



DECISION ON ADMISSIBILITY AND MERITS

Case no. CH/01/8027

Nadžija AVDIĆ

against

THE REPUBLIKA SRPSKA

The Human Rights Commission within the Constitutional Court of Bosnia and Herzegovina, sitting in plenary session on 8 July 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 Articles 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 citizen of Bosnia and Herzegovina of Bosniak origin. Before the outbreak of the armed conflict she resided in an apartment in Majke Knežopoljke Street no. 3 in Banja Luka, the Republika Srpska. The occupancy right holder over the apartment was the applicant's spouse, H.A. Because of the armed conflict, the applicant and her spouse left the apartment in 1994. On 15 August 1998 H.A. died. On 17 November 1998 H.A.'s representative submitted a repossession request for the apartment to the Commission for Real Property Claims of Displaced Persons and Refugees ("CRPC"). On 12 September 2000, the CRPC issued a decision confirming that H.A. was the occupancy right holder of the apartment on 1 April 1992. On 21 March 2001 the applicant was reinstated into possession of the apartment. Upon a request for review submitted by the temporary occupant of the apartment, on 1 May 2001 the CRPC put out of force its previous decision. After that, on 3 October 2001, the Ministry for Refugees and Displaced Persons, Department Banja Luka ("the Ministry") scheduled the eviction of the applicant from the apartment for 15 October 2001.

2. The application raises issues under Article 8 of the European Convention on Human Rights ("the Convention").

II. PROCEEDINGS BEFORE THE CHAMBER AND THE COMMISSION

3. The application was introduced on 11 October 2001 and registered on the same date. Mr. Turkanović represents the applicant before the Chamber and the Commission.

4. The applicant requested the Chamber to order the respondent Party, as a provisional measure, to take all necessary steps to prevent her eviction from the apartment in Majke Knežopoljke Street no. 3 in Banja Luka.

5. On 21 October 2001 the Chamber ordered the requested provisional measure specifying that it should remain in force until the CRPC issues its final decision in the case. At the same time, the Chamber transmitted the application to the respondent Party for its observations on the admissibility and merits of the application in connection with Article 8 of the Convention and Article 1 of Protocol No. 1 to the Convention.

6. On 2 November 2001 the Chamber requested information from the CRPC regarding the repossession request submitted by H.A. On 11 March 2002, the CRPC submitted the requested information.

7. On 14 November 2001 the respondent Party submitted its written observations on the admissibility and merits to the Chamber.

8. The applicant submitted her observations on 27 February 2002 and 19 April 2002.

9. The respondent Party submitted additional observations on 1 February 2002 and 15 April 2002.

10. On 8 February 2002 the Chamber decided to extend its provisional measure until 10 March 2002. On 8 March 2002 the Chamber decided to extend the provisional measure until it issues its final decision.

11. The Commission deliberated on the admissibility and merits of the case on 6 May 2004 and 8 July 2004 and on the latter date adopted the present decision.

III. ESTABLISHMENT OF THE FACTS

12. The applicant's spouse, H.A., concluded a contract on use for the apartment located at Majke Knežopoljke Street no. 3. (formerly Skender Kulenovića no. 3) in Banja Luka on 7 May 1975 with the company "Tvornica obuće Bosna". The applicant and her husband resided in the apartment until 1994. The applicant states that in 1994 the company "Tvornica obuće Bosna" requested her husband to return the apartment to the company, and a few months later she and her family fled to Sweden as refugees.

13. On 18 March 1998 H.A. executed an authorization for Mr. Sadik Turkanović to initiate proceedings before the CRPC to undertake all action related to returning him into possession of his pre-war apartment. This authorization was executed in Stockholm, Sweden, and verified by the Bosnia and Herzegovina Embassy in Sweden on 20 March 1998. It appears that Mr. Turkanović is not a lawyer.

14. H.A. died on 15 August 1998 in Sweden.

15. On 17 November 1998 Mr. Turkanović submitted a request for repossession of the apartment to the CRPC, on behalf of H.A.

16. On 25 February 1999 Mr. Turkanović submitted a repossession request to the Ministry on behalf of H.A. On 13 September 1999 the Ministry made an official record in the presence of Mr. Turkanović, where Mr. Turkanović stated that he submitted the repossession request on behalf of H.A., who is deceased, and that he would submit to the Ministry H.A.'s death certificate as well as evidence of the other family household members.

17. On 12 September 2000 the CRPC issued a decision (*odluka*) recognizing H.A. as the occupancy right holder of the apartment on 1 April 1992. On 10 October 2000 Mr. Turkanović submitted a request for the enforcement of the CRPC decision to the Ministry.

18. On 21 December 2000 the Ministry issued a conclusion (*zaključak*) permitting the enforcement of the CRPC decision. The applicant was subsequently reinstated into the apartment on 21 March 2001.

19. In the meantime, on 4 January 2001, the temporary occupant of the apartment submitted a request for reconsideration of the 12 September 2000 CRPC decision.

20. On 1 May 2001 the CRPC issued a decision annulling its 12 September 2000 decision and rejected the request of the applicant's spouse. The CRPC stated that, upon the death of H.A., the letter of authority he gave to his representative ceased to be valid and therefore his request was rejected.

21. On 20 August 2001, the Ministry issued a procedural decision quashing the procedural decision permitting the enforcement of the CRPC decision. On 31 August 2001 the applicant appealed against the 20 August 2001 decision. It appears that these proceedings are still pending.

22. The applicant and her representative, Mr. Turkanović, submitted separate requests to the CRPC for review of its 1 May 2001 decision. On 27 November 2001, the CRPC issued two decisions rejecting both the applicant's and her representative's request.

23. On 3 October 2001, the Ministry informed the applicant that her eviction from the apartment was scheduled for 15 October 2001.

24. On 21 October 2001 the Chamber ordered the respondent Party to refrain from evicting the applicant from the apartment. On 8 March 2002 the Chamber decided that this measure should be

in force until it issues the final decision in the applicant's case. It appears that the applicant continues to reside in the apartment on the basis of the Chamber's provisional measure.

25. On 11 March 2002 the CRPC, in response to the Chamber's request, submitted additional factual information regarding its rejection of H.A.'s claim. The CRPC confirmed that it annulled its earlier decision of 12 September 2000 and rejected H.A.'s request because an unauthorized person had submitted it. The CRPC stated that under the Law on Contractual Relations an authorization letter remains in effect until the death of the person who authorized it. Moreover, under the Law on General Administrative Proceedings only if the occupancy right holder dies after commencement of the administrative proceedings will the letter of authorization remain valid. In conclusion, it stated:

"... the CRPC did not decide on Ms. Nadžija Avdić's occupancy right but her husband's claim was rejected as inadmissible because an unauthorized representative submitted it. The problem is that the Law on Cessation of Application of the Law on Abandoned Property stipulates that the occupancy right holder shall lose his or her occupancy right if she or he did not submit a claim within the deadline. The issue is whether Ms. Avdić, who is currently residing in the apartment at issue (which would indisputably be hers but for a formal error in submitting the claim at the CRPC) should be evicted."

IV. RELEVANT LEGAL PROVISIONS

A. The Constitution of Bosnia and Herzegovina

26. Article II, paragraph 2 provides:

"The rights and freedoms set forth in the European Convention on Human Rights and its Protocols shall apply directly in Bosnia and Herzegovina. These shall have priority over all other law."

B. The General Framework Agreement for Peace in Bosnia and Herzegovina—Annex 7, Agreement on Refugees and Displaced Persons ("Annex 7")

27. Annex 7 to the General Framework Agreement, entitled Agreement on Refugees and Displaced Persons, addresses the rights of displaced persons to return to their pre-war homes.

28. Article I, paragraph 1 of Annex 7 provides:

"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 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. The Parties confirm that they will accept the return of such persons who have left their territory, including those who have been accorded temporary protection by third countries."

C. The Law on Cessation of Application of the Law on Use of Abandoned Property ("Law on Cessation")

29. The Law on Cessation (Official Gazette of the Republika Srpska nos. 38/98, 41/98, 12/99, 31/99, 38/99, 65/01, 13/02, 64/02, 39/03 and 96/03) provides as follows:

Article 14, paragraph 1

“The occupancy right holder of an abandoned apartment or a member of his or her family household as defined in Article 6 of the Law on Housing Relations (hereinafter the “occupancy right holder”) shall have the right to return to the apartment in accordance with Annex 7 of the General Framework Agreement for Peace in Bosnia and Herzegovina. The provisions of this Law shall apply to all apartments vacated between 30 April 1991 and 19 December 1998, whether or not the apartment was registered as abandoned, and regardless of whether the apartment was used for business purposes after 30 April 1991.”

Article 15, paragraph 1

“The occupancy right holder as defined in Article 14, paragraph 1 of this Law shall be entitled to file a claim for repossession of the apartment.”

Article 20

“The proceedings to return the apartment to the occupancy right holder shall be carried out in accordance with the provisions of the Law on General Administrative Proceedings, unless this Law provides otherwise.”

Article 23

“The party referred to in the decision under Articles 14 and 15, paragraph 1 of this Law may initiate at any time proceedings before the CRPC.

“In case that such proceedings have been initiated, all other proceedings carried out before the competent bodies, including the procedure to enforce the decision, shall be stayed pending the final decision of the CRPC but only in cases where the competent authority has rejected the request of the claimant on formal or material grounds, and where suspension is requested by the CRPC.

“A decision of the CRPC shall be final and binding.

“In the light of specifying the rights and obligations of the party referred to in paragraph 1 of this Article, the decision of the CRPC shall have the same legal force as the decision of any other responsible body issued in accordance with this Law.

“A decision of the CRPC shall be enforced by the competent body of the Republika Srpska.”

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

30. The Law on Implementation (Official Gazette of the Republika Srpska nos. 31/99, 2/00, 39/00, 65/01, 13/02 and 39/03) sets forth a regime for the enforcement of CRPC decisions.

31. The responsible body of the Ministry of Refugees and Displaced Persons in the municipality where the property is located shall enforce CRPC decisions relating to real property, or apartments with an occupancy right, upon the request for enforcement (Article 3, paragraph 2). The CRPC decisions shall be enforced if a request for enforcement has been filed with the competent body. In accordance with Article 4, paragraph 1 the following persons are entitled to file a request for enforcement of a CRPC decision relating to an apartment with an occupancy right: 1) the occupancy right holder referred to in the decision; or 2) the persons who, in accordance with the Law on Housing Relations, are considered to be members of the family household of the occupancy right holder. If a request for enforcement of the CRPC decision is submitted by a person not named in the preamble of the decision, the administrative body shall decide whether he or she can be considered as a member of the family household of the occupancy right holder identified in the decision (Article 4, paragraphs 2 and 3).

32. If the requestor for enforcement has submitted a claim for repossession to the competent administrative body in relation to the same property or apartment in accordance with the Law on Cessation of the Application of the Law on the Use of Abandoned Property and the requestor for enforcement subsequently submits a CRPC decision for enforcement, the competent administrative body shall join the proceedings for enforcement of both decisions and issue a conclusion authorizing enforcement in accordance with this Article (Article 7, paragraph 6).

E. The Law on Civil Proceedings

33. The Law on Civil Proceedings (Official Gazette of the Socialist Federal Republic of Yugoslavia nos. 4/77, 36/77, 36/80 and 69/82) was taken over as the law of the Republika Srpska and provided as follows:

Article 96

“If a party has not specified the powers of the authorized representative in the authorization, the authorized representative who is not a lawyer may on the basis of such authorization carry out all actions in the proceedings, but he needs explicit authorization to withdraw a lawsuit, to acknowledge or refute a claim, to settle, to refute or waive the right to a remedy, to transfer the legal authorization to another person, as well as to file an extraordinary legal remedy.”

Article 100

“If an authorized representative is given the power to carry out all actions in the proceedings and a party, i.e. his or her legal representative dies or loses full capacity to contract, or if an authorized representative is relieved of his or her duty, the authorized representative still has the power to take actions in the proceedings, but his or her successor, i.e., the new legal representative, may withdraw the authorization.

“In cases referred to in paragraph 1 of this Article, the powers which have to be explicitly specified in the authorization (Article 96) cease if the authorized representative is not a lawyer.”

34. The new Law on Civil Proceedings of the Republika Srpska (Official Gazette of the Republika Srpska nos. 58/03 and 85/03) entered into force on 1 August 2003, and contains the same provisions under Articles 307 and 311.

F. The Law on General Administrative Procedure

35. The Law on General Administrative Procedure (Official Gazette of the Socialist Federal Republic of Yugoslavia no. 47/86) as taken over by the Republika Srpska, provided as follows:

Article 61, paragraph 2

“Authorization shall not be canceled by death of the party, loss of his/her ability to take part in the proceedings, or by change of his/her legal representative; the party’s legal successor, or his/her new legal representative, may, however, revoke the previous authorization.”

Article 281, paragraph 1

“The administrative execution shall be terminated *ex officio* and all actions executed shall be quashed if it is determined that the obligation has been fulfilled, or the execution was not permitted at all, or it was enforced against the person who was not under any obligation, or if the person requesting enforcement gives up his or her claim, or if the enforcement title is annulled or revoked.”

36. The new Law on General Administrative Procedure of the Republika Srpska (Official Gazette of the Republika Srpska no. 13/02) entered into force on 26 March 2002, and contains the same provisions under Article 49, paragraph 2 and Article 265, paragraph 1.

G. The Law on Contractual Obligations

37. The Law on Contractual Obligations (Official Gazette of Socialist Federal Republic of Yugoslavia nos. 29/78, 39/85, 45/89 and 57/89) as taken over by the Republika Srpska (Official Gazette of the Republika Srpska nos. 17/93, 3/96 and 39/03) provides as follows:

Article 94, paragraph 3

“An authorization ceases with the cessation of the legal person, *i.e.*, with the death of the person who has given it, unless the initiated business transaction may not be terminated without damaging the legal successors, or if the authorization is still in force even in case of the death of its giver, either pursuant to his or her will or because of the nature of the business transaction.”

V. COMPLAINTS

38. The applicant alleges that her rights to her home and her property have been violated by the actions of the respondent Party's organs. The applicant requests the Commission to order the respondent Party to take all necessary steps to allow her the unhindered use of her apartment.

VI. SUBMISSIONS OF THE PARTIES

A. The respondent Party

1. As to the admissibility

39. With regard to the admissibility of the application, the respondent Party points out in its submission of 14 November 2001 that the applicant's complaint relates to a legal matter that was considered by another international institution for human rights established by Annex 7 of the General Framework Agreement. Therefore, the respondent argues that the conditions were met to declare the application inadmissible in accordance with Article VIII(2)(d) of the Agreement because of the final and binding nature of CRPC decisions.

2. As to the merits

40. With respect to the merits of the application, the respondent Party considers the application ill-founded. The respondent Party states that the applicant's complaint is, in its essence, directed against the 20 August 2001 procedural decision of the Ministry, which was issued in accordance with the 1 May 2001 CRPC decision. Therefore, the domestic organs acted in accordance with provisions of the Law on Implementation.

41. The respondent Party further alleges that the request for repossession of the apartment was not submitted to the Ministry or the CRPC by the competent person.

B. The applicant

42. In her written observations of 27 February 2002 the applicant disputes all statements of the respondent Party. The applicant enclosed the official record (*zapisnik*) made at the Ministry on 13 September 1999 (see paragraph 16 above) and alleges that on that occasion Mr. Turkanović requested information on whether a new request for repossession should be made on her behalf, and he was informed that it was not necessary because the right is transferred to heirs *ex lege*.

The applicant points out that, if she had been warned by the Ministry that the letter of authority was not valid any more, she would have had enough time to submit a new repossession request.

43. The applicant further submits that the Ministry has never responded to the repossession request submitted on 25 February 1999.

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. In accordance with Article VIII(2) of the Agreement, "the [Commission] shall decide which applications to accept ... In so doing, the [Commission] shall take into account the following criteria: ... (d) The [Commission] may reject or defer further consideration if the application concerns a matter currently pending before any other international human rights body responsible for the adjudication of applications or the decision of cases, or any other Commission established by the Annexes to the General Framework Agreement."

46. The respondent Party asserts that the application is inadmissible because the legal matter raised in the application was already adjudicated before the CRPC, and, therefore, inadmissible under Article VIII(2)(d) of the Agreement.

47. The Commission observes that the CRPC issued its final and binding decision rejecting the claim of the applicant's spouse for procedural reasons. The Commission notes that the CRPC did not dispute the fact that the applicant's spouse was the occupancy right holder over the apartment, and in fact originally issued a decision finding that H.A. was the occupancy right holder over the apartment on 1 April 1992. The Commission also notes that the interference complained of involves the Ministry's execution of the Law on Implementation, a law that forms an integral part of the Republika Srpska's legal system. In these circumstances, the Commission finds that the respondent Party's objection to the admissibility of the application under Article VIII(2)(d) of the Agreement is not well-founded. As the respondent Party has asserted no other grounds on which the application may be inadmissible, the Commission therefore finds the application admissible in its entirety.

B. Merits

48. Under Article XI of the Agreement, the Commission must next address the question of 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 recognized human rights and fundamental freedoms", including the rights and freedoms provided for in the Convention.

1. Article 8 of the Convention

49. The applicant complains that her right to home has been violated. Article 8 of the Convention provides, as far as relevant, the following:

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

50. The Commission notes as undisputed the fact that the applicant lived in the apartment from 1975 to 1994 together with her spouse, and that she was the co-occupancy right holder. It clearly follows that the apartment must be considered her “home” for the purpose of Article 8 of the Convention.

51. The Commission recalls that the Chamber already found that the threatened eviction of a person from his or her home constituted an “interference by a public authority” with the exercise of his or her right to respect for his or her home (*see, e.g.,* case no. CH/96/31, *Turčinović*, decision on admissibility and merits of 11 March 1998, paragraph 20, Decisions and Reports 1998). The 20 August 2001 procedural decision issued by the Ministry quashing the procedural decision permitting the enforcement of the CRPC decision, and the subsequent scheduled eviction for 15 October 2001, therefore, constitute an “interference by a public authority” with the exercise of the applicant’s right to respect for her home.

52. The Commission further 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 of the Convention. 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 threatened eviction “in accordance with the law”?

53. The Commission observes that the Chamber, in its case-law, considered that the 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, e.g.,* case no. CH/02/9130, *Samardžić*, decision on admissibility and merits of 6 January 2003, paragraph 46, Decisions January-June 2003).

54. The Commission notes that CRPC decisions are enforced in accordance with the Law on Implementation and the appropriate application of the Law on Administrative Proceedings. The CRPC first issued a decision finding H.A. to be the occupancy right holder as of 1 April 1992, and the applicant subsequently entered into possession of her pre-war apartment as a member of the family household of H.A. Upon a request for reconsideration of its decision, the CRPC annulled this decision, and declared H.A.’s request inadmissible because an unauthorised person allegedly submitted it. The Ministry then informed the applicant that she would be evicted, however, failing to take into consideration that it had already determined that the applicant was a family household member of H.A., and that the CRPC had earlier established that H.A. was the occupancy right holder on 1 April 1992. In these circumstances, the Commission finds that the scheduled eviction was not “in accordance with the law.” Nevertheless, the Commission will address the other aspects of the applicant’s claim in light of Article 8 of the Convention.

b. Does the interference pursue a legitimate aim and is it necessary in a democratic society?

55. The Commission recalls that the Chamber repeatedly emphasized in its case law that the right of displaced persons and refugees to repossess and return to their pre-war property was one of the central objectives of the Dayton Peace Agreement. The Chamber further concluded that the Law on Implementation was based on the recognition that the failure to return property to rightful owners or occupancy right holders represented a violation of the right to the peaceful enjoyment of one's possessions under Article 1 of Protocol No. 1 to the Convention. The Law on Implementation 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, e.g., case no. CH/02/9130, *Samardžić*, decision on admissibility and merits of 6 January 2003, paragraph 49, Decisions January-June 2003).

56. The Commission attaches great importance to the aims of Annex 7 to the General Framework Agreement, i.e. the return of displaced persons and refugees. The applicant has shown that while she was obliged to flee Banja Luka during the conflict, she has subsequently returned to her pre-war home. The Commission further notes that under the domestic property laws, the temporary user of the apartment does not have any lawful claim to the apartment. The Commission is also mindful of the burden on the applicant if evicted from her pre-war home, and her status as a Bosniak returnee to a Serb-majority municipality. Considering all of the above, the Commission concludes that even if the applicant's eviction could be regarded as pursuing the protection of the right and freedoms of others, that is to provide housing for the temporary occupant, in the context of the Dayton Peace Agreement, her eviction could not be considered "necessary in a democratic society" within the meaning of Article 8, paragraph 2 of the Convention.

c. Conclusion

57. For the above reasons, the Commission finds that proceedings to evict the applicant from her home were not justified, and that, therefore, the respondent Party has violated the applicant's rights as guaranteed under Article 8 of the Convention.

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

58. In light of its finding above of a violation of Article 8 of the Convention, relating to the applicant's threatened eviction, the Commission considers it unnecessary to examine the application in connection with Article 1 of Protocol No. 1 to the Convention.

VIII. REMEDIES

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

60. The Commission notes that it has found violation of the applicant's right to respect for her home as guaranteed by Article 8 of the Convention. The Commission finds it appropriate to order the respondent Party to take all necessary steps to ensure that the applicant is not evicted from the apartment in question. The Commission also finds it appropriate to order the respondent Party to take all necessary steps through its domestic organs to recognize and give effect to the applicant's

occupancy right over the apartment no later than one month from the date of receipt of the present decision.

IX. CONCLUSION

61. For the above reasons, the Commission decides,

1. unanimously, to declare the application admissible in its entirety;
2. unanimously, that the right of the applicant to the peaceful enjoyment of her home within the meaning of Article 8 of the European Convention on Human Rights, has been violated, the Republika Srpska thereby being in breach of Article I of the Human Rights Agreement;
3. unanimously, that it is not necessary to examine the application in connection with Article 1 of Protocol No. 1 to the European Convention on Human Rights;
4. unanimously, to order the Republika Srpska to ensure that the applicant is not evicted from the apartment at Majke Knežopoljke Street no. 3 in Banja Luka ; and to take all necessary steps to recognise and give effect to the applicant's occupancy right over the apartment, no later than one month from the date of receipt of the present decision; and,
5. unanimously, to order the Republika Srpska to submit to the Commission, or its legal successor, a report on the steps taken by it to comply with these orders three months from the date of receipt of the present decision.

(signed)
J. David YEAGER
Registrar of the Commission

(signed)
Jakob MÖLLER
President of the Commission