PRESS RELEASE
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Human Rights Chamber Delivers 9 Decisions on Admissibility and Merits, 2 Decisions on Review and 1 Decision on Further Remedies

On Friday, 7 November 2003 at 9:00 a.m. in the Cantonal Court building, Šenoina St. 1, Sarajevo, the Human Rights Chamber for Bosnia and Herzegovina delivered 9 decisions on admissibility and merits, 2 decisions on review and one decision on further remedies. A summary of each case follows.

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1. CH/02/12470 Nedjeljko OBRADOVIĆ v. Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina
2. CH/03/13051 S.S. v. the Republika Srpska
3. CH/98/377 et al. Nenad ĐURKOVIĆ et al. v. Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, and the Republika Srpska
4. CH/01/8110 D.R. v. the Republika Srpska (Decision on Further Remedies)
5. CH/01/8112 et al. N.V. et al. v. the Republika Srpska
6. CH/00/4861 Milivoje BULATOVIĆ v. the Federation of Bosnia and Herzegovina (Decision on Review)
7. CH/01/8569, CH/02/9611, CH/02/9613, CH/02/9614, CH/02/11195 and CH/02/11391 Selima PAŠOVIĆ, S.N., Z.M., H.P., Zada NIKŠIĆ and Ibrahim BURIĆ v. the Republika Srpska
8. CH/02/10074 Ljiljana, Anka, Lazar and Nataša POPOVIĆ v. the Federation of Bosnia and Herzegovina
9. CH/01/7912 and CH/01/7913 Adem LANDŽO and Jusuf POTUR v. the Federation of Bosnia and Herzegovina
10. CH/97/57 Ferid HALILOVIĆ v. the Republika Srpska (Decision on Review)
11. CH/00/3574 Dušanka TASOVAC v. the Federation of Bosnia and Herzegovina
12. CH/98/835 Hamdo SULJOVIĆ v. the Federation of Bosnia and Herzegovina

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CH/02/12470 Nedjeljko OBRADOVIĆ v. Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina

Factual background
The applicant was an Assistant Minister of Defence and a Lieutenant General of the Federation of BiH Army. In April 2001, the Government of the Federation of BiH, discharged the applicant of his duties as Assistant Minister of Defence. Shortly after, the Minister of Defence of the Federation of BiH informed the Commander of the Stabilization Forces (COMSFOR), that he had the intention to terminate the service of the applicant and asked the COMSFOR for his permission. In an undated letter the COMSFOR gave his approval.

Article 19.9A of the Election Law prohibits military officers from being a candidate in the elections or holding an elected mandate or an appointed office, if removed from service pursuant to Chapter 14 of the Instructions to the Parties.

In May 2002, the applicant submitted his application to the Election Commission, as he intended to run for the Federation House of Representatives in the General Elections in October 2002. The

Election Commission rejected the applicant's application, as he was discharged by a decision of the COMSFOR and therefore caught by Article 19.9A of the Election Law. The applicant appealed to the Court of Bosnia and Herzegovina against the decision of the Election Commission. The Court of Bosnia and Herzegovina rejected the applicant's appeal and held that the Election Commission properly applied Article 19.9A of the Election Law, as the applicant was discharged by a COMSFOR decision.

Alleged violations of human rights

The applicant alleges a violation of his right to participate in the proceedings, as he never received any of the decisions discharging him of his duties. These allegations raise issues under Articles 6 and 13 of the European Convention on Human Rights.

Also, the applicant alleges a violation of Article 25(b) of the International Covenant on Civil and Political Rights in connection with discrimination, as the Election Commission prohibited him from running in the General Elections in Bosnia and Herzegovina in 2002. The application further appears to raise issues with regard to Article 3 of the First Protocol to the European Convention (right to free elections).

Findings of the Chamber

The Chamber declared admissible the part of the application relating to the applicant's inability to run for the General Elections in October 2002, as protected under Article 3 of the First Protocol to the European Convention, due to the application of Article 19.9A of the Election Law, which concerns Bosnia and Herzegovina as the respondent Party. The remainder of the applicant's claims were declared inadmissible.

The Chamber found that Article 19.9A of the Election Law, having the aim to ensure that all public officials support the Dayton Peace Agreement in Bosnia and Herzegovina, pursues a legitimate aim, and for the same reason the means employed are proportionate to the aim pursued.

Next, the Chamber assessed the fairness, objectivity and procedural safeguards afforded to the applicant during the course of proceedings whereby he was banned from standing for election.

The Chamber recalled that both the Election Commission and, on appeal, the Court of Bosnia and Herzegovina, denied his right as protected under Article 3 of the First Protocol to the European Convention, by relying on a decision issued by the COMSFOR, whose actual existence remains a mystery. That is to say, it appears that neither the Election Commission nor the Court of Bosnia and Herzegovina were in possession of any such decision from the COMSFOR. The Chamber in this regard concluded that the manner in which the Election Commission and the Court of Bosnia and Herzegovina relied on such decision, although they were not in possession of a copy of such decision, defies all notions of expected procedural fairness.

Also, the Election Commission rejected the applicant's claim because he could not submit the decisions in support of his claim, while the Court of Bosnia and Herzegovina, on appeal, stated that the decisions from the COMSFOR discharging military officers are never sent to the persons discharged. The Chamber noted these contradictions and found that the applicant was prevented from having his case considered both before the Election Commission and by the Court of Bosnia and Herzegovina.

In addition, Article 19.9A of the Election Law requires military officers be removed from service pursuant to Chapter 14 of the Instructions to the Parties, which provides for two concrete ways by which a military officer can be removed. However, the Chamber found that it is unclear which provision formed the basis for the removal of the applicant and this contributed to the lack of legal certainty.

Therefore, the Chamber found that the proceedings, whereby the applicant was denied his right to run for elections, were lacking in all procedural fairness and legal certainty. In this manner, the Chamber found that Bosnia and Herzegovina has violated the applicant's right to stand for elections as guaranteed by Article 3 of the First Protocol to the European Convention.

Remedies
The Chamber, having established that the violation of Article 3 of the First Protocol arises from the decision of the Election Commission and the decision of the Court of Bosnia and Herzegovina, ordered Bosnia and Herzegovina to take all necessary steps to annul these two decisions. In addition, in recognition of the moral damages the applicant suffered due to his inability to participate in the General Elections in 2002, the Chamber ordered Bosnia and Herzegovina to publish this decision in its Official Gazette and, in recognition of the sense of injustice he has suffered, to pay to the applicant the sum of 5,000 KM. Given the applicant's legal costs in the proceedings before the Chamber, the Chamber awarded monetary compensation in the amount of 2,000 KM for legal costs.

CH/03/13051 S.S. v. the Republika Srpska

Factual background
On 6 September 1997, Dr. Dragomir Kerović, a sitting Serb member of the House of Representatives of Bosnia and Herzegovina and a practicing physician in Lopare, along with three accomplices, kidnapped the applicant, a displaced person and the woman with whom he had shared an intimated relationship, and performed a forcible abortion upon her, thereby causing her to deliver a stillborn female fetus in the seventh month of pregnancy.

Criminal charges were filed against Dr. Kerović and others on 28 October 1997. Due to myriad procedural delays and a pattern of obstruction by the defendants, the Basic Court in Bijeljina did not issue its verdict in the case until 27 December 2001. In that judgment, it found the defendants guilty of kidnapping and/or forcible abortion against the applicant. On 20 June 2002, the District Court in Bijeljina confirmed the first instance judgment. However, on 4 November 2002, the Supreme Court of the Republika Srpska (the "Supreme Court"), acting in extraordinary review proceedings, vacated the verdicts and returned the entire case to the Basic Court in Bijeljina for renewed criminal proceedings. In particular, the Supreme Court found that because Dr. Kerović had been suffering from depression since 1993, the Basic Court should have ordered an expertise upon his mental competence (sanity) at the time of commission of the crimes. Neither the Basic Court nor District Court had found such expertise necessary because neither court found any reason whatsoever to doubt Dr. Kerović's accountability for the criminal offences. To date the renewed criminal proceedings are still pending before the Basic Court in Bijeljina, and Dr. Kerović remains at liberty.

Alleged violations of human rights
As the crime victim, the applicant alleges a violation of Article 8 of the European Convention on Human Rights because the Republika Srpska has failed to satisfy its obligation to ensure and protect her right to private and family life, in particular, as a result of the excessively long duration of the criminal proceedings against the perpetrators of the crimes against her. The Chamber further considers these allegations to raise issues under Article 3 of the Convention, which prohibits inhuman or degrading treatment.

In addition, the applicant alleges a violation of Article 6 of the Convention because the proceedings in the criminal case have been lasting for an unusually long time, thereby delaying the determination of her civil claim. This is the result of the manner in which the criminal proceedings have been conducted by the Republika Srpska and obstruction by the defendants in order to delay the proceedings for an indefinite time.

Findings of the Chamber
With respect to the length of the proceedings, the Chamber noted that the applicant's civil claim for compensation for damages she suffered by the commission of the crimes against her has been pending since 9 September 1998 and is still not decided to date. Under the legal system in the Republika Srpska, as an injured party, the applicant's claim is partly dependent upon the outcome and conduct of the criminal proceedings against the perpetrators of the crimes against her. It is the regular practice in Bosnia and Herzegovina for the courts to conclude the criminal proceedings before they decide upon an injured party's civil action.

The Chamber observed that the delays in the length of the proceedings fall into two categories: delays attributable to the defendants and delays or irregularities attributable to the Republika Srpska. The judicial organs of the Republika Srpska have tolerated significant obstructionism on the part of the defendants, especially Dr. Kerović, without taking any actions or measures to otherwise ensure his attendance and co-operation with the proceedings. Therefore, the overwhelming impression is one of inordinate delay. The Chamber concluded that the prolonged period of delay cannot be considered reasonable and violated the applicant's right to a hearing within a reasonable time for the determination of her civil claim, as guaranteed by Article 6 paragraph 1 of the Convention.

With respect to the Republika Srpska's positive obligation to secure respect for the applicant's private and family life, the Chamber noted that for six years, the judicial authorities of the Republika Srpska have been unable to effectively prosecute Dr. Kerović and his accomplices for the crimes of kidnapping and forcible abortion committed against the applicant and her unborn child. The Basic Court took insufficient action to ensure that the proceedings were conducted expeditiously, either by compelling Dr. Kerović and his defence counsel to attend the proceedings or otherwise by taking measures to counteract his obstructionism, all the while leaving the applicant in a state of apprehension. Moreover, the issue of Dr. Kerović's procedural capacity to stand trial and mental competence (sanity) at the time of the offence have unduly complicated the proceedings. This case highlights a lack of clarity and standards in the governing law that opens the door to significant opportunity for procedural manipulation. It further often results in prolonged appellate and renewed proceedings that thwart legal certainty.

In assessing whether the Republika Srpska achieved a fair balance between the general interest and the applicant's interest, the Chamber observed that considerable measures have been taken to consider the interests of the defendants and the courts in general, while no measures appear to have been taken to protect the interests of the applicant, who is both the crime victim and the injured party. This is so, despite the applicant's clear vulnerability as a displaced person and a crime victim, which entitled her to increased, not decreased, protection from the authorities. Therefore, the Chamber concluded that the failure of the judiciary of the Republika Srpska effectively and efficiently to conclude the criminal proceedings against the perpetrators of the crimes against the applicant has disproportionately infringed upon her right to respect for her private and family life.

With respect to the Republika Srpska's positive obligation to protect the applicant from ill-treatment, the Chamber recalled that vulnerable individuals, in particular, are entitled to State protection in the form of effective deterrence against serious breaches of their personal integrity. Although the laws of the Republika Srpska appropriately criminalize the offences of kidnapping and forcible abortion, the prosecution conducted against Dr. Kerović and his accomplices has been neither efficient nor effective. The sum total of the acts of the Republika Srpska in tolerating obstructionism by Dr. Kerović in the criminal proceedings has been to confirm that high-level politicians may commit crimes against vulnerable members of society with impunity. They may continue to practice their chosen professions, refuse to co-operate with the criminal prosecution, and avoid custody and punishment altogether, or at least, for an extended period of time. This is not the kind of "effective deterrence" required by the Republika Srpska in response to heinous criminal offences. Therefore, the Republika Srpska has not satisfied its positive obligation to secure the applicant's protection from ill-treatment.

Remedies

As remedies for the violations of the human rights, the Chamber ordered the Republika Srpska to ensure that the competent courts expeditiously and effectively decide the pending criminal proceedings on the merits in a final and binding manner, at the latest by 8 July 2004, giving full effect to the applicant's human rights and endeavouring to offer her the greatest protection available under domestic law, as well as complying with all the obligations due under the Convention. In addition, the competent courts of the Republika Srpska shall promptly decide the applicant's civil claim under property law at the latest by 3 months from the date the judgment by the domestic courts in the criminal proceedings becomes final and binding. Finally, as a remedy for the applicant's sense of injustice, as well as the ill-treatment and disrespect inflicted upon her, the Chamber ordered the Republika Srpska to pay to the applicant the sum of 10,000 KM as compensation for non-pecuniary damages by 8 December 2003.

CH/98/377, CH/98/410, CH/98/416, CH/98/417, CH/98/418, CH/98/422, CH/98/427, CH/98/428, CH/98/429, CH/98/431, CH/98/435, CH/98/446, CH/98/447, CH/98/448, CH/98/449, CH/98/472, CH/98/473, CH/98/498, CH/98/584, CH/98/585, CH/98/622, CH/98/626, CH/98/784, CH/98/785, CH/98/1084, CH/98/1092, CH/98/1305, CH/99/1729, CH/99/2025, CH/99/2207, CH/99/2215, CH/99/2682, CH/99/2998, CH/00/4801, CH/00/4832, CH/00/5105, and CH/01/7301 Nenad ĐURKOVIĆ et al. v. Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, and the Republika Srpska

Factual background

The applicants are citizens of Bosnia and Herzegovina and are holders of "frozen" old foreign currency savings accounts. Before the dissolution of the Socialist Federal Republic of Yugoslavia (SFRY), they deposited foreign currency with commercial banks in that country. Because of a growing shortage of such currency and other economic problems, the withdrawal of money from these old foreign currency savings accounts was progressively restricted by legislation enacted during the 1980s and early 1990s. Following the war in Bosnia and Herzegovina, the applicants' requests to withdraw money from their foreign currency savings accounts were all rejected, either without stated reasons or with reference to legislation enacted by the SFRY, the Republic of Bosnia and Herzegovina, or the Federation of Bosnia and Herzegovina.

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. One of the applicants, Dragan Prečanica (case no. CH/98/1084) has obtained two court judgements in his favour, ordering the banks to pay him his entire savings plus interest.

In *Poropat and Others* (CH/97/48 et al., delivered 9 June 2000), the Chamber found that the respondent Parties had violated old foreign currency savings holders' property rights under Article 1 of Protocol No. 1 to the Convention, and it 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* (CH/97/104 et al., delivered 11 October 2002), 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.

After the Chamber's decision in *Todorović and Others*, the Federation delayed taking any substantive legislative action to remedy the violations. On 4 July 2003, the Chamber issued a Decision on Further Remedies in *Poropat and Others*, involving all the applicants from the prior *Poropat and Others* and *Todorović and Others* decisions. The Chamber concluded that neither Bosnia and Herzegovina nor the Federation of Bosnia and Herzegovina had taken any relevant steps to comply with the *Todorović and Others* decision and therefore continued to violate the applicants' rights under Article 1 of Protocol No. 1 to the Convention. The Chamber therefore found it appropriate to order further remedies, including, *inter alia*, payment of money to each of the applicants.

The present 37 applicants are in the same situation as the applicants in *Poropat and Others* and *Todorović and Others*.

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 European Convention on Human Rights, 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

Admissibility
With regard to admissibility of the applications, the relevant laws governing banking, Citizen's Claims, and privatisation have all been enacted by the Federation of Bosnia and Herzegovina, and the applicants' legal actions have been examined by courts in the Federation. The Chamber therefore concluded that the present applications were admissible in their entirety against the Federation of Bosnia and Herzegovina.

With regard to Bosnia and Herzegovina, the Chamber considered that the state remains responsible for finding an overall solution to the frozen bank accounts problem. The Chamber thus found the applications admissible against Bosnia and Herzegovina in regard to Article 1 of Protocol No. 1 to the Convention. As to the allegations of lack of access to court by the applicants, the Chamber noted that these claims exclusively concern the judiciary of the Federation. The Chamber therefore found the applications inadmissible against Bosnia and Herzegovina in regard to Article 6 of the Convention.

The Chamber declared the applications inadmissible against the Republika Srpska.

Merits
With regard to the Federation of Bosnia and Herzegovina, the Chamber found that no legislative or other action has been taken to resolve the old foreign currency savings situation, and that the situation of the applicants, including the restrictions on their old foreign currency savings, has not changed. Thus, the Federation continues to interfere with the applicants' property rights. The Chamber again noted that the Federation's legislative measures had been pursued in accordance with the general interest, but found that its inaction following the Federation Constitutional Court's decision and its conduct in making inconsistent public statements regarding old foreign currency savings have led to a state of legal and public confusion for which there is no justification. The prevailing situation creates a disproportionate interference with the applicants' property rights in violation of Article 1 of Protocol No. 1 to the Convention.

With regard to Bosnia and Herzegovina, the Chamber found that, because of its general responsibility for issues related to old foreign currency savings, and due to its statements and inactivity, including the failure of the Bosnia and Herzegovina Constitutional Court to decide the appeal of the Federation Constitutional Court's judgement, the State has also violated the applicants' rights under Article 1 of Protocol No. 1 to the Convention.

The Chamber found that it was not necessary to consider the present applications under Article 6 of the Convention.

The Chamber ordered the Federation of Bosnia and Herzegovina to establish, within six months, through appropriate legislation or regulations, a clear legal framework that gives old foreign currency savings holders concrete and reliable information regarding their savings, and that addresses the problem without placing an excessive burden on the applicants.

In the case of Dragan Prečanica (case no. CH/98/1084), the Chamber ordered the Federation to take all necessary steps to ensure the enforcement of his court judgements within one month or else to directly pay the applicant the amounts awarded by those judgement within two months.

In each of the other cases, 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.

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 ordered the Federation of Bosnia and Herzegovina and Bosnia and Herzegovina to share in paying expenses of proceedings of 200 KM to each applicant.

The Chamber further ordered the respondent Parties to report to the Human Rights Commission within the Constitutional Court on the steps taken to comply with these orders within six months.

DECISION ON FURTHER REMEDIES:

CH/01/8110 D.R. v. the Republika Srpska

Factual background

On 7 March 2003, the Chamber delivered its decision on admissibility and merits in case no. CH/01/8110, *D.R. v. Bosnia and Herzegovina and the Republika Srpska*. This application concerns the applicant's attempts to obtain compensation for war damages from the Republika Srpska granted to her by the Second Instance Court in Banja Luka in a final and binding judgment of 3 October 2000. However, the Republika Srpska has never paid the compensation to the applicant. Moreover, on 28 May 2002, the "Law on Postponement of Enforcement of Court Decisions on Payment of Compensation for Pecuniary and Non-Pecuniary Damages resulting from War Activities and Non-Payment of Old Foreign Currency Savings Deposits, Payable from the Republika Srpska Budget" (the "Law on Postponement") entered into force. By this Law, the Republika Srpska has postponed indefinitely the enforcement of court decisions on the payment of compensation for pecuniary and non-pecuniary damages due to war activities, like the judgment obtained by the applicant.

In the decision on admissibility and merits, the Chamber found that the Republika Srpska had violated the applicant's human rights. Among the remedies, the Chamber ordered the Republika Srpska to enact, within six months, a law which will regulate, in a manner compatible with the Convention, the manner of settling obligations payable from the budget of the Republika Srpska and incurred on the basis of court decisions on the payment of compensation sustained due to war

activities. To date the Republika Srpska has not paid the applicant any of the compensation awarded to her in the final and binding judgment of 3 October 2000, nor has it amended the Law on Postponement in accordance with the Chamber's decision on admissibility and merits. To the contrary, on 9 July 2003, the Republika Srpska amended the Law on Postponement to provide for an even wider number of situations where it has suspended the payment of final and binding court decisions against it.

Further Remedies

Taking into account that the Republika Srpska has failed to reach a regulatory solution to remedy the human rights violations established in the present application and that the deadline for implementation of the decision on admissibility and merits has expired, the Chamber decided to issue this decision on further remedies. As an additional remedy, the Chamber ordered the Republika Srpska to pay to the applicant by 7 December 2003 the compensation awarded to her in the final and binding judgment of October 2000 in full. The Chamber further ordered the Republika Srpska, once again, to enact, within three months a law which will regulate the manner of settling obligations payable from the budget of the Republika Srpska and subject to the Amended Law on Postponement. The new law must clearly address the manner of settling such obligations in a manner compatible with the Convention, but the precise manner of settling such obligations shall be determined by the Republika Srpska in the new law.

CH/01/8112, CH/02/8159, CH/02/8160, CH/02/8218, CH/02/8223, CH/02/8238, CH/02/9065, CH/02/9192, CH/02/9234, CH/02/10669, CH/02/10679, CH/03/13511, CH/03/13518, CH/03/13531, CH/03/13553, CH/03/13564, CH/03/13704, CH/03/13705, CH/03/13706, CH/03/13707, CH/03/13708, CH/03/13709, CH/03/13710, CH/03/13711, CH/03/13712, CH/03/13713, CH/03/13714, CH/03/14264 and CH/03/14273

N.V., Milan MAJSTOROVIĆ, Tomislav MALKIĆ, Radoslav GAŠIĆ, Kristina TODOROVIĆ, Nebojša KOZIĆ, Čedo PREDOJEVIĆ, I.K., M.K., G.K. and M.J., G.M., Mara and Miladin MIHAJLOVIĆ, Ivka ERIĆ and Milena TRIŠIĆ, Zoran VUČANOVIĆ, Goran SIMOVIĆ, Slobodan MARJANOVIĆ, Nikola ŠAVIJA, Vojislav STAKIĆ, Krstan and Mileva VUKOVIĆ, Petar and Sekula TOPIĆ, Draginja, Aleksandra and Tanja BABIĆ, Dobrila, Duško and Dragica PILIPOVIĆ, Vojka NARANČIĆ, Veljko and Vinka ĐEKIĆ and Gordana POPOVIĆ, Lazo ZVONAR, Janja JERKOVIĆ, Milan and Mileva PUZIĆ, Mira and Brane MARJANOVIĆ, Vladan, Vesna and Jovanka MILOVANOVIĆ, Drinka and Dragana KOVAČEVIĆ, Radomir, Jelena and Milan STANIVUKOVIĆ and Svetozar VANOVAC v. the Republika Srpska

Factual background

These applications concern the applicants' attempts to obtain compensation from the Republika Srpska granted to them by different courts of the Republika Srpska in final and binding judgments issued in the period from 1998 to 2003. All the applicants possess final and binding permissions on enforcement of those judgments. However, the Republika Srpska has never paid the compensation awarded to the applicants.

Moreover, on 28 May 2002, the "Law on Postponement of Enforcement of Court Decisions on Payment of Compensation for Pecuniary and Non-Pecuniary Damages resulting from War Activities and Non-Payment of Old Foreign Currency Savings Deposits, Payable from the Republika Srpska Budget" (the "Law on Postponement") entered into force. By this Law on Postponement, the Republika Srpska has postponed indefinitely the enforcement of court decisions on the payment of compensation for pecuniary and non-pecuniary damages due to war activities, like the judgments obtained by the applicants. On 9 July 2003, the "Law on Amendments to the Law on Postponement of Enforcement of Court Decisions on Payment of Compensation for Pecuniary and Non-Pecuniary Damages resulting from War Activities and Non-Payment of Old Foreign Currency Savings Deposits, Payable from the Republika Srpska Budget" came into force. This amended Law provides for the indefinite postponement of the enforcement of "other court judgments, out-of-court settlements and

other administrative documents on claims dating from the period of war activities". Thus, the Amended Law on Postponement is now applicable to an even wider number of situations where the national judiciary has ordered payments from the budget of the Republika Srpska.

Alleged violations of human rights

The applicants complain that the Republika Srpska has failed to comply with final and binding court decisions ordering it to pay compensation to them for "war-damages" and other damages sustained by them during the period of the war. The applications raise issues under Article 1 of Protocol No. 1 (right to peaceful enjoyment of possessions) to the European Convention on Human Rights; Article 6 of the Convention (right to a court); and Article 13 of the Convention (right to an effective remedy).

Findings of the Chamber

In its decision on admissibility and merits, the Chamber found that the Republika Srpska's failure to take any steps to enforce the final and binding judgments ordering payment of compensation to the applicants constitutes an unlawful interference with their protected possessions. The Chamber further found that by enacting the Law on Postponement on 28 May 2002 and its amendments on 9 July 2003, the Republika Srpska failed to strike a fair balance between the general interests of the community to finance the public sector and the applicants' fundamental human rights because the Republika Srpska is permitted to avoid the consequences of its actions, which gave rise to the subject court decisions. In addition, the damaged individuals, in whose favor the court decisions have been issued, are provided no right to a court for the enforcement of their legally recognised rights.

For these reasons, the Chamber concluded that the Republika Srpska violated the applicants' right protected by Article 1 Protocol No. 1 to the Convention, both before and after the Law on Postponement entered into force and was amended. In addition, the Chamber concluded that by failing to enforce the final and binding judgments in the applicants' favour, the Republika Srpska violated the applicants' right to a court as guaranteed by paragraph 1 of Article 6 of the Convention.

Remedies

The Chamber ordered the Republika Srpska to enact, within three months from the date the present decision becomes final and binding, such law, which will regulate the manner of settling obligations payable from the budget of the Republika Srpska and subject to the Amended Law on Postponement. The new law must clearly address the manner of settling such obligations in a manner compatible with the Convention, in particular Article 1 of Protocol No. 1 to the Convention and Article 6 of the Convention, but the precise manner of settling such obligations shall be determined by the Republika Srpska in the new law. Further, the Chamber ordered the Republika Srpska to pay to each applicant the compensation awarded to them in full in the specific court judgments in their favour. The Chamber additionally ordered the Republika Srpska to pay to each of the applicants the sum of 1000 Convertible Marks as compensation for non-pecuniary damages.

DECISION ON REVIEW:

CH/00/4861 Milivoje BULATOVIĆ v. the Federation of Bosnia and Herzegovina

Factual background

The applicant, a citizen of Bosnia and Herzegovina of Montenegrin descent, asserts that an apartment exchange contract he entered into in 1995 is null and void because it was executed contrary to existing regulations and because he was forced to sign it due to his personal circumstances and ethnic minority status. He further complains that judgements of the Sarajevo Municipal and Cantonal Courts, upholding the validity of the exchange contract, were not impartial and objective.

The applicant's complaint is that, in deciding against him, the domestic courts (in particular the Municipal Court I in Sarajevo) failed to properly consider the facts (including facts related to wartime conditions, his ethnicity, and his poor health) and misapplied the law. He further argues that the Municipal Court improperly valued the lawsuit to deprive him of appellate review. The applicant asserts that the courts decided to uphold the validity of the exchange contract with the precise discriminatory intent to deprive him, as a person of Montenegrin origin, of his home in Sarajevo and to give the apartment to a person of majority Bosniak origin.

Alleged violations of human rights
The applicant essentially complains that the failure of the domestic courts in assessing the facts and law of his case constitutes a violation of his right to respect for his home as guaranteed by Article 8 of the European Convention on Human Rights. He further complains of violations of his right to a fair hearing within a reasonable time before an independent and impartial tribunal, as guaranteed by Article 6 of the Convention; his right to an effective remedy, as guaranteed by Article 13 of the Convention; and discrimination in the enjoyment of these rights.

Findings of the Chamber
On review, the Chamber found that the particular factual issues raised by the applicant merited inquiry, and it declared the application admissible. It nonetheless concluded, in keeping with its established practice of relying on the findings of the domestic courts, that there was no error serious enough to allow the Chamber to substitute its assessment of the underlying facts. The Municipal Court clearly examined and considered the specific facts before it and delivered a fair and reasoned judgement. Accordingly, the Chamber found no violation by the Federation of Bosnia and Herzegovina of the applicant's right to a fair hearing under Article 6 of the Convention.

The Chamber noted, however, that although the applicant's complaints arise from the judgements of the courts regarding a private contract he entered into with another individual, the circumstances of this case raise some doubts as to whether the dispute is of an essentially private nature for the purposes of the Agreement. The recognition or denial of the validity of these exchange contracts is of considerable impact on the implementation of Annex 7 of the Dayton Peace Agreement and on the constitutional right to return.

The Chamber further noted that the legislatures in both the Federation of Bosnia and Herzegovina and the Republika Srpska have passed provisions placing the burden of proof of the voluntariness of an exchange contract on the party seeking to uphold the validity of the contract. There is a general presumption of lack of voluntariness and freedom of choice for such transactions concluded during the armed conflict.

In the applicant's case, however, the provisions that make this general presumption of involuntariness operative were not yet in effect. The applicant did not argue before the domestic courts that the circumstances in Sarajevo in November 1995 were such that he, as an ethnic minority, was under undue pressure to conclude – against his free will – an unfavourable exchange contract. Although the applicant did not raise the issue, the courts heard testimony on the matter and concluded that the applicant had decided to leave Sarajevo on his own free will.

Having found that the courts acted reasonably and fairly in assessing the facts and law of the case, the Chamber concluded that there has been no violation by the Federation of Bosnia and Herzegovina of the applicant's right to respect for his home under Article 8 of the Convention, his right to an effective remedy under Article 13 of the Convention, or his right to protection of property under Article 1 of Protocol No. 1 to the Convention. Having found no violation of the applicant's substantive rights, the Chamber also found that the Federation of Bosnia and Herzegovina has not discriminated against the applicant in the enjoyment of those rights.

CH/01/8569, CH/02/9611, CH/02/9613, CH/02/9614, CH/02/11195 and CH/02/11391 Selima PAŠOVIĆ, S.N., Z.M., H.P., Zada NIKŠIĆ and Ibrahim BURIĆ v. the Republika Srpska

Factual background
The applications concern the fate of immediate family members of the applicants, who are of Bosniak origin from the Municipality of Foča. In April 1992, armed conflict broke out in Foča, starting with a military attack carried out by Bosnian Serbs and leading to the eventual take-over of the entire Municipality. A large number of civilians, predominantly of Bosniak origin, were killed or fled the town. Hundreds of Bosniak men were detained, many of whom went missing and were never seen again. All presumed victims have been registered as missing persons either with the "State Commission for

Tracing Missing Persons" or the International Committee of the Red Cross, or both. 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.

Alleged violations of human rights

The applicants allege that, as close family members, they are themselves victims of alleged or apparent human rights violations resulting from the lack of specific information on the fate and the whereabouts of their loved ones last seen in 1992. They seek to know the truth. All of the applicants also seek compensation for their continuing suffering.

Findings of the Chamber

The Chamber considered itself incompetent *ratione temporis* to examine the applicants' complaints relating to the disappearance of their family members, and to their presumed death before the entry into force of the Agreement. However, the Chamber found that the respondent Party has breached its positive obligations to secure respect for the applicants' rights protected by Article 8 of the Convention in that it has failed to make accessible and disclose information requested about the applicants' missing loved ones. It also held that the Republika Srpska has violated the rights of the applicants to be free from "inhuman and degrading treatment", as guaranteed by Article 3 of the Convention, in that it has failed to inform the applicants about the truth of the fate and whereabouts of their loved ones missing from Foča during the period of April to June 1992.

Remedies

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, and whether any of the missing persons are known to have been killed in the Foča events and if so, the location of their mortal remains. The respondent Party was also ordered to conduct a full, meaningful, thorough, and detailed investigation into the events giving rise to the established human rights violations. Lastly, the Chamber ordered the Republika Srpska 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 Foča 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 purpose of collecting information on the fate and whereabouts of missing persons from the Municipality of Foča.

CH/02/10074 Ljiljana, Anka, Lazar and Nataša POPOVIĆ v. the Federation of Bosnia and Herzegovina

Factual background

The applicants are the wife, Ljiljana, mother, Anka, and two children, Lazar and Nataša, of Dragoljub Popović, who was abducted in 1993 by *mujahedin* in the Travnik area, the Federation of Bosnia and Herzegovina. The applicants Nataša and Lazar were ages 8 and 11, respectively, at the time of their father's disappearance. The applicants later learned, based on the eye-witness testimony of others detained at the same time and later released, that their loved one was killed while held in the *mujahedin* camp in Orašac, near Travnik. In 1997, the applicant Ljiljana Popović initiated proceedings before the Federation Ombudsmen's Office in Zenica requesting that an investigation into her husband's disappearance and death be initiated and that she obtain his mortal remains.

Alleged violations of human rights

The applicants claim that organs of the Federation of Bosnia and Herzegovina have violated their right to be free from inhuman or degrading treatment (Article 3 of the European Convention on Human Rights), their right to respect for private and family life (Article 8 of the Convention), and their right to an effective remedy (Article 13 of the Convention). The applicants believe that the actions of the respondent Party reveal a general frame of obstruction in investigating their loved one's death, which has prevented them from obtaining his mortal remains and bringing the perpetrators of the crime to justice.

Findings of the Chamber
The Chamber found that the respondent Party has reacted to the applicants' complaints in a complacent manner and failed to conduct a thorough and meaningful investigation into the disappearance and death of Dragoljub Popović, initially primarily due to an array of jurisdictional issues and later because the case file was simply closed "until the perpetrator is found". In assessing all of the factors relevant to a finding of a violation of Article 3 of the European Convention on Human Rights, as previously established in its case law, the Chamber found that the Federation of Bosnia and Herzegovina has violated the applicants' right to be free from inhuman and degrading treatment, within the meaning of Article 3 of the European Convention on Human Rights. The Chamber also found that the respondent Party has breached its positive obligation to secure respect for the applicants' rights as protected by Article 8 of the European Convention on Human Rights in that it has failed to make accessible and disclose information requested about the applicants' missing loved one after 14 December 1995.

Remedies
As remedies for the established violations, the Chamber ordered the Federation of Bosnia and Herzegovina to conduct a full, meaningful, thorough and detailed investigation into the disappearance and death of Dragoljub Popović and provide this information to the applicants. The Chamber also ordered the Federation of Bosnia and Herzegovina to pay to the applicants the total sum of 6,000 KM in recognition of their mental suffering.

CH/01/7912 and CH/01/7913 Adem LANDŽO and Jusuf POTUR v. the Federation of Bosnia and Herzegovina

Factual background
The applicants are citizens of Bosnia and Herzegovina of Bosniak origin. Adem Landžo and Jusuf Potur were jointly charged with war crimes against the civilian population. The applicants were alleged to have murdered the Golubović family in Konjic in July 1992, and the first applicant was alleged also to have murdered Branko Đogić in Konjic in July 1992. Both applicants were held in pre-trial detention for less than a month in 1994 and then again from 18 January 1999 until 25 July 2000, when the first instance judgment was issued.

On 25 July 2000, the applicants were convicted by the Cantonal Court in Mostar and sentenced to 12 and 9 years imprisonment, respectively. Both the applicants and the Cantonal Public Prosecutor submitted appeals to the Supreme Court of the Federation of Bosnia and Herzegovina against the judgment of 25 July 2000. The Supreme Court rejected the appeals on 8 February 2001.

Alleged violations of human rights
The case raises issues under Article 5 paragraph 1(c) (lawfulness of detention), Article 5 paragraph 3 (right to be brought promptly before a judge or other officer authorised by law to exercise judicial power and reasonable length of detention), Article 6 paragraph 1 (reasonable length of proceedings) and taken in conjunction with Article 6 paragraph 3(c) (right to legal representation) of the European Convention on Human Rights.

Findings of the Chamber
The Chamber found that the applicants' detention from 18 January 1999 to 26 April 1999 was not in accordance with the Rules of the Road and therefore in violation of Article 5(1)(c) of the Convention. The Chamber found that, in the absence of judicial review at two month intervals, the applicants' detention for the periods from 18 March 1999 to 25 May 1999, 9 June 1999 to 22 June 1999, 22 August 1999 to 9 December 1999 and 9 February 2000 to 25 July 2000 was not in accordance with a procedure prescribed by law within the meaning of Article 5(1)(c). The Chamber further found that the length of the applicants' detention from 18 January 1999 until 25 July 2000 constitutes a violation of their right to be tried within a reasonable time or released pending trial as guaranteed by Article 5(3) of the Convention. The Chamber also found a violation of the applicants' right to be tried within a reasonable time as guaranteed by Article 6(1) of the Convention. The Chamber found that there had been no violation of the applicants' right to a fair trial concerning the absence of legal representation during the investigative stage of the proceedings. The Chamber found that, in the

present case, the establishment of violations represents sufficient satisfaction to the applicants for the harm suffered by them.

DECISION ON REVIEW:

CH/97/57 Ferid HALILOVIĆ v. the Republika Srpska

Factual background
On 18 October 1996, the applicant was arrested by the Republika Srpska police on account of charges of war crimes. At some point in July 1996, the authorities of the Republika Srpska requested the International Criminal Tribunal for the former Yugoslavia (ICTY) to review the possibility of the applicant's arrest and detention, in order to comply with the Rules of the Road. However, the applicant was arrested before the authorities had received the response of the ICTY. On 9 May 1997, the ICTY issued its opinion that there was "sufficient evidence by international standards to provide reasonable grounds for believing that Ferid Halilović has committed a serious violation of international humanitarian law." On 23 October 1997, the applicant was convicted for war crimes and sentenced to 15 years imprisonment. On 19 May 2001, the applicant was released on probation. On 15 October 1998 the Chamber struck out the application as the applicant did not respond to the Chamber's letters. The applicant then contacted the Chamber and expressed his wish to continue with his application before the Chamber and detailed these reasons. The Chamber then accepted his request for review on 16 April 1999.

Alleged violations of human rights
In his original application, the applicant complained that the Republika Srpska authorities detained him before the ICTY reviewed the evidence against him in accordance with the Rules of the Road. The applicant also complained that the Republika Srpska violated certain procedural guarantees in the course of the criminal proceedings against him.

In his letter received on 18 February 1999, the applicant additionally complained that the Republika Srpska police maltreated him in the period from 18 October to 22 October 1996 in order to obtain his confession, that his privately-hired defence counsel from the Federation of BiH was only able to act as the "assistant" to his other defence counsel before the Court, and that all of his defence counsel were acting in collusion with the authorities of the Republika Srpska.

Findings of the Chamber
The Chamber found that the Republika Srpska failed to obtain the opinion of the ICTY prior to arresting the applicant, which meant that his arrest and detention from 18 October 1996 to 9 May 1997, the date on which the positive opinion of the ICTY was obtained, were not "in accordance with a procedure prescribed by law" as required by Article 5, paragraph 1(c) of the European Convention on Human Rights. The Chamber concluded that the Republika Srpska therefore violated the applicant's right in connection with Article 5 of the Convention. The Chamber found that there was no violation of Article 6 of the Convention and declared the remainder of the claims inadmissible.

Remedies
The Chamber noted that the violation found was constituted by the fact that no opinion of the ICTY was obtained prior to the applicant's arrest as required by the Rules of the Road. However, the Chamber also recalled that the First Instance Court in Modriča, when deciding upon the applicant's sentence, took into account the time he had spent in detention as of 22 October 1996. Therefore, the Chamber was of the opinion that the finding of a violation of the applicant's right to liberty was sufficient satisfaction for the harm suffered by him.

CH/00/3574 Dušanka TASOVAC v. the Federation of Bosnia and Herzegovina

Factual background
The case concerns the applicant's attempts to repossess her apartment, from which she was evicted on 24 January 2000 by the Canton Sarajevo Administration for Housing Affairs. The eviction of the

applicant was conducted without her having received any procedural decision in that regard, nor was the applicant ever informed that her apartment had been declared abandoned in 1996, although a sub-tenant was continually in the apartment and she also regularly used the apartment. After the eviction, the Federation Ministry of Defence issued a contract on use of the apartment to another user, who purchased the apartment the following day.

Alleged violations of human rights
The application raises issues under the right to the peaceful enjoyment of the applicant's occupancy right over the apartment under Article 1 of Protocol No. 1 to the European Convention on Human Rights, the protection of one's home under Article 8 of the Convention and the right to access to a court under Article 6 of the Convention.

Findings of the Chamber
The Chamber found that that the proceedings by which the apartment was declared abandoned in 1996, and all later attempts to *ex lege* deprive the applicant of her occupancy right, and the proceedings by which the apartment was allocated to another user, were not in accordance with the law as required by Article 1 of Protocol No. 1 to the Convention. Accordingly, the Chamber found that the Federation of Bosnia and Herzegovina violated the applicant's right to the enjoyment of her occupancy right over her apartment as guaranteed by Article 1 of Protocol No. 1 to the Convention.

The Chamber also found that the apartment in question was the applicant's home, for the purposes of Article 8 of the Convention, and the eviction of the applicant in January 2000, when no procedural decision had been issued in that regard, was not provided for by law within the meaning of Article 8 of the Convention. It also followed that the subsequent allocation of her apartment to another individual, and that person's purchase of the apartment, was not in accordance with the law. This finding was sufficient for the Chamber to find that the Federation of Bosnia and Herzegovina has violated the applicant's right to respect for her home as guaranteed by Article 8 of the Convention.

As to the right of access to a court guaranteed by Article 6 of the Convention, the Chamber found that the respondent Party failed to provide the applicant with access to a court for the determination of her occupancy right to the apartment and her right to not be evicted from the apartment. Therefore, the Chamber found that the Federation of Bosnia and Herzegovina violated the applicant's right as guaranteed by paragraph 1 of Article 6 of the Convention.

Remedies
The Chamber ordered that the applicant's occupancy right be restored to her, and that she be reinstated into her apartment without further delay, and that the respondent Party take all necessary steps to declare null and void the contract on purchase of the apartment between the new purchaser of the apartment and the Federation Ministry of Defence. The Chamber also ordered the respondent Party to pay to the applicant the sum of 2,000 KM in non-pecuniary damages.

CH/98/835 Hamdo SULJOVIĆ v. the Federation of Bosnia and Herzegovina

Factual background
The case arises from the expropriation of a piece of land owned by the applicant, carried out by the Municipality of Novi Grad Sarajevo. The expropriation took place in 1985, encompassing both the land and several buildings that belonged to the applicant. However, the purpose of the expropriation, the construction of a residential settlement, was never put into practice. At the outset, the applicant unsuccessfully tried to challenge the expropriation procedure. After it had become clear that the purpose of the expropriation would never be realised, the applicant requested that his land be given back to him. The myriad proceedings initiated by the applicant before the domestic administrative and judicial bodies and aimed at rectifying the expropriation have, taken together, lasted for more than 17 years.

Alleged violations of human rights
The applicant alleges that he was unlawfully deprived of his property, that he was not given back his land and that the proceedings in his case were not conducted within a reasonable time. He requests

the Chamber to award him an additional amount of money as compensation for the land taken from him.

Findings of the Chamber

The Chamber considered itself incompetent *ratione temporis* to deal with the applicant's complaint that he was unlawfully deprived of his property in 1985. However, the Chamber found that proceedings before the domestic administrative and judicial bodies with regard to the applicant's claims have lasted unreasonably long, and that the respondent Party has violated the applicant's right to have his civil rights determined within a reasonable time as guaranteed by paragraph 1 of Article 6 of the European Convention on Human Rights.

Remedies

The Chamber found it appropriate to award the sum of 1,000 KM to the applicant in recognition of the sense of injustice he has suffered as a result of his inability to have his case decided within a reasonable time.