



DECISION ON ADMISSIBILITY AND MERITS
(delivered on 9 March 2001)

Case No. CH/98/834

O.K.K.

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 6 March 2001 with the following members present:

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

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

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

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

I INTRODUCTION

1. The applicant is a citizen of Bosnia and Herzegovina of Serb descent and is currently residing in Germany. She and her daughter are pre-war co-owners of an apartment at Obrada Popadića 5 (ex Indire Gandi) in Srpsko Sarajevo, municipality Srpska Ilidža. The applicant and her daughter left their apartment due to the war hostilities. The case concerns the applicant's attempts to regain possession of the apartment. She lodged an application to the Commission for Real Property Claims of Displaced Persons and Refugees (CRPC), which issued decision recognising the applicant's ownership rights. However, that decision has not been executed.

2. The case raises issues under Articles 8 and 13 of the European Convention on Human Rights and under Article 1 of Protocol No. 1 to the Convention.

II. PROCEEDINGS BEFORE THE CHAMBER

3. On 28 July 1998 the case was referred to the Chamber by the Human Rights Ombudsperson for Bosnia and Herzegovina pursuant to Articles V (7) and VIII (1) of the Human Rights Agreement. The case was registered in the Chamber on 3 August 1998.

4. The applicant is represented in the proceedings before the Chamber by her late husband's parents. She asked the Chamber not to reveal her identity.

5. The applicant has submitted additional observations and a specified compensation claim dated 12 October 1998.

6. The case was transmitted to the respondent Party for observations on admissibility and merits on 8 December 1998. The respondent Party has not submitted the observations within the time-limit prescribed by the Chamber's Rules of Procedure.

7. On 2 July 1999 the Chamber received a letter from the applicant dated 30 June 1999 pointing to the fact that the respondent Party had not replied following the transmittal and that the Chamber has not yet adopted a decision. The applicant stated that she maintained her compensation claim as previously set out. She further informed the Chamber that she had received a decision issued by the CRPC, dated 17 December 1998.

8. On 26 November 1999 the applicant informed the Chamber that there had been no developments in her case before the Republika Srpska authorities and stated that she was maintaining all her previous requests including the request for compensation.

9. After the transmission of the applicant's written observations of 26 November 1999 to the respondent Party, the representative of the Republika Srpska submitted written observations on 20 January 2000.

10. On 28 February 2000 the applicant sent observations and comments in response to the respondent Party's written observations of 20 January 2000.

11. On 7 September 2000 the applicant informed the Chamber that she had not yet regained possession of the apartment and requested the Chamber to deal with her case urgently.

12. On 18 October 2000 the Registry received information requested from CRPC, according to which the applicant's CRPC decision had not yet been executed.

13. On 7 November 2000 the Chamber decided to admit the respondent Party's observations of 20 January 2000, although they were received out of time.

14. On 8 January 2001 the applicant informed the Chamber that she had not yet been reinstated into possession of the apartment. On 9 February 2001 the Chamber received the applicant's additional submissions in response to information which had been provided by CRPC.

15. The Chamber deliberated on the case on 11 September 1998, on 15 September and 6 October 1999, on 7 November 2000, on 7 and 8 February 2001 and on 6 March 2001. It adopted the present decision on the latter date.

III. FACTS

16. Before the war the applicant, who is of Serb descent, lived together with her daughter in their apartment at Indire Gandi 5, in Sarajevo (now Obrada Popadića 5, Srpska Ilidža).

17. On 24 April 1992 the applicant and her daughter were forced to leave the apartment since the apartment was located on the front-line and exposed to hostile action. Thereafter, the applicant and her daughter left for Germany.

18. On 18 January 1996 the applicant, represented by her late husband's parents, submitted a request for reinstatement into her possession of her apartment to the Municipality Secretariat for Housing Affairs in Srpska Ilidža ("the Secretariat"). Afterwards the applicant's representatives went to visit the apartment and found a Mr. B.K. there. However, shortly after their visit, Mr. B.K. left the apartment and the applicant's parents-in-law moved into the apartment, cleaned it and started living there.

19. In April 1996 they left the apartment to pay a short visit to relatives. Upon their return they could not re-enter the apartment. Later, they discovered that the apartment had been allocated by the Secretariat to a Ms. M.L. on 7 May 1996.

20. On 4 June 1996 the applicant, through her representatives, appealed to the Secretariat against the above-mentioned decision. On 6 November 1996 the applicant requested the Secretariat to issue a decision restoring the apartment to her within 30 days. On 20 November 1996 the applicant requested the Ministry for Refugees and Displaced Persons of the Republika Srpska ("the Ministry"), Srpska Ilidža Municipality office, that the issuance of the decision on the restoration of the apartment should be dealt with urgently.

21. On 28 March 1997 the applicant, again through her representatives, submitted a new request for the restoration into her possession of her apartment, both to the Ministry and to the Secretariat for Property-Legal Affairs and Cadaster Srpska Ilidža. No decision was issued.

22. On 30 June 1997 the applicant submitted a request to the CRPC requesting to be reinstated together with her under-age daughter into possession of the apartment. On 17 December 1998 the CRPC issued its two decisions (nos. 302-2247-1/1 and 302-2247-1/2) confirming that the applicant and her daughter were co-owners of the apartment.

23. On 22 April 1999 the applicant filed a request with the Republika Srpska Ministry, Municipality of Srpska Ilidža office, demanding reinstatement into her apartment, according to the Law on Cessation of Application of the Law on Use of Abandoned property. As there has been no reply the applicant filed a complaint and another request with the Ministry, Department at the Municipality Srpska Ilidža on 30 June 1999.

24. On 24 November 1999 the applicant submitted a request for enforcement of the CRPC decisions, according to the Law on Implementation of the Decisions of the CRPC (which entered into force as a law of the Republika Srpska on 28 October 1999).

25. On 17 April 2000 the applicant submitted an objection to the Ministry Department at Srpska Ilidža Municipality against the failure to issue a conclusion authorizing the enforcement of a CRPC decisions. She stated that these decisions are final and binding and constituted the most effective legal procedure for the repossession of the apartment. She requested that proceedings be conducted in accordance with the Law on Implementation of CRPC Decisions, following which the applicant's representatives were orally informed that the officials at the Department lacked experience in applying that Law.

26. On 12 May 2000, acting upon the Law on the Cessation of the Application of the Law on the Use of Abandoned Property, the Ministry Department in Municipality Srpska Ilidža issued a procedural decision confirming the applicant's ownership over the apartment and ordering that it be returned into her possession. The current occupant of the apartment was ordered to vacate the apartment within 90 days of the procedural decision (the time-limit expired on 12 August 2000) and was granted the right to alternative accommodation. On 24 May 2000 the applicant's representatives requested the enforcement of this procedural decision and, at the same time, they filed an appeal against it because it neither entitled her to repossession of the basement and the garden, nor to compensation, and because the request for the enforcement of the CRPC decisions was ignored. The procedural decision of 12 May 2000 has not been enforced to date.

27. In September 2000 the applicant's representatives met with the Head of the Srpska Ilidža Ministry office, to complain about the lack of action. On 27 September 2000 they also wrote to the central Ministry in Banja Luka, asking them to intervene in this case. In addition, they lodged a complaint for silence of administration, before the Municipality Srpska Ilidža.

IV. RELEVANT LEGAL PROVISIONS

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

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

29. The CRPC shall receive and decide any claims for real property in Bosnia and Herzegovina, where the property has not voluntarily been sold or otherwise transferred since 1 April 1992, and where the claimant does not enjoy possession of that property (Article XI). The CRPC shall determine the lawful owner of the property - a concept which the CRPC has construed to include an occupancy right holder - according to Article XII(1). According to Article XII(7) the decisions of CRPC are final and any title, deed, mortgage, or other legal instrument created or awarded by the CRPC shall be recognised as lawful throughout Bosnia and Herzegovina.

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

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

31. The Law on Implementation of the Decisions of the Commission for Real Property Claims of Displaced Persons and Refugees (Official Gazette of the Republika Srpska 31/99 – hereinafter "the Law on Implementation") was imposed as a law of the Republika Srpska by a decision of the High Representative in Bosnia and Herzegovina on 27 October 1999. It sets out a regime for the enforcement of decisions of the CRPC.

32. The responsible body of the Ministry of Refugees and Displaced Persons in the municipality where the property is located shall enforce decisions of the CRPC relating to real property owned by citizens, or relating to apartments for which there is an occupancy right, upon the request for enforcement (Article 3 paragraph 2). The CRPC decisions shall be enforced if a request for the enforcement has been filed to the relevant organ. The following persons are entitled to file such a request: The right holder specified in the CRPC decision and his/her heirs relating to real property owned by citizens (Article 4 paragraph 1) and relating to apartments for which there is an occupancy right; the occupancy right holder referred to in a CRPC decision and the persons who, in compliance

with the Law on housing relations are considered to be members of the family household of the occupancy right holder (Article 4 paragraph 2).

33. The right to file a request for enforcement of a CRPC decision confirming a right to private property is not subject to any statute of limitation (Article 5 paragraph 1). The request for enforcement of a CRPC decision confirming occupancy right must be submitted within 18 months from the date when the CRPC decision was issued, or for decisions issued before this law entered into force, within 18 months from the entry into force of this law (Article 5 paragraph 2, as amended by the High Representative with effect from 28 October 2000. Before that the time limit was one year).

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

1. a decision on repossession of the property or apartment by the right holder or other requestor for enforcement;
2. a decision terminating the right of the temporary user (where there is one) to use the property or apartment;
3. a time limit for the enforcer to vacate the property;
4. a decision on whether the enforcer is entitled to accommodation in accordance with applicable laws;
5. a requirement that the premises shall be vacated of all persons and possessions, other than those belonging to the person authorised to return into possession.

35. According to Article 7 paragraph 5 the time limit for vacating the property shall be the minimum time limit applicable under the Law on the Cessation of the Application of the Law on the Use of Abandoned Property (Official Gazette of the Republika Srpska nos. 38/98, 12/99 and 31/99). No extension of this time limit shall be permitted.

36. In case a petitioner for enforcement has commenced proceedings for enforcement of a decision issued by the responsible administrative organ in relation to the same property or apartment under the Law on the Cessation of the Application of the Law on the Use of Abandoned Property, and this person subsequently submits the decision of the CRPC for enforcement, the responsible administrative organ shall join the proceedings for enforcement of both decisions. The date on which the person commenced enforcement of proceedings for the first decision shall be considered, for the purposes of this Law, the date of submission of the request for enforcement (Article 7 paragraph 6).

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

3. The Law on General Administrative Proceedings

38. The Law on General Administrative Proceedings (Official Gazette of the Socialist Federal Republic of Yugoslavia no. 47/86) was taken over as a law of the Republika Srpska. It governs all administrative proceedings. Under Article 278 of the Law the competent administrative organ has to issue a decision to execute an administrative decision within 30 days upon the receipt of a request to this effect. Article 218 paragraph 2 provides for an appeal to the administrative appellate body if a decision is not issued within this time limit (appeal against "silence of the administration").

4. The Law on Administrative Disputes

39. Article 1 of the Law on Administrative Disputes (Official Gazette of the Republika Srpska no. 12/94) provides that the courts shall decide in administrative disputes on the lawfulness of administrative acts concerning rights and obligations of citizens and legal persons.

40. Article 25 paragraph 3 provides that an administrative dispute may be instituted also if the administrative second instance organ fails to render a decision within the prescribed time limit, whether the appeal to it was against a decision or against the first instance organ's silence.

V. COMPLAINTS

A. The applicant

41. The applicant claims that her rights as guaranteed by Articles 8 and 13 of the European Convention and Article 1 of Protocol 1 to the European Convention have been violated.

B. The Human Rights Ombudsperson for Bosnia and Herzegovina

42. The Ombudsperson concluded in her Report of 29 April 1998 that there had been a violation of Article 8 of the Convention, Article 1 of Protocol No. 1 to the Convention and Article 13 of the Convention in conjunction with the said Articles. The Ombudsperson recommended in her report, *inter alia*, to amend the Law on Abandoned Property to ensure that owners, possessors or users of "abandoned" real property could repossess their property with all the rights they had before 30 April 1991; to take appropriate steps to ensure that the applicant is allowed to return to her pre-war home within 90 days from the receipt of the Report; and that the applicant be paid a nominal sum of 500 DEM by way of reparation of the moral damage suffered.

VI. SUBMISSIONS OF THE PARTIES

A. The respondent Party

43. The respondent Party argues, in its observations received on 20 January 2000, that the complaint was related to an already decided issue and that the complaint has to be rejected under Article VIII (3) of the Agreement. The respondent Party states that, based on the CRPC decision of 17 December 1998, and in accordance with provision of Article 3 of the Law on Implementation of CRPC decisions, the applicant could have lodged a request for enforcement of the CRPC decision in administrative proceedings, and she has not done so yet. The respondent Party further states that the applicant's request to the Ministry –Department Srpska Ilidža of 22 April 1999, is to be considered irrelevant, having in mind that the case was decided by a final decision of the competent international body (CRPC).

B. The applicant

44. The applicant maintains her complaints and claims that the remedies available to her are ineffective.

VII. OPINION OF THE CHAMBER

A. Admissibility

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

46. According to Article VIII(2)(a) of the Agreement, the Chamber must consider whether effective remedies exist and whether the applicant has demonstrated that they have been exhausted. In the *Blentić* case (case no. CH/96/17, decision on admissibility and merits delivered on 3 December 1997, paragraphs 19-21, Decisions on Admissibility and Merits 1996-1997, with further references) the Chamber considered this admissibility criterion in the light of the corresponding requirement to exhaust domestic remedies in the former Article 26 of the Convention (now Article 35(1) of the Convention). The European Court of Human Rights has found that such remedies must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness. The Court has, moreover, considered that in applying the rule on exhaustion it is necessary to take realistic account not only of the existence of formal remedies in the legal system of the Contracting Party concerned but also of the general legal and political context in which they operate as well as of personal circumstances of the applicants.

47. In the present case the respondent Party objects to the admissibility of the application on the ground that the domestic remedies provided by the Law on Implementation have not been exhausted. Whilst this law afford remedies which might qualify as effective ones within the meaning of Article VIII(2)(a) of the Agreement in so far as the applicant is seeking to return to the apartment and is faced with the authorities' inaction, the Chamber must ascertain whether, in the case now before it, these remedies can also be considered effective in practice.

48. The Chamber notes that the applicant, on 30 June 1997, filed a request to the CRPC with a view to being reinstated into the apartment. On 17 December 1998 the CRPC issued two decisions confirming the applicant's and her daughter's ownership rights from which it follows that the applicant is entitled to seek the removal of the temporary occupants from the apartment. However, those decisions have not been enforced despite the applicant's enforcement request of 24 November 1999 to the competent administrative organ of the Ministry, which has been pending for 15 months. It follows that the respondent Party's statement that the applicant has not sought enforcement of the CRPC decision is incorrect. According to Article 7 of the Law on Implementation the competent administrative organ is obliged to issue a conclusion on permission of enforcement within a period of 30 days from the date when the request for enforcement is submitted.

49. The Chamber notes that it is still open to the applicant to make further attempts to have her CRPC decision enforced. However the applicant has already made repeated attempts to remedy her situation and they have been unsuccessful. Use of the remedies provided by the Law on Administrative Disputes because of "silence of administration", even if successful, would also not remedy the applicant's complaints in so far as they relate to the failure of the authorities to enforce the CRPC decisions within the time-limit prescribed by the law. Furthermore, there is no reason to suppose that the responsible authorities, which have for a long period disregarded their legal obligations to enforce the CRPC decisions, will treat the decisions of the courts with any greater respect.

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

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

B. Merits

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

1. Article 8 of the Convention

53. Article 8 of the Convention reads, as far as relevant, as follows:

“1. Everyone has the right to respect for...his home...

2. There shall be no interference by a public authority with the exercise of this right except such as in accordance with the law 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.”

54. The respondent Party did not submit any observations under this provision.

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

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

57. The Chamber notes that it is correct that legislation is in force in the Republika Srpska that theoretically enables persons to repossess their apartments. However, both the Chamber and the European Court of Human Rights have held that, although the object of Article 8 is essentially that of protecting the individual against arbitrary interference by the authorities, it may also give rise to positive obligations (see e.g. Case No. 96/17, *Blentić v. Republika Srpska*, decisions on admissibility and merits, Decisions 1997, paragraph 27, Marckx v. Belgium, 1979 Series A No. 31 para 31; Airey v. Ireland, 1979 Series A No. 32, para 32; Velosa Barreto v. Portugal, 1995 Series A No. 334, para 23). Therefore the Chamber considers that the Republika Srpska not only has to pass legislation but that the legislation also has to be implemented. Otherwise the legislation is not effective.

58. In the present case the Chamber recalls that the CRPC has issued decisions confirming the applicant’s and her daughter’s right to repossess their apartment. The applicant has been unable to regain possession of the apartment due to the failure of the authorities of the Republika Srpska to deal effectively, in accordance with Republika Srpska Law, with the applicant’s request for the enforcement of the CRPC decisions. The Chamber further notes that the authorities of the Republika Srpska were particularly persistent in failing to deal with various other requests of the applicant aimed at regaining the possession of the apartment, the first of which was submitted as early as 6 November 1996. The Republika Srpska also failed to act in accordance with the Ombudsperson’s recommendations (see paragraph 42 above). It follows that the result of the inaction of the Republika Srpska is that the applicant cannot return to her home and that there is an ongoing interference with the applicant’s right to respect for her home.

59. The Chamber must therefore examine whether this interference is in accordance with paragraph 2 of Article 8 of the Convention.

60. According to Article 7 of the Law on Implementation, the competent administrative organ is obliged to issue a conclusion authorising the execution of the decision within 30 days of the date of the request for such enforcement. The applicant has still not received a decision on her request to have the CRPC decisions enforced, despite the time-limit for this having expired in December 1999, 14 months ago. Accordingly, the failure of the competent administrative organ to decide upon the applicant’s request is not “in accordance with the law”.

61. As the interference with the applicant’s right to respect for her home referred to above is not “in accordance with the law”, it is not necessary for the Chamber to examine whether it pursued a “legitimate aim” or was “necessary in a democratic society”.

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

2. Article 1 of Protocol No. 1

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

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

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

64. The respondent Party did not submit any observations under this provision.

65. The Chamber notes that the applicant and her daughter are the co-owners over the apartment in question.

66. Accordingly, the Chamber considers that the applicant's right in respect of the apartment constitutes “possessions” for the purposes of Article 1 of Protocol No. 1 to the Convention.

67. The Chamber considers that the failure of the authorities of the Republika Srpska to allow the applicant to regain possession of the apartment constitutes an “interference” with her right to peaceful enjoyment of that possession. This interference is ongoing as the applicant still does not enjoy possession of the apartment.

68. The Chamber must therefore examine whether this interference can be justified. For this to be the case, it must be in the public interest and subject to conditions provided for by law. The latter means that the deprivation must have a basis in national law and that the law concerned must be both accessible and sufficiently precise.

69. As the Chamber noted, in the context of its examination of the case under Article 8 of the Convention, Article 7 of the Law on Implementation states that the competent administrative organ is obliged to issue a conclusion authorising the execution of the decision within 30 days of the date of a request for such enforcement. Accordingly, the failure of the competent administrative organ to decide upon the applicant's request is contrary to the law. This is in itself sufficient to justify a finding of a violation of the applicant's right to peaceful enjoyment of her possession as guaranteed by Article 1 of Protocol No. 1. Furthermore, the Chamber notes that the authorities of the Republika Srpska, having failed to act upon the applicant's requests from 6 November 1996 onwards, issued a procedural decision confirming the applicant's ownership over the apartment on 12 May 2000. However, this procedural decision has not been enforced to date either, despite the applicant's request for its enforcement (see paragraph 26 above).

70. As the interference with the applicant's right to peaceful enjoyment of her possessions is not subject to conditions provided for by law, it is not necessary for the Chamber to examine whether it was in the public interest.

71. In conclusion, there has been a violation of the right of the applicant to peaceful enjoyment of her possessions as guaranteed by Article 1 of Protocol No. 1 to the Convention.

3. Article 13 of the Convention

72. Article 13 of the Convention provides as follows:

"Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

73. The applicant alleges violations of her rights as guaranteed by this provision. The respondent Party states that the applicant, allegedly, did not submit the request for enforcement of the CRPC decision. The Ombudsperson concluded in her Report of 29 April 1998 that there was a violation of Article 13.

74. The Chamber, having regard to other violations of the applicant's rights it has found, does not consider it necessary to examine the case under this provision.

VIII. REMEDIES

75. Under Article XI(1)(b) of the Agreement the Chamber must address the question of what steps shall be taken by the respondent Party to remedy the established breaches of the Agreement. In this connection the Chamber shall consider issuing orders to cease and desist, monetary relief as well as provisional measures. The Chamber is not necessarily bound by the claims of the applicant.

76. In her claim for compensation the applicant requests that the respondent Party be ordered: 1) to restore the apartment to the previous condition as it was on 24 April 1992; 2) to pay the sum of 80.000 DEM for the stolen movable property and household items; 3) to pay the sum of 850 DEM per month for pecuniary damage - the rent in Germany, starting from 24 April 1992; 4) to pay the sum of 500 DEM as a compensation for non-pecuniary damage in accordance with the Ombudsperson's Report of 29 April 1998. Further, the applicant offered amicable resolution as an alternative for the above mentioned claims. As amicable resolution the applicant proposes to the respondent Party to pay to her the sum of 255.100 DEM (which is comprised of 106.800 DEM for the apartment, 80.000 DEM for the missing movable property, 66.300 DEM for the rent in Germany and 2.000 DEM for non-pecuniary damage).

77. The respondent Party did not submit any observations on the applicant's claim for compensation.

78. The Chamber considers it appropriate to order the respondent Party to take all necessary steps to enforce the CRPC decision and to enable the applicant to regain possession of her apartment without any further delay and at latest within one month from the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure.

79. With regard to possible compensatory awards the Chamber considers it appropriate to award a sum to the applicant in recognition of the sense of injustice she has suffered as a result of her inability to regain possession of her apartment, especially in view of the fact that she has taken all necessary steps to have the CRPC decisions enforced and that the authorities of the Republika Srpska were particularly persistent in failing to deal with various other requests of the applicant aimed at regaining possession of the apartment.

80. Accordingly the Chamber will order the respondent Party to pay to the applicant the sum of 2000 Convertible Marks (Konvertibilnih Maraka, "KM") in recognition of her suffering as a result of her inability to regain possession of her apartment.

81. Concerning the applicant's claim for her movable property, the Chamber notes that there is no evidence before it that this movable property was alienated after 14 December 1995, the date of entry into force of the Agreement. In addition, there is no indication that the respondent Party is responsible for any damage that may have occurred to her movable property. Accordingly, this claim must be rejected. The same reasoning applies to the applicant's claim for the restoration of her apartment to its previous condition.

82. The applicant claims the sum of DEM 850 per month from April 1992 for the rent in Germany. She did not submit any evidence to support her claim. The Chamber considers that the sum of KM 300 is appropriate to compensate for the loss of use of the apartment and any extra costs for each month the applicant has been and continues to be forced to live in alternative accommodation. The Chamber considers it appropriate that this sum should be payable from 6 December 1996, the date the time-limit for the competent municipal organ to issue a procedural decision upon the applicant's first request to regain possession of the apartment (see paragraph 20 above), expired, up to and including March 2001, amounting to a total of KM 15.600. This sum should continue to be paid at the same rate until the end of the month in which the applicant regains possession of her apartment.

83. In its decision on the claim for compensation of 16 March 1998 in the *Damjanović* case (CH/96/30, Decisions and Reports 1998), the Chamber ordered the payment of simple interest at an annual rate of 4% on compensation for damage paid after the expiry of the time-limit set for that purpose. The award compensation for damage was expressed in German currency and 4% was the legal rate of default interest in Germany at that time. The Chamber considers that it should now award such interest at an annual rate of 10%, which more closely reflects economic reality in Bosnia and Herzegovina. Interest at that rate should be paid as of the date of expiry of the one month period set in paragraph 78 for the implementation of the present decision, and on each sums awarded in paragraphs 80 and 82 or any unpaid portion thereof until the date of settlement in full.

IX. CONCLUSION

84. For the above reasons, the Chamber decides,

1. unanimously, to declare the application admissible;

2. unanimously, that the non-enforcement of the decision of the CRPC constitutes a violation of the right of the applicant to respect for her home within the meaning of Article 8 of the Convention, the Republika Srpska thereby being in breach of Article 1 of the Agreement;

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

4. by 6 votes to 1, that it is not necessary to rule on the complaints under Article 13 of the Convention;

5. unanimously, to order the Republika Srpska to take all necessary steps to enforce the CRPC decision and to enable the applicant to regain possession of her apartment without any further delay, and at latest within one month from the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure;

6. unanimously, to order the Republika Srpska to pay to the applicant, at the latest within one month from the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure, the sum of KM 2.000 for non-pecuniary damage;

7. unanimously, to order the Republika Srpska to pay to the applicant, at the latest within one month from the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure, the sum of KM 15.600 as compensation for the loss of use of the apartment and for any extra costs during the time the applicant has been forced to live in alternative accommodation;

8. unanimously, to order the Republika Srpska to pay to the applicant KM 300 for each further month that she continues to be forced to live in alternative accommodation as from 1 April 2001 until the end of the month in which she is reinstated, each of these monthly payments to be made within 30 days from the end of the month to which they relate;

9. unanimously, to order the Republika Srpska to pay simple interest at the rate of 10 (ten) per cent per annum over the above sums or any unpaid portion thereof from the date of expiry of the above one-month periods until the date of settlement in full;
10. unanimously, to dismiss the remainder of the applicant's claim for remedies; and
11. unanimously, to order the Republika Srpska to report to it within one month of the date of this decision becoming final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure on the steps taken by it to comply with the above orders.

(signed)
Peter KEMPEES
Registrar of the Chamber

(signed)
Giovanni GRASSO
President of the Second Panel