DECISION ON ADMISSIBILITY AND MERITS
(delivered on 11 May 2001)

Case no. CH/98/1066

Savka KOVAČEVIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 7 May 2001 with the following members present:

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

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

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

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

I. INTRODUCTION

1. The applicant, Savka Kovačević, has been the occupancy right holder of an apartment in Novo Sarajevo, which she left in March 1996 to care for her sick mother in Ljubljana. The case concerns the applicant's attempts to regain possession of her apartment. Ms. Kovacević pursued repossession of her apartment not only through competent local administrative bodies (commencing in May 1998), but also filed an application with the Commission for Real Property Claims of Displaced Persons and Refugees (hereinafter "CRPC") (in October 1998). In January 1999 CRPC issued a decision confirming the applicant's status as the occupancy right holder of the apartment at issue and finding that the applicant is entitled to regain possession of the apartment. In May 2000, the local administrative body also issued a decision confirming that the applicant is the occupancy right holder of the apartment and allowing her to repossess the apartment. However, it was not until 4 December 2000 that the applicant finally repossessed her apartment.

2. The case raises issues under Article 8 of the European Convention on Human Rights and under Article 1 of Protocol No. 1 to the Convention.

II. PROCEEDINGS BEFORE THE CHAMBER

3. The application was introduced on 16 November 1998 and registered on the same day.

4. On 21 February 2000 the Chamber transmitted the application to the respondent Party for observations on the admissibility and merits thereof. The respondent Party submitted its observations on 21 April 2000.

5. The applicants' further observations, including claims for compensation, were submitted on 31 May 2000 and transmitted to the respondent Party. The respondent Party filed additional written observations on the claim for compensation on 12 July 2000.

6. On 17 October 2000, the applicant wrote to the Chamber concerning recent factual developments in her case, including the fact that as of 5 August 2000, the temporary occupant of her apartment subleased the apartment to subtenants in exchange for rent.

7. At the request of the Chamber, CRPC contacted the applicant through her neighbour to attempt to obtain updated information on implementation of the CRPC decision of 28 January 1999 in the applicant's favour. On 15 January 2001, the applicant presented herself to CRPC and informed it that on 4 December 2000, she had repossessed her apartment.

8. On 16 February 2001, the applicant wrote to the Chamber and informed it that she had finally been reinstated into possession of her apartment, "two years, six months, and seven days" after she submitted her request for repossession to the Novo Sarajevo Administration for Housing Affairs of Sarajevo Canton on 18 May 1998. The applicant confirmed that she would maintain her claim for compensation made on 31 May 2000. On 9 March 2001, the respondent Party filed additional written observations to the applicant's submission.

9. On 13 January 2001, 4-5 April 2001, and 7 May 2001, the Chamber considered the admissibility and merits of the application. On 7 May 2001, the Chamber adopted the present decision.

III. FACTS

A. Domestic Proceedings.

10. As of 30 April 1991, the applicant has been the occupancy right holder of a two room apartment in Novo Sarajevo located at Hamdije Čemerlića Str. 41/II (formerly Bratstva i Jedinstva Str. 41/II). On 16 March 1996 the applicant left her apartment to go to Ljubljana to care for her sick,

elderly mother. The applicant states that she returned 23 days later to find the locks to her apartment changed and another name on her door. (Presumably thereafter the applicant returned once again to Ljubljana.) The respondent Party, however, claims the applicant did not return until May 1998. The applicant states that she returned to Sarajevo with her mother in May 1998.

11. After the applicant returned home from Ljubljana, she learned that the Novo Sarajevo Administration for Housing Affairs of Sarajevo Canton (the competent municipal organ, herein after the "Administration") had declared her apartment temporarily abandoned on 6 May 1996 and permanently abandoned on 30 May 1997, and had thereafter, on 10 June 1997, allocated her apartment to a work colleague, Mr. S.B. Mr. S.B. is the occupancy right holder of another apartment in the Federation of Bosnia and Herzegovina, located at Rudija Alvađa Str. 8/1 in Sarajevo. (There is some dispute over the condition of Mr. S.B.'s apartment. The applicant submitted a certificate of ownership which indicates that as of 22 June 2000, Mr. A.G. is the occupant of the apartment over which Mr. S.B. possesses an occupancy right. However, the Administration found that the apartment was devastated during the war and is not suitable for living.)

12. On 28 May 1998, the applicant submitted a request to the Administration to recognise her occupancy right and to return possession of her apartment. On 1 September 1998, the Administration issued a decision establishing that the applicant had the right to submit a request for repossession of her apartment. The Administration further confirmed the allocation of the apartment on 10 June 1997 to the new occupancy right holder, Mr. S.B.

13. On 9 November 1998, the applicant appealed against the Administration's procedural decision of 1 September 1998 to the Cantonal Ministry for Urban Planning, Housing and Communal Affairs in Sarajevo (hereinafter the "Ministry"). On 14 September 1999, the Ministry annulled the procedural decision of the Administration and returned the case for renewed proceedings. The Ministry explained that the Administration failed to decide on the applicant's request for repossession of her apartment and that Mr. S.B., according to Article 1, paragraph 1 of the Law Amending the Law on Cessation of Application of the Law on Abandoned apartments (OG FBiH no. 18/99), is now a temporary user of the apartment in question.

14. On 24 November 1999, the Administration, Department Novo Sarajevo, held a hearing in renewed proceedings in the case. On 24 December 1999, the applicant urged the Administration to issue its decision in the case.

15. On 6 May 2000, the Administration issued a new procedural decision, no. 23/6-372-1088/98, invalidating its earlier decision of 1 September 1998 and confirming that the applicant is the occupancy right holder of the apartment at issue, allowing the applicant to repossess the apartment, terminating the temporary use right of the temporary occupant, ordering the temporary occupant to vacate the apartment within 90 days, and recognizing the right of the temporary occupant to alternative accommodation. The Administration further found that Mr. S.B. had used his own resources to reconstruct the applicant's apartment and that he could commence separate proceedings before the competent court for compensation for his expenditures under the Law on Obligation Relations.

16. On 24 August 2000, the applicant requested enforcement of the Administration's decision of 6 May 2000.

17. Throughout the proceedings in her case, the applicant repeatedly states that she was homeless and suffered significant hardship without possession of her apartment. She further alleges that throughout her attempts to obtain repossession of her apartment, she has suffered offensive, humiliating, and psychologically abusive treatment by the domestic authorities, which she attributes to discrimination based on her national origin as a non-Bosniak.

B. Proceedings relating to the CRPC decision.

18. In addition to her proceedings before the competent domestic organs, the applicant also filed a claim with CRPC on 6 October 1998. On 28 January 1999, CRPC issued a decision, no. 201-8196-1/1, confirming the applicant's status as the occupancy right holder to the apartment in Novo

Sarajevo. CRPC found that the applicant was entitled to regain possession of the apartment in accordance with Article 1 to Annex 7. It further overruled all acts of judicial or administrative organs issued after 30 April 1991 which terminated or limited the occupancy right of the applicant to the apartment in question.

19. On 19 March 1999, the applicant requested that the Administration execute the CRPC decision and forcibly evict the temporary occupant. On 15 December 1999, she amended her proposal for execution according to the Law on Implementation of the Commission for Property Claims of Displaced Persons and Refugees.

C. Reinstatement into Possession of the Apartment.

20. Finally, on 4 December 2000, the applicant regained possession of her apartment. Although this is not clear from the documents and submissions contained in the case file, it appears that the applicant was reinstated into possession of her apartment pursuant to the 6 May 2000 decision of the Administration rather than the 28 January 1999 decision of CRPC.

IV. RELEVANT LEGAL PROVISIONS

A. The 1992 Law on Abandoned Apartments.

21. On 1 June 1994 the Assembly of the Republic of Bosnia and Herzegovina adopted the Decree with force of Law on Abandoned Apartments (Official Gazette of the Republic of Bosnia and Herzegovina, Nos. 6/92, 8/92, 16/92, 13/94, 36/94, 9/95 and 33/95; hereinafter the "old Law"). The old Law governed the re-allocation of occupancy rights over socially-owned apartments which had been abandoned. On 4 April 1998, the old Law was repealed by the Law on the Cessation of the Application of the Law on Abandoned Apartments (Official Gazette of the Federation of Bosnia and Herzegovina, No. 11/98; hereinafter the "new Law"), which entered into force on that day.

22. Under Article 1 of the old Law an occupancy right was suspended if the holder of that right and the members of his or her household abandoned the apartment after 30 April 1991. Article 2 defined an apartment as abandoned if, even temporarily, it was not used by the occupancy right holder or the members of his or her household. Article 3 provided for some exceptions to this definition, including the following:

> a. if the holder of the occupancy right and members of his or her household had resumed using the apartment either within seven days from the issuing of the declaration on the cessation of the state of war (if the holder of the right had been staying within the territory of the Republic of Bosnia and Herzegovina) or within fifteen days from the issuing of this declaration (if he or she had been staying outside that territory); or
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> b. if the holder of the occupancy right or members of his or her household had, within the terms of the requisite permission to stay abroad or in another place within the country, left the apartment for the purpose of effecting a private or business journey; had been sent as a representative of a state authority, enterprise, state institution or other organisation or association upon the request of, or with the approval of, a competent state authority; had been sent for medical treatment; or had joined the armed forces of the Republic of Bosnia and Herzegovina.

23. A state organ, a holder of an allocation right, a political organisation, a social organisation, an association of citizens or a housing board could initiate proceedings seeking to have an apartment declared abandoned. The competent municipal housing authority was to decide on a request to this end within 7 days and could also *ex officio* declare an apartment abandoned. Failing a decision within this time limit, the decision was to be made by the Minister for Urban Planning, Construction and Environment (Articles 4-6). Interested parties could challenge a decision by the municipal organ before the same Ministry, but an appeal had no suspensive effect.

24. An apartment declared abandoned could be allocated for temporary use to "an active

participant in the fight against the aggressor against the Republic of Bosnia and Herzegovina" or to a person who had lost his or her apartment due to hostile action. Such temporary use could last up to one year after the date of the cessation of the imminent threat of war. A temporary user was obliged under the threat of eviction to vacate the apartment at the end of that period and to place the apartment at the disposal of the organ which allocated it (Articles 7-8).

25. If the holder of the occupancy right failed to resume using the apartment within the applicable time limit laid down in Article 3, read in conjunction with Article 10, he or she was regarded as having abandoned the apartment permanently. The resultant loss of the occupancy right was to be recorded in a decision by the competent authority (Article 10).

B. The 1998 Law on the Cessation of the Application of the Law on Abandoned Apartments.

26. The Law on the Cessation of the Application of the Law on Abandoned Apartments ("the new Law") entered into force on 4 April 1998. According to this legislation all administrative, judicial, and other decisions terminating occupancy rights on the basis of regulations issued under the old Law shall be null and void. Nevertheless, all decisions establishing a right of temporary occupancy shall remain effective until revoked in accordance with the new Law. Moreover, all decisions establishing a new occupancy right shall remain in force unless revoked in accordance with the new Law (Article 2). The holder (or a member of his or her household) of an occupancy right in respect of an apartment which has been declared abandoned is referred to in the new Law as "the occupancy right holder" (Article 3(1)). The holder of a newly allocated occupancy right based either on a decision of the holder of the right of allocation or on a contract is referred to as "the current occupant" (Article 3(6)).

27. The occupancy right holder shall be entitled to seek his or her reinstatement into the apartment at a certain date which must not be earlier than 90 days and no later than one year from the submission of the claim (Articles 3, 4, and 7). The competent authority shall decide on such a repossession claim within 30 days (Articles 6-7). The decision shall be delivered to the occupancy right holder, the holder of the allocation right, and the current occupant within five days from its issuance. An appeal lies to the Cantonal Ministry for Housing Affairs within 15 days from the date of receipt of the decision. An appeal shall not suspend the execution of the decision (Article 8). In no event shall a failure either of the cantonal authorities or the holder of the allocation right to meet their obligations under Article 3, or a failure of "the current occupancy right holder" to accept another apartment, delay the attempts of "an occupancy right holder" to reclaim his or her apartment (Article 3(9)).

28. If the apartment is occupied without a legal basis or was vacant when the new Law entered into force, the occupancy right holder shall be granted repossession of the apartment without any restriction and any temporary user shall be evicted (Article 3(3)). A person who is temporarily occupying the apartment and whose housing needs are otherwise met shall vacate the apartment within 90 days from the decision pursuant to Article 6 (Article 3(4)). If his or her housing needs are not otherwise met, he or she shall be provided with accommodation in accordance with the Law on the Taking Over of the Law on Housing Relations (OG FBiH, No. 11/98). In such a case the period within which the apartment must be vacated shall not be shorter than 90 days from the issuance of the decision pursuant to Article 6 of the new Law. The apartment must be vacated before the day of the intended return of the occupancy right holder but the intended return must not be sooner than 90 days from the date when the claim for repossession was submitted (Articles 3(5), 7(2)).

29. In exceptional circumstances the deadline for vacating an apartment may be extended to up to one year if the municipality or the allocation right holder responsible for providing alternative accommodation provides the cantonal administrative authority with detailed documentation about the efforts to secure alternative accommodation and if the cantonal authority finds that there is documented lack of available housing. In every individual case, the requirements of the Convention and its Protocols must be met, and the occupancy right holder must be notified of the decision extending the deadline, including its reasoning, 30 days before the initial deadline expires (Article 7(3)).

30. According to Article 7, a decision within the meaning of Article 6 shall contain a confirmation that the claimant is the holder of the occupancy right; a decision granting repossession of the

apartment to the occupancy right holder if the dwelling is temporarily occupied by someone else, is vacant, or is occupied without legal basis; a decision terminating the right of temporary occupancy if the apartment is in temporary use; a time limit by which a temporary user or another person occupying the apartment shall vacate it; and a decision as to whether the temporary user is entitled to accommodation in accordance with the Law on Housing Relations. Under Article 10 of the Instruction of 30 April 1998 on the Application of Article 4 of the new Law, the authority issuing the decision within the meaning of Article 6 of the new Law shall verify the status of the occupancy right; verify whether the apartment is uninhabitable, vacant, or occupied; and verify the status of any current occupant (illegal, temporary occupant, or person living in the apartment prior to 7 February 1998 on the basis of an occupancy right acquired before that date). Contracts on the use of apartments declared abandoned pursuant to regulations issued under the old Law and decisions on the allocation of such an apartment shall be null and void, if concluded or issued after 7 February 1998 (Article 16).

31. If "a person occupying the apartment" fails to comply voluntarily with a decision ordering him to vacate the apartment, the competent administrative body shall take enforcement measures at the request of the occupancy right holder (Article 11).

32. Pursuant to Article 14, the occupancy right holder (and any other person affected by a decision issued under Article 7), may "at any time file a claim with [CRPC]". Moreover, with regards to determining the rights and obligations of the occupancy right holder, a decision of CRPC "has the same power as a decision by any competent domestic body issued in accordance with this law."

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

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

34. 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). CRPC shall determine the lawful owner of the property – a concept which CRPC has construed to include an occupancy right holder - according to Article XII(1). According to Article XII(7), decisions of CRPC are final, and any title, deed, mortgage, or other legal instrument created or awarded by CRPC shall be recognised as lawful throughout Bosnia and Herzegovina.

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

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

36. The Law on Implementation of the Decisions of the Commission for Real Property Claims of Displaced Persons and Refugees (OG FBiH 43/99 – hereinafter the "Law on Implementation"), which entered into force on 28 October 1999, regulates the enforcement of decisions of CRPC.

37. The administrative body responsible for property-related legal affairs in the municipality where the property is located shall enforce decisions of CRPC relating to real property owned by citizens (Article 3, paragraph 2). Decisions of 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: the right holder specified in the CRPC decision and his/her heirs relating to real property owned by citizens (Article 4, paragraph 1) and relating to apartments for which there is an occupancy right; the occupancy right holder referred to in a CRPC decision and the persons who, in compliance with the Law on Housing Relations, are considered to be members of the family household of the occupancy right holder (Article 4, paragraph 2).

38. 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, or for decisions issued before this Law entered into force, within 18 months from the entry into force of this Law (Article 5, paragraph 2, as amended by the High Representative, effective 28 October 2000). (Previously, the time limit had been one year.)

39. The request for enforcement of a CRPC decision shall include two photocopies of the CRPC decision relating to real property owned by citizens, and three photocopies of the CRPC decision relating to the occupancy right (Article 6). The administrative organ responsible for the enforcement of a CRPC decision is obliged to issue a conclusion on the permission of enforcement within a period of 30 days from the date when the request for enforcement was submitted and shall not require any confirmation of the enforceability of the decision from CRPC or any other body (Article 7, paragraphs 1 and 2). The conclusion shall contain the following:

1. in the 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 of 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; and
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.

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

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

42. Under the terms of Article 10, paragraph 1, the right holder referred to in the CRPC decision and/or any other person who held a legal interest in the property or apartment at issue on the date referred to in the dispositive of the CRPC decision, is entitled to submit a request for reconsideration to CRPC in accordance with CRPC regulations. Additionally, Article 10, paragraph 2 provides that a person with a legal interest in the property or apartment at issue which was acquired after the date referred to in the dispositive of the CRPC decision may lodge an appeal against the conclusion on permission of enforcement issued by the competent administrative organ. The appellant is required to prove that the right holder named in the Commission's decision voluntarily and lawfully transferred his or her rights to the appellant since the date referred to in the dispoisitive of the CRPC decision (Article 12, paragraph 2).

43. Enforcement of the CRPC decision shall not be suspended by the use of any legal remedy, except in the following two cases:

1. the competent administrative authority may suspend enforcement if it is notified by CRPC that a request for reconsideration of the CRPC decision has been lodged in accordance with CRPC regulations (Article 11, paragraph 2);

2. the court before which an appeal lodged under Article 10, paragraph 2 is pending may suspend enforcement if a verified contract on the transfer of rights was made after 14 December 1995 (Article 12, paragraph 4).

E. The Law on Administrative Proceedings.

44. Under Article 216, paragraph 1 of the Law on Administrative Proceedings (OG FBiH nos. 2/98, 48/99), the competent administrative organ must issue a decision to execute an administrative decision within 30 days of the receipt of a request to this effect. Article 216, paragraph 3 provides for an appeal to the administrative appellate body if a decision is not issued within this time limit, as if the request were denied (appeal against "silence of the administration"). In order to commence execution of an administration decision, Article 275, paragraph 1 states that the competent administrative organ shall adopt the conclusion on the permission of the execution of a decision. This conclusion shall state that the decision to be executed has become effective and shall outline the manner of execution. According to Article 275, paragraph 2, this conclusion shall be adopted without delay once the decision has become effective and no later than 30 days after the decision has become effective.

F. The Law on Administrative Disputes.

45. Article 1 of the Law on Administrative Disputes (OG FBiH nos. 2/98, 8/00) provides that the courts shall decide administrative disputes on the lawfulness of second instance administrative acts concerning rights and obligations of citizens and legal persons.

46. Article 22, paragraph 3 provides that an administrative dispute may also be instituted if the administrative second instance organ fails to render a decision within the prescribed time limit, whether the appeal to it was against a decision or against the first instance organ's silence.

V. COMPLAINTS

47. The applicant claims that her right to respect for her home as guaranteed by Article 8 of the European Convention and her right to peaceful enjoyment of possessions as guaranteed by Article 1 of Protocol No. 1 to the European Convention have been violated.

VI. SUBMISSIONS OF THE PARTIES

A. The respondent Party

48. The respondent Party contends that the application, the subject matter of which, it submits, is implementation of a decision of CRPC, is inadmissible or ill-founded on the merits. With respect to admissibility, the respondent Party objects to the application on the ground of *lis alibi pendens* and for failure to exhaust domestic remedies. It points out that the applicant sought enforcement of a CRPC decision. The High Representative issued the Law on Enforcement of Decisions Issued by the Commission for Property Claims of Refugees and Displaced Persons on 28 October 1999. The applicant submitted her claim under this new law on 15 December 1999. Thus, at the time the respondent Party submitted its observations, this administrative procedure was still pending and the applicant had various domestic remedies available to appeal or hasten this process. In addition, the respondent Party points out that the applicant regained possession of her apartment on 4 December 2000.

49. With regard to the merits of the applicant's claims under Article 8 and Article 1 of Protocol No. 1, the respondent Party emphasizes that the applicant left her apartment voluntarily, without any

influence from the respondent Party, in March 1996 and allegedly did not return until 1998. The respondent Party argues that there has been no violation of the applicant's rights because it has passed legislation which enables all persons to repossess their real property.

B. The applicant

50. The applicant maintains her complaints and notes that she waited for repossession of her apartment for "two years, six months, and seven days" after she submitted her request for repossession to the Novo Sarajevo Administration for Housing Affairs of Sarajevo Canton and for over 22 months after the CRPC decision in her favour. Meanwhile, she claims that during this time, her former colleague, who holds an occupancy right to another apartment in Sarajevo, possessed her apartment. For most of this time, the applicant cared for her ill, elderly mother, and they both suffered during the extended period the applicant was without a home.

VII. OPINION OF THE CHAMBER

A. Admissibility

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

52. According to Article VIII(2)(a) of the Agreement, the Chamber must consider whether effective remedies exist and whether the applicant has demonstrated that they have been exhausted. In the *Blentić* case (case no. CH/96/17, decision on admissibility and merits delivered on 3 December 1997, paragraphs 19-21, 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) 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 the personal circumstances of the applicants.

53. In the present case the Federation objects to the admissibility of the application 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 applicant sought to return to the apartment in question and was faced with the authorities' inaction, the Chamber must ascertain whether, in the case now before it, these remedies could also be considered effective in practice.

54. The Chamber notes that the applicant filed a request for repossession of her apartment with the Administration on 28 May 1998. The Administration issued a decision on that request on 1 September 1998, but that decision failed to respond to the applicant's specific request for repossession. On appeal by the applicant, the Ministry, on 14 September 1999, finally addressed the previous error by invalidating the procedural decision on 1 September 1998 and returning the case to the Administration for reconsideration and renewed proceedings. The Administration conducted a hearing one month later, and then, on 6 May 2000, issued a procedural decision in the applicant's favour confirming her occupancy right over her apartment and allowing her to repossess her apartment. However, despite a request for enforcement by the applicant on 24 August 2000, she did not in fact repossess her apartment until 4 December 2000, almost seven months after the favourable decision entitling her to such repossession and over thirty months after her initial request.

55. The Chamber further notes that the applicant also filed a request with CRPC with a view to being reinstated into her apartment. CRPC issued a decision on 28 January 1999 confirming the applicant's status as the occupancy right holder of the apartment, from which it follows that she was

entitled to seek the removal of the temporary occupant and to repossess the apartment. However, as explained above, the applicant did not in fact repossess her apartment until 4 December 2000, despite the applicant's specific request to the Administration on 19 March 1999, amended on 15 December 1999, to enforce the CRPC decision.

56. Under the Law on the Cessation of the Application of the Law on Abandoned Apartments (OG FBiH no. 11/98), the applicable law at the time the applicant filed her initial requests for repossession to the Administration and CRPC, if a person occupying an apartment fails to comply voluntarily with a decision ordering him to vacate the apartment, the competent administrative body shall, at the request of the occupancy right holder, take enforcement measures (Article 11 of the new Law). Article 14 of the new Law further confirms that a decision of CRPC on the rights and obligations of the occupancy right holder has the same power as a decision by any competent domestic body issued in accordance with this law.

57. Moreover, under Article 216, paragraph 1 of the Law on Administrative Proceedings (OG FBiH no. 2/98), the competent administrative organ must issue a decision to execute an administrative decision within 30 days of the receipt of a request to this effect. Additionally, in order to commence execution of an administrative decision, Article 275, paragraphs 1 and 2 of the Law on Administrative Proceedings provides that the competent administrative organ shall adopt the conclusion on the permission of the execution of a decision without delay once the decision has become effective and in any event no later than 30 days after the decision has become effective.

58. The Chamber notes that the applicant did finally, after repeated requests and proceedings before competent administrative bodies and CRPC, regain possession of her apartment. However, the remedies provided by the new Law, the Law on Administrative Proceedings, and the Law on Administrative Disputes could not remedy the applicants' complaints insofar as they relate to the failure of the authorities to enforce the decisions of the Administration and CRPC within the time-limits prescribed by law. Furthermore, there is no reason to suppose that the responsible authorities, which for a long period disregarded their legal obligations to enforce the decisions of the Administration and CRPC, would have treated the decisions of the courts with any greater respect.

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

60. The Chamber further finds that no other ground for declaring the case inadmissible has been established. Accordingly, the case is to be declared admissible.

B. Merits

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

1. Article 8 of the Convention

62. The relevant portion of Article 8 of the Convention provides 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 expect 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."

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

64. Moreover, the respondent Party states in its observations of 21 April 2000 that it "considers as indisputable the fact that the housing premises in question are the applicant's home".

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

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

67. The Chamber notes that it is correct that legislation is in force in the Federation that in theory enables persons to repossess their homes. However, both the Chamber and the European Court of Human Rights have held that, although the object of Article 8 is essentially that of protecting the individual against arbitrary interference by the authorities, it may also give rise to positive obligations (see, e.g., case no. 96/17, *Blentić*, decisions on admissibility and merits delivered on 22 July 1998, paragraph 27, Decsions and Reports 1998, *Marckx v. Belgium*, 13 June 1979, Series A No. 31, paragraph 31; *Airey v. Ireland*, 9 October 1979, Series A No. 32, paragraph 32*; Velosa Barreto v. Portugal*, 21 November 1995, Series A No. 334, paragraph 23). Therefore, the Chamber considers that the Federation not only must pass legislation, but that the legislation also must be implemented. Otherwise, the legislation is not effective.

68. In the present case the Chamber recalls that both the Administration and CRPC issued decisions confirming the applicant's status as the occupancy right holder and her right to repossess the apartment. For many months (over 30 months after her initial request to the Administration and over 22 months after the CRPC decision in her favour) the applicant was unable to regain possession of her apartment due to the failure of the authorities of the Federation to deal effectively, in accordance with Federation law, with the applicant's requests for repossession and thereafter, with her requests for enforcement of the decisions in her favour by the Administration and CRPC. It follows that during that time, there were ongoing interferences with the applicants' right to respect for her home.

69. The Chamber must therefore examine whether these interferences were in accordance with paragraph 2 of Article 8 of the Convention.

70. The Chamber notes that the applicant filed a request for repossession of her apartment with the Administration on 28 May 1998. The Administration initially responded to this request on 1 September 1998. However, according to the subsequent decision by the Ministry on 14 September 1999, which decision invalidated the Administration's decision of 1 September 1998, the Administration's initial decision on the applicant's request for repossession "confirms that the applicant is entitled to the right to file a request for repossession of the apartment in question, instead of deciding upon the request already filed in accordance with the Law on Cessation of the Application of the Law on Abandoned Apartments." Thus, the Administration failed to deal properly with the applicant's initial request for repossession. This failure resulted in a delay of the applicant's repossession of her apartment. The Administration did not finally issue a procedural decision in the applicant's favour confirming her occupancy right over her apartment and allowing her to repossess her apartment until 6 May 2000. However, despite a request for enforcement by the applicant on 24 August 2000, she did not in fact repossess her apartment until 4 December 2000, over thirty months after her initial request.

71. The Chamber further notes that the applicant filed an additional request to CRPC with a view to being reinstated into her apartment. CRPC issued a decision on 28 January 1999 confirming the

applicant's status as the occupancy right holder of the apartment, from which it follows that she was entitled to seek removal of the temporary occupant and to repossess the apartment. On 19 March 1999, the applicant specifically requested that the Administration execute the CRPC decision and evict the temporary occupant, and on 15 December 1999, she resubmitted her request under the Law on Implementation. However, it appears from the submissions in the case file that at no time did the competent authorities enforce the decision of CRPC. The applicant did eventually regain possession of her apartment, but this appears to have resulted from the Administration's decision of 6 May 2000.

72. As explained above, under Article 216, paragraph 1 of the Law on Administrative Proceedings, the competent administrative organ must issue a decision to execute an administrative decision within 30 days of the receipt of a request to this effect. Additionally, in order to commence execution of an administrative decision, Article 275, paragraphs 1 and 2 of the Law on Administrative Proceedings provides that the competent administrative organ shall adopt the conclusion on the permission of the execution of a decision without delay once the decision has become effective and in any event no later than 30 days after the decision has become effective.

73. The Chamber notes that the applicant specifically sought enforcement of the CRPC decision of 28 January 1999 on 19 March 1999 and that she further sought enforcement of the Administration's decision of 6 May 2000 on 24 August 2000. Thus, the latest date on which the respondent Party should have issued a conclusion on the CRPC decision is 30 days after 19 March 1999, *i.e.*, on 18 April 1999, and the latest date on which the respondent Party should have issued a conclusion on the Administration's decision is 30 days after 24 August 2000, i.e., on 23 September 2000. However, the applicant was not reinstated to her apartment until 4 December 2000, despite the fact that the applicable time limits for enforcement had expired. Accordingly, the failure of the competent administrative organ to decide upon the applicant's enforcement requests in a timely manner was not "in accordance with the law."

74. Furthermore, the Chamber considers that had the Administration properly acted on the applicant's initial request for repossession, it would have decided in the applicant's favour in its decision of 1 September 1998. Thus, the failure of the competent administrative organ to decide properly upon the applicant's initial request for repossession in a timely manner was also not "in accordance with the law."

75. As the interferences with the applicant's right to respect for her home referred to above were not "in accordance with the law", it is not necessary for the Chamber to examine whether the acts complained of pursued a "legitimate aim" or were "necessary in a democratic society".

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

2. Article 1 of Protocol No. 1

77. The applicant complains also that her right to peaceful enjoyment of her possessions has been violated as a result of her inability to regain possession of her apartment in a timely manner. Article 1 of Protocol No. 1 provides 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."

78. It is the Federation's assertion that it has passed such legislation which enables all persons to repossess their apartments and that the applicant was not deprived of her right to return into possession of her apartment.

79. The Chamber notes that the applicant is the occupancy right holder of the apartment in question and that the apartment constitutes her "possession" within the meaning of Article 1 of Protocol No. 1 to the Convention. The Chamber considers that the failure of the authorities of the Federation to allow the applicant to regain possession of her apartment in a timely manner constituted an "interference" with her right to peaceful enjoyment of that possession. This interference was ongoing until the applicant finally regained possession of her apartment on 4 December 2000.

80. The Chamber must therefore examine whether this interference could 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.

81. As the Chamber noted in the context of its examination of the case under Article 8 of the Convention, the Law on Administrative Proceedings provides in Article 216, paragraph 1 that the competent administrative organ must issue a decision to execute an administrative decision within 30 days of the receipt of a request to this effect. Additionally, in order to commence execution of an administrative decision, Article 275, paragraphs 1 and 2 of the Law on Administrative Proceedings provides that the competent administrative organ shall adopt the conclusion on the permission of the execution of a decision without delay once the decision has become effective and in any event no later than 30 days after the decision has become effective.

82. Accordingly, the failure of the competent administrative organ to decide upon the applicant's enforcement request of the CRPC decision by 18 April 1999 and the failure of the competent administrative organ to decide upon the applicant's enforcement request of the Administration's decision by 23 September 2000 were contrary to the law. This is in itself sufficient to justify a finding of a violation of the applicant's right to peaceful enjoyment of her possessions as guaranteed by Article 1 of Protocol No. 1. Accordingly, the rights of the applicant under this provision have been violated.

VIII. REMEDIES

83. 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 breaches of the Agreement established. In this connection the Chamber shall consider issuing orders to cease and desist, monetary relief, as well as provisional measures. The Chamber is not necessarily bound by the claims of the applicant.

84. In her submissions of 31 May 2000 and 17 October 2000, the applicant requested that she be enabled to regain possession of the apartment. In addition, the applicant requested compensation in the amount of 400 Convertible Marks (Konvertibilnih Maraka, "KM") per month for 50 months on account of the rent she was forced to pay because she could not use her apartment. She also requested compensation in the amount of 8000 KM by way of moral damages for the suffering and humiliation she was subjected to in the proceedings before the state authorities. In her supplemental submission to the Chamber dated 16 February 2001, the applicant confirmed that she wanted to maintain her claim for compensation in the total amount of 28,000 KM.

85. The respondent Party in its observations of 12 July 2000 argued that the claims for compensation were ill-founded, unsubstantiated, and excessive. In its additional observations submitted on 7 March 2001, the respondent Party further argued that because the applicant regained possession of her apartment on 4 December 2000, the remainder of her application should be struck out.

86. With regard to possible compensatory awards the Chamber considers it appropriate to award a sum to the applicant in recognition of the sense of injustice she has suffered as a result of her inability to regain possession of her apartment in a timely manner, especially in view of the fact that the applicant took all necessary steps to have the two decisions in her favour enforced.

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

88. 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, not yet published), the Chamber considers that the sum of KM 200 per month is appropriate to compensate for the loss of use of the apartment and any extra costs for each month the applicant was forced to live in alternative accommodation. The Chamber considers that this sum should be payable from 1 September 1998 (the date of the initial decision of the Administration which failed to respond to the applicant's request for repossession) up to and including December 2000 when the applicant finally regained possession of her apartment. Thus, the total award for pecuniary compensation for the loss of use of the apartment and any extra costs is 5600 KM (that is, 200 KM per month for 28 months). The Chamber considers it appropriate in the present case to order the respondent Party to pay the sums mentioned in paragraphs 87 and 88 within one month from the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure.

89. Additionally, the Chamber awards simple interest at an annual rate of 10% on the sums awarded to be paid to the applicant in paragraphs 87 and 88 above. Interest shall be paid as of one month from the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure on each sums awarded or any unpaid portion thereof until the date of settlement in full.

IX. CONCLUSION

90. For the above reasons, the Chamber decides,

1. unanimously, to declare the application admissible;

2. unanimously, that the failure of the Administration to issue a decision awarding the applicant repossession of her apartment in a timely manner and the delayed enforcement of the Administration's eventual decision constitute violations of the right of the applicant to respect for her home within the meaning of Article 8 of the Convention, the Federation thereby being in breach of Article I of the Agreement;

3. unanimously, that the non-enforcement of the CRPC decision constitutes a violation of the right of the applicant to respect for her home within the meaning of Article 8 of the Convention, the Federation thereby being in breach of Article I of the Agreement;

4. unanimously, that the failure of the Administration to issue a decision awarding the applicant repossession of her apartment in a timely manner and the delayed enforcement of the Administration's eventual decision constitute violations of the right of the applicant to peaceful enjoyment of her possessions within the meaning of Article 1 of Protocol No. 1 to the Convention, the Federation thereby being in breach of Article I of the Agreement;

5. unanimously, that the non-enforcement of the CRPC decision constitutes a violation of the right of the applicant to peaceful enjoyment of her possessions within the meaning of Article 1 of Protocol No. 1 to the Convention, the Federation thereby being in breach of Article I of the Agreement;

6. unanimously, to order the respondent Party to pay to the applicant, no later than one month from the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure, the sum of 2000 KM in respect of non-pecuniary damage;

7. unanimously, to order the respondent Party to pay to the applicant, no later than one month from the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedures, the sum of 5600 KM as compensation for the loss of use of the

apartment and for any extra costs during the time the applicant was forced to live in alternative accommodation until 4 December 2000;

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 after the expiry of one month from the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure until the date of settlement in full; and

9. unanimously, to order the respondent Party to report to it by one month from the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure on the steps taken by it to comply with the above orders.

(signed)
Peter KEMPEES
Registrar of the Chamber

(signed)
Giovanni GRASSO
President of the Panel