of paragraph 2 of Article 11, which reads:

“The competent administrative body shall not suspend the enforcement of the Commission decision, unless it has received official notification from the Commission specifically requesting suspension pending the outcome of the reconsideration.”

53. Article 12 as amended provides:

“The appeal against the conclusion on the permission of enforcement of the decision of the Commission, referred to in paragraph 2 of Article 10 of the Law, shall be submitted to the responsible second instance body in accordance with the Law on Administrative Procedure by the administrative body that issued the conclusion on the permission of enforcement, within 8 days from the date of delivery of the conclusion on the permission of enforcement.

The grounds for the appeal shall be limited to the following:

- (a) the decision of the Commission upon which the conclusion on the permission of enforcement was based has not been issued at all or is revoked by the Commission in its reconsideration proceedings;
- (b) whether the enforcee is entitled to alternative accommodation or the time limit provided for the enforcee to vacate the property is in accordance with the applicable laws; or
- (c) other reasons for appeals against conclusions on the permission of enforcement which are in accordance with the Law on Administrative Procedure.”

54. The new Article 12a reads:

“The responsible administrative body shall direct the appellant to initiate proceedings before the competent court within 30 days to prove that the right holder named in the Commission’s decision voluntarily and lawfully transferred his/her rights to the appellant since the date referred to in the dispositive Commission’s decision.

The competent court may make a specific order to suspend the enforcement proceedings before the responsible administrative body pending the court’s decision where the appellant can show evidence of a written contract on transfer of rights in accordance with domestic law and irreparable damage to the enforcee if the enforcement proceedings continued.”

V. COMPLAINTS

55. The applicant alleges a violation of her right to property and her right to respect for her home. She claims that the housing authorities could not lawfully evict her because she bought this apartment and is registered as the owner of it in the land books of the municipal court. The applicant further claims that she has never been informed nor invited, nor given any other possibility to participate as a party in the proceedings which were initiated to evict her. The applicant finally claims that the CRPC decision is “unlawful”, in that it fails to recognise that the applicant was the pre-war occupancy right holder. For these reasons, she alleges violations of Articles 6 and 8 of the Convention and Article 1 of Protocol No. 1 to the Convention.

VI. SUBMISSIONS OF THE PARTIES

A. The respondent Party

56. The Federation objects to the admissibility of the application on the ground that the domestic remedies provided by the domestic law have not been exhausted. With regard to the eviction, the respondent Party submits that the applicant could have initiated an administrative dispute against the conclusion of the Ministry for Housing Affairs of 18 October 2001. The respondent Party disputes, however, the statement by CRPC, according to which the applicant could have obtained a court order suspending her eviction under the Law on Civil Proceedings or the Law on Execution (see paragraph 69 below).

57. With regard to the applicant’s asserted ownership of the apartment, the respondent Party argues that the applicant could have initiated civil proceedings in order to obtain a judgement recognising her as the owner. The respondent Party accordingly asks the Chamber to declare the application inadmissible.

58. As to the merits, the respondent Party notes that the applicant has not started any court proceedings to assert her rights over the disputed apartment. The respondent Party disputes the applicant’s claim that in the administrative proceedings she was not heard. Therefore, Article 6 of the Convention was not violated.

59. With regard to the complaint under Article 8 of the Convention, the respondent Party states that the applicant is the owner of the apartment in question over which the pre-war right holder acquired an occupancy right. The respondent Party concludes that the applicant, being the owner of

the apartment, has the right of disposal while the pre-war right holder is entitled to use and possession of the apartment.

60. As to the complaint of a violation under Article 1 of Protocol No. 1 to the Convention, the Federation contends that “in case the applicant was not aware of the fact that a third person’s right existed over the apartment which can exclude, diminish or restrict her right, the seller is responsible for the legal failures”. The respondent Party further contended that “if the applicant was not informed and she would not have agreed to purchase an apartment burdened with an occupancy right, it is the seller who is responsible, not the respondent Party”. The respondent Party further argues that the Decision of the High Representative of 5 November 1998, banning the sale of apartments to persons having acquired the occupancy right after 30 April 1991, does not apply to the sale of the apartment to the applicant, as the applicant had obtained the occupancy right in 1990.

B. The applicant

61. The applicant argues that her husband became the occupancy right holder of the apartment in 1990, at which time she became the co-holder of that right. S.M. was at that time allocated another, larger apartment, and thus ceased to be the occupancy right holder of the disputed apartment. The applicant therefore concludes that the CRPC decision, finding that M.S. was the occupancy right holder as of 1 April 1991, is factually mistaken and based on misapplication of the Law on Housing Relations. The applicant also appears to argue that CRPC is incompetent to establish pre-war occupancy rights and should instead focus on examining the validity and voluntariness of transfers of rights that occurred during the armed conflict.

62. Moreover, the applicant argues that by concluding a contract on purchase of the apartment on 18 January 1999, and subsequently registering her rights under that contract with the land registry at the Municipal Court I, she became the owner of the apartment.

63. With regard to the respondent Party’s argument that, if the applicant unknowingly purchased an apartment burdened by an occupancy right in favour of a third party, the seller shall be responsible for any damage incurred by the buyer, the applicant submits that the seller is the respondent Party. Therefore, she submits, this argument can in no way discharge the respondent Party from its responsibilities.

64. As to the claim, made in the *amicus curiae* submissions of the CRPC, that the applicant could have initiated civil proceedings in order to assert that she was the occupancy right holder as of 1 April 1992, the applicant responds that her occupancy right being undisputed except for the unlawful CRPC decision, there was no reason for her to initiate civil proceedings.

65. Finally, with regard to her eviction, the applicant alleges unlawful pressures on the housing organs by CRPC, untrue statements of the competent officials, and that she learned about the date of her eviction through the respondent Party’s submissions to the Chamber, not having been delivered the relevant conclusion.

VII. SUBMISSIONS OF THE AMICI CURIAE

A. The CRPC *amicus curiae* brief

66. The CRPC was invited to submit its *amicus curiae* opinion on two questions: whether the applicant had an effective domestic remedy against her eviction pending determination of her rights to the apartment, and whether the enforcement of the CRPC decision should be suspended pending determination of the applicant’s rights to the apartment.

1. Whether the applicant had effective domestic remedies available

67. As to the existence of effective domestic remedies, CRPC notes that according to Annex 7 to the GFAP and to the Law on Implementation, CRPC’s initial decision confirming S.M. as the occupancy right holder constitutes a final and binding determination of the rights to the apartment as

of 1 April 1992. The decision's regularity can only be reviewed by CRPC in its reconsideration procedure. The applicant twice submitted such a request, and it was rejected both times.

68. CRPC next points out that, according to the Law on Implementation, the applicant could have appealed the conclusion on enforcement of the CRPC decision and requested a provisional measure to postpone the enforcement of the CRPC decision from a competent court. Under Article 12, paragraph 4, of the Law on Implementation the competent court could have granted such an order, as the applicant signed the contract on use of the apartment after 15 December 1995.

69. According to CRPC, the applicant could also have initiated proceedings under the Law on Civil Proceedings and the Law on Enforcement Procedure to establish that her former husband had in fact perfected the occupancy right in 1990 or that the transaction regarding the purchase of the apartment was lawful. She could have requested a provisional measure pending the outcome of either determination. The applicant did not pursue these proceedings.

2. Whether the CRPC decision should be enforced pending disputes as to the rights over the apartment

70. CRPC submits that its decisions should be enforced by the domestic authorities regardless of the legal basis, if any, on which the current occupant uses the property at issue. The Law on Implementation clearly legislates that the CRPC decision must be executed, with some strict exceptions. CRPC argues that the applicant should not benefit from these exceptions, on the grounds that: (i) the contract on use concluded by the applicant on 10 September 1996 was arguably cancelled by Articles 1 and 2 of the Law on Cessation; and (ii) the applicant purchased the apartment and registered herself as owner while a ban imposed by the High Representative on the purchase of apartments applying to her case was in force (see paragraph 36 above).

71. CRPC recalls the Chamber's decision in case no. CH/00/5408, *Salihagić* (decision of 11 May 2001, Decisions January-June 2001), in which the Chamber found that the applicant's eviction notwithstanding her registration as owner constituted a violation of the Convention. However, CRPC argues that the case of the applicant can be distinguished from the *Salihagic* case in several respects:

- (a) in the present case the apartment is validly claimed by the pre-war occupant, while in the *Salihagić* case there was no valid claim by the pre-war occupant, and the eviction was triggered by the Municipality *ex officio*;
- (b) S.M. is requesting the enforcement of a final and binding decision by CRPC, an institution established by the Dayton Peace Agreement;
- (c) Ms. Salihagić had revalidated her contract on use before purchasing the apartment, while the applicant failed to do so.

3. Policy considerations

72. CRPC adds some policy considerations to its legal analysis of the questions posed by the Chamber. It argues that in balancing the interests at issue in the case, the Chamber should take into account the rights of refugees and displaced persons ("RDPs").

73. CRPC argues that the early return of RDPs to their homes of origin is unequivocally an important objective of the settlement of the conflict in BiH. The Annex 4 Constitution of BiH guarantees, in Article II(5), the right of all RDPs to freely return to their homes of origin. Annex 7 guarantees the right of RDPs to have restored to them the property they lost in the course of the hostilities since 1991.

74. CRPC further argues that, considering that it is estimated that during and shortly after the armed conflict in BiH up to 70% of the population was internally displaced or had fled the country, "[W]ithout adequate legal standards and mechanisms to facilitate return to their original homes, the right to return cannot be adequately guaranteed and people will remain displaced even longer".

B. The *amicus curiae* brief of the OSCE

75. The OSCE submitted an *amicus curiae* brief addressing five issues: (1) whether the applicant had an effective remedy available; (2) whether the process by which CRPC confirmed the occupancy right of the applicant S.M. was in accordance with the standards guaranteed by the Convention; (3) whether the eviction of the applicant was in accordance with the standards guaranteed by the Convention; (4) responsibility of the respondent Party and (5) policy considerations.

1. Whether the applicant had an effective remedy available

76. OSCE submits that the applicant bases her claim to the apartment (and thus her complaint about the eviction) on the claim that her former husband was the occupancy right holder on 1 April 1992, and not on a subsequent transfer of rights. CRPC decisions are final and binding as regards the determination of the property right as of 1 April 1992. Therefore, the applicant, who contests the CRPC finding that S.M. was the occupancy right holder, made use of the only remedy relevant to her claim when she requested CRPC to reconsider its decision. Accordingly, OSCE submits that the applicant's application cannot be declared inadmissible on grounds of non-exhaustion of domestic remedies.

2. Whether the process by which CRPC confirmed the occupancy right of S.M. was in accordance with the standards guaranteed by the Convention

77. OSCE submits that "the decisions of the CRPC can be qualified as essentially judicial decisions which affect substantive rights of persons to apartments", or, in the alternative, that CRPC decisions are of an essentially administrative character but "have a direct bearing on the determination or substantive content of a private right or obligation". To the extent that the decisions of CRPC constitute a determination of a civil right or obligation within the meaning of Article 6 paragraph 1, the applicant is entitled to the protection of the rights guaranteed by this article. OSCE recalls the case-law of the European Court of Human Rights providing that "where a body falls within Article 6(1), but is not in itself a court or tribunal, then either the body itself must comply with Article 6(1), or there must be a right of appeal to a court or tribunal that complies with the requirements of Article 6(1)". There is no appeal from CRPC decisions as to the status on 1 April 1992. Therefore, "the actions of the CRPC must be examined to consider whether they fulfil the requirements of Art. 6(1)". OSCE accordingly sets out to examine the CRPC procedure in the light of Article 6, paragraph 1 of the Convention.

78. As to the requirement of an oral hearing, OSCE submits that *The Book of Regulations on Confirmation of Occupancy Rights of Displaced Persons and Refugees* of the CRPC does not provide for an oral hearing. Claims, and reconsideration requests, are to be decided on the basis of documentary evidence. "If ever CRPC admits oral hearings, it is not clear under what circumstances this is done".

79. Regarding the requirement that "judgement shall be pronounced publicly", OSCE submits that CRPC decisions are listed on the CRPC web-site, to which only a small minority of the population of BiH has access. "The CRPC decision is given to the claimant but, until a request for enforcement is filed with the authorities by the decision-holder, the decision is not public". In the present case, the applicant "could only have become aware of the decision when the Canton Sarajevo Administration for Housing Affairs served a copy of the decision on her along with the conclusion on enforcement of the decision specifying the deadline by which she had to vacate the apartment". OSCE further argues that none of the grounds for limiting the right to an oral hearing and public delivery of judgments listed in Article 6, paragraph 1, apply to CRPC decision-making.

80. With regard to the requirement of "equality of arms", OSCE submits that S.M. had ample opportunity to submit evidence, both in his request for a CRPC decision and in subsequent proceedings. The applicant, on the other hand, "was only entitled to submit evidence to the CRPC once the initial CRPC decision had been issued and only in order to request formally reconsideration of that decision".

81. Regarding the right to an adversarial hearing, OSCE argues that this aspect of equality of arms includes the requirement of full disclosure. OSCE submits that the CRPC reconsideration procedure does not require disclosure to the party requesting reconsideration of the documents submitted by the party who obtained a CRPC decision in its favour.

82. As to the requirement of independence and impartiality, OSCE submits that, where a tribunal has already taken decisions on key issues prior to the hearing on the merits of a case, subsequent decisions on the merits will be subject to challenge. In the case of the CRPC reconsideration procedure, according to OSCE, the same body, sitting in the same composition and following the same procedure, reconsiders its decision.

3. Whether the enforcement of the CRPC decision while the applicant was still registered in the land books as the owner was in accordance with the standards guaranteed by the Convention

83. OSCE submits that, in order to be in compliance with the right to respect for one's home guaranteed by Article 8 of the Convention, an eviction must be "in accordance with the law". OSCE recalls the Chamber's decision in the *Salihagić* case, in which the Chamber ordered the Federation to prevent the eviction of the applicant as long as she is registered as owner in the land books. OSCE concedes that, unlike in the *Salihagić* case, in the present case the apartment is claimed by the purported pre-war occupant.

84. OSCE argues that the CRPC decision is an administrative decision, though final and binding. They add that "there is nothing in the Law [on Implementation] to suggest that registration in the land book can be cancelled by a simple administrative act". OSCE appears to conclude that it therefore remains unclear whether, in case of conflict between a CRPC decision and the land book registration, the matter would not need to be referred to a court for resolution, before an eviction can be carried out "in accordance with the law".

4. Responsibility of the respondent Party for possible violations arising from the implementation of the CRPC decision

85. OSCE submits that the Federation can be held responsible for any violations arising from the procedure before CRPC and for the implementation of its decisions on the following grounds:

- The Federation is a Party to the Annex 7 Agreement. As such, it appoints four of the nine CRPC Commissioners, is responsible for the funding of the CRPC in equal shares with the other Parties and is a Party to the *Agreement concerning Article XVI to the General Framework Agreement for Peace in Bosnia and Herzegovina*, signed on 10 November 2000, that extended the CRPC mandate until the end of 2003.
- Although it was imposed by the High Representative, the Law on Implementation of CRPC Decisions is now part of the domestic Federation legal system. "The Federation is responsible for its implementation and can, if necessary, amend it".
- The Canton Sarajevo Administration for Housing Affairs, which issued and enforced the eviction order against the applicant, is a public authority of the Federation.
- The Federation is bound to afford to anyone within its jurisdiction access to a tribunal that will determine any dispute arising from an act or omission of the administrative authorities.
- OSCE further draws the Chamber's attention to the opinion of the European Commission for Democracy Through Law (the "Venice Commission") which noted in 1999 that:

"[CRPC's] operation appears as an exception to the legal order of Bosnia and Herzegovina, which, through Article 6 of the ECHR, requires that disputes over civil rights and obligations be decided by tribunals established by law, after fair and public hearings. It should be regarded as a provisional institution. [...] It will not be possible to integrate this Commission into the legal order of BH without subjecting its decisions to judicial or, at least, constitutional control." (*Preliminary Proposal for the Restructuring of Human Rights Protection Mechanisms in Bosnia & Herzegovina*", adopted by the Venice Commission at its 39th Plenary meeting (Venice, 18-19 June 1999), CDL (99) 19 final, page 10)

- OSCE concludes that “[a]lthough aware of the problem, the Federation failed to use its considerable leverage in negotiating the extension to require that the CRPC revise its reconsideration procedure so as to accord with European standards”.

5. Policy considerations

86. OSCE concludes its *amicus curiae* brief with some policy considerations:

“In the wake of the conflict in Bosnia & Herzegovina and the large-scale displacement of populations that it produced, the creation of an independent body to decide claims for property, the CRPC, was a logical (and innovative) solution. Given the political climate and vulnerability of the courts and other institutions to external influence, it was necessary that enforcement of such decisions was not made subject to review by those authorities; hence the rationale for CRPC decisions being final and binding. Similarly, the entire property repossession regime has been developed so as to err on the side of protecting the rights of displaced persons and refugees. Such ‘over-compensation’ has occasionally perfected a property right that was less than complete before the war. However, it should not give rights that did not exist on 1 April 1992 and still less give rights at the expense of another person’s rights. ECHR protections apply equally to all persons in Bosnia & Herzegovina, Annex 7 notwithstanding.

In complex cases as to who had what right, and to what apartment, a solution cannot be found by simple reference to the allocation right holder’s records. What is required is a comprehensive review of the documentary and testamentary evidence, in accordance with international standards, as well as a measure of legislative interpretation.

Arguably, the situation in Bosnia & Herzegovina is such now that most property claims can be expected to be decided fairly, albeit slowly, by the courts and administrative authorities. These domestic bodies have the means, procedures, and expertise to decide on complicated, disputed claims. [...]

No system is free of error, especially when confronted by such a sheer volume and complexity of claims. Given that their decisions are final and binding, it is incumbent upon CRPC to ensure that its procedures and appeal structures meet the highest international standards when it undertakes to decide a complex and contested case. CRPC has discretion as to the operating procedures it establishes, as well as its reconsideration process. In this, Annex 7 gives it a free hand.

However, the Implementation Law is an integral part of the legal system of the Federation. There are legal processes and mechanisms to facilitate the return of property, even if it has been purchased and registered contrary to law. Albeit sometimes inconvenient or slow, such processes and mechanisms should be recognised. If they do not apply when a CRPC decision is involved, it follows that this should also be the case where there is an administrative or domestic court decision but no CRPC decision.”

C. The Addendum to the CRPC *amicus curiae* brief

87. The “addendum” to the CRPC *amicus curiae* brief in fact constitutes a reply to the OSCE *amicus curiae* brief. The CRPC addresses both the admissibility of the application submitted by the applicant (as interpreted by OSCE) and the merits of any analysis of CRPC proceedings with Article 6 of the Convention.

1. As to the admissibility

88. CRPC reiterates its submission that the applicant failed to exhaust domestic remedies against the alleged violation.

89. Additionally, CRPC submits that the applicant’s complaints before the Chamber concern substantially the same matter as already considered and decided by CRPC. Therefore, the application is inadmissible under Article VIII(2)(b) of the Agreement.

90. Further, CRPC submits that, insofar as the application of the applicant is directed against the CRPC process and decision, it is incompatible with the Chamber’s competence *ratione personae*. In support of this statement CRPC argues, *inter alia*, that:

- (a) CRPC is established as an independent international body under Annex 7 to the DPA.
- (b) The rules governing procedure before CRPC have been enacted by CRPC in accordance with Annex 7.

- (c) Reconsideration by CRPC is the only possibility of review of CRPC decisions.
- (d) The mandates of the Chamber under Annex 6 and of CRPC under Annex 7 have both been established by the GFAP and the two Annexes do not contemplate a hierarchical structure between the Chamber and CRPC.
- (e) The Constitutional Court of BiH has ruled that it does not have jurisdiction to review decisions of the Chamber and CRPC, since they both carry out their functions outside the regular court structure of BiH.

2. As to the merits

91. In the event the Chamber was to consider the CRPC procedure on the merits, CRPC submits that “[a]ny analysis of the compatibility of CRPC procedures with Article 6 of the ECHR must take into account the specific circumstances surrounding the establishment and continued operation of CRPC”. CRPC points out that, when it began receiving applications in November 1996, there were more than two million refugees and displaced persons in or from BiH, and that it has received more than 310,000 claims. The DPA recognises that the early return of refugees and displaced persons is a priority. Accordingly, “[t]o guarantee fair determination of property claims within a reasonable period, CRPC simply has to operate as a mass claims facility and employ standardised, single-party proceedings and rely exclusively on written documents and evidence”.

92. CRPC further submits that the right of access to a court is not absolute, and that states enjoy a certain margin of appreciation in imposing restrictions on the right of access to court. CRPC argues that the situation described above was a legitimate aim, justifying removing jurisdiction for property claims from the regular courts and placing it primarily with a mass claims facility. According to CRPC, the extremely limited number of requests for reconsideration (only 0.4% of the decisions) and the even more limited number of requests accepted (14 % of the requests filed, 0.06 % of the overall decisions), confirms that CRPC procedures do result in fair and effective outcomes.

93. As to the right to a public hearing, CRPC submits that under the circumstances requiring public hearings would “(1) pose possible security threats for claimants and third parties, (2) cause significant costs for claimants and third parties residing abroad and (3) cause enormous delays in decision-making. In practice, it would amount to an effective denial of both the right of access to the CRPC and the right to a speedy and effective remedy”.

94. CRPC submits that the need for adversarial proceedings is taken care of through the reconsideration procedure, during which third parties are given full opportunity to present their case and equality of arms is ensured. In this respect CRPC also submits that the fairness of proceedings has to be assessed looking at the procedure as a whole, and not at a single phase of it.

95. Finally, CRPC argues that the execution of the CRPC decision in favour of S.M. was fully justified. CRPC reminds the Chamber that it has itself found in numerous cases that the failure to enforce a CRPC decision constitutes a violation of the right to respect for one’s home and peaceful enjoyment of possessions. As to applicant’s registration in the land books, CRPC argues that it is mandated under article XII of Annex 7 not to recognise any illegal property transaction, and that “entries in the property books may be suspect is also strongly implied in Article 13 of the Law on Implementation”.

VIII. OPINION OF THE CHAMBER

A. Admissibility

1. Admissibility as regards the alleged violation of the right to peaceful enjoyment of possessions under Article 1 of Protocol No. 1 to the Convention

96. The respondent Party submits that the applicant could have initiated civil proceedings in order to obtain a judgement recognising her as the owner. *Amicus curiae* CRPC makes the same argument. The respondent Party further submits that the applicant could have initiated an administrative dispute

against the conclusion on enforcement of the CRPC decision. Additionally, CRPC submits that the applicant's complaints before the Chamber concern substantially the same matter as already considered and decided by CRPC. Therefore, they argue that the application is inadmissible under Article VIII(2)(b) of the Agreement (see paragraph 89 above).

(a) *Res judicata*

97. In accordance with Article VIII(2)(b) of the Agreement, "the Chamber shall not address any application which is substantially the same as a matter which has already been examined by the Chamber or has already been submitted to another procedure of international investigation or settlement." The Chamber accordingly finds that, insofar as the applicant is complaining that the CRPC decision establishing that S.M. was the occupancy right holder of the apartment as of 1 April 1992 violates her right to peaceful enjoyment of possessions, this matter has been "submitted to another procedure of international investigation or settlement" within the meaning of Article VIII(2)(b), i.e. the CRPC. It follows that in this respect the application is inadmissible.

98. The Chamber observes, however, that the applicant also complains that she has been evicted from the apartment although she purchased the apartment in 1999 and registered herself as the owner. This complaint is not addressed by the CRPC decision, which establishes the status of S.M. (and thus, indirectly, of the applicant) as of 1 April 1992. The Chamber is therefore not precluded by Article VIII(2)(b) from considering this complaint.

(b) *Exhaustion of domestic remedies*

99. According to Article VIII(2)(a) of the Agreement, the Chamber must consider whether effective remedies against the violations complained of exist and whether the applicant has demonstrated that they have been exhausted.

100. Firstly, the respondent Party and CRPC argue that the applicant could have initiated civil proceedings in order to obtain a judgement recognising her as the owner. The Chamber, however, notes that the respondent Party recognises that the applicant is the owner of the apartment (see paragraph 59 above), but challenges the applicant's right to use the apartment on the ground that her ownership is burdened by the occupancy right enjoyed by S.M.. The Chamber on this basis notes that the applicant's ownership is undisputed and that civil proceedings aimed at recognition of the applicant as the owner can therefore not be considered a relevant remedy.

101. Secondly, the respondent Party submits that the applicant could have initiated an administrative dispute against the conclusion on enforcement of the CRPC decision. However, the Chamber notes that the initiation of such an administrative dispute would not have had suspensive effect on the enforcement of the CRPC decision. Under the Law on Implementation of CRPC Decisions, as *lex specialis*, the only remedy against the enforcement of the CRPC decision was then (October 2001) the action under Article 12, paragraphs 2 to 4 of that Law. With the entry into force of the amendments to Article 12 and of Article 12a, the situation in the applicant's specific case remained substantially unchanged: the only remedy available is now an action under Article 12a accompanied by a request to the court for an interim order to suspend enforcement of the CRPC decision. The remedy indicated by the respondent Party would therefore not have been effective to halt the eviction of the applicant. Similarly, because the Law on Implementation of CRPC Decisions is *lex specialis*, also the Law on Civil Proceedings or the Law on Enforcement Procedure could not have provided the applicant with a remedy capable of halting the enforcement of the CRPC decision (as argued by CRPC).

102. As to the action under Article 12, paragraph 4 of the Law on Implementation of CRPC Decisions, indicated as the relevant remedy by CRPC as *amicus* of the Chamber, this provision reads that "the competent court may make a specific order to suspend the enforcement proceedings before the responsible administrative organ if a verified contract on the transfer of rights was made after 14 December 1995". The Chamber notes, however, that it is the applicant's position that the transfer of the occupancy right to her occurred in 1990, and not after 14 December 1995. The applicant understands that her right to use the apartment is shielded against the claims of S.M. only if she is recognised as the pre-war (co-)holder of the occupancy right. She therefore twice sought

reconsideration of the CRPC decision, and both requests were rejected. The Chamber accordingly concludes that the remedy in Article 12, paragraph 4 of the Law on Implementation of CRPC Decisions is not relevant to the applicant's case. The Chamber moreover notes that there is reason to doubt whether the remedy in Article 12, paragraph 4, could at all have been exercised by the applicant. In the light of the subsequent enactment of Article 12a (see the next paragraph), it is reasonable to assume that the "contract on the transfer of rights" in Article 12, paragraph 4, can only be a contract between the pre-war right holder and the appellant (i.e. in the present case between the applicant and S.M.) and not a contract on use or on sale of the apartment between the allocation right holder and the applicant.

103. As to an action under Article 12a once the December 2001 amendments had entered into force, the Chamber notes that the first paragraph of this Article reads: "The responsible administrative body shall direct the appellant to initiate proceedings before the competent court within 30 days to prove *that the right holder named in the Commission's decision voluntarily and lawfully transferred his/her rights to the appellant since the date referred to in the dispositive Commission's decision.*" (emphasis added). The applicant, however, does not allege that after 1 April 1992 S.M. transferred the right to her. Thus the remedy set forth in this provision, and the possibility to request an interim order from the court under the second paragraph of Article 12a, do not apply in the applicant's case.

104. Finally, the Chamber notes that the applicant's claim that she acquired ownership of the apartment does not fall within the scope of any of the three grounds for appealing against the conclusion on permission of enforcement of a CRPC decision listed in the new (post-December 2001) paragraph 2 of Article 12 of the Law on Implementation of CRPC Decisions (see paragraph 51 above).

105. The Chamber concludes that the applicant had no effective remedy against her eviction. The application is thus admissible under Article 1 of Protocol No. 1 to the Convention insofar as the applicant complains that her eviction from the apartment she owns constitutes a violation of her right to peaceful enjoyment of possessions.

2. Admissibility as regards the alleged violation of the right to respect for the applicant's home under Article 8 of the Convention

106. The Chamber notes that the applicant complains that her eviction from the apartment also constitutes a violation of her right to respect for her home protected by Article 8 of the Convention. For the reasons outlined above, the Chamber concludes that the applicant had no effective remedy against her eviction. The application is thus admissible under Article 8 of the Convention.

3. Admissibility as regards the alleged violation of the right to a fair hearing under Article 6 of the Convention

107. In accordance with Article VIII(2)(c) of the Agreement, "the Chamber shall also dismiss any application which it considers incompatible with this Agreement, manifestly ill-founded, or an abuse of the right of petition."

108. The applicant claims that she has never been informed nor invited, nor given any other possibility to participate as a party in the administrative proceedings which were initiated to evict her. Moreover, she alleges "unlawfulness" of the CRPC proceedings. The Chamber notes that this "unlawfulness" consists mostly in alleged misapplication of the relevant provisions of the Law on Housing Relations.

109. OSCE, acting as *amicus curiae*, submits that "the decisions of the CRPC can be qualified as essentially judicial decisions which affect substantive rights of persons to apartments", or, in the alternative, that CRPC decisions are of an essentially administrative character but "have a direct bearing on the determination or substantive content of a private right or obligation". OSCE argues that the decisions of CRPC constitute a "determination of a civil right or obligation" within the meaning of Article 6 paragraph 1. OSCE further argues that there is no appeal from CRPC decisions

as to the status on 1 April 1992 to a court or tribunal that complies with the requirements of Article 6(1). Therefore, “the actions of the CRPC must be examined to consider whether they fulfil the requirements of Art. 6(1)”. Having examined the CRPC procedure in the light of Article 6, paragraph 1 of the Convention, OSCE concludes that the CRPC procedure falls short of these requirements in many respects and that there has accordingly been a violation of Article 6 paragraph 1 of the Convention (see paragraphs 77-82 above).

(a) Right to be heard in the domestic administrative proceedings

110. With regard to the alleged violations of the applicant's right to be heard in the administrative proceedings, the Chamber notes that any shortcomings could have been raised in administrative appeals and in an administrative dispute before the competent court. In this respect the applicant has not exhausted the available domestic remedies.

(b) Alleged violations in the CRPC proceedings

111. As to the compatibility with Article 6 of the CRPC proceedings that resulted in the issuance of the decision in favour of S.M. and the two rejection of the applicant's two requests for reconsideration, the Chamber must examine whether the respondent Party can be held responsible for any violation of Article 6 committed in these proceedings. CRPC submits that, insofar as the application of the applicant is directed against the CRPC process and decision, it is incompatible with the Chamber's competence *ratione personae* (see paragraph 90 above). OSCE, on the other hand, submits a number of reasons for which they maintain that the respondent Party can be held responsible for shortcomings of the CRPC decision-making process (see paragraph 123 below).

112. The Chamber recalls Article II(2) of the Agreement and Article VIII(1) of the Agreement setting out the Chamber's jurisdiction. Article II(2) of the Agreement states as follows:

“The Office of the Ombudsman and the Human Rights Chamber shall consider, as subsequently described:

- (a) alleged and apparent violations of human rights as provided in the (Convention) and the Protocols thereto, or
- (b) alleged or apparent discrimination on any ground ... arising in the enjoyment of any of the rights and freedoms provided for in the international agreements listed in the Appendix to this Annex,

where such 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 official or organ.” (emphasis added).

113. Article VIII(1) of the Agreement states as follows:

“The Chamber shall receive by referral of the Ombudsman on behalf of the applicant, or directly from any Party or person, non-governmental organization, or group of individuals claiming to be the victim of a violation by any Party or acting on behalf of alleged victims who are deceased or missing, for resolution or decision applications concerning alleged or apparent violations of human rights within the scope of paragraph 2 of Article II.”

114. In applying Articles II(2) and VIII(1) to applications in which the conduct complained of was in fact carried out by bodies established under other Annexes to the General Framework Agreement, the Chamber has consistently held that

- (i) it is competent *ratione personae* only to examine complaints directed against one of the three respondent Parties (see cases nos. CH/00/4027 and CH/00/4074, *Municipal Council of the Municipality of South-West Mostar v. the High Representative*, decision of 9 March 2000, Decisions January-June 2000; and case no. CH/00/4194, *Radić v. the International*

- Stabilisation Force in Bosnia and Herzegovina (SFOR)*, decision of 7 June 2000, Decisions January-June 2000);
- (ii) the respondent Parties cannot be held responsible under the Annex 6 Agreement for having agreed, by putting their signature under other Annexes of the DPA, to the mandate of certain international bodies (SFOR, OSCE, OHR) and for granting those bodies the powers necessary to carry out their mandate.

115. As examples for the second principle, the Chamber recalls its decision in the cases no. CH/98/230 *Suljanović* and CH/98/231 *Čišić and Lelić v. Bosnia and Herzegovina and the Republika Srpska* (decision on admissibility of 14 May 1998, Decisions and Reports 1998). The applicants complained that they were improperly excluded from the elections as a result of a number of mistakes in the organisation of the out-of-country voting procedure administered by OSCE under Annex 3 of the Dayton Peace Agreement. The applicants and the Ombudsperson, who had referred the cases to the Chamber, considered that Bosnia and Herzegovina and the Republika Srpska were responsible for the management of the elections by the bodies entrusted with this task in Annex 3. The Chamber, however, held that:

“42. The actions complained of were carried out exclusively by the OSCE, PEC and EASC within the scope of them carrying out their responsibilities under Annex 3 to the General Framework Agreement. The General Framework Agreement does not provide for the intervention of either respondent Party in the conduct of the elections. Accordingly, these actions are not such as are within the responsibility of either respondent Party.

43. In conclusion, while it is possible that a breach of the rights of the applicants as guaranteed by Article 3 of Protocol No. 1 to the European Convention on Human Rights may have occurred, the impugned acts do not come within the responsibility of the respondent Parties and are therefore outside the competence of the Chamber under Article II and VIII(I) of Annex 6 to the General Framework Agreement. Accordingly the application is inadmissible under Article VIII(2)(c) of Annex 6 to that Agreement.”

116. Similarly, in case no. CH/98/1266 *Čavić v. Bosnia and Herzegovina* (decision on admissibility of 18 December 1998, para. 19, Decisions and Reports 1998) the Chamber examined the compatibility with Annex 6 of complaints concerning actions carried out by the High Representative in the performance of his functions under Annex 10 of the Dayton Peace Agreement. The applicant complained that the High Representative, by removing him from office as a member of the Republika Srpska National Assembly, to which he had been elected, had exceeded his powers and thereby violated several rights of the applicant protected by the Convention. The applicant submitted that Bosnia and Herzegovina was responsible for the actions of the High Representative for the purposes of the Annex 6 Agreement. The Chamber reviewed the relevant provisions of Annex 10 to the GFAP, U.N. Security Council Resolution No. 1031(1995) and the relevant conclusions of the report of the Bonn Peace Implementation Conference and held that:

“The actions complained of were carried out by the High Representative in the performance of his functions under the General Framework Agreement, as interpreted by the Bonn Peace Implementation Conference. There is no provision for any intervention by the respondent Party (or by any of the other Parties to the General Framework Agreement) in those actions. In addition, the High Representative cannot be said to be acting as, or on behalf of, the State or the Entities when acting in pursuance of his powers. As a result, the actions giving rise to the present application cannot be considered to be within the scope of responsibility of the respondent Party“(id., paragraph 19).

On this basis, the Chamber decided not to accept the application, it being incompatible *ratione personae* with the Agreement (id., paragraph 20).

117. More recently, in cases no. CH/00/3771 et al., *Hajder & Others v. the Federation of BiH* (decision on admissibility of 5 November 2002), the applicants alleged a violation of their right to peaceful enjoyment of their land located in an area in Canton 10 of the Federation of Bosnia and Herzegovina currently used by the NATO-led international Stabilisation Force (hereinafter “SFOR”) as a military training range. The Chamber noted “that SFOR uses the land in question on the basis of Article VI of Annex 1-A of the Dayton Peace Agreement” (id., paragraph 13). The Chamber further noted

“that the actions complained of by the applicants, the use of their property as a military training range, were carried out exclusively by SFOR. There is no intervention or participation by the respondent Party (or by any of the other Parties to the General Framework Agreement) in those actions. In addition, SFOR, when using the applicants’ property as its training range, cannot be said to be acting as, or on behalf of, the State or the Entities. As a result, the actions giving rise to the present application cannot be considered to be within the scope of responsibility of the respondent Party” (*id.*, paragraph 19).

As a consequence, the Chamber concluded that

“the impugned acts do not come within the responsibility of the respondent Party and are outside the competence of the Chamber under Articles II and VIII(1) of Annex 6 to the General Framework Agreement. It follows that the applications are incompatible *ratione personae* with the provisions of the Agreement, within the meaning of Article VIII(2)(c)” (*id.*, paragraph 22).

118. Turning again to the case presently before it, the Chamber notes that OSCE argues that the Federation can be held responsible for violations arising from the procedure before CRPC and for the implementation of its decisions. It submits the following grounds:

- (i) The Federation is a Party to the Annex 7 Agreement. As such, it appoints four of the nine CRPC Commissioners, is responsible for the funding of the CRPC in equal shares with the other Parties and is a Party to the *Agreement concerning Article XVI to the General Framework Agreement for Peace in Bosnia and Herzegovina*, signed on 10 November 2000, that extended the CRPC mandate until the end of 2003.
- (ii) Although it was imposed by the High Representative, the Law on Implementation of CRPC Decisions is now part of the domestic Federation legal system. “The Federation is responsible for its implementation and can, if necessary, amend it”.
- (iii) The Canton Sarajevo Administration for Housing Affairs, which issued and enforced the eviction order against the applicant, is a public authority of the Federation.
- (iv) The Federation is bound to afford to anyone within its jurisdiction access to a tribunal that will determine any dispute arising from an act or omission of the administrative authorities.
- (v) The Federation failed to use its leverage in negotiating the extension to require that the CRPC revise its reconsideration procedure so as to accord with European standards, although the Venice Commission had drawn the respondent Party’s attention to the problems arising under Article 6 of the Convention from Annex 7 (see paragraph 85 above).

119. With regard to the argument listed under no. (i) above, the Chamber notes that the Federation’s obligations to appoint four Commissioners and to contribute to the funding of CRPC are directly set out in Articles IX(1) and X(2) of Annex 7.

120. The Chamber further notes, in relation to the arguments made under (iv) and (v) above, that Article XV of Annex 7 provides that “the Commission shall promulgate such rules and regulations, consistent with this Agreement, as may be necessary to carry out its functions”. OSCE itself submits that “CRPC has discretion as to the operating procedures it establishes, as well as its reconsideration process” (see paragraph 86 above). Therefore, under Annex 7, it is within the competence of CRPC to establish the rules governing its procedure, and no influence of the Federation on this is foreseen.

121. As to the arguments (nos. (ii) and (iii) above) that the Federation is responsible for having legislation that provides for the implementation of CRPC decisions, and for having applied this legislation in the applicant’s case, the Chamber notes that Article XII(7) of Annex 7 prescribes that “Commission decisions shall be final, and any title ... awarded by the Commission shall be recognised as lawful throughout Bosnia and Herzegovina”. Accordingly, it is in execution of its obligations under Annex 7 that the Federation enacted legislation that provides for the implementation of CRPC decisions and that does not allow any review of those decisions by the authorities of the Federation. It is as well in execution of the Federation’s obligations under Annex 7 that the Canton Sarajevo Administration for Housing Affairs took steps to implement the CRPC decision in favour of S.M..

122. To sum up, the Chamber finds that the Parties to Annex 7, among them the Federation, agreed that CRPC would, independently, promulgate its own procedures and that there would be no

review of the CRPC decisions by the Federation authorities. Therefore, the Chamber finds that the respondent Party cannot be held responsible under the Agreement for the procedures by which CRPC decisions are issued. Also, the respondent Party cannot be held responsible under the Agreement for failing to provide review of CRPC decisions by an independent and impartial tribunal, as such review is excluded by Annex 7¹. In this respect, the complaint is inadmissible *ratione personae* with the Agreement.

(c) *Conclusion with regard to Article 6 of the Convention*

123. In conclusion, the Chamber finds that the issues raised under Article 6 of the Convention are inadmissible, partly because the applicant failed to exhaust existing domestic remedies, and partly because they are not compatible *ratione personae* with the Agreement.

4. Conclusion on Admissibility

124. The Chamber decides to declare the application admissible in respect of the complaint of a violation of the applicant's right to respect for her home (under Article 8 of the Convention). The Chamber further decides to declare the application admissible under Article 1 of Protocol No. 1 to the Convention insofar as the applicant complains that her eviction from the apartment she owns constitutes a violation of her right to peaceful enjoyment of possessions. The Chamber, however, decides to declare the application inadmissible insofar as the applicant complains about the CRPC decision establishing that on 1 April 1992 S.M. was the occupancy right holder of the apartment. Finally, the Chamber decides to declare the application inadmissible in respect of the right to a fair hearing (Article 6 of the Convention).

B. Merits

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

126. The Chamber has found that the applicant's complaints relating to her eviction are admissible under Article 8 of the Convention and Article 1 of Protocol No. 1 to the Convention. It will first examine the alleged violation of the applicant's right to respect for her home and then the alleged violation of the right to peaceful enjoyment of possessions.

1. Article 8 of the Convention

127. Article 8 of the Convention provides as follows:

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

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

¹ The Chamber notes that in other respects the Law on Implementation of CRPC Decisions grants the Federation courts jurisdiction to decide matters that Annex 7 mandates CRPC to decide. Annex 7 provides that CRPC shall decide on individual claims "where the property has not voluntarily been sold or otherwise transferred since April 1, 1992 (...)" (Article XI of Annex 7). Further, the CRPC "shall not recognize as valid any illegal property transaction, including any transfer that was made under duress, in exchange for exit permission or documents, or that was otherwise in connection with ethnic cleansing." (Article XII Annex 7). The Law on Implementation, however, provides in Article 12 (now in Article 12a) that the domestic courts will decide on the validity of post 1 April 1992 transfers of title. The Chamber observes, however, that CRPC had chosen to limit itself to assessing the status of 1 April 1992 and to delegate determination of the validity of post 1 April 1992 transfers to the local courts. This choice has only been confirmed by the Law on Implementation of CRPC Decisions (see the *Samardžić* decision at paragraph 54).

prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

128. It is undisputed that the applicant and her daughter have been living in the apartment in Grbavica since 1996. It has thus become the applicant’s home for the purposes of Article 8 of the Convention.

129. It is also undisputed that the applicant has been forced to vacate the apartment and hand over the keys thereto. There is thus little doubt that there is an interference with her rights under Article 8 insofar as her family life and home have been disrupted by the eviction.

130. The Chamber recalls that the conditions upon which a state may interfere with the right to respect for one’s home are set out in the second paragraph of Article 8. It must accordingly be determined whether the interference in question satisfied the conditions in paragraph 2, that is to say was "in accordance with the law", in the interests of one or more of the legitimate aims listed, and "necessary in a democratic society" for achieving them. Further, a proper balance needs to be achieved between the legitimate aim pursued and the means employed.

(a) Is the interference “in accordance with the law”?

131. The Chamber observes that domestic legality is a necessary condition for the justification of an interference with Article 8 of the Convention and that in order to be “in accordance with law” the interference complained of must have a legal basis and the law in question must contain a measure of protection against arbitrariness by public authorities. The European Court of Human Rights has considered that the words "in accordance with a procedure prescribed by law" essentially refer back to domestic law; they state the need for compliance with the relevant procedure under that law (see *Samardžić* at paragraph 46).

132. The Chamber notes that on 23 October 2000 S.M. requested the Administration to enforce the CRPC decision in his favour. The Chamber further notes that enforcement of CRPC decisions is governed exclusively by the Law on Implementation of CRPC Decisions as *lex specialis*. This law provides for suspension of the enforcement of a CRPC decision under two circumstances: under Article 11 of the Law, CRPC may notify the competent administration that a request for reconsideration has been received, in which case the administration shall suspend enforcement until the request for reconsideration has been decided. The applicant was not evicted while her first request for reconsideration was pending before the CRPC (15 December 2000 to 12 June 2001), and the enforcement of the CRPC decision was suspended by the Cantonal Ministry until completion of the second reconsideration of the CRPC decision requested by the applicant. The applicant was only evicted after her second request for reconsideration had been rejected on 16 October 2001.

133. Secondly, the enforcee can apply for a court order to suspend the enforcement of the CRPC decision pending determination of the validity of the transfer of the right to the apartment to her (until 29 December 2001 under Article 12 paragraph 4 of the Law, since then under the new Article 12a). On 30 March 2001 the applicant filed an appeal against the conclusion on her eviction, arguing that she is the owner of the apartment. However, under the then applicable Article 12 of the Law, the administrative organ cannot suspend the enforcement proceedings, it can only refer the applicant to initiate civil proceedings before the competent court. The applicant never initiated such proceedings, nor could she have effectively argued her position in such proceedings, as her stance is not that S.M. transferred the right to her after 1 April 1992, but that the CRPC decision is wrong (see paragraphs 98-99 above).

134. Thus the Chamber concludes that the continuation of the enforcement proceedings against the applicant was in accordance with the law.

(b) Whether the interference with the applicants rights pursues a legitimate aim under paragraph 2 of Article 8, i.e. 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

135. The Chamber notes that the right of displaced persons and refugees to repossess and return to their pre-war home is one of the central objectives of the Dayton Peace Agreement. It further notes that the Law on Implementation of CRPC Decisions is based on the recognition that the failure to return property to rightful owners or occupancy right holders represents a violation of the right to peaceful enjoyment of possessions under Article 1 of Protocol No. 1 to the Convention. The Law acknowledges that return of property is essential to the creation of durable solutions for refugees and displaced persons. This can take the form of either actual return to the property or sale of the property in order to finance one's own local integration elsewhere, through purchase or rental of a home that does not belong to someone else (see *Samardžić* at paragraph 49).

136. On these grounds, the Chamber finds that the recognition of the right of the pre-war occupant (as determined by the CRPC decision) to repossess the apartment and the consequential order to the applicant to vacate it are supported by a legitimate aim, i.e. "the protection of the rights and freedoms of others".

(c) Is the interference necessary in a democratic society for the protection of the rights and freedoms of others, i.e. is there a proper balance between the legitimate aim pursued and the means employed?

137. Thus, the question before the Chamber is whether the interference with the applicant's right is "necessary in a democratic society". In other words, has the respondent Party struck the right balance between the "protection of the rights and freedoms of others", in this case S.M., and the applicant's right to respect for her home? In assessing whether the right balance has been struck the Chamber will take into account (i) the urgency of the legitimate interest pursued, (ii) the strength of the right asserted by the applicant and (iii) the procedural safeguards afforded to the applicant. In balancing these elements the Chamber will also take into due account the margin of appreciation which the respondent Party enjoys in this area of social policy.

(i) The urgency of the legitimate interest pursued

138. The Chamber recalls that Article I, paragraph 1 of Annex 7 provides that "the early return of refugees and displaced persons is an important objective of the settlement of the conflict in Bosnia and Herzegovina". The Chamber further recalls that it is estimated that during and shortly after the armed conflict in BiH up to 70% of the population was internally displaced or had fled the country (see the CRPC *amicus curiae* opinion, paragraph 74 above). Also OSCE has acknowledged that:

"In the wake of the conflict in Bosnia & Herzegovina and the large-scale displacement of populations that it produced, the creation of an independent body to decide claims for property, the CRPC, was a logical (and innovative) solution. Given the political climate and vulnerability of the courts and other institutions to external influence, it was necessary that enforcement of such decisions was not made subject to review by those authorities; hence the rationale for CRPC decisions being final and binding. Similarly, the entire property repossession regime has been developed so as to err on the side of protecting the rights of displaced persons and refugees."

139. Notwithstanding the urgency of the return process claimed by Article I of Annex 7, according to a paper entitled "PLIP - Non Negotiable Principles In The Context Of The Property Law Implementation", issued by OSCE, OHR, UNHCR, the United Nations Mission to Bosnia and Herzegovina and CRPC on 21 August 2001, "at current rate the process [of implementation of the property laws] will take another 22 years in the Federation and another 40 years in the Republika Srpska".

140. The Chamber also notes that the eviction of current occupants, whatever the legal status of their occupancy, is the only possible way to reinstate pre-war occupancy right holders in their

apartments. In this respect, the Chamber cannot see any alternative ways the respondent Party could have chosen in order to pursue its aim, nor have the applicant or OSCE suggested any.

(ii) The strength of the applicant's right

141. The Chamber takes note of the fact that the applicant moved into the apartment together with her daughter in 1996. At that time the apartment was devastated. The applicant reconstructed it, obtained a judgment recognising her as pre-war occupancy right holder, and concluded a new contract on use with the allocation right holder. Finally, in 1999 the applicant purchased the apartment.

142. On the other hand, the Chamber notes that, as pointed out by CRPC, (i) the contract on use concluded by the applicant on 10 September 1996 was arguably cancelled by Articles 1 and 2 of the Law on Cessation; and (ii) the applicant purchased the apartment and registered herself as owner after the High Representative imposed a ban on the purchase of apartments, although the Chamber has doubts as to the legal effect of this ban, which was never published in any official gazette (see paragraphs 36, 60, and 70 above). Moreover, the applicant could have dispelled the clouds surrounding the validity and legality of her title to the apartment by initiating the revalidation procedure. She has failed to do so.

(iii) The legal safeguards afforded to the applicant

143. The Chamber has decided that it is not competent to examine the compatibility of the CRPC procedures with the requirements of a fair hearing under Article 6 of the Convention. For the purposes of Article 8, however, the Chamber notes on the one hand that it is true that, as remarked by OSCE, the applicant had no opportunity to be heard in the procedure that led to the issuance of a CRPC decision in favour of S.M.. On the other hand, the applicant had the opportunity to submit two requests for reconsideration, and the enforcement of the CRPC decision was postponed until both requests had been considered and rejected.

(iv) Conclusion

144. Taking into account all the above considerations, the Chamber finds that the respondent Party has not exceeded its margin of appreciation in determining that the CRPC decision should be enforced pending resolution of the disputes as to the rights over the apartment. In the words of paragraph 2 of Article 8, the interference was necessary in a democratic society for the protection of the rights and freedoms of others.

(d) Conclusion on Article 8 of the Convention

145. In conclusion, the Chamber finds that there has been no violation of the applicant's right to respect for her home as guaranteed by Article 8 of the Convention.

2. Article 1 of Protocol No. 1 to the Convention

146. 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."

(a) Definition of the possession enjoyed by the applicant and of the interference therewith

147. The Chamber notes that the applicant has been evicted from the apartment she owns. This constitutes an interference with her peaceful enjoyment of her possessions. It is disputed among the parties, however, what "possessions" the applicant enjoyed, i.e. what is the asset the applicant can

call her own under domestic law.

148. The applicant appears to be of the opinion that she is the owner of the apartment of which she was, prior to purchasing it, the validly recognised occupancy right holder. Her ownership was accordingly unburdened by any rights of third parties, in particular S.M.. Her eviction thus deprived her of use and possession of the apartment and, at least implicitly, challenged her rights as owner.

149. As stated above, the respondent Party does not challenge the applicant's ownership. According to the respondent Party the applicant is the owner of an apartment burdened by an occupancy right in favour of a third party, S.M.. As such, the applicant has the right to dispose of the apartment, but not the right to use and possess the apartment (see paragraph 59 above).

150. The Chamber has already stated that, for the purposes of the proceedings before it, CRPC's determination that S.M. was the occupancy right holder as of 1 April 1992 is *res judicata* (see paragraph 97 above). Moreover, according to Article 2, paragraph 3, of the Law on Cessation, all occupancy rights or contracts on use made between 1 April 1992 and 7 February 1998 were cancelled (see paragraph 39 above). As a consequence, when the applicant concluded the contract to purchase the apartment, S.M. was the occupancy right holder, and the applicant purchased only the ownership of an apartment burdened with an occupancy right. The cancellation of the applicant's occupancy right under the Law on Cessation and the enforcement of the CRPC decision re-established a very heavy-handed "control of use" of the applicant's property: the allocation of the right to inhabit the applicant's apartment in favour of the occupancy right holder.

(b) *General considerations on justification of an interference with peaceful enjoyment of possessions under Article 1 of Protocol No. 1*

151. The Chamber recalls that, as stated in the *Poropat and Others* decision (case no. CH/97/48 et al., *Poropat and Others v. Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina*, decision on admissibility and merits of 9 June 2000, Decisions January-June 2000, paragraph 163, quoting the case law of the European Court of Human Rights), Article 1 of Protocol No. 1 to the Convention comprises three distinct rules:

"the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers deprivation of possessions and subjects it to certain conditions; the third rule, stated in the second paragraph, recognises that the Contracting States are entitled, amongst other things, to control the use of property in accordance with the general interest.... The three rules are not, however, 'distinct' in the sense of being unconnected. The second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule."

James and Others v. the United Kingdom (judgment of 21 February 1986, Series A no. 98, paragraph 37).

152. It must be determined in each case whether a "fair balance" has been struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. Thus, there must be a reasonable relationship of proportionality between the means employed and the aim sought to be realised. The requisite balance will not be found if the person concerned has had to bear an individual and excessive burden. The respondent Parties generally enjoy a wide margin of appreciation in assessing the appropriate degree and form of limitations of property rights to further social policies. However, before the Chamber assesses whether a fair balance has been struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights, it shall examine whether the interference is in accordance with the applicable laws of the Federation (see Eur. Court HR, *Iatridis v. Greece*, judgment of 25 March 1999, Reports of Judgments and Decisions 1999-II, page 97, paragraph 58).

(c) *Lawfulness of the interference*

153. The Chamber finds that the eviction of the applicant from the apartment is in fact in accordance with the applicable law. In accordance with Article 3 paragraph 3 of the Law on Implementation of CRPC Decisions, decisions 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 (see paragraph 45 above). Article 9 of the same Law 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. On this basis, the Chamber concludes that the order to the applicant to vacate the apartment was as prescribed by law, notwithstanding the fact that she is recognised as the owner of the apartment.

(d) *Justification of the interference*

154. The Chamber notes that the interference with the applicant's right to use the apartment, i.e. the order to her to vacate it, pursues two public interests, which in the present case are intertwined: the overriding social need of the return of refugees and displaced persons, and the housing policy underlying the establishment of occupancy rights over apartments, both in social and private ownership.

155. As to the public interest in the return of refugees and displaced persons, the Chamber has elaborated in relation to the applicant's rights under Article 8 of the Convention that "the eviction of current occupants, whatever the legal status of their occupancy, is the only possible way to reinstate pre-war occupancy right holders in their apartments" (see paragraph 140 above). Also in relation to the applicant's right to peaceful enjoyment of possessions, the Chamber finds that this is indeed a pressing social need, justifying deep-cutting interference with property rights acquired during and after the armed conflict. For the reasons set forth above in relation to the proportionality of the interference with the applicant's right to respect for her home (paragraphs 138-143), the Chamber finds that the order to vacate the apartment did not place an excessive burden on the applicant if compared to the public interest thereby pursued.

156. Moreover, the Chamber considers that the applicant is deprived of the right to use her apartment because it is burdened with an occupancy right. Whether or not the applicant and the seller of the apartment, which is in fact a body under the control of the respondent Party, were aware of this limitation of the owner's rights over the apartment at the moment of conclusion of the sale contract, the CRPC decision establishes that S.M.'s occupancy right burdened the apartment already at the moment it became the applicant's property. The applicant thus purchased a piece of property subject to "control of use" within the meaning of the second paragraph of Article 1 of Protocol No. 1. This control of use pursues a perceived general interest, i.e. a policy to solve the housing problem of those inhabitants of the Federation who do not own their dwelling, as set forth in the Law on Housing Relations, which the Federation has taken over from the SFRY.

157. As stated by the respondent Party, in case the applicant was not aware of the fact that a third person's right existed over the apartment which restricts her own rights, the applicant can hold the seller (i.e. the respondent Party) responsible for the failure to transfer to her full ownership as agreed and obtain compensation (see paragraph 60 above).

158. Considering the wide margin of appreciation the respondent Party enjoys in an area of social policy such as the limitation of the rights of owners of housing in favour of tenants, and the fact that the applicant can still obtain compensation, the Chamber finds that the control of use of the applicant's apartment is justified under Article 1 of Protocol No. 1. This is all the more so, as in the present case this control of use is also necessary to allow S.M., a displaced person, to return to his pre-war home.

(e) *Conclusion as to Article 1 of Protocol No. 1*

159. In conclusion, the Chamber finds that there has been no violation of the applicant's right to peaceful enjoyment of possessions as guaranteed by Article 1 of Protocol No. 1 to the Convention.

IX. CONCLUSION

160. For these reasons, the Chamber, decides

1. unanimously, that the application is admissible with respect to the complaint under Article 8 of the European Convention on Human Rights;

2. unanimously, that the application is admissible with respect to the complaint under Article 1 of Protocol No. 1 to the European Convention on Human Rights;

3. by 12 votes to 1, that the application is not admissible with respect to the complaint under Article 6 of the European Convention on Human Rights;

4. by 12 votes to 1, that the Federation of Bosnia and Herzegovina has not violated the applicant's right to respect for her home under Article 8 of the European Convention on Human Rights;

5. by 12 votes to 1, that the Federation of Bosnia and Herzegovina has not violated the applicant's right to peaceful enjoyment of possessions under Article 1 of Protocol No. 1 to the European Convention on Human Rights.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the Chamber