



DECISION ON ADMISSIBILITY AND MERITS

Case no. CH/00/6101

Nurija MAGLAJAC

against

THE REPUBLIKA SRPSKA

The Human Rights Commission within the Constitutional Court of Bosnia and Herzegovina, sitting in plenary session on 5 November 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 case concerns the attempts of the applicant, an eighty-one year old citizen of Bosnia and Herzegovina of Bosniak descent, to regain possession of pre-war apartment in Gavrila Principa 1 in Modriča, Republika Srpska. In the event that this is not possible, the applicant seeks to be allocated another similar apartment. The residential building, in which the applicant's pre-war apartment was located, was significantly damaged due to the war and the remaining ruins were entirely removed. On the same foundation, in 1997 the company "Radnik-Gradnja" constructed an entirely new, larger building. In 2000 the relevant authorities confirmed the applicant's occupancy right and right to repossess his apartment if the building were restored, without limitation and restriction. However, the applicant has not succeeded in gaining possession of an apartment in the reconstructed building. Meanwhile, all of the apartments in the new building have been sold. According to the relevant legislation, the applicant filed a request to purchase another adequate apartment, however, he has received no response.

2. The case raises issues under Articles 6 and 8 of the European Convention on Human Rights ("the Convention") and under Article 1 of Protocol No. 1 to the Convention separately and in connection with discrimination in the enjoyment of these rights.

II. PROCEEDINGS BEFORE THE CHAMBER AND THE COMMISSION

3. The application was introduced to the Chamber on 14 August 2000.

4. On 16 May 2004 the Commission transmitted the application to the respondent Party the Republika Srpska for its observations on the admissibility and merits in connection with Articles 6 and 8 of the Convention, Article 1 of Protocol No. 1 to the Convention, all separately and with regard to discrimination in the enjoyment of these rights in connection with Article II(2)(b) of the Agreement.

5. On 2 June 2004 the respondent Party submitted its written observations on the admissibility and merits of the application and on 13 September 2004 the respondent Party submitted its additional observations.

6. On 23 June 2004 the applicant submitted his written observations in reply and on 5 July 2004 he submitted additional observations. The applicant submitted additional information and documents on 11 October 2004.

7. In response to a request from the Commission, the respondent Party submitted additional factual information with relevant documentation on 27 October 2004.

8. The Commission deliberated on the application on 5 May 2004 and 5 November 2004 and adopted the present decision on the latter date.

III. ESTABLISHMENT OF THE FACTS

9. The applicant was the occupancy right holder over an apartment located in a building at Gavrila Principa no. 1/I in Modriča, now a part of the Republika Srpska. The owner of the apartment concerned was the Municipality Modriča. The applicant lived in the apartment with his wife. Due to the armed conflict, the applicant and his wife left Modriča. The applicant and his wife presently live in Belgrade, Serbia and Montenegro.

10. During the war the residential building in Gavrila Principa no. 1 was badly damaged, and the remaining ruins removed completely.

11. In 1997 the state-owned construction company “Radnik–Gradnja” (“the Company”, *Osnovna državna građevinski proizvođač “Radnik-Gradnja”*) obtained the right of construction on the city construction land in Gavrića Principa no. 1. The Company constructed an entirely new and larger residential building on the same foundation where the pre-war building used to be. The respondent Party states that all the apartments in the reconstructed building have already been sold.

12. On 14 October 1999 the applicant submitted a request to the Republika Srpska Ministry for Refugees and Displaced Persons, the Department in Modriča (“the Department”) to repossess his pre-war apartment.

13. On 22 January 2000 the Department issued a procedural decision establishing that the applicant was the pre-war occupancy right holder over the apartment in Gavrića Principa no. 1/I in Modriča. It is stated that the owner of the apartment was the Municipality Modriča. Also, in the operative section of the decision it is stated that the building located in Gavrića Principa no. 1 was pulled down, and that the applicant may return to the apartment upon the building being reconstructed, without limitation or restriction.

14. The applicant filed an appeal against the procedural decision of 22 January 2000. He complains that the operative section of the contested procedural decision is contradictory and that it did not set the time limit within which he would be reinstated.

15. On 21 March 2000 the Commission for Real Property Claims of Displaced Persons and Refugees (“CRPC”) issued a decision confirming that the applicant was the occupancy right holder of the apartment on 1 April 1992 and that he has the right to repossess it.

16. On 11 April 2000 the applicant submitted a request to the Department for the enforcement of the CRPC decision. On 17 July 2000 he addressed the CRPC complaining of the non-enforcement of its decision by the competent authorities.

17. Deciding upon the applicant’s appeal against the 22 January 2000 procedural decision, the second instance organ, the Republika Srpska Ministry for Refugees and Displaced Persons (“the Ministry”) on 19 April 2001 issued a procedural decision rejecting the applicant’s appeal as ill-founded. The Ministry established that the first instance body properly determined the facts and correctly applied the substantive law.

18. On 11 May 2001 the applicant submitted a request for the enforcement of the 22 January 2000 procedural decision to the Department.

19. On 12 June 2000 the applicant addressed the Republika Srpska Administrative Inspection (*Upravna inspekcija*) to seek enforcement of the CRPC decision. The Republic Administrative Inspector M.V. carried out an inspection and ordered the Department to issue a conclusion on enforcement of the 22 January 2000 procedural decision, and on 30 May 2002 informed the applicant in writing of this.

20. Because the inspector’s order was not enforced, the applicant addressed the Administrative Inspection again. On 8 October 2002 M.V. carried out an inspection. On 10 October 2002 the inspector M.V. informed the applicant in writing that all the apartments in the rebuilt, larger residential building had been allocated and that the Department was not in the position to enforce its procedural decision. The applicant was instructed to obtain his rights through the court.

21. On 18 October 2002 the applicant submitted a request to the Modriča Municipality for the purchase of another apartment, based on Article 54 of the Law on Privatisation of State-Owned Apartments (see paragraph 45 below). The applicant never obtained any response.

22. On 14 May 2004 the Head of the Department (*šef Odsjek*) addressed the Agent of the respondent Party with regard to the present case. He stated that in accordance with the Law on Privatization of State-Owned Apartments, the Municipality is obliged to provide an adequate apartment to the pre-war occupancy right holder whose apartment was destroyed due to the war, within five years from the date when the Law entered into force (which was on 28 July 2001, see paragraph 48 below).

23. On 10 September 2004 the Deputy Head of the Municipality of Modriča (*zamjenik načelnik Opštine Modriča*) informed the Agent of the respondent Party that the Municipality did not decide on the requests of the pre-war occupancy right holders, whose apartments were destroyed, and that the funds for solution of such cases would be foreseen in the Municipality's budget for 2005. Also, the Deputy Head of the Municipality states that it appears that the applicant's complaints relating to alleged discrimination are ill-founded as there are approximately ten similar cases before the Municipality and none have been resolved yet.

IV. RELEVANT LEGISLATION

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

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

25. Article I considers rights of refugees and displaced persons:

1. 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.

2. The parties shall ensure that refugees and displaced persons are permitted to return in safety, without risk of harassment, intimidation, persecution, or discrimination, particularly on account of their ethnic origin, religious belief, or political opinion.

26. 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 ("CRPC"), was established.

27. 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). In accordance with Article I(1) the claimant may seek return of the property or just compensation in lieu of return. 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 the 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.

28. The Parties to Annex 7 to the General Framework Agreement shall co-operate with the work of the CRPC, and shall 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

29. The Law on Implementation of the Decisions of the Commission for Real Property Claims of Displaced Persons and Refugees ("Law on Implementation", Official Gazette of the Republika Srpska ("OG RS") nos. 31/99, 2/00, 39/00, 65/01, 13/02 and 39/03) was imposed as a law of the Republika Srpska by a decision of the High Representative in Bosnia and Herzegovina on 27 October 1999. It sets out a regime for the enforcement of CRPC decisions.

30. 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 owned by citizens, or relating to apartments for which there is an occupancy right, upon a request for enforcement (Article 3, paragraph 2). The CRPC decision shall be enforced if a request for the enforcement has been filed to the relevant organ.

31. The administrative organ responsible for the enforcement of a CRPC decision is obliged to issue a conclusion on the permission of enforcement within 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).

32. Article 9, paragraph 3 states that a decision of the CRPC is enforceable regardless of whether the apartment was declared abandoned and irrespective of any other decision or provision relating to its legal status.

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

33. The Law on Cessation of Application of the Law on Use of Abandoned Property of 11 December 1998 ("the Law on Cessation", OG RS nos. 38/98, 41/98, 12/99, 31/99, 38/99, 65/01, 13/02, 64/02, 39/03 and 96/03) establishes a detailed framework for persons to regain possession of property regardless of whether the property has been declared abandoned or not.

34. Article 3 gives the owner, possessor or user of real property who abandoned such property the right to repossess it and enjoy it on the same terms as he or she did before 30 April 1991, or the date when he or she left the property. Article 4 states that the terms "owner", "possessor" or "user" shall mean the persons who had such status under the applicable legislation at the time the property concerned became abandoned or when such persons first lost possession of the property, in the event that the property was not declared abandoned.

35. Article 10 sets out that the procedure for lodging of claims is carried out in accordance with the Law on General Administrative Proceedings (Official Gazette of the Socialist Federal Republic of Yugoslavia no. 47/86) and treated as an expedited procedure.

36. Article 14 provides that the occupancy right holder of an abandoned apartment or a member of his or her family household have the right to repossess the apartment in accordance Annex 7. It is stated that the provisions of the Law shall be applied to all apartments vacated between 30 April 1991 and 19 December 1998 by the occupancy right holders, regardless of whether the apartment was declared abandoned or not. Also, it is provided that a person who left his or her apartment between 30 April 1991 to 19 December 1998 is to be considered a refugees or a displaced person in accordance with Annex 7 and has right to return into possession of the apartment.

37. Article 32 provides that a repossession request has to be submitted also for damaged and destroyed apartments on the condition that the occupancy right holder lost possession of the apartment before 19 December 1998. If a claimed apartment is reconstructed, the occupancy right holder may repossess the apartment without limitation and restriction.

38. Article 29 requires the Minister for Refugees and Displaced Persons to pass an instruction on the application of, *inter alia*, Articles 8 to 11 inclusive of the law. This instruction was published in OG RS no. 1/99 and entered into force on 21 January 1999. An amended instruction was contained in a decision of the High Representative dated 27 October 1999 and entered into force on 28 October 1999.

D. The Law on Administrative Disputes

39. Article 1 of the Law on Administrative Disputes (OG RS no. 12/94) provides that the courts shall decide in administrative disputes on the lawfulness of the administrative acts concerning rights and obligations of citizens and legal persons.

E. Decisions of the High Representative on State-Owned Real Property

40. On 26 May 1999 the High Representative issued a Decision suspending the power of local authorities in the Federation and the Republika Srpska to dispose of socially-owned land in cases where the land was used on 6 April 1992 for residential, religious, cultural, private agricultural or private business activities.

41. The Decision of 26 May 1999 states, in pertinent part, as follows:

“Notwithstanding the provision of any other law, state property (including former socially-owned property, but excluding socially-owned apartments) may not be disposed of (including allotment, transfer, sale, giving for use or rent) by the authorities of the Entities or Bosnia and Herzegovina if it was used on April 6, 1992 for cultural or religious services, or if it was used by natural persons for residential purposes, business activities, or agriculture.

“Any decision referred to in the previous paragraph made by the authorities of the Entities after April 6, 1992 which affects the rights of refugees and displaced persons shall be null and void, unless a third party has undertaken lawful construction work.”

42. The Decision of 26 May 1999 entered into force immediately and remained in force until 31 December 1999. On 31 December 1999 the High Representative extended the validity of the Decision of 26 May 1999 until 30 June 2000.

F. The Law on Privatization of State-Owned Apartments

43. The National Assembly of the Republika Srpska enacted the Law on Privatization of State-Owned Apartments (OG RS nos. 11/00, 18/01, 47/02 and 65/03) on 25 April 2000 (“The Law on Privatization”). It sets out a regime for the privatization of state-owned apartments. Article 54 provides:

“The city or the municipality is obliged to provide the occupancy right holder whose apartment is a compositional part of a building destroyed by war activities with the possibility to purchase another appropriate apartment, but not one of a larger surface than the one previously used, within five years from the date the present Law came into force, and under the same conditions he or she had as the occupancy right holder.”

44. Article 73 provided that the Law on Privatization came into force on the 8th day from the date it was published in the Official Gazette of the Republika Srpska.

45. On 17 July 2000 the High Representative issued a Decision (OG RS no. 20/00) abolishing Article 73 of the Law on Privatization and putting the Law out of force. It was provided that the Law on Privatization shall be applied only following a decision of the High Representative.

46. On 17 July 2001 the High Representative enacted a Decision (OG RS no. 35/01) allowing the Law on Privatization to come into force the day of publication of the Decision in the Official Gazette of the Republika Srpska, which was on 28 July 2001.

V. COMPLAINTS

47. The applicant complains that his right to home guaranteed by Article 8 of the Convention has been violated as well as the right to fair hearing under Article 6 of the Convention and the right to peaceful enjoyment of his property under Article 1 of Protocol No. 1 to the Convention. Also, the applicant complains that the respondent Party, by its acts, has discriminated against him on the basis of his national origin.

48. The applicant requests the Commission to order the respondent Party to enforce the 21 March 2000 CRPC decision. The applicant requests compensation for expenses related to his monthly rent, which he has been paying in Belgrade in the amount of 200 KM monthly from April 2000 until August 2000, and in the amount of 500 KM monthly from August 2000 until his reinstatement into the possession of the apartment in question.

49. The applicant also requests compensation for movable property that was in the apartment when the building was pulled down. He encloses a detailed inventory list of the destroyed movable property.

VI. SUBMISSIONS OF THE PARTIES

A. The Republika Srpska

50. In its written observations of 2 June 2004, the respondent Party objects to the admissibility of the application on the grounds of non-exhaustion of domestic remedies, as the applicant has not initiated an administrative dispute against the 19 April 2001 procedural decision of the Ministry. The respondent Party also states that the applicant could have submitted a request for purchase of another adequate apartment, in accordance with Article 54 of the Law on Privatisation, and he did not do so. It is stated that the time limit for such request is five years and that the applicant still may submit the request. Considering the aforementioned, the respondent Party requests the Commission to declare the application inadmissible for non-exhaustion of legal remedies.

51. As to the merits, the respondent Party states that the applicant's occupancy right is confirmed by the 22 January 2000 procedural decision of the Department, thereby the respondent Party has fully recognized the applicant's right to his home and the right to his property, as guaranteed by Article 8 of the Convention and Article 1 of Protocol 1 to the Convention. As to the alleged violation of Article 6 of the Convention, the respondent Party states that the violations are not specified in the application. Furthermore, the first instance procedural decision was issued within the legal time limit and the applicant realized his rights to appeal, thereby he obtained the right to access to the competent authorities.

52. As to alleged discrimination, the respondent Party points out that the Municipality Modriča did not decide on the requests of any pre-war occupancy right holders whose apartments were destroyed, and that the funds for solution of such cases would be foreseen in the Municipality's budget for 2005 (see paragraph 23 above). The respondent Party considers the discrimination claim entirely ill-founded.

53. As to the applicant's request for compensation, the respondent Party states that the applicant's movable property from the apartment was burnt down when the building was set on fire and the respondent Party objects *ratione temporis* to this part of the application. Also, the respondent Party considers that the applicant has not initiated any civil proceedings against the

Municipality for compensation relating to the destroyed property and it requests that the Commission declares the application in this part inadmissible for non-exhaustion of domestic remedies.

B. The applicant

54. In his written observations in reply, the applicant points out that the respondent Party's position on the admissibility is absurd, insulting and bureaucratic. He states that he has not initiated an administrative dispute before the Republika Srpska Supreme Court, as this legal remedy would be ineffective considering that the Supreme Court is deciding on cases from 2000 only. On the other hand, he emphasizes that he has no legal interest in initiating an administrative dispute against the procedural decision that recognized his occupancy right, but rather he has insisted on its enforcement and his reinstatement.

55. The applicant contests the respondent Party's allegations that he has not submitted the request for purchase of another adequate apartment, and as evidence enclosed his 18 October 2002 request for purchase of another adequate apartment directed to the Municipality of Modriča. The applicant highlights that the Municipality has not acted on his request.

56. As to the merits, the applicant considers that the respondent Party's approach is formalistic in resolving the issue of return of displaced persons and refugees as his occupancy right has only been formally recognized by the 22 January 2000 procedural decision of the Department.

57. According to the applicant, the violation of Article 1 of Protocol No. 1 to the Convention arises from the fact that a new building was constructed on the site where his apartment used to be located, but he is prevented from entering into the possession of the newly constructed apartment and thus unable to realize his property rights. Also, he complains that the organs of the respondent Party unjustifiably delay the proceedings contrary to Article 6 of the Convention, i.e., the first instance body issued the procedural decision after 3 months and 8 days, and the second instance body took more than one year to decide on the appeal. He also asserts that he is in his eighties and he and his wife have no children, therefore, the Municipality is delaying the process in the hopes that he will die before they have to address his housing situation.

58. The applicant complains that his rights have been harshly violated by the allocation of the apartments in the rebuilt building. He considers that he has used all available legal remedies. The applicant points out that the respondent Party persistently denies him the right to repossess his pre-war apartment, despite the fact that it has been formally recognised to him. He deems that the organs of the respondent Party have discriminated against him based on his national origin and states that B.L., another pre-war occupancy right holder over an apartment in Gavrića Principa 1, who is of Serb origin, has been allocated another apartment in Modriča.

VII. OPINION OF THE COMMISSION

A. Admissibility

59. 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.

1. Exhaustion of domestic remedies

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

61. In the present case the respondent Party objects to the admissibility of the application on the ground that the applicant has not initiated an administrative dispute before the competent court against the second instance decision of 19 April 2001, which is a remedy provided by the Law on Administrative Disputes. Also, the respondent Party alleges that the applicant has the possibility, in accordance with Article 54 of the Law on Privatization, to submit a request for purchase of another adequate apartment, and he did not do so.

62. The Commission notes that the 22 January 2000 procedural decision, as confirmed by the second instance, recognised the applicant's occupancy right to the apartment. The applicant points out that he had no legal interest to initiate an administrative dispute before the court against the procedural decision recognizing his occupancy right. Rather, he insisted on its enforcement, with a view to being reinstated into possession of an apartment in the reconstructed building, as he was entitled to by the first instance decision. Since submitting his repossession request in 1999, the applicant appears to have taken every possible measure to repossess an apartment. On 10 October 2002 the Administrative Inspector informed him that all of the apartments in the reconstructed building were already taken. A few days later, the applicant submitted a request to purchase another apartment in accordance with the Law on Privatisation. The applicant has obtained no response to this request, nor does it appear that the Municipality has taken any steps towards resolving the applicant's housing situation.

63. The Commission notes that the applicant has made repeated attempts to remedy his situation and he has been unsuccessful. Two years from the date when he filed a request for purchase of another adequate apartment and three years and three months from the date when the Law on Privatisation entered into force, the Municipality has not taken any concrete actions to resolve the applicant's housing problem. The Municipality has not provided any guaranties that the applicant's request will be resolved.

64. 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.

2. In relation to the alleged discrimination

65. 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: ... (c) The [Commission] shall also dismiss any application which it considers incompatible with this Agreement, manifestly ill-founded, or an abuse of the right of petition."

66. The applicant complains that the respondent Party has discriminated against him because of his national origin. The Commission explicitly asked the applicant to submit additional

information to substantiate this allegation. However, the applicant has not sufficiently supported his allegation, nor is it apparent to the Commission that the applicant has been treated differently from other similarly situated persons. Therefore, the Commission decides to declare the claim of discrimination inadmissible as manifestly ill-founded in accordance with Article VIII(2)(c) of the Agreement.

3. In relation to the movable property complaint

67. 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: (a) Whether effective remedies exist, and the applicant has demonstrated that they have been exhausted”

68. The applicant complains the Municipality Modriča allowed the removal of the pre-war building in Gavriča Principa, even though all of his movable property remained in his apartment, and the applicant seeks compensation for this movable property. The Commission notes that the applicant has not initiated civil proceedings against Municipality for damage compensation relating to the destroyed property. The applicant has not shown that this remedy was ineffective and it does not appear so to the Commission. Accordingly, the Commission finds that the applicant has not, as required by Article VIII(2)(a) of the Agreement, exhausted the effective remedies. The Commission therefore decides to declare this part of the application inadmissible.

4. Conclusion as to admissibility

69. The Commission concludes that the application is admissible insofar as the applicant complains of violations of his rights under Articles 6, 8 and Article 1 of Protocol 1 to the Convention in so far as it relates to the applicant’s attempts to repossess his pre-war apartment or be allocated another suitable apartment. The Commission declares the remainder of the application inadmissible.

B. Merits

70. Under Article XI of the Agreement the Commission 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 and the other treaties listed in the Appendix to the Agreement.

1. Article 8 of the Convention

71. The applicant alleges a violation of the right to his home, as protected by Article 8 of the Convention.

72. Article 8 provides as follows:

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

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

73. The Commission must first determine whether the applicant’s pre-war apartment constitutes his “home” in the sense of Article 8 of the Convention. If so, the Commission must

determine whether the Republika Srpska has interfered with the applicant's right to respect for his home under Article 8 of the Convention. Finally, the Commission must determine whether the interference of the Republika Srpska is justified. The Commission recalls that the conditions upon which a respondent Party may interfere with the right to respect for one's home are set out in paragraph 2 of Article 8. The interference is only justified if it is: (a) "in accordance with the law"; (b) in the interest of one or more of the legitimate aims listed; and (c) "necessary in a democratic society". Therefore, a proper balance must be struck between the legitimate aim pursued and the means employed, taking into account the respondent Party's margin of appreciation.

a. Whether the apartment is the applicant's home

74. The Commission notes that the applicant resided in the apartment concerned as his home until he was forced to leave it due to the war hostilities in Modriča. The Chamber has previously held that persons seeking to regain possession of properties they lost possession of during the war retain sufficient links with those properties for them to be considered their "home" within the meaning of Article 8 of the Convention (see, e.g., case no. CH/98/777, *Pletilić*, decision on admissibility and merits delivered on 8 October 1999, paragraph 74, Decisions August-December 1999). The Commission therefore considers that the pre-war apartment is the applicant's "home" within the meaning of Article 8 of the Convention.

b. Interference with the applicant's occupancy right

75. The respondent Party points out that the applicant's occupancy right is confirmed by the procedural decision of the Department of 22 January 2000, and thereby it has fully recognized the applicant's right to his home, as guaranteed by Article 8 of the Convention.

76. The Commission recalls that both the competent administrative authority and the CRPC have confirmed the applicant's occupancy right in 2000 and this is not disputed. Nevertheless, his attempts to regain possession over his pre-war apartment, or in the alternative, to be allocated another adequate apartment, have been unsuccessful for a long period of time, notwithstanding that he has taken all necessary steps to realize his occupancy right and to return to his pre-war home in Modriča. The Commission finds that the non-implementation of the CRPC decision and 22 January 2000 decision of the Department constitutes the interference with the applicant's occupancy right.

c. Whether the interference with the applicants' rights pursues a legitimate aim under paragraph 2 of Article 8, i.e., the interests of national security, public safety or the economic well-being of the country, the prevention of disorder or crime, the protection of health or morals, or the protection of the rights and freedoms of others

77. The Chamber noted in *Blentić v. The Republika Srpska*, (case no. CH/96/17, decision on admissibility and merits of 5 November 1997, paragraph 26, Decisions on Admissibility and Merits 1996-1997) and *Đ.M. v. The Federation of Bosnia and Herzegovina* (case no. CH/98/756, decision on admissibility and merits of 13 April 1999, paragraph 90, Decisions January-July 1999) that although the object of Article 8 is essentially that of protecting the individual against arbitrary interference by public authorities, it may also give rise to positive obligations, which are inherent in an effective respect for the rights which it guarantees, and that, in this context, a fair balance must be struck between the general interest and the interests of the people concerned.

78. In the present case, the Commission recalls that the Department and the CRPC have recognized the applicant's occupancy right and granted him the right to return to the apartment. In its 22 January 2000 procedural decision the Department also noted that the building where the applicant lived was removed, but that upon the building's reconstruction, the applicant may return "without limitation or restriction". At the time of issuing the mentioned procedural decision, the building was in fact already rebuilt. The Commission finds this language misleading and confusing,

in light of the actual factual situation at the time of issuing of the decision.

79. The Department has failed to implement its 22 January 2000 decision and the CRPC decision. The Department itself has provided the applicant with no explanation as to why these decisions have not been implemented. The Administrative Inspector, who inspected the work of the Department on two occasions upon the applicant's request, informed the applicant after her second inspection that the Department was not in the position to implement its decision. Following this, the applicant submitted a request to obtain another apartment as provided for in Article 54 of the Law on Privatisation. The Municipality has never responded to the applicant's request.

80. The Commission finds that the authorities of the respondent Party have failed to take reasonable and appropriate measures to implement the 22 January 2000 decision and the CRPC decision, which has effectively prevented the applicant from returning to Modriča. The fact that the apartment building in which the applicant's apartment was located was rebuilt by a construction company and allocated or sold to other persons does not absolve the Municipality from addressing the applicant's repossession request, particularly when it has issued a decision authorizing the applicant to repossess the apartment upon its reconstruction. Moreover, the applicant has also demonstrated his willingness to be allocated another apartment, in lieu of repossession his pre-war apartment, by submitting such request on 18 October 2002. The Municipality has also failed to respond to this request. The applicant has never been informed by the Municipality of any steps taken by it to resolve his various requests.

81. The Commission notes that it obtained information directly from the respondent Party that the Municipality Modriča intends to allocate funds in its 2005 budget for the allocation of apartments to occupancy right holders of destroyed apartments, in accordance with Article 54 of the Law on Privatization. However, in light of the earlier decision on repossession issued by the Department on 22 January 2000, as well as the CRPC decision, the Municipality should have ensured that the applicant's repossession request was resolved in a timelier manner. Moreover, the applicant has no guarantee that he will be allocated such apartment in 2005. The applicant also submitted that one of the other occupancy right holders in his former apartment building has been allocated another apartment in Modriča. The respondent Party has not disputed this statement.

82. In view of all of the above, the Commission finds that the inaction of the Municipality Modriča in response to the applicant's various petitions aiming at allowing him to repossess his pre-war apartment, or another adequate apartment in lieu of that one, amounts to a lack of respect for his home within the meaning of Article 8, paragraph 1 of the Convention. The respondent Party has made no attempt to justify this inaction, nor can the Commission find that this interference is justified in accordance with one of the provisions of the second paragraph of Article 8 of the Convention. The Commission therefore concludes that the organs of the respondent Party have interfered with the applicant's right to respect for his home, without apparent justification.

83. In conclusion, the Commission finds that the organs of the respondent Party have violated 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

84. The applicant claims that his right to his occupancy right as guaranteed by Article 1 of Protocol No. 1 to the Convention has been violated.

85. Article 1 of Protocol No. 1 to the Convention provides:

"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.”

86. The Commission notes that the applicant's occupancy right to the apartment located at Gavriła Principa 1/I was confirmed by the domestic authorities and the CRPC, and is not in dispute. The Chamber has consistently held that an occupancy right constitutes a “possession” within the meaning of Article 1 of Protocol No. 1 to the Convention (*see, e.g.*, 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). Accordingly, the Commission considers that the applicant's occupancy right to the apartment constitutes his “possession” for the purposes of Article 1 of Protocol No. 1 to the Convention.

87. The Commission recalls that Article 1 of Protocol No. 1 contains three rules. The first is the general principle of peaceful enjoyment of possessions. The second rule covers deprivation of property and subjects it to the requirements of public interest and conditions laid out in law. The third rule deals with control of use of property and subjects this to the requirement of the general interest and domestic law. It must be determined in respect of all of these situations whether a fair balance was struck between the demands of the general interest of the community and the requirements of the protection of the individual applicant's fundamental rights (*see, e.g.*, case no. CH/96/17, *Blentić*, decision on admissibility and merits of 5 November 1997, paragraphs 31-32, Decisions on Admissibility and Merits 1996-1997). Although States Parties to the Convention enjoy a wide margin of appreciation in judging what is in the general interest, that judgement must not be manifestly without reasonable foundation (*see Eur. Court H.R., James and Others v. the United Kingdom* judgement of 21 February 1986, Series A No. 98, p. 32, paragraph 46). In the assessment of whether an applicant has had to bear “an individual and excessive burden” it is also of relevance whether he has had the possibility of effectively challenging the measure taken against him (*see Eur. Court HR., Hentrich v. France* judgement of 22 September 1994, Series A No. 296-A, p. 21, paragraph 49). Article 1 of Protocol No. 1 to the Convention may, like other Convention guarantees, give rise to positive obligations on the authorities to provide effective protection for the individual's rights (*see, e.g.*, the above-mentioned *Blentić*, paragraph 32 and the case law of the European Court referred to therein).

88. The Commission considers that the failure of the Municipality Modriča to enforce its procedural decision of 22 January 2000, as well as the CRPC decision, or, in lieu of enforcement to allocate another apartment to the applicant, constitutes an interference with the applicant's right to the peaceful enjoyment of his possessions.

89. 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. As discussed above in connection with Article 8 of the Convention, the fact that the apartment building in which the applicant's apartment was located was rebuilt by a construction company and allocated or sold to other persons does not absolve the Municipality from addressing the applicant's repossession request, particularly when it has issued a decision authorizing the applicant to repossess the apartment upon its reconstruction. The respondent Party has not shown that the interference with the applicant's occupancy right was “in the public interest”, nor is it apparent to the Commission. The Commission finds that the respondent Party has unjustifiably interfered with the applicant's occupancy right.

90. In conclusion, based on essentially the same reasons as it has given in relation to Article 8 of the Convention, the Commission finds that the respondent Party's interference with the applicant's occupancy right amounts to a breach of his rights under Article 1 of Protocol No. 1 to the Convention.

3. Article 6 of the Convention

91. The applicant also alleges a violation of Article 6 of the Convention, which provides, as far as relevant, 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. ...”

92. Considering that it has found violations of the applicant’s rights protected by Article 8 of the Convention and Article 1 of Protocol 1 to the Convention, the Commission does not consider it necessary to examine the case in connection with Article 6 of the Convention.

VIII. REMEDIES

93. Under Article XI(1)(b) of the Agreement the Commission 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 Commission shall consider issuing orders to cease and desist, monetary relief as well as provisional measures.

94. In his submissions the applicant requests to be enabled to regain possession of a two-room apartment in the reconstructed building located at Gavrića Principa 1 in Modriča. In addition, the applicant requests compensation for rent, which he has been paying in Belgrade in the amount of 200 KM monthly from April 2000 until August 2000, and in the amount of 500 KM monthly from August 2000 until his reinstatement into the apartment.

95. The Republika Srpska argues that the compensation claims submitted by the applicant are ill-founded or unsubstantiated, and in any case excessive.

96. In view of the violations found in connection with Article 8 of the Convention and Article 1 of Protocol No. 1 to the Convention, the Commission finds it appropriate to exercise its powers granted under Article XI(1)(b) of the Agreement to order the respondent Party to reinstate the applicant into an adequate apartment in Modriča, at least of the same surface as his pre-war apartment, under the same conditions he had as the occupancy right holder of his pre-war apartment, without further delay, and at the latest within three months from the date of receipt of the present decision.

97. With regard to possible compensatory awards 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 his apartment.

98. Accordingly, the Commission will order the respondent Party to pay to the applicant the sum of 3,000 Convertible Marks in recognition of his particular suffering as a result of his inability to regain possession of the apartment within three months from the date of receipt of the present decision.

99. Concerning the applicant’s compensation claim for expenses related to monthly rent, the Commission notes that the applicant has not attached any evidence confirming these expenses. Moreover, the Commission considers that the orders set forth in paragraphs 96 and 98 above are sufficient satisfaction for the violations found.

100. The Commission further awards simple interest at an annual rate of 10% as of the date of expiry of the three month period for the implementation of the present decision, on the sum awarded in paragraph 101 above or any unpaid portion thereof until the date of settlement in full.

IX. CONCLUSION

101. For the above reasons, the Commission decides,

1. unanimously, that the applicant's claims under Articles 6 and 8 of the European Convention on Human Rights and Article 1 of Protocol No. 1 to the European Convention on Human Rights, with regard to his attempts to repossess his pre-war apartment, or be allocated another apartment, are admissible;
2. unanimously, that any remaining portions of the application are inadmissible;
3. unanimously, that there has been and continues to be 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 Republika Srpska thereby being in breach of Article I of the Human Rights Agreement;
4. unanimously, that there has been and continues to be a violation of the right of the applicant to the peaceful enjoyment of his possessions within the meaning of Article 1 of Protocol No. 1 to the European Convention on Human Rights, the Republika Srpska thereby being in breach of Article I of the Agreement;
5. unanimously, that it is not necessary to consider the application under Article 6 of the European Convention on Human Rights;
6. unanimously, to order the Republika Srpska, with no further delay and at the latest three month from the date of receipt of the present decision, to take all necessary steps to ensure that the applicant regains possession of an adequate apartment in Modriča, the Republika Srpska, at least of the same surface as his pre-war apartment, under the same conditions he had as the occupancy right holder;
7. unanimously, to order the Republika Srpska to pay to the applicant, within three months of the date of receipt of the present decision, the sum of 3,000 (three thousand) Convertible Marks as compensation for moral suffering;
8. unanimously, to order that simple interest at an annual rate of 10% (ten percent) will be payable on the sum awarded in conclusion no. 7 above after the expiry of the period set in that conclusions for the payment of such sum, or any unpaid portion thereof; and
9. unanimously, to order the Republika Srpska to report to the Commission, or its successor institution, within four months from the date of receipt of the present decision, on the steps taken by it to comply with the above orders.



(signed)
J. David YEAGER
Registrar of the Commission

(signed)
Jakob MÖLLER
President of the Commission