



**DECISION ON ADMISSIBILITY AND MERITS**  
(delivered on 8 February 2002)

**Cases nos.**

**CH/99/3071, CH/99/3391, CH/99/3395, CH/00/5090,  
CH/00/5946, CH/00/6177, CH/00/6336, CH/00/6556,  
CH/00/6697, CH/00/6705 and CH/01/6808**

**Bosilijka JOKIĆ, Slavica JAKŠIĆ, Milka DERENJ, Živana SIMEUNOVIĆ,  
Olga KULJANIN, Anđa BJELOVUK, Julio MARIĆ, Leopoldina BAJOVIĆ,  
Đorđe MITROVIĆ, Kosta MIJATOVIĆ and Perka LATINOVIĆ**

**against**

**BOSNIA AND HERZEGOVINA**  
**and**  
**THE FEDERATION OF BOSNIA AND HERZEGOVINA**

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 4 February 2002 with the following members present:

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

Mr. Ulrich GARMS, 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 Articles VIII(2) and XI of the Agreement and Rules 52, 57 and 58 of the Chamber's Rules of Procedure:

## **I. INTRODUCTION**

1. The applicants are citizens of Bosnia and Herzegovina. They are all pre-war occupancy right holders of apartments in the Canton Sarajevo, Municipalities Novo Sarajevo, Novi Grad, Centar, Ilidža and Vogošća. The cases concern the applicants' attempts to regain possession of their apartments. All applicants have lodged applications to the Commission for Real Property Claims of Displaced Persons and Refugees (CRPC), which has issued decisions confirming their occupancy rights. However, the competent authorities have failed to execute those decisions. The relevant facts of the individual cases are set out in Section III below.

2. The cases raise issues under Articles 6, 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. The applications were introduced and registered between 28 October 1999 and 2 February 2001.

4. Between 21 February 2001 and 26 March 2001 the Chamber sent letters to the applicants asking them to inform the Chamber as to whether the situation was still the same as described in their applications. The applicants who had used the Chambers "old" application forms were also invited to specify in detail their claims for compensation or other relief. Furthermore, in the cases in which the applicants had filed requests for provisional measures the Chamber rejected the requests.

5. Between 5 April 2001 and 17 May 2001 the Chamber asked CRPC for verification that the information supplied by the applicants was correct. Between 17 April 2001 and 6 June 2001 the Chamber received the requested confirmation from the CRPC.

6. Between 12 July 2000 and 22 June 2001 the Chamber transmitted the applications to the Federation of Bosnia and Herzegovina as the respondent Party for observations on the admissibility and merits thereof. In several cases the respondent Party asked the Chamber for an extension of the deadline to submit its observations on the admissibility and merits of the cases. Such extension was granted. The respondent Party submitted its observations between 12 September 2000 and 23 July 2001.

7. Further observations by the applicants were received between 18 December 2000 and 10 October 2001.

8. On 9 January 2002 and on 4 February 2002 the Chamber considered the admissibility and merits of the applications. On 4 February 2002 the Chamber decided to join the applications and adopted the present decision.

## **III. FACTS**

### **1. Case no. CH/99/3071 Bosiljka Jokić**

9. The applicant is the pre-war occupancy right holder over an apartment located at Geteova 10/XII (formerly Cetinjska) in Sarajevo, Municipality Novi Grad. The applicant left the apartment during the 1992-95 war.

10. On a date unknown to the Chamber the applicant filed a request to the CRPC for repossession of her occupancy right.

11. On 9 September 1999 the CRPC issued a decision (Decision No. 302-2242-1/1) confirming the applicant's occupancy right.

12. On 14 October 1999 and again 10 May 2000 and on 29 May 2000 the applicant filed a request for the execution of the CRPC decision to the Administration for Housing Affairs of Canton Sarajevo. However, as of the date of this decision, the applicant has not received a conclusion on the enforcement of the CRPC decision.

13. The applicant has also initiated other proceedings before domestic administrative and/or judicial organs to regain possession of her apartment.

**2. Case no. CH/99/3391 Slavica Jakšić**

14. The applicant is the pre-war occupancy right holder over an apartment located at Tome Mendeša 39/V, in Vogošća. The applicant left the apartment at the beginning of the 1992-95 war.

15. On a date unknown to the Chamber the applicant requested the CRPC to issue a decision confirming her occupancy right.

16. On 21 March 2000 the CRPC issued a decision (Decision No. 202-4154-1/1) confirming the applicant's occupancy right.

17. On 7 August 2000 the applicant filed a request for the execution of the CRPC decision to the Administration for Housing Affairs of Canton Sarajevo. However, as of the date of this decision, the applicant has not received a conclusion on the enforcement of the CRPC decision.

18. The applicant has also initiated other proceedings before domestic administrative and/or judicial organs to regain possession of her apartment.

**3. Case no. CH/99/3395 Milka Derenj**

19. The applicant is the pre-war occupancy right holder over an apartment located Spasoja Blagovčanina 15/I, in Vogošća. The applicant left the apartment in March 1996.

20. On a date unknown to the Chamber the applicant requested the CRPC to issue a decision confirming her occupancy right.

21. On 28 January 1999 the CRPC issued a decision (Decision No. 301-2718-1/1) confirming the applicant's occupancy right.

22. On 12 November 1999 the applicant filed a request for the execution of the CRPC decision to the Administration for Housing Affairs of Canton Sarajevo. However, as of the date of this decision, the applicant has not received a conclusion on the enforcement of the CRPC decision.

23. The applicant has also initiated other proceedings before domestic administrative and/or judicial organs to regain possession of her apartment.

**4. Case no. CH/00/5090 Živana Simeunović**

24. The applicant is the pre-war occupancy right holder over an apartment located at Ulica Kemala Kapetanovića No. 27/II (formerly Đure Salaja) in Sarajevo, Municipality Novi Grad. The applicant left the apartment during the 1992-95 war.

25. On 17 February 1999 the applicant requested the CRPC to issue a decision confirming her occupancy right.

26. On 8 June 1999 the CRPC issued a decision (Decision No. 513-1515-1/1) confirming the applicant's occupancy right.

27. On 21 January 2001 the applicant filed a request for the execution of the CRPC decision to the Administration for Housing Affairs of Canton Sarajevo. However, as of the date of this decision, the applicant has not received a conclusion on the enforcement of the CRPC decision.

28. The applicant has also initiated other proceedings before domestic administrative and/or judicial organs to regain possession of her apartment.

**5. Case no. CH/00/5946 Olga Kuljanin**

29. The applicant is the pre-war occupancy right holder over an apartment at Porodice Ribar 97 (formerly 93) in Sarajevo, Municipality Novo Sarajevo. The applicant left the apartment in May 1992.

30. On 26 June 1997 the applicant requested the CRPC to issue a decision confirming her occupancy right.

31. On 17 December 1998 the CRPC issued a decision (Decision No. 301-2503-1/1) confirming the applicant's occupancy right.

32. On 12 July 1999 the applicant filed a request for the execution of the CRPC decision to the Administration for Housing Affairs of Canton Sarajevo. However, as of the date of this decision, the applicant has not received a conclusion on the enforcement of the CRPC decision.

33. The applicant has also initiated other proceedings before domestic administrative and/or judicial organs to regain possession of her apartment.

**6. Case no. CH/00/6177 Anđa Bjelovuk**

34. The applicant is the pre-war occupancy right holder over an apartment located at P.O. Zvijezda no. 46, Vogošća in Municipality Vogošća. The applicant left the apartment during the 1992-95 war.

35. On a date unknown to the Chamber the applicant requested the CRPC to issue a decision confirming her occupancy right.

36. On 9 September 1999 the CRPC issued a decision (Decision No. 301-4138-1/1) confirming the applicant's occupancy right.

37. On 16 October 2000 the applicant filed a request for the execution of the CRPC decision to the Administration for Housing Affairs of Canton Sarajevo. On 9 December 2000 the applicant received a conclusion on the enforcement of the CRPC decision. According to the respondent Party, the temporary occupant was ordered to vacate the apartment within 90 days of 9 December 2000. However, the applicant has still not regained possession of her apartment.

38. The applicant has also initiated other proceedings before domestic administrative and/or judicial organs to regain possession of her apartment.

**7. Case no. CH/00/6336 Julio Marić**

39. The applicant is the pre-war occupancy right holder over an apartment located at Behdžeta Mutevelića 533 II (formerly Raković). The applicant left the apartment on 2 April 1992.

40. On a date unknown to the Chamber the applicant requested the CRPC to issue a decision confirming his occupancy right.

41. On 8 October 1998 the CRPC issued a decision (Decision No. 551-315-1/1) confirming the applicant's occupancy right.

42. On 15 September 1999 the applicant filed a request for the execution of the CRPC decision to the Administration for Housing Affairs of Canton Sarajevo. However, as of the date of this decision, the applicant has not received a conclusion on the enforcement of the CRPC decision.

43. The applicant has also initiated other proceedings before domestic administrative and/or judicial organs to regain possession of his apartment.

**8. Case no. CH/00/6556 Leopoldina Bajović**

44. The applicant is the pre-war occupancy right holder over an apartment located Čobanija No. 7 (formerly Tome Masarika No 5/IV) in Sarajevo, Municipality Centar. The applicant left the apartment sometimes prior to 3 April 1992.

45. On a date unknown to the Chamber the applicant requested the CRPC to issue a decision confirming her occupancy right.

46. On 9 December 1999 the CRPC issued a decision (Decision No. 204-965-1/1) confirming the applicant's occupancy right.

47. On 14 January 2000 the applicant filed a request for the execution of the CRPC decision to the Administration for Housing Affairs of Canton Sarajevo. However, as of the date of this decision, the applicant has not received a conclusion on the enforcement of the CRPC decision.

48. The applicant has also initiated other proceedings before domestic administrative and/or judicial organs to regain possession of her apartment.

**9. Case no. CH/01/6697 Đorđe Mitrović**

49. The applicant is the pre-war occupancy right holder over an apartment located at Behdežeta Mutevelića 416 (formerly Rave Janković) in Sarajevo, Municipality Novo Sarajevo. The applicant left the apartment during the 1992-95 war.

50. On 12 April 2000 the applicant requested the CRPC to issue a decision confirming his occupancy right.

51. On 5 August 1999 the CRPC issued a decision (Decision No. 514-1809-1/1) confirming the applicant's occupancy right.

52. On 2 December 1999 the applicant filed a request for the execution of the CRPC decision to the Administration for Housing Affairs of Canton Sarajevo. However, as of the date of this decision, the applicant has not received a conclusion on the enforcement of the CRPC decision.

53. The applicant has also initiated other proceedings before domestic administrative and/or judicial organs to regain possession of his apartment.

**10. Case no. CH/00/6705 Kosta Mijatović**

54. The applicant is the pre-war occupancy right holder over an apartment located at Dobrinjske Bolnice 11/2 (formerly Oktobarske Revolucije) in Sarajevo, Municipality Novi Grad. The applicant left the apartment during the 1992-95 war.

55. On 9 November 1998 the applicant requested the CRPC to issue a decision confirming his occupancy right.

56. On 12 December 1998 the CRPC issued a decision (Decision No.511-613-1/1) confirming the applicant's occupancy right.

57. On 24 March 1999 and 2 December 2000 the applicant filed requests for the execution of the CRPC decision to the Administration for Housing Affairs of Canton Sarajevo. However, as of the date of this decision, the applicant has not received a conclusion on the enforcement of the CRPC decision.

58. The applicant has also initiated other proceedings before domestic administrative and/or judicial organs to regain possession of his apartment.

**11. Case no. CH/01/6808 Perka Latinović**

59. The applicant is the pre-war occupancy right holder over an apartment located at Braće Krešo 6 (formerly Partizanskog visočko-fojničkog odreda 6/2 apartment 3) in Vogošća. The applicant left the apartment during the 1992-95 war.

60. On 14 May 1999 the applicant requested the CRPC to issue a decision confirming her occupancy right.

61. On 9 December 1999 the CRPC issued a decision (Decision No. 511-1655-1/1) confirming the applicant's occupancy right.

62. On 3 February 2000 the applicant filed a request for the execution of the CRPC decision to the Administration for Housing Affairs of Canton Sarajevo. However, as of the date of this decision, the applicant has not received a conclusion on the enforcement of the CRPC decision.

63. The applicant has also initiated other proceedings before domestic administrative and/or judicial organs to regain possession of her apartment.

**IV. RELEVANT LEGAL PROVISIONS**

**1. The General Framework Agreement for Peace in Bosnia and Herzegovina – Annex 4, Constitution of Bosnia and Herzegovina**

64. 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 4 to the General Framework Agreement, entitled Constitution of Bosnia and Herzegovina, deals, among other things, with the responsibilities of and relations between the institutions of Bosnia and Herzegovina and its Entities.

65. The following matters are the responsibility of the institutions of Bosnia and Herzegovina: foreign policy, foreign trade policy, customs policy, monetary policy as provided in Article VII of the Constitution of Bosnia and Herzegovina, finances of the institutions and for the international obligations of Bosnia and Herzegovina, immigration policy and regulation, refugee policy and regulation, asylum policy and regulation, international and inter-Entity criminal law enforcement including relations with Interpol, establishment and operation of common and international communications facilities, regulation of inter-Entity facilities and air traffic control (Article III, paragraph 1).

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

66. Annex 7 to the General Framework Agreement, entitled Agreement on Refugees and Displaced Persons, deals with refugees and displaced persons. 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.

67. 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). 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 (Article XII(7)).

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

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

69. The Law on Implementation of the Decisions of the Commission for Real Property Claims of Displaced Persons and Refugees (Official Gazette of the Federation of Bosnia and Herzegovina 43/99, 51/00 and 56/01 – hereinafter “the Implementation Law”) regulates the enforcement of decisions of the CRPC.

70. The administrative body responsible for property-related legal affairs in the municipality where the property is located shall enforce decisions of the CRPC relating to real property owned by citizens (Article 3 paragraph 2). 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 or 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).

71. 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 (Article 5 paragraph 2).

72. 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.

73. 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 of the Application of the Law on Abandoned Apartments (Official Gazette of the Federation of Bosnia and Herzegovina nos. 11/98, 38/98, 12/99, 18/99, 27/99 and 43/99) or the Law on the Cessation of the Application of the Law

on Temporary Abandoned Real Property Owned by Citizens (Official Gazette of the Federation of Bosnia and Herzegovina nos. 11/98, 29/98, 27/99 and 43/99)

74. 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.

#### **4. The Law on Administrative Proceedings**

75. Under Article 216 of the Law on Administrative Proceedings (Official Gazette of the Federation of Bosnia and Herzegovina no. 2/98) the competent administrative organ has to issue a decision within 30 days upon 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”).

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

76. Article 1 of the Law on Administrative Disputes (Official Gazette of the Federation of Bosnia and Herzegovina no. 2/98) 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.

77. 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**

78. Each of the applicants claims that one or more of the following rights have been violated: the right to respect for their home as guaranteed by Article 8 of the Convention, the right to peaceful enjoyment of possessions as guaranteed by Article 1 of Protocol No. 1 to the Convention, the right to a hearing within reasonable time as guaranteed by Article 6 of the Convention, the right to an effective remedy as guaranteed by Article 13 of the Convention and the right not be discriminated against as guaranteed by Article 14 of the Convention. The applicant Leopoldina Bajović (CH/00/6556), in addition, claims a violation of her right to life as protected by Article 2 of the Convention and her right to freedom of movement as protected by Article 2 of Protocol No. 4 to the Convention.

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

#### **A. The Federation of Bosnia and Herzegovina**

79. The Federation objects, in its observations received between 12 September 2000 and 23 July 2001, to the admissibility of the applications on the ground that the domestic remedies provided by the Law on Administrative Proceedings and by the Law on Administrative Disputes have not been exhausted.

80. As to the merits of the complaints relating to the applicants’ right to respect for their homes as protected by Article 8 of the Convention and the applicants’ property rights as protected by Article 1 of Protocol No. 1 to the Convention, the respondent Party is of the opinion that there has been no violation, because it has passed legislation which enables all persons to repossess their property.



**B. The applicants**

81. The applicants maintain their complaints.

**VII. OPINION OF THE CHAMBER****A. Admissibility**

82. 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.

83. One of the applicants, Olga Kuljanin (CH/00/5946), directed her application against both Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina. The Chamber will consider the admissibility of the applications as against Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina.

**1. Bosnia and Herzegovina**

84. During the proceedings before the Chamber, the Chamber has not received any evidence which would tend to indicate that Bosnia and Herzegovina is responsible for any of the matters that Olga Kuljanin (CH/00/5946) complains of. The competencies of Bosnia and Herzegovina are set out in Article III of the Constitution of Bosnia and Herzegovina, contained in Annex 4 to the General Framework Agreement. These do not include matters relating to the return of property to pre-war occupants or owners. Accordingly, this matter is within the competence of the Entities. Consequently, the case does not raise any issues engaging the responsibility of Bosnia and Herzegovina and therefore are to be declared inadmissible *ratione personae* as against that respondent Party.

**2. Federation of Bosnia and Herzegovina**

85. The Chamber notes that the actions complained of by the applicants are within the competence of the Federation of Bosnia and Herzegovina.

**(a) Exhaustion of effective domestic remedies**

86. 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 *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, 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.

87. In the present cases the respondent Party objects to the admissibility of the applications on the ground that the domestic remedies provided by the Law on Administrative Proceedings and by the Law on Administrative Disputes have not been exhausted. Whilst these laws afford remedies which might qualify as effective ones within the meaning of Article VIII(2)(a) of the Agreement in so far as the applicants are seeking to return to their apartments are faced with the authorities' inaction, the Chamber must ascertain whether, in the cases now before it, these remedies can also be considered effective in practice.

88. The Chamber notes that the applicants filed requests to the CRPC with a view to being reinstated into their apartments. The CRPC issued decisions confirming their occupancy rights, from

which it follows that they are entitled to seek the removal of the temporary occupants from the apartments. However, those decisions have not been enforced despite the applicants' enforcement requests to the competent administrative organ, which have been pending between 12 and 34 months.

89. The Chamber further notes that according to Article 7 of the Implementation Law the competent administrative organ is obliged to issue a conclusion on the enforcement within a period of 30 days from the date when the request for enforcement is submitted. The Chamber interprets this provision to require the competent administrative organ, in cases in which the applicant filed a request for enforcement before the Implementation Law entered into force, to issue a conclusion on the enforcement at the latest 30 days after the date on which the Implementation Law entered into force, i.e. 30 days after 28 October 1999.

90. The Chamber also notes that it is still open to the applicants to make further attempts to have their CRPC decisions enforced. However, the applicants have already made repeated attempts to remedy their situation and they have been unsuccessful. Use of other remedies, even if successful, would also not remedy the applicants' complaints in so far as they relate to the failure of the authorities to enforce the CRPC decisions within the prescribed time-limit. 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.

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

**(b) Admissibility of the discrimination complaint**

92. Regarding the claims of Živana Simeunović (CH/00/5090), Anđa Bjelovuk (CH/00/6177), Leopoldina Bajović (CH/00/6556), Đorđe Mitrović (CH/00/6697), Kosta Mijatović (CH/01/6705) and Perka Latinović (CH/01/6808), that they have been discriminated against, the Chamber notes that the applicants have not submitted any evidence to support their allegations. The Chamber is therefore of the opinion that this part of the application is unsubstantiated and manifestly ill-founded.

**(c) Admissibility of the complaint regarding right to life and freedom of movement**

93. Regarding the claims of Leopoldina Bajović (CH/00/6556), that her right to life and her right to freedom of movement have been violated, the Chamber notes that the applicant's factual allegations do not raise any issues with regard to those rights. The Chamber is therefore of the opinion that this part of the application is manifestly ill-founded.

**(d) Conclusion as to admissibility**

94. The Chamber further finds that no other ground for declaring the cases inadmissible has been established. Accordingly, the applications are to be declared admissible in so far as directed against the Federation of Bosnia and Herzegovina, except for the complaints regarding discrimination, the right to life and the right to freedom of movement. The applications are further to be declared inadmissible in so far as they are directed against Bosnia and Herzegovina.

**B. Merits**

95. 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

96. Article 8 of the Convention, insofar as relevant, provides:

“1. Every one 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.”

97. The Chamber notes that all of the applicants have lived in the apartments and used them as their homes until such times as they were forced to leave. The Chamber has previously held that links that persons in similar situations as the applicants in the present cases 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 of 12 January 1999, Decisions January-July 1999, paragraph 48; and case no. CH/97/46, *Kevešević*, decision on the merits of 15 July 1998, paragraphs 39-42, Decisions and Reports 1998).

98. It is therefore clear that the applicants’ apartments are to be considered as their homes for the purposes of Article 8 of the Convention.

99. It is the respondent Party’s assertion that it has passed legislation which enables all persons to repossess their property and that therefore there has been no violation of Article 8 of the Convention.

100. The Chamber notes that legislation is in force in the Federation that in theory enables persons to repossess their property. 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 of 5 November 1997, Decisions 1997, paragraph 27, Eur. Court HR, *Marckx v. Belgium*, judgement of 13 June 1979, Series A no. 31, paragraph 31; Eur. Court HR, *Airey v. Ireland*, judgement of 9 October 1979, Series A no. 32, paragraph 32; Eur. Court HR, *Velosa Barreto v. Portugal*, judgement of 21 November 1995, Series A no. 334, paragraph 23). Therefore the Chamber considers that the respondent Party not only has to pass legislation but that the legislation also has to be implemented. Otherwise the legislation is not effective.

101. In the present cases the Chamber recalls that the CRPC has issued decisions confirming the applicants’ right to repossess their apartments. The applicants have been unable to regain possession of their apartments due to the failure of the authorities of the Federation to deal effectively, in accordance with Federation law, with their requests for the enforcement of the CRPC decisions. It follows that the result of the inaction of the respondent Party is that the applicants cannot return to their homes and that there is an ongoing interference with the applicants’ right to respect for their homes.

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

103. According to Article 7 of the Implementation Law, 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. If a request for enforcement was filed before the Implementation Law entered into force, the Chamber interprets Article 7 of that Law to require the competent administrative organ to issue a conclusion at the latest 30 days after the date on which that law entered into force, i.e. 30 days after 28 October 1999. The applicants have still not received a decision on their requests to have the CRPC decisions enforced, despite the time-limit for this having expired between 11 and 26 months ago. Accordingly, the failure of the competent administrative organ to decide upon the applicants’ requests is not “in accordance with the law”.

104. 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 it pursued a "legitimate aim" or was "necessary in a democratic society".

105. In conclusion, there has been a violation of the rights of the applicants' to respect for their home as guaranteed by Article 8 of the Convention.

## **2. Article 1 of Protocol No. 1**

106. The applicants complain that their rights to peaceful enjoyment of their possessions have been violated as a result of their inability to regain possession of their apartments. 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."

107. It is the respondent Party's assertion that it has passed such legislation, which enables all persons to repossess their property, and that the applicants were not deprived of their rights to return into possession of their property.

108. The Chamber notes that the applicants are the holders of occupancy rights over apartments. The Chamber has previously held regarding the occupancy rights over apartments, as follows (case no. CH/96/28, *M.J.*, decision on admissibility and merits delivered on 3 December 1997, paragraph 32, Decisions on Admissibility and Merits 1996-1997):

"...[A]n occupancy right is a valuable asset giving the holder the right, subject to the conditions prescribed by law, to occupy the property in question indefinitely. ... In the Chamber's opinion it is an asset which constitutes a "possession" within the meaning of Article 1 [of Protocol No. 1]..."

109. Accordingly, the Chamber considers that the applicants' rights in respect of the apartments also constitute "possessions" for the purposes of Article 1 of Protocol No. 1 to the Convention.

110. The Chamber considers the failure of the authorities of the respondent Party to allow the applicants to regain possession of the apartments constitutes an "interference" with the right to peaceful enjoyment of that possession. This interference is ongoing as the applicants still do not enjoy possession of the apartments.

111. 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. This means that the deprivation must have a basis in national law and that the law concerned must be both accessible and sufficiently precise.

112. As the Chamber noted in the context of its examination of the case under Article 8 of the Convention, Article 7 of the Implementation Law 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. If the request for enforcement was filed before the Implementation Law entered into force, the Chamber interprets Article 7 of that Law to require the competent administrative organ to issue a conclusion at the latest 30 days after the date on which that Law entered into force, i.e. 30 days after 28 October 1999. It follows that the failure of the competent administrative organ to decide upon the applicants' 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, the right of the applicants under this provision has been violated.

### **3. Articles 6 and 13 of the Convention**

113. Article 6 of the Convention, insofar as relevant, provides 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...”

114. 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.”

115. Some of the applicants also allege violation of their rights as guaranteed by one or both of these provisions.

116. The Chamber, considering that it has found violations of the applicants' rights protected by Article 8 of the Convention and Article 1 of Protocol No. 1 to the Convention, does not consider it necessary to examine the cases under Articles 6 and 13 of the Convention.

## **VIII. REMEDIES**

117. 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.

118. In their submissions the applicants request that they be enabled to regain possession of their apartments. In addition, some of the applicants request compensation for one or more of the following reasons: compensation for mental suffering and for the injustice they claim to have suffered, compensation for the rent they have been forced to pay for their accommodation pending their return to their apartments, compensation for legal costs, compensation for travel costs and compensation for their destroyed movable property.

119. The Federation, in its observations, argued that the claims for compensation, which were submitted by some of the applicants, were ill-founded or unsubstantiated and in any case excessive.

120. The Chamber considers it appropriate to order the Federation to take all necessary steps to enforce the CRPC decisions 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.

121. With regard to possible compensatory awards the Chamber considers it appropriate to award a sum to the applicants in recognition of the sense of injustice they have suffered as a result of their inability to regain possession of their apartments, especially in view of the fact that they have taken all necessary steps to have the CRPC decisions enforced.

122. Accordingly, the Chamber will order the respondent Party to pay to each of the applicants the sum of 1200 Convertible Marks (*Konvertibilnih Maraka*, “KM”) in recognition of their suffering as a result of their inability to regain possession of their apartments. In the particular circumstances at hand, the Chamber will also award the applicants who did not make specific claims for compensation the same sum. As the Chamber held in *Pletilić and others* (cases nos. CH/98/659 et al., decision on admissibility and merits of 9 July 1999, paragraph 236, Decisions August-December), Article

XI(1)(b) of the Agreement does not preclude the Chamber from ordering a remedy which has not been requested by an applicant.

123. In accordance with its decision in *Turundžić and Frančić* (cases nos. CH/00/6143 and CH/00/6150, decision on admissibility and merits of 5 February 2001, paragraph 70), the Chamber considers it appropriate to order the respondent Party to compensate the applicants for the loss of use of their homes. The Chamber considers it appropriate that this sum should be KM 200 per month and payable from the date the time-limit for the competent administrative organ to issue a conclusion on the enforcement of the CRPC decision expired, i.e. 30 days after the applicant lodged his request up to and including February 2002. In the cases in which the applicants filed the request for enforcement before the Implementation Law entered into force, the Chamber considers it appropriate that this sum should be payable from 30 days after the Implementation Law entered into force, i.e. 30 days after 28 October 1999, up to and including February 2002. This sum should continue to be paid at the same rate until the end of the month in which the applicants regain possession of their apartments.

124. With regard to the claims for compensation for destruction and deprivation of movable property in the apartments, the Chamber notes that it has previously held that where it has not been shown that the alleged loss of or damage to property was directly caused by the respondent Party or any person acting on its behalf, the respondent Party cannot be held responsible (see, e.g., case no. CH/97/42, *Eraković*, decision on admissibility and merits of 14 January 1999, paragraph 65, Decisions January-July 1999). In the present cases no such responsibility can be established. The Chamber will therefore not award any compensation in this respect.

125. With regard to Olga Kuljanin's (CH/00/5946) claim for compensation for legal costs, the Chamber notes that the applicant has submitted evidence that she has paid a lawyer KM 600 for his assistance. However, this sum relates to the proceedings initiated before the domestic organs and not to the proceeding before the Chamber. The Chamber will therefore not award any compensation in this respect.

126. With regard to Anđa Bjelovuk's (CH/CH/00/6177) claim for compensation of court fees, the Chamber notes that the applicant has submitted evidence that she has paid 102 KM for court fees. However, this sum relates to the proceedings initiated before the domestic organs and not to the proceeding before the Chamber. The Chamber will therefore not award any compensation in this respect.

127. With regard to the other applicants' claim for compensation for their legal costs, the Chamber notes that they have failed to submit any evidence that they actually incurred these expenses. The Chamber will therefore not award any compensation in this respect.

128. With regard to the applicants' claim for compensation for their travel costs, the Chamber notes that they have failed to submit any evidence that they actually incurred these expenses. The Chamber will therefore not award any compensation in this respect.

129. The Chamber further awards simple interest at an annual rate of 10% as of the date of expiry of the one-month period set in paragraph 120 for the implementation of the present decision, and on each of the sums awarded in paragraphs 122 and 123 or any unpaid portion thereof until the date of settlement in full.

## **IX. CONCLUSION**

130. For the above reasons, the Chamber decides,

1. unanimously, to declare the applications inadmissible against Bosnia and Herzegovina;

2. unanimously, to declare the applications admissible against the Federation of Bosnia and Herzegovina under Articles 6, 8 and 13 of the European Convention on Human Rights and under Article 1 of Protocol No. 1 thereto;
3. unanimously, to declare the claims of Živana Simeunović (CH/00/5090), Anđa Bjelovuk (CH/00/6177), Leopoldina Bajović (CH/00/6556), Đorđe Mitrović (CH/00/6697), Kosta Mijatović (CH/01/6705) and Perka Latinović (CH/01/6808), that they have been discriminated against inadmissible as manifestly ill-founded;
4. unanimously, to declare the claims of Leopoldina Bajović (CH/00/6556), that her right to life and her right to freedom of movement have been violated, inadmissible as manifestly ill-founded;
5. unanimously, that the non-enforcement of the decisions of the Commission for Real Property Claims of Displaced Persons and Refugees (CRPC) constitutes a violation of the right of the applicants to respect for their homes within the meaning of Article 8 of the Convention, the Federation thereby being in breach of Article I of the Human Rights Agreement;
6. unanimously, that the non-enforcement of the decisions of the CRPC constitutes a violation of the right of the applicants to peaceful enjoyment of their possessions within the meaning of Article 1 of Protocol No. 1 to the Convention, the Federation thereby being in breach of Article I of the Agreement;
7. unanimously, that it is not necessary to rule on the complaints under Article 6 and Article 13 of the Convention;
8. unanimously, to order the Federation to enable the applicants to regain possession of their apartments without further delay and at latest 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;
9. by six votes to one, to order the Federation to pay to the applicants, 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:

to Ms. Bosiljka Jokić, the applicant in case CH/99/3071: 6600 (six thousand six hundred) Convertible Marks (*Konvertibilnih Maraka*, "KM"), composed of KM 1200 by way of compensation for non-pecuniary damage and 5400 KM by way of compensation for the loss of use of her home;

to Ms. Slavica Jakšić, the applicant in case CH/99/3391: KM 4600 (four thousand six hundred), composed of KM 1200 by way of compensation for non-pecuniary damage and KM 3400 by way of compensation for the loss of use of her home;

to Ms. Milka Derenj, the applicant in case CH/99/3395: KM 6400 (six thousand four hundred), composed of KM 1200 by way of compensation for non-pecuniary damage and KM 5200 by way of compensation for the loss of use of her home;

to Ms. Živana Simeunović, the applicant in case CH/00/5090: KM 3600 (three thousand six hundred), composed of KM 1200 by way of compensation for non-pecuniary damage and KM 2400 by way of compensation for the loss of use of her home;

to Ms. Olga Kuljanin, the applicant in case CH/00/5946: KM 6600 (six thousand six hundred), composed of KM 1200 by way of compensation for non-pecuniary damage and KM 5400 by way of compensation for the loss of use of her home;

to Ms. Anđa Bjelovuk, the applicant in case CH/00/6177: KM 4200 (four thousand two hundred), composed of KM 1200 by way of compensation for non-pecuniary damage and KM 3000 by way of compensation for the loss of use of her home;

to Mr. Julio Marić, the applicant in case CH/00/6336: KM 6600 (six thousand six hundred), composed of KM 1200 by way of compensation for non-pecuniary damage and 5400 KM by way of compensation for the loss of use of his home;

to Ms. Leopoldina Bajović, the applicant in case CH/00/6556: KM 6000 (six thousand), composed of KM 1200 by way of compensation for non-pecuniary damage and KM 4800 by way of compensation for the loss of use of her home;

to Mr. Đorđe Mitrović, the applicant in case CH/00/6697: KM 6200 (six thousand two hundred), composed of KM 1200 by way of compensation for non-pecuniary damage and KM 5000 by way of compensation for the loss of use his home;

to Mr. Kosta Mijatović applicant in case CH/01/6705: 6600 (six thousand six hundred) Convertible Marks (*Konvertibilnih Maraka*, "KM"), composed of KM 1200 by way of compensation for non-pecuniary damage and 5400 KM by way of compensation for the loss of use of his home;

to Ms. Perka Latinović, the applicant in case CH/00/6808: KM 5800 (five thousand eight hundred), composed of KM 1200 by way of compensation for non-pecuniary damage and KM 4600 by way of compensation for the loss of use of her home;

10. by six votes to one, to order the Federation to pay to each of the applicants KM 200 for each further month that they remain excluded from their apartments as from February 2002 until the end of the month in which they are reinstated, each of these monthly payments to be made within 30 days from the end of the month to which they relate;

11. by six votes to one, to order the Federation 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;

12. unanimously, to dismiss the remainder of the applicants' claims for compensation;

13. unanimously, to order the Federation to report to it 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 it to comply with the above orders.

(signed)  
Ulrich GARMS  
Registrar of the Chamber

(signed)  
Ms. Michèle PICARD  
President of the First Panel