



DECISION ON ADMISSIBILITY AND MERITS

Case no. CH/02/11024

Milorad NJEGOMIROVIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Commission within the Constitutional Court of Bosnia and Herzegovina, sitting in plenary session on 5 May 2004 with the following members present:

Mr. Jakob MÖLLER, President
Mr. Miodrag PAJIĆ, Vice-President
Mr. Želimir JUKA
Mr. Mehmed DEKOVIĆ
Mr. Andrew GROTRIAN

Mr. J. David YEAGER, Registrar
Ms. Olga KAPIĆ, Deputy Registrar
Ms. Meagan HRLE, Deputy Registrar

Having considered the aforementioned application introduced to the Human Rights Chamber for Bosnia and Herzegovina 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;

Noting that the Human Rights Chamber for Bosnia and Herzegovina ("the Chamber") ceased to exist on 31 December 2003 and that the Human Rights Commission within the Constitutional Court of Bosnia and Herzegovina ("the Commission") has been mandated under the Agreement pursuant to Article XIV of Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina entered into on 22 and 25 September 2003 ("the 2003 Agreement") to decide on cases received by the Chamber through 31 December 2003;

Adopts the following decision pursuant to Article VIII(2) and XI of the Agreement, Articles 5 and 9 of the 2003 Agreement, and Rules 50, 54, 56, and 57 of the Commission's Rules of Procedure:

I. INTRODUCTION

1. The applicant is a citizen of Bosnia and Herzegovina of Serb descent. His complaints are related to his unsuccessful attempts to return into the possession of an apartment located at Branilaca grada street no. 32 in Banovići, the Federation of Bosnia and Herzegovina. The applicant requested the Chamber to issue a provisional measure preventing M.T.K. from selling or exchanging the apartment in question. On 4 September 2002 the Chamber decided not to issue the provisional measure.

2. The application raises issues under Articles 6, 8, and 13 of the European Convention on Human Rights (“the Convention”) and under Article 1 of Protocol No. 1 to the Convention.

II. PROCEEDINGS BEFORE THE CHAMBER AND COMMISSION

3. The application with the request for provisional measure was submitted to the Chamber on 20 May 2002.

4. On 4 September 2002 the Chamber decided to reject the request for provisional measure and to transmit the case to the respondent Party for its observations on the admissibility and merits with regard to Articles 6, 8, and 13 of the Convention and Article 1 of Protocol No. 1 to the Convention.

5. On 6 September 2002 the application was transmitted to the respondent Party. The respondent Party submitted its written observations to the Chamber on 8 November 2002.

6. The Chamber sent the respondent Party’s written observations to the applicant for his reply. On 2 December 2002 the Chamber received the applicant’s reply.

7. On 16 January 2004 the Commission received a letter from the applicant in which he stated that his situation has not been resolved.

8. The Commission deliberated on the admissibility and merits of the application on 8 March 2004 and 5 May 2004. On the latter date, it adopted the present decision.

III. ESTABLISHMENT OF THE FACTS

9. On 21 May 1981 the applicant concluded a contract for use of an apartment at Branilaca grada no. 32 in Banovići, the Federation of Bosnia and Herzegovina, where he lived until 1 October 1993, when he left the town. He alleges that, from the beginning of the armed conflict, he was subjected to pressure and maltreatment, and he therefore applied to leave Banovići.

10. In August 1992 M.T.K. offered the applicant her assistance in leaving the town with the help of the Office of the Red Cross Organisation in Banovići. She conditioned her assistance on the exchange of their apartments, handing him a contract on exchange of the apartments for his signature. The applicant signed the contract although it did not contain the date. He points out that he mentioned this fact to M.T.K., but she replied that she would put the date on the contract upon the completion of the proceedings. She also promised that she would send him his copies of the contract. She has never done so, however, and the applicant believed that she gave up on the exchange of the apartments.

11. On 1 October 1993 the applicant left Banovići. He states that he lived in the apartment at Branilaca grada no. 32 until that day.

12. Considering the exchange contract to be fictitious and therefore invalid, the applicant submitted a request to the Commission for Real Property Claims of Displaced Persons and Refugees (“the CRPC”) for reinstatement into the possession of his apartment.
13. On 1 February 2000, the CRPC issued a decision confirming that the applicant was the occupancy right holder over the apartment located at Branilaca grada no. 32 on 1 April 1992.
14. On 17 April 2000 the applicant submitted a request to the Department for Physical Planning, Housing and Public Utility Affairs of Banovići Municipality (“the Department”) for the enforcement of the CRPC decision.
15. M.T.K submitted a request to the CRPC to reconsider its decision of 1 February 2000. In her request M.T.K pointed out that she concluded a contract on exchange of the apartments with the applicant on 20 March 1992. Taking into consideration that the contract was concluded before the beginning of the armed conflict, and that the apartment in question was not declared abandoned, M.T.K stated that the provisions of the Law on Cessation of Application of the Law on Abandoned Apartments (“the Law on Cessation”) cannot be applied in this case.
16. On 10 April 2001 M.T.K. concluded a contract on purchase for the apartment at Branilaca grada no. 32.
17. On 27 November 2001 the CRPC rejected M.T.K.'s request as ill-founded. The reasoning of the decision states that M.T.K did not proffer any evidence that would result in a different decision of the CRPC. The applicant enclosed relevant evidence to confirm that on 1 April 1992 he was in possession of the apartment. Therefore, under Article 11 of the Law on Housing Relations, M.T.K did not obtain an occupancy right over the apartment prior to 1 April 1992.
18. Because the Department did not act upon his request for enforcement of the CRPC decision within the legal time limit, on 8 August 2000 the applicant lodged an appeal with the Ministry for Urbanism, Physical Planning and Environment of Tuzla Canton (“the Ministry”) because of the “silence of the administration”.
19. When this body did not act upon his appeal, the applicant initiated an administrative dispute before the Cantonal Court in Tuzla against the Ministry based on the “silence of the administration”. On 20 February 2002 the Cantonal Court rendered a verdict accepting the legal action and ordering the Ministry to issue a procedural decision upon the appeal within 15 days.
20. On 12 March 2002 the Ministry issued a procedural decision accepting the applicant’s appeal and ordering the first instance body to decide on the applicant’s request within 15 days. It appears that these proceedings are still pending.

IV. RELEVANT LEGISLATION

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

21. The General Framework Agreement was signed by the Republic of Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia (the “Parties”) in Paris on 14 December 1995. Annex 7 to the General Framework Agreement deals with refugees and displaced persons, and in accordance with Article VII of Annex 7, an Independent Commission for Displaced Persons and Refugees, later renamed the Commission for Real Property Claims of Displaced Persons and Refugees, was established.
22. The CRPC's mission was to receive and decide on claims for real property in Bosnia and Herzegovina, where the property had not voluntarily been sold or otherwise transferred since

1 April 1992, and where the claimant did not enjoy possession of the property (Article XI). The CRPC was to determine the lawful owner of the property - a concept that the CRPC 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.

23. The Parties are obliged to cooperate with the work of the CRPC and to respect and implement its decisions expeditiously and in good faith (Article VIII).

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

24. The Law on Implementation of the Decisions of the Commission for Real Property Claims of Displaced Persons and Refugees ("the Law on Implementation") (Official Gazette of the Federation of Bosnia and Herzegovina ("OG FBiH") nos. 43/99, 51/00, 56/01, 27/02, and 24/03) regulates the enforcement of CRPC decisions.

25. CRPC 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 (Article 3, paragraph 3). The CRPC decisions shall be enforced if a request for enforcement has been filed with the relevant organ. The following persons are entitled to file such a request: (1) 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; and (2) 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).

26. 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). A request for enforcement of a CRPC decision confirming an occupancy right must be submitted within 18 months from the date when the CRPC decision was issued, or for decisions issued before this Law entered into force, within 18 months from the entry into force of this Law (Article 5, paragraph 2, as amended by the High Representative effective from 28 October 2000; the previous time limit was one year).

27. 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). Article 7, paragraph 4 specifies that 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 person requesting 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.

28. 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.

29. Article 7, paragraphs 7 and 8 (enacted by the High Representative on 15 May 2003, and replacing Article 12(a)) provide as follows:

“In case a person claims a legal interest in the property or apartment at issue which was acquired after the date referred to in the operative part of the Commission decision and can show a valid contract on exchange or transfer of rights, the competent administrative organ shall suspend proceedings and shall refer the parties to the competent court according to the provisions of the Law on Administrative Procedures (...) regulating preliminary issues, in order to rule on the allegation.

“Exceptionally, in the case where a person claims a legal interest in the property or apartment at issue which was acquired after the date referred to in the operative part of the Commission decision, in which the competent administrative organ issued a conclusion on permission of enforcement prior to the date of entry into force of this Law and that has not yet been enforced, the competent administrative organ shall *ex officio* suspend enforcement proceedings pending a final judicial decision on the matter, under the condition that an interested party provides evidence that he/she has initiated proceedings before the competent court and can show a valid contract on exchange or transfer of rights.”

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

C. The Law on Administrative Procedures

31. Under Article 275 of the Law on Administrative Procedure of the Federation of Bosnia and Herzegovina (OG FBiH nos. 2/98 and 48/99), the competent administrative organ has to issue a decision to execute an administrative decision within 30 days upon the receipt of a request to this effect. Article 216, paragraph 3 provides for an appeal to the administrative appellate body if a decision is not issued within this time limit (i.e. an appeal against “silence of the administration”).

D. The Law on Administrative Disputes

32. 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 the rights and obligations of citizens and legal persons.

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

V. COMPLAINTS

34. The applicant alleges that he has been deprived of his fundamental rights to his home and to the peaceful enjoyment of his home, as well as his right to return guaranteed by Annex 7 of the General Framework Agreement.

35. The applicant requests the Commission to stop further obstructions of his rights and to order the respondent Party either to enforce the CRPC decision or to pay him fair compensation for the apartment in question.

VI. SUBMISSIONS OF THE PARTIES

A. The respondent Party

1. As to the facts

36. As to the facts, the respondent Party alleges that the applicant concluded the contract on exchange of the apartments with M.T.K. on 20 March 1992, and that the allocation right holder gave its consent for the exchange of the apartments. On the basis of this contract on exchange of the apartments, on the same day, the applicant concluded a contract on use of an apartment located in Veljka Vlahovića Street (now 119 MBB Street in Banovići), which he received by the exchange. M.T.K., according to the record on the hand over of the apartment, then entered into the possession of the apartment located in Branilaca grada no. 32. The respondent Party submitted no documentation supporting these statements.

2. As to admissibility

37. The respondent Party considers the application inadmissible with regard to Article VIII(2)(a) of the Agreement for non-exhaustion of domestic remedies. It alleges that the applicant has failed to initiate proceedings before a competent court for the annulment of the 20 March 1992 exchange contract.

3. As to the merits

38. As to the merits, the respondent Party considers that the application is ill-founded on the merits and should be declared inadmissible in accordance with Article VIII(2)(c) of the Agreement.

a. Article 8 of the Convention

39. The respondent Party states that the apartment at Branilaca grada no. 32 cannot be considered the applicant's home because, on the basis of the 20 March 1992 exchange contract, he lost his occupancy right over that apartment and acquired an occupancy right over the apartment located in Veljka Vlahovića Street. The respondent Party emphasises that it did not have any impact on the applicant's choice of his home and that the contract on exchange of the apartments contains all the essential elements required by law to be presumed legally valid. The respondent Party also points out that the applicant did not contest the validity of the contract in proceedings before the court, in which way he could have eventually proved that the apartment in question was his home.

40. Consequently, the respondent Party asserts that it did not interfere with the applicant's right to his home and therefore did not violate Article 8 of the Convention.

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

41. As to Article 1 of Protocol No. 1, the respondent Party points out that it has neither endangered the applicant's possession of the apartment nor deprived him of the apartment by any of its acts. The applicant voluntarily deprived himself of his right to the apartment in exchange for the same rights over another apartment.

c. Articles 6 and 13 of the Convention

42. The respondent Party also considers that the domestic bodies have undertaken all actions in accordance with law and that the complexity of the case must be taken into account while assessing the length of proceedings before the domestic administrative bodies. Also, the respondent Party asserts that it cannot be said that there is no effective legal remedy because the applicant has not exhausted all available remedies.

B. The applicant

43. In his December 2002 reply to the respondent Party's written observations, the applicant repeated the allegations and information stated in his application. He completely denies that the exchange contract was concluded on 20 March 1992. He claims that he stayed in the apartment until 1 October 1993, and he denies the existence of any record on the handing over of the apartments. The applicant also alleges that M.T.K. purchased the apartment in question with the assistance of the leading structures of Banovići Municipality and the Mine Banovići, thereby abusing her official authority as an inspector with the Department for Physical Planning, Housing and Public Utility of Banovići Municipality.

VII. OPINION OF THE COMMISSION

A. Admissibility

44. The Commission recalls that the application was introduced to the Human Rights Chamber under the Agreement. As the Chamber had not decided on the application by 31 December 2003, in accordance with Article 5 of the 2003 Agreement, the Commission is now competent to decide on the application. In doing so, the Commission shall apply the admissibility requirements set forth in Article VIII(2) of the Agreement. Moreover, the Commission notes that the Rules of Procedure governing its proceedings do not differ, insofar as relevant for the applicant's case, from those of the Chamber, except for the composition of the Commission.

45. According to Article VIII(2)(a) of the Agreement, the Commission must consider whether effective remedies exist and whether the applicant has demonstrated that they have been exhausted. In *Blentić* (case no. CH/96/17, decision on admissibility and merits of 5 November 1997, paragraphs 19-21, Decisions on Admissibility and Merits 1996-1997), the Chamber considered this admissibility criterion in light of the corresponding requirement to exhaust domestic remedies in the former Article 26 of the Convention (now Article 35(1) of the Convention). The European Court of Human Rights ("the European Court") 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 European Court has, moreover, considered that in applying the rule on exhaustion, it is necessary to take realistic account not only of the existence of formal remedies in the legal system of the Contracting Party concerned, but also of the general legal and political context in which they operate, as well as of the personal circumstances of the applicants. In previous cases the Chamber held that the burden of proof is on the respondent Party to satisfy the burden of production that there was a remedy available to the applicant both in theory and in practice (see, e.g., case no. CH/96/21, *Čegar*, decision on admissibility of 11 April 1997, paragraph 12, Decisions March 1996-December 1997).

46. In the present case, the respondent Party considers the application inadmissible with regard to Article VIII(2)(a) of the Agreement for non-exhaustion of domestic remedies. It argues that the applicant has failed to initiate proceedings before a competent court for the annulment of the 20 March 1992 exchange contract (see paragraph 37 above). However, pursuant to the amendments to the Law on Implementation enacted by the High Representative on 15 May 2003, in particular Article 7, paragraphs 7 and 8 (which replaced the earlier Article 12(a)) (see paragraph 29 above), it is for the party asserting to have acquired a right under an exchange contract, and

thus claiming that the exchange contract is valid, to initiate court proceedings against the person seeking enforcement of a CRPC decision.

47. The Commission notes that the applicant filed a request with the 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 temporary occupants from the apartment. This decision has not been enforced, however, despite the applicant's enforcement requests to the competent administrative organ, which have been pending for 48 months. According to Article 7 of the Law on Implementation, the competent administrative organ is obliged to issue a conclusion on permission of enforcement within a period of 30 days from the date when the request for enforcement is submitted.

48. In these circumstances, the Commission 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.

49. The Commission further finds that no other ground for declaring the case inadmissible has been established. Accordingly, the case is to be declared admissible.

B. Merits

50. Under Article XI of the Agreement, the Commission must next address the question of 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

51. The Commission will first examine if there has been a violation of Article 8 of the Convention in that the applicant was prevented to return to his home. The relevant parts of Article 8 of the Convention provides as follows:

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

"2. There shall be no interference by a public authority with the exercise of this right except such as in accordance with the law..."

52. The Commission notes that the applicant used to live in his apartment and used it as his home until he was forced to leave. The Chamber has previously held that the links persons in similar situations to the applicant retained to their dwellings were sufficient to have those dwellings considered their "homes" within the meaning of Article 8 of the Convention (see case no. CH/97/58, *Onić*, decision on admissibility and merits of 12 January 1999, paragraph 48, Decisions January-July 1999; and case no. CH/97/46, *Kevešević*, decision on the merits of 15 July 1998, paragraphs 39-42, Decisions and Reports 1998).

53. Therefore, the applicant's pre-war apartment is to be considered his home for the purposes of Article 8 of the Convention.

54. In the present case, the Commission recalls that the CRPC issued a decision confirming the applicant's right to repossess his apartment. The applicant has been unable to regain possession of his apartment due to the failure of the authorities of the Federation of Bosnia and Herzegovina to deal effectively, in accordance with the Federation's laws, with his request for enforcement of the CRPC decision. The result of the Federation's inaction is that the applicant has

not been able to return to his home, and that is an ongoing interference with the applicant's right to respect for his home.

55. The Commission must therefore examine whether this interference, which is ongoing, is in accordance with paragraph 2 of Article 8 of the Convention.

56. According to Article 7 of the Law on Implementation, the competent administrative organ is obliged to issue a conclusion authorising the enforcement of a CRPC decision within 30 days from the date of the request for such enforcement. The applicant did not receive any decision by the administrative authorities. Accordingly, the failure of the competent administrative organ to decide upon those requests is not "in accordance with the law".

57. Because the interference with the applicants' right to respect for his home referred to above is not "in accordance with the law", it is not necessary for the Commission to examine whether it pursued a "legitimate aim" or is "necessary in a democratic society".

58. In these circumstances, the Commission concludes, there has been a violation of the applicant's right to respect for his home as guaranteed by Article 8 of the Convention.

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

59. The Commission will next turn to the question whether the respondent Party has violated the applicant's right to peaceful enjoyment of his possessions. 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."

60. The Commission notes that the CRPC confirmed that the applicant was the holder of the occupancy right to the apartment on 1 April 1992. The CRPC decided this after it assessed evidence relating to the exchange contract allegedly concluded on 20 March 1992, and it found that the applicant was the occupancy right holder on 1 April 1992. Thus, the Commission accepts this conclusion. The Commission further notes the consistent jurisprudence of the Chamber, according to which an occupancy right is a possession within the meaning of Article 1 of Protocol No. 1 (see, e.g., case no. CH/96/28, *M.J. v. The Republika Srpska*, decision on admissibility and merits of 3 December 1997, paragraph 32, Decisions on Admissibility and Merits 1996-1997).

61. The Commission considers that the failure of the authorities of the Federation to allow the applicant to regain possession of the apartment constitutes an "interference" with his right to the peaceful enjoyment of his possession. This interference is ongoing because the applicant still does not enjoy possession of the apartment.

62. The Commission must therefore examine whether this interference can be justified. For this to be the case, it must be in the public interest and subject to conditions provided for by law. This means that the deprivation must have a basis in national law and that the law concerned must be both accessible and sufficiently precise.

63. As the Commission noted in the context of its examination of the case under Article 8 of the Convention, Article 7 of the Law on Implementation states that the competent administrative organ is obliged to issue a conclusion authorising the execution of the decision within 30 days from the

date of a request for such enforcement. It follows that the failure of the competent administrative organ to decide upon the applicant's requests is contrary to the law. This is in itself sufficient to justify a finding of a violation of the applicant's right to the peaceful enjoyment of his possessions as guaranteed by Article 1 of Protocol No. 1 to the Convention. Accordingly the Commission finds that the applicant's rights under this provision have been violated.

3. Articles 6 and 13 of the Convention

64. Article 6, paragraph 1 of the Convention reads, in relevant part, 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...."

65. 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."

66. The applicant alleges violations of his rights as guaranteed by these provisions. The respondent Party states that there has been no violation of these Articles in the applicant's case.

67. The Commission, having regard to other violations of the applicant's rights found above, does not consider it necessary to examine the case under these provisions.

VIII. REMEDIES

68. Under Article XI(1)(b) of the Agreement, the Commission must next address the question of what steps shall be taken by the Federation of Bosnia and Herzegovina to remedy the established breaches of the Agreement. In this connection the Commission shall consider issuing orders to cease and desist, monetary relief (including pecuniary and non-pecuniary damages), as well as provisional measures.

69. In his submissions, the applicant asks to be swiftly reinstated into possession of the apartment at Ulica Branilaca Grada no. 32 in Banovići. He also requests compensation for non-pecuniary damages in an unspecified amount.

70. The Commission considers it appropriate to order the respondent Party to take all necessary steps to enforce the CRPC decision of 1 February 2000 without further delay, and no later than three months from the date of receipt of the present decision.

71. With regard to possible compensation, the Commission 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 has taken all necessary steps to have the CRPC decision enforced.

72. Accordingly, the Commission will order the respondent Party to pay to the applicant the sum of 2000 KM Convertible Marks (*Konvertibilnih Maraka*, "KM") in recognition of the sense of injustice he has suffered, within one month from the date of receipt of the present decision.

73. In accordance with its decision in *Turundžić and Frančić* (case 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 Commission considers that the sum of 100 KM per month is appropriate to compensate the applicant for the loss of use of the apartment and any extra costs

for each month he has been unable to be reinstated into his apartment. The Commission considers it appropriate that this sum should be payable from 18 May 2000, the date the time limit for the competent municipal organ to issue a conclusion on the permission of enforcement of the CRPC decision expired, i.e. 30 days after the applicant lodged his complete request, up to and including May 2004, amounting to a total of 4,800 KM, to be paid, within one month from the date of receipt of the present decision. The monthly sum of 100 KM shall continue to be paid until the end of the month in which the applicant regains possession of the apartment.

74. The Commission further awards simple interest at an annual rate of 10% (ten percent) running from the due dates of the payments ordered in paragraphs 72 and 73 on the sums awarded or any unpaid portion thereof until the date of settlement in full.

IX. CONCLUSIONS

75. For the above reasons, the Commission decides,

1. unanimously, to declare the application admissible;
2. unanimously, that the non-enforcement of the decision of the Commission for Real Property Claims of Displaced Persons and Refugees of 1 February 2000 constitutes a violation of the right of the applicant to respect for his home within the meaning of Article 8 of the European Convention on Human Rights, the respondent Party thereby being in breach of Article I of the Human Rights Agreement;
3. unanimously, that the non-enforcement of the decision of the Commission for Real Property Claims of Displaced Persons and Refugees of 1 February 2000 constitutes 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 European Convention on Human Rights, the respondent Party thereby being in breach of Article I of the Human Rights Agreement;
4. unanimously, that it is not necessary to consider the complaints under Articles 6 and Article 13 of the European Convention on Human Rights;
5. unanimously, to order the Federation of Bosnia and Herzegovina to take all necessary steps to enforce the Commission for Real Property Claims of Displaced Persons and Refugees decision of 1 February 2000 without further delay, and no later than three months after the date of receipt of the present decision;
6. unanimously, to order the Federation of Bosnia and Herzegovina to pay to the applicant the sum of 2,000 (two thousand) Convertible Marks ("*Konvertibilnih Maraka*") by way of compensation for the sense of injustice he suffered, within one month from the date of receipt of the present decision;
7. unanimously, to order the Federation of Bosnia and Herzegovina to pay to the applicant the sum of 4,800 (four thousand eight hundred) Convertible Marks ("*Konvertibilnih Maraka*") as compensation for the loss of use of the apartment through the end of May 2004, within one month from the date of receipt of the present decision;
8. unanimously, to order the Federation of Bosnia and Herzegovina to pay to the applicant 100 (one hundred) Convertible Marks ("*Konvertibilnih Maraka*") for each additional month that he continues to be unable to live in his pre-war apartment as of 1 June 2004 until the end of the month in which he is reinstated, each of these monthly payments to be made within 30 days from the end of the month to which they relate;

CH/02/11024

9. unanimously, that simple interest at an annual rate of 10 % (ten per cent) shall be paid on the sums awarded in the conclusions 6, 7, and 8 from the due dates of the payments ordered 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 it no later than 4 November 2004 on the steps taken by them to comply with the above orders.

(signed)
J. David YEAGER
Registrar of the Commission

(signed)
Jakob MÖLLER
President of the Commission