



## **PRESS RELEASE**

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### **Human Rights Chamber Delivers 6 Decisions on Admissibility and Merits and 1 Decision on Review**

**On Friday, 10 January 2003 at 9:00 a.m. in the Cantonal Court building, Šenoina St. 1, Sarajevo, the Human Rights Chamber delivered the following 7 decisions:**

1. CH/02/8923, CH/02/8924 and CH/02/9364 *Đoko KLIČKOVIĆ, Anka PAŠALIĆ and Duško KARANOVIĆ v. Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina and Republika Srpska*
2. CH/02/8767 *Fedai UNAL v. Bosnia and Herzegovina*
3. CH/01/9040 *Neđeljko LATINOVIC v. Republika Srpska*
4. CH/01/9130 *Stana SAMARDŽIĆ v. Republika Srpska*
5. CH/02/9842 *Eslam DURMO v. Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina*
6. CH/01/6930 *Kompas Međugorje v. the Federation of Bosnia and Herzegovina*
7. CH/98/1373 *Aleksandar BAJRIĆ v. the Federation of Bosnia and Herzegovina* (Decision on Review)

#### **CH/02/8923, CH/02/8924, CH/02/9364 Đoko KLIČKOVIĆ, Anka PAŠALIĆ and Duško KARANOVIĆ v. Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina and the Republika Srpska**

##### ***Factual background***

The case concerns disparity in pension amounts received by pensioner returnees to the Federation of Bosnia and Herzegovina and pensioners who remained in the Federation during the armed conflict.

All three applicants are retired persons of Serb origin who lived in Sarajevo before the armed conflict and had been retired and receiving pensions from the pension fund of Bosnia and Herzegovina. During the war, pensions came to be administered by three separate funds. The applicants resided in the territory of the Republika Srpska and received their pensions from the Republika Srpska.

On 27 March 2000, the pension funds entered into an agreement under which pensioners would continue to be paid by the fund they were currently affiliated with, regardless of their place of residence. In 2000 and 2001, the applicants were reinstated into possession of their apartments in Sarajevo, where they have continued to live on their Republika Srpska pensions. They complain of disparities in pension amounts between the Entities.

As a practical matter, a person who retired in Sarajevo and held a pension there before the armed conflict, but later began receiving pension payments from the Republika Srpska pension fund after displacement to the Republika Srpska, would continue, after returning to Sarajevo, to receive the lower pension payment from the Republika Srpska fund. Such a returnee, while receiving the smaller Republika Srpska fund pension, would also face a higher cost of living in Sarajevo than in Republika Srpska. Moreover, such a returnee would receive a pension much lower than a person who had made similar pension contributions during their working life but remained in the Federation throughout the armed conflict.

##### ***Alleged violations of human rights***

The applicants claim that their rights under Articles 8 and 13 of the Convention, Article 1 of Protocol No. 1 to the Convention, and Article 2 of Protocol No. 4 (the right to liberty of movement and to choose one's residence) have been violated. They further complain that the parties to the Pension Agreement intended a discriminatory effect when they decided upon this practice of payment of pensions. The applicants also appear to complain that they have been discriminated against in the enjoyment of their right to social security under Article 9 of the International Covenant on Economic, Social and Cultural Rights.

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

The Chamber declared the applications admissible against the State of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina and the Republika Srpska.

The Chamber found, on the basis of the evidence presented to it, that the fact that the applicants receive smaller pensions than persons paid by the pension fund in the Federation of Bosnia and Herzegovina does not interfere with their rights under Article 1 of Protocol No. 1 to the Convention. Accordingly, there has been no violation by Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, or the Republika Srpska of the applicants' rights to peaceful enjoyment of their possessions under Article 1 of Protocol No. 1 to the Convention.

Under current practice, the pension of a former Socialist Republic of BiH pensioner from Sarajevo who is now paid by the Republika Srpska pension fund because he or she was displaced to the Republika Srpska during the armed conflict is significantly lower than the pension of a pensioner who remained in the Federation. This disparity leaves no doubt that persons who were internally displaced during the armed conflict are, upon their return, treated differently. Having in mind that facilitating the return of displaced persons is one of the important objectives of the Dayton Peace Agreement, the Chamber has found that displaced person status cannot justify the different treatment of the present applicants. The current pension situation presents a significant obstacle to return.

As a result of the agreement between the pension funds, the applicants, as internally displaced persons who returned to the Federation, have been discriminated against. Because the Federation pension fund is a party to that agreement, the Chamber has found that the Federation of Bosnia and Herzegovina has discriminated against the applicants in their enjoyment of the right to social security under Article 9 of the International Covenant on Economic, Social and Cultural Rights.

The Chamber has further found that, because Bosnia and Herzegovina is not a party to the pension agreement, and because all legislation directly concerning pension systems is made at the entity level, Bosnia and Herzegovina is not responsible for the discrimination against the applicants with regard to their pension rights. The Chamber has also found that the Republika Srpska, though a party to the pension agreement, cannot be held responsible for the lower pensions received by the applicants or for the discrimination against the applicants with regard to their pension rights.

### ***Remedies***

The Chamber ordered the Federation of Bosnia and Herzegovina to take all necessary legislative and administrative actions by 10 July 2003 to ensure that the applicants are no longer discriminated against in the enjoyment of their pension rights, particularly in comparison to those pensioners who remained in the Federation during the armed conflict.

The Chamber has also ordered the Federation of Bosnia and Herzegovina to compensate each applicant for the difference between the pension that he or she would be due under the agreement between the pension funds and the amount the applicant would have received from the Federation Fund, from the date of his or her application to the Human Rights Chamber until the date of the Federation's compliance in eliminating the discrimination through legislative or administrative actions.

***Factual background***

The applicant is a Turkish citizen who, at the time of his application in January 2002, lived together with his wife and four children in Bihać, Bosnia and Herzegovina, where he owns a business. The application concerns the fact that the applicant was issued a decision on expulsion from Bosnia and Herzegovina and his temporary residence permit was revoked by the Ministry for Human Rights and Refugees of Bosnia and Herzegovina.

***Alleged violations of human rights***

The applicant alleges a violation of his right of access to court as protected by Articles 6 and 13 of the European Convention on Human Rights with respect to the fact that the decision revoking his residence permit stated that he could appeal to the Court of Bosnia and Herzegovina which, however, at the time did not exist.

He further claims a violation of his right to stay in Bosnia and Herzegovina and work there and of the right to make use of his private property in Bihać including his import-export business, which would suffer from his absence. He therefore alleges a violation of Article 1 of Protocol No. 1 to the Convention. The applicant further complains that an expulsion would separate him from his family, resulting in a violation of his rights to private and family life as protected by Article 8 of the Convention.

***Findings of the Chamber***

The Chamber declared inadmissible the complaints with regard to Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention. It declared admissible the application under Article 1 of Protocol No. 7 to the Convention, which it raised upon its own motion and under Articles 8 and 13 of the Convention.

The Chamber found that the applicant's rights under paragraph 1 a) and b) of Article 1 of Protocol No. 7 to the Convention containing "procedural safeguards relating to the expulsion of aliens" have been violated. The applicant had no possibility to effectively submit reasons against his expulsion as his arguments were not considered by any competent body. In practice no mechanism existed to review the applicant's expulsion. Neither the Court of Bosnia and Herzegovina indicated in the expulsion decision itself functioned at the relevant time, nor the appeals panel of the Council of Ministers referred to in the Law on Immigration and Asylum.

The Chamber did not find a violation of Article 8 because the applicant's separation from his family was not disproportionate to the legitimate aims pursued. In light of its findings under Article 1 of Protocol No. 7 the Chamber did not find it necessary to examine the case under Article 13.

***Remedies***

The Chamber is of the opinion that the finding of a violation of Article 1 of Protocol No. 7 to the Convention in itself is satisfaction enough to remedy the violation found and did not order any remedies.

**CH/02/9040 Nedeljko LATINVIĆ v. Republika Srpska*****Factual background***

This case concerns the attempts of the applicant to prevent his eviction from an apartment located in Banja Luka. In 1992 the applicant concluded a contract on exchange with S.T and N.Z.. According to the contract, the applicant exchanged his apartment (over which he had the occupancy right) situated in Čelinac (a small town near Banja Luka) for S.T.'s, which the applicant currently uses in Banja Luka. N.Z. acquired the applicant's apartment while S.T. acquired the apartment of N.Z. The owners of the three apartments approved the exchange. In March 1999 S.T. submitted a request for repossession of her pre-war apartment. In October 2000 the Ministry for Refugees and Displaced Persons in Banja Luka issued a decision confirming S.T.'s occupancy right over the apartment in Banja Luka and at the same time terminating the applicant's right to use it. The applicant was ordered to vacate the apartment.

**Alleged violations of human rights**

The applicant alleges violations of his rights as protected by Article 8 of the Convention and Article 1 of Protocol No. 1 to the Convention. The applicant also complains of violations of his “right to appeal” and remedies at his disposal and of his right to a fair trial.

**Findings of the Chamber**

The Chamber found that the continuation of the enforcement proceedings against the applicant, aiming at evicting him from the apartment he has been living in for ten years, without any consideration of the court dispute initiated by him to show the validity of the contract in his case, coupled with the risk of privatization of the apartment under dispute, fails to strike a fair balance between the protection of the rights of the pre-war occupant and those of the applicant. It concluded that there has been a violation of Article 8 of the European Convention.

**Remedies**

The Chamber ordered the Republika Srpska to take necessary action to ensure that in the applicant’s case all administrative proceedings, including enforcement proceedings, are suspended pending the decision of the judiciary as to the validity of the exchange contract.

**CH/02/9130 Stana SAMARDŽIĆ v. Republika Srpska****Factual background**

This case concerns the attempts of the applicant, who is a Bosnian Serb originally from Visoko, now in the Federation of Bosnia and Herzegovina, to prevent her eviction from a privately owned house situated in Banja Luka which she obtained by an exchange contract concluded in May 1995. By this contract the applicant had exchanged her house in Visoko with M.J., who is of Bosniak descent and originally from Banja Luka, against the one she currently uses in Banja Luka. Since the validity of the contract is disputed, there are court proceedings pending before the Court of First Instance in Banja Luka.

**Alleged violations of human rights**

The applicant alleges violations of her rights as protected by Articles 6 (right to a fair trial) and 8 (right to respect for her home) of the European Convention on Human Rights and Article 1 of Protocol No. 1 to the Convention (right to peaceful enjoyment of possessions). The applicant did not specifically allege any violation of her rights as protected by Article 13 of the Convention (right to an effective remedy). The Chamber raised the issue of a possible violation of this provision *proprio motu* when transmitting the case to the respondent Party for its observations on the admissibility and merits of the case.

**Findings of the Chamber**

The Chamber found that the continuation of the enforcement proceedings against the applicant, aiming at evicting her from the house in Banja Luka, without any consideration of the court dispute concerning the validity of the contract in her case; the failure of the First Instance Court to decide on the applicant’s request for suspension of proceedings; the unjustified difference in treatment between exchange contract cases in which the person challenging the validity of the exchange contract holds a CRPC decision, as in the applicant’s case, and those in which no CRPC decision is involved, failed to strike a fair balance between the protection of the rights of the pre-war occupant and those of the applicant. It concluded that there has been a violation of Article 8 of the Convention.

The Chamber also found that the failure of the First Instance Court in Banja Luka to decide on the applicant’s request for provisional measures to prevent her eviction pending court proceedings on the validity of the exchange contract left the applicant without any other remedy to seek suspension of her eviction. It concluded that the applicant was deprived of her right under Article 13 to an effective remedy against the violation of her right to respect for her home.

**Remedies**

The Chamber ordered the Republika Srpska to take necessary action to ensure that the fair balance

between the applicant's rights and those of the pre-war owner of the apartment is re-established through the establishment of a materially effective mechanism. It specifically ordered the Republika Srpska to take necessary legislative or administrative action to ensure that in the applicant's case all administrative proceedings, including enforcement proceedings, are suspended ex officio by the administrative bodies pending the final (pravosnažno) decision of the judiciary as to the validity of the exchange contract.

## **CH/02/9842 Eslam DURMO v. Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina**

### ***Factual background***

The applicant, who is of Egyptian origin, was granted citizenship of Bosnia and Herzegovina on 10 February 1995. On 19 July 2001 he was arrested and taken into custody on suspicion of having committed the criminal act of certifying untrue matters. On 5 October 2001, the applicant's release from pre-trial detention was ordered. However, instead of being released, he was immediately taken into custody by the Ministry of Interior of the Federation of Bosnia and Herzegovina. The applicant was handed over to the authorities of the Arabic Republic of Egypt and transferred to Egypt on 6 October 2001. On the same day a decision of the Ministry of Interior of the Federation of Bosnia and Herzegovina revoking his citizenship was delivered to him.

### ***Alleged violations of human rights***

The expulsion of the applicant raises issues under Article 3 of Protocol No. 4 to the European Convention on Human Rights which prohibits the expulsion of nationals. In case the applicant was no longer to be considered a national of Bosnia and Herzegovina, the case raises issues under Article 1 of Protocol No. 7 to the Convention, which provides for procedural safeguards in relation to the expulsion of aliens. The case also raises issues under Article 5 of the Convention, the right to liberty and security of persons, as the applicant claims that he was detained unlawfully at certain periods of time.

The applicant's removal from Bosnia and Herzegovina and his separation from his family could give rise to a violation of Article 8 of the Convention, the right to respect for private and family life. The hand-over of the applicant to the Egyptian authorities and his detention in Egypt might give rise to a violation of Article 3, the prohibition of torture or inhuman or degrading treatment and to Article 2 of the Convention, the right to life. The case also raises issues under Article 13 of the Convention, the right to an effective remedy, as well as in relation to discrimination in the enjoyment of the rights protected by these Articles.

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

The Chamber declared the case with regard to Bosnia and Herzegovina inadmissible. The application is, with the exceptions of the allegations in relation to the right to life, the issue of discrimination and the allegations of a violation of the presumption of innocence, declared admissible against the Federation of Bosnia and Herzegovina.

The Chamber established that the applicant was a national of Bosnia and Herzegovina at the time of his expulsion. It then found that therefore the Federation of Bosnia and Herzegovina violated Article 3 of Protocol No. 4 to the Convention which prohibits the expulsion of nationals, with respect to the applicant.

The Chamber has also found that the Federation of Bosnia and Herzegovina violated the rights of the applicant protected by Article 5, paragraph 1, of the Convention by detaining him after he was ordered to be released from pre-trial detention until his hand-over to the Egyptian authorities as he was held in detention without any legal basis.

The Chamber further found that substantial grounds have been shown that the applicant, by being expelled to the Arabic Republic of Egypt, faces a real risk of being subjected to treatment contrary to Article 3 of the Convention. The Federation of Bosnia and Herzegovina was therefore under an

obligation not to expel the applicant to the Arabic Republic of Egypt. The Chamber, accordingly, found a violation of Article 3 of the Convention.

Since the applicant was not enabled to challenge his detention and expulsion, the Chamber also found a violation of Article 13 of the Convention in conjunction with the found violations.

The Chamber considered it unnecessary to rule on the applicant's complaints under Article 8 of the Convention.

### ***Remedies***

The Chamber ordered the Federation of Bosnia and Herzegovina to carry out an investigation into the circumstances surrounding the expulsion of the applicant to the Arabic Republic of Egypt, with the aim to take appropriate actions with regard to the persons responsible for this expulsion.

The Chamber further ordered the Federation of Bosnia and Herzegovina to compensate the applicant in the amount of 10,000 KM for his suffering arising from the violations found and to compensate the applicant in the amount of 2,531.10 KM for legal costs.

## **CH/01/6930 KOMPAS MEĐUGORJE v. the Federation of Bosnia and Herzegovina**

### ***Factual background***

The case concerns the mobilisation, use, and rental to UN forces of the tourist facility "Kamp Međugorje" by Čitluk Municipality following the armed conflict in Bosnia and Herzegovina. Kamp Međugorje is owned by the company "Kompas Međugorje", of which Zoran Buntić is 76.74% owner, director, and authorised representative. Mr. Buntić purchased his shares in a sales contract dated 30 December 1998.

In December 1992, the tourist facility Kamp Međugorje was mobilised for military use, and in February 1993 HVO Čitluk rented the facilities to the Spanish Battalion of UNPROFOR for DM 171,000 per month. On 23 December 1996, the Parliament of the Federation of Bosnia and Herzegovina issued its Decision on the Cessation of the Application of the Decision Declaring the State of War in the Territory of the Federation of Bosnia and Herzegovina, under which all institutions were ordered to resume work in accordance with peacetime regulations.

Beginning as early as October 1996, Čitluk Municipality received rent payments for the facility, which continued until the departure of the Spanish Battalion on 31 January 2000. Following the departure of the Spanish Battalion, Čitluk Municipality continued to exercise control of the property and did not return it to Kompas Međugorje or Mr. Buntić. On 9 May 2001, the Federal Minister of Defence wrote to the Mayor of Čitluk Municipality, advising him that the legal basis for mobilisation of Kamp Međugorje ceased to exist on 23 December 1996 and that Čitluk Municipality was using the property illegally. The letter ordered Čitluk Municipality to vacate the camp by 25 May 2001.

Beginning in 1999, Mr. Buntić has attempted to prosecute numerous legal actions on behalf of Kompas Međugorje to obtain the return of the property. Little or no action has been taken in his cases, however, and the Kamp Međugorje property has not been returned to Kompas Međugorje or Mr. Buntić.

### ***Alleged violations of human rights***

The applicant complains that the unlawful use of the Kamp Međugorje facility by Čitluk Municipality following the declared cessation of the state of war, and Čitluk Municipality's receipt of compensation for such use, violate its property rights under Article 1 of Protocol No. 1 to the Convention. The applicant further complains of violations of the right to a fair trial within a reasonable time under Article 6 of the Convention.

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

The Chamber found that, while the respondent Party's actions during and shortly following the state of war were taken in the general interest, any legitimate purpose for Čitluk Municipality's control over Kamp Međugorje ceased to exist on 23 December 1996, when the Federation Parliament declared

an end to the immediate threat of war in the Federation and ordered all institutions and persons to resume their work in accordance with peacetime regulations. The Chamber concluded that the respondent Party's continuing control over the Kamp Međugorje property following official declarations ending the state of war constitutes an unlawful interference with the applicant's property rights under Article 1 of Protocol No. 1 to the Convention.

The Chamber further found no justification for the significant delays and judicial procrastination in this property rights case. Accordingly, the Chamber found that the Federation of Bosnia and Herzegovina has violated the applicant's right to a fair hearing within a reasonable time under Article 6(1) of the European Convention.

### ***Remedies***

The Chamber ordered the Federation of Bosnia and Herzegovina to secure the immediate return of the Kamp Međugorje property to Kompas Međugorje.

The Chamber also finds it appropriate to order the Federation to ensure that the level of compensation for the violation of Article 1 of Protocol No. 1 to the Convention found in this case be determined fairly and expeditiously by the domestic courts.

Having found the Federation of Bosnia and Herzegovina to be in violation of Article 6 of the Convention, the Chamber ordered the Federation to take all necessary steps to carry out all appropriate investigations and ensure expeditious decisions in all pending court cases initiated on behalf of Kompas Međugorje.

The Chamber further ordered the Federation of Bosnia and Herzegovina to carry out all appropriate criminal investigations in relation to this matter, with a view to bringing the perpetrators to justice.

The Chamber has further ordered the Federation of Bosnia and Herzegovina to pay the applicant 10,000 KM as moral damages for the delay in the domestic court proceedings and 2,500 KM as compensation for legal costs and expenses incurred in pursuing domestic court proceedings.

The Chamber reserved the right to order additional remedies in this case, as it deems warranted.

## **CH/98/1373 Aleksandar BAJRIĆ v. the Federation of Bosnia and Herzegovina**

### ***Background***

On 10 May 2002 the Chamber issued a decision on admissibility and merits in the case finding violations of Article 3 (inhuman treatment), Article 5, paragraph 1 (illegal detention), Article 5, paragraph 3 (failure to bring the applicant promptly before a judge after his arrest) and discrimination. As remedies the respondent Party was ordered to carry out an investigation into the conduct of the police and prison officials involved in the violation of the applicant's rights with a view to initiating criminal proceedings against them, and to pay to the applicant the sum of KM 30,000.

### ***Proceedings***

The respondent Party filed a request for review, arguing that the applicant was brought before an investigative judge on 22 May 1996, the day of his arrest, and that therefore there was no violation of Article 5, paragraph 3 of the Convention. In addition the respondent Party complained that the compensation ordered was too high. The Plenary Chamber granted the request for review insofar as it concerned the finding of a violation of Article 5, paragraph 3 to the Convention.

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

In light of the remaining uncertainty as to the events of 22 May 1996 the Chamber finds that a violation of Article 5, paragraph 3 of the Convention has not been established.

The Chamber decided that the earlier finding of a violation of Article 5, paragraph 3 in the decision on admissibility and merits of 10 May 2002 is set aside. The other conclusions in the decision of 10 May 2002 on admissibility and merits and the remedies ordered in this decision remain valid.