DECISION ON ADMISSIBILITY AND MERITS

Case no. CH/98/293

Anica GALIĆ-LUKIĆ

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 July 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 Antuna Hangija 11 in Sarajevo, which she 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 5 December 1991. The applicant also seeks to be registered as the owner of the apartment.

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.

II. PROCEEDINGS BEFORE THE CHAMBER AND THE COMMISSION

3. The application was introduced to the Chamber on 6 February 1998 and registered on 10 April 1998.

4. On 15 June 1999 the application was transmitted to the respondent Parties in connection with Article 8 and Article 1 of Protocol No. 1 to the Convention.

5. On 16 August 1999 the Federation of Bosnia and Herzegovina submitted its observations on the admissibility and merits of the application, which were transmitted to the applicant, who replied on 8 November 1999. Bosnia and Herzegovina did not submit observations to the Chamber, and has never made any submission to the Chamber or Commission in connection with this application. Therefore, throughout this decision, the term "respondent Party" in the singular refers to the Federation of Bosnia and Herzegovina.

6. On 25 December 2001 the applicant sent a request for urgency to the Chamber that was transmitted to both respondent Parties.

7. On 12 September 2003, 21 November 2003, and 21 June 2004, the Federation of Bosnia and Herzegovina submitted further information, which was transmitted to the applicant and Bosnia and Herzegovina.

8. The applicant submitted further observations on 29 October 2003, 9 April 2004, and 13 April 2004. As of 8 April 2004, the applicant was represented before the Commission by Snježana Jokić, a lawyer practicing in Srpsko Sarajevo, the Republika Srpska.

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

III. ESTABLISHMENT OF THE FACTS

10. The applicant is the pre-war occupancy right holder over an apartment located at Antuna Hangija 11 in Sarajevo. The applicant was allocated the apartment in 1987 as a doctor at the Military Hospital in Sarajevo (*Vojna bolnica*) and a civilian member of the JNA. The applicant concluded a contract on use for the apartment on 12 July 1998.

11. On 5 December 1991 the applicant concluded a purchase contract for the apartment with the JNA Housing Fund, in accordance with the Law on Securing Housing for the JNA. The contract provided for the applicant to pay the purchase price in monthly instalments. The signatures on the purchase contract were verified before the First Instance Court (*Osnovni sud II*) in Sarajevo, apparently on 6 December 1991, according to the information on the back of the contract.

12. On 13 February 1992 the applicant paid 618,792 Yugoslav Dinars toward the purchase of the apartment. On 15 February 1992 the applicant concluded an Annex to the purchase contract that changed the terms of the contract such that the purchase price was to be paid in the lump sum of 618,792 Yugoslav Dinars. The Annex was verified at the First Instance Court in Sarajevo on 9 March 1992.

13. The applicant was transferred to the Military Medicine Academy (*Vojno medicinskoj akademji*) in Belgrade pursuant to an order of 11 March 1992, and in April 1992 she left the apartment, together with her daughter, and went to Belgrade.

14. On 23 May 1996 the apartment was declared permanently abandoned, and was allocated to R.S., an official in the Army of the Federation of Bosnia and Herzegovina. The respondent Party states that R.S. presently uses the apartment as alternative accommodation (*sekundarni smješta*).

15. On 17 August 1998 the applicant filed a request for repossession of the apartment to the Administration for Housing Affairs of Sarajevo Canton ("the Administration", *Uprava za stambena pitanje Kanton Sarajevo*).

16. According to the applicant's representative, on 7 December 1998 the applicant submitted a repossession request for the apartment to the Commission for Real Property Claims of Displaced Persons and Refugees ("the CRPC").

17. On 6 February 2002 the Administration issued a procedural decision rejecting the applicant's request for repossession of the apartment as ill-founded pursuant to Article 3a, paragraph 2 of the Law on Cessation of Application of the Law on Abandoned Apartments ("the Law on Cessation", see paragraph 34 below). It emphasized that the applicant was a civilian member of the Yugoslav Army after 14 December 1995, such that she cannot be considered a refugee or a displaced person for the purposes of the Law on Cessation. The Administration relied on a document (*potvrda*) from the Military Medicine Academy of 24 January 2002 confirming her employment with that institution.

18. On 24 June 2002 the applicant filed an appeal to the Ministry of Housing Affairs of Sarajevo Canton ("the Ministry", *Ministarstvo stambenih poslova*) against the 6 February 2002 procedural decision.

19. On 9 July 2002 the CRPC issued a decision (*odluka*) rejecting the applicant's claim and declaring itself unable to decide in the matter as the applicant served in a foreign army after 14 December 1995 and could not therefore be considered a refugee.

20. On 24 December 2002 the Ministry issued a procedural decision rejecting the applicant's appeal against the 6 February 2002 decision. The Ministry noted that it was undisputed that the applicant served in the JNA on 30 April 1991 and that after 14 December 1995 she continued to serve in the Yugoslav Army, as evidenced by the document of 24 January 2002 (see paragraph 17 above). Thus, according to Article 3a, paragraph 2 of the Law on Cessation, the applicant cannot be considered a refugee or displaced person and does consequently not have the right to repossess the apartment. As to the applicant's alleged ownership, the Ministry noted that Article 39e of the Law on Sale of Apartments with an Occupancy Right ("the Law on Sale of Apartments", see paragraph 43 below) allows the applicant to seek compensation for the amount she paid for the apartment from the Federation Ministry of Defence.

21. In a letter of 9 April 2004 the applicant's representative informed the Commission that the applicant did not initiate an administrative dispute against the decision of 24 December 2002 because she considered she would have received a negative decision, and because she was waiting for the outcome of the proceedings before the CRPC and the Human Rights Chamber.

IV. RELEVANT DOMESTIC LEGISLATION

A. Relevant legislation of the Socialist Federal Republic of Yugoslavia

1. Law on Securing Housing for the Yugoslav National Army

22. The applicant 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.

23. 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, the revaluated amount of procurement and communal facilities costs of the construction land, and the revaluated amount of the housing construction contribution that was paid to the JNA Housing Fund. The Federal Secretary was also authorized to prescribe the exact methodology for determining the purchase price.

2. Instructions on the methodology to determine the purchase price for JNA apartments ("**the Instructions**"*, **Upustvo o metodoligiji za utvrđivanje otkupne cene stanova stambenog fonda jugoslovenske narodne armije***)

24. These Instructions were published in the Military Official Gazette in April 1991 and set forth the manner of calculating the purchase price of apartments that were to be purchased from the JNA Housing Fund.

3. Guidelines for purchasing an apartment from the JNA Housing Fund ("the Guidelines", *Pravilinik o otkupu stanova iz stambenog fonda jugoslovenske narodne armije*)

25. These Guidelines were published in the Military Official Gazette in April 1991 and set forth the procedure to be followed in order to purchase an apartment from the JNA Housing Fund.

B. Relevant legislation of the Republic of Bosnia and Herzegovina

1. Law on Abandoned Apartments

26. 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.

27. 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 only 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.

28. According to Article 10, as amended, the failure to resume using the apartment within the time limit would result in 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

29. 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 that the signatures must be verified by the competent court.

C. Relevant legislation of the Federation of Bosnia and Herzegovina

1. The Law on Cessation of the Application of the Law on Abandoned Apartments ("Law on Cessation")

30. The Law on Cessation entered into force on 4 April 1998 and has been thereafter amended (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.

31. 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).

32. 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).

33. The occupancy right holder of an apartment declared abandoned, or a member of his or 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).

34. The former Article 3a, paragraphs 1 and 2, which were in force between 4 July 1999 and 1 July 2003, provided as follows:

> "As an exception to Article 3, paragraphs 1 and 2 of this Law, regarding apartments declared abandoned on the territory of the Federation of Bosnia and Herzegovina, at the disposal of the Federation Ministry of Defence, the occupancy right holder shall not be considered a refugee if on 30 April 1991 s/he was in active service in the SSNO (Federal Secretariat for National Defence) – JNA (i.e. not retired) and was not a citizen of Bosnia and Herzegovina according to the citizenship records, unless s/he had residence approved to him or her in the capacity of a refugee, or other equivalent protective status, in a country outside the former Socialist Federal Republic of Yugoslavia before 14 December 1995.
>
> "A holder of an occupancy right from paragraph 1 of this Article will not be considered a refugee if s/he remained in the active military service of any armed forces outside the territory of Bosnia and Herzegovina after 14 December 1995, or if s/he has acquired another occupancy right outside the territory of Bosnia and Herzegovina."

35. The present Article 3a, which came into force on 1 July 2003, provides as follows:

> "As an exception to Article 3, paragraph 1 and 2 of the Law, regarding apartments declared abandoned on the territory of the Federation of Bosnia and Herzegovina at the disposal of the Federation Ministry of Defence, the occupancy right holder shall not be considered a refugee nor have the right to repossess the apartment if after 19 May 1992, she or he remained in the active service as a military or civilian personnel of any armed forces outside the territory of Bosnia and Herzegovina, unless she or he had residence approved to him or

her in the capacity of a refugee, or other equivalent protective status, in a country outside the former Socialist Federal Republic of Yugoslavia before 14 December 1995.

"A holder of an occupancy right from paragraph 1 of this Article will not be considered a refugee or have the right to repossess the apartment in the Federation of Bosnia and Herzegovina, if she or he has acquired another occupancy right or other equivalent right from the same housing fund of the former JNA or newly-established funds of armed forces of states created on the territory of the former Socialist Federal Republic of Yugoslavia."

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

36. Article 27 of 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.

37. 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."

38. 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.

39. 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 (SSNO) 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."

40. Article 39b, in relevant part, provides,

"In the event that the occupancy right holder referred to in Article 39a of this Law did not effect the payment of the total amount of the sale price of the apartment in accordance with the purchase contract, s/he shall pay the remainder of the amount specified in that contract to the Ministry of Defence of the Federation.

….

"The provisions of Articles 39a of this Law and paragraph 1 and 2 of this Article shall also be applied to contracts on the purchase of apartments concluded before 6 April 1992, in cases where the verification of signatures has not been done before the responsible court."

41. 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)."

42. Article 39d provides:

> "A person who does not realise his or her right with the Ministry of Defence, as provided for in this Law, may initiate proceedings before the competent court."

43. Article 39e provides:

> "The occupancy right holder who is not entitled to the repossession of the apartment or does not submit a claim for the repossession of the apartment in accordance with the provisions of Article 3 and 3a of the Law on Cessation of the Application of the Law on Abandoned Apartments and who entered into a legally binding contract on purchase of the apartment with the former Federal Secretariat for National Defence (SSNO) before 6 April 1992, shall have the right to submit a request to the Federation Ministry of Defence for compensation of the funds paid on that basis, unless it is proved that these funds were acknowledged for purchase of an apartment outside the territory of Bosnia and Herzegovina"

3. Law on Civil Procedure

44. 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, or 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 a 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.
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> "Filing a complaint under the provision in paragraph 3 of this Article shall not be deemed modification of the lawsuit."

V. COMPLAINTS

45. The applicant complains that her right to her home in connection with Article 8 of the Convention, and her right to the peaceful enjoyment of her property, in connection with Article 1 of Protocol No. 1 to the Convention, have been violated.

VI. SUBMISSIONS OF THE PARTIES

A. The Federation of Bosnia and Herzegovina

46. The Federation of Bosnia and Herzegovina submitted its observations on the admissibility and merits on 16 August 1999. As to the admissibility of the application, the respondent Party suggests to declare the application inadmissible for non-exhaustion of domestic remedies. The respondent Party notes that, at the time of her application to the Chamber, the applicant had not even addressed the competent body for the repossession of the apartment. With the passage of the amendments to the Law on Sale of Apartments in July 1999, the applicant has also had the legal possibility to request the Federation Ministry of Defence to issue an order to be registered as

the owner of the apartment, and if she does not realize her rights in that manner, she can initiate a dispute before the competent court in accordance with Article 39d of the Law on Sale of Apartments. If she fails to realize her rights in this manner, she may still submit a compensation claim to the Federation Ministry of Defence to be reimbursed for the amount she paid for the apartment. The respondent Party asserts that the applicant has taken no steps regarding the recognition of her ownership right to the apartment as provided for by the Law on Sale of Apartments.

47. With respect to the merits of the application in connection with Article 8 of the Convention, the Federation of Bosnia and Herzegovina notes that it is undisputed that the applicant voluntarily left her apartment upon her transfer to the Military Medical Academy in Belgrade; that she served in the JNA before the war and during the war; and that after the war she continued to serve in its successor, the Army of Yugoslavia. Because the applicant has moved to another country, where she is employed, the apartment in Sarajevo cannot be regarded as her home within the meaning of Article 8 of the Convention. Therefore, the respondent Party asserts that it has not interfered with the applicant's rights in connection with Article 8 of the Convention.

48. With respect to the merits of the application in connection with Article 1 of Protocol No. 1 to the Convention, the respondent Party first asserts that Articles 39a and 39b of the Law on Sale of Apartments provides that persons who concluded legally binding contracts on purchase prior to 6 April 1992, and who use their apartment legally, will have their rights to the apartment recognized, including registration of their ownership in the relevant Land Registry books. The Federation of Bosnia and Herzegovina also notes that Article 3a of the Law on Cessation prevents some persons from repossessing their apartments, but that Article 39e allows those persons to obtain compensation for the purchase price paid for the apartment. In the present case, the respondent Party notes that the applicant has not even submitted a repossession request for the apartment, and without wishing to prejudice the possible response of the administrative organ, points out that the applicant has continually served with the JNA since 20 April 1992, and that she is a citizen of Yugoslavia (as otherwise she could not serve in the Yugoslav Army). In any case, the applicant has the possibility of obtaining compensation from the Federation Ministry of Defence for the amount paid for the apartment in accordance with Article 39e of the Law on Sale of Apartments. Furthermore, because the applicant voluntarily abandoned her apartment and has not sought to repossess it, the respondent Party holds that it has not violated Article 1 of Protocol No. 1 to the Convention.

B. The applicant

49. The applicant maintains her application in full. The applicant asserts that she is the owner of the apartment, and that she paid the entire purchase price and verified the purchase contract and the Annex to the contract at the court. She states that she also submitted the purchase contract to the competent organ to be registered as the owner of the apartment on 8 December 1991, but that the laws in force did not permit this at that time.

50. In the applicant's submission of 8 November 1999, she states that she addressed the municipal housing bodies seeking the repossession of her apartment but that she has received no response to her requests and subsequent requests for urgency. The applicant states that she was born in Sarajevo and has lived and worked there for most of her life, and as a doctor and humanist she has cared for persons regardless of their national origin or religious affiliations.

51. As to having not initiated an administrative dispute, the applicant states that she determined that it did not make sense to initiate this because all her previous appeals and requests had a negative outcome and because it was obvious that any administrative dispute would also be negatively decided upon. The applicant expected that her case would be positively resolved before the CRPC and the Chamber.

VII. OPINION OF THE COMMISSION

A. Admissibility

52. The Commission recalls that the application was introduced to the Human Rights Chamber under the Agreement. As the Chamber had not decided on 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

53. 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."

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

55. 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 nos. CH/96/3, CH/96/8 and CH/96/9, *Medan, Bastijanović 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 nos. 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 nos. CH/97/60 *et al., Miholić and others,* decision on admissibility and merits of 9 November 2001, Decisions July–December 2001).

56. The Commission notes that in the present case, the conduct of the bodies responsible for the proceedings complained of by the applicant, such as the Administration and the Ministry of Defence, engages the responsibility of the Federation of Bosnia and Herzegovina, 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).

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

2. Admissibility as against the Federation of Bosnia and Herzegovina

58. 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 …."

59. In its submission of 16 August 1999, the Federation of Bosnia and Herzegovina generally asserts that the applicant has not exhausted the domestic remedies available to her in relation to the repossession and registration of ownership over the apartment, and it states that the applicant has not yet addressed a repossession request to the domestic organs for the apartment.

60. The Commission notes that it is true that the applicant, at the time she submitted her application to the Chamber, had not yet addressed the domestic organs regarding the repossession of the apartment. However, the Law on Cessation was not yet in force at the time of the applicant's application to the Chamber, and therefore the legal framework allowing the applicant to repossess her apartment was not yet in place. The Law on Cessation entered into force on 4 April 1998, and on 17 August 1998 the applicant submitted a repossession request for the apartment to the Administration.

61. The Commission also notes that the applicant received a negative decision from the first and second instance administrative organs in her case, and did not initiate an administrative dispute before the competent court regarding her repossession request. The Commission, however, takes seriously the applicant's assertion that this remedy posed no prospect of success, because it is not disputed by any of the parties that the applicant worked for the successor to the JNA, the Yugoslav Army, after 14 December 1995. Given that Article 3a of the Law on Cessation provided no legal possibility for the domestic organs to reinstate the applicant into the apartment, the Commission holds that initiating an administrative dispute was not an effective remedy in the instant case. For these reasons, the Commission decides to declare the application admissible against the Federation of Bosnia and Herzegovina.

B. Merits

62. 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. As to the alleged violation of Article 1 of Protocol No. 1 to the Convention

63. 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 was the pre-war occupancy right holder and which she purchased in December1991.

64. 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."

65. 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 it 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.

66. 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 concluded a contract under factual circumstances similar to those in the cases cited, and therefore, the Commission sees no reason to differ from the previous jurisprudence of the Chamber in this regard.

a. Interference with the applicant's rights

67. The Commission must next determine the nature of the interference, if any, with the applicant's rights flowing from the purchase contract. The Commission is aware that the applicant has not requested the Federation Ministry of Defence (*Federalno ministarstvo odbrane*) to issue an order to be registered as the owner of the apartment. It is apparent from Article 39c of the Law on Sale of Apartments that the applicant would have no prospect of success, because this provision clearly requires the applicant to repossess the apartment in accordance with the Law on Cessation before the Federation Ministry of Defence will issue the order to be registered as owner. The respondent Party also states 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, and Article 39e provides that persons may be reimbursed for the amount paid for the apartment. The Commission therefore concludes that interference with the applicant's rights flowing from the purchase contract is caused by the Law on Sale of Apartments.

b. Public interest

68. 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 Articles 39a, 39c, 39d, and 39e of the Law of Sale of Apartments can be justified as "in the public interest."[1]

69. 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,* judgement of 23 September 1982, Series A no. 52, pp. 26-28, paragraphs 70-73).

70. 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*, judgement of 21 February 1986, Series A no. 98, p. 40, paragraph 46).

[1] The Commission has excluded Article 39b from this assessment because it does not deny recognition of the applicant's ownership right to the apartment.

71. 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* judgement, 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* judgement, p. 26, paragraphs 69 and 73).

72. In its submission received on 16 August 1999, the respondent Party states that, per the decision of the High Representative of 2 July 1999, the Law on Sale of Apartments was amended to allow a person who concluded a legally binding contract with the JNA prior to 6 April 1992 to be registered as the owner of the apartment on the condition that they use the apartment legally. The Commission recalls that Article 39a of the Law on Sale of Apartments specifies that only persons who are in possession of the apartment may obtain an order from the Federation Ministry of Defence to be registered as the owner. Article 39c prevents persons who have not repossessed their apartment in accordance with the Law on Cessation from obtaining the order to be registered as owner. The respondent Party has asserted no legitimate aim for either of these two provisions, or even reasons supporting such an extraordinary requirement for contract holders. The Commission, *proprio motu*, cannot find any reason for conditioning one's ownership rights upon possession of the property, as provided for in both Articles 39a and 39c of the Law on Sale of Apartments. Lacking any legitimate aim, the Commission therefore must find that the requirement that a contract holder be legally in possession of the apartment before being granted the right to register his or her ownership rights, is not "in the public interest". As such, Articles 39a and 39c of the Law on Sale of Apartments are not compatible with the requirements of Article 1 of Protocol No. 1 to the Convention.

73. The respondent Party also submits that the applicant can avail herself of Article 39d of the Law on Sale of Apartments, which would allow her to initiate a court dispute to determine her ownership rights to the apartment. The respondent Party did not, however, submit any reasons why contract holders who are in possession of their apartment should have their contract recognized, while contract holders who are not in possession must initiate a civil dispute to have their contract declared legally valid. The Commission accepts that such a requirement is appropriate in cases where the purchase contract was never concluded, or is in some form incomplete or lost, etc. (see, e.g., case no. CH/99/1921, *Blagojević*, decision on admissibility of 16 January 2004). When, however, as in the present case, there are no apparent flaws in the purchase contract, 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. In coming to this conclusion, the Commission also bears in mind that the same burden is not placed on contract holders who are legally in possession of their apartment. Therefore, the Commission finds that the blanket requirement to initiate court proceedings, as provided for in Article 39d of the Law on Sale of Apartments 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.

74. Finally, the respondent Party submits that, if the applicant does not realize her rights to the apartment, she may request the Federation Ministry of Defence to reimburse her for the amount paid towards the purchase of the apartment in accordance with Article 39e of the Law on Sale of Apartments. The applicant has not commented on this, nor has she sought to be reimbursed for the funds paid in 1991 for the apartment. The Commission notes that the European Court has consistently held that compensation terms under the relevant legislation are material to the assessment of whether the contested measure strikes a fair balance and whether it imposes a disproportionate burden on the applicant. In *The Holy Monasteries v. Greece*, the European Court noted: "In this connection, the taking of property without payment of an amount reasonably related

to its value will normally constitute a disproportionate interference and a total lack of compensation can be justifiable under Article 1 in exceptional circumstances only" (Eur. Ct. HR, Judgement of 9 December 1994, Series A, no. 301-A, p. 35, paragraph 71). The Commission recalls that the price of the apartment was calculated on the basis of the provisions of the Law on Securing Housing for the JNA, and the accompanying Instructions and Guidelines (see paragraphs 22 to 25 above). These provisions established a somewhat complicated system of determining the purchase price by taking into account the revaluated construction value of the apartment (depending on the quality of the furnishing of the apartment and its location, among other things), the depreciation value of the apartment, and the buyer's contribution to the JNA Housing Fund during the years of service with the JNA. In some cases, the purchase price of the apartment amounted to 0.0 Yugoslav Dinars, depending on the contributions already paid to the JNA Housing Fund. In the present case, the applicant paid 618,792 Yugoslav Dinars for the apartment, which was calculated according to the Instructions and Guidelines. This sum of money, calculated in today's market, would amount to approximately 16,786.08 Convertible Marks ("KM").[2] Although the Commission does not wish to conduct an economic assessment of the price of the apartment, it is clear that the purchase price paid in no way reflects the present day market value.

75. The respondent Party has submitted no purpose or reasons for crafting a compensation provision which provides compensation only for the purchase price paid, without taking into account that the calculated purchase price included substantial reductions based on previous payments to the JNA Housing Fund, and without taking into account the present day real market value of the apartment. The Commission can only conclude that such provision does not allow the contract holder to be reimbursed for the taking of his or her property in an amount "reasonably related to its value", and therefore poses a disproportionate interference with the applicant's rights. Furthermore, the respondent Party has submitted no legitimate aim for such a compensation scheme, nor is it apparent to the Commission. The Commission finds that Article 39e does not strike the requisite fair balance between the protection of the applicant's property and the requirements of the general interest. Therefore, the Commission also finds that Article 39e of the Law Sale of Apartments is not compatible with Article 1 of Protocol No. 1 to the Convention.

c. Conclusion

76. Having regard to the above, the Commission finds that the provisions set forth in Articles 39a, 39c, 39d, and 39e of the Law on Sale of Apartments are not in the public interest, and are 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 Bosnia and Herzegovina being responsible for this violation.

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

77. 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."

[2] This figure is based on the current value of 618,792.00 CSD (Serbian Dinar) in KM (Convertible Marks) on 5 July 2004.

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

VIII. REMEDIES

79. The Commission has established that the Federation of Bosnia and Herzegovina violated the right of the applicant to the peaceful enjoyment of her possessions flowing from the purchase contract that she 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 connection the Commission shall consider issuing orders to cease and desist, monetary relief (including pecuniary and non-pecuniary damages), as well as provisional measures.

80. The Commission recalls that the applicant has not submitted a compensation claim.

81. In view of the finding of a violation, the Commission considers it appropriate to order the Federation of Bosnia and Herzegovina to ensure that the applicant is allowed to repossess the apartment located at Antuna Hangija 11 within three months from the date of receipt of this decision, and to ensure that the applicant is registered as the owner over the apartment in the appropriate Land Registry books of the competent court within four months from the date of receipt of this decision. The Commission considers that this remedy is sufficient satisfaction for the violations found.

82. The Commission will order the Federation of Bosnia and Herzegovina to submit to the Commission, or its successor institution, a report on the steps taken by it to comply with these orders within four months of receipt of the present decision.

IX. CONCLUSIONS

83. 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 admissible as against the Federation of Bosnia and Herzegovina;

3. 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;

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

5. unanimously, to order the Federation of Bosnia and Herzegovina to ensure that the applicant is permitted to repossess the apartment within three months of the date of receipt of this decision, and to ensure that the applicant is registered as the owner over the apartment at Antuna Hangija 11 in the Land Registry books of the competent court within four months from the date of receipt of this decision; and,

6. unanimously, to order the Federation of Bosnia and Herzegovina to submit to the Commission, or its successor institution, a report on the steps taken by it to comply with these orders within four months of receipt of the present decision.

(signed)
J. David YEAGER
Registrar of the Commission

(signed)
Jakob MÖLLER
President of the Commission