



DECISION ON ADMISSIBILITY AND MERITS
(delivered on 22 December 2003)

Case no. CH/02/12435

Hazim BOJIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 3 December 2003 with the following members present:

Ms. Michèle PICARD, President
Mr. Mato TADIĆ, Vice-President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
Mr. Rona AYBAY
Mr. Želimir JUKA
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Giovanni GRASSO
Mr. Miodrag PAJIĆ
Mr. Manfred NOWAK
Mr. Vitomir POPOVIĆ
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 ("the General Framework Agreement");

Adopts the following decision pursuant to Article VIII(2) and Article XI of the Agreement and Rules 52, 57 and 58 of its Rules of Procedure:

I. INTRODUCTION

1. The applicant is a citizen of Bosnia and Herzegovina of Bosniak origin. He is the pre-war occupancy right holder of an apartment in the Municipality Mostar Southwest ("Jugozapad"). The case concerns the applicant's attempts to regain possession of his apartment. The applicant has lodged an application to the Commission for Real Property Claims of Displaced Persons and Refugees ("CRPC"), which has issued a decision confirming his occupancy right. The relevant facts of the case are set out in Section III below.

2. The application raises issues under Articles 6 and 8 of the European Convention on Human Rights (hereinafter "the Convention") and under Article 1 of Protocol No. 1 to the Convention and of discrimination in the enjoyment of the mentioned rights.

II. PROCEEDINGS BEFORE THE CHAMBER

3. The application was introduced with the Chamber on 14 November 2002 and registered on the same day. The applicant is represented by Mr. Zlatan Dizdar, a lawyer practising in Mostar.

4. On 3 March 2003 the Chamber requested the respondent Party to give information as to the applicant's reinstatement.

5. On 4 April 2003 the respondent Party submitted the requested information alleging that the applicant was reinstated into the possession of his apartment, but it did not state a date of his reinstatement or submit a record of it.

6. On 18 April 2003 the submitted information was communicated to the applicant.

7. On 6 May 2003 as well as on 8 May 2003 the applicant informed the Chamber that the respondent Party's information of 4 April 2003 was incorrect and that he, in spite of all his attempts, was not reinstated into the possession of his apartment.

8. On 20 June 2003 the Chamber transmitted the application to the respondent Party for observations on admissibility and merits under Articles 6, 8 and 13 of the European Convention and Article 1 of Protocol No. 1 to the Convention in conjunction with Article II(2)(b) of the Agreement.

9. On 21 July 2003 the respondent Party submitted its written observations on admissibility and merits of the application.

10. On 22 July 2003 the respondent Party's observations on admissibility and merits of the application were communicated to the applicant.

11. On 1 August 2003 the applicant submitted his reply to the respondent Party's written observations.

12. On 17 September 2003 respondent Party submitted additional information.

13. On 24 September 2003 the respondent Party's additional information was communicated to the applicant.

14. On 6 October 2003 the applicant submitted his comment on the respondent Party's additional information of 17 September 2003.

15. On 7 November 2003 the applicant submitted additional information.

16. On 12 November 2003 the applicant's information was communicated to the respondent Party.

17. On 18 November 2003 the respondent Party submitted additional observations.

18. The First Panel deliberated on the admissibility and merits of the case on 11 October 2003 and on 7 November 2003. On 7 November 2003 the First Panel referred the case to the Plenary Chamber which discussed the case on 3 December 2003 and adopted the present decision on admissibility and merits.

III. ESTABLISHMENT OF THE FACTS

19. The applicant is the occupancy right holder over an apartment located in Matije Gupca Street no. 88 in Mostar (currently Fra Didaka Buntića Street no. 83).

20. The applicant, together with members of his family, left his apartment on 9 May 1993.

21. On 3 April 1995 the Municipal Council of the Mostar Municipality issued a decision allocating to the Franciscan School Sisters – the Province of the Holy Family in Herzegovina - certain real estate, including the building in which the applicant's apartment is located. Article 3 of the mentioned decision stipulates that the holder of the right to use is obliged, at its own expense, to regulate housing and property relations with the current users of the apartments located in the buildings allocated to the holder's possession. On 12 January 1998 the Southwest Mostar Municipality, on request of the Franciscan School Sisters, issued a conclusion on lease of the real estates, mentioned above, to the Franciscan School Sisters. The lease contract was concluded on 5 March 1998. The contract stipulates that the Franciscan School Sisters, instead of paying a rental fee, are obliged to invest in the repair of the premises and reconstruction of the building and to pay investment maintenance and current maintenance of the building.

22. On 26 July 1999 the applicant addressed the Southwest Mostar Municipality, the Department for Physical Planning, Construction and Housing-Public Utility Development ("Municipal Housing Department") requesting the repossession of the apartment and information relating to the purchase of the apartment.

23. In the reply of the Municipal Housing Department, sent to the applicant on 2 September 1999, it is stated that apartments located in nationalised buildings are not subject to purchase until a Law on Restitution is enacted and that the applicant could solve his status with regard to the apartment in a different way. In the reply of the Department it is not stated which way that would be, nor is the question of repossession of the apartment addressed.

24. On 14 November 1999 and on 13 March 2000 the applicant again submitted a request for reinstatement and a request for the purchase of the apartment in question to the Municipal Housing Department.

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

26. On 20 March 2001 the CRPC issued a decision confirming the applicant's occupancy right over the apartment in question.

27. On 8 May 2001 the applicant submitted to the Department for Physical Planning, Construction and Housing-Public Utility Development a request for enforcement of the CRPC decision.

28. On 10 June 2002 the Municipal Housing Department offered the applicant a temporary alternative accommodation. The applicant refused it. In the reasoning for his refusal of the temporary alternative accommodation, the applicant states that the Southwest Mostar Municipality has resolved the housing issue of all tenants of Croat origin who lived in the building where the apartment in question is located by allocating them other apartments and enabling them to purchase those apartments. The apartment offered to the applicant as temporary alternative accommodation is a one room apartment located in the residential area Panjevinina close to the Big Cross on the Hum hill above Mostar. He further claims that it is the property of a person of Bosniak origin, who has not been reinstated into the possession of that apartment.

29. On 18 July 2002 the applicant was forcibly evicted from the apartment he used as temporary occupant on the east side of Mostar city. Since then he has been paying a rent of 250 KM per month.

30. On 8 April 2003 the Department for Housing and Business Affairs of the Southwest Mostar Municipality issued a conclusion allowing the enforcement of the CRPC decision. As of the date of this decision, however, the CRPC decision has not been enforced.

Proceedings before the Municipal Court I in Mostar

31. On 8 May 2001 the applicant submitted an action to the Municipal Court I in Mostar against the Southwest Mostar Municipality, for reinstatement into his pre-war apartment or, alternatively for allocation of an adequate apartment.

32. On 6 September 2001 a preliminary hearing was scheduled on the aforementioned action. It was postponed on request of the Southwest Mostar Municipality, the defendant, and the new hearing was scheduled for 3 October 2001.

33. At the hearing held on 3 October 2001, the Municipal Court I in Mostar issued a procedural decision suspending the proceedings because the request for the enforcement of the CRPC decision had been submitted.

34. On 27 March 2002 the applicant submitted a proposal to the Municipal Court I in Mostar for continuation of the proceedings suspended by the court's procedural decision of 3 October 2001.

35. On 12 May 2002 the applicant, for the second time, submitted a proposal to the Municipal Court I in Mostar for continuation of the proceedings suspended by the court's procedural decision of 3 October 2001. By this proposal, the applicant extended his statement of claims against the Franciscan School Sisters, the Province of the Holy Family in Herzegovina, because the decision of the Municipal Assembly Mostar of 3 April 1995 stipulates that the Franciscan School Sisters are obliged to regulate, at their own expense, housing and property relations of the current users of the apartments located in the buildings allocated to them.

36. On 2 July 2002 the Municipal Court I in Mostar scheduled a hearing on the applicant's proposals. This hearing was postponed until 3 September 2002 due to the absence of the defendant, i.e. representative of the Southwest Mostar Municipality and representative of the Franciscan School Sisters.

37. The hearing scheduled for 3 September 2002 was postponed until 8 October 2002 because the parties expressed the will for an extra - judicial settlement. Also, the parties agreed to invite the FBiH Ombudsman, the Office in Mostar, in the capacity of *amicus curiae*, to attend the hearing for an extra - judicial settlement.

38. At the session of 8 October 2002, the Municipal Court I in Mostar issued a procedural decision accepting the proposals of the parties. It suspended the proceedings. The proceedings would continue on the proposal of any of the parties to the proceedings. The parties stated that they gave up their right to appeal against the issued procedural decision.

39. On 16 October 2003 the applicant submitted a request for continuation of the proceedings before Municipal Court I in Mostar because the extra - judicial settlement has not been reached.

40. The Municipal Court I in Mostar scheduled a hearing in the applicant's case on 9 December 2003.

Proceedings before the Ombudsmen of the Federation of Bosnia and Herzegovina

41. On 21 March 2002 the applicant addressed the FBiH Ombudsmen, Office in Mostar, complaining about the non-enforcement of the CRPC decision. On 22 March 2002 the Ombudsman issued a decision finding a violation of the applicant's rights. The Ombudsmen recommended to the

respondent Party to enforce the CRPC decision, without further delay but no later than 15 days from date of its decision. The Ombudsmen's recommendation, given in the decision of 22 March 2002, has not been complied with to date.

42. The applicant has not entered into the possession of the apartment in question to date.

IV. RELEVANT LEGISLATION

A. The General Framework Agreement – Annex 7, Agreement on Refugees and Displaced Persons

43. The General Framework Agreement was signed by the Republic of Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia (the "Parties") in Paris on 14 December 1995. Annex 7 to the General Framework Agreement deals with refugees and displaced persons. 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.

44. 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). According to Article XII(7) 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.

45. 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).

B. Constitution of the Federation of Bosnia and Herzegovina

46. Constitution of the Federation of Bosnia and Herzegovina entered into force in midnight on 30 March 1994.

47. Article 3 of the Constitution reads as follows:

"All refugees and displaced persons have the rights to freely return to their homes of origin."

48. Article 4 of the Constitution reads as follows:

"All persons shall have the right, to be implemented in accordance with Federation legislation and Cantonal legislation consistent therewith, to have restored to them any property or to be compensated for any property which can not be restored to them. All statements or commitments made under duress, particularly those relating to the relinquishment of rights to land or property, shall be treated as null and void."

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

49. The Law on the Cessation of the Application of the Law on Abandoned Apartments (Official Gazette of the Federation of Bosnia and Herzegovina – hereinafter OG FBiH – nos. 11/98, 38/98, 12/99, 18/99, 27/99, 43/99, 31/01, 56/01, 15/02, 24/03 and 29/03; hereinafter "the Law on Cessation") entered into force on 4 April 1998 and has been amended on several occasions thereafter.

50. Article 1 paragraph 1 provides for the cessation of the application of the Law on Abandoned Apartments (Official Gazette of the Republic of Bosnia and Herzegovina nos. 6/92, 8/92, 16/92, 13/94, 36/94, 9/95 and 33/95), including all regulations regulating the issue of abandoned apartments passed between 30 April 1991 and the entry into force of the Law on Cessation.

51. According to Article 2, all administrative, judicial and any other decisions enacted on the basis of the regulations referred to in paragraph 1 of Article 1 terminating occupancy rights shall be null and void. In addition, paragraph 3 of this Article cancels any occupancy right or contract on use made between 1 April 1992 and 7 February 1998.

52. Article 3 paragraph 1 stipulates that the occupancy right holder of an apartment declared abandoned or a member of his/her household as defined in Article 6 of the Law on Housing Relations shall have the right to return in accordance with Annex 7 of the General Framework Agreement. According to paragraph 2, all persons who have left their apartments between 30 April 1991 and 4 April 1998 shall be considered to be refugees and displaced persons under Annex 7 of the General Framework Agreement.

53. Article 6 paragraph 1 obliges the competent administrative authority to decide on a claim for return of the apartment filed by the pre-war occupancy rights holder within 30 days from the date of receipt of the claim. The claim shall be solved in the chronological order in which it was received.

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

54. The Law on Implementation of the Decisions of the Commission for Real Property Claims of Displaced Persons and Refugees (OG FBiH nos. 43/99, 15/00, 56/01 and 24/03 – hereinafter “the Law on Implementation”) regulates the enforcement of decisions of the CRPC. It entered into force on 28 October 1999.

55. 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/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).

56. The right to file a request for enforcement of a CRPC decision confirming a right to private property is not subject to any statute of limitation (Article 5 paragraph 1). The request for enforcement of a CRPC decision confirming an occupancy right must be submitted within 18 months from the date when the CRPC decision was issued, or for decisions issued before this Law entered into force, within 18 months from the entry into force of this Law (Article 5 paragraph 2, as amended by the High Representative with effect from 28 October 2000. Before that the time limit was one year).

57. The request for enforcement of a CRPC decision shall include two photocopies of the CRPC decision relating to real property owned by citizens, and three photocopies of the CRPC decision relating to occupancy right (Article 6). The administrative organ responsible for the enforcement of a CRPC decision is obliged to issue a conclusion on the permission of enforcement within a period of 30 days from the date when the request for enforcement was submitted and shall not require any confirmation of the enforceability of the decision from CRPC or any other body (Article 7 paragraphs 1 and 2). The conclusion shall contain:

1. in case of property or apartments that have been declared abandoned, a decision terminating the municipal administration of the property;
2. a decision on repossession of the property or apartment by the right holder or other requestor for enforcement;
3. a decision terminating the right of the temporary user (where there is one) to use the property or apartment;
4. a time limit for the enforcee to vacate the property;

5. a decision on whether the enforcee is entitled to accommodation in accordance with applicable laws;
6. a requirement that the premises shall be vacated of all persons and possessions, other than those belonging to the person authorised to return into possession.

58. According to Article 7 paragraph 5 the time-limit for vacating the house or apartment shall be the minimum time-limit applicable under the Law on the Cessation.

59. 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.

E. The Law on Administrative Procedures

60. Under Article 216 of the Law on Administrative Proceedings (OG FBiH no. 2/98 and 48/99), the competent administrative organ has to issue a decision within 30 days upon receipt of a request to this effect. Article 216 paragraph 3 provides for an appeal to the administrative appellate body if a decision is not issued within this time-limit (appeal against "silence of the administration"). Under Article 275 of the Law, the competent administrative organ has to issue a conclusion on execution of an administrative decision within 30 days upon the receipt of a request to this effect.

F. The Law on Administrative Disputes

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

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

V. COMPLAINTS

63. The applicant alleges violations of his following rights: the right to life, the right to home, the right to equality before the law, the right to property, to free movement and residence. The applicant states that he has not regained the possession of the apartment in question because of his Bosniak origin while the Southwest Mostar Municipality has resolved housing issues of persons of Croat origin living in the same building in which he used to live and which is currently used by the Franciscan School Sisters.

64. The Chamber has transmitted the application to the respondent Party under Article 6 (right to fair trial), Article 8 (right to home), Article 13 (right to effective remedy), Article 1 Protocol No. 1 to Convention (right to property) and II(2)(b) of the Agreement (discrimination on the enjoyment of the mentioned rights).

VI. SUBMISSIONS OF THE PARTIES

A. The Federation of Bosnia and Herzegovina

65. The Federation objects to the admissibility of the application on the ground that the domestic remedies, provided by the Law on Administrative Proceedings and the Law on Administrative Disputes, have not been exhausted.

66. As to the merits of the complaints of the applicant, the respondent Party argues that Article 6 of the Convention is not violated because the proceeding which the applicant initiated before Municipal Court I in Mostar is still pending. With regard to the rights to respect for his home and property, the respondent Party is of the opinion that there has been no violation, because it has passed legislation which enables all persons to repossess their property.

67. With regard to the applicant's claims that he has been discriminated against, the respondent Party states that the applicant has not stated what the discrimination consists of and that a violation of the applicant's rights not to be discriminated against is not apparent from his submissions.

B. The applicant

68. The applicant states in his application that the failure of the competent administrative organ and the Municipal Court I in Mostar to decide upon his requests to be reinstated into his apartment is a violation of his rights protected by the Convention (see paragraph 63 above).

69. In his response to the respondent Party's observations and all later submitted letters, the applicant maintains his claims.

VII. OPINION OF THE CHAMBER

A. Admissibility

70. Before considering the merits of the case, the Chamber must decide whether to accept it, taking into account the admissibility criteria set out in Article VIII of the Agreement.

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

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

73. In the present case the respondent Party objects to the admissibility of the application on the ground that the domestic remedies provided by the Law on Administrative Proceedings and by the Law on Administrative Disputes have not been exhausted. Whilst these laws afford remedies which might qualify as effective ones within the meaning of Article VIII(2)(a) of the Agreement insofar as the applicant is faced with the authorities' inaction, the Chamber must ascertain whether, in the case now before it, these remedies could also have been effective in practice.

74. The Chamber notes that the applicant filed requests to the Municipality and CRPC with a view to being reinstated into his apartment. The CRPC issued a decision confirming his occupancy right, from which it follows that he is entitled to seek the removal of the Franciscan School Sisters from the apartment.

75. However, the Chamber also notes that 53 months passed from the day when the applicant submitted his request for repossession to the Southwest Mostar Municipality, the Department for Physical Planning, Construction and Housing-Public Utility Development. The Chamber further notes that, according to Article 216 of the Law on Administrative Proceedings the competent administrative

organ was obliged to issue a decision within 30 days upon receipt of a request to this effect. The Chamber notes that applicant has been waiting, until now, 30 months for the enforcement by the competent administrative organ of his CRPC decision. The Chamber further notes that, according to Article 7 of the Implementation Law, the competent administrative organ is obliged to issue a conclusion on the enforcement within a period of 30 days from the date when the request for enforcement is submitted and that the competent administrative organ issued the conclusion of enforcement of the CRPC decision on 8 April 2003. The Chamber notes that 25 months passed from the day when the applicant submitted his request for enforcement until the day when the administrative organ issued a conclusion on enforcement. The competent authorities have neither executed the CRPC decision nor is there any indication it will be done in near future. The Chamber further notes that the applicant initiated the proceeding before the Municipal Court I in Mostar. He has also tried to reach a friendly settlement with the Municipality but, until now, 31 months have passed but the friendly settlement has not been achieved.

76. The Chamber also notes that it was still open to the applicant to make further attempts to have his CRPC decision enforced. However, the applicant has made repeated attempts to remedy his situation and they have been unsuccessful. Also, the applicant filed a lawsuit to the competent court with the aim to protect his right. The proceedings are still pending. These proceedings, even if they were successful, also will not remedy the applicant's complaints insofar as they relate to the failure of the authorities to enforce the CRPC decision within the prescribed time-limit. Furthermore, there is no reason to suppose that the responsible authorities, which have for a long period disregarded their legal obligations to enforce the CRPC decision, would treat the decision of the courts with any greater respect.

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

78. As there are no other grounds for declaring the application inadmissible, the Chamber concludes that the application is admissible in its entirety.

B. Merits

79. Under Article XI of the Agreement the Chamber must next address the question whether the facts found disclose a breach by the Federation of Bosnia and Herzegovina of its obligations under the Agreement. Under Article I of the Agreement, the Parties are obliged to "secure to all persons within their jurisdiction the highest level of internationally recognised human rights and fundamental freedoms", including the rights and freedoms provided for by the Convention and the other international agreements listed in the Appendix to the Agreement.

1. Article 8 of the Convention

80. The Chamber will examine if there has been a violation of Article 8 of the Convention in that the applicant was prevented from returning to his home. The relevant parts of Article 8 of the Convention read as follows:

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

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society ...for the protection of the rights and freedoms of others."

81. The Chamber notes that the applicant is the holder of the occupancy right over the apartment in which he lived until such time as he was forced to leave due to the armed conflict. In accordance with the constant jurisprudence of the Chamber (see, e.g., case no. CH/98/777, *Pletilić*, decision on admissibility and merits of 9 September 1999, paragraph 74 and 88, Decisions August-December 1999 and case no. CH/98/457, *Anušić*, decision on admissibility and merits of 10 October 2000, paragraph 66 and 77, Decisions August-December 2000), an occupancy right is an asset which constitutes a "possession" within the meaning of Article 1 of Protocol No. 1 to the Convention, and

the apartment of the applicant is to be considered his home within the meaning of Article 8 of the Convention.

82. The Chamber notes that in the present case the organs of the Federation allocated the building, in which the applicant's apartment is located, to the Franciscan School Sisters in 1995. In 1998 the organs of the Federation concluded a lease contract with the Franciscan School Sisters. The Chamber recalls that the Dayton Peace Agreement entered into force on 14 December 1995 and the Constitution of the Federation of Bosnia and Herzegovina entered into force on 30 March 1994 (see paragraphs 43-48 above). The Chamber further notes that those actions of the Federation organs were not in accordance with Constitution of Federation and Annex 7 of the Agreement, which guarantee the right of refugees to return their pre-war homes.

83. The Chamber recalls that the administrative organ rejected the applicant's request to repossess his apartment of 26 July 1999. It failed to take into consideration repeated requests by the applicant. Only on 8 April 2003, after the CRPC, on 20 March 2001, had issued a decision confirming his right to repossess his apartment it considered the applicant's request for repossession. The applicant has been and still is unable to regain possession of the apartment due to the failure of the authorities of the respondent Party to deal effectively with his request for repossession of his pre-war home before the administrative organs and courts. In addition, they failed to effectively deal with the request for the enforcement of the CRPC decision. As a result of the inaction of the respondent Party, the applicant can not return to his home, thereby interfering with his right to home as guaranteed under Article 8 of the Convention.

84. The Chamber must therefore examine whether this interference is in accordance with paragraph 2 of Article 8 of the Convention, i.e. "whether it is in accordance with the law", "pursues a legitimate aim" and "was necessary in democratic society".

85. According to Article 7 of the Law on Implementation, the competent administrative organ is obliged to issue a conclusion authorising the execution of the decision within 30 days from the date of the request for such enforcement. Only on 8 April 2003 the applicant received a decision on his request filed on 8 May 2001 to have the CRPC decision enforced. On 8 April 2003, however, the time-limit for receiving an enforcement decision had already expired for more than 23 months. Moreover, the conclusion on enforcement has not yet been implemented. Accordingly, the competent administrative organ failed to decide upon the applicant's request "in accordance with the law".

86. As the interference with the applicant's right to respect for his home referred to above is not "in accordance with the law", it is not necessary for the Chamber to examine whether it pursued a "legitimate aim" or was "necessary in a democratic society".

87. In the present case the Chamber finds that the passivity shown by the municipal authorities in response to the applicant's various petitions aiming at enabling him to re-enter the apartment which he indisputably is entitled to possess amounts to a lack of respect for his "home" within the meaning of Article 8(1) of the Convention. The respondent Party has made no attempt to justify this lack of respect. Nor can the Chamber find any such justification on its own motion. The Chamber therefore concludes that the applicant's right under Article 8 of the Convention has been violated.

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

88. The Chamber will next turn to the question whether the respondent Party has violated the applicant's right to peaceful enjoyment of his possession. Article 1 of Protocol No. 1 to the Convention reads as follows:

"(1) 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.

(2) 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.”

89. The Chamber has already recognised (see paragraph 81 above) that the applicant's rights in respect of the apartment constitute a “possession” for the purposes of Article 1 of Protocol No. 1 to the Convention.

90. Regardless of which of the three rules set forth in Article 1 of Protocol No. 1 is applied in a given case (*i.e.*, interference with possessions, deprivation of possessions, or control of use of property), the challenged action by the respondent Party must have been lawful in order to comply with the requirements of Article 1 of Protocol No. 1. The European Court has explained as follows: “The Court reiterates that the first and most important requirement of Article 1 of Protocol No. 1 is that any interference by a public authority with the peaceful enjoyment of possessions should be lawful: the second sentence of the first paragraph authorises a deprivation of possessions only ‘subject to the conditions provided for by law’ and the second paragraph recognises that the States have the right to control the use of property by enforcing ‘laws’.” (see case no. CH/01/8110 *D.R.*, decision on admissibility and merits of 7 March 2003, paragraph 47). Moreover, Article 1 of Protocol No. 1 to the Convention may, like other Convention guarantees, give rise to positive obligations on the authorities to provide effective protection for the individual's rights (see case no. CH/98/756, *D.M.*, decision on admissibility and merits of 13 April 1999, paragraph 95, Decisions January-July 1999 and the case law of the European Court referred to therein). Such positive obligations may include the provision of necessary assistance in the recovery of property by means of eviction.

91. In the present case, the Chamber is concerned with a failure of the authorities to protect the applicant, against a continuing occupation of his possession within the meaning of the first sentence of the first paragraph of Article 1 of Protocol No. 1. The Chamber finds, for essentially the same reasons as it has given in relation to Article 8 of the Convention, that this failure, during this lapse of time, of the authorities to assist the applicant in recovering his property amounts to a breach of his rights under Article 1 of Protocol No. 1 to the Convention.

3. Discrimination in the enjoyment of the applicant's right to respect for his home and to the peaceful enjoyment of his possessions.

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

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

94. The Chamber has already found that the failure to reinstate the applicant into possession of his pre-war apartment amounts to an interference with and a violation of his rights to respect for his home and peaceful enjoyment of possessions.

95. The applicant claimed in his refusal of an offer of 10 June 2000 to be allocated temporary alternative accommodation, that the municipality of Mostar Jugozapad has resolved only the housing issues of all tenants of Croat origin who lived in the same building as the applicant by allocating them other apartments which they could purchase. He has made the same, undisputed, claim before the Chamber. The applicant further claims that the apartment offered to him consisted only of one room located far away from the centre. In addition, the place that he was offered as temporary accommodation is allegedly the property of a person of Bosniak origin, who has not been reinstated into the possession of that apartment up to date.

96. In examining whether there has been discrimination contrary to the Agreement, the Chamber has consistently found it necessary first to determine whether the applicants were treated differently from others in the same or relevantly similar situation. Any differential treatment is to be deemed discriminatory if it has no reasonable and objective justification; that is, if it does not pursue a legitimate aim or if there is no reasonable relationship of proportionality between the means employed and the aim sought to be realised. There is a particular onus on the respondent Party to justify differential treatment which is based on any of the grounds explicitly enumerated in the relevant provisions, including religion or national origin.

97. The Chamber recalls that in cases which are in essence identical to that of the applicant the Chamber has found it established that the competent administrative and political organs in the municipality of Mostar Jugozapad pursue a deliberate policy of preventing minority returns by, *inter alia*, not processing the claims of persons of Bosniak and Serb origin, to repossess their pre-war apartments (see e.g. CH/00/6444 *et al. Trklja et al.*, decision on admissibility and merits of 11 April 2002, para. 64-76, Decisions January - June 2002, or cases nos. CH/00/6436 and CH/00/6486 *Krvavac and Pribišić*, decision on admissibility and merits of 3 July 2002, para. 68-79, Decisions July - December 2002). The Chamber has also noted in its decision that the uncontested policy of the ruling Croat HDZ party to maintain the demographic “purity” of the three Croat majority municipalities in itself constitutes a systematic pattern of discrimination against persons of Bosniak and Serb origin, including persons of mixed marriages (see *Trklja, ibid*, para. 75).

98. The Chamber notes that the applicant made a detailed claim of discrimination in his case. It would have expected the respondent Party to submit evidence that there has been no discrimination in the present case. The respondent Party could have easily submitted evidence that it solved not only the housing problems of the applicant’s former neighbours of Croat origin, as claimed by the applicant, but also those of residents of other ethnicities. It failed, however, to do so. Therefore, the Chamber is convinced that also in the applicant’s case the respondent Parties authorities acted in a discriminatory way.

99. The Chamber concludes that the applicant has been discriminated against in the enjoyment of his rights under Article 8 of the Convention and Article 1 of Protocol No. 1 to the Convention.

4. Articles 6 and 13 of the Convention

100. Article 6, paragraph 1 of the Convention reads as follows:

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

101. Article 13 of the Convention provides as follows:

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

102. As explained above, the Chamber has found violation of the applicant’s rights under Articles 8 of the Convention and 1 of Protocol No.1 to the Convention, as well as that the applicant has been discriminated against in the enjoyment of his rights protected under Article 8 of the Convention and Article 1 of Protocol No. 1 to the Convention. Considering these findings and reasons supporting them, the Chamber does not consider it necessary separately to examine the application under Articles 6 and 13 of the Convention.

VIII. REMEDIES

103. Under Article XI(1)(b) of the Agreement the Chamber must next address the question what steps shall be taken by the Federation of Bosnia and Herzegovina to remedy breaches of the Agreement which it has found. In this connection the Chamber shall consider issuing orders to cease and desist, monetary relief as well as provisional measures.

104. In his submissions the applicant requests repossession of his apartment. If it is not possible, he proposes to be allocated another adequate apartment of a surface of 65 metres square. In the alternative, he requests monetary compensation corresponding to the purchase of a 65m² apartment amounting to 65,000 KM (= 1000 KM per square metre) in accordance with practice of Supreme Court of Federation Bosnia and Herzegovina. As a further alternative, he requests the Chamber to order compensation in the amount of the market value of his pre-war apartment in order to enable him to purchase another adequate apartment. The applicant requests compensation for all types of pecuniary and non-pecuniary damages as provided for in the Law on Contractual Relations. He requests circa 15,000 KM for lawyer fees, for representation in administrative and court proceedings, costs of photocopying, typing of legal and other ordinary and extra-ordinary remedies and all in accordance with the tariff for compensation of advocates.

105. The Federation, in its observations, argued that the claims for compensation, which were submitted by the applicant, were ill-founded or unsubstantiated and in any case excessive. The Federation further suggests to the Chamber to reject the request for compensation as unspecified or to refuse it as ill-founded.

106. The Chamber finds it appropriate to order the respondent Party to reinstate the applicant into his apartment as it is his right under domestic law. Since the applicant in the present case has, for a long time, been unable to regain possession of his apartment due to the failure of the respondent Party to reinstate him in a timely manner, this re-instatement should happen without further delay, and at the latest by 22 February 2004. In case that the respondent Party chooses to offer to the applicant another adequate apartment of the same size or an adequate pecuniary compensation enabling him to buy a comparable apartment before 22 February 2004, the applicant shall be free to choose to accept this offer instead of being re-instated.

107. With regard to possible compensatory awards, the Chamber considers it appropriate to award a sum to the applicant in recognition of the sense of injustice he has suffered as a result of his inability to regain possession of the apartment, especially in view of the fact that he had taken all necessary steps to have the CRPC decision enforced (and to be discriminated against).

108. Accordingly, the Chamber will order the respondent Party to pay to the applicant the sum of 1,200 KM Convertible Marks (*Konvertibilnih Maraka*, "KM") in recognition of the sense of injustice he has suffered at the latest within one month from the delivery of the present decision.

109. In accordance with its decision in *Turundžić and Frančić* (cases nos. CH/00/6143 and CH/00/6150, decision on admissibility and merits delivered on 8 February 2001, paragraph 70, Decisions January-June 2001), the Chamber considers that the sum of KM 200 per month is appropriate to compensate for the loss of use of the apartment and any extra costs for each month the applicant has been and continues to be forced to live in alternative accommodation. The Chamber considers it appropriate that this sum should be payable from 26 August 1999, the date the time-limit for the competent municipal organ to decide on the applicant's claim for return of the apartment, i.e. 30 days after the applicant lodged his complete request, up to and including December 2003, amounting to a total of 10.400 KM. This sum (200 KM per month) should continue to be paid at the same rate until the end of the month in which the applicant regains possession of his apartment.

110. The Chamber further awards simple interest at an annual rate of 10% as of the date of expiry of the one-month periods set in paragraphs 108-109 for the implementation of the present decision on the sums awarded or any unpaid portion thereof until the date of settlement in full.

IX. CONCLUSIONS

111. For the above reasons, the Chamber decides,

1. unanimously, to declare the application admissible;
2. unanimously, that the applicant has been discriminated against in the enjoyment of his rights under Article 8 of the European Convention on Human Rights and Article 1 of Protocol No. 1 to the Convention, the respondent Party thereby being in violation of Article I of the Human Rights Agreement;
3. unanimously, that there has been a violation of the right of the applicant to respect for his home within the meaning of Article 8 of the Convention, the respondent Party thereby being in breach of Article I of the Agreement;
4. unanimously, that there has been a violation of the applicant's right to peaceful enjoyment of his possessions within the meaning of Article 1 of Protocol No. 1 to the Convention, the respondent Party thereby being in breach of Article I of the Agreement;
5. unanimously, that it is not necessary to rule on the complaints under Articles 6 and 13 of the Convention;
6. unanimously, to order the Federation of Bosnia and Herzegovina to reinstate the applicant into his apartment without further delay, in the absence of any other solution agreed by the applicant, and at the latest by 22 February 2004;
7. unanimously, to order the Federation to pay to the applicant, no later than one month after this decision has been delivered, i.e. by 22 January 2004, the sum of KM 11.600 (eleven thousand six hundred), composed KM 1200 by way of compensation for non-pecuniary damage and KM 10.400 by way of compensation for the loss of use of his home;
8. unanimously, to order the Federation of Bosnia and Herzegovina to pay to the applicant 200 (two hundred) KM for each further month that he continues to be forced to live in alternative accommodation as from 1 January 2004 until the end of the month in which he repossess his apartment, each of these monthly payments to be made within 30 days from the end of the month to which they relate;
9. unanimously, that simple interest at an annual rate of 10 % (ten per cent) will be payable on the sum awarded in the previous conclusions from the expiry of the one-month period set for such payment until the date of final settlement of all sums due to the applicant under this decision; and

10. unanimously, to order the Federation of Bosnia and Herzegovina to report to Commission for Human Rights within the Constitutional Court no later than on 22 February 2004 on the steps taken by it to comply with the above orders.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the Chamber