



DECISION ON ADMISSIBILITY AND MERITS

Case no. CH/99/1987

Spasoja MACURA

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Commission within the Constitutional Court of Bosnia and Herzegovina, sitting in plenary session on 6 November 2004 with the following members present:

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

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

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

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

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

I. INTRODUCTION

1. The applicant is a citizen of Bosnia and Herzegovina of Serb origin. He is the pre-war occupancy right holder of an apartment in Kamengrad, Municipality of Sanski Most, in the Federation of Bosnia and Herzegovina, which he left due to war hostilities. The case concerns his attempts to regain possession of this apartment. The applicant lodged an application to the Commission for Real Property Claims of Displaced Persons and Refugees ("CRPC"), which issued a decision recognising his occupancy right. This decision has not been executed, however.

2. The case raises issues under Articles 6, 8, and 13 of the European Convention on Human Rights ("the Convention").

II. PROCEEDINGS BEFORE THE CHAMBER AND THE COMMISSION

3. The application was introduced on 26 July 1999 and registered on the same day. The applicant is represented by Ms. Vesna Rujević, a lawyer from Banja Luka.

4. On 6 June 2003 the Chamber decided to transmit the application to the respondent Party for its observations on the admissibility and merits. The respondent Party submitted its observations on 13 August 2003. The applicant's observations were received on 18 September 2003 and 6 May 2004. The respondent Party's additional observations were received on 3 November 2004. These observations were transmitted to the applicant and respondent Party respectively.

5. On 16 January 2004 and 5 November 2004 the Commission considered the admissibility and merits of the application, and on the latter date it adopted the present decision.

III. ESTABLISHMENT OF THE FACTS

A. Repossession proceedings before the administrative bodies of the Municipality of Sanski Most

6. The applicant was the pre-war occupancy right holder over an apartment located at Omladinska no. 8 in Kamengrad, near Sanski Most. On an unspecified date, the applicant left his apartment due to the armed conflict. He fled to Banja Luka where he presently lives. Thereafter, Mr. Z.O. moved into his apartment.

7. On 4 August 1998 the applicant filed a repossession request for the apartment with the Sanski Most Municipal Service for Spatial Planning, Resources and Environmental Protection (*Služba za prostorno uređenje, resursa i zaštitu okoline*, "the Municipal Service").

8. On 16 October 1998 the Municipal Service rejected his request on the grounds that the applicant had transferred his occupancy right over the apartment to Mr. Z.O. in an exchange contract concluded on 14 June 1998. The applicant, who denies having concluded any such contract, appealed to the Cantonal Ministry for Construction, Spatial Planning and Environmental Protection (*Kantonalno ministarstvo za građenje, prostorno uređenje i zaštitu okoline*, "the Ministry").

9. As there was no swift decision on the applicant's appeal by the Ministry, on 17 February 1999 the applicant initiated an administrative dispute due to the "silence of the administration" before the Cantonal Court in Bihać. The Cantonal Court, on 6 July 1999, declared itself not competent to decide on the claim and rejected the applicant's claim. It stated that the introduction

of new housing laws following the first instance procedural decision of 16 October 1998 made it impossible for the Court to rule on his claim in an administrative dispute.

10. On 4 August 2000 the Ministry issued a procedural decision rejecting the applicant's appeal (see paragraph 8 above) on the grounds that an unauthorised representative lodged the appeal because the applicant's wife signed it. In addition it stated that the appeal was filed out of time. It appears that the applicant did not initiate an administrative dispute against this decision.

B. Repossession proceedings on the basis of the CRPC decision

11. On 25 June 1998, the applicant lodged an application to the CRPC with a view to having his occupancy right over the apartment confirmed. On 2 May 2000 the CRPC issued a decision confirming the applicant's occupancy right as of 1 April 1992, cancelling all legal acts thereafter affecting this right, if contrary to the applicant's free will. Mr. Z.O., the current occupant of the apartment, submitted a request for review of the 2 May 2000 CRPC decision. On 24 July 2001 the CRPC rejected his request for review of its decision. The temporary occupant again requested review of the CRPC decision, and the CRPC rejected this request on 5 March 2002.

12. On 19 February 2001 the applicant requested the Administration for Property-Legal and Housing Affairs of Sanski Most Municipality (*Općinski organ uprave nadležan za imovinsko-pravne i stambene poslove*, "the Housing Administration") to enforce the CRPC decision of 2 May 2000. On 24 April 2001 the Housing Administration issued a procedural decision authorising the enforcement of the CRPC decision of 2 May 2000 and ordering Z.O. to vacate the premises within 15 days.

13. It appears that Z.O. submitted an appeal against the 24 April 2001 procedural decision on the grounds that he was the owner of the apartment because he had entered into a purchase contract for the purchase of the apartment that was verified by the Municipal Court in Sanski Most on 21 March 2000.

14. On 26 December 2003, the Municipal Service issued a conclusion on suspension of the proceedings for enforcement of CRPC decision. It appears that neither the applicant nor Z.O. initiated court proceedings to establish the validity of the alleged exchange contract of 14 June 1998.

IV. RELEVANT LEGISLATION

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

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

16. 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 that the CRPC has construed to include an occupancy right holder—according to Article XII(1). According to Article XII(7), decisions of the 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.

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

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

18. In 1998, at the time the applicant filed his repossession request with the Municipal Service, the Law on the Cessation of the Application of the Law on Abandoned Apartments ("the Law on Cessation", 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, 24/03 and 29/03) governed the restoration of pre-war occupancy rights of displaced persons and refugees. The Law entered into force on 4 April 1998 and has been amended numerous times thereafter.

19. According to Article 1 of the Law on Cessation, the Law on Abandoned Apartments (Official Gazette of the Republic of Bosnia and Herzegovina nos. 6/92, 8/92, 15/92, 13/94, 36/94, 9/95 and 33/95) and the regulations passed thereunder were no longer to be applied. The competent administrative bodies would decide about the rights of occupancy right holders to return to their apartments. According to Article 2 of the Law on Cessation, all administrative, judicial and any other decisions enacted on the basis of the regulations referred to in Article 1, terminating occupancy rights shall be null and void. Article 3 of the Law on Cessation stipulates that the occupancy right holder of an apartment declared abandoned shall have the right to return in accordance with Annex 7 of the General Framework Agreement.

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

20. The Law on Implementation of the Decisions of the Commission for Real Property Claims of Displaced Persons and Refugees ("the Law on Implementation", OG FBiH, nos. 43/99, 51/00, 56/01, 27/02, and 24/03) regulates the enforcement of decisions of the CRPC.

21. CRPC decisions relating to an apartment for which there is an occupancy right shall be enforced by the administrative body for housing affairs in the municipality where the apartment is located (Article 3, paragraph 3). CRPC decisions shall be enforced if a request for enforcement has been filed with the relevant organ. The following persons are entitled to file such a request: (1) The right holder specified in the CRPC decision and his or her heirs in relation to real property owned by citizens (Article 4, paragraph 1) and relating to apartments for which there is an occupancy right; and (2) the occupancy right holder referred to in a CRPC decision and the persons who, in compliance with the Law on Housing Relations, are considered to be members of the family household of the occupancy right holder (Article 4, paragraph 2).

22. 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). A request for enforcement of a CRPC decision confirming an occupancy right must be submitted within 18 months from the date when the CRPC decision was issued, or for decisions issued before this Law entered into force, within 18 months from the entry into force of this Law (Article 5, paragraph 2, as amended by the High Representative effective from 28 October 2000; the previous time limit was one year).

23. The request for enforcement of a CRPC decision shall include two photocopies of a CRPC decision relating to real property owned by citizens, and three photocopies of a CRPC decision relating to an occupancy right (Article 6). The administrative organ responsible for the enforcement of a CRPC decision is obliged to issue a conclusion on permission for 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 the CRPC or any other body (Article 7 paragraphs 1 and 2). The conclusion shall contain:

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

24. According to Article 7, paragraph 5 the time limit for vacating the house or apartment shall be the minimum time limit applicable under the Law on the Cessation.

25. Article 7, paragraphs 7 and 8 (enacted by the High Representative on 15 May 2003, and replacing Article 12(a)) provide as follows:

“In case a person claims a legal interest in the property or apartment at issue which was acquired after the date referred to in the operative part of the Commission decision and can show a valid contract on exchange or transfer of rights, the competent administrative organ shall suspend proceedings and shall refer the parties to the competent court according to the provisions of the Law on Administrative Procedures ... regulating preliminary issues, in order to rule on the allegation.

“Exceptionally, in the case where a person claims a legal interest in the property or apartment at issue which was acquired after the date referred to in the operative part of the Commission decision, in which the competent administrative organ issued a conclusion on permission of enforcement prior to the date of entry into force of this Law and that has not yet been enforced, the competent administrative organ shall *ex officio* suspend enforcement proceedings pending a final judicial decision on the matter, under the condition that an interested party provides evidence that he/she has initiated proceedings before the competent court and can show a valid contract on exchange or transfer of rights.”

26. 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.

27. Paragraph 2 of Article 12 of the Law on Implementation contains an exclusive list of grounds for an appeal against the conclusion on the permission of enforcement of the decision of the CRPC. They are as follows:

- “(a) The decision of the Commission upon which the conclusion on the permission of enforcement was based has not been issued at all or is revoked by the Commission in its reconsideration proceedings;
- (b) The enforcee is entitled to alternative accommodation or the time limit provided for the enforcee to vacate the property is not in accordance with the applicable laws; or
- (c) Other reasons for appeals against conclusions on the permission of enforcement which are in accordance with the Law on Administrative Procedure.”

D. The Law on Administrative Proceedings

28. The provisions of the Law on Administrative Proceedings (OG FBiH, nos. 2/98 and 48/99), insofar as they are relevant to the present case, are summarised below.

29. Article 271 states that execution of a decision shall be carried out against the person who is ordered to fulfil the relevant obligation. Execution may be conducted *ex officio* or at the request of a party to the proceedings. *Ex officio* execution shall occur when required by the public interest. Execution that is in the interest of one party shall be conducted at the request of that party.

30. Article 272 states that execution shall be carried out either through an administrative or court procedure, as prescribed by the law. The execution of decisions of the type concerned in the present case (i.e. reinstatement into property rights) is to be carried out by an administrative procedure.

31. Under Article 274(1), administrative execution shall be carried out by the administrative body that issued the first instance decision, unless a different procedure is provided for by law.

32. Article 283 states that if the person against whom execution is ordered does not comply with the decision, the administrative body that made the decision shall ensure the execution of the decision. The administrative body shall warn the person against whom execution is ordered that if he or she does not comply with the decision within a specified period, forceful means shall be employed to ensure execution of the decision. If he or she fails to comply with the decision within this specified period, the threatened means shall be applied and further stronger means shall be threatened.

33. Article 284 provides for the use of direct force to ensure the execution of a decision that cannot be executed using the procedure provided for under Article 283 above.

E. The Law on Administrative Disputes

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

35. Article 22, 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

36. The applicant claims that his right to respect for his home (Article 8 of the Convention), his right to peaceful enjoyment of his possessions (Article 1 of Protocol No. 1 to the Convention), his right to a hearing within reasonable time (Article 6 of the Convention) and his right to an effective remedy (Article 13 of the Convention) have been violated. He also alleges that he has been discriminated against in the enjoyment of these rights on the basis of his Serb origin.

VI. SUBMISSIONS OF THE PARTIES

A. The respondent Party

37. The Federation of Bosnia and Herzegovina objects, in its observations received on 13 August 2003 and 3 November 2004, to the admissibility of the application on the ground that the domestic proceedings on the appeal of Z.O. are still pending. It suggests that the Commission declare the application inadmissible *ratione materiae*, claiming that the issue of validity of the exchange contract the applicant allegedly concluded is exclusively for the domestic courts to

determine. It further alleges that the applicant has failed to initiate proceedings before a competent court for the annulment of the 14 June 1998 exchange contract.

38. As to the merits of the complaint relating to the applicant's right to respect for his home, as protected by Article 8 of the Convention, the respondent Party is of the opinion that there has been no violation. The respondent Party further states that there has been no violation of Articles 6 and 13 of the Convention in this case.

B. The applicant

39. The applicant denies having entered into any contract to exchange his apartment in Kamengrad with that of Z.O.'s apartment. The applicant maintains his complaints and claims that the remedies available to him are ineffective.

VII. OPINION OF THE COMMISSION

A. Admissibility

40. 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.

41. According to Article VIII(2)(a) of the Agreement, the Commission must consider whether effective remedies exist and whether the applicants have demonstrated that they have been exhausted. In the *Blentić* case (case no. CH/96/17, decision on admissibility and merits of 5 November 1997, paragraphs 19-21, Decisions on Admissibility and Merits 1996-1997) the Chamber considered this admissibility criterion in 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 the personal circumstances of the applicants.

42. In the present case, the respondent Party alleges that the applicant's complaints are outside the Commission's competence *ratione materiae*, claiming that the issue of validity of the exchange contract the applicant allegedly concluded is exclusively for the domestic courts to determine. It argues that the applicant has failed to initiate proceedings before a competent court for the annulment of the 14 June 1998 exchange contract (see paragraph 37 above). However, pursuant to the amendments to the Law on Implementation enacted by the High Representative on 15 May 2003, in particular Article 7, paragraphs 7 and 8 (which replaced the earlier Article 12(a), see paragraph 25 above), it is for the party asserting to have acquired a right under an exchange contract, and thus claiming that the exchange contract is valid, to initiate court proceedings against the person seeking enforcement of a CRPC decision.

43. The Commission notes that the applicant filed a request with the CRPC with a view to being reinstated into his apartment. The CRPC issued a decision confirming his occupancy right, from which it follows that he is entitled to seek the removal of the temporary occupants from the apartment. This decision has not been enforced, however, despite the applicant having submitted a timely request for enforcement of the CRPC decision on 7 February 2001. The competent

administrative organ issued a procedural decision authorising enforcement on 24 April 2001. More than three years after this procedural decision was issued, however, the competent authorities have not yet implemented the decision, nor is there any indication that it will be implemented in the near future.

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

2. Manifestly ill-founded

45. The applicant alleged that he was discriminated against in the enjoyment of the rights guaranteed under the Convention. He did not provide further substantiation of this allegation, however. It follows that the application is manifestly ill-founded in that regard, within the meaning of Article VIII(2)(c) of the Agreement. The Commission therefore decides to declare this part of the application inadmissible.

3. Conclusion as to admissibility

46. As there are no other grounds for declaring the application inadmissible, the Commission concludes that the application is admissible under Articles 6, 8, and 13 of the Convention. The Commission decides to declare the remainder of the application inadmissible.

B. Merits

47. Under Article XI of the Agreement, the Commission must next address the question of whether the facts found disclose a breach by the Federation of Bosnia and Herzegovina 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 by the Convention and the other international agreements listed in the Appendix to the Agreement.

1. Article 8 of the Convention

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

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

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

50. The Commission therefore finds that the applicant's pre-war apartment is to be considered his home for the purposes of Article 8 of the Convention.

51. The Commission recalls that the CRPC issued a decision confirming the applicant's right to repossess his apartment. The applicant has been unable to regain possession of his apartment,

however, due to the failure of the authorities of the Federation of Bosnia and Herzegovina to deal effectively, in accordance with the applicable laws, with his request for enforcement of the CRPC decision. The result of the Federation of Bosnia and Herzegovina's inaction is that the applicant has not been able to return to his home, and that creates an ongoing interference with the applicant's right to respect for his home.

52. The Commission must therefore examine whether this ongoing interference is in accordance with paragraph 2 of Article 8 of the Convention.

53. According to Article 7 of the Law on Implementation, the competent administrative organ is obliged to issue a conclusion authorising the enforcement of a CRPC decision within 30 days from the date of the request for such enforcement. The applicant received such a decision from the administrative authorities, but it has not been enforced to date. The Commission notes that according to Article 7, paragraph 8 of the Law, in cases where the competent administrative organ issued a conclusion on permission of enforcement prior to the date of entry into force of this paragraph, the competent administrative organ shall *ex officio* suspend enforcement proceedings pending a final judicial decision on the matter, under the condition that an interested party provides evidence that he or she has initiated proceedings before the competent court and can show a valid contract on exchange or transfer of rights. The respondent Party did not submit any evidence that Z.O. initiated any such proceedings. Accordingly, the failure of the competent administrative organ to implement the procedural decision authorising the enforcement of the CRPC decision is not "in accordance with the law".

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

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

2. Articles 6 and 13 of the Convention

56. Article 6, paragraph 1 of the Convention provides, in relevant part, as follows:

"In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law...."

57. 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."

58. The applicant alleges violations of the rights guaranteed by these provisions. The respondent Party states that there have been no violations of these Articles in the applicant's case.

59. The Commission, having regard to the violations of the applicant's rights in connection with Article 8, does not consider it necessary to examine the application under these provisions.

VIII. REMEDIES

60. Under Article XI(1)(b) of the Agreement, the Commission must next address the question of what steps shall be taken by the Federation of Bosnia and Herzegovina 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.

61. In his submissions, the applicant asks to be swiftly reinstated into possession of the apartment at Ulica Omladinska no. 8 in Kamengrad, Municipality of Sanski Most. He also requests compensation for pecuniary and non-pecuniary damages.

62. The Commission considers it appropriate to order the respondent Party to take all necessary steps to enforce the CRPC decision of 2 May 2000 without further delay, and no later than three months from the date of receipt of the present decision.

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

64. Accordingly, the Commission will order the respondent Party to pay the applicant the sum of 2,000 Convertible Marks (*Konvertibilnih Maraka*, "KM") in recognition of the sense of injustice he has suffered, within one month from the date of receipt of the present decision.

65. In accordance with its decision in *Turundžić and Frančić* (case nos. CH/00/6143 and CH/00/6150, decision on admissibility and merits delivered on 8 February 2001, paragraph 70, Decisions January-June 2001), the Commission considers that the sum of 100 KM per month is appropriate to compensate the applicant for the loss of use of the apartment and any extra costs for each month he has been unable to be reinstated into his apartment. The Commission considers it appropriate that this sum should be payable from 1 June 2001, the first day of the month following the month in which the temporary occupant was obliged to vacate the apartment pursuant to the conclusion on the permission of enforcement of the CRPC decision of 24 April 2001 up to and including April 2005, amounting to a total of 4,600 KM, to be paid within one month from the date of receipt of the present decision. The monthly sum of 100 KM shall continue to be paid until the end of the month in which the applicant regains possession of the apartment.

66. The Commission further awards simple interest at an annual rate of 10% (ten percent) running from the due dates of the payments ordered in paragraphs 64 and 65 on the sums awarded or any unpaid portion thereof from the due dates until the date of settlement in full.

IX. CONCLUSIONS

67. For the above reasons, the Commission decides,

1. unanimously, to declare the application admissible in relation to Articles 6, 8, and 13 of the European Convention on Human Rights;

2. unanimously, to declare the remainder of the application inadmissible;

3. unanimously, that the non-enforcement of the decision of the Commission for Real Property Claims of Displaced Persons and Refugees of 2 May 2000 constitutes a violation of the right of the applicant to respect for his home within the meaning of Article 8 of the European Convention on Human Rights, the respondent Party thereby being in breach of Article I of the Human Rights Agreement;

4. unanimously, that it is not necessary to consider the complaints under Article 6 and Article 13 of the European Convention on Human Rights;

5. unanimously, to order the Federation of Bosnia and Herzegovina to take all necessary steps to enforce the Commission for Real Property Claims of Displaced Persons and Refugees decision of 2 May 2000 without further delay, and no later than three months after the date of receipt of the present decision;
6. unanimously, to order the Federation of Bosnia and Herzegovina to pay to the applicant the sum of 2,000 (two thousand) Convertible Marks ("*Konvertibilnih Maraka*") by way of compensation for the sense of injustice he suffered, within one month from the date of receipt of the present decision;
7. unanimously, to order the Federation of Bosnia and Herzegovina to pay to the applicant the sum of 4,600 (four thousand six hundred) Convertible Marks ("*Konvertibilnih Maraka*") as compensation for the loss of use of the apartment till the end of April 2005, within one month from the date of receipt of the present decision;
8. unanimously, to order the Federation of Bosnia and Herzegovina to pay to the applicant 100 (one hundred) Convertible Marks ("*Konvertibilnih Maraka*") for each additional month that he continues to be unable to live in his pre-war apartment as of 1 May 2005 until the end of the month in which he is reinstated, each of these monthly payments to be made within 30 days from the end of the month to which they relate;
9. unanimously, that simple interest at an annual rate of 10 % (ten per cent) shall be paid on the sums awarded in the conclusions 6, 7, and 8, from the due dates of the payments ordered until the date of final settlement of all sums due to the applicant under this decision; and
10. unanimously, to order the Federation of Bosnia and Herzegovina to report to it, or its successor institution, within three months of the date of receipt of the present decision on the steps taken by it to comply with the above orders.



(signed)
J. David YEAGER
Registrar of the Commission

(signed)
Jakob MÖLLER
President of the Commission