DECISION ON ADMISSIBILITY AND MERITS

Case no. CH/98/1162

Slavica PROLE

against

BOSNIA AND HERZEGOVINA
and
THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Commission within the Constitutional Court of Bosnia and Herzegovina, sitting in plenary session on 7 May 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 Article 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 application concerns the applicant's attempts to enter into possession of her pre-war apartment located at Dajanli Ibrahimbega no. 6/III in Sarajevo, which her husband purchased from the former Yugoslav National Army ("the JNA") Housing Fund (*Vojna Ustanova za upravljanje stambenih fondom JNA---Beograd, Odeljenje Sarajevo*), according to a purchase contract dated 23 December 1991. The applicant also seeks to be registered as the owner of the apartment in question. The applicant timely submitted her repossession claim for the apartment on 11 March 1998 to the Commission for Real Property Claims of Displaced Persons and Refugees ("the CRPC"). Nevertheless, the domestic housing organs assert that the applicant did not timely file her repossession claim and for this reason they have denied her the right to return to the apartment. The respondent Party, in the proceedings before the Commission, has conceded that the applicant timely filed her repossession claim.

2. The application appears to raise issues in connection with Article 8 of the European Convention on Human Rights ("the Convention") and Article 1 of Protocol No. 1 to the Convention, in connection with discrimination.

II. PROCEEDINGS BEFORE THE CHAMBER AND COMMISSION

3. The application was introduced to the Chamber on 14 September 1998 and registered on the same day.

4. On 22 January 1999 the application was transmitted to the Federation of Bosnia and Herzegovina ("the Federation of BiH") in connection with Articles 6 and 13 of the Convention and Article 1 of Protocol No. 1 to the Convention. Although directed against Bosnia and Herzegovina, the application was not transmitted to Bosnia and Herzegovina. Therefore, throughout this decision, "respondent Party" refers only to the Federation of BiH.

5. On 19 April 1999 the Chamber received the respondent Party's observations on the admissibility and merits of the application. On 6 June 2003, the respondent Party submitted additional observations

6. The applicant submitted her comments on the respondent Party's initial observations on 19 May 1999; these were subsequently forwarded to the respondent Party. The applicant submitted additional information on 6 April 2000, 2 April 2001, 11 October 2001, 27 February 2002, 30 December 2002, 28 March 2003, and 2 July 2003.

7. On 4 December 2003 the Chamber considered the application, at which time it decided to re-transmit the application to the respondent Party in connection with Article 8 of the Convention and in relation to discrimination in connection with Article 8 and Article 1 of Protocol No. 1 to the Convention. The application was re-transmitted to the respondent Party on 11 December 2003.

8. On 13 January 2004 the Commission received further observations on the admissibility and merits of the application from the respondent Party, which were forwarded to the applicant. On 9 February 2004, the applicant submitted her response. On 15 April 2004 and 28 April 2004, additional information and observations were received from the respondent Party, which were also forwarded to the applicant.

9. On 10 March, 3 May 2004, and 7 May 2004, the Commission deliberated on the admissibility and merits of the application, and on the latter date it adopted the present decision.

III. FACTS

10. The applicant's husband, Radomir Prole, was a citizen of Bosnia and Herzegovina of Serb national origin, as is the applicant.

11. The applicant's husband was the the pre-war occupancy right holder over an apartment located at Dajanli Ibrahimbega 6/III in Sarajevo. The applicant was the co-occupancy right holder, and since the death of her husband in September 1997, she has been the sole pre-war occupancy right holder. The applicant and her husband moved into the apartment in April 1989.

12. On 23 December 1991 the applicant's husband concluded a purchase contract with the former JNA. The purchase price amounted to 576,602.00 Yugoslav Dinars, to be paid in installments. On 25 December 1991, the taxes on the transfer of real estate were paid, and on 27 December 1991 the signatures on the contract were verified before the Basic Court II in Sarajevo (*Osnovni Sud II*).

13. According to the payment slip dated 14 February 1992, the applicant's husband paid 466,255.20 Yugoslav Dinars for the purchase of the apartment.

14. On 15 February 1992 the applicant's husband signed an annex to the contract, changing the terms of the contract such that the total price amounted to 466,255.29 Yugoslav Dinars, to be paid in a lump sum. The signatures on the annex were also verified before the Basic Court II in Sarajevo on 6 March 1992.

15. On 27 April 1992 the JNA Housing Fund, Sarajevo Branch, issued a confirmation that Radomir Prole had paid the entire purchase price for the apartment at Dajanli Ibrahimbega 6/III on 14 February 1992.

16. The applicant's husband was an officer in the former JNA until 19 May 1992, at which time, as the applicant states, he became an officer in the Army of the Republika Srpska (*Vojska Republika Srspka*), where he served until 1 July 1996. As evidence, the applicant submitted the following documentation: an order dated 23 May 1992 whereby the Ministry of Defence of the Republika Srpska transferred Radomir Prole to the rank of Colonel and the position of Head of Liaison Unit in the Headquarters of the Serb Army of Bosnia and Herzegovina (*načelnika roda veze u glavnom štabu vojska Srpske Republike Bosne i Herecegovine*), effective 16 May 1992; a confirmation (*uvjerenje*) issued on 19 December 2002 by the Secretariat of the Ministry of Defence of the Republika Srspka, Department in Banja Luka, (*Ministarstvo odbrane Sekretariat Banja Luka, Odsjek Banja Luka*) stating that Radomir Prole served in the armed forces of the Republika Srspka as of 16 May 1992 until 30 June 1996; and finally, a confirmation dated 4 October 2001 issued by the Military Post Banja Luka Army of the Republika Srpska (*Vojna Pošta 7572-4 Banja Luka)* stating that Radomir Prole was a member of the Army of the Republika Srpska as of 19 May 1992.

17. The applicant states that she lived in Sarajevo until 6 June 1993, when she was displaced to Banja Luka, where she continues to live to this day. The applicant states that she was forced to flee Sarajevo because she was afraid for her life.

18. The apartment was declared permanently abandoned on 24 May 1996.

19. On 3 March 1997 E.J. signed a contract on use for the apartment.

20. The applicant filed a reposession claim for the apartment on 11 March 1998 to the CRPC Office in Banja Luka.

21. On 3 March 2000 the applicant filed a request to the Federation Ministry of Defence Municipality Centar Section (*Federalno Ministarstvo Odbrane—Odjel za odbranu Centar Sarajevo*)

("Ministry of Defence") to be registered as owner of the apartment. On 22 March 2000 the applicant received a written response from the Ministry of Defence stating that because her apartment was declared abandoned, she must first repossess her apartment in accordance with the Law on Cessation of the Application of the Law on Abandoned Apartments of the Federation of Bosnia and Herzegovina ("Law on Cessation"). On 13 May 2000 the applicant, in response to the letter of 22 March 2000, submitted another letter urging the Ministry of Defence to register her as owner over the apartment. Because she received no response, on 15 November 2000 and 15 February 2001, the applicant sent urgent appeals (*urgencija*) to the Ministry of Defence.

22. On 16 May 2000 the applicant filed a repossession request to Department for the Administration of Property and Geodetic Affairs and Cadaster Real Estate of the Municipality Centar (*Sluzba za upravu za imovinsko-pravne poslove, geodetske poslove i katastar nekretnina*) ("Department for Private Property") for her apartment, which she identified in the request as her private property.

23. On 15 November 2000 and 15 February 2001 the applicant filed urgent appeals to the Department for Private Property regarding the repossession request for her apartment.

24. By its letter of 8 March 2001, the Department for Private Property forwarded the applicant's repossession request to the Canton Sarajevo Administration for Housing Affairs (*Kanton Sarajevo Uprava za stambena pitanje*) ("the Administration"), as the body competent for such claims. The applicant also received a copy of this letter.

25. On 23 March 2001 the applicant submitted a repossession request for her pre-war apartment to the Administration. In this request the applicant states that she had first applied to the CRPC on 11 March 1998 and that she also submitted a repossession request to the Department for Private Property on 16 May 2000. She also states that on 7 March 2001 she received a telephone call from an employee of the Department for Private Property, informing her to submit her repossession request to the Administration, because the Department for Private Property was not competent in regard to former JNA apartments. The applicant concluded by stating that, in accordance with these verbal instructions, she was again submitting her request, but that the Department for Private Property should have immediately forwarded her request to the competent body and not telephoned her a year later to inform her that she should file yet another request to the competent body.

26. On 23 March 2001 the applicant submitted another request to the Ministry of Defence requesting that she be registered as the owner over the apartment.

27. On 29 March 2001 the Ministry of Defence sent a letter in response to the applicant's request, stating that, because the applicant had not presented any new information, the Ministry of Defence maintained its position as stated in its letter of 22 March 2000 (see paragraph 21 above.)

28. On 4 April 2001 the Administration issued a procedural decision (*zaključak*) rejecting the applicant's repossession claim as out of time, with the explanation that the applicant had filed her claim on 16 May 2000, while the deadline for submitting her claim had expired on 4 July 1999.

29. On 29 May 2001 the applicant submitted an appeal to the Canton Sarajevo Ministry for Housing Affairs (*Kanton Sarajevo Ministarstvo stambenih poslova*) ("the Ministry") against the procedural decision of 4 April 2001, arguing that the Law on Cessation was incorrectly applied because her private property was in question, which means that the Law on Cessation of the Application of the Law on Temporarily Abandonded Real Property Owned by Citizens ("Law on Cessation--Real Property") should have been applied in her case.

30. On 29 May 2001 the applicant sent a letter to the CRPC urging that a decision in her case be issued.

31. On 14 September 2001 the CRPC sent a letter to the applicant explaining that it had suspended consideration of repossession requests submitted for former JNA apartments pending the decision of the Human Rights Chamber regarding Article 3a of the Law on Cessation.

32. On 11 October 2001 the applicant submitted a request to the CRPC that they resolve her claim with urgency, and explaining that because her husband had served in the Army of the Republika Srspka, and that both she and her husband were citizens of Bosnia and Herzegovina, Article 3a of the Law on Cessation could not be applied in her case.

33. On 12 December 2001 the Minstry issued a procedural decision (*rješenje*) rejecting the applicant's appeal of 29 May 2001. The decision states that the applicant filed a repossession claim for the apartment on 16 May 2000 and, according to the Law on Cessation, she should have filed a claim prior to 4 July 1999. As to the ownership, the Ministry states that the applicant must first repossess her apartment in accordance with the Law on Cessation before being able to register her ownership over the apartment in accordance with Articles 39a, 39b, and 39c of the Law on Sale of Apartments with an Occupancy Right ("Law on Sale of Apartments").

34. On 25 February 2002 the applicant submitted a second request for the repossession of her apartment to the Administration. On 13 June 2002, this request was rejected as out of time. On 8 July 2003, the applicant submitted an appeal to the Ministry against the decision of 13 June 2002.

35. On 22 April 2003 the CRPC issued a decision (*odluka*) rejecting the applicant's claim and declaring itself not competent to decide in the case because the pre-war occupancy right holder, Radomir Prole, served in foreign armed forces after the relevant date of 14 December 1995. The decision does not state on what grounds, nor on what evidentiary basis, this conclusion was drawn.

36. On 2 July 2003 the applicant filed a request for review of the CRPC decision, arguing that her husband did not serve in any foreign army after 14 December 1995, but rather that her husband served in the armed forces of the Republika Srspka from 19 May 1992 until his retirement on 30 June 1996, and that on 30 April 1991 he served in the armed forces of the JNA and had citizenship of Bosnia and Herzegovina.

37. It appears that the CRPC ended its mandate without issuing a decision on the applicant's request for review.

38. On 7 July 2003 the applicant submitted a request to the Ministry to renew the proceedings (*obnoviti postupak*) upon its decision of 12 December 2001 (see paragraph 33 above). The applicant requested that the proceedings be renewed on the grounds that her private property is in question and not only her occupancy right.

39. On 24 December 2003 the Ministry issued a procedural decision (*zaključak*) rejecting the applicant's request to renew the proceedings as out of time.

40. On 25 December 2003 the Ministry issued a procedural decision (*rješenje*) rejecting the applicant's appeal against the decision of 13 June 2002 (see paragraph 34 above). In the explanation, it states that the applicant appealed against the decision on the grounds that the first instance organ incorrectly determined the facts and misapplied the law. Namely, the applicant states in her appeal that her deceased husband was the owner of the apartment on the basis of the purchase contract concluded on 23 December 1991; and for this reason the first instance organ should have applied the Law on Cessation--Real Property, and not the Law on Cessation. The Ministry notes that the applicant filed her request to repossess the apartment on 25 February 2002, and in accordance with Article 5, paragraph 1 of the Law on Cessation, her request was out of time. As to the applicant's assertion that the Law on Cessation—Private Property applies, the Ministry asserts that this is not applicable because it is apparent from Article

39c and 39e of the Law on Sale of Apartments that the applicant must first be in possession of the apartment in accordance with the Law on Cessation. The Ministry concludes that the first instance organ correctly rejected the applicant's repossession request as out of time.

41. The applicant initiated an administrative dispute before the Cantonal Court in Sarajevo against the Ministry's decision of 25 December 2003. In her appeal, the applicant emphasizes that the competent organs should have applied the Law on Cessation--Real Property. These proceedings are still pending.

IV. RELEVANT DOMESTIC LEGISLATION

A. Relevant legislation of the Socialist Federal Republic of Yugoslavia

1. Law on Securing Housing for the Yugoslav National Army

42. The applicant's husband purchased the apartment under the Law on Securing Housing for the Yugoslav National Army (Official Gazette of the Socialist Federal Republic of Yugoslavia ("OG SFRJ") no. 84/90). This Law was passed in 1990 and came into force on 6 January 1991. It essentially regulated the housing needs for military and civilian members of the JNA.

43. Article 21 set forth the general manner in which the purchase price of the apartment was to be determined, which included reductions for the revaluated construction value, the depreciation value, and the revaluated amount of procurement and communal facilities costs of the construction land, and the revaluated amount of the housing construction contribution which was paid to the JNA Housing Fund. The Federal Secretary was also authorized to prescribe the exact methodology to determine the purchase price.

B. Relevant legislation of the Republic of Bosnia and Herzegovina

1. Law on Abandoned Apartments

44. On 15 June 1992 the Presidency of the then Republic of Bosnia and Herzegovina issued a Decree with Force of Law on Abandoned Apartments (Official Gazette of the Republic of Bosnia and Herzegovina ("OG RBiH") nos. 6/92, 8/92, 16/92, 13/94, 36/94, 9/95 and 33/95). The Parliament of the Republic of Bosnia and Herzegovina approved this Decree on 17 June 1994 and renamed the Decree the "Law on Abandoned Apartments". The Law governed the declaration of abandonment of certain categories of socially-owned apartments and their re-allocation.

45. Article 2 set forth that apartments were to be considered abandoned if the pre-war occupancy right holder and his family members left the apartment, even if temporarily. If the pre-war occupancy right holder failed to resume using the apartment within the applicable time limit laid down in Article 3 (*i.e.* before 6 January 1996), he or she was regarded as having abandoned the apartment permanently.

46. According to Article 10, as amended, the failure to resume using the apartment within the time limit was to result in the deprivation of the occupancy right. The resulting loss of the occupancy right was to be recorded in a decision by the competent authority.

2. Law on the Transfer of Real Estate

47. Article 9 of the Law on the Transfer of Real Estate (Official Gazette of the Socialist Republic of Bosnia and Herzegovina ("OG SRBiH") nos. 38/78, 4/89, 29/90 and 22/91; OG RBiH nos. 21/92, 3/93, 17/93, 13/94, 18/94 and 33/94) provided that a contract on the transfer of real estate must be made in written form and the signatures of the parties must be verified by the competent court.

C. Relevant legislation of the Federation of Bosnia and Herzegovina

1. Law on Cessation of the Application of the Law on Abandoned Apartments

48. 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 ("OG FBiH") nos. 11/98, 38/98, 12/99, 18/99, 27/99, 43/99, 31/01, 56/01, 15/02 and 29/03). The Law on Cessation repealed the former Law on Abandoned Apartments.

49. According to the Law on Cessation, the competent authorities may make no further decisions declaring apartments abandoned (Article 1, paragraph 2). All administrative, judicial and other decisions terminating occupancy rights based on regulations issued under the Law on Abandoned Apartments are null and void (Article 2, paragraph 1).

50. 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).

51. The occupancy right holder of an apartment declared abandoned, or a member of his/her household, has a right to return to the apartment in accordance with Annex 7 of the General Framework Agreement for Peace in Bosnia and Herzegovina (Article 3, paragraphs 1 and 2).

52. According to Article 4, paragraph 1, the pre-war occupancy right holder over an apartment or a member of his or her household shall be entitled to claim repossession of the apartment.

53. Article 5, paragraphs 1-3, as amended, provides as follows:

> "A claim for repossession of the apartment must be filed within fifteen months from the date of entry into force of this Law[1].
>
> "Exceptionally, the deadline for submission of claims for repossession of apartments under Article 2, paragraph 5 and Article 18b paragraph 1 of this Law, and Article 83a para. 4 of the Law on Amendments to the Law on Taking Over of the Law on Housing Relations (Official Gazette of FBiH no. 19/99) shall be October 4, 1999.
>
> "If the occupancy right holder does not file a claim to the competent administrative authority, to a competent court, or to the Commission for Real Property Claims of Displaced Persons and Refugees (hereinafter "CRPC"), within the appropriate time limit, or a request for enforcement of a decision of the CRPC within the deadline specified in the Law on Implementation of the Decisions of the CRPC (FBiH OG 43/99, 5/00) the occupancy right is cancelled."

2. Instruction on Application of the Law on Cessation of the Application of the Law on Abandoned Apartments ("Instruction on the Law on Cessation")

[1] That is to say before 4 July 1999.

54. Point 14, sub-point iii, of the Instruction on the Law on Cessation (OG FBiH nos. 11/98, 38/98, 12/99, 27/99, 43/99 and 56/01) clarifies that under Article 5 of the Law on Cessation an occupancy right holder is considered to have made a claim for repossession of the apartment in accordance with the applicable deadline if the occupancy right holder has

> "...submitted a claim to the Commission for Real Property Claims of Displaced Persons and Refugees in accordance with its rules and regulations, namely, by 2 September 1999; or exceptionally, for claims referred to in Article 5, paragraph 2 of the Law, by 3 December 1999;"

3. Law on Sale of Apartments with an Occupancy Right ("Law on Sale of Apartments")

55. Article 27of the Law on Sale of Apartments (OG FBiH nos. 27/97, 11/98, 22/99, 27/99, 7/00, 32/01, 61/01 and 15/02) provides that the ownership right to an apartment shall be acquired upon registration of that right in the Land Registry books of the competent court.

56. Article 39 provides, in relevant part:

> "The occupancy right holders who previously concluded a contract on purchase of an apartment in accordance with the Law on Securing Housing for JNA … shall have the amount they paid, expressed in German Marks ("DEM") according to the applicable exchange rate on the day of purchase, recognised when the new contract on purchase of the apartment is concluded in accordance with this Law."

57. Articles 39a, 39b, 39c, 39d, and 39e came into force on 5 July 1999, the date of their publication in the Official Gazette of the Federation of Bosnia and Herzegovina, as a result of their imposition by the High Representative of Bosnia and Herzegovina.

58. Article 39a provides:

> "If the occupancy right holder of an apartment at the disposal of the Federation Ministry of Defence uses the apartment legally and s/he entered into a legally binding contract on purchase of the apartment with the Federal Secretariat for National Defence before 6 April 1992 in accordance with the Law referred to in Article 39 of this Law, the Federation Ministry of Defence shall issue an order for the registration of the occupancy right holder as the owner of the apartment with the competent court."

59. Article 39b provides that if the occupancy right holder did not pay the total purchase price as specified in the purchase contract, then he or she shall pay the remaining amount specified in the contract to the Ministry of Defence.

60. Article 39c provides:

> "The provisions of Articles 39a and 39b shall also be applicable to an occupancy right holder who has exercised the right to repossess the apartment pursuant to the provisions of the Law on Cessation of the Application of the Law on Abandoned Apartments (Official Gazette of the Federation of Bosnia and Herzegovina nos. 11/98 and 18/99)."

61. Article 39d states that if an individual fails to realise his or her rights in connection with the apartment with the Federation Ministry of Defence, as provided for in the Law on Sale of Apartments, he or she may initiate proceedings before the competent court.

4. Instruction for Implementation of Articles 39a, 39b and 39c of the Law on Sale of Apartments

62. The Instruction for the Implementation of Articles 39a, 39b, and 39c of the Law on Sale of Apartments with an Occupancy Right (OG FBiH no. 6/00) states that the Ministry of Defence shall issue an order for registration of the ownership right over the apartment on the request of the occupancy right holder, or a member of his or her family household, who realised the right to repossess the apartment in accordance with the Law on Cessation, and who had previously concluded a legally binding contract on purchase of the apartment from the JNA (Federal Secretariat for National Defence) Housing Fund before 6 April 1992.

5. Law on Civil Procedure

63. Article 54 of the Law on Civil Procedure (OG FBiH nos. 42/98, 3/99 and 53/03) provides as follows:

> "A plaintiff may initiate a lawsuit and request that the court establish the existence or non-existence of some right or legal relationship, and the authenticity or non-authenticity of some document, respectively.
>
> "Such a lawsuit may be initiated when a special regulation provides so, when the plaintiff has a legal interest that the court establish the existence or non-existence of some right or legal relationship and the authenticity or non-authenticity of some document before the maturity date of the claim for enforcement from the same relationship.
>
> "If the decision in the dispute depends on whether some legal interest, which during the lawsuit became disputable, exists or not, the plaintiff may file, in addition to the existing claim, a complaint requesting that the court establish the existence or non-existence of such relationship, if the court before which the lawsuit is pending is competent for such a complaint.
>
> "Filing a complaint under the provision in paragraph 3 of this Article shall not be deemed modification of the lawsuit."

V. COMPLAINTS

64. The applicant alleges a violation of her right to the peaceful enjoyment of her possessions (Article 1 of Protocol No. 1 to the Convention) and requests that the domestic organs recognise her as the owner of the apartment based on the purchase contract concluded in December 1991.

VI. SUBMISSIONS OF THE PARTIES

A. The Federation of Bosnia and Herzegovina

65. The respondent Party submitted its observations on the admissibility and merits of the application on 19 April 1999, in a joint submission also addressing three other applications. The submission makes no comments on the facts of the case. As to the admissibility, the respondent Party asserts that the six-month rule should be applied to declare the cases inadmissible. As to the merits, the respondent Party only generally states that Article 6 has not been violated, and therefore Article 13 has also not been violated. As to Article 1 of Protocol No. 1 to the Convention, the respondent Party argues that the applicants (*i.e.* the husband of the present applicant Slavica Prole and the three others) had not concluded purchase contracts; therefore, they have no protected possession. Even if the applicants had purchase contracts that were retroactively invalidated by certain legislation, there is still no violation of Article 1 of Protocol No. 1 to the Convention, according to the respondent Party.

66. In its submission received on 6 June 2003, the respondent Party requests the Chamber to declare the application inadmissible for non-exhaustion of domestic remedies because the applicant only filed a repossession request for the apartment on 16 May 2000.

67. In its observations on the admissibility and merits received on 13 January 2004, the respondent Party submits that the applicant submitted her repossession request to the CRPC on 11 March 1998, and that this request was rejected by the CRPC on 24 April 2003. The applicant submitted a request for review of the decision, but no response was ever obtained from the CRPC.

68. As to the admissibility of the application, the respondent Party states that the applicant filed a repossession request on 11 March 1998 and that the competent organ rejected the applicant's request. However, the applicant still has the possibility to initiate an administrative dispute before the Cantonal Court. Moreover, the applicant can initiate a civil lawsuit to determine the validity of the purchase contract in accordance with the Law on Civil Procedure. The respondent Party, therefore, requests that the application be declared inadmissible as pre-mature.

69. With regard to the merits of the application, the respondent Party states that Article 8 of the Convention has not been violated because the competent organ rejected the applicant's repossession claim as out of time and the CRPC rejected her repossession request. As to the alleged discrimination, the respondent Party states that the applicant did not state on what grounds she has been discriminated against, nor has she shown that she has been the victim of any discrimination; therefore, this claim is unsupported.

70. On 28 April 2004, the respondent Party submitted additional written observations contesting the validity of the purchase contract of 23 December 1991. The respondent Party asserts that the seal indicates that the contract was concluded in Belgrade, although the Military Construction Department in Sarajevo was responsible for concluding contracts for the purchase of JNA apartments located in Sarajevo. Also, the practice was to place the stamp of the Basic Court on each page of the contract, which this contract does not have; moreover, the competent court for the verification of such purchase contracts was the Basic Court I in Sarajevo, and not the Basic Court II in Sarajevo. The respondent Party also disputes the confirmation issued on 27 April 1992 showing that the applicant paid the full purchase price as it obtained information from the Ministry of Defence that the individual who signed the confirmation worked at the Ministry of Defence only as of 22 April 1992.

B. The applicant

71. The applicant considers herself the owner of the apartment,and she believes that the Law on Cessation--Real Property should be the applicable law in her case. The applicant asserts that she has taken all steps possible to gain repossession of her apartment and to obtain the registration of her ownership in the Land Registry books. The applicant also claims that she has been discriminated against in this regard.

72. In a submission dated 8 October 2003, the applicant states that she has not received any response from the CRPC regarding her request for review, nor from the Ministry regarding her request to renew the proceedings. The applicant explains that she did not initiate an administrative dispute against the 12 December 2001 decision of the Ministry because she assumed she would realise her rights to the apartment through the CRPC.

73. On 9 February 2004 the applicant responded to the additional observations of the respondent Party. The applicant states that her husband was in the JNA until 19 May 1992, at which time, upon the formal exit of the JNA from Bosnia and Herzegovina, he became a part of the Army of the Republika Srpska, where he served until 1 July 1996 (he received the decision regarding his retirement pension on 30 June 1996). The applicant lodged a request for review of the CRPC decision because it was based on incorrect facts, and she also initiated an administrative dispute before the Cantonal Court regarding the repossession request. She

believes that the respondent Party's insistence on her initiating an administrative dispute is simply a delay tactic. The applicant reiterates that she submitted her repossession claim to the CRPC on 11 March 1998.

74. The applicant objects to the respondent Party's assertion that the contract on purchase concluded by her husband in 1991 is in any way not valid. The applicant states that the Law on Sale of Apartments explicitly recognises the validity of purchase contracts concluded before 6 April 1992. Article 39a of said Law provides that a possessor of such a contract may be registered as the owner of the apartment, on the condition that the contract holder has legally entered into possession of the apartment. Thus, the applicant considers it unnecessary to initiate civil proceedings to determine the validity of the purchase contract because the Law on Sale of Apartments does not in any way question the validity of the contract. The 22 March 2000 letter from the Ministry of Defence is also evidence that the Ministry of Defence does not dispute the validity of the contract because it only requests that she repossess her apartment in order to realise her rights to register ownership over the apartment.

75. As to the objections of the respondent Party on the merits of the case, the applicant quotes from a decision of the Federation Supreme Court, in case no. UŽ-216/02, where the Court held that a repossession request must be considered in light of Article 8 of the Convention and Annex 7, and that the Convention has priority over all other domestic laws. The applicant concludes that other organs of the respondent Party have already found, in repossession cases similar to hers, violations of Article 8 of the Convention, such that the respondent Party's rejection of her repossession claim is ill-founded.

VII. OPINION OF THE COMMISSION

A. Admissibility

76. 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. Admissibility as against Bosnia and Herzegovina

77. In accordance with Article VIII(2) of the Agreement, "the [Commission] shall decide which applications to accept.… In so doing, the [Commission] shall take into account the following criteria: … (c) The [Commission] shall also dismiss any application which it considers incompatible with this Agreement, manifestly ill-founded, or an abuse of the right of petition."

78. The Commission notes that the applicant directs her application against Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina.

79. In the previous cases decided by the Chamber on the subject of JNA apartments, the Chamber held Bosnia and Herzegovina responsible for passing the legislation that retroactively annulled the contracts on purchase of JNA apartments (*see, e.g.,* case no. CH/96/3, CH/96/8 and CH/96/9, *Medan, Baštijanović, and Marković,* decision on merits of 3 November 1997, Decisions on Admissibility and Merits March 1996 – December 1997; case no. CH/96/22, *Bulatović,* decision on merits of 3 November 1997, Decisions on Admissibility and Merits March 1996 – December 1997; case no. CH/96/2 *et al., Podvorac and others,* decision on admissibility and merits of 14 May 1998, Decisions and Reports 1998; case nos. CH/97/82 *et al., Ostojić and others,* decision on admissibility and merits of 13 January 1999, Decisions January – July 1999; case no. CH/97/60

et al., Miholić and others, decision on admissibility and merits of 9 November 2001, Decisions July – December 2001).

80. In the present case, however, it is not shown that the retroactive annulment of purchase contracts with the former JNA has affected the applicant. Rather, the Commission notes that the conduct of the bodies responsible for the proceedings complained of by the applicant, such as the Administration, the Ministry, and the Ministry of Defence, engages the responsibility of the Federation of BiH, not of Bosnia and Herzegovina, for the purposes of Article II(2) of the Agreement. Accordingly, as directed against Bosnia and Herzegovina, the application is incompatible *ratione personae* with the provisions of the Agreement, within the meaning of Article VIII(2)(c).

81. The Commission therefore decides to declare the application inadmissible against Bosnia and Herzegovina.

2. Admissibility as against the Federation of Bosnia and Herzegovina

a. Manifestly ill-founded

82. In accordance with Article VIII(2) of the Agreement, "(c) The [Commission] shall also dismiss any application which it considers incompatible with this Agreement, manifestly ill-founded, or an abuse of the right of petition."

83. The Chamber transmitted the application in connection with discrimination and the right to the enjoyment of one's possessions and the right to one's home. However, in the course of the proceedings before the domestic organs, it is not apparent that the applicant has been discriminated against. The applicant states that Article 3a of the Law on Cessation is discriminatory. However, the Commission notes that Article 3a of the Law on Cessation has not been applied in the applicant's case. Therefore, the Commission decides to declare the application inadmissible as manifestly ill-founded in relation to the applicant's discrimination claim.

b. Non-exhaustion of domestic remedies

84. In accordance with Article VIII(2) of the Agreement, "the [Commission] shall decide which applications to accept…. In so doing, the [Commission] shall take into account the following criteria: (a) Whether effective remedies exist, and the applicant has demonstrated that they have been exhausted …."

(1) Repossession claim

85. The respondent Party asserts that the applicant has not exhausted domestic remedies related to the repossession of the apartment because she still has the possibility of initiating an administrative dispute before the Cantonal Court in Sarajevo. The Commission notes that the applicant initiated such a dispute on 25 December 2003, and that these proceedings are still pending. However, given the fact that the applicant first lodged her repossession request on 11 March 1998, more than six years ago, the Commission concludes that the domestic remedies have not proven effective. For this reason, the application is admissible despite the pending administrative dispute.

(2) Ownership claim

86. As to the respondent Party's assertion that the applicant must initiate a civil lawsuit to determine the validity of the purchase contract concluded in 1991, the Commission acknowledges that the Law on Civil Procedure provides a remedy to determine whether some right exists or not or to determine the authenticity of a document.

87. The Commission recalls that previously the Chamber has found Article 54 of the Law on Civil Procedure (or Article 172, under the former Law on Civil Procedure) an effective domestic remedy that must be exhausted in cases where the applicants did not have a purchase contract in their possession, but rather asserted that they were the owners based on the steps taken toward the purchase of an apartment in 1991 and 1992 (see, *e.g.* case nos. CH/98/1160, CH/98/1177, CH/98/1264 *Pajagić, Kurozović and M.P.*, decision on admissibility of 9 May 2003). In such cases, the Commission considers it reasonable to expect that the applicant must bear the burden of initiating a lawsuit to determine the existence of a contractual relationship or of any contractual rights.

88. In the case at hand, the applicant has a purchase contract that appears, in all aspects, to be a valid contract. It has been signed by all parties, includes the purchase price and terms of payment, the signatures on the contract were verified by the Basic Court II in Sarajevo, and the taxes on the transfer of real estate were paid. The applicant asserts that the validity of the contract is not in dispute because the Law on Sale of Apartments explicitly recognises purchase contracts concluded with the JNA prior to 6 April 1992, but only sets the additional condition that the contract holder first repossess the apartment in accordance with the Law on Cessation before the contractual rights can be realised. The Commission takes note that the respondent Party has disputed the validity of the purchase contract five years after the application and purchase contract were transmitted to it, by its submission of 28 April 2004 (see paragraph 70 above). The Commission also takes note that no organ of the respondent Party has disputed the validity of the purchase contract. The Commission considers that the burden of initiating proceedings to determine the validity of the contract should fall on the party who wishes to dispute the contract, and not on the contract holder who otherwise has no reason to doubt the validity of the contract he or she possesses.

89. The Commission concludes that, because the applicant possesses a purchase contract which appears on its face to be valid, initiating a lawsuit in accordance with Article 54 of the Law on Civil Procedure is not a domestic remedy that the applicant must exhaust, within the meaning of Article VIII(2)(a) of the Agreement.

3. Conclusion as to admissibility

90. Because the respondent Party has asserted no other grounds for declaring the application inadmissible, and there are no other apparent grounds, the Commission declares the application inadmissible *ratione personae* as directed against Bosnia and Herzegovina, inadmissible as to the alleged discrimination, and admissible in all other respects as directed against the Federation of BiH.

B. MERITS

91. 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. Alleged violation in connection with Article 1 of Protocol No. 1 to the Convention

92. The applicant alleges a violation of the peaceful enjoyment of her possessions with regard to the use and enjoyment of the apartment over which she and her husband were the pre-war occupancy right holders and which her husband purchased in 1991.

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

94. Article 1 of Protocol No. 1 to the Convention thus contains three rules. The first rule enunciates the general principle that one has the protected right to the peaceful enjoyment of one's property. The second rule covers deprivation of property and subjects it to the requirements of the public interest and conditions laid out in law. The third rule recognises that States are entitled to control the use of property and subjects such control to the general interest and domestic law. It must then be determined in respect of these conditions whether a fair balance has been struck between the demands of the general interest of the community and the requirements of the protection of the individual applicant's rights, bearing in mind that the last two rules should be construed in light of the general principle (*see*, *e.g.,* case no. CH/96/17 *Blentić,* decision on admissibility and merits of 5 November 1997, paragraphs 31-32, Decisions on Admissibility and Merits March 1996-December 1997). Thus, there must be a reasonable relationship of proportionality between the means employed and the aim sought to be realised.

95. The Commission must first consider whether the applicant has any rights under the contract that constitute "possessions" for the purposes of Article 1 of Protocol No. 1 to the Convention. In this regard, the Commission refers to the Chamber's decisions in case no. CH/96/3 *et al. Medan and others*, decision on merits of 3 November 1997, Decisions on Admissibility and Merits March 1996 – December 1997; and case no. CH/97/60 *et al. Miholić and others*, decision on admissibility and merits of 9 November 2001, Decisions July – December 2001. In the aforementioned cases, the Chamber consistently found that the rights under a contract to purchase an apartment concluded with the JNA, pursuant to the Law on Securing Housing for the JNA, constitute "possessions" for the purposes of Article 1 of Protocol No. 1 to the Convention. The Commission notes that in the present case the applicant's husband concluded a contract under factual circumstances similar to those in the cases cited, and therefore, the Commission sees no reason to diverge from the previous jurisprudence of the Chamber in this regard.

a. Interference with the applicant's rights

96. The Commission must next determine the nature of the interference with the applicant's rights flowing from the purchase contract. On 3 March 2000 the applicant first requested the Ministry of Defence to issue an order that would allow her to be registered as the owner of the apartment in the Land Registry books. Her request has been denied on several occasions, with the explanation that she must first repossess the apartment in accordance with the Law on Cessation as provided for in Article 39c of the Law on Sale of Apartments before the Ministry of Defence will issue such an order. Thus, the applicant is essentially prevented from exercising her ownership rights to the apartment for two reasons: First, because she cannot enter into possession of the apartment due to the domestic organs' insistence that she did not timely file the repossession request; and second, because Article 39c of the Law on Sale of Apartments requires her to be in possession of the apartment before the order to be registered as owner can be issued. It appears that the Ministry of Defence lawfully denied the applicant's request to be registered as

the owner because Article 39c explicitly sets forth that an order authorising the registration of ownership cannot be issued until the contract holder is in possession of the apartment. The Commission is aware, although it is not specifically raised in the proceedings in this case, that Article 39d of the Law on Sale of Apartments further provides that a person who does not realise his or her rights to the apartment in accordance with the Law on Sale of Apartments may initiate court proceedings in order to do so. The Commission therefore concludes that the interference in question stems from the Law on Sale of Apartments. It is accordingly necessary for the Commission to examine whether this interference by the Federation of BiH is justified under Article 1 of Protocol No. 1 to the Convention as being "subject to conditions provided for by law" and "in the public interest".

b. Principle of lawfulness

97. Regardless of which of the three rules set forth in Article 1 of Protocol No. 1 of the Convention is applied in a given case (*i.e.*, interference with possessions, deprivation of possessions, or control of use of property), the challenged action by the respondent Party must have been lawful in order to comply with the requirements of Article 1 of Protocol No. 1 to the Convention. As mentioned above, the refusal to issue the order for the applicant to be registered as owner over the apartment was in accordance with Article 39c of the Law on Sale of Apartments. Therefore, the denial of the applicant's rights flowing from the purchase contract is in accordance with the law.

c. Public interest

98 The central issue of this case, and what the Commission must now examine, is whether the continuing interference with the applicant's property rights resulting from the application of Article 39c of the Law of Sale of Apartments can be justified as "in the public interest". Additionally, although not specifically asserted during the proceedings by the Ministry of Defence as a legal possibility for the applicant, the Commission will also address whether Article 39d of the said Law is "in the public interest."

99. When considering whether the taking of property is "in the public interest", it must be determined whether a "fair balance" has been struck between the demands of the general interest of the community and the requirements of the protection of the individuals' fundamental rights. Thus, there must be a reasonable relationship of proportionality between the means employed and the aim to be achieved. The requisite balance will not be found if the persons concerned had to bear "an excessive burden" (see *e.g.*, Eur. Court HR, *Sporrong and Lönnroth v. Sweden,* decision of 23 September 1982, Series A no. 52, pp. 26-28, paragraphs 70-73).

100. The European Court has acknowledged that in taking decisions involving the deprivation of property rights of individuals, national authorities enjoy a wide margin of appreciation because of their direct knowledge of their society and its needs. Further, the decision to expropriate property will often involve consideration of political, economic and social issues on which opinions within a democratic society may reasonably differ. Therefore, the judgement of the national authorities will be respected unless it was "manifestly without reasonable foundation" (Eur. Court HR, *James and Others v. United Kingdom*, decision of 21 February 1986, Series A no. 98, p. 40, paragraph 46).

101. Nevertheless, respondent Parties have not been granted *carte blanche* when deciding upon appropriate measures of their social and economic policies. Those measures are still subject to the scrutiny of the European Court: (a) They must pursue a legitimate aim; and (b) there must be a "reasonable relation of proportionality between the means employed and the aim sought to be realised" (see the above-mentioned *James and others* decision, p. 34, paragraph 50). The latter requirement was expressed also by the notion of the "fair balance" that must be struck between the demands of the communal interest and the requirements of the protection of the individual's fundamental rights. There is no "fair balance" if the person concerned has had to bear "an

individual and excessive burden" (see the above-mentioned *Sporrong and Lönnroth* decision, p. 26, paragraphs 69 and 73).

102. In the case at hand, the respondent Party has asserted no legitimate aim for Article 39c of the Law on Sale of Apartments. In its submission received on 23 March 1999, the respondent Party states that Article 39 of the Law on Sale of Apartments allows those persons who concluded legally binding contracts to be reimbursed for the funds they previously paid, which therefore brings all citizens to an equal footing. This reasoning, however, does not provide an aim for the provision of Article 39c of the Law on Sale of Apartments. By its own examination, the Commission can see no legitimate aim in requiring a contract holder to first enter into possession of the apartment in question before being able to exercise his or her contractual rights. Lacking any legitimate aim, the Commission therefore, must find that this provision is not "in the public interest". This determination is sufficient for the Commission to find that the provision is not compatible with Article 1 of Protocol No. 1 to the Convention.

103. The Commission will next turn to address whether Article 39d of the Law on Sale of Apartments has a legitimate aim and is proportional to the aim sought. The Commission notes that in other submissions related to contracts on purchase of JNA apartments concluded before 6 April 1992, the respondent Party has pointed out that Article 39d of the Law on Sale of Apartments provides a remedy for persons who do not realise their rights to the apartment with the Ministry of Defence, in that they may initiate a lawsuit regarding their ownership to the apartment. Although the respondent Party has submitted no legitimate aim for the provision in question, the Commission, *proprio motu*, could accept that such provision is appropriate in cases where the purchase contract is in some form incomplete, in dispute, lost, *etc*. When, however, as in the present case, there are no apparent flaws in the purchase contract and its validity has not been disputed by the domestic organs, the Commission considers that requiring the applicant to initiate court proceedings places an excessive burden on the contract holder and that this burden is not proportional to any legitimate aim. Therefore, the Commission finds that this provision, in the case at hand, is not "in the public interest" and as such, it is incompatible with the requirements of Article 1 of Protocol No. 1 to the Convention.

d. Conclusion

104. Having regard to the above, the Commission finds that the denial of the applicant's rights flowing from the purchase contract due to the application of Article 39c of the Law on Sale of Apartments was not in the public interest, and thereforecannot be justified. The Commission also finds that Article 39d of the Law on Cessation places an excessive burden on contract holders, and that it is also not "in the public interest", and therefore not compatible with Article 1 of Protocol No. 1 to the Convention. The Commission therefore, finds a violation of the right to the peaceful enjoyment of the applicant's possessions under Article 1 of Protocol No. 1 to the Convention, the Federation of BiH being responsible for this violation.

2. Alleged violation in connection with Article 8 of the Convention

105. Article 8 of the Convention provides as follows,

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> "2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

106. In light of its finding above of a violation of Article 1 of Protocol No. 1 to the Convention, related to the ownership claim, the Commission considers it unnecessary to also examine the application in connection with Article 8 of the Convention.

VIII. REMEDIES

107. The Commission has established that the Federation of BiH violated the right of the applicant to the peaceful enjoyment of her rights flowing from the purchase contract that her husband concluded with the JNA in 1991 in connection with Article 1 of Protocol No. 1 to the Convention. Under Article XI(1)(b) of the Agreement, the Commission must next address the question of what steps shall be taken by the respondent Party to remedy the established breaches of the Agreement. In this regard the Commission shall consider issuing orders to cease and desist, monetary relief (including pecuniary and non-pecuniary damages), as well as provisional measures.

108. The Commission recalls that the applicant, on 30 December 2002, submitted a claim for pecuniary and non-pecuniary monetary compensation related to the non-recognition of her ownership to the apartment. Additionally, the applicant added a compensation request for her alleged unlawful detention by the Military Police in Sarajevo for a three-day period in April 1992. This second compensation claim is not otherwise supported or explained in the course of the proceedings before the Chamber or Commission.

109. In view of the finding of a violation, the Commission considers it appropriate to order the respondent Party to ensure that the applicant is allowed to repossess the apartment located at Dajanli Ibrahimbega 6/III within three months from the date of receipt of this decision, and to ensure that the Federation Ministry of Defence issues an order for the applicant to be registered as the owner over the apartment in question within three months from the date of receipt of this decision. The Commission considers that this is sufficient satisfaction for the violations found.

110. The Commission will order the Federation of BiH to submit to the Commission a full report on the steps taken by it to comply with these orders by 29 October 2004.

IX. CONCLUSIONS

111. For the above reasons, the Commission decides,

1. unanimously, to declare the application inadmissible as directed against Bosnia and Herzegovina;

2. unanimously, to declare the application inadmissible in relation to the applicant's claim of discrimination;

3. unanimously, to declare the remainder of the application admissible as against the Federation of Bosnia and Herzegovina;

4. unanimously, that the right of the applicant to the peaceful enjoyment of her possessions flowing from the purchase contract, within the meaning of Article 1 of Protocol No. 1 to the European Convention on Human Rights, has been violated, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Human Rights Agreement;

5. unanimously, that it is not necessary to examine the application in connection with Article 8 of the European Convention on Human Rights;

6. unanimously, to order the Federation of Bosnia and Herzegovina to ensure that the applicant is permitted to repossess the apartment and ensure that the Federation of Bosnia and Herzegovina Ministry of Defence issues the order for the applicant to be registered as the owner over the apartment at Dajanli Ibrahimbega 6/III in the Land Registry books of the competent court within three months from the date of receipt of this decision; and,

7. unanimously, to order the Federation of Bosnia and Herzegovina to submit to the Commission a full report on the steps taken by it to comply with these orders by 29 October 2004.

(signed)
J. David YEAGER
Registrar of the Commission

(signed)
Jakob MÖLLER
President of the Commission