



**DECISION ON ADMISSIBILITY AND MERITS**  
**(delivered on 10 October 2003)**

**Case no. CH/99/2289**

**M.G.**

**against**

**THE FEDERATION OF BOSNIA AND HERZEGOVINA**

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on  
October 2003 with the following members present:

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Ms. Michèle PICARD, President  
Mr. Miodrag PAJIĆ, Vice-President  
Mr. Dietrich RAUSCHNING  
Mr. Hasan BALIĆ  
Mr. Želimir JUKA  
Mr. Andrew GROTRIAN

Mr. Ulrich GARMS, Registrar  
Ms. Olga KAPIĆ, Deputy Registrar  
Ms. Antonia DE MEO, 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 (“the General Framework Agreement”);

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

## **I. INTRODUCTION**

1. The applicant is a citizen of Bosnia and Herzegovina of Serb origin. The case deals with his attempts to regain possession of his pre-war home in Sarajevo, an apartment that had never been officially declared abandoned. Initially, the applicant's request for return was denied for the reason that it had not been declared abandoned, but when the Commission for Real Property Claims of Displaced Persons and Refugees (hereinafter "the CRPC") confirmed his rights, he received an administrative decision in his favour. Soon thereafter, the applicant died. His son, Z.G., is now continuing all domestic proceedings and the application before the Chamber on his own behalf. However, the administrative decision remains unimplemented to date. Moreover, there are court proceedings pending that deal with the validity of the applicant's occupancy right over the apartment. This dispute, now pursued by Z.G., is still not settled until the present day.

2. The application raises issues under Articles 6 and 8 of the European Convention on Human Rights (hereinafter "the Convention") and under Article 1 of Protocol No. 1 to the Convention.

## **II. PROCEEDINGS BEFORE THE CHAMBER**

3. The application was introduced on 4 June and registered on 9 June 1999. The applicant was represented by Ms. Ljiljana Batinić from Sarajevo. On 11 July 2000, the case was transmitted to the respondent Party. The Federation of Bosnia and Herzegovina submitted its observations on admissibility and merits of the case on 11 September 2000. Additional observations were received on 23 April and 12 September 2001, on 21 October and 18 December 2002, on 23 June and 1 September 2003. Submissions from the applicant's representative were received on 26 September, 17 October, 30 October and 20 November 2001, on 19 March, 19 April, 23 July and 17 October 2001, on 10 January, 18 July, 23 September, 14 October and 30 December 2002, on 3 February, 23 May, 16 June, 30 June, 18 July, 22 July and 4 September 2003. The Chamber deliberated on the admissibility and merits of the case on 4 July 2000, on 2 July, 4 September, and 7 October 2003. On the latter date, it adopted the present decision.

4. The applicant died on 5 December 2000. In a letter received on 19 April 2001, his son Z.G. stated that before the armed conflict, he had lived in the apartment together with his father in a common household. He expressed his wish to maintain the application and all complaints raised by his father and authorised Ms. Batinić to represent him in the proceedings before the Chamber.

## **III. ESTABLISHMENT OF THE FACTS**

### **A. Proceedings initiated by the applicant to repossess the apartment**

5. On 16 February 1973, the applicant, a citizen of Bosnia and Herzegovina of Serb origin, concluded a contract on use of an apartment in Sarajevo (Ulica Patriotske Lige no. 22/XV) with the Sarajevo Housing Company (*Stambeno preduzeće Sarajevo*), then the allocation right holder. In July 1992, he left the apartment. Without being declared abandoned, on 16 September 1992, the apartment was allocated to Ms. B.K.-H. by "Traser d.o.o.", a company which in the meantime had become the owner of the apartment.

6. On 2 April 1998, the applicant submitted a claim to repossess his pre-war apartment to the Administration for Housing Affairs of the Sarajevo Canton (*Uprava za stambena pitanja Kantona Sarajevo*; hereinafter "the Administration"). On 8 July 1998, the Administration rejected his request and declared itself incompetent to deal with it on the ground that the claimed apartment never had been declared abandoned. The Ministry for Housing Affairs of the Sarajevo Canton, the second instance administrative body, rejected the applicant's appeal on 3 September 1998.

7. Being unsatisfied with the outcome of the administrative proceedings, on 21 October 1998, the applicant initiated an administrative dispute before the Cantonal Court in Sarajevo. On 28 June 1999, the Cantonal Court rejected his claim. It reasoned that, undisputedly, the apartment at Ulica Patriotske Lige had never been declared abandoned, and that the Law on the Cessation of the

Application of the Law on Abandoned Apartments provided only for restoring occupancy rights regarding apartments that had been declared either permanently or temporarily abandoned.

8. On 1 February 2000, the CRPC confirmed that the applicant was the pre-war occupancy right holder of the apartment in question. On 2 March 2000, he filed a new request to the Administration to repossess his apartment and to enforce the CRPC decision of 1 February 2000.

9. On 24 November 2000, the Administration issued a decision, establishing that the applicant was the pre-war occupancy right holder of the apartment at Ulica Patriotske Lige, and confirming his right to return to it. At the same time, the decision obliged the temporary user, Ms. B.K.-H., to vacate the premises within 15 days. As the applicant had died on 5 December 2000, Z.G. addressed the Administration and declared that he was now pursuing the proceedings instead of his late father. Z.G. is in possession of a certificate issued by the Police Administration of Centar Sarajevo of 14 December 2000, stating that Z.G. took residence in the apartment at issue as of 17 July 1984. On 9 January and again on 28 February 2001, Z.G. requested the Administration to swiftly enforce its decision of 24 November 2000. However, there was no progress in this matter until, finally, on 12 December 2001, Ms. B.K.-H. was evicted and the apartment was sealed. Subsequently, not Z.G., but an employee of the allocation right holder "Traser d.o.o." moved into the apartment.

**B. Proceedings initiated by the allocation right holder of the apartment to cancel the applicant's contract on use**

10. In separate proceedings instituted in 1997, "Traser d.o.o." sought to cancel the contract on use concluded by the applicant on 16 February 1973. On 23 March 1997, a Sunday, the Municipal Court I in Sarajevo issued a judgment to that effect. It reasoned that the applicant had left the apartment voluntarily, and that he had adduced no evidence that he was a refugee or a displaced person. The proceedings before the Municipal Court were conducted in the absence of the applicant, and a representative appointed by the Municipal Court acted on his behalf. This representative waived the right to appeal against the judgment of 23 March 1997, and it became final and binding thereafter.

11. On 26 October 1998, the applicant initiated proceedings before the Municipal Court I in Sarajevo, requesting that the judgment of 23 March 1997 be suspended. He referred to the new provisions introduced to the Law on Cessation of the Application of the Law on Abandoned Apartments, aiming at unifying the legal treatment of apartments that have been formally declared temporarily or permanently abandoned and apartments without such declaration. On 13 September 1999, the Municipal Court I in Sarajevo granted the applicant's request. "Traser d.o.o." appealed against this decision and on 25 May 2000, the Cantonal Court in Sarajevo quashed the decision of 13 September 1999 and returned the case for renewed proceedings to the Municipal Court. After his father's death, Z.G. lodged a request for review of the Cantonal Court's decision before the Supreme Court of the Federation of Bosnia and Herzegovina. The request was rejected on 7 May 2002 by a procedural decision of the Supreme Court for the reason that the impugned decision of the Cantonal Court was not yet final and binding.

12. In the renewed proceedings before the Municipal Court, several hearings have taken place, but no decision has been reached yet. On 21 May 2003, the Municipal Court decided to suspend proceedings for an indefinite period of time on the basis that the Chamber was dealing with the matter. Nonetheless, on 14 July and 2 September 2003, further hearings took place, but no decision has been issued.

**IV. RELEVANT LEGISLATION**

**A. The General Framework Agreement – Annex 7, Agreement on Refugees and Displaced Persons**

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

14. 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.

15. The Parties shall co-operate 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**

16. The Law on the Cessation of the Application of the Law on Abandoned Apartments (Official Gazette of the Federation of Bosnia and Herzegovina – hereinafter 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; hereinafter “the Law on Cessation”) entered into force on 4 April 1998 and has been amended on several occasions thereafter. The following provisions are relevant to the events described in paragraphs 6-9 above:

17. Article 1 paragraph 1 provides for the cessation of the application of the Law on Abandoned Apartments (Official Gazette of the Republic of Bosnia and Herzegovina nos. 6/92, 8/92, 16/92, 13/94, 36/94, 9/95 and 33/95), including all regulations regulating the issue of abandoned apartments passed between 30 April 1991 and the entry into force of the Law on Cessation.

18. According to Article 2, all administrative, judicial and any other decisions enacted on the basis of the regulations referred to in paragraph 1 of Article 1 terminating occupancy rights shall be null and void. In addition, paragraph 3 of this Article cancels any occupancy right or contract on use made between 1 April 1992 and 7 February 1998.

19. Article 3 paragraph 1 stipulates that the occupancy right holder of an apartment declared abandoned or a member of his/her household as defined in Article 6 of the Law on Housing Relations shall have the right to return in accordance with Annex 7 of the General Framework Agreement. According to paragraph 2, all persons who have left their apartments between 30 April 1991 and 4 April 1998 shall be considered to be refugees and displaced persons under Annex 7 of the General Framework Agreement.

20. Article 6 paragraph 1 obliges the competent administrative authority to decide on a claim for return of the apartment filed by the pre-war occupancy rights holder within 30 days from the date of receipt of the claim. The claim shall be solved in the chronological order in which it was received.

21. Article 18b was introduced by a decision of the High Representative and entered into force on 4 July 1999. It extended the field of application of the Law on Cessation also to apartments that have not been declared abandoned in terms of Article 1 of the Law on Cessation, including damaged and destroyed apartments, provided that the occupancy right holder lost possession of the apartment in question before 4 April 1998.

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

22. The Law on Implementation of the Decisions of the Commission for Real Property Claims of Displaced Persons and Refugees (OG FBiH nos. 43/99, 15/00, 56/01 and 24/03 – hereinafter “the Law on Implementation”) regulates the enforcement of decisions of the CRPC.

23. Decisions of the CRPC relating to an apartment for which there is an occupancy right shall be enforced by the administrative body for housing affairs in the municipality where the apartment is located (Article 3 paragraph 3). 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).

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

25. 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. 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.

26. 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.

27. 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.

#### **D. The Law on Administrative Procedures**

28. Under Article 275 of the Law on Administrative Procedure of the Federation of Bosnia and Herzegovina (OG FBiH nos. 2/98 and 48/99), 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 216 paragraph 3 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”).

#### **E. The Law on Administrative Disputes**

29. 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.

30. 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**

31. The applicant alleged a violation of his right to return to his pre-conflict home and that his rights guaranteed under Article 8 of the Convention and under Article 1 of Protocol No. 1 to the Convention have been infringed. Furthermore, he complained of the unreasonable length of the administrative and judicial proceedings he initiated in pursuance of his rights within the meaning of Article 6 of the Convention. The applicant also asserted that he was discriminated against on the ground of his age and of his ethnic origin. Z.G. maintains these complaints.

32. In his submissions received on 30 October 2000, the applicant requested that the Chamber order the respondent Party to compensate him for pecuniary and non-pecuniary damages he incurred in his efforts aiming at regaining possession of his apartment. Z.G. also maintains this claim. He leaves it to the Chamber to determine the amount of compensation that should be awarded to him.

## **VI. SUBMISSIONS OF THE PARTIES**

### **A. The respondent Party**

33. As to the admissibility of the application, the Federation of Bosnia and Herzegovina is of the opinion that Z.G. could have pursued his rights pertaining to the apartment in lodging a complaint against the "silence of the administration" after there has been no reaction to his request to enforce the CRPC decision of 1 February 2000 and the administrative decision of 24 November 2000. It suggests to declare the entire application inadmissible for non-exhaustion of domestic legal remedies.

34. On the merits, the respondent Party claims that Article 6 of the Convention is not applicable to administrative proceedings and that the delay in determining the applicant's rights is caused by the significant number of repossession claims pending before the administrative bodies of the Federation. Also, it contends that Article 8 of the Convention and Article 1 of Protocol No. 1 to the Convention were not violated as there was not yet a final and binding decision denying Z.G.'s right to a home or to enjoy his possessions.

### **B. The applicant**

35. The applicant has stated that in his view, the legal situation with respect to the apartment is very clear. He argues that his status as a displaced person was confirmed by the Administration's decision of 24 November 2000 and that he must be treated equally as if his apartment had been declared abandoned due to the fact that it was allocated to another person.

36. Z.G. alleges that, after his father's death, repossession proceedings now pursued by him have come to a complete halt, and that the administrative authorities are simply unwilling to enforce their own decision of 24 November 2000. As to the civil proceedings currently pending before the Municipal Court I in Sarajevo, Z.G. underlines that although they deal with the contract on use of the apartment, those proceedings are to be regarded separately from the administrative proceedings and that they should not prevent his return into possession of the apartment.

## **VII. OPINION OF THE CHAMBER**

## **A. Admissibility**

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

### **1. Requirement to exhaust effective domestic remedies**

38. According to Article VIII(2)(a) of the Agreement, the Chamber must consider whether effective remedies exist and whether the applicants have demonstrated that they have been exhausted. In the *Onić* case (case no. CH/97/58, *Onić v. The Federation of Bosnia and Herzegovina*, decision on admissibility and merits of 12 February 1999, Decisions January-July 1999, paragraph 38), the Chamber held that it was necessary to take realistic account not only of the existence of formal remedies in the domestic system, but also of the general legal and political context in which they operate.

#### **(a) With regard to complaints under Article 8 of the Convention and under Article 1 of Protocol No. 1 to the Convention**

39. With regard to the complaints raised by the applicant and by Z.G. that they were prevented from returning to their pre-war home (Article 8 of the Convention) and to enjoy their possessions (Article 1 of Protocol No. 1 to the Convention), the Chamber recalls that administrative proceedings were initiated by the applicant and conducted since 1998, resulting in a decision in favour of the applicant of 24 November 2000. After his father's death, Z.G. has lodged two requests that this decision be enforced, but without achieving any result. The respondent Party initially claimed that the applicant, and maintains that now Z.G., have not exhausted the domestic remedies available to them in that they have not availed themselves of a "silence of administration" complaint to the second instance administrative body and, eventually, to the courts, concerning the failure of the Administration to implement its decision of 24 November 2000 and to reply Z.G.'s enforcement requests of 9 January and 28 February 2001. Z.G., however, stresses that he and his father have made every possible effort in that respect, and that the Administration is moving the case back and forth without letting him return to the apartment.

40. In this context, the Chamber notes that the applicant died only eleven days after he received a favourable administrative decision. Considering the various requests filed and other efforts undertaken by him, the Chamber is of the opinion that the applicant exhausted all domestic legal remedies available to him before he died.

41. As regards Z.G., the Chamber notes that it is still open to him to make further attempts to have the CRPC decision enforced. However, the respondent Party has not argued that the reason why Z.G.'s repeated attempts to have the CRPC decision enforced were unsuccessful due to the fact that he was not entitled to repossess the apartment at issue. Use of the remedies provided by the Law on Administrative Proceedings and by the Law on Administrative Disputes even if successful, would also not remedy Z.G.'s complaints in so far as they relate to the failure of the authorities to enforce the CRPC decision within the time-limit prescribed by 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 decision, will treat the decisions of the courts with any greater respect.

42. In these circumstances the Chamber is satisfied that neither the applicant nor his son could be required, for the purposes of Article VIII(2)(a) of the Agreement, to pursue any further remedy provided by domestic law.

#### **(b) With regard to the complaint under Article 6 of the Convention**

43. The Chamber recalls that the applicant's contract on use of the apartment in question was cancelled by a decision of the Municipal Court I in Sarajevo of 23 March 1997. With regard to the alleged unreasonable length of proceedings, the Chamber observes that although the judgment issued by the Municipal Court is final and binding, proceedings initiated by the applicant on 26 October 1998 aiming at suspending its application are still pending today.

44. The respondent Party has not sought to claim that there is any remedy available against the failure of the Municipal Court to issue a final decision on the applicant's request which is now pursued by Z.G., and the Chamber for its part is not aware of any such remedy. It follows that there is no effective remedy available for the purposes of this complaint.

## **2. Manifestly ill-founded**

45. The applicant alleged that he was discriminated against in the enjoyment of the rights guaranteed under the Convention. However, he did not provide further substantiation as to this allegation. It follows that the application is manifestly ill-founded in that regard, within the meaning of Article VIII(2)(c) of the Agreement. The Chamber 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 Chamber concludes that the application is admissible under Articles 6 and 8 of the Convention, as well as under Article 1 of Protocol No. 1 to the Convention. The remainder of the application will be declared inadmissible.

## **B. Merits**

47. Under Article XI of the Agreement the Chamber must next address the question 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 Chamber will first examine if there has been a violation of Article 8 of the Convention in that the applicant, and later Z.G. were prevented to return to his home. The relevant parts of Article 8 of the Convention read 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 Chamber notes that the applicant has lived in the apartment in question long before the outbreak of hostilities and thereafter until such time as he was forced to leave. The Chamber has previously held that links that persons in similar situations as the applicants in the present case retain to their dwellings are sufficient for them to be considered as their "home" within the meaning of Article 8 of the Convention (see, e.g., case no. CH/98/659 et al., *Pletilić and others v. The Republika Srpska*, decision on admissibility and merits delivered on 10 September 1999, paragraphs 165-166, Decisions August – December 1999). Also, Z.G. submitted a certificate that he took residence with his father in the apartment at issue as of 1984 (see paragraph 9 above). It follows that the apartment in question is to be considered as the applicant's and Z.G.'s home for the purposes of Article 8 of the Convention.

50. In the present case, the Chamber recalls that the Administration rejected the applicant's request to repossess his apartment of 2 April 1998, and it only granted the request on 24 November 2000, after the CRPC on 1 February 2000 had issued a decision confirming his right to repossess his apartment. It is obvious that the applicant, and later Z.G. have been unable to regain possession of the apartment due to the failure of the authorities of the respondent Party to deal effectively, in accordance with Federation law, with the request for the enforcement of the CRPC decision. It follows that the result of the inaction of the respondent Party is that the applicant, and now Z.G. could not return to their home.

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

52. 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 from the date of the request for such enforcement. The applicant only on 24 November 2000 received a decision on his request filed on 2 March 2000 to have the CRPC decision enforced, despite the time-limit for this having expired more than seven months ago. Similarly, the requests lodged by Z.G. of 9 January and 28 February 2001 did not result in any action by the administrative authorities. Accordingly, the failure of the competent administrative organ to decide upon those requests is not “in accordance with the law”.

53. As the interference with the applicants’ right to respect for their home referred to above is not “in accordance with the law”, it is not necessary for the Chamber to examine whether they pursued a “legitimate aim” or were “necessary in a democratic society”.

54. In conclusion, there has been a violation of the applicant’s, and now Z.G.’s right to respect for their home as guaranteed by Article 8 of the Convention.

## **2. Article 1 of Protocol No. 1 to the Convention**

55. The Chamber will next turn to the question whether the respondent Party has violated the applicant’s and Z.G.’s right to peaceful enjoyment of their possessions. Article 1 of Protocol No. 1 to the Convention reads as follows:

“(1) 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.

(2) 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.”

56. At the outset, the Chamber notes that the applicant was the occupancy right holder of the apartment in question. In this respect, the Chamber reiterates its consistent jurisprudence according to which an occupancy right is a possession within the meaning of Article 1 of Protocol No. 1 (see, e.g., case no. CH/96/28, *M.J. v. The Republika Srpska*, decision on admissibility and merits delivered on 3 December 1997, paragraph 32, Decisions on Admissibility and Merits 1996-1997). The question arises whether this occupancy right was forfeited in the course of the domestic court proceedings.

57. On 23 March 1997, the Municipal Court I in Sarajevo cancelled the applicant’s contract on use of 16 February 1973, thereby stripping away his occupancy right on the basis that he had abandoned his apartment. However, Article 2 paragraph 1 of the Federation Law on the Cessation of the Application of the Law on Abandoned Apartments, which entered into force on 4 April 1998 (see paragraph 16 above), provides for the nullification of this judgment (see paragraph 18 above) *ex lege*. The Chamber cannot but note with astonishment that until the present day, the proceedings initiated by the applicant, now pursued by Z.G., aiming at the suspension of the judgment are still pending. Moreover, the facts that the mentioned judgment was adopted on a Sunday, and that the applicant did not take part in the proceedings also strongly call into question the propriety of this ruling.

58. The Chamber notes that the apartment, although it had never been declared abandoned, was in the absence of the applicant allocated to a third person, B.K.-H. That person lived in the apartment until 12 December 2001. Even though the apartment was vacated in the meantime, Z.G. was not allowed to return to it. The Chamber considers that the failure of the authorities of the respondent Party to allow first the applicant, then Z.G., to regain possession of the apartment constitutes an “interference” with their right to peaceful enjoyment of that possession.

59. The Chamber must therefore examine whether this interference can be justified. 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 from the date of a request for such enforcement. It follows that the failure of the competent administrative organ to decide upon the applicant's and Z.G.'s requests is contrary to the law. This is in itself sufficient to justify a finding of a violation of the applicants' right to peaceful enjoyment of their possessions as guaranteed by Article 1 of Protocol No. 1. Accordingly, both the applicant's and Z.G.'s rights under this provision have been violated.

60. Accordingly, the Chamber finds that the applicant's and Z.G.'s rights under Article 1 of Protocol No. 1 to the Convention were violated by the administrative authorities' refusal to allow them to return to the apartment following the applicant's request for re-instatement of 2 April 1998 and to recognise his occupancy right until 24 November 2000, as well as by the ongoing refusal of the administrative authorities to allow Z.G. to return to the apartment, and the continuing court proceedings on the suspension of a judgment that has been nullified *ex lege*.

### **3. Article 6 of the Convention**

61. Article 6, paragraph 1 of the Convention reads, 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 ...."

62. Both the applicant and Z.G. put forward that the court proceedings regarding the validity of the applicant's contract on use have lasted for an unreasonable length of time. The respondent Party has not made a specific argument on this point.

63. The Chamber recalls that "Traser d.o.o.", the apartment's allocation right holder, initiated proceedings with a view to cancel the applicant's contract on use of 16 February 1973, and that the Municipal Court I in Sarajevo indeed terminated his occupancy right by virtue of a judgment of 23 March 1997. As the Chamber has outlined in the above section dealing with a violation of Article 1 of Protocol No. 1 to the Convention, this judgment falls squarely within the field of application of Article 2 paragraph 1 of the Law on Cessation, providing for an *ex lege* nullification. Against this background, the Municipal Court still has not reached a decision on the applicant's request of 26 October 1998, now pursued by Z.G., that the enforcement of the judgment be suspended.

64. When assessing the reasonableness of the length of proceedings for the purpose of Article 6 paragraph 1 of the Convention, the Chamber must take into account, *inter alia*, the complexity of the case, the conduct of the applicant and the authorities and the matter at stake for the applicant (see, e.g., case no. CH/97/54, *Mitrović v. The Federation of Bosnia and Herzegovina*, decision on admissibility of 10 June 1998, paragraph 10, Decisions and Reports 1998).

65. The underlying issue to be determined by the Municipal Court in this case is whether the judgment of 23 March 1997 can be maintained in accordance with current legislation. The Chamber cannot find that this issue is so complex in nature that it requires several hearings and proceedings now lasting for almost five years. Moreover, the Chamber notes that there is no indication that the length of the proceedings can be attributed to the conduct of the applicant or of Z.G., nor has the respondent Party made an allegation to that effect.

66. Therefore, the Chamber finds that there has been a violation of both the applicant's and Z.G.'s right to a hearing within a reasonable time within the meaning of Article 6 paragraph 1 of the Convention, for which the Federation of Bosnia and Herzegovina is responsible.

## **VIII. REMEDIES**

67. Under Article XI(1)(b) of the Agreement the Chamber must next address the question what steps shall be taken by the Federation of Bosnia and Herzegovina to remedy breaches of the Agreement which it has found. 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 applicants.

68. In his submissions, Z.G. asks to be swiftly reinstated into possession of the apartment at Ulica Patriotske Lige in Sarajevo. He also requests to be compensated for non-pecuniary damages in an unspecified amount.

69. The Chamber considers it appropriate to order the respondent Party to take all necessary steps to enforce the CRPC decision of 1 February 2000 and the administrative decision of 24 November 2000 without 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.

70. With regard to possible compensatory awards, the Chamber considers it appropriate to award a sum to Z.G. 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 and his father have taken all necessary steps to have the CRPC decision enforced.

71. Accordingly, the Chamber will order the respondent Party to pay to Z.G. the sum of 1,200 KM Convertible Marks (*Konvertibilnih Maraka*, "KM") in recognition of the sense of injustice he has suffered at the latest within one month from the delivery of the present decision.

72. In accordance with its decision in *Turundžić and Frančić* (cases nos. CH/00/6143 and CH/00/6150, decision on admissibility and merits delivered on 8 February 2001, paragraph 70, Decisions January-June 2001), the Chamber considers that the sum of KM 100 per month is appropriate to compensate for the loss of use of the apartment and any extra costs for each month Z.G. has been and continues to be forced to live in alternative accommodation. The Chamber considers it appropriate that this sum should be payable from 2 April 2000, the date the time-limit for the competent municipal organ to issue a conclusion on the permission of enforcement of the CRPC decision expired, i.e. 30 days after the applicant lodged his complete request, up to and including October 2003, amounting to a total of 4,300 KM. This sum should continue to be paid at the same rate until the end of the month in which Z.G. regains possession of the apartment.

73. The Chamber further awards simple interest at an annual rate of 10% as of the date of expiry of the one-month periods set in paragraphs 71-72 for the implementation of the present decision on the sums awarded or any unpaid portion thereof until the date of settlement in full.

## **IX. CONCLUSIONS**

74. For the above reasons, the Chamber decides,

1. unanimously, to declare the application admissible under Articles 6 and 8 of the European Convention on Human Rights and under Article 1 of Protocol No. 1 thereto;
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 1 February 2000 and of the administrative decision of 24 November 2000 constituted a violation of the right of the applicant and Z.G. to respect for their home within the meaning of Article 8 of the Convention, the respondent Party thereby being in breach of Article I of the Human Rights Agreement;
4. unanimously, that the non-enforcement of the decision of the Commission for Real Property Claims of Displaced Persons and Refugees of 1 February 2000 and of the administrative decision of 24 November 2000 constituted a violation of the applicant's and Z.G.'s right to

- peaceful enjoyment of their possessions within the meaning of Article 1 of Protocol No. 1 to the Convention, the respondent Party thereby being in breach of Article I of the Agreement;
5. unanimously, that there has been a violation of the applicant's and Z.G.'s right to a determination of their civil rights within a reasonable time under Article 6 paragraph 1 of the Convention, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Agreement;
  6. unanimously, to order the Federation of Bosnia and Herzegovina to take all necessary steps to enforce the CRPC decision of 1 February 2000 and the administrative decision of 24 November 2000 without 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;
  7. unanimously, to order the Federation of Bosnia and Herzegovina to pay to Z.G. the sum of 1,200 (one thousand two hundred) Convertible Marks ("*Konvertibilnih Maraka*") by way of compensation for the sense of injustice he suffered, 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;
  8. unanimously, to order the Federation of Bosnia and Herzegovina to pay to Z.G. the sum of 4,300 (four thousand three hundred) Convertible Marks ("*Konvertibilnih Maraka*") as compensation for the loss of use of the apartment and for any extra costs during the time the applicant and Z.G. have been forced to live in alternative accommodation until the end of October 2003, 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;
  9. unanimously, to order the Federation of Bosnia and Herzegovina to pay to Z.G. 100 (one hundred) Convertible Marks ("*Konvertibilnih Maraka*") for each further month that he continues to be forced to live in alternative accommodation as from 1 November 2003 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;
  10. unanimously, that simple interest at an annual rate of 10 % (ten per cent) will be payable on the sum awarded in the previous conclusions from the expiry of the one-month period set for such payment until the date of final settlement of all sums due to Z.G. under this decision; and

11. unanimously, to order the Federation of Bosnia and Herzegovina to report to it or its successor institution no later than one month after the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure on the steps taken by them to comply with the above orders.

Remedy: in accordance with Rule 63 of the Chamber's Rules of Procedure, as amended on 1 September 2003 and entered into force on 7 October 2003, a request for review against this decision to the plenary Chamber can be filed **within fifteen days** starting on the working day following that on which the Panel's reasoned decision was publicly delivered.

(signed)  
Ulrich GARMS  
Registrar of the Chamber

(signed)  
Michèle PICARD  
President of the First Panel