



DECISION ON ADMISSIBILITY AND MERITS
(delivered on 9 March 2001)

Case no. CH/00/3708

Zorica LAZAREVIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 6 March 2001 with the following members present:

Mr. Giovanni GRASSO, President
Mr. Viktor MASENKO-MAVI, Vice-President
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Manfred NOWAK
Mr. Vitomir POPOVIĆ
Mr. Mato TADIĆ

Mr. Peter KEMPEES, Registrar
Ms. Olga KAPIĆ, Deputy Registrar

Having considered the aforementioned application introduced pursuant to Article VIII(1) of the Human Rights Agreement ("the Agreement") set out in Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina;

Adopts the following decision pursuant to Articles VIII(2) and XI of the Agreement and Rules 52, 57 and 58 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The applicant is a citizen of Bosnia and Herzegovina of Serb descent. She is the pre-war occupancy right holder of an apartment in Novo Sarajevo. The applicant left her apartment in 1992 due to the war hostilities. The case concerns her attempts to regain possession of her apartment. The applicant has lodged applications to the Commission for Real Property Claims of Displaced Persons and Refugees (CRPC), which has issued decisions recognising the applicant's occupancy right. However, this decision has not been executed. The facts of the case are set out in Section III below.
2. The case raises issues under Articles 8, 13 and 14 of the European Convention on Human Rights and under Article 1 of Protocol No. 1 to the Convention.

II. PROCEEDINGS BEFORE THE CHAMBER

3. The applications were introduced on 28 March 2000 and registered on the same day.
4. On 6 April 2000 the Chamber decided to transmit the applications to the respondent Party for observations on the admissibility and merits thereof. The Chamber received the respondent Party's observations on 13 June 2000.
5. The applicant's further observations, including claims for compensation, were received on 5 July 2000 and transmitted to the respondent Party. The respondent Party's further observations on the compensation were received on 15 August 2000.
6. On 10 January 2001 and 9 February 2001 the Chamber considered the admissibility and merits of the application. On 6 March the Chamber adopted the present decision.

III. FACTS

7. The applicant is the pre-war occupancy right holder over an apartment located at Ulica Zmaja od Bosne 28/7 in Novo Sarajevo. She lived in the apartment until 1992 when she left the apartment due to the war hostilities.
8. On 13 May 1998 Ms. M.L., a member of the applicant's household, filed a claim for repossession of the apartment to the Administration for Housing Affairs of the Canton Sarajevo (the competent municipal organ).
9. On a date which has not been made known to the Chamber the applicant requested the CRPC to issue a decision recognising her occupancy right. On 17 December 1998 the CRPC issued a decision (Decision No. 301-3268-1/1) recognising the applicant's occupancy right.
10. On 20 May 1999 the applicant filed a request for the execution of the CRPC decision to the competent municipal organ. She has not received any response.
11. On 29 September 1999 the competent municipal organ issued a decision granting Ms. M.L.'s request for repossession of 13 May 1998 and ordered the current occupant to vacate the apartment within 90 days.
12. On 4 April 2000 the Ministry of Housing Affairs of the Canton Sarajevo annulled the decision of 29 September 1999 because it was of the opinion that it was not clear that Ms. M.L. was a member of the applicant's household. The matter was referred back to the competent municipal organ for re-examination. On 12 May 2000 Ms. M.L. appealed to the Cantonal Court in Sarajevo but she has not received any answer.

IV. RELEVANT LEGAL PROVISIONS

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

13. The General Framework Agreement for Peace in Bosnia and Herzegovina (the “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 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 Commission for Real Property Claims of Displaced Persons and Refugees (CRPC), was established.

14. 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.

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

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

16. The Law on Implementation of the Decisions of the Commission for Real Property Claims of Displaced Persons and Refugees (Official Gazette of the Federation of Bosnia and Herzegovina 43/99 – hereinafter “the Law on Implementation”) regulates the enforcement of decisions of the CRPC.

17. The administrative body responsible for property-related legal affairs in the municipality where the property is located shall enforce decisions of the CRPC relating to real property owned by citizens (Article 3 paragraph 2). Decisions of the CRPC relating to an apartment for which there is an occupancy right shall be enforced by the administrative body for housing affairs in the municipality where the apartment is located (Article 3 paragraph 3). The CRPC decisions shall be enforced if a request for the enforcement has been filed to the relevant organ. The following persons are entitled to file such a request: The right holder specified in the CRPC decision and his/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).

18. 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 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).

19. 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 the 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.

20. According to Article 7 paragraph 5 the time limit for vacating the house or apartment shall be the minimum time limit applicable under the Law on the Cessation of the Application of the Law on Abandoned Apartments (Official Gazette of the Federation of Bosnia and Herzegovina nos. 11/98, 38/98, 12/99, 18/99, 27/99 and 43/99) or the Law on the Cessation of the Application of the Law on Temporary Abandoned Real Property Owned by Citizens (Official Gazette of the Federation of Bosnia and Herzegovina 11/98, 29/98, 27/99 and 43/99)

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

3. The Law on Administrative Proceedings

22. Under Article 275 of the Law on Administrative Proceedings (Official Gazette of the Federation of Bosnia and Herzegovina no 2/98) the competent administrative organ has to issue a decision 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 (appeal against "silence of the administration").

4. The Law on Administrative Disputes

23. Article 1 of the Law on Administrative Disputes (Official Gazette of the Federation of Bosnia and Herzegovina no 2/98) provides that the courts shall decide in administrative disputes on the lawfulness of second instance administrative acts concerning rights and obligations of citizens and legal persons.

24. 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

25. The applicant claims that her rights as guaranteed by Articles 13 and 14 of the European Convention and Article 1 of Protocol No. 1 to the European Convention have been violated. The case also raises issues under Article 8 of the European Convention.

VI. SUBMISSIONS OF THE PARTIES

A. The respondent Party

26. The Federation objects, in their observations received on 13 June 2000, to the admissibility on the applications on the ground that the domestic remedies provided by the Law on Administrative Proceedings and by the Law on Administrative Disputes have not been exhausted.

27. As to the merits of the complaint relating to the applicant's property rights as protected by Article 1 of Protocol No. 1 to the Convention, the respondent Party is of the opinion that there has

been no violation because it has shown that, in the frame of the valid regulations which are being applied in such proceedings, it fully respects the applicant's right to repossess her apartment. Further, the respondent Party states that it cannot be burdened with the fact that the applicant has not exhausted domestic remedies in order to return the apartment in her possession. The respondent Party further states that there has been no violation of Articles 13 and 14 in the applicant's case.

B. The applicant

28. The applicant maintains her complaints and claim that the remedies available to her are ineffective.

VII. OPINION OF THE CHAMBER

A. Admissibility

29. Before considering the merits of this case the Chamber must decide whether to accept it, taking into account the admissibility criteria set out in Article VIII(2) of the Agreement.

30. According to Article II(2)(a) of the Agreement the Chamber has competence to consider, not only alleged violations, but also apparent violations of human rights. It follows that the Chamber is not exclusively limited to the consideration of the specific Articles the applicant claims to have been violated. The Chamber is free to examine the case under any Article it considers relevant.

31. The Chamber decided to consider this case under Article 8 of the European Convention, although the case was not transmitted to the respondent Party under this Article, as the facts on which the respondent Party was requested to make observations raised *prima facie* issues under this Article.

32. 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 delivered on 3 December 1997, paragraphs 19-21, with further references, Decisions on Admissibility and Merits 1996-1997) 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.

33. In the present case the Federation objects to the admissibility of the applications on the ground that the domestic remedies provided by the Law on Administrative Proceedings and by the Law on Administrative Disputes have not been exhausted. Whilst these laws afford remedies which might qualify as effective ones within the meaning of Article VIII(2)(a) of the Agreement in so far as the applicant is seeking to return to her apartment and faced with the authorities' inaction, the Chamber must ascertain whether, in the case now before it, these remedies can also be considered effective in practice.

34. The Chamber notes that the applicant filed a request to the CRPC with a view to being reinstated into her apartment. The CRPC issued a decision confirming her occupancy right from which it follows that she is entitled to seek the removal of the temporary occupant from the apartment. However, this decision has not been enforced despite the applicant's enforcement request to the competent administrative organ, which have been pending for over 21 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.

35. The Chamber notes that it is still open to the applicant to make further attempts to have her CRPC decision enforced. However, the applicant has already made attempts to remedy her situation and they have been unsuccessful. Use of the remedies provided by the Law on Administrative Proceedings and by the Law on Administrative Disputes, even if successful, would also not remedy the applicant's complaint in so far as it relate to the failure of the authorities to enforce the CRPC decisions within the time-limit prescribed by law. 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, will treat the decisions of the courts with any greater respect.

36. 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

37. Regarding the applicant's claim under Article 14 the Chamber notes that the applicant has not submitted any evidence to support her allegations that she has been discriminated against. The Chamber is therefore of the opinion that this part of the application is unsubstantiated and manifestly ill-founded.

38. The Chamber further finds that no other ground for declaring the case inadmissible has been established. Accordingly, the case is to be declared admissible in respect of Articles 8 and 13 of the European Convention and Article 1 of Protocol No. 1 to the European Convention and inadmissible as manifestly ill-founded in respect of the applicant's claim under Article 14.

B. Merits

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

1. Article 1 of Protocol No. 1

40. The applicant complains that her right to peaceful enjoyment of her possessions has been violated as a result of her inability to regain possession of her apartment. Article 1 of Protocol No. 1 reads as follows:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

41. It is the Federation's assertion that there has been no violation of Article 1 of Protocol No. 1 because it has shown that, in the frame of the valid regulations which are being applied in such proceedings, it fully respects the applicant's right to repossess her apartment. Further, the respondent Party states that it cannot be burdened with the fact that the applicant has not exhausted domestic remedies in order to regain possession of the apartment.

42. The Chamber notes that the applicant is the holder of the occupancy right over the apartment in question. The Chamber has previously held as follows (case no. CH/96/28, *M.J.*, decision on admissibility and merits delivered on 3 December 1997, paragraph 32, Decisions on Admissibility and Merits 1996-1997):

"...[A]n occupancy right is a valuable asset giving the holder the right, subject to the conditions prescribed by law, to occupy the property in question indefinitely. ... In the Chamber's opinion it is an asset which constitutes a "possession" within the meaning of Article 1 [of Protocol No. 1]..."

43. Accordingly, the Chamber considers that the applicant's rights in respect of the apartment constitute "possessions" for the purposes of Article 1 of Protocol No. 1 to the Convention.

44. The Chamber considers that the failure of the authorities of the Federation to allow the applicant to regain possession of the apartment constitutes an "interference" with her right to peaceful enjoyment of that possession. This interference is ongoing as the applicant still does not enjoy possession of the apartment.

45. The Chamber 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.

46. 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 of the date of a request for such enforcement. Accordingly, 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 peaceful enjoyment of her possessions as guaranteed by Article 1 of Protocol No. 1.

47. As the interference with the applicant's right to peaceful enjoyment of her possessions is not subject to conditions provided by law, it is not necessary for the Chamber to examine whether it was in the public interest.

48. In conclusion, there has been a violation of the right of the applicant's right to peaceful enjoyment of her possessions as guaranteed by Article 1 of Protocol No. 1 to the Convention.

2. Article 8 of the Convention

49. Article 8 of the Convention reads, as far as relevant, 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 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 Chamber notes that the applicant has lived in the apartment and used it as her home until such times as she was forced to leave. The Chamber has previously held that links that persons in similar situations as the applicant in the present case retained to their dwellings were sufficient for them to be considered to be their "homes" within the meaning of Article 8 of the Convention (see case no. CH/97/58, *Onić*, Decision on admissibility and merits delivered on 12 February, paragraph 48, Decisions January-July 1999; and case no. CH/97/46, *Kevešević*, decision on the merits delivered on 10 September 1998, paragraphs 39-42, Decisions and Reports 1998).

51. It is therefore clear that the applicant's apartment is to be considered as her home for the purposes of Article 8 of the Convention.

52. The Chamber notes that it is correct that legislation is in force in the Federation that in theory enables persons to repossess their apartments. However, both the Chamber and the European Court of Human Rights have held that, although the object of Article 8 is essentially that of protecting the individual against arbitrary interference by the authorities, it may also give rise to positive obligations (see e.g. Case No. 96/17, *Blentić*, decisions on admissibility and merits delivered on 22 July 1998, paragraph 27, Decisions and Reports 1998, *Marckx v. Belgium*, 1979 Series A No. 31 para 31; *Airey v. Ireland*, 1979 Series A No. 32, para 32; *Velosa Barreto v. Portugal*, 1995 Series A No. 334, para 23). Therefore the Chamber considers that the Federation not only has to pass legislation but that the legislation also has to be implemented. Otherwise the legislation is not effective.

53. In the present case the Chamber recalls that the CRPC has issued a decision confirming the applicant's right to repossess her apartment. The applicant has been unable to regain possession of her apartment due to the failure of the authorities of the Federation to deal effectively, in accordance with Federation Law, with her request for the enforcement of the CRPC decision. It follows that the result of the inaction of the Federation is that the applicant cannot return to her home and that there is an ongoing interference with the applicant's right to respect for her home.

54. The Chamber must therefore examine whether this interference is in accordance with paragraph 2 of Article 8 of the Convention.

55. As the Chamber noted, in the context of its examination of the case under Article 1 of Protocol No. 1 to 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 of the date of the request for such enforcement. The applicant has still not received a decision on her request to have the CRPC decision enforced, despite the time-limit for this having expired over 20 months ago. Accordingly, the failure of the competent administrative organ to decide upon the applicant's request is not "in accordance with the law".

56. As the interference with the applicant's right to respect for her 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".

57. In conclusion, there has been a violation of the right of the applicant to respect for her home as guaranteed by Article 8 of the Convention.

3. Articles 13 of the Convention

58. Article 13 of the Convention provides as follows:

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

59. The applicant alleges violations of her rights as guaranteed by this provision. The respondent Party states that there has been no violation of this Article in the applicant's case.

60. The Chamber, having regard to other violations of the applicant's rights it has found, does not consider it necessary to examine the case under this provision.

VIII. REMEDIES

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

62. The applicant requested the Chamber that she be enabled to regain possession of her apartment. In addition, the applicant requested compensation in the amount of 5000 Convertible Marks (Konvertibilnih Maraka, "KM") for mental suffering she claims to have suffered. The applicant also claimed compensation in the amount of KM 400 per month for the rent she has been forced to pay for her accommodation pending her return to her apartment. Further, the applicant claimed compensation for destruction and deprivation of her movable property in the apartment in the amount of KM 92.950.

63. The respondent Party, in its observations, argued that the claims for compensation were unsubstantiated and in any case excessive.

64. The Chamber considers it appropriate to order the respondent Party to take all necessary steps to enforce the CRPC decisions and to enable her to regain possession of her apartment without any further delay and at the latest within one month from the date on which the present decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure.

65. 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 she has suffered as a result of her inability to regain possession of her apartment, especially in view of the fact that she has taken all necessary steps to have the CRPC decision enforced.

66. Accordingly the Chamber will order the respondent Party to pay to the applicant the sum of KM 2000 in recognition of her suffering as a result of her inability to regain possession of her apartment.

67. 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), the Chamber considers it appropriate to order the respondent Party to compensate the applicant for the loss of use of the apartment and any extra costs for each month she has been forced to live in alternative accommodation. The Chamber considers it appropriate that this sum should be KM 200 per month and payable from the date the time-limit for the competent municipal organ to issue a conclusion on the permission of enforcement of the CRPC decision expired, i.e. from 20 June 1999 (30 days after the applicant lodged her request) up to and including March 2001, amounting to a total of KM 4400. This sum should continue to be paid at the same rate until the end of the month in which the applicant regains possession of her apartment.

68. With regard to the applicant's claim for compensation for destruction and deprivation of her movable property in the apartment the Chamber notes that it has previously held that where it has not been shown that the alleged loss of or damage to property was directly caused by the respondent Party or any person acting on its behalf, the respondent Party cannot be held responsible (see, e.g., case no. CH/97/42, *Eraković*, decision on admissibility and merits delivered on 15 January 1999, paragraph 65, Decisions January-July 1999). In the present case no such responsibility can be established. This claim must therefore be rejected.

69. In its decision on the claim for compensation in the *Damjanović* case (CH/96/30, delivered on 16 March 1998, Decisions and Reports 1998), the Chamber ordered the payment of simple interest at an annual rate of 4% on compensation for damage paid after the expiry of the time-limit set for that purpose. The award compensation for damage was expressed in German currency and 4% was the legal rate of default interest in Germany at that time. The Chamber considers that it should now award such interest at an annual rate of 10%, which more closely reflects economic reality in Bosnia and Herzegovina. Interest at that rate should be paid as of the date of expiry of the one month period set in paragraph 64 for the implementation of the present decision, and on each sum awarded in paragraphs 66 and 67 or any unpaid portion thereof until the date of settlement in full.

IX. CONCLUSION

70. For the above reasons, the Chamber decides,

1. unanimously, to declare the application admissible insofar as it relates to Article 13 of the European Convention and Article 1 of Protocol No. 1 to the European Convention ;
2. by 6 votes to 1, to declare the application admissible insofar as it relates to Article 8 of the European Convention;
3. unanimously, to declare the application inadmissible as manifestly ill-founded insofar as it relates to Article 14 of the European Convention;
4. unanimously, that the non-enforcement of the decisions of the CRPC constitutes a violation of the right of the applicant to peaceful enjoyment of her possessions within the meaning of Article 1 of Protocol No. 1 to the Convention, the Federation thereby being in breach of Article 1 of the Agreement;
5. by 6 votes to 1, that the non-enforcement of the decisions of the CRPC constitutes a violation of the right of the applicant to respect for her home within the meaning of Article 8 of the Convention, the Federation thereby being in breach of Article 1 of the Agreement;

6. unanimously, that it is not necessary to rule on the complaints under Article 13 of the Convention;
7. unanimously / by .. votes to .. , to order the Federation to take all necessary steps to enforce the CRPC decision and to enable the applicant to regain possession of her apartment without any further delay, and at the latest one month after the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure;
8. unanimously, to order the Federation to pay to the applicant, no later than one month after the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure, the sum of KM 2000 in respect of non-pecuniary damage;
9. unanimously, to order the Federation to pay to the applicant, no later than one month after the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure, the sum of KM 4400 as compensation for the loss of use of the apartment and for any extra costs during the time the applicant has been forced to live in alternative accommodation;
10. unanimously, to order the Federation to pay to the applicant KM 200 for each further month that she continues to be forced to live in alternative accommodation as from 1 April 2001 until the end of the month in which she is reinstated, each of these monthly payments to be made within 30 days from the end of the month to which they relate;
11. unanimously, to order the Federation to pay simple interest at the rate of 10 (ten) per cent per annum over the above sums or any unpaid portion thereof from the date of expiry of the above one-month periods until the date of settlement in full;
12. unanimously, to dismiss the remainder of the applicant's claims for remedies; and
13. unanimously, to order the Federation to report to it one month after the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure, on the steps taken by it to comply with the above orders.

(signed)
Peter KEMPEES
Registrar of the Chamber

(signed)
Giovanni GRASSO
President of the Second Panel

Annex Dissenting opinion of Mr. Viktor Masenko-Mavi

ANNEX

According to Rule 61 of the Chamber's Rules of Procedure, this Annex contains the dissenting opinion of Mr. Viktor Masenko-Mavi.

DISSENTING OPINION OF MR. VIKTOR MASENKO-MAVI

The Chamber has for the first time decided to find a violation of an Article of the European Convention on Human Rights (Article 8) under which the case was not transmitted to the respondent Party. And this is not merely an oversight, but a deliberate decision of the majority (see, in particular, paragraph 30 of the decision).

The majority argues that it was not necessary to draw the respondent Party's attention specifically to the issue of Article 8, because the facts on which the respondent Party was requested to make observations raised *prima facie* issues under this Article.

I have two problems with this argument. Firstly, if it had been so clear from the very beginning that the case also raised issues under Article 8, then why were these not pointed out to the respondent Party when the case was transmitted to it on 6 April 2000? Secondly, consideration of a particular set of facts under two different Articles of the Convention inevitably entails two different lines of legal reasoning. Given the opportunity, the respondent Party would have submitted its legal reasoning in respect of the issues under Article 8 also.

I am of the opinion that the argument of the majority clearly disregards the adversarial principle which lies at the very heart of the Chamber's proceedings. In adversarial proceedings the parties should have the opportunity to defend themselves, to put forward their own legal arguments. In the present case the Federation of Bosnia and Herzegovina had no such opportunity, because it was given no indication that the case would be considered also under Article 8.

It is my opinion that the Chamber is bound by principles of fairness and should not set itself up as a body endowed with unlimited freedom to judge without taking into account all possible legal defences of a party to proceedings before it. If one follows the view taken by the majority in the present case, one may wonder why cases should be transmitted to a respondent Party at all, if the Chamber considers itself competent to establish a violation without first obtaining the views of a respondent Party on all the issues to be decided.

(signed)
Viktor Masenko-Mavi