HUMAN RIGHTS CHAMBER
FOR BOSNIA AND HERZEGOVINA

DOM ZA LJUDSKA PRAVA
ZA BOSNU I HERCEGOVINU

PRESS RELEASE
Published Friday, 6 June 2003

Human Rights Chamber Delivers 6 Decisions on Admissibility and Merits

On **Friday, 6 June 2003 at 9:00 a.m.** in the Cantonal Court building, Šenoina St. 1, Sarajevo, the Human Rights Chamber for Bosnia and Herzegovina delivered the following 6 decisions on admissibility and merits. A summary of each decision is provided below.

1. CH/00/6183 and CH/00/6231 *Dušanka BILBIJA, Gordana STEVIĆ, Ljubica BAJILO, Goran KOVRLIJA, and Maja MANDIĆ and Stjepan PEPIĆ v. the Republika Srpska*
2. CH/99/3227 *Tereza MILISAVLJEVIĆ v. the Federation of Bosnia and Herzegovina*
3. CH/02/9628 *CATHOLIC ARCHDIOCESE OF VRHBOSNA v. the Federation of Bosnia and Herzegovina*
4. CH/02/9868 *Sejad and Senad BUKVIĆ v. the Federation of Bosnia and Herzegovina*
5. CH/98/1493 *Milan PILIPOVIĆ v. Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina*
6. CH/98/1169 *R.M. v. the Federation of Bosnia and Herzegovina*

CH/00/6183 and CH/00/6231 Dušanka BILBIJA, Gordana STEVIĆ, Ljubica BAJILO, Goran KOVRLIJA, and Maja MANDIĆ and Stjepan PEPIĆ v. the Republika Srpska

Factual background
These cases concern the continued operation of the first private school of higher education in the Republika Srpska — the Higher Business School of Industrial Engineering, Organisation and Management in Prijedor (the "Higher Business School") — and the validity of the diplomas issued by that School to its students.

The Higher Business School enrolled its first class of students in the school year 1995-1996. It pursued its educational activities undisturbed until 23 July 1999, when the Ministry of Education of the Republika Srpska issued a procedural decision prohibiting the School from admitting new students for the school year 1999-2000 until a deficiency in terms of the capacity of the premises of the School in Prijedor was removed. Thereafter, the School entered into lease contracts for three additional premises in Prijedor, and it admitted new students. On 14 April 2000, the Ministry of Education issued a procedural decision annulling the admission of new students for the school year 1999-2000. On 19 April 2000, the Ministry of Education issued another procedural decision prohibiting the operation of the School. Both decisions were due to the School's alleged non-compliance with the procedural decision of 23 July 1999. The School appealed against these decisions to both the Ministry of Education and the Supreme Court of the Republika Srpska, but three years later, these appeals are still not fully decided, leaving the School with an uncertain legal status. Since that time, the Higher Business School has *de facto* continued to admit new students, to educate them in accordance with its curriculum and syllabus, and to graduate them. However, the Ministry of Education has issued statements to the media and the public refusing to recognise the validity of the diplomas awarded by the Higher Business School, thereby injuring the students and the reputation of the School.

Alleged violations of human rights

The applicants Bilbija and Pepić allege that through a pattern of illegal actions and implicit corruption, the Minister of Education of the Republika Srpska has violated the right to education of students of the Higher Business School, as protected by Article 2 of Protocol No. 1 to the European Convention on Human Rights. The applicant Bilbija also alleges on her own behalf that she is one of the initial founders of and a financial contributor to the Higher Business School, and as such her right to property protected by Article 1 of Protocol No. 1 to the Convention has been violated. The applications further appear to raise issues under Article 6 (right to a court) and Article 13 (right to an effective remedy) of the Convention.

Findings of the Chamber

The Chamber considered the right to education vis-à-vis the applicant Pepić, a student of the Higher Business School, with respect to his right to access to a given course of study offered by an existing educational institution, and his right as a student of such educational institution to obtain official recognition of his completed studies, including recognition of his completed courses and any diploma. Although a State may regulate the sphere of education, such regulation must achieve a balance between protection of the general public interest and respect for the individual's human rights.

The Chamber observed that the Ministry of Education banned further operations of the Higher Business School under highly suspect conditions and failed to provide the students of the School with any real avenue to further pursue their studies, which they legally commenced. In these circumstances, the Chamber concluded that the authorities of the Republika Srpska failed to achieve a fair balance between the general public's interest in having premises of adequate capacity at the Higher Business School and the applicant Pepić's right to education. In banning the operations of the Higher Business School and annulling the admission of students, the Ministry of Education of the Republika Srpska misused its regulatory authority in the sphere of education. Therefore, the authorities of the Republika Srpska breached the applicant Pepić's fundamental right to education guaranteed by Article 2 of Protocol No. 1 to the Convention.

The Chamber considered the right to peaceful enjoyment of possessions of the applicant Bilbija, a founder and guarantor of the School. The Chamber noted that in addition to the procedural decisions issued by the Ministry of Education, the statements by its officials to the media maligning the reputation of the Higher Business School further injured its goodwill. The Ministry took no action to attempt to balance the general interest of the community against the individual rights, presumably because it did not believe it was required to do so. In these circumstances, the Chamber concluded that the authorities of the Republika Srpska failed to achieve a fair balance between the general public's interest in having larger premises at the Higher Business School and the applicant Bilbija's protected possession in the goodwill of the Higher Business School. Therefore, the authorities of the Republika Srpska breached the applicant Bilbija's right to peaceful enjoyment of her possessions guaranteed by Article 1 of Protocol No. 1 to the Convention.

Remedies

As remedies for the established violations, the Chamber ordered the Ministry of Education of the Republika Srpska to nullify the procedural decisions of 23 July 1999, 14 April 2000, and 19 April 2000, with retroactive effect, and to officially recognise the diplomas issued by the Higher Business School to graduated students and the studies officially completed by current students, within one month from the date on which this decision becomes final and binding. Thereafter, the Chamber ordered the Republika Srpska to publish the decision or decisions on nullification and recognition of diplomas and completed studies by the Ministry of Education in the Official Gazette of the Republika Srpska.

In addition, taking into consideration that the authorities of the Ministry of Education issued statements to the media which damaged the goodwill of the Higher Business School and raised doubts in the public about the validity of diplomas issued to students of the Higher Business School, the Chamber ordered the Republika Sprska to publish the text of the Chamber's official press release on these particular cases within two weeks from the date on which the present decision becomes final and binding.

CH/99/3227 Tereza MILISAVLJEVIĆ v. the Federation of Bosnia and Herzegovina

Factual background
The applicant lived in an apartment in her father's private house in Sarajevo until January 1984, when she was evicted following an expropriation procedure. On 24 June 1983, the Municipality of Novo Sarajevo issued a final and binding procedural decision by which it obliged the beneficiary of the expropriation (the Institute for Development of the City of Sarajevo) to provide the applicant with another apartment – a suitable replacement apartment – as specified in separate proceedings. However, to date, the beneficiary of the expropriation has not provided the applicant with a suitable replacement apartment. The applicant initiated proceedings before both administrative organs and the courts to achieve her right, but both determined themselves incompetent to deal with her complaint. As a result, twenty years later, the applicant remains without a suitable replacement apartment, although her right to such apartment is indisputable.

Alleged violations of human rights
The applicant complains that she has not been allocated a suitable replacement apartment for her use, although her right to such apartment was declared in the final and binding procedural decision on expropriation of 24 June 1983 and confirmed several times thereafter. She alleges violations of her rights to respect for her home and peaceful enjoyment of her possessions under Article 8 of the European Convention on Human Rights and Article 1 of Protocol No. 1 to the Convention, as well as violations of her right to a fair hearing within a reasonable time under Article 6 of the Convention and her right to an effective remedy under Article 13 of the Convention. She seeks compensation for physical and mental damages caused to her and her two children as a result of having no suitable replacement apartment since 1983.

Findings of the Chamber
With respect to the right to peaceful enjoyment of possessions, the Chamber found that as a result of the valid administrative act of 24 June 1983 and applicable legislation, the applicant had a legitimate expectation to be allocated a suitable replacement apartment for her use. Since the Federation failed to take the necessary actions to ensure the applicant's right to be allocated a suitable replacement apartment, it interfered with her uncontested right in a disproportional and unjustified manner, and thereby violated her right protected by Article 1 of Protocol No. 1 to the Convention.

In addition, with respect to the right to a hearing within a reasonable time and right to a court, the Chamber noted that to date the applicant still has not realised her right to be allocated a suitable replacement apartment. She has pursued numerous proceedings before both the administrative and judicial bodies to attempt to enforce her right to a suitable replacement apartment for some twenty years, and each body, in the end, has declared itself incompetent to deal with her request and referred her elsewhere, in a vicious circle.

Thus, this case is a tragic yet classic example of how the inertia of the competent authorities has, up until today, rendered illusory the valuable right granted to the applicant in the expropriation proceedings. The applicant's court proceedings on this issue were pending until 31 March 1999, and there still to date has been no enforcement of the procedural decision of 24 June 1983. Therefore, the Chamber found that the Federation violated the applicant's right to a hearing within a reasonable time and right to a court, both guaranteed by Article 6 paragraph 1 of the Convention.

Remedies
The Chamber ordered the Federation to allocate, or to cause the beneficiary of the expropriation to allocate to the applicant a suitable replacement apartment without further delay. In addition, the Chamber ordered the Federation of BiH to pay to the applicant 200 KM per month for the loss of use of a suitable replacement apartment, from 14 December 1995 until the end of the month in which she is allocated such an apartment, as well as compensation for non-pecuniary damages.

CH/02/9628 CATHOLIC ARCHDIOCESE OF VRHBOSNA v. the Federation of Bosnia and Herzegovina

Factual background
The case concerns the claim of the Archdiocese of Bosnia (*Vhrbosanska nadbiskupija*) to be reinstated into possession and use of the remaining part of the Archdiocese High School building and surrounding land in Travnik. Beginning in 1990, the Archdiocese of Bosnia requested that Travnik Municipality return certain property that had been confiscated in 1946 in the nationalisation process. In 1998, the Archdiocese was reinstated into one part of the Archdiocese High School Building, with the rest remaining in the munipality's control. The Archdiocese alleges that in 1997 Travnik Municipality returned to the Islamic Community all its previously-owned property that had been confiscated in the same manner as property confiscated from the Archdiocese. In its application, the Archdiocese challenges this differential treatment as discrimination in the enjoyment of its rights protected under Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina.

Alleged violations of human rights
The application raises issues with regard to the applicant's rights to freedom of religion (Article 9 of the European Convention on Human Rights) and protection of property (Article 1 of Protocol No. 1 to the Convention), as well as discrimination in the enjoyment of these rights.

Findings of the Chamber

As to admissibility:
Because the original taking of the applicant's property in the nationalisation process occurred before the entry into force of the agreement on 14 December 1995, the Chamber concluded that the applicant's property claims were inadmissible *ratione temporis*.

The Chamber also found the applicant's allegations regarding direct interference with its freedom of religion to be manifestly ill-founded and therefore declared the application inadmissible in regard to a direct violation of Article 9 of the European Convention on Human Rights.

As to the merits:
Although it did not find direct interference with the applicant's freedom of religion as protected by Article 9 of the Convention, the Chamber found discrimination with regard to the applicant's enjoyment of the rights protected by that Article. With particular regard to the ability to provide religious education, the Chamber found that Travnik Municipality subjected the applicant, and the Catholic Community in Travnik, to differential treatment as compared to the Islamic religious community. The respondent Party's significant delay in relocating certain public schools— actions that would create the conditions for accommodating the applicant's needs— places an undue burden on the applicant and has had a negative impact on the applicant's freedom to practice religion, with particular regard to its ability to provide religious education. The discriminatory situation in Travnik Municipality also appears to discourage and therefore obstruct the return of Croat refugees and other Catholic believers to the area. Under the circumstances, there is no reasonable and objective justification for the differential treatment, and the Chamber has found that the respondent Party has discriminated against the applicant with regard to its enjoyment of the right of freedom of religion guaranteed by Article 9 of the Convention.

Remedies
In order to remedy the discriminatory treatment of the applicant, the Chamber ordered the Federation of Bosnia and Herzegovina to expedite the relocation of the public schools housed in the Archdiocese High School building, in order to permit ceding of the remaining portions of that building to the applicant's use. The Federation of BiH is ordered to issue relevant and binding decisions on these matters within six months. Further, the Federation of BiH shall cede the remaining portion of the building to the applicant as soon as possible, and within one year at the latest. The Chamber reserved the right to order additional remedies in the case, if warranted.

CH/02/9868 Sejad and Senad BUKVIĆ v. the Federation of Bosnia and Herzegovina

Factual background
The applicants are running the restaurant "KOGO", located at Dalmatinska Street no. 2, in Sarajevo. The applicants were allocated the land on which the restaurant stands by the Municipality Centar in 1996. In the meantime, they have registered their ownership over the restaurant in the land books. R.K., who used to run a restaurant on the same site before the war, has obtained a decision issued by the Commission for Real Property Claims (CRPC) entitling him to regain possession of the restaurant. The Municipality Centar Sarajevo has issued a procedural decision ordering the enforcement of the CRPC decision and thus the eviction of the applicants from the restaurant. A dispute concerning the rights to the land on which the restaurant stands is pending before the Municipal Court I in Sarajevo.

Alleged violations of human rights
The applicants disagree with the CRPC decision concerning R.K.'s rights as of April 1992 and state that they have built a completely new restaurant on the site and invested about 200,000 DEM in its construction and in paying all the fees for approvals from the Municipality. They complain that the reinstatement into possession of the land and restaurant will violate their right to peaceful enjoyment of possessions protected under Article 1 of the First Protocol to the European Convention on Human Rights.

Findings of the Chamber

As to admissibility:
The Chamber firstly examined whether the legal system of the Federation provided the applicants with an effective remedy against the alleged violation of the right to property. The Chamber noted that the applicants cannot obtain a suspension of the enforcement of the CRPC decision, neither by filing an administrative appeal, nor by applying to the courts for a temporary measure. The Chamber also concluded that the applicants cannot obtain from any authority of the Federation a decision that overrules the provision in the CRPC decision that any transfer of rights over the restaurant after 1 April 1992 is null and void. Also, the applicants cannot request a waiver under the OHR Decisions banning the allocation of socially owned land, which can be sought only by the public authorities, nor is it clear whether they fall under the exception for third parties having carried out lawful construction work. Considering all of this, the Chamber concluded that it was competent to decide the case although a dispute between the pre-war user and the applicants is pending before the Municipal Court I in Sarajevo.

As to the merits:
The Chamber then considered the merits of the case. The Chamber noted that in order to make the process of return of displaced persons and refugees sustainable it is necessary not only to allow them to repossess their homes, but also to create the conditions that enable returnees to earn a living. In this perspective, the return of business premises to their pre-war users is a requirement of the right to return established by the Dayton Peace Agreement. There is therefore a very strong public interest in the expeditious repossession of business premises by their pre-war users, which supports the eviction of persons who have obtained rights to business premises after the war, such as the applicant Bukvić brothers.

However, the Chamber noted that the cumulative effect of the allocation of the land to the applicants, of their registration as owners in the land books, of the CRPC decision and of the OHR Decisions banning the allocation of socially owned land, which both had retroactive effects in the applicants' case, and of the Federation's failure to enact a clear, non-discriminatory legal framework for the allocation of socially owned land (as requested by the OHR) was a situation of utmost legal uncertainty. Moreover, the mechanism by which the applicants can obtain compensation for their investments in case the land and the restaurant are returned to the pre-war user is unsatisfactory. Under these circumstances, the Chamber concluded that the eviction of the applicants before the courts have clarified whether the land was validly allocated to them in 1996 places a burden on the applicants' shoulders which cannot be justified by the need to facilitate the return of the pre-war

possessor. The Chamber therefore found a violation of the right to peaceful enjoyment of possessions under Article 1 of Protocol No. 1 to the European Convention on Human Rights.

Remedies

As a remedy, the Chamber ordered the Federation to postpone the enforcement of the CRPC decision until the case pending before the Municipal Court I in Sarajevo is decided. Secondly, the Chamber ordered the Federation to put in place a clear, non-discriminatory legal framework for the allocation of socially owned land. It is important to note that the Chamber adopted this decision on 7 May 2003, before the High Representative imposed the Law on Construction Land of the Federation, which was therefore not taken into account by the Chamber in this case.

CH/98/1493 Milan PILIPOVIĆ v. Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina

Factual background

The case concerns an applicant complaining of the fact that Article 3a of the Law on Cessation of the Application of the Law on Abandoned Apartments prevented him from repossessing his pre-war apartment located in Bihać in the Federation of BiH. The applicant further complains of the fact that the domestic authorities do not recognise him as the owner over the apartment in question on the basis of the steps taken by the applicant in 1992, aimed at purchasing the apartment from the then Yugoslav National Army ("JNA"). Those steps included paying the purchase price, but did not include concluding a written purchase contract.

The facts of the case are slightly different from those in *M.P., Brdar and Štrbac* (CH/02/8202, CH/02/9980 and CH/02/11011, decision on admissibility and merits of 31 March 2003) because, unlike the applicants in *M.P., Brdar and Štrbac*, the present applicant initiated the procedure to purchase his pre-war apartment under the Law on Securing Housing for JNA in 1992.

Alleged violations of human rights

The case raises issues under Article 6 of the European Convention on Human Rights (the right to a fair and public hearing within a reasonable time), Article 8 of the Convention (the right to respect for one's home), Article 13 of the Convention (the right to an effective remedy), Article 1 of Protocol No. 1 to the Convention (the right to the peaceful enjoyment of one's possessions) and Article II(2)(b) of the Human Rights Agreement (the right not to be discriminated against).

Findings of the Chamber

As to admissibility:

The Chamber declared the application incompatible *ratione personae* with the provisions of the Agreement insofar as it is directed against Bosnia and Herzegovina. In the previous cases decided by the Chamber in the matter of JNA apartments, the Chamber held Bosnia and Herzegovina responsible for passing the legislation that retroactively annulled the contracts on purchase of JNA apartments. In the present case, the retroactive annulment of the purchase contracts did not affect the applicant's situation because the applicant did not conclude a written purchase contract with the former JNA. Furthermore, it has not been established in any proceedings in the domestic courts that an informal contract of a legally valid nature existed.

Insofar as the applicant complains because the Federation of BiH failed to recognise him as the owner over his pre-war apartment, the applicant has not exhausted domestic remedies as required by Article VIII(2)(a) of the Agreement. The applicant could have *inter alia* initiated a lawsuit and requested the court to establish his ownership under Article 172 of the Law on Civil Procedure.

Insofar as the applicant complains because the Federation of BiH failed to reinstate him, as occupancy right holder, into his pre-war apartment, the application is admissible. Therefore, the Chamber continued with the examination of the merits of this applicant's complaint.

As to the merits:
The Chamber found that the applicant's pre-war apartment is his "home" for the purpose of Article 8 of the Convention and that the applicant's occupancy right over his pre-war apartment constitutes a "possession" for the purpose of Article 1 of Protocol No. 1 to the Convention. The Chamber further found that the Federation of BiH, by refusing to reinstate the applicant into his pre-war apartment, interfered with his right to respect for home as guaranteed by Article 8 of the Convention and the right to the peaceful enjoyment of possessions as guaranteed by Article 1 of Protocol No. 1 to the Convention. The Chamber then proceeded to examine whether that interference was justified and proportional.

The Federation of BiH refused to reinstate the applicant because he served in the then JNA on 30 April 1991 and was not a citizen of Bosnia and Herzegovina on the same date (in accordance with paragraph 1 of Article 3a of the Law on Cessation). In the opinion of the Chamber, these reasons do not provide for a reasonable justification for deprivation of the applicant of his pre-war apartment. Therefore, the Chamber found a violation by the Federation of BiH of his right to respect for home as guaranteed by Article 8 of the Convention and the right to the peaceful enjoyment of possessions as guaranteed by Article 1 of Protocol No. 1 to the Convention. Moreover, the Chamber found that the Federation of BiH discriminated against the applicant due to his status as a former service member of the then JNA who did not join the RBiH Army (Bosniak-dominated armed forces) or HVO (Croat-dominated armed forces).

In the light of its findings concerning Article 8 of the Convention, Article 1 of Protocol No. 1 to the Convention and Article II(2)(b) of the Human Rights Agreement, the Chamber did not consider it necessary to examine the cases also under Articles 6 and 13 of the Convention.

Remedies
The Federation of BiH was ordered to ensure that the applicant is reinstated into his pre-war apartment without further delay and no later than 7 September 2003. Furthermore, the Federation of BiH was ordered to pay to the applicant 5,800 KM, by way of compensation for the loss of use of his home no later than three months after the delivery of the present decision and to continue to pay to the applicant 200 KM for each further month that he remains excluded from his apartment as from June 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.

CH/98/1169 R.M. v. the Federation of Bosnia and Herzegovina

Factual background
The case concerns the applicant's attempts to register his ownership over a former Yugoslav National Army ("JNA") apartment located in Sarajevo, the Federation of Bosnia and Herzegovina. The applicant is the occupancy right holder over the apartment and has never abandoned the apartment. At issue is whether the applicant should be recognised as the owner of the apartment, based on the fact that he initiated the proceedings to purchase his apartment, was assessed the purchase price, which turned out to be 0.00 Yugoslav Dinars ("YUD"), and paid a small fee related to the purchase, but never concluded the written purchase contract.

The applicant initiated proceedings in January 1995 before the Municipal Court I in Sarajevo to establish his ownership over the apartment in question. The Municipal Court issued its decision in October 2000, and the applicant appealed the decision to the Cantonal Court, which quashed the decision and returned the case to the Municipal Court. In November 2002, the Municipal Court declared that it did not have jurisdiction over the matter. The applicant appealed that decision to the Cantonal Court, and those proceedings are still pending.

Alleged violations of human rights
The case raises issues under Articles 6 and 13 of the European Convention on Human Rights and Article 1 of Protocol No. 1 to the Convention.

Findings of the Chamber

The Chamber found that the excessive length of proceedings in a relatively simple matter such as the applicant's claim before the domestic courts violates the applicant's right to a fair trial within a reasonable time under Article 6 paragraph 1 of the Convention, for which the Federation of BiH is responsible.

The Chamber held that the applicant's claim under Article 1 of Protocol No. 1 to the Convention is too tenuous to amount to a protected possession, and therefore, there has been no violation of Article 1 of Protocol No. 1 to the Convention.

Remedies

The Federation of BiH was ordered to take all necessary steps to secure the speedy resolution of the applicant's claim. Furthermore, the Federation of BiH was ordered to pay to the applicant, not later than 6 August 2003, the sum of 1,000 KM by way of compensation for non-pecuniary damage.
