



DECISION ON ADMISSIBILITY AND MERITS

Case no. CH/03/14304

Smail LAĐAREVIĆ

against

THE REPUBLIKA SRPSKA

The Human Rights Commission within the Constitutional Court of Bosnia and Herzegovina, sitting in plenary session on 4 November 2004 with the following members present:

Mr. Jakob MÖLLER, President
Mr. Miodrag PAJIĆ, Vice-President
Mr. Želimir JUKA
Mr. Mehmed DEKOVIĆ
Mr. Andrew GROTRIAN

Mr. J. David YEAGER, Registrar
Ms. Olga KAPIĆ, Deputy Registrar
Ms. Meagan HRLE, Deputy Registrar

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

Noting that the Human Rights Chamber for Bosnia and Herzegovina ("the Chamber") ceased to exist on 31 December 2003 and that the Human Rights Commission within the Constitutional Court of Bosnia and Herzegovina ("the Commission") has been mandated under the Agreement pursuant to Article XIV of Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina entered into on 22 and 25 September 2003 ("the 2003 Agreement") to decide on cases received by the Chamber through 31 December 2003;

Adopts the following decision pursuant to Articles VIII(2) and XI of the Agreement, Articles 5 and 9 of the 2003 Agreement, and Rules 50, 54, 56 and 57 of the Commission's Rules of Procedure:

I. INTRODUCTION

1. The applicant, who is of Bosniak origin, complains that he is unable to repossess his pre-war apartment located in Bosanska Dubica, Republika Srpska. The applicant complains that his request for enforcement of a CRPC decision in his favour was rejected as out of time by the Ministry of Displaced Person and Refugees. The applicant states that he received the CRPC decision after the time limit for requesting enforcement had expired.

2. The applicant complains that his rights protected under Articles 8 and 14 of the European Convention on Human Rights ("the Convention") and Article 1 of Protocol No. 1 to the Convention have been violated.

II. PROCEEDINGS BEFORE THE CHAMBER AND COMMISSION

3. The application was introduced before the Chamber on 24 June 2003 and registered on the same day. The applicant requested the Chamber to issue an order for enforcement of the decision of the Commission for Real Property Claims of Displaced Persons and Refugees ("the CRPC") of 12 November 1998 because he was not able to submit the request within the time limit.

4. On 17 November 2003 the Chamber sent a letter to the respondent Party requesting information on whether the applicant had repossessed the apartment.

5. On 1 December 2003 the respondent Party submitted information that the applicant was not reinstated into the apartment because he failed to submit a timely request for enforcement of the CRPC decision.

6. The applicant sent a letter that the Commission received on 11 May 2004, requesting information on the status of the proceedings upon his application before the Commission.

7. The Commission then asked the applicant to provide information on when the CRPC decision was delivered to him and whether the decision upon his appeal has ever been delivered to him.

8. On 31 August 2004 the applicant replied to the Commission.

9. On 1 October 2004 the Commission transmitted the case to the respondent Party under Articles 6 and 8 of the Convention and Article 1 of Protocol No. 1 to the Convention. The respondent Party was invited to submit its written observations within 15 days.

10. On 18 October 2004 the respondent Party submitted its written observations, which were transmitted to the applicant.

11. No responsive comments had been sent by the applicant by the time of the adoption of the present decision.

12. The Commission deliberated on the case on 8 September 2004, 1 November 2004, and 4 November 2004. On the latter date it adopted the present decision.

III. FACTS

13. The applicant was the occupancy right holder over an apartment at St. Đurđevdanska 3, in Bosanska Dubica, the Republika Srpska.

14. On an unknown date the applicant filed a request for repossession of the apartment before the CRPC.

15. The CRPC adopted a decision on 12 November 1998, confirming that the applicant was the occupancy right holder and allowing him to repossess the apartment.

16. The CRPC sent a notice to the applicant at his address in Berlin, Germany, informing him that the CRPC had adopted a decision and that he should “immediately” take it to the CRPC Central Regional Office in Sarajevo. The notice is dated 23 October 2000. It also states that, in accordance with the Law on Enforcement of CRPC Decisions, a request for enforcement should be submitted before the competent ministry at the latest by 28 October 2000. The notice establishes that if the request is not submitted with the time limit, the applicant would lose the right to repossess the apartment.

17. According to the applicant’s allegations, the CRPC letter was delivered to him on 30 October 2000.

18. On 7 December 2000 the applicant, through a representative, filed a request for enforcement of the CRPC decision with the Ministry for Refugees and Displaced Persons in Bosanska Dubica, Republika Srpska (“the Ministry”).

19. On 19 February 2002 the Ministry issued a procedural decision rejecting the applicant’s request as out of time.

20. On 4 March 2002 the applicant filed an appeal against this procedural decision. A decision upon the appeal has not been issued yet.

IV. RELEVANT LEGISLATION

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

21. The General Framework Agreement was signed by the Republic of Bosnia and Herzegovina, the Republic of Croatia, and the Federal Republic of Yugoslavia (“the Parties”) in Paris on 14 December 1995. Annex 7 to the General Framework Agreement deals with refugees and displaced persons, and in accordance with Article VII of Annex 7, an Independent Commission for Displaced Persons and Refugees, later renamed the Commission for Real Property Claims of Displaced Persons and Refugees, (“the CRPC”), was established.

22. The CRPC’s mission was to receive and decide on 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 the property (Article XI). The CRPC was to determine the lawful owner of the property—a concept that the CRPC construed to include an occupancy right holder—according to Article XII(1). According to Article XII(7) the decisions of CRPC are final, and any title, deed, mortgage, or other legal instrument created or awarded by the CRPC shall be recognized as lawful throughout Bosnia and Herzegovina.

23. The Parties are obliged to 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 (“Law on Implementation of CRPC Decisions”)

24. **The Law on Implementation of CRPC Decisions (Official Gazette of the Republika**

Srpska nos. 31/99, 2/00, 39/00, 65/01, 13/02 and 39/03) provides that 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). CRPC decisions shall be enforced if a request for the enforcement has been filed with the relevant organ. The following persons are entitled to file such a request: (1) The right holder specified in the CRPC decision and his/her heirs relating to real property owned by citizens (Article 4, paragraph 1) and relating to apartments for which there is an occupancy right; and (2) 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. Article 5, paragraph 2 of the Law, which came into force on 28 October 1999 and was published in the Official Gazette of the Republika Srpska no. 31/99 on 12 November 1999, provides as follows:

“A request for enforcement of a decision of the Commission confirming occupancy rights must be submitted within a year from the date when the Commission decision was issued namely for decisions issued before this Law came into force within a year from the date this Law came into force.”

26. On 28 October 2000 the High Representative issued a Decision amending Article 5, paragraph 2 of the Law on Enforcement of CRPC Decisions, which came into force with immediate effect and published in Official Gazette of the Republika Srpska no. 39/00 on 16 November 2000. It provides as follows:

“A request for enforcement of a decision of the Commission confirming occupancy rights must be submitted within eighteen months from the date when the Commission decision was issued namely for decisions issued before this Law came into force within eighteen months from the date this Law came into force.”

27. On 12 December 2001 the High Representative issued a Decision amending Article 5, paragraph 2 of the Law on Enforcement of CRPC Decisions, which was published in the Official Gazette of the Republika Srpska no. 65/01 on 21 December 2001, came into force eight days after publication, and reads as follows:

“A request for enforcement of a decision of the Commission confirming occupancy rights must be submitted within eighteen months from the date when the Commission decision was issued.”

28. Article 7 of the Law, which went into force on 28 October 1999 and was published in the Official Gazette of the Republika Srpska no. 31/99 on 12 November 1999, provides as follows:

- “(1) The administrative organ responsible for enforcement of a Commission 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.
- (2) The administrative organ which is responsible for enforcement of decisions of the Commission shall not require any confirmation of the enforceability of the decision from the Commission or from any other body.
- (3) The administrative organ which is responsible for enforcement of a decision of the Commission shall obtain all necessary information about the identity of the enforcee (as defined in Article 9 of this Law), together with details of the legal basis, if any, on which the enforcee is inhabiting the property or apartment.
- (4) The conclusion referred to in paragraph 1 of this Article shall contain:

- a decision on repossession of the property or apartment by the right holder or other requestor for enforcement;
 - a decision terminating the right of the temporary user (where there is one) to use the property or apartment;
 - a time limit for the enforcee to vacate the property;
 - a decision on whether the enforcee is entitled to accommodation in accordance with applicable laws;
 - 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.
- (5) The time limit for vacating the property shall be the minimum time limit applicable under the Law on Cessation of the Application of the Law on Temporarily Abandoned Real Property Owned by Citizens and the Law on Cessation of the Application of the Law on Abandoned Apartments. No extension of this time limit shall be permitted.
- (6) In case a requestor for enforcement has commenced proceedings for enforcement of a decision issued by the responsible administrative organ in relation to the same property or apartment under the Law on Cessation of the Application of the Law on Temporarily Abandoned Real Property owned by Citizens or under the Law on Cessation of the Application of the Law on Abandoned Apartments, and this person subsequently submits the decision of the Commission for enforcement, the responsible administrative organ shall join the proceedings for enforcement of both decisions. The date on which the person commenced enforcement proceedings for the first decision shall be considered, for the purposes of this Law, the date of submission of the request for enforcement."

29. Article 7, paragraph 6 was amended on 12 December 2001 by a decision of the High Representative and was published in the Official Gazette of the Republika Srpska on 21 December 2001. It went into force eight days after publication and provides as follows:

"In case a requestor for enforcement has commenced proceedings for enforcement of a decision issued by the responsible administrative organ in relation to the same property or apartment under the Law on Cessation of the Application of the Law on the Use of Abandoned Property, and this person subsequently submits the decision of the Commission for enforcement, the responsible administrative organ shall join the proceedings for enforcement of both decisions and issue the conclusion permitting enforcement in accordance with this Article...."

V. COMPLAINTS

30. The applicant complains that he has not been able to submit a request for enforcement of the CRPC decision because he only received the CRPC decision when the time had already expired. The applicant complains that he did not know anything about those deadlines and the laws because he is not educated. The applicant requests compensation for pecuniary and non-pecuniary damages in the total amount of 6,000 Convertible Marks.

VI. SUBMISSIONS OF THE PARTIES

A. The respondent Party

1. As to the admissibility

31. The respondent Party states that the applicant's statement that his complaint has not been solved is well-founded, but that he could have initiated an administrative dispute before the Supreme Court of the respondent Party because of the "silence of the administration".

32. The then-applicable Law on Administrative Disputes, Article 26, stated that when the second instance organ has not decided upon the appeal of a party against the first-instance procedural decision within the 60-day time limit, and within seven more days upon a repeated request, the party may initiate an administrative dispute as if the appeal was rejected.

33. Because of this, the respondent Party proposes that the application in relation to the alleged violation of Article 6 of the Convention be declared inadmissible for non-exhaustion of domestic remedies.

34. As to the alleged violation of Article 8 of the Convention in conjunction with Article 1 of Protocol No. 1 to the Convention, the respondent Party also proposes to declare it inadmissible as manifestly ill-founded.

2. As to the facts

35. The respondent Party considers the facts stated in the application disputable and contrary to themselves. For example, in the statement of facts, first paragraph, the applicant alleges that he submitted his request for repossession of the apartment within the time limit, but in the third paragraph he alleges that he did it "after the expiry of the time limit for submission of the request for enforcement". In the opinion of the respondent Party, the applicant could have known about the issuance of the decision because, at the moment he submitted his request to the CRPC, he could have submitted his letter of authorization.

3. As to the merits

36. As to Article 6, the respondent Party asserts that it has not prevented the applicant from initiating an administrative dispute before the Supreme Court regarding the actions of the second instance organ. The respondent Party therefore proposes to declare the application inadmissible in relation to Article 6 of the Convention.

37. As to the alleged violation of Article 8 of the Convention in conjunction with Article 1 of Protocol No. 1 to the Convention, the respondent Party also proposes to reject the application in the merits as ill-founded because the applicant himself claims that he submitted the request for enforcement of the CRPC decision on 7 December 2000, after the expiry of the time limit prescribed by Article 5, paragraph 2 of the Law Amending the Law on Implementation of CRPC Decisions. Thus, the Ministry for Refugees and Displaced Persons acted in accordance with the law and did not violate Article 8 of the Convention.

38. The respondent Party argues that the same argument applies to the alleged violation of Article 1 of Protocol No. 1 to the Convention by analogy. The actions of the organs of the respondent Party were taken "under conditions prescribed by law", and therefore the respondent Party urges the Commission to reject this part of the application as ill-founded on the merits.

4. As to compensation

39. As part of his compensation claim, the applicant seeks 5,000 Convertible Marks for mental suffering because he was put into an unequal position in relation to all other citizens of Bosnia and Herzegovina but he provides no facts or evidence of what actions of the respondent Party constituted discrimination against him. If the problem was the untimely delivery of the CRPC decision, or information on the issuance of it, the respondent Party argues that responsibility cannot be attributed to the respondent Party but only to the CRPC. Therefore, the respondent Party considers the compensation claim manifestly ill-founded.

B. The applicant

40. No further submissions were received from the applicant.

VII. OPINION OF THE COMMISSION

A. Admissibility

41. The Commission recalls that the application was introduced to the Human Rights Chamber under the Agreement. As the Chamber had not decided the application by 31 December 2003, in accordance with Article 5 of the 2003 Agreement, the Commission is now competent to decide on the application. In doing so, the Commission shall apply the admissibility requirements set forth in Article VIII(2) of the Agreement. Moreover, the Commission notes that the Rules of Procedure governing its proceedings do not differ, insofar as relevant for the applicant's case, from those of the Chamber, except for the composition of the Commission.

1. Non-exhaustion of domestic remedies

42. According to Article VIII(2)(a) of the Agreement, the Commission must consider whether effective remedies exist and whether the applicants have demonstrated that they have been exhausted. In *Blentić* (case no. CH/96/17, decision on admissibility and merits of 5 November 1997, paragraphs 19-21, Decisions on Admissibility and Merits 1996-1997), the Chamber considered this admissibility criterion in light of the corresponding requirement to exhaust domestic remedies in the former Article 26 of the Convention (now Article 35(1)). The European Court of Human Rights ("the European Court") 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 European 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 the personal circumstances of the applicants. In previous cases the Chamber has held that the burden of proof is on the respondent Party to satisfy the Chamber that there was a remedy available to the applicant both in theory and in practice (see, e.g., case no. CH/96/21, *Čegar*, decision on admissibility of 11 April 1997, paragraph 12, Decisions March 1996-December 1997).

43. In the present case, the respondent Party considers the application inadmissible with regard to Article VIII(2)(a) of the Agreement for non-exhaustion of domestic remedies. The Commission notes that the respondent Party states that the applicant has failed to initiate appeal proceedings against the "silence of the administration".

44. The Commission notes that the applicant filed a request with the CRPC with a view to being reinstated into his apartment. The CRPC adopted a decision confirming his occupancy right, from which it follows that he was entitled to seek execution of the CRPC decision. The Ministry issued a procedural decision on 19 February 2002 rejecting the applicant's request (dated 7 December 2000) for enforcement of the CRPC decision. The applicant appealed against this procedural

decision, and the appeal proceedings are still pending. Accordingly, the enforcement proceedings have already lasted four years. In these circumstances, the Commission is satisfied that the applicant could not be required, for the purposes of Article VIII(2)(a) of the Agreement, to pursue any further remedy provided by domestic law.

2. Conclusion as to admissibility

45. The Commission finds no other grounds for declaring the case inadmissible. Accordingly, the Commission declares the application admissible.

B. Merits

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

1. Article 8 of the Convention

47. The Commission will first examine if there has been a violation of Article 8 of the Convention in that the applicant was prevented to return to his home. The relevant parts of Article 8 provide as follows:

- "1. Everyone has the right to respect for ... his home....
- "2. There shall be no interference by a public authority with the exercise of this right except such as in accordance with the law...."

48. The Commission notes that the applicant used to live in his apartment and used it as his home until he was forced to leave. The Chamber previously held that the links that persons in similar situations to the applicant in the present case retained to their dwellings were sufficient for them to have those dwellings be considered to be their "homes" within the meaning of Article 8 of the Convention (see case no. CH/97/58, *Onić*, decision on admissibility and merits of 12 January 1999, paragraph 48, Decisions January-July 1999, paragraph 48; and case no. CH/97/46, *Kevešević*, decision on the merits of 15 July 1998, paragraphs 39-42, Decisions and Reports 1998).

49. Therefore, the applicant's pre-war apartment is to be considered as his home for the purposes of Article 8 of the Convention.

50. In the present case, the Commission recalls that the CRPC adopted a decision confirming the applicant's right to repossess his apartment. The CRPC decision was adopted on 12 November 1998. According the Law on Implementation of CRPC Decisions, the time limit for requesting enforcement of a CRPC decision issued before the Law went into the force expired on 28 October 2000. On the same date, according to a decision of the High Representative amending the Law on Implementation of CRPC Decisions, this time limit was extended for six months. The applicant requested the administrative organ to issue a decision allowing execution of the CRPC decision on 7 December 2000. The Commission recalls that on 28 October 2000, by a decision of the High Representative that came into force with immediate effect, the deadline for submitting the request was extended by six months (see paragraph 26 above). In light of this circumstance, it is clear that the applicant submitted his request within the time limit. The applicant has been unable to regain possession of his apartment due to the failure of the authorities of the Republika Srpska to deal effectively, in accordance with the Republika Srpska Laws, with his request for the enforcement of the CRPC decision. The result of the inaction of the Republika

Srpska is that the applicant cannot return to his home, which is an ongoing interference with the applicant's right to respect for his home.

51. The Commission must next examine whether this interference, which is ongoing, is in accordance with paragraph 2 of Article 8 of the Convention.

52. According to Article 7 of the Law on Implementation, the competent administrative organ is obliged to issue a conclusion authorising the enforcement of a CRPC decision within 30 days from the date of the request for such enforcement. The procedural decision rejecting the applicant's request was issued on 19 February 2002, more than fourteen months after the request. Thus, the failure of the competent administrative organ to decide upon that request was not "in accordance with the law". In the meantime the Law has been changed and the request has been erroneously rejected as out of time.

53. Because the interference with the applicant's right to respect for his home referred to above was not "in accordance with the law", it is not necessary for the Commission to examine whether it pursued a "legitimate aim" or is "necessary in a democratic society".

54. In these circumstances, the Commission concludes that there has been a violation of the applicant's right to respect for his home as guaranteed by Article 8 of the Convention.

2. Article 1 of Protocol No. 1

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

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

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

56. The Commission notes that the applicant is the holder of the occupancy right over the apartment. Regarding occupancy rights over apartments, the Chamber has previously held as follows:

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

(case no. CH/96/28, *M.J.*, decision on admissibility and merits of 3 December 1997, paragraph 32, Decisions on Admissibility and Merits 1996-1997).

57. Accordingly, the Commission considers that the applicant's right in respect of the apartment constitutes a "possession" for the purposes of Article 1 of Protocol No. 1 to the Convention.

58. The Commission considers that the respondent Party's decision preventing the applicant from regaining possession of the apartment constitutes an "interference" with the right to peaceful enjoyment of that possession. This interference is ongoing because the applicant still does not enjoy possession of the apartment.

59. The Commission must therefore examine whether this interference can be justified. For this to be the case, it must be in the public interest and subject to conditions provided for by law. This

means that the deprivation must have a basis in national law and that the law concerned must be both accessible and sufficiently precise.

60. As the Commission noted, in the context of its examination of the case under Article 8 of the Convention, Article 7 of the implementation Law states that the competent administrative organ is obliged to issue a conclusion authorising the execution of the decision within 30 days from the date of a request for such enforcement. It follows that the failure of the competent administrative organ to decide upon the applicant's request is contrary to the law. This is in itself sufficient to justify a finding of a violation of the applicant's right to peaceful enjoyment of his possessions as guaranteed by Article 1 of Protocol No. 1. Accordingly, the rights of the applicant under this provision has been violated.

3. Article 6 of the Convention

61. Article 6 of the Convention, insofar as relevant, provides 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...."

62. The applicant alleges violation of his rights as guaranteed by this provision.

63. The Commission, considering that it has found violations of the applicant's rights projected by Article 8 of the Convention and Article 1 of Protocol No. 1 to the Convention, does not consider it necessary to examine the case under Article 6 of the Convention.

4. Conclusion as to the merits

64. In summary, the Commission finds that the respondent Party has violated the human rights of the applicant protected by Article 8 of the Convention and Article 1 of Protocol No. 1 to the Convention. The Commission does not consider it necessary to examine the application separately under Article 6 of the Convention.

VIII. REMEDIES

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

66. In his submissions, the applicant asked the Chamber to issue a decision ordering the respondent Party to implement the CRPC decision. The applicant also requested compensation for non-pecuniary damages in the amount of 5000.00 KM and compensation for costs and expenses in trying to prevent the human rights violation in the amount of 1000.00 KM.

67. The Commission considers it appropriate to order the respondent Party to take all necessary steps to enforce the CRPC decision of 12 November 1998 without further delay, and no later than three months from the date of receipt of the present decision.

68. With regard to possible compensatory awards, the Commission considers it appropriate to award a sum to the applicant in recognition of the sense of injustice he has suffered as a result of his inability to regain possession of the apartment, especially in view of the fact that he has taken all necessary steps to have the CRPC decision enforced.

69. Accordingly, the Commission will order the respondent Party to pay to the applicant the sum of 2,000 KM (Convertible Marks) in recognition of the sense of injustice he has suffered, at the latest within one month from the receipt of the present decision.

70. In accordance with its decision in *Turundžić and Frančić* (cases nos. CH/00/6143 and CH/00/6150, decision on admissibility and merits delivered on 8 February 2001, paragraph 70, Decisions January-June 2001), the Commission considers that the sum of KM 100 per month is appropriate to compensate the applicant for the loss of use of the apartment and any extra costs for each month the he has been and continues to be unable to be reinstated into his apartment. The Commission considers it appropriate that this sum should be payable from 7 January 2001 (the date the time limit for the competent municipal organ to issue a conclusion on the request for enforcement of the CRPC decision expired, i.e. 30 days after the applicant lodged his complete request) up to and including April 2005. This amounts to a total of 5,100.00 KM, to be paid within one month from the date of receipt of the present decision. The respondent Party shall additionally continue to pay the monthly sum of 100 KM until the end of the month in which the applicant regains possession of the apartment.

71. The Commission further awards simple interest at an annual rate of 10% (ten percent), running from the due dates of the payments referenced in paragraphs 69 and 70 on the sums awarded or any unpaid portion thereof from the due date until the date of settlement in full.

IX. CONCLUSIONS

72. For the above reasons, the Commission decides,

1. unanimously, to declare the application admissible;
2. unanimously, that the failure of the respondent Party to enforce the CRPC decision of 12 November 1998 constitutes a violation of the right of the applicant to respect for his home within the meaning of Article 8 of the European Convention on Human Rights, the respondent Party thereby being in breach of Article I of the Human Rights Agreement;
3. unanimously, that the non-enforcement of the decision of the Commission for Real Property Claims of Displaced Persons and Refugees of 12 November 1998 constitutes a violation of the applicant's right to peaceful enjoyment of his possessions within the meaning of Article 1 of Protocol No. 1 to the European Convention on Human Rights, the respondent Party thereby being in breach of Article I of the Human Rights Agreement;
4. unanimously, that it is not necessary to consider the complaints under Article 6 of the European Convention on Human Rights;
5. unanimously, to order the respondent Party to take all necessary steps to enforce the Commission for Real Property Claims of Displaced Persons and Refugees decision of 12 November 1998 without further delay, and at the latest within one month from the date of receipt of the present decision;
6. unanimously, to order the respondent Party to pay the applicant 2,000 (two thousand) Convertible Marks ("*Konvertibilnih Maraka*") as compensation for the sense of injustice he suffered, within one month from the date of receipt of the present decision;
7. unanimously, to order respondent Party to pay the applicant the sum of 5,100.00 KM as compensation for the loss of use of the apartment and for any extra costs incurred during the time the applicant has been unable to repossess the apartment through the end of April 2005, within one month from the date of receipt of the present decision;

8. unanimously, to order the respondent Party to pay the applicant 100.00 KM for each additional month that he continues to be unable to live in his pre-war apartment from 1 May 2005 until the end of the month in which he is reinstated, each of these monthly payments to be made within 30 days from the end of the month to which it relates;

9. unanimously, that simple interest at an annual rate of 10 % (ten per cent) shall be paid on the sums awarded in conclusions 6, 7, and 8 from the expiry of the due date for such payment until the date of final settlement of all sums due to the applicant under this decision; and

10. unanimously, to order the respondent Party to report to the Commission, or its successor institution, no later than four months from the date of receipt of the present decision on the steps taken by it to comply with the above orders.



(signed)
J. David YEAGER
Registrar of the Commission

(signed)
Jakob MÖLLER
President of the Commission