



DECISION ON ADMISSIBILITY AND MERITS
(delivered on 7 March 2003)

Case no. CH/02/8939

M.H.

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 6 February 2003 with the following members present:

Ms. Michèle PICARD, President
Mr. Mato TADIĆ, Vice-President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
Mr. Rona AYBAY
Mr. Želimir JUKA
Mr. Jakob MÖLLER
Mr. Giovanni GRASSO
Mr. Miodrag PAJIĆ
Mr. Manfred NOWAK
Mr. Vitomir POPOVIĆ
Mr. Viktor MASENKO-MAVI
Mr. Andrew GROTRIAN

Mr. Ulrich GARMS, Registrar
Ms. Olga KAPIĆ, Deputy Registrar
Ms. Antonia DE MEO, 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 Article VIII(2) and XI of the Agreement and Rules and 52, 57 and 58 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. This case concerns the applicant's eviction from an apartment in Zenica where she had been living since August 1994. The person living in the apartment before the war was Đ.S. His claim for repossession of the apartment was rejected as he had never obtained a contract on use over the apartment. The apartment, therefore, falls into the category of "unclaimed apartments" available to the local authorities to be used as alternative accommodation. The applicant complains of the fact that the housing authorities determined that she was a "multiple occupant", and the fact that she was evicted from her home without being offered any other adequate accommodation.
2. The application raises issues with regard to the applicant's right to respect for her home under Article 8 of the European Convention on Human Rights (hereinafter "the Convention"), and her right to an effective remedy under Article 13 of the Convention.

II. PROCEEDINGS BEFORE THE CHAMBER

3. The application was received on 18 February 2002 and registered on the same day.
4. The applicant requested the Chamber to order the respondent Party, as a provisional measure, to take all necessary steps to prevent her eviction from the apartment in question, or to provide her with alternative accommodation (at that time the eviction had not been scheduled yet). On 19 February 2002, the President of the Chamber rejected the request for provisional measures.
5. On 4 November 2002, the First Panel decided to relinquish jurisdiction of the application to the plenary Chamber as it appears to raise questions of general importance, in accordance with Article 29(2) of the Chamber's Rules of Procedure.
6. The Chamber invited the Office of the High Representative ("the OHR") and the Organisation for Security and Cooperation in Europe, Mission to BiH, ("the OSCE") to participate in the proceedings as *amici curiae*. The Chamber received submissions from the OSCE on 5 November 2002 and from the OHR on 13 November 2002.
7. The application was transmitted to the respondent Party on 14 November 2002 under Articles 6, 8 and 13 of the Convention, together with the submissions of the *amici curiae*. The respondent Party submitted its observations on the admissibility and merits on 16 December 2002. In response to a request from the Chamber, the respondent Party also submitted additional observations on 17 January 2003 and 4 February 2003.
8. The applicant submitted additional information to the Chamber on 3 June 2002.
9. On 20 January 2003, the Chamber received authorisation from the applicant to have Anto Petrušić, a lawyer from Zenica, represent her. In the same letter, the applicant, through her lawyer, submitted her response to the respondent Party's observations on the admissibility and merits and response to the *amici curiae* submissions.
10. The Chamber deliberated on the admissibility and merits of the application on 9 November 2002, 6 January 2003 and 6 February 2003, and it adopted this decision on the latter date.

III. ESTABLISHMENT OF THE FACTS

11. The facts of the case as they appear from the applicant's submissions and the documents in the case file, are not in dispute, unless otherwise stated, and may be summarised as follows.
12. The applicant is a widow of a soldier of the Army of Bosnia and Herzegovina and the mother of an underage child. At the time of her application, the applicant occupied an apartment at Šerbin

Sokak 19 in Zenica, the Federation of Bosnia and Herzegovina. The owner of the apartment is the Federation Ministry of Defence. The applicant was first allocated this apartment by the Republic of Bosnia and Herzegovina Army ("the RBiH Army") on 12 August 1994 for temporary use. On 16 June 1996, the apartment was declared permanently abandoned by the previous occupancy right holder. On 2 April 1997, the applicant was allocated the apartment in question for permanent use, and signed a contract on use on 5 April 1997 with the Headquarters of the RBiH Army.

13. On 1 September 1998, Đ.S. filed a claim for repossession of the apartment. This claim was rejected by the Zenica Municipal Housing Department ("the Housing Department") by a procedural decision of 17 January 2002, on the ground that Đ.S. had been allocated the apartment on 10 January 1992, but had never concluded a contract on use, and, as such, had never obtained an occupancy right over the apartment.

14. In the same procedural decision of 17 January 2002, the Housing Department terminated the applicant's occupancy right and ordered the applicant to vacate the apartment within 15 days. The procedural decision established that the applicant is a multiple occupant because on 30 April 1991 she lived with her mother-in-law at Gradac 19 in Zenica. According to the procedural decision, the applicant and a representative of the Federation Ministry of Defence were heard on 25 September 2001 by the Housing Department and made oral statements for the record.

15. On 31 January 2002, the applicant appealed against the decision of 17 January 2002. This appeal, however, does not have suspensive effect. Đ.S. and the Ministry of Defence also appealed.

16. The respondent Party alleges that the applicant was allocated a 25,000 Convertible Marks (KM) housing loan on 12 June 2002 to resolve her housing situation. The applicant has neither confirmed nor denied the receipt of this credit.

17. The applicant was evicted on 14 June 2002.

18. The appeals of the applicant and Đ.S. were rejected on 27 August 2002 by the Ministry for Physical Planning, Traffic, Communications and Protection of the Environment of Zenica-Doboj Canton as ill-founded. However, the appeal of the Ministry of Defence was accepted as well-founded and the second instance body put the apartment at the disposal of the Federation Ministry of Defense, instead of at the disposal of Zenica Municipality.

19. On 17 January 2003, the respondent Party informed the Chamber that the apartment in question is now used by a temporary user who had to leave another apartment in Zenica to allow the pre-war occupancy right holder to repossess that apartment. The temporary user can not return to his/her property in the Republika Srpska, and has a sick child. The temporary user has not officially been allocated the apartment on temporary use, but rather entered into possession with the permission of the competent body in the Army of the Federation of BiH.

IV. RELEVANT DOMESTIC LAW

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

20. The Law on the Cessation of the Application of the Law on Abandoned Apartments ("the Law on Cessation") entered into force on 4 April 1998 and has been amended on several occasions thereafter (Official Gazette of the Federation of Bosnia and Herzegovina nos. 11/98, 38/98, 12/99, 18/99, 27/99, 43/99, 31/01, 56/01 and 15/02). The Law on Cessation repealed the former Law on Abandoned Apartments.

21. According to the Law on Cessation, the competent authorities may make no further decisions declaring apartments abandoned (Article 1). All administrative, judicial and other decisions terminating occupancy rights based on regulations issued under the old law are invalid. Nevertheless, decisions establishing a right of temporary occupancy shall remain effective until revoked in accordance with the Law on Cessation.

22. All occupancy rights or contracts on use made between 1 April 1992 and 7 February 1998 were cancelled (Article 2, paragraph 3). A person occupying an apartment on the basis of a cancelled occupancy right or decision on temporary occupancy is to be considered a temporary user (Article 2, paragraph 3). A temporary user who does not have other accommodation available to them has the right to a new contract on use, or an extension of the temporary use of the apartment, when the occupancy right of the former occupancy right holder is cancelled or the claim rejected (Article 2, paragraph 4).

23. Article 3 generally describes that occupancy right holders shall have the right to return to their apartments, while persons using the apartment without any legal basis should be evicted immediately or at least within 15 days, and temporary users with no right to alternative accommodation shall be evicted within 15 days. Article 3 also addresses the provision of alternative accommodation for those entitled to it.

24. Article 4 defines that occupancy right holders shall submit a claim for repossession to the municipal administrative authority competent for housing affairs, unless otherwise determined by cantonal law. Article 7 defines that the decision issued shall include, among other things, a decision on whether the current user is using the apartment with a legal basis, a decision terminating the right of temporary use of the apartment, if there is a temporary user in the apartment, and a decision determining whether the temporary user is entitled to alternative accommodation.

25. The Instruction to the Law on Cessation, issued on 27 October 1999, in point 38, further explains that the municipal or cantonal authority responsible for housing shall be competent to receive and decide claims for return to apartments at the disposal of the Federation Ministry of Defence, in accordance with Articles 3 and 3a of the Law.

26. Article 8 paragraph 2 provides that any appeal shall not suspend the execution of the decision.

27. Article 11 sets forth that, “the competent administrative authority shall, *ex officio*...pass a decision to vacate the apartment immediately in cases where the current user is a multiple occupant. The affected person has the right to file an appeal against the decision, but the appeal does not suspend the eviction.”

28. Article 11 continues that a “multiple occupant includes, among others, a current user who uses an apartment and ...3) ... where a member of his/her family household is in possession of his/her 1991 home; or ... 5) has a member of his/her family household who has accommodation anywhere on the territory of the Federation of Bosnia and Herzegovina or in the same city or municipality as the 1991 home anywhere else in the territory of Bosnia and Herzegovina ...”

29. Article 18d sets forth that for apartments where an occupancy right was cancelled or the claim rejected, and the temporary occupant does not have the right to a new contract on use, the apartment will be managed by the administrative body in charge of housing issues. Exceptionally, where the owner of the apartment is the Federation Ministry of Defence, “the competent body of the Federation Ministry of Defence may issue a new contract on use to a temporary user of an apartment in cases where s/he is required to vacate the apartment under this Law to enable the return of a pre-war occupancy right holder or purchaser of the apartment, provided that his or her housing needs are not otherwise met.”¹

¹ The Instruction on Application of the Law on Cessation of 27 October 1999, provides further clarification of the management of abandoned military apartments. Item 24(ii) states, “...the responsible military housing body may issue a new contract on use of an apartment which is unclaimed or for which the claim is finally rejected to a temporary user who is currently occupying an apartment at the disposal of the Federation Ministry of Defence, who is required to vacate that apartment pursuant to the provisions of this Law to enable the return of a pre-war occupancy right holder or purchaser of the apartment, provided that his/her housing needs are not otherwise met, as explained by the Law and this Instruction.” In essence, this provision obligates the Ministry of Defence to house persons entitled to alternative accommodation (and who should be evicted from another military apartment to allow the pre-war occupancy right holder to repossess the apartment) in an unclaimed military apartment at their disposal.

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

30. Annex 7 to the General Framework Agreement for Peace in Bosnia and Herzegovina, entitled Agreement on Refugees and Displaced Persons, deals with refugees and displaced persons. Article I paragraph 1 of Annex 7 provides that:

“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 the 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. ...”

V. COMPLAINTS

31. In her application, the applicant did not specify which human rights violations she wished to allege. Of its own accord, the Chamber has considered the application as raising issues related to her right to a hearing before a public body under Article 6 of the Convention, the right to respect for her home under Article 8 of the Convention, and the right to an effective remedy under Article 13 of the Convention.

VI. SUBMISSIONS OF THE PARTIES

A. The respondent Party

32. In its observations of 15 December 2002, the respondent Party did not contest any of the facts as the applicant had presented them, and provided additional factual information.

33. As to the admissibility of the application, the respondent Party considers the application inadmissible as the applicant could have initiated an administrative dispute before the Cantonal Court in Zenica against the second instance organ’s rejection of her appeal. The applicant failed to initiate this administrative dispute, and has thereby not exhausted domestic remedies. The respondent Party concludes that if not found inadmissible for this reason, then the application should be found inadmissible as manifestly ill-founded, in accordance with Article VIII(2)(c) of the Agreement.

Article 8 of the Convention

34. With regard to Article 8 of the Convention, the respondent Party submits that every interference is not automatically a violation, under the condition that the interference was in accordance with applicable legal provisions. In this case, the Housing Department’s determinations were in accordance with the Law on Cessation provisions on multiple occupancy which provide that a temporary occupant is a multiple occupant if a member of their 1991 family household is still in possession of that housing unit.

35. Finally, the applicant received a housing credit of KM 25,000, which means that the apartment in question can now be used as the home for another family facing eviction. In this way, the applicant’s right, as well as another person’s rights, are both being protected.

Article 6 of the Convention

36. The respondent Party notes that the applicant herself did not raise a potential violation of Article 6 of the Convention. The respondent Party considers that the proceedings before the first and second instance administrative bodies have been conducted in a manner consistent with Article 6 of the Convention.

Article 13 of the Convention

37. With regard to Article 13 of the Convention, the respondent Party points out that a system of appeals is in place and available to the applicant. Specifically regarding the non-suspensive nature of the appeal pertaining to the eviction, the respondent Party agrees with the position of the OSCE *amicus curiae* that the provisions allowing for this in the Law on Cessation are proportional and justified in the interest of the public aim which they pursue.

B. The applicant

38. In her application to the Chamber, the applicant appealed to the Chamber for assistance in resolving her housing situation. She stated that she lived in the apartment in question with her son Amer (born 1990) and that she had concluded a contract on use on 5 April 1997 with the RBiH Army. She asserts that the Housing Department has incorrectly determined the material facts in her case, and by doing so, has violated the Law on Housing Relations.

39. As to the determination by the Housing Department that she is a multiple occupant, she asserts that she is not a multiple occupant because she is no longer living in a household with her deceased husband, and the property of her mother-in-law can not be considered her property under any law, nor is her mother-in-law legally required to share her property with her daughter-in-law.

40. In her observations submitted on 20 January 2003, the applicant notes that the second instance procedural decision of 27 August 2002 refused her appeal but accepted the appeal of the Ministry of Defence, thereby changing the procedural decision so that the apartment was put at the disposal of the Ministry of Defence. The applicant asserts that this change has far-reaching legal consequences and implications on her application before the Chamber with respect to violation of Articles 6, 8 and 13 of the Convention. The applicant alleges that the Housing Department unlawfully initiated the eviction procedure, as the Ministry of Defence, as the owner of the apartment, should have authorised the eviction from the apartment. The impartiality and fairness of the Housing Department is called into question because it unlawfully gave itself the right to allocate the apartment, in violation of the Law on Cessation. As to Articles 8 and 13 of the Convention, the applicant sets out that although she had a formal, legal remedy to the eviction (the appeal), the remedy was not real nor effective, as it did not prevent her eviction nor protect her right to her home. As the remedy exists in form only, her rights to her home were violated by the lack of an effective remedy before a national body.

C. Amici Curiae

1. Organisation for Security and Cooperation in Europe

41. On 5 November 2002, the OSCE submitted its *amicus curiae* opinion on the issues at hand. As to a potential violation of Article 8 of the Convention due to the non-suspensive nature of the eviction, the OSCE holds that such a policy is in keeping with the Convention. With regard to the legitimate aim that such a policy fulfils, the OSCE can find grounds supporting each of the legitimate aims contained in the second paragraph of Article 8 of the Convention. In particular, as to the “rights and freedoms of others,” the OSCE noted:

“The “others”, in this case, are the thousands of pre-conflict owners and occupancy right holders of the properties involved, which should have been returned to them years ago according to the property laws. The practical, (though not legally valid) excuse for this failure is lack of alternative accommodation. Because unclaimed apartments are the most inherently appropriate and readily available form of alternative accommodation (see section III.B.1, below), there is a direct link between the public purpose of protecting the right of pre-conflict owners to repossess their property and the challenged procedure for securing unclaimed apartments as alternative accommodation. In practice, every unclaimed apartment that is made available translates into at least one and possibly numerous repossessions of property of refugees and displaced persons” (OSCE submission of 5 November 2002, p. 4, hereinafter “OSCE submission”).

42. The OSCE underlines the tremendous number of property repossession claims outstanding (over 100,000 as of September 2002), and the legal obligation of the BiH authorities to provide alternative accommodation to those entitled to it. As to the applicant's rights, the OSCE points out that if she had been entitled to revalidate her contract on use, the Law on Cessation provides for such a possibility. Additionally, if she had been entitled to alternative accommodation, she could have submitted the appropriate evidence to the housing body. The OSCE concludes that given the enormity of the problem, the non-suspensive nature of the appeal is a proportional response and necessary in a democratic society to facilitate the property repossession process for displaced persons and refugees.

2. Office of the High Representative

43. On 13 November 2002, the OHR submitted its *amicus curiae* opinion and agreed in full with the OSCE *amicus curiae* submission. The OHR strongly upholds the contention made in the OSCE submission that, "Granting suspensive effect to an appeal...could have the effect of nullifying the provisions allowing housing officials to use unclaimed apartments as alternative accommodation" (the OHR submission of 13 November 2002, quoting the OSCE submission, p.7). The OHR would view with grave concern any arguments in favor of limiting the housing authorities' ability to issue and enforce *ex officio* decisions for the vacation of current occupants not found to be entitled to alternative accommodation, regardless of whether the property is claimed.

VII. OPINION OF THE CHAMBER

A. Admissibility

44. Before considering the merits of the case, the Chamber must decide whether to accept it, taking into account the admissibility criteria set out in Article VIII(2) of the Agreement. Applicable to this case, under Article VIII(2)(a) of the Agreement, the Chamber shall consider, "whether effective remedies exist, and the applicant has demonstrated that they have been exhausted"

45. The Chamber notes that the applicant does not appear to have initiated an administrative dispute before the Cantonal Court against the administrative second instance decision which denied her appeal as ill-founded. For this reason, the Chamber will declare inadmissible the part of her application related to her right to a fair trial under Article 6 of the Convention, as she has not exhausted the domestic remedies in this regard.

46. However, as to the other issues, namely, the determination that she is a multiple occupant, and her subsequent eviction as a result, the Chamber notes that further administrative and court proceedings are futile in this regard, as the eviction has already been carried out. For these reasons, the Chamber considers the application admissible at this time.

47. As there are no other grounds for declaring the application inadmissible, the Chamber declares the application admissible.

B. Merits

48. Under Article XI of the Agreement the Chamber must in the present decision address the question whether the facts found disclose a breach by the respondent Party of its obligations under the Agreement. Under Article I of the Agreement the parties are obliged to "secure to all persons within their jurisdiction the highest level of internationally recognized human rights and fundamental freedoms", including the rights and freedoms provided for in the treaties listed in the Appendix to the Agreement.

49. The Chamber has considered the present case under Articles 8 and 13 of the Convention.

1. Article 8 of the Convention

50. Article 8 of the Convention provides as follows:

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

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.”

a) Is the applicant’s apartment a “home” within the meaning of the Convention?

51. The applicant and her son had been living in the apartment in question since August 1994, when she was allocated the apartment by the then R BiH Army upon the death of her husband. Without need to further analyse her legal relationship with the apartment in question, the Chamber determines that the apartment in question was the applicant’s “home” for the purposes of Article 8 of the Convention.

b) Is there an interference by a public authority with the exercise of the applicant’s right to respect for her “home”?

52. The Housing Department issued a procedural decision ordering the applicant to leave the apartment in 15 days as she was determined to be a multiple occupant. Thereafter, a conclusion on enforcement was issued authorising the implementation of that procedural decision, and an eviction was ordered for 14 June 2002. The procedural decision and resulting eviction clearly constitute an interference within the meaning of Article 8 of the Convention.

53. The Chamber recalls that the conditions upon which a state may interfere with the right to respect for one’s home are set out in the second paragraph of Article 8 of the Convention. It must accordingly be determined whether the interference in question satisfied the conditions in paragraph 2, that is to say was “in accordance with the law”, in the interests of one or more of the legitimate aims listed, and “necessary in a democratic society” for achieving them. Therefore, a proper balance needs to be achieved between the legitimate aim pursued and the means employed.

c) Is the interference lawful?

54. The Chamber observes that domestic legality is a necessary condition for the justification of an interference with Article 8 of the Convention and that in order to be “in accordance with law” the interference must have a legal basis and the law in question must contain a measure of protection against arbitrariness by public authorities. The European Court of Human Rights has considered that the words “in accordance with a procedure prescribed by law” essentially refer back to domestic law; they state the need for compliance with the relevant procedure under that law (see CH/02/9130, *Samardžić*, decision on admissibility and merits delivered on 10 January 2003, paragraph 46).

55. The interference in question was in accordance with the Law on Cessation, as Article 11, paragraph 4, point 3, outlines that a current occupant is a multiple occupant when that current occupant has a member of his or her family household of 30 April 1991 who is in possession of the 1991 home. Article 11, paragraph 4, point 5, also states that a current occupant is a multiple occupant if a member of his or her family household has accommodation in the same city or municipality. Article 11 also clearly defines that, “family household shall mean all members of the family household as of 30 April 1991”. Article 8 of the Law on Cessation provides that an appeal shall not stop the enforcement of a decision (see paragraphs 26-28 above).

56. In a statement made for the record on 25 September 2001, the applicant informed the Housing Department that on 30 April 1991 she lived together with her family at Gradac 19 in Zenica, the home of her mother-in-law. It appears that her mother-in-law continues to live in the same home

in Zenica, which makes her a “multiple occupant” for the purposes of the Law on Cessation. The Chamber concludes that the actions of the Housing Department were in accordance with the law.

57. The applicant alleges that the eviction was unlawful because the housing department had no right to initiate an eviction procedure for an apartment owned by the Ministry of Defence. However, the Chamber does not agree with this interpretation. The Law on Cessation provides that claims for repossession shall be submitted to the municipal administrative authority responsible for housing affairs (Article 4). Additionally, the Instruction on Application of the Law on Cessation notes in point 38 that the municipal authority responsible for housing shall be competent to receive and decide on claims for return to apartments at the disposal of the Federation Ministry of Defence, in accordance with Article 3 and Article 3a of the Law on Cessation. Following the issuance of a decision, the same competent body is required to execute the decision. Any exceptions related to military apartments are duly noted in the Law on Cessation, and there is no exception which would exempt the Housing Department from pursuing proceedings against the applicant as a double occupant and issuing and enforcing the procedural decision against her (see paragraphs 24-29 above).

d) Does the interference pursue a legitimate aim?

58. The Chamber notes that the right of displaced persons and refugees to repossess and return to their pre-war property is a central objective of the Dayton Peace Agreement. It further notes that the Law on Cessation is based on the recognition that the failure to return property to rightful owners or occupancy right holders represents a violation of the right to peaceful enjoyment of possessions under Article 1 of Protocol No. 1 to the Convention. The Law acknowledges that return of property is essential to the creation of durable solutions for refugees and displaced persons.

59. The Chamber refers to the *amicus curiae* submission of the OSCE, which outlines the purposes of the particular provisions in the Law on Cessation relevant to the facts at hand. The OSCE submits that the provisions in the Law on Cessation authorising such an eviction are aimed at protecting the “rights and freedoms of others” (see paragraph 41 above).

60. Thus, despite the fact that the applicant’s eviction was not facilitating the return of the pre-war occupancy right holder to the apartment, the apartment should nevertheless be used to provide much-needed alternative accommodation for persons who are legally entitled. This will in turn facilitate the return of displaced persons and refugees to their pre-war homes. The Chamber can accept that this is a legitimate aim of the legal provisions in question.

e) Is the interference necessary in a democratic society?

61. The Chamber must consider whether the interference in question strikes the proper balance between the aim of protecting the “rights and freedoms of others”, and the applicant’s right to respect for her home. This analysis should take into account (i) the urgency of the legitimate interest pursued, (ii) the burden placed on the applicant and (iii) the procedural safeguards afforded to the applicant. In balancing these elements the Chamber will also take into due account the margin of appreciation the respondent Party enjoys in this area of social policy.

i. The urgency of the legitimate aim pursued

62. The OSCE reports that as of September 2002 nearly 100,000 property claims remain unresolved, which represents “up to 100,000 families who still remain displaced and unable to repossess their pre-war homes” (OSCE submission, p. 10). The Chamber recalls that the housing authorities are obligated to provide alternative accommodation to those legally entitled to it, although lack of alternative accommodation should not prevent the enforcement of a decision granting the pre-war occupancy right holder or owner the right to return to their home. In practice however, the Chamber is aware that housing authorities are reluctant to implement a decision if it requires evicting a family who is entitled to alternative accommodation, when no alternative accommodation is available. This lack of alternative accommodation is the primary obstacle in the resolution of the outstanding property claims. As the OSCE states,

“...Every unclaimed apartment made available is a precious resource, allowing additional cases to be solved with minimum budgetary expenditure and maximum speed. In turn, each case solved brings BiH one step closer to resolving its greatest ongoing human rights violation and allows one family to freely exercise its Annex 6 and 7 right.

Granting suspensive effect to an appeal of a housing authority determination of multiple occupancy could have the effect of nullifying the provisions allowing housing officials to use unclaimed apartments as alternative accommodation. Most temporary users could be expected to appeal (particularly if doing so would allow them to remain in the unclaimed apartment) and the appeals process in the Federation can last for months and even years“ (the OSCE submission, p. 7).

63. The Chamber concludes that there is a pressing and extensive social need for unclaimed apartments to be used as alternative accommodation to facilitate the resolution of the outstanding claims for repossession.

ii. The burden placed on the applicant

64. In balancing the rights of the applicant with the “rights and freedoms of others”, the Chamber recalls that under national laws, the housing needs of the applicant are considered to be met by the fact that she could live in her 1991 family household, which is also located in Zenica. The Chamber notes that the availability of her mother-in-law’s home, particularly after the death of her husband nearly nine years ago, may not sufficiently ease the hardship of the eviction. However, after she had already been declared a multiple occupant by the Housing Department and ordered to vacate the apartment, she also received a substantial housing loan from the Zenica-Doboj Canton government. The Chamber finds that the housing loan significantly reduced the burden of the eviction on the applicant.

iii. The procedural safeguards afforded to the applicant

65. The OSCE submission contends that the applicant has had ample opportunity to demonstrate grounds for entitlement to alternative accommodation as well as grounds for entitlement to revalidation of any wartime contract on use, either of which would have prevented her eviction. The Chamber notes that the applicant admitted orally in a hearing-like setting before the Housing Department that before the war she lived with her mother-in-law in Zenica. This means that she is not entitled to alternative accommodation, or revalidation of the contract on use. Nevertheless, the Chamber takes note that the Law on Cessation includes provisions for those who do not have other accommodation available to them (for example, Article 2 paragraph 4 and Article 18d, see paragraphs 22 and 29 above). The Chamber concludes that sufficient procedural safeguards existed surrounding the determination that the applicant was not entitled to alternative accommodation and her subsequent eviction.

iv. Conclusion

66. The Chamber considers that the particular legislation in question, allowing the *ex officio* determination of the applicant as a double occupant of an unclaimed apartment, with no right to alternative accommodation, and barring the suspensive effect of her appeal against this determination, are all measures which serve the significant public interest of providing alternative accommodation in order to resolve the thousands of outstanding housing claims in the most efficient manner possible. Given the margin of appreciation afforded to the respondent Party in this area of social policy, the Chamber concludes that the aim pursued and the means employed are on the whole proportional, and that, therefore, there has been no violation of the applicant’s right to respect for her home under Article 8 of the Convention.

2. Article 13 of the Convention

67. 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.”

68. At the outset, the Chamber recalls that it is not necessary for the applicant to show an actual violation of one of her Convention rights; it is sufficient that she has an arguable claim that such a violation has occurred (see, case no. CH/97/40, *Galić*, decision on the merits delivered on 12 June 1998, Decisions and Reports 1998, p. 149 et seq., paragraph 53 et seq., with further reference to case law of the European Court). As the present applicant has an arguable claim that the right to respect for her home has been violated, the Chamber will consider whether her rights under Article 13 of the Convention were violated in connection with her claim under Article 8 of the Convention, although it has not found a violation of Article 8 in isolation.

69. The jurisprudence of the European Court reveals several principles related to Article 13 of the Convention which may be relevant to the facts at hand. As set forth in *Aydin v. Turkey*, (Eur. Ct. HR, judgment of 25 September 1997 *Reports of Judgments and Decisions* 1997, paragraph 103) Article 13 of the Convention “guarantees the availability at the national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order, although Contracting States are afforded some discretion as to the manner in which they conform to their obligations under this provision. The scope of the obligation under Article 13 varies depending on the nature of the applicant’s complaint under the Convention.” No single remedy must entirely satisfy the requirements of Article 13 of the Convention, but the aggregate of remedies provided for under domestic law must do so (Eur. Ct. HR, *Silver and Others v. the United Kingdom*, judgment of 25 March 1983, Series A, no. 61, paragraph 113).

70. In the present case, the applicant argues that, although she filed an appeal against the procedural decision ordering her eviction, she had no immediate remedy to stop the eviction. The Chamber notes that it has already determined that the legislation in question, including its effects on the applicant, is compatible with the substantive provisions of the Convention. The applicant has the right to appeal the procedural decision and, *ex post facto*, the applicant could bring an action in court seeking remedies if it was later determined that she was wrongfully evicted from the apartment in question. In this manner, the applicant’s rights could be fully restored to her. This being the case, the Chamber concludes that in the aggregate, the applicant has sufficient remedies available to her within the meaning of Article 13 of the Convention.

71. In light of the above, the Chamber concludes that the applicant’s rights have not been violated under Article 13 of the Convention.

VIII. CONCLUSION

72. For the reasons given above, the Chamber, decides as follows:

1. unanimously, to declare the application admissible with regard to Articles 8 and 13 of the European Convention on Human Rights;
2. unanimously, that the application is not admissible with respect to the complaint under Article 6 of the European Convention on Human Rights;
3. by 11 votes to 2, that the Federation of Bosnia and Herzegovina has not violated the applicant’s right to respect for her home under Article 8 of the European Convention on Human Rights;
4. unanimously, that the Federation of Bosnia and Herzegovina has not violated the applicant’s right to an effective remedy under Article 13 of the European Convention on Human Rights.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the Chamber

Annex Partly dissenting opinion of Mme. Michèle Picard

ANNEX

In accordance with Rule 61 of the Chamber's Rules of Procedure, this Annex contains the partly dissenting opinion of Mme. Michèle Picard.

PARTLY DISSENTING OPINION OF MME. MICHELE PICARD

I disagree with the majority of the Chamber for the following reasons:

According to the Law on Cessation, all occupancy rights obtained over socially-owned abandoned properties during the armed conflict and until 1998, are automatically cancelled. Nevertheless, the occupants have the possibility to obtain a new contract or an extension of their temporary right to use the apartment if they have no other accommodation available, as long as the pre-war occupancy right holder has not filed a claim for repossession. These provisions were issued to allow pre-war occupancy right holders to return to their pre-war homes and, by doing so, to reverse the "ethnic cleansing" that occurred during the armed conflict. In such cases, when there is a pre-war occupancy right holder, the Chamber has always been of the opinion that the eviction proceedings of the "illegal" or temporary occupants could be entirely dealt with at the administrative level instead of the judicial level, because otherwise it would not have been possible to achieve this aim. Indeed, the courts have not been functioning efficiently, and it would have taken years for displaced persons to return to their pre-war homes if a court decision was required. The efficiency of the process appeared more important to the Chamber than the procedural safeguards. This opinion is disputable, especially considering the amount of time that has elapsed since the end of the armed conflict, but I agree with it in light of the factual situation.

In the case of *Kulovac*, the applicant was *ex officio* found to be an illegal occupant, with no right to alternative accommodation. In accordance with Article 3 paragraph 3 of the Law on Cessation, the applicant was denied the right to remain in the apartment. In the case of *M.H.*, the applicant was found to be a multiple occupant with no right to alternative accommodation. The applicant was denied the right to remain in the apartment on the basis of Articles 11 and 18d of the Law on Cessation, which provide that a multiple occupant is a person who uses the apartment although a member of his/her family household is in possession of his/her 1991 home or a person who has a member of his/her family household with accommodation anywhere in the territory of the Federation of Bosnia and Herzegovina. In such cases, only the administrative authorities are entitled to evict the multiple or illegal occupants. These provisions are aimed at preventing abuses and expediting the return process, given that there are not enough apartments to house everybody in need of housing. These vacated apartments are then to be used as alternative accommodation for those in need of housing in accordance with the Law on Cessation.

The cases of *Kulovac* and *M.H.* differ from previous decisions of the Chamber in that there is no pre-war occupancy right holder who wishes to return to the apartments at issue. Consequently, the decisions taken by the administration involve completely its own assessment of the facts, that is, the determination of whether the applicant is a multiple or illegal occupant and the subsequent allocation of the apartment as alternative accommodation. This is the first time that the Chamber has assessed the compatibility of these procedures with the European Convention on Human Rights (the "Convention").

In practice, it is neither clear nor precisely defined how the administration should decide which apartments, among the unclaimed ones, should be vacated by multiple or illegal occupants and thereafter allocated to third parties in need of housing as alternative accommodation. There are no adversarial proceedings, nor any opportunity for the temporary occupant to be heard before the court or to seek suspension of his or her eviction. In fact, there is no control at all over these decisions.

I am of the opinion that these evictions violate Article 8 of the Convention because of the lack of proportionality of such procedures in a democratic society.

There is no doubt, as the Chamber has found, that there has been an interference with the applicants' rights to their home. As to the lawfulness of this interference, it is, in my mind,

questionable. Although it is clear that the law provides for such administrative procedures, the quality of the national legal rules vis-à-vis the Convention is not ensured, as it does not eliminate any risk of arbitrariness. But, notwithstanding this aspect, above all I believe that such procedures are not necessary in a democratic society. While I concede that these interferences pursue a legitimate aim, that is to provide alternative accommodation to those in need, I am concerned that there are no provisions in the law affording adequate and effective safeguards against the abuse of the administration. The housing authorities have been granted exceedingly wide powers, as they have exclusive competence to make the determinations of who constitute multiple or illegal occupants and to implement the evictions, without any judicial decision or adversarial proceedings. The total absence of any control, that is the requirement of a judicial decision, makes the interferences with the applicants' rights disproportionate to the legitimate aim pursued (see *mutatis mutandis*, *Klass v. Germany*, judgment of 6 September 1978, Series A no. 28, paragraph 55; and *Funke v. France*, judgment of 25 February 1993, Series A no. 256-A).

In the present decisions, the Chamber agrees with the opinion of the OSCE as *amicus curiae* that the urgency of the legitimate aim should prevail over the procedural safeguards, as "allowing appeals suspending evictions would have the effect of nullifying the provisions allowing housing officials to use unclaimed apartments as alternative accommodation", because the "appeals process in the Federation can last for months and even years" and because the housing authorities are in general reluctant to evict families entitled to alternative accommodation when no alternative accommodation is available. In my mind, the fact that the courts do not function properly is not grounds to give unlimited powers to the administrative organs. This is particularly so when one knows that the administrative organs are themselves potentially corrupt, and when the returns process has only become possible due to intense pressure from the international community. It would have been more in accordance with the Convention to provide for a specific short judicial adversarial proceeding in these matters with a deadline for the courts to decide the cases expeditiously, as such procedures exist in most other countries.

Concerning these two cases, it is important to note that, before the armed conflict, one of the applicants was living with her parents and the other was married and living with her mother-in-law. Her husband died during the armed conflict, and now she is alone and unemployed. Both applicants have been evicted in order to provide alternative accommodation for families in need, but it is in fact impossible to control whether their apartments have been used for that purpose. In fact, M.H. was evicted on 14 June 2002, and apparently the apartment was given to another family only in January 2003. The urgency of the eviction does not appear evident to me. As for Kulovac, she left the apartment in December 2002, and she has informed the Chamber that the apartment was allocated in December 2002, but to persons not entitled to alternative accommodation. Although I have no more information about these facts, I believe that if there had been judicial proceedings where a judge would have decided to evict the applicants in order to allocate the apartments as alternative accommodation to specific families, then these doubts clouding the whole process would not be possible.

In conclusion, I believe that after seven years, it is time now for Bosnia and Herzegovina to apply the Convention. I also take note that no reservations or interpretative declarations were made with regard to Article 8 of the Convention in relation to the housing laws when the instrument of ratification was deposited with the Council of Europe in July 2002.

(signed)
Michèle Picard