DECISION ON ADMISSIBILITY AND MERITS
(delivered on 5 July 2002)

Cases nos. CH/00/6436 and CH/00/6486

Đulba KRVAVAC and Danica PRIBIŠIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 3 July 2002 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. Ulrich GARMS, 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 applicants are citizens of Bosnia and Herzegovina of Bosniak and Serb origin. They are pre-war occupancy right holders of apartments in the municipalities Mostar Southwest ("Jugozapad") and Mostar West ("Zapad"). The cases concern the applicants' attempts to regain possession of their apartments. The applicants have lodged applications to the Commission for Real Property Claims of Displaced Persons and Refugees ("CRPC"), which has issued decisions confirming their occupancy rights. The relevant facts of the individual cases are set out in Section III below.

2. The cases primarily raise issues of discrimination in relation to Articles 6, 8 and 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and Article 1 of Protocol No. 1 to the Convention as well as under Articles 14, 17 and 26 of the International Covenant on Civil and Political Rights ("ICCPR"). The applications also raise issues in relation to the aforementioned Convention provisions in isolation.

II. PROCEEDINGS BEFORE THE CHAMBER

3. The applications were introduced on 30 November 2000 and registered on 2 December 2000. The applicants are represented by the American Refugee Committee, Legal Aid Center.

4. On 16 November 2001 the Chamber transmitted the applications to the Federation of Bosnia and Herzegovina as the respondent Party for observations on the admissibility and merits thereof. The respondent Party submitted its observations on 14 December 2001. Additional submissions were received on 27 February 2002.

5. The applicants submitted their observations in reply on 29 January 2002.

6. On 7 June and 3 July 2002 the Chamber considered the admissibility and merits of the applications. On 3 July 2002 the Chamber decided to join the applications and adopted the present decision.

III. FACTS

A. Case no. CH/00/6436 Đulba Krvavac

7. The applicant's late husband was the pre-war occupancy right holder over an apartment located at Stjepana Radića No. 70, Municipality Mostar-Jugozapad. The applicant, who is of Bosniak origin, left the apartment in August 1993.

8. On 14 May 1997 the applicant requested that the CRPC issue a decision confirming her occupancy right.

9. On 8 June 1999 the CRPC issued a decision confirming that the applicant's late husband was the occupancy right holder.

10. On 16 December 1999 the applicant filed a request for execution of the CRPC decision to the Department for Physical Planning, Construction and Housing, Communal Management of the Municipality Mostar-Jugozapad. On 15 December 2000 this Department issued a conclusion on enforcement of the CRPC decision.

11. The applicant has also initiated other proceedings before domestic organs to regain possession of her apartment.

12. On 27 February 2002 the Federation informed the Chamber that the applicant was reinstated into her apartment on 6 February 2002.

13. On 22 March 2002 the applicant's representative confirmed that the applicant had repossessed her apartment on 6 February 2002.

B. Case no. CH/00/6486 Danica Pribišić

14. The applicant, who is of Serb origin, is the pre-war occupancy right holder over an apartment located at Splitska No. 40a, Municipality Mostar-Zapad. The applicant left the apartment in April 1992.

15. On a date unknown to the Chamber the applicant requested that the CRPC issue a decision confirming her occupancy right.

16. On 17 December 1998 the CRPC issued a decision confirming the applicant's occupancy right.

17. On 20 March 2000 the applicant filed a request for execution of the CRPC decision to the Department for Physical Planning, Construction and Housing, Communal Management of the Municipality Mostar-Zapad.

18. The applicant has also initiated other proceedings before domestic organs to regain possession of her apartment.

19. On 3 April 2002 the applicant's representative informed the Chamber that the applicant had repossessed her apartment on 19 March 2002.

IV. RELEVANT LEGAL PROVISIONS

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

20. Annex 7 to the General Framework Agreement, entitled Agreement on Refugees and Displaced Persons, deals with refugees and displaced persons. In accordance with Article VII of Annex 7, an Independent Commission for Displaced Persons and Refugees, later renamed Commission for Real Property Claims of Displaced Persons and Refugees (CRPC), was established.

21. 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). 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 (Article XII(7)).

22. The Parties shall co-operate with the work of the CRPC, and shall respect and implement its decisions expeditiously and in good faith (Article VIII).

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

23. 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 – hereinafter "OG FBiH" – no. 43/99, 51/00 and 56/01 – hereinafter "the Implementation Law") regulates the enforcement of decisions of the CRPC. It entered into force on 28 October 1999.

24. 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 or 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).

25. The right to file a request for enforcement of a CRPC decision confirming a right to private property is not subject to any statute of limitation (Article 5 paragraph 1). The request for enforcement of a CRPC decision confirming an occupancy right must be submitted within 18 months from the date when the CRPC decision was issued (Article 5 paragraph 2).

26. 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.

27. 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 (OG FBiH nos. 11/98, 38/98, 12/99, 18/99, 27/99, 43/99 and 56/01) or the Law on the Cessation of the Application of the Law on Temporary Abandoned Real Property Owned by Citizens (OG FBiH nos. 11/98, 29/98, 27/99 and 43/99).

28. 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.

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

29. The Law on the Cessation of the Application of the Law on Abandoned Apartments ("the new law") entered into force on 4 April 1998 and has been amended on several occasions thereafter (OG FBiH nos. 11/98, 38/98, 12/99, 18/99, 27/99, 43/99, and 56/01).

30. The occupancy right holder of an apartment declared abandoned has a right to return to the apartment in accordance with Annex 7 of the General Framework Agreement (Article 3 paragraphs 1 and 2). Persons using the apartment without any legal basis shall be evicted immediately or at the latest within 15 days (Article 3 paragraph 3). A temporary user who has alternative accommodation is to vacate the apartment within 15 days of the date of delivery (before 1 July 1999 within 90 days of the date of issuance) of the decision on repossession (Article 3 paragraph 4). A temporary user without alternative accommodation is given a longer period of time (at least 90 days) within which to vacate the apartment. In exceptional circumstances, this deadline may be extended for up to one year if the municipality or the allocation right holder responsible for providing alternative accommodation submits detailed documentation regarding its efforts to secure such accommodation to the cantonal administrative authority for housing affairs and that authority finds that there is a

documented absence of available housing, as agreed upon with the Office of the High Representative. In such a case, the occupancy right holder must be notified of the decision to extend the deadline and the basis therefor 30 days before the original deadline expires (Article 3 paragraph 5 compared to Article 7 paragraphs 2 and 3). The competent administrative authorities and responsible officers or persons shall be fined if they violate some provisions of the law, *inter alia*, if they do not order the vacating of the apartment in accordance with Article 3 paragraphs 3 and 4 of the Law (Article 18f).

31. Article 18f of the Law provides:

> "The competent administrative authority shall be fined 1000 to 5000 KM for the following minor offences:
>
> 1. if it does not take into account the presumption that persons who have left their apartments between 30 April 1991 and 4 April 1998 shall be considered to be refugees and displaced persons under Annex 7 of the General Framework Agreement for Peace in Bosnia and Herzegovina, as set out in Article 3, paragraphs 1 and 2 of the Law;
> 2. if it does not order the vacating of the apartment within 15 days in accordance with Article 3, paragraphs 3 and 4 of the Law;
> 3. if it fails to process an eviction request because one of the parties filed an appeal against the prior decision, as set out in Article 8, paragraph 3 of the Law;
> 4. if it fails to hand over the apartment in accordance with Article 9 of the Law;
>
> [...] The responsible person in the competent administrative authority shall be fined 200 to 1000 KM for the violation of paragraph 1 of this Article."

D. The Law on Administrative Proceedings

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

E. The Law on Administrative Disputes

33. Article 1 of the Law on Administrative Disputes (OG FBiH 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.

34. Article 22 paragraph 3 provides that an administrative dispute may be instituted also if the second instance administrative 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

35. The applicants claim that the following rights have been violated: their rights to respect for their homes as guaranteed by Article 8 of the Convention and Article 17 of the ICCPR, the right to peaceful enjoyment of possessions as guaranteed by Article 1 of Protocol No. 1 to the Convention, the right to a hearing within a reasonable time as guaranteed by Article 6 of the Convention and Article 14 of the ICCPR, the right to an effective remedy as guaranteed by Article 13 of the Convention, the right to equal treatment before the law without any discrimination as guaranteed by Article 26 of the ICCPR and the right not to be discriminated against in the enjoyment of the above mentioned rights.

VI. SUBMISSIONS OF THE PARTIES

A. The Federation of Bosnia and Herzegovina

36. 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.

37. As to the merits of the complaints relating to the applicants' right to respect for their homes as protected by Article 8 of the Convention and the applicants' 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 passed legislation which enables all persons to repossess their property.

38. With regard to the applicants' claims that they have been discriminated against, the respondent Party states that the applicants have not stated what the discrimination consisted of and that a violation of the applicants' rights not to be discriminated against is not apparent from the case files. The respondent Party further states that the mere allegation that the applicants have been discriminated against is not sufficient for finding a violation.

39. Finally, in its submission of 27 February 2002, the Federation requests the Chamber to issue a strike out decision in this case. The respondent Party considers that the reinstatement of the applicants into their possession has resolved the matter and that it "has in essence admitted that there was violation of the Agreement". Consequently the Chamber should, in accordance with Article VIII 3 (b) of the Agreement and its jurisprudence, strike out the applications.

B. The applicants

40. The applicants state in their applications that the failure of the competent administrative organ to decide upon their requests to be reinstated into their apartments is a violation of Articles 6, 8 and 13 of the Convention, Article 1 of Protocol No. 1 to the Convention, and Articles 2, 14, 17 and 26 of the ICCPR.

41. In their response to the respondent Party's observations, the applicants maintain their claims.

42. Notwithstanding the fact that they have been reinstated into their apartments, the applicants request the Chamber to continue consideration of their cases in accordance with the criteria set out in the *S.P.* decision (case no. CH/99/2336, *S.P.*, strike out decision of 2 July 2001).

43. In substantiating their claims that they have been discriminated against, the applicants submit the following statements in their applications:

1. The American Refugee Committee, Legal Aid Center

44. The applicants are represented by the American Refugee Committee, Legal Aid Center ("ARC-LAC"). In the applications the ARC-LAC describes their experience of how the competent administrative organs in West and Southwest Mostar are handling claims for repossession of apartments and houses. These statements were transmitted to the respondent Party which did not challenge them. The relevant parts of the statements are as follows:

> *"During several meetings, housing officials informed ARC lawyers that they, the housing officials, were under instructions from higher authorities, including the mayor, not to process any claims for apartment decisions and not to return any property to minority occupancy right holders....*
>
> *In the April 17th 2000 meeting, Ms. [R.C.] also indicated that the municipality considered the property cases to be political and therefore they would not seek a legal solution as the municipality was obligated to do by law. In a meeting on May 29th 2000 with [R.C.] and*

[Z.M.], the heads of housing Mostar West and Mostar Southwest municipalities, they directly referred to the lack of instructions by the mayor of their municipality that would allow them to process cases....

These experiences illustrate a disturbing pattern of discrimination by authorities against minorities attempting to reclaim their property. When the municipal staff say they are under instructions not to process any minority claims and data show that these claims are not being processed, a pattern of differential treatment for minority housing applicants, like the applicants in this case, becomes clear."

2. International Crisis Group report of 19 April 2000

45. The applicants submitted parts of a report on Mostar written by the International Crisis Group ("ICG") on 19 April 2000. These parts of the ICG report were submitted to the respondent Party which has not challenged the information. The relevant parts of the report are as follows:

"Politics, not rule of law, govern the return process in Mostar. The policy of the ruling Croat HDZ party with regard to minority, especially Bosniak returns to west Mostar, is to maintain the demographic "purity" of the three Croat majority municipalities for territorial reasons. This policy has included obstructing the return of Croat displaced persons from west Mostar to central Bosnia and east Mostar. Despite six years of agreeing to minority return and pledging to implement Annex Seven, the actions and statements of HDZ officials and the pathetic return figures demonstrate this policy....

The statistics on implementation of the property laws support these conclusions. In the three Croat majority municipalities of Mostar, a total of 6,044 claims for socially owned property and 463 claims for private property had been filed by July of 1999. Of these 6,507 claims, the housing authorities have signed only a hand-full of claims in which the Double Occupancy Commission confirmed that the current occupant has alternate accommodation. No evictions have taken place without good will of the current occupant. The majority of outstanding claims are in municipality Southwest, where there exists a backlog of approximately 4,500 unprocessed claims. Under existing law, these should all have been processed, and the pre-war occupant should have received notification within 30 days. The municipality currently lacks a mayor and a head of the housing department to sign decisions, and the housing office employs only two staff members."

VII. OPINION OF THE CHAMBER

A. Request to strike out

46. The Chamber notes that the applicants had lodged their applications with a view to regaining possession of the apartments over which they held an occupancy right. As noted above, the applicants regained possession of their apartments while the cases were still pending before the Chamber.

47. The Chamber further notes that the Federation considers that the matter has been resolved since the applicants have been reinstated into their possessions. Furthermore it claims that it has acted "with the aim to respect human rights". Consequently, the respondent Party considers that the Chamber should, in accordance with Article VIII 3 (b) of the Agreement and its jurisprudence, strike out the applications.

48. Article VIII (3) of the Agreement provides, as far as relevant, as follow:

"the Chamber may decide at any point in its proceedings to suspend consideration of, reject or strike out, an application on the ground that [...] (b) the matter has been resolved; [...] provided that such result is consistent with the objective of respect for human rights."

49. It is open to the Chamber to consider the admissibility and merits of any case, when, as in the present cases, the question arises whether the time-limits and other procedural requirements laid down by domestic law have been complied with by the authorities. If it found a violation, the Chamber would have to address the question whether any remedies should be ordered.

50. The Chamber recalls, as defined in the *S.P.* decision (case no. CH/99/2336, strike out decision of 2 July 2001), that where it appears that the domestic authorities have taken appropriate and effective action in good faith and where the applicants have in fact been reinstated, although not within the time-limit established by law, the Chamber may be persuaded to strike out the application. The Chamber is of the opinion that such an approach, given the circumstances prevailing in the country, does not run counter to the objective of ensuring respect for human rights.

51. As regards the proceedings before itself, the Chamber recalls, as it has stated in the *S.P.* decision, that the "factors to be taken into consideration may include, but are not limited to, the length of time that has elapsed between the date on which the application was lodged and the date on which the applicant is reinstated, and the stage the proceedings before the Chamber have reached when the Chamber is informed of the applicant's reinstatement. In general, the sooner the applicant is reinstated, and the less advanced the stage of the proceedings reached before the Chamber, the greater the likelihood that the Chamber will consider it appropriate to strike out the application."

52. Turning to the facts of the present cases, the Chamber notes that at the time of their reinstatement, the applicants had been waiting for over two years from the time they filed their requests for the enforcement of the CRPC decisions. In addition the Chamber recalls the discriminatory policy pursued by the Mostar-Zapad and Mostar-Jugozapad Municipalities (see paragraphs 76 and 78 below). Therefore, the Chamber considers that the competent authorities in the present cases cannot be regarded as having acted in good faith.

53. Furthermore, the Chamber notes that it had registered the applications more than two years before the applicants' reinstatements. The Chamber also transmitted the applications to the respondent Party on 16 November 2001. As a result, by the time of the applicants' reinstatements into their apartments on 6 February and 19 March 2002, respectively, the proceedings before the Chamber had reached an advanced stage.

54. Considering the special circumstances of the applicants' situation regarding their human rights and the evidence of a systematic disregard for human rights in the territory of the applicants' apartments, the Chamber, following the request of the applicants, considers that the main issue raised in the applications requires the examination of the applications to be continued. The Chamber therefore decides that it is not appropriate to strike out the applications.

B. Admissibility

55. Before considering the merits of these applicants, the Chamber must decide whether to accept them, taking into account the admissibility criteria set out in Article VIII(2) of the Agreement.

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

57. According to Article VIII(2)(a) of the Agreement, the Chamber 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.

58. In the present cases the respondent Party 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 insofar as the applicants were faced with the authorities' inaction, the Chamber must ascertain whether, in the cases now before it, these remedies could also have been effective in practice.

59. The Chamber notes that the applicants filed requests to the CRPC with a view to being reinstated into their apartments. The CRPC issued decisions confirming their occupancy rights, from which it follows that they are entitled to seek the removal of the temporary occupants from the apartments. However, the applicants have been waiting 26 and 24 months before the enforcement by the competent administrative organ of their CRPC decisions.

60. The Chamber further notes that, according to Article 7 of the Implementation Law, the competent administrative organ is obliged to issue a conclusion on the enforcement within a period of 30 days from the date when the request for enforcement is submitted.

61. The Chamber also notes that it was still open to the applicants to make further attempts to have their CRPC decisions enforced. However, the applicants had made repeated attempts to remedy their situation and they had been unsuccessful. Use of other remedies, even if successful, would also not remedy the applicants' complaints insofar as they relate to the failure of the authorities to enforce the CRPC decisions within the prescribed time-limit. Furthermore, there is no reason to suppose that the responsible authorities, which had for a long period disregarded their legal obligations to enforce the CRPC decisions, would treat the decisions of the courts with any greater respect.

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

63. The Chamber further finds that no other ground for declaring the cases inadmissible has been established. Accordingly, the Chamber declares the applications admissible.

C. Merits

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

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

66. The Chamber has considered the present case under Article II(2)(b) of the Agreement in relation to Articles 8 and 13 of the Convention, Article 1 of Protocol No. 1 to the Convention and Articles 17 and 26 of ICCPR. The Chamber has further considered the case under Article II(2)(a) of the Agreement in relation to the said provisions of the Convention in isolation.

67. The Chamber has repeatedly held (see, *e.g.*, case no. CH/97/45, *Hermas,* decision on

admissibility and merits of 16 January 1998, paragraph 82, Decisions and Reports 1998; case no. CH/98/756, *Đ.M.*, decision on admissibility and merits of 13 April 1999, paragraph 68, Decisions January-July 1999; and case no. CH/97/67, *Zahirović*, decision on admissibility and merits of 10 June 1999, paragraph 115, Decisions January-July 1999) that the prohibition of discrimination is a central objective of the Agreement to which the Chamber must attach particular importance. It will therefore first consider whether the applicants were discriminated against.

1. Discrimination in the enjoyment of the applicants' right to equal protection of the law, to respect for their homes and to the peaceful enjoyment of their possessions.

68. Article 17 of the ICCPR provides:

> "1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
>
> 2. Everyone has the right to the protection of the law against such interference or attacks."

69. Article 26 of the ICCPR reads as follows:

> "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status."

70. Article 8 of the Convention provides, as far as relevant, as follows:

> "1. Everyone has the right to respect for his … family life, his home…
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society …for the protection of the rights and freedoms of others."

71. Article 1 of Protocol No. 1 to the Convention 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."

72. The Chamber notes that the applicants are holders of occupancy rights over apartments in which they lived until such times as they were forced to leave due to the armed conflict. In accordance with the constant jurisprudence of the Chamber (see, *e.g.*, case no. CH/98/777, *Pletilić,* decision on admissibility and merits of 9 September 1999, paragraph 74 and 88, Decisions August-December 1999 and case no. CH/98/457, *Anušić*, decision on admissibility and merits of 10 October 2000, paragraph 66 and 77, Decisions August-December 2000), these occupancy rights are assets which constitute a "possession" within the meaning of Article 1 of Protocol No. 1 to the Convention, and the apartments of the applicants are to be considered their homes within the meaning of Article 8 of the Convention as well as Article 17 of the ICCPR.

73. The applicants allege that the systematic policy of obstructing minority returns in the municipalities of Mostar Zapad and Mostar Jugozapad constitutes discrimination, on the grounds of their ethnic origin, in the enjoyment of their rights to protection of their homes and possessions, as well as in their right to equal protection of the law within the meaning of Article 26 of the ICCPR and their right to an effective remedy within the meaning of Article 13 of the Convention.

74. The Chamber observes that Article 26 of the Covenant sets out an independent right to equality before the law and equal protection of the law (see case no. CH/97/41, *Marčeta*, decision on admissibility and merits of 3 April 1998, paragraph 61 *et seq.*, Decisions and Reports 1998). In the present cases the Chamber notes that the applicants had filed requests for the execution of the CRPC decisions to the competent administrative organs, before which they may assert their right to equal and effective protection of the law, as guaranteed under Article 26 of the Covenant.

75. In examining whether there has been discrimination contrary to the Agreement, the Chamber has consistently found it necessary first to determine whether the applicants were treated differently from others in the same or relevantly similar situations. Any differential treatment is to be deemed discriminatory if it has no reasonable and objective justification; that is, if it does not pursue a legitimate aim or if there is no reasonable relationship of proportionality between the means employed and the aim sought to be realised. There is a particular onus on the respondent Party to justify differential treatment which is based on any of the grounds explicitly enumerated in the relevant provisions, including religion or national origin. In previous cases, the Chamber has taken the same approach (see the above-mentioned *Zahirović* decision, paragraph 133 *et seq.*; *Hermas* decision, paragraphs 86 *et seq.*; *Đ.M.* decision, paragraph 92; and *Kevešević* decision, paragraph 92).

76. In the present cases, the unchallenged statements submitted by the applicants to the Chamber (see paragraphs 44-45 above) establish that the competent administrative and political organs in the municipalities of Mostar Zapad and Mostar Jugozapad pursue a deliberate policy of preventing minority returns by, *inter alia*, not processing the claims of persons of Bosniak and Serb origin to repossess their pre-war apartments.

77. The Chamber recalls that the applicants' occupancy rights over the apartments were confirmed by the CRPC already in 1999 and are not in dispute. Nevertheless, their attempts to regain possession over their apartments had been unsuccessful until February and March 2002, notwithstanding that they had taken all necessary steps to repossess them.

78. The discrimination found has also barred the applicants, for a long time, from returning to their homes and property within the meaning of Article 8 of the Convention, Article 1 of Protocol No. 1 to the Convention, as well as Article 17 of the ICCPR. The respondent Party has not suggested any justification for the differential treatment at issue as compared to persons of Croat origin, and the Chamber cannot, on its own motion, find any such justification. On the contrary, the uncontested policy of the ruling Croat HDZ party to maintain the demographic "purity" of the three Croat majority municipalities in itself constitutes a systematic pattern of discrimination against persons of Bosniak and Serb origin, including persons of mixed marriages. Accordingly, the applicants have been discriminated against in the enjoyment of their rights under Article 26 of the ICCPR to equal protection of the law and an effective remedy before a national authority within the meaning of Article 13 of the Convention.

79. The Chamber concludes that the applicants have been discriminated against in the enjoyment of their rights under Articles 17 and 26 of the ICCPR and Articles 8 and 13 of the Convention and Article 1 of Protocol No. 1 to the Convention.

2. Article 8 of the Convention

80. As the Chamber has already stated above (see paragraph 72), the applicants' apartments are to be considered as their homes for the purposes of Article 8 of the Convention.

81. It is the respondent Party's assertion that it has passed legislation which enables all persons to repossess their property and that therefore there has been no violation of Article 8 of the Convention.

82. In the present cases the Chamber finds that the passivity shown by the municipal authorities in response to the applicants' various petitions aiming at enabling them to re-enter apartments which they indisputably are entitled to possess amounts to a lack of respect for their "home" within the

meaning of Article 8(1) of the Convention. The respondent Party has made no attempt to justify this lack of respect. Nor can the Chamber find any such justification on its own motion. The Chamber therefore concludes that the applicants' rights under Article 8 of the Convention in isolation have also been violated.

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

83. The Chamber has already recognised (see paragraph 72 above) that the applicants' rights in respect of the apartments constitute "possessions" for the purposes of Article 1 of Protocol No. 1 to the Convention.

84. The Chamber 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.*, the aforementioned *Blentić* decision, *loc.cit.*, paragraphs 31-32). Although States Parties to the Convention enjoy a wide margin of appreciation in judging what is in the general interest, that judgment must not be manifestly without reasonable foundation (see Eur. Court HR, *James and Others v. the United Kingdom*, judgment 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*, judgment 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 aforementioned *Đ.M.* decision, *loc. cit.*, paragraph 95 and the case law of the European Court referred to therein). Such positive obligations may include the provision of necessary assistance in the recovery of property by means of eviction.

85. In the present cases, the Chamber is concerned with a failure by the authorities to protect the applicants, for a period of 26 and 24 months, against a continuing unlawful occupation of their possessions within the meaning of the first sentence of the first paragraph of Article 1 of Protocol No. 1. The Chamber finds, for essentially the same reasons as it has given in relation to Article 8 of the Convention, that this failure, during this lapse of time, of the authorities to assist the applicants in recovering their property also amounts to a breach of their rights under Article 1 of Protocol No. 1 to the Convention in isolation.

5. Articles 6 and 13 of the Convention and Article 14 of the ICCPR

86. Article 6 paragraph 1 of the Convention 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. …"

87. Article 14 of the ICCPR provides, as far as relevant for the present case:

> "1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to fair and public hearing by a competent, independent and impartial tribunal established by law."

88. Article 13 of the Convention provides as follows:

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

89. As explained above, the Chamber has found that the applicants have been discriminated against in the enjoyment of their rights protected under Articles 17 and 26 of the ICCPR and Articles 8 and 13 of the Convention and Article 1 of Protocol No. 1 to the Convention. The Chamber has also found that the respondent Party violated the rights of the applicants protected by Article 8 of the Convention, Article 1 of Protocol No. 1 in isolation. Considering these findings, the Chamber does not consider it necessary separately to examine the applications under Articles 6 and 13 of the Convention and Article 14 of the ICCPR.

VIII. REMEDIES

90. 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.

91. In their submissions the applicants request that they be enabled to regain possession of their apartments. In addition, the applicants in each of the cases request KM 2000 as compensation for mental suffering and for the injustice they claim to have suffered and compensation for the rent they have been forced to pay for their accommodation pending their return to their apartments. Further, the applicants seek the application of the penalties under the Law on Cessation of the Application of the Law on Abandoned Apartments, for officials who have failed to carry out their legal duties. Under Article 18f of this Law, responsible officers or persons in an administrative body who block returns may be fined up to KM 1000 for their actions.

92. The Federation, in its observations, argued that the claims for compensation, which were submitted by the applicants, were ill-founded or unsubstantiated and in any case excessive. The Federation was further of the opinion that the Chamber should follow its case law and reject the applicants' claim for the application of the penalties under the Law on Cessation of the Application of the Law on Abandoned Apartments.

93. Since the applicants in the present cases had, for a long time, been unable to regain possession of their apartments due to the failure of the respondent Party to reinstate them in a timely manner, the Chamber finds it appropriate to exercise its powers granted under Article XI(1)(b) of the Agreement.

94. With regard to possible compensatory awards, the Chamber considers it appropriate to award a sum to the applicants in recognition of the sense of injustice which they suffered for a prolonged period of time as a result of their inability to regain possession of their apartments in a timely manner, purely for reasons of discrimination.

95. Accordingly, the Chamber will order the respondent Party to pay to each of the applicants the sum of 1200 Convertible Marks (*Konvertibilnih Maraka*, "KM") as compensation for non-pecuniary damages in recognition of their suffering as a result of their inability to regain possession of their apartments in a timely manner and as a result of being subjected to unlawful discrimination.

96. In accordance with its decision in *Turundžić and Frančić* (cases nos. CH/00/6143 and CH/00/6150, decision on admissibility and merits of 5 February 2001, paragraph 70, Decisions January-June 2001), the Chamber considers it appropriate to order the respondent Party to compensate the applicants for the loss of use of their homes. 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 administrative organ to issue a conclusion on the enforcement of the CRPC decision expired, *i.e.*, 30 days after the applicants lodged their requests up to and including the month of their

reinstatements into their apartments. Therefore considering the cases, Ms. Đulba Krvavac should receive the sum of KM 5200 and Ms. Danica Pribišić should receive the amount of KM 4600 to compensate the time periods of 26 and 24 months between the date they filed request of enforcement of their CPRC decisions and the date when they have been reinstated into their apartments.

97. With regard to the applicants' suggestion of sanctions under Article 18f of the Law on Cessation of the Application of the Law on Abandoned Apartments, the Chamber considers it appropriate to order the respondent Party to take all necessary measures to ensure respect for and implementation of Article 18f of the Law, including investigations and appropriate penalties for the officers and other persons responsible for the systematic policy of discrimination and obstruction of minority returns in the municipalities of Mostar Zapad and Mostar Jugozad.

98. The Chamber further awards simple interest at an annual rate of 10% on each of the sums awarded in paragraphs 95 and 96 or any unpaid portion thereof until the date of settlement in full.

IX. CONCLUSIONS

99. For the above reasons, the Chamber decides,

1. unanimously, to declare the applications admissible;

2. unanimously, that the applicants have been discriminated against in the enjoyment of their rights under Articles 8 and 13 of the Convention, Article 1 of Protocol No. 1 to the Convention and Articles 17 and 26 of the ICCPR, the respondent Party thereby being in violation of Article I of the Human Rights Agreement;

3. unanimously, that the non-enforcement of the decisions of the Commission for Real Property Claims of Displaced Persons and Refugees (CRPC), for a long period, constitutes a violation of the right of the applicants to respect for their homes within the meaning of Article 8 of the Convention, the Federation thereby being in breach of Article I of the Agreement;

4. unanimously, that the non-enforcement of the decisions of the CRPC, for a long period, constitutes a violation of the right of the applicants to peaceful enjoyment of their possessions within the meaning of Article 1 of Protocol No. 1 to the Convention, the Federation thereby being in breach of Article I of the Agreement;

6. unanimously, that it is not necessary to rule on the complaints under Articles 6 and 13 of the Convention and 14 of the ICCPR;

7. unanimously, to order the Federation to pay to the applicants, 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:

   to Ms. Đulba Krvavac , the applicant in case CH/00/6436, KM 6400 (six thousand two hundred), composed 1200 by way of compensation for non-pecuniary damage and KM 5200 by way of compensation for the loss of use of her home;

   to Ms. Danica Pribišić, the applicant in case CH/00/6486, KM 5800 (five thousand eight hundred), composed of 1200 by way of compensation for non-pecuniary damage and KM 4600 by way of compensation for the loss of use of her home;

8. 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;

9. unanimously, to order the Federation to take all necessary measures to ensure respect for and the implementation of Article 18f of the Law on Cessation of the Application of the Law on Abandoned Apartments;

10. unanimously, to dismiss the remainder of the applicants' claims for remedies; and

11. unanimously, to order the Federation to report to it 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 on the steps taken by it to comply with the above orders.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Giovanni GRASSO
President of the Second Panel