HUMAN RIGHTS CHAMBER
FOR BOSNIA AND HERZEGOVINA

DOM ZA LJUDSKA PRAVA
ZA BOSNU I HERCEGOVINU

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Human Rights Chamber Delivers 6 Decisions on Admissibility and Merits and 1 Decision on Further Remedies

On **Friday, 4 July 2003 at 9:00 a.m.** in the Cantonal Court building, Šenoina St. 1, Sarajevo, the Human Rights Chamber for Bosnia and Herzegovina delivered 6 decisions on admissibility and merits and 1 decision on further remedies. A summary of each decision follows.

Decision on Further Remedies:

CH/97/48, CH/97/52, CH/97/104, CH/97/105, CH/97/106, CH/97/107, CH/97/108, CH/98/374, CH/98/386, CH/99/2997, and CH/00/4358 Milovan POROPAT et al. v. Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina

Factual background
The case involves eleven applicants who had been involved in two earlier decisions of the Chamber, *Poropat and Others* (CH/97/48 et al., delivered 9 June 2000) and *Todorović and Others* (CH/97/104 et al., delivered 11 October 2002), concerning so-called "frozen" old foreign currency savings accounts. The facts of the individual cases are set out in those decisions. All of the applicants hold old foreign currency savings accounts at bank branches located in what is now the Federation of Bosnia and Herzegovina, and they have been unable to obtain money from these accounts. In *Poropat and Others*, the Chamber found that the respondent Parties had violated the applicants' property rights under Article 1 of Protocol No. 1 to the Convention and ordered the Federation of Bosnia and Herzegovina to amend the privatisation programme so as to achieve a fair balance between the general interest and the protection of the property rights of the applicants as holders of old foreign currency savings accounts.

Between 2 November 2000 and 8 February 2002, the Federation amended various provisions of the Citizens' Claims Law in an effort to comply with the Chamber's order in *Poropat and Others*. During that period, on 8 January 2001, the Constitutional Court of the Federation of Bosnia and Herzegovina determined that Articles 3, 7, 11, and 18 of the Citizens' Claims Law—provisions essential to the scheme of conversion of old foreign currency savings into privatisation certificates—were not in accordance with the Constitution of the Federation of Bosnia and Herzegovina. A period of inactivity by the respondent Parties followed.

In October 2002, the Chamber delivered a second decision, *Todorović and Others*, concerning old foreign currency savings accounts. In *Todorović and Others*, the Chamber decided, *inter alia*, that the state of legal uncertainty resulting from the Federation Constitutional Court's decision, the Federation's continued application of laws that had been declared unconstitutional, the lack of responsive amendments to those laws, and the unavailability of relief in the domestic courts, taken together, created a disproportionate interference with the applicants' property rights and therefore constituted a violation by the Federation of Bosnia and Herzegovina of the applicants' rights to peaceful enjoyment of their possessions under Article 1 of Protocol No. 1 to the Convention. The Chamber also found a violation of Article 1 of Protocol No. 1 to the Convention by Bosnia and

Herzegovina, based on the state's general involvement in and responsibility for old foreign currency savings accounts and its failure to take adequate action in this respect. As a remedy, the Chamber ordered the Federation, *inter alia*, "to remove the prevailing legal uncertainty by enacting, within six months from the date of delivery of this decision, relevant and binding laws or regulations that clearly address this problem in a manner compatible with Article 1 of Protocol No. 1 to the Convention, as interpreted in the Chamber's decision in *Poropat and Others* and the present decision", and to secure enforcement of a valid court judgement obtained by one of the applicants.

Alleged violations of human rights

The applicants complain that their right to peaceful enjoyment of their possessions, as guaranteed by Article 1 of Protocol No. 1 to the Convention, and their right to a fair hearing within a reasonable time before an independent and impartial tribunal, as guaranteed by Article 6 of the Convention, have been, and continue to be, violated.

Findings of the Chamber

Since the Chamber's decision in *Todorović and Others*, it appears that the Federation has delayed taking any substantive legislative action to remedy the violations, blaming its inactivity on changes in government brought about by the 2002 elections. In the absence of any concrete action on its part, the Federation cites only speculative future actions by the legislature and the formation of a commission to resolve issues related to certain foreign banks. Also, the Federation has not ensured the enforcement of the applicant Milenko Višnjevac's valid court judgement, as ordered by the Chamber in *Todorović and Others*, but has merely acquiesced in the bank's refusal to pay. For these reasons, the Chamber found that the Federation has failed to implement the Chamber's orders in *Todorović and Others* in any meaningful respect.

At the same time, Bosnia and Herzegovina has provided the Chamber with no report regarding attempted compliance with the Chamber's decision in *Todorović and Others*, and the Chamber therefore concluded that the State has taken no significant action. Therefore, the Chamber found that Bosnia and Herzegovina has also failed to comply with the Chamber's decision.

In the *Todorović & Others* judgement, the Chamber ordered the Federation of BiH "to take all necessary steps to ensure the enforcement of the applicant Milenko Višnjevac's valid court judgement as ordered by the First Instance Court in Sarajevo on 22 November 1993, not later than 11 January 2003" (paragraph 175(13)). The Federation has reported that, on 14 November 2002, the Municipal Court I in Sarajevo requested Ljubljanska Banka d.d. Sarajevo to submit the account number within eight days. By its letter of 20 November 2002, the bank informed the court that it could not comply with its decision because the State of Bosnia and Herzegovina had taken over the obligations related to old foreign currency savings. The Federation has taken no further steps to implement the judgement against Ljubljanska Banka in favour of Mr. Višnjevac.

In deciding on a further remedy in Mr. Višnjevac's case, the Chamber recalled that there is no legal basis on which Ljubljanska Banka d.d. Sarajevo could refuse the payment of a valid court judgement to Mr. Višnjevac. If Ljubljanska Banka d.d. Sarajevo, a bank registered to do business in the Federation, does not comply with the valid and enforceable judgement of a Federation court, the Federation is responsible, upon request of the beneficiary of the judgement, to take all necessary coercive steps to ensure the enforcement of the judgement issued by its own courts. However, in the case of Mr. Višnjevac, the Federation has been unwilling to ensure enforcement of the judgement of the First Instance Court in Sarajevo against Ljubljanska Banka d.d. Sarajevo. Indeed, the Chamber found that the Federation has merely acquiesced in the bank's refusal to pay. The Chamber therefore found it appropriate to order the Federation itself to pay the amount corresponding to the DEM 2,000 that its authorities should have forced Ljubljanska Banka d.d. Sarajevo to pay to the applicant, along with any and all interest accrued on this amount under the First Instance Court's judgement.

With regard to further remedies in all of these cases, including the case of Mr. Višnjevac, the Chamber found that the human rights violations found in *Poropat and Others* and *Todorović and Others* have continued. Since the Constitutional Court of the Federation declared that Articles 3, 7, 11, and 18 of the Citizens' Claims Law — provisions essential to the scheme of conversion of old foreign currency savings into certificates — are not in accordance with the Constitution of the

Federation of Bosnia and Herzegovina, there has been no legal basis for denying these applicants access to their old foreign currency savings accounts. Nonetheless, the Federation persists in doing so. And Bosnia and Herzegovina's failure to address the problem in any significant respect has also allowed these ongoing violations to persist.

In the circumstances, the Chamber found it appropriate to order the respondent Parties to pay each of the applicants, within one month of the date of delivery of this decision, 2,000 KM or the full balance of his or her old foreign currency savings accounts, whichever is less, the cost to be borne equally between the respondent Parties. In the case of Milenko Višnjevac (case no. CH/99/2997), this payment shall be made in addition to the amount awarded for the Federation's failure to ensure enforcement of his valid court judgement. The amounts of all these payments, including both payments to Mr. Višnjevac, shall be deducted from any future recovery of old foreign currency savings to which the applicants may become entitled, as well as from any amounts the applicants may hold on the Unique Citizen's Account for use in the privatisation process. The Chamber further ordered the respondent Parties to report back to it on the steps taken to comply with these orders within two months, and it reserved the right to order further remedies in these cases.

The Chamber clarified that it did not order these payments on the basis of an assumption that, under the Convention, KM 2,000 is an adequate amount to be paid to the applicants on account of their old foreign currency savings. The adequate payment may be more or less than this amount. As the Chamber has previously explained, what the applicants are entitled to under Article 1 of Protocol No. 1 to the Convention is a clear legal framework that takes into account the general interest without placing an excessive individual burden on the applicants. The applicants have the right to know whether the use of certificates in the privatisation process is the only way they can obtain something of value for their old foreign currency savings. They are entitled to know whether Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina intend to respect statements made by officials and even in legislation that the issue of old foreign currency savings will be addressed through the public debt of the respondent Parties. If so, the applicants are entitled to know what percentage of their savings they can expect to recoup and within what time frame. The respondent Parties have consistently failed to provide clear answers to these questions.

The Chamber further stressed that the remedies ordered in *Poropat and Others* and *Todorović and Others* remain in force and should be implemented without any further delay.

Decisions on Admissibility and Merits:

CH/02/10046 Timotije BAVČIĆ and 285 Other JNA Pensioners v. Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina

Factual background

The applicants are citizens of Bosnia and Herzegovina living in the territory of the Federation of Bosnia and Herzegovina. They are former officers of the Yugoslav National Army (JNA) who retired before 1992. Until the outbreak of the war in Bosnia and Herzegovina, they received their pensions from the Institute for Social Insurance of Army Insurees in Belgrade to which they had paid contributions during their life as active soldiers. At the beginning of 1992 the applicants ceased to receive payments from the JNA Pension Fund. In September 1992 the Republic of Bosnia and Herzegovina issued a decree to the effect that pensioners of the JNA would be paid a pension amounting to 50 percent of their previous pension. This decision was confirmed by a law of the Republic of Bosnia and Herzegovina passed in June 1994 and by Article 139 of the Law on Pensions and Disability Insurance of the Federation of Bosnia and Herzegovina, which entered into force on 31 July 1998. The Chamber recalls that on 9 March 2000 it adopted for the first time a decision on the admissibility and merits of three applications concerning the issue of the pensions paid by the Pension and Disability Insurance Fund of Bosnia and Herzegovina to JNA pensioners (cases nos. CH/98/706, 740 and 776, *Šećerbegović, Biočić and Oroz,* decision on admissibility and merits of 9 March 2000.

On 29 June 2001 Bosnia and Herzegovina, the Republic of Croatia, the Former Yugoslav Republic of Macedonia, the Republic of Slovenia and the former Federal Republic of Yugoslavia (currently Serbia and Montenegro) signed the Agreement on the Issues of Succession between the Successor States of the former Socialist Federal Republic of Yugoslavia. On 28 November 2001 the Presidency of Bosnia and Herzegovina issued the Decision on Ratification of this Agreement. The Decision entered into force on 31 December 2001. Annex E of this Agreement provides that each of the successor States shall assume responsibility for and regularly pay pensions which are due to its citizens who were civil or military servants of the former Socialist Federal Republic of Yugoslavia (hereinafter: "SFRY"), irrespective of where they are resident or domiciled.

Alleged violations of human rights

The applicants allege a violation of their right to receive the full pension under Article 1 of Protocol No. 1 to the European Convention on Human Rights. They also complain that they are being discriminated against in the enjoyment of the right to social security guaranteed by Article 9 of the International Covenant on Economic, Social and Cultural Rights on political grounds as they served in the JNA, which makes them the "second class citizens". The applicants argue that the Chamber should change its decision in the *Šećerbegović, Biočić and Oroz* cases, considering that in Annex E of the Succession Agreement Bosnia and Herzegovina has taken over the responsibility to pay their entire pension, and considering that Bosnia and Herzegovina receives succession funds in order to comply with its obligations.

Findings of the Chamber

The Chamber declared the application admissible against both Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina.

The Chamber noted that the European Court and Commission on Human Rights have considered that the right to a pension could, under certain circumstances, amount to a possession protected by Article 1 of Protocol No. 1. It also noted, however, that the applicants have not paid any contributions to the Federation Pension and Disability Institute - PIO FBiH and that they had no legal relationship to that fund before the enactment of the 1992 Decree on pension and disability insurance.

The Chamber next examined the question whether the Succession Agreement has given the applicants a claim against the PIO FBiH. The Chamber rejected the argument of the Federation that further bilateral agreements between Bosnia and Herzegovina and other successor States are necessary to render operative the obligations Bosnia and Herzegovina has assumed towards the applicants in Annex E of the Succession Agreement. The Chamber noted, however, that the Succession Agreement provides that it shall enter into force once all five successor States have ratified it. As the Republic of Croatia has not yet ratified the Succession Agreement, it has not entered into force yet.

The Chamber therefore concluded that, as of the date of this decision, the applicants still have no enforceable claims against the PIO FBiH, or against Bosnia and Herzegovina and the Federation, beyond those attributed to them by the 1992 Decree and 1998 Law, i.e. a pension in the amount of fifty percent of their JNA pension. Accordingly, the Chamber found no violation of Article 1 of Protocol No. 1 to the Convention.

Regarding the issue of discrimination in the enjoyment of the right to social security, the Chamber found, for the same reasons as in its *Šećerbegović, Biočić and Oroz* decision, that the applicants are not victims of discrimination. The Chamber found that the civil pensioners who receive pension payments from the PIO FBiH are not in a relevantly comparable situation to that of the applicants. The Chamber also found that the differential treatment between, on the one hand, the pensioners of the Army of the Republic of Bosnia and Herzegovina and the Army of the Federation of Bosnia and Herzegovina, and, on the other hand, the JNA pensioners is justifiable, considering that the former have served in the armed forces of the country whose pension fund pays their pensions.

To sum up, the Chamber found no violation by the respondent Parties of the applicants' rights protected by the Human Rights Agreement.

CH/99/2743 Jasminka SARAČ v. the Federation of Bosnia and Herzegovina

Factual background
The applicant, who is of Bosniak origin, was employed by the "Bosna" company (which subsequently changed its name into "Euroservis d.o.o.) in Livno. When the conflict between the Croats and Bosniaks in Livno broke out in July 1993, she was told by the employer's management not to come to work, and subsequently her employment was terminated by the employer's decision. After the cessation of the war the applicant initiated proceedings requesting to be reinstated into her working position, but was not successful. The court proceedings were finished to her detriment, and the Cantonal Commission for implementation of Article 143 of the Law on Labour also rejected her request for establishment of her legal and working status.

Alleged violations of human rights
The applicant complains of a violation of her right to work and is invoking Articles 6, 7 and 8 of the International Covenant on Economic, Social and Cultural Rights. She alleges that she was discriminated on the ground of her national origin in the enjoyment of her above-mentioned rights. The applicant also alleges violations of her right to a fair hearing within a reasonable time by an independent and impartial tribunal under Article 6 of the European Convention on Human Rights, the right to respect for her private and family life under Article 8 of the Convention, the right to an effective remedy under Article 13 of the Convention and her right to peaceful enjoyment of her possessions under Article 1 of Protocol No. 1 to the Convention.

Findings of the Chamber
As regards the admissibility, the Chamber decided not to deal with the part of the application insofar as it relates to termination of the applicant's employment i.e. events before the entry into force of the Human Rights Agreement, since the Chamber is not competent to do so *ratione temporis*. It also found that there is no violation of the applicant's right to peaceful enjoyment of her possessions and that she failed to substantiate her complaint about the violation of her right to respect for her private and family life. However, the Chamber found that the Cantonal Commission for Implementation of Article 143 of the Law on Labour in Tomislavgrad did not decide the applicant's case within a reasonable time. Therefore the Chamber found the Federation of Bosnia and Herzegovina has violated the applicant's right to a fair hearing within a reasonable time as guaranteed by Article 6 of the Convention.

Remedies
The Federation was ordered to pay the applicant the sum of 1,000 KM by way of compensation for non-pecuniary damages.

CH/99/1838, CH/99/1894, CH/99/1898, CH/99/1928, CH/99/1930 and CH/99/1971, CH/99/2318, CH/99/2341, CH/00/3816, CH/00/3851, CH/01/7049, CH/01/7083, CH/01/7106 and CH/01/7209 Miroslav KARAN, Stevan ZELIĆ, Miroslav RADAK, Jasminko ČEHOBAŠIĆ, Petar MILETIĆ, Nikola ŠAVIJA, M. K., Ilija JAKOVLJEVIĆ, Brane ČIČIĆ, Radovan PANIĆ, Uroš PAJČIN, Zoran MANDIĆ and Momčilo PAJČIN v. the Federation of Bosnia and Herzegovina

Factual background
The applicants are citizens of Bosnia and Herzegovina of Serb descent. At various dates during the war in Bosnia and Herzegovina, they were arrested and detained by units of the Croat Defence Council. At the time of their arrest, ten of the applicants served in the Army of the Republika Srpska, but three of the applicants never joined the armed forces. In most cases, their eventual release took place before the cessation of hostilities. However, in some instances, the applicants were only released after the General Framework Agreement for Peace in Bosnia and Herzegovina entered into force.

The applicants allege that during their detention, they were ill-treated and forced to work. In order to obtain compensation for pecuniary and non-pecuniary damages, all of the applicants initiated court proceedings before the Municipal Court II in Sarajevo. The Court has refused to decide on the claims. It declared itself incompetent and referred the applicants instead to the Human Rights Chamber.

Alleged violations of human rights
The applicants allege violations under the European Convention on Human Rights of the right not to be subjected to torture or to inhuman or degrading treatment (Article 3), the right not to be required to perform forced or compulsory labour (Article 4 paragraph 2) and of the right to liberty and security of person (Article 5). Three of the applicants complain of a violation of their right to a fair trial (Article 6).

Findings of the Chamber
As regards the admissibility, the Chamber decided not to deal with the applications insofar as they relate to events before the entry into force of the Agreement, since the Chamber is not competent to do so *ratione temporis*. It also found that the applicants have failed to substantiate their complaints of ill-treatment and the allegation that they were required to perform forced labour. The Chamber rejected the respondent Party's argument that the applicants had not exhausted all domestic legal remedies available to them. On the contrary, the Chamber found that the domestic courts were simply not willing to deal with the substance of the requests.

In the cases of three applicants, the Chamber found that their detention which lasted until April 1996 constituted a violation of their right to liberty and security of person pursuant to paragraph 1 of Article 5 of the Convention. The respondent Party also was found in breach of paragraph 5 of Article 5 of the Convention, a provision which stipulates that everyone who was unlawfully detained shall have an enforceable right to compensation. Moreover, the Chamber found that the respondent Party has violated the right of access to court as guaranteed by Article 6 paragraph 1 of the Convention in all the applicants' cases. The Chamber also emphasised that the courts addressed by the applicants had the competence and the obligation to rule on their claims.

Remedies
The Federation of Bosnia and Herzegovina was ordered to take all necessary action to provide the applicants with access to a court. The respondent Party was also ordered to pay the sum of 5,000 KM to each of the three applicants whose detention lasted until April 1996, and the sum of 2,000 KM to each of the remaining applicants.

CH/02/8655 Ferzija SAČAK and Fikreta SALIHAGIĆ v. the Republika Srpska

Factual background
The application concerns a procedural decision by which the Doboj Municipality Assembly on 29 December 1998 allocated "city construction land" to the Serb Orthodox Church District Doboj (Srpska pravoslavna crkvena opština) for the purpose of the construction of a Memorial Chapel. The applicants, as former owners, had a right to use the land for agricultural purposes. During the proceedings a temporary representative was appointed to the applicants, who are of Bosniak origin and were displaced as a consequence of the armed conflict. The applicants complain that they had not been informed about the proceedings before the issuance of the procedural decision and that they have never been delivered the procedural decision. The applicants allege that the allocation of the land to the Orthodox Church is illegal in several respects.

On 17 December 2002 the competent administration organised an oral hearing on the initiative of the Mayor of the Municipality Doboj for renewal of the administrative proceedings relating to the land seizure.

On 27 December 2002 the Department for Urban Development of the Municipality Doboj, issued a new procedural decision granting an urban approval to the Serb Orthodox Church District Doboj for construction of the Memorial Chapel. This procedural decision does not cover the land previously seized from the applicants.

Alleged violations of human rights
The applicants complain of violations of Articles 6 (right to a fair hearing), 13 (right to an effective remedy), 14 (prohibition of discrimination), 17 (prohibition of abuse of rights) of the Convention and Article 1 of Protocol No. 1 to the Convention (protection of property). The Republika Srpska states that the decision of the Municipality of December 2002 has solved the matter.

Findings of the Chamber
The Chamber concluded that the applicants have been given no actual opportunity to participate in the proceedings which deprived them of their property rights. Moreover, the temporary representative appointed on their behalf by the Doboj Municipality Assembly has not adequately protected their interests. The Chamber took note of a recent decision in which the District Court in Doboj had annulled the same land allocation decision of 1998 with regard to other plaintiffs. However, according to the Republika Srpska, the applicants before the Chamber cannot challenge the 1998 decision of the Doboj Municipality Assembly because the deadline to start an administrative dispute has expired (although the decision was never delivered to them and possibly not even to the temporary representative). In these circumstances, the Chamber concluded that the respondent Party has failed to provide the applicants with access to a court for the determination of their property rights in violation of paragraph 1 of Article 6 of the Convention.

The Chamber also found that the applicants' temporary right to use the land constitutes a protected possession, within the meaning of Article 1 of Protocol No. 1. In issuing the procedural decision of 29 December 1998, which seized the land and allocated it to third parties, the respondent Party failed to fully comply with domestic law. The respondent Party also failed to comply with domestic law after the procedural decision of 27 December 2002 excluding the land in question from the site of the Memorial Chapel. Accordingly, the Chamber decides that the respondent Party has violated the applicants' right as guaranteed by Article 1 of Protocol No. 1 to the Convention.

Remedies
The Chamber ordered the Republika Srpska to pay to the applicants compensation for both loss of use and moral damages. The Chamber also ordered the Republika Srpska that the Doboj Municipality issue a new procedural decision which would replace the procedural decision of 29 December 1998 and return the plot concerned into the applicants' possession in the condition as it was before issuing the procedural decision of 29 December 1998.

CH/98/668 Ranko and Goran ĆEBIĆ v. the Federation of Bosnia and Herzegovina and Bosnia and Herzegovina

Factual background
The application was brought before the Chamber by Ranko Ćebić in his own right and on behalf of his late son, Goran Ćebić.

Around 15 September 1996, Goran Ćebić disappeared from Sarajevo. On 4 February 1997, Ranko Ćebić started to report his son's disappearance in writing to several domestic and international organs. His son was officially registered as a missing person on 4 May 1998. Meanwhile, on 28 September 1996, an unidentified dead body was found in the River Bosna next to the Reljevo Bridge. After an autopsy was performed, the body was buried in the Municipal Cemetery of Visoko. The autopsy established that this unidentified person died of hydrocution. On 25 June 2000, the unidentified corpse was exhumed and officially identified as Goran Ćebić's body by the Commission for Tracing Missing and Detained Persons of the Republika Srpska.

On 2 April 2003, the Chamber held a public hearing in the premises of the Sarajevo Cantonal Court on this case.

Alleged violations of human rights
Ranko Ćebić is of the opinion that his son was killed and that his murder was covered up by the authorities of the Federation of Bosnia and Herzegovina. He argues that the authorities of the

Federation purposely did not take the appropriate steps to locate and identify the body of his son and later to investigate his death and find the perpetrators of what he insists must have been a murder.

The case raises issues under Article 2 (right to life) of the European Convention on Human Rights in regard to Goran Ćebić. It further raises issues under Article 8 (right to respect for private and family life) of the Convention in regard to Ranko Ćebić himself.

Findings of the Chamber

With respect to the right to life of Goran Ćebić, the Chamber recalled that to engage the responsibility of the respondent Party under the positive obligations of Article 2 of the Convention, and to impose upon it an obligation to investigate, the use of force must be established. In the present case, the Chamber considered that the circumstances of the death of Goran Ćebić remain unclear, despite the fact that the authorities undertook the basic investigations required by the domestic law. The Chamber further stressed that Goran Ćebić was affected by a serious neurological disease and that he had exhibited suicidal tendencies; therefore, the likelihood of an accident or suicide cannot be reasonably excluded as the possible cause of his death. The Chamber acknowledged that the authorities of the Federation can be seen as having lacked a degree of efficiency in the investigation concerning the disappearance and fate of Goran Ćebić. However, the Chamber recalls that Article 2 of the Convention does not impose upon the respondent Party an obligation of result but only an obligation of conduct. The Chamber considered that the authorities of the Federation carried out the minimum investigations necessary, in the special circumstances of this specific case, to satisfy the positive obligations of Article 2 of the Convention. Therefore, the Chamber concluded that the Federation did not violate Goran Ćebić's rights as guaranteed by Article 2 of the Convention.

With respect to the right to access to information of Ranko Ćebić the Chamber was of the opinion that Article 8 of the Convention should be further extended to impose upon the authorities the positive obligation to affirmatively seek, collect, and investigate information on the fate and whereabouts of missing persons within their jurisdiction, when properly requested to do so by their family members, and then, to share such information with the family members in a timely manner and in good faith. This is so even when the missing persons disappeared due to no involvement of the authorities and in the absence of any evidence of criminal activity. Accordingly, in the Chamber's view, if the authorities withhold, purposefully fail to collect, or negligently fail to analyse and disclose information on the fate and whereabouts of missing persons with their family members, who are actively seeking such information, then the authorities may be in breach of their positive obligations due under Article 8 of the Convention. Therefore, the Chamber found that the failure of the authorities of the Federation to act in a diligent and efficient manner to respond to the complaints and pleas of the applicant to clarify the fate and whereabouts of his son violated Ranko Ćebić's rights protected by Article 8 of the Convention.

Remedies

In order to remedy the violations of Ranko Ćebić's rights, the Chamber ordered the Federation to pay to him the sum of 5,000 KM in recognition of his mental suffering within one month from the date on which this decision becomes final and binding.

CH/02/9794 Idriz DEMIRI v. the Federation of Bosnia and Herzegovina

Factual background

The case concerns the applicant's request to gain possession of business premises from E.L., the long-term lease-holder over the property located in Zenica at M. Tarabara no. 3. In 1993 the applicant concluded a purchase contract for these premises and subsequently was registered as the owner. E.L. claimed to have a contractual priority right to buy the business premises and challenged the validity of the purchase contract between the applicant and M.J.. From December 1993 to May 2000 a first set of proceedings in the dispute between the applicant and E.L. concerning the validity of the purchase contract was pending before the domestic courts. The decision of the Supreme Court of May 2000 settled the matter in favour of the applicant and declared the purchase contract between the applicant and M.J. to be valid. Since September 2000 a second set of proceedings in the dispute

between the applicant and E.L. is pending, in which the applicant seeks the termination of E.L.'s lease contract over the business premises.

Alleged violations of human rights

The applicant complains about the length of the civil proceedings because he has not been able to enter into the possession of the business premises in question for more than nine years, although the Supreme Court of the Federation in its judgment of 25 May 2000 confirmed the validity of the sale contract and he is the registered owner.

The case raises issues under Article 6, paragraph 1 of the European Convention on Human Rights (right to a fair hearing within a reasonable time) and Article 1 of Protocol No. 1 to the Convention, (right to peaceful enjoyment of possessions).

Findings of the Chamber

The Chamber declared the complaint under Article 1 of Protocol No. 1 to the Convention inadmissible as premature because domestic proceedings are still pending. The Chamber found the case admissible with regard to the complaint under Article 6, paragraph 1 of the Convention.

The Chamber found that the proceedings in the applicant's case against E.L. consist of two distinct sets of proceedings, a first set of proceedings regarding the validity of the applicant's purchase contract that lasted from December 1993 until May 2000 and a second set of proceedings regarding the termination of E.L.'s lease contract that has lasted from September 2000 until to date. In order to assess whether there has been a violation of the right to have a civil right determined within reasonable time as protected under Article 6, the Chamber examined the two sets of proceedings separately.

Taking into consideration the specific circumstances of the case, the Chamber found that the first set of proceedings had been determined within a reasonable time. It further found that the time period for which the second set of proceedings has been pending so far, from September 2000 to date, does not seem unreasonably long to determine the validity of the lease contract.

In sum, the Chamber found that the Federation of Bosnia and Herzegovina did not violate the applicant's right to have his civil claims determined within a reasonable time.