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**PRESS RELEASE**

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## Human Rights Chamber Delivers 10 Decisions on Admissibility and Merits

On **Monday, 22 December 2003 at 9:00 a.m.** in the Cantonal Court building, Šenoina St. 1, Sarajevo, the Human Rights Chamber for Bosnia and Herzegovina delivered 10 decisions on admissibility and merits in the following cases:

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**CH/98/565 M.K. v. the Federation of Bosnia and Herzegovina**

***Factual background***

The case concerns the attempts of the applicant, who is a citizen of Bosnia and Herzegovina of Serb origin, to be re-employed by his pre-war employer, the Sarajevo Canton Development Institute. The applicant left Sarajevo in spring 1992 with the consent of his employer. Since his return to Sarajevo in 1996 he has been seeking to be re-employed, but to no avail. He has pursued his case before the Municipal Court in Sarajevo, which first suspended proceedings and referred the applicant to the Cantonal Commission for the Implementation of Article 143 of the Labor Law. When the Cantonal Commission sent the case back to the Court, the Court declared that the applicant had filed his action out of time. The case is currently pending on appeal before the Cantonal Court.

***Findings of the Chamber***

The Chamber finds that, after the applicant in 1996 requested his employer to allow him to return to work, the Sarajevo Canton Development Institute denied the applicant the possibility to resume his work and, instead, hired other engineers of Bosniak origin to fill the applicant's position. The Chamber therefore finds that the applicant has been discriminated against in his right to work. The Chamber also finds a violation of the applicant's right to a fair hearing within reasonable time in the proceedings before the Municipal and Cantonal Courts in Sarajevo and the Cantonal Commission.

***Remedies***

The Chamber ordered the Federation of Bosnia and Herzegovina to undertake immediate steps to ensure that the applicant is no longer discriminated against in his right to work and to just and favourable conditions of work, and that he be offered the possibility of resuming his previous position, or another position appropriate to his skills and training, with a salary commensurate to his previous position. The Chamber further orders the Federation to calculate and pay all benefits, including unpaid contributions to the applicant's pension and health insurance, from 23 June 1996 through the date of his reinstatement, into the appropriate funds for the applicant's benefit and by way of compensation for both pecuniary and non-pecuniary damages suffered during the period from 23 June 1996 through 31 December 2003, to pay the applicant the sum of 20,000 KM.

**CH/01/7701 Islamic Community in Bosnia and Herzegovina v. the Republika Srpska**

***Factual background***

The application concerns the site of the former Kizlaragina mosque in Mrkonjić Grad, Republika Srpska. The mosque was destroyed during the 1992-95 armed conflict in Bosnia and Herzegovina. In 1995 the site was divided into two plots, plot no. 26/82-1 (the part where the mosque used to stand) and plot no. 26/82-2 (the part covered by two small cemeteries). Plot no. 26/82-2 was declared to be undeveloped city construction land and partially allocated to a private contractor for the construction of business premises, which have since then been built. These business premises

occupy the part of the plot, which used to be a graveyard belonging to the mosque complex (plot no. 26/82-2). The remainder of the site, including the part of the plot where the mosque was standing, is currently used as a car parking area and refuse dump. None of the decisions issued by the Republika Srpska authorities in this matter has been notified to the applicant. The Islamic Community in Bosnia and Herzegovina seeks permission to rebuild the destroyed mosque as well as destruction of the business premises.

### ***Findings of the Chamber***

The Chamber finds that the Republika Srpska has violated the Islamic Community's right to freedom of religion by unlawfully seizing land from it, assigning it for construction, allowing business premises to be built on the graveyard of the Kizlagarina mosque, and allowing the citizens of Mrkonjić Grad to use the site of the Kizlagarina mosque as a car parking area and refuse dump. The Chamber finds that by the same conduct the respondent Party has violated the applicant's right to peaceful enjoyment of possessions. The Chamber further finds that the Republika Srpska authorities have discriminated against the applicant on grounds of its religion in the enjoyment of these rights. Finally, the Chamber finds that the applicant was denied the right of effective access to court as guaranteed by Article 6 paragraph 1 of the Convention.

### ***Remedies***

To remedy the violations found, the Chamber ordered the Republika Srpska:

- to ensure, at the latest by 22 January 2004, that all cars, temporary facilities, and refuse, are removed from plot no. 26/82-1, that the land is fenced in and handed over to the applicant;
- to ensure that by 31 March 2004 ownership of plot no. 26/82-1 in the Municipality Mrkonjić Grad is transferred to the applicant;
- to consider any future requests by the applicant for a permit for the reconstruction of the Kizlagarina Mosque on plot no. 26/82-1 in good faith and to grant permission without unreasonable conditions.

The Chamber decided not to order the demolition of the business premises constructed on plot no. 26/82-2, as requested by the Islamic Community. Instead, it ordered the Republika Srpska:

- to take all necessary action to ensure that the amount of compensation for seizure is re-assessed based on present day evaluations, and a new offer for pecuniary compensation for the seizure of plot no. 26/82-2 in the Municipality Mrkonjić Grad is made to the applicant and in no case shall the new offer amount to less than 20,000 KM;
- to make an advance payment on the pecuniary compensation to be in the amount of 20,000 KM, at the latest by 22 January 2004;
- to pay to the applicant, no later than 22 February 2004, the sum of 50,000 KM by way of compensation for non-pecuniary damage.

## **CH/01/7967 Jusuf SEJDINOVIĆ v. the Federation of Bosnia and Herzegovina and the Republika Srpska**

### ***Factual background***

The applicant is a person of Bosniak origin displaced to Sarajevo. His application concerns his efforts to regain possession of his pre-war home in Janja, Municipality Bijeljina. The applicant's rights in this respect have been confirmed by a CRPC decision. However, the Republika Srpska authorities have failed to implement the decision until to day. Moreover, the applicant sought protection from the Chamber against eviction from the apartment he currently lives in in Sarajevo.

### ***Findings of the Chamber***

In the part of the application directed against the Federation of Bosnia and Herzegovina, the Chamber found that the decision on the eviction of the applicant was issued in order to enable the pre-war owner of the house to repossess his property, but that the applicant continued to live there as a tenant. The Chamber found that this part of the application did not disclose any appearance of a violation of the rights and freedoms guaranteed under the Agreement and declared it manifestly ill-founded.

In the part of the application directed against the Republika Srpska, the Chamber found that the non-enforcement of the CRPC decision of 12 November 1998 constituted a violation of the right of the applicant to respect for his home and his right to property.

***Remedies***

The Chamber ordered the Republika Srpska to take all necessary steps to ensure enforcement of the CRPC decision of 12 November 1998 without further delay and at the latest by 22 January 2004. The Chamber further ordered the Republika Srpska to pay to the applicant compensation in recognition of his suffering as a result of his inability to regain possession his property and for the loss of use of his home. Finally, the Republika Srpska was ordered to continue to pay to the applicant KM 150 monthly until the end of the month in which the applicant regains possession of his house.

**CH/02/12435 Hazim BOJIĆ v. Federation of Bosnia and Herzegovina**

***Factual ackground***

The case concerns the applicant's attempts to regain possession of his apartment in the municipality South-West Mostar. The applicant, a citizen of BiH of Bosniak origin, has obtained a decision of the Commission for Real Property Claims of Displaced Persons and Refugees (CRPC) confirming his rights over the apartment. The competent authorities have failed to execute this decision. The applicant has also pursued negotiations with the authorities for the allocation of another apartment and initiated court proceedings, but to no avail.

***Findings of the Chamber***

The Chamber found that the respondent Party's failure to reinstate the applicant into possession of his apartment constitutes a violation of the applicant's right to respect for his home and a violation of his right to peaceful enjoyment of possessions. The Chamber also found that the applicant has been discriminated against by the authorities of the Municipality Mostar South-West due to his Bosniak origin.

***Remedies***

The Chamber ordered the Federation of Bosnia and Herzegovina to reinstate the applicant, in the absence of any other solution agreed to by the applicant, without further delay, and at latest by 22 February 2003. The Chamber further ordered the Federation of Bosnia and Herzegovina to pay the applicant compensation in recognition of his suffering as a result of his inability to regain possession of his apartment in a timely manner and for the loss of use of his apartment. Finally, the Federation was ordered to continue to make to the applicant a monthly payment of compensation until the end of the month in which the applicant regains possession of his apartment.

**CH/03/14212 Enver SYLA v. Bosnia and Herzegovina**

***Factual background***

The applicant is a citizen of Serbia and Montenegro and of the Netherlands. On 2 April 2003 he was arrested by members of the Bosnia and Herzegovina State Border Service in Neum during a routine border check, on the basis of an outstanding Interpol arrest warrant and due to the fact that he allegedly attempted to abscond from the authorities. The applicant was brought before the investigative judge of the Cantonal Court in Mostar and detained on the basis of decisions of that court until 16 May 2003. On 16 May 2003 the Court of Bosnia and Herzegovina, conducting extradition proceedings, ordered that the applicant remain in detention until such time as the extradition proceedings were concluded. The extradition proceedings concerned a request by the Federal Republic of Germany for the applicant to face charges of drug trafficking. On 19 May 2003, the Court of Bosnia and Herzegovina issued a procedural decision establishing that the legal requirements for extraditing the applicant had been met. The applicant submitted an appeal against this procedural decision stating that none of the documents considered by the Court of BiH in the extradition proceedings had been delivered to him or his legal representative. On 27 May 2003, the appeal was rejected by the Appellate Panel of the Court of Bosnia and Herzegovina. On 30 May 2003 the Bosnia and Herzegovina Ministry of Justice issued a procedural decision authorising the

extradition of the applicant and on 12 June 2003 the applicant was extradited to the Federal Republic of Germany.

***Alleged violations of human rights***

The applicant alleges that the Court of Bosnia and Herzegovina was not competent to conduct the extradition proceedings in his case and that his rights were violated in the proceedings before the Court of BiH.

***Findings of the Chamber***

The Chamber finds that from the moment of the applicant's arrest, the Court of Bosnia and Herzegovina was competent to conduct the extradition proceedings and should have decided on the applicant's detention. For this and other reasons, the applicant's detention was not in accordance with a procedure prescribed by law and thus in violation of Article 5 paragraph 1 of the Convention. Furthermore, the Chamber held that the Court of BiH violated the applicant's rights under Article 5 paragraph 4 by failing to provide the applicant with a real possibility to challenge the lawfulness of his detention, by failing to provide him with any documentation pertaining to his extradition, and by failing to enable him to reply to the submissions of the prosecution and of the Federal Republic of Germany requesting extradition.

***Remedies***

The Chamber ordered Bosnia and Herzegovina to pay to the applicant a sum by way of compensation for moral damage suffered.

The remaining five decisions delivered, covering 41 applications, all concern the right of family members of persons who went missing during the war to know the truth about the fate of their loved ones. In all cases the missing relative was last seen in the custody of the armed forces or the police of the respondent Party. The applicants allege that, as close family members of missing persons, they are themselves victims of alleged or apparent human rights violations resulting from the lack of specific information on the fate and whereabouts of their loved ones. They seek to know the truth. Some applicants specifically request to be given possession of the remains of their missing loved ones, if they have been killed, so that they may be properly buried. The applicants seek compensation for their continuing suffering. Some further request that the perpetrators of the crimes against their loved ones be duly punished.

Case no. **CH/99/2688 Angelina, Dragan and Nikola SAVIĆ v. the Federation of Bosnia and Herzegovina** was filed with the Chamber by the wife and the son of Nikola Savić, a member of the Bosnian Serb police force, who was captured by the Army of the Republic of Bosnia and Herzegovina in Sanski Most on 10 October 1995. His wife Angelina and son Dragan reported him missing to the International Committee of the Red Cross in February 1996, as well as to the Commission for Tracing Missing and Detained Persons of the Republika Srpska ("RS Commission"). They allege that at least until January 1996 the Federation authorities raised false hopes that Nikola Savić was held in captivity. Thereafter, Angelina and Dragan Savić received no official information from the authorities of the Federation of Bosnia and Herzegovina about his fate. They only learned that he had been tortured and killed after the RS Commission conducted an exhumation of a mass grave near Sanki Most in October 1998 and Nikola Savić's body was identified by the court medical expert on 9 January 1999. It does not appear that, since the exhumation, any investigation into the facts leading to Nikola Savić's death has been conducted.

The Chamber decided not to deal with the part of the application relating to possible violations of Nikola Savić's rights under the Convention, i.e. events before the entry into force of the Agreement, since the Chamber is not competent to do so. The Chamber found that the respondent Party has breached its positive obligations to secure respect for the private and family life of Angelina and Dragan Savić, in that it has failed to make accessible and disclose information requested about their husband and father. The Chamber concluded, however, that the respondent Party has not violated their right to be free from "inhuman and degrading treatment", as guaranteed by Article 3 of the Convention.

The Federation of Bosnia and Herzegovina was ordered, as a matter of urgency, to release to the applicants all information presently within its possession, control, and knowledge with respect to the fate of Nikola Savić, including information on the circumstances of his arrest, torture, and death, as well as to conduct a full, meaningful, thorough, and detailed investigation capable of exploring all the facts regarding Nikola Savić's fate from the day when he was forcibly taken away by members of the Army of the Republic of Bosnia and Herzegovina until his death, both with a view to making such information known to the applicants and with a view to bringing the perpetrators of any crimes to justice. The Federation was also ordered to pay to the Applicants Angelina and Dragan Savić the total sum of five thousand (5,000) KM by way of compensation for their mental suffering.

In cases no. **CH/02/9358, CH/02/10431, CH/02/10432, CH/02/10433, CH/02/11210, CH/01/11442, CH/02/11566 and CH/02/12094, Jusuf MALKIĆ, Hava SMAJLOVIĆ, H.G., Munevera SARAČEVIĆ, Hava KULJANČIĆ and Alija ČAMDŽIĆ v. the Republika Srpska**, the applications were filed by the immediate family members of persons missing from Vlasenica. All the missing persons are of Bosniak origin. They disappeared between June and December 1992. Most of the applicants allege that their missing loved ones were captured by soldiers of the Army of Serbs in Bosnia and Herzegovina during the armed conflict in Vlasenica and some were thereafter detained in the infamous Sušica Camp. Tracing requests were opened with the International Committee of the Red Cross ("ICRC") for all the missing persons in 1995 or 1996. All the applicants seek information about the fate and whereabouts of their missing loved ones, but none has received any such specific information from the competent authorities since the events underlying their applications.

In cases no. **CH/02/9851, CH/02/10458, CH/02/10459, CH/02/10460, CH/02/10461, CH/02/10462, CH/02/10463, CH/02/10464, CH/02/11032 and CH/02/11246 M.Č., H.A.Č., H.A.Č., S.Č., M.Č., S.Č., F.V., F.V., Razija Ć. and M.Z. v. the Republika Srpska**, the applicants are immediate family members of four men of Bosniak origin from the Municipality of Rogatica. The four presumed victims disappeared on 3 and 4 June 1992, allegedly after being taken away for an interview by soldiers of the Republika Srpska Army. All presumed victims have been registered as missing persons with the International Committee of the Red Cross and one presumed victim has been listed with both the ICRC and the "State Commission for Tracing Missing Persons". All of the applicants seek information about the fate and whereabouts of their missing loved ones. None of the applicants have received any such specific information from the competent authorities since the events underlying their applications.

In cases no. **CH/02/10235, CH/02/11582, CH/02/11608, CH/02/12070, CH/02/12565, CH/02/12655, CH/02/12749, CH/03/13152 and CH/03/13204 Nedžiba MUJIĆ, Hata AVDIĆ, Hasiba HARBAŠ, Kada MUJČIĆ, Zumreta IBIŠEVIĆ, Mevlida SALKIĆ, Fata SALKIĆ, Hiba MALAGIĆ and Hatidža KARIĆ v. the Republika Srpska**, the applicants are immediate family members of missing persons of Bosniak origin from the Municipality of Bratunac. In May 1992, Bosnian Serb armed forces launched an onslaught on Bratunac, leading to the eventual take-over of the entire Municipality in only a couple of weeks. A large number of civilians, predominantly of Bosniak origin, were killed, fled the area or were captured by Serb armed forces. Many of those initially detained went missing and were never seen again. All presumed victims have been registered as missing persons with the "State Commission for Tracing Missing Persons" and with the International Committee of the Red Cross. All of the applicants seek information about the fate and whereabouts of their missing loved ones. None of the applicants has received any such specific information from the competent authorities since the events underlying their applications.

In cases no. **CH/02/12551, CH/02/12552, CH/02/12553, CH/02/12554, CH/02/12555, CH/02/12556, CH/02/12557, CH/02/12558, CH/02/12559, CH/02/12560, CH/02/12561, CH/02/12562 and CH/02/12563 Hasan HUSKOVIĆ, Omer ČEHIĆ, Slobodan MILOJEVIĆ, Rabija GRIZOVIĆ, Osman ČOLIĆ, Osman ČAMO, Đula BEHMEN, Hamid ŠARANČIĆ, Munevera MEHIĆ, Omer HUSIĆ, Muškija POBRIĆ, Azra PENAVALA and Ilijas HASIĆ v. the Federation of Bosnia and Herzegovina**, the applications arise from the disappearance of thirteen members of the Army of BiH seized by units of the Croatian Defence Council on 10 May 1993, during the armed conflict between the Army of BiH and the HVO in Mostar. The applicants are the parents, wives and other close

relatives of the unaccounted for members of the Army of BiH.

Criminal proceedings concerning the murder of the applicants' relatives are pending since January 2000. In April 2001 the Cantonal Court in Mostar acquitted all the accused. This judgement was quashed by the Supreme Court of the Federation in June 2002. Since then the case is pending again before the Cantonal Court.

### ***Findings of the Chamber***

In all these cases, in accordance with its practice, the Chamber declared that it is not competent to deal with the alleged violations of the rights of the persons who went missing during the war, as these events occurred before the Dayton Peace Agreement was signed.

However, the Chamber concluded that the respondent Partys' failure to make accessible and disclose information requested by the applicants about their missing loved ones constitutes a violation of their positive obligations to secure respect for the applicants' rights to private and family life, as guaranteed by Article 8 of the Convention. In addition, the respondent Party's failure to inform the applicants about the truth of the fate and whereabouts of their missing loved ones, including conducting a meaningful and effective investigation into the events in Rogatica, Bratunac and Vlasenica in 1992, and in Mostar in 1993, violates the applicants' rights to be free from inhuman and degrading treatment, as guaranteed by Article 3 of the Convention.

### ***Remedies***

As remedies for the violations established in the **Rogatica, Bratunac and Vlasenica cases**, the Chamber ordered the Republika Srpska, as a matter of urgency, to release all information presently within its possession, control, and knowledge with respect to the fate and whereabouts of the missing loved ones of the applicants. The Republika Srpska shall also disclose all information not previously disclosed on the location of any gravesites, individual or mass, primary or secondary, of the victims of the events in Rogatica, Bratunac and Vlasenica. In addition, the Chamber decided to order the Republika Srpska to conduct a full, meaningful, thorough, and detailed investigation into the events giving rise to the established human rights violations within six months.

Lastly, although the Chamber declined to make any individual awards of compensation, it ordered the Republika Srpska to make a lump sum contribution to the Institute for Missing Persons in the total amount of one-hundred thousand Convertible Marks (100,000 KM) in each group of cases (overall 300,000 KM). These funds shall be used in accordance with the Statute of the Institute for Missing Persons for the purpose of collecting information on the fate and whereabouts of missing persons primarily from the Municipalities of Rogatica, Bratunac and Vlasenica, to be paid within six months.

Also in the **Husković & Others (Mostar)** case, the Chamber ordered the Federation of Bosnia and Herzegovina, as a matter of urgency, to release all information presently within its possession, control, and knowledge with respect to the fate and whereabouts of the missing thirteen members of the Army of Bosnia and Herzegovina, and whether any of the missing persons are known to have been killed in the events of 10-11 May 1993 at the Faculty of Mechanical Engineering in Mostar and if so, the location of their mortal remains. The Federation of Bosnia and Herzegovina was also ordered to conduct a full, meaningful, thorough, and detailed investigation into the events. Lastly, the Chamber ordered the Federation of Bosnia and Herzegovina to make a lump sum contribution to the Institute for Missing Persons for the collective benefit of all the applicants and the families of the victims of the Mostar events in the total amount of one hundred thousand Convertible Marks (100,000 KM), to be used in accordance with the Statute of the Institute for Missing Persons for the general purpose of collecting information on the fate and whereabouts of missing persons in Bosnia and Herzegovina, primarily with a view to ascertaining the fate of the missing thirteen members of the Army of Bosnia and Herzegovina.