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**PRESS RELEASE**

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## Human Rights Chamber Delivers 5 Decisions on Admissibility and Merits and 1 Decision on Further Remedies

On **Friday, 7 March 2003 at 9:00 a.m.** in the Cantonal Court building, Šenoina St. 1, Sarajevo, the Human Rights Chamber delivered the following 5 Decisions on Admissibility and Merits and 1 Decision on Further Remedies:

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Case nos. CH/01/8365, CH/01/8397, CH/01/8398, CH/01/8399, CH/01/8410, CH/01/8411, CH/01/8412, CH/01/8414, CH/01/8428, CH/01/8484, CH/01/8487, CH/01/8521, CH/02/8842, CH/02/8927, CH/02/9357, CH/02/9375, CH/02/9385, CH/02/9390, CH/02/9403, CH/02/9427, CH/02/9431, CH/02/9433, CH/02/9470, CH/02/9484, CH/02/9485, CH/02/9486, CH/02/9487, CH/02/9505, CH/02/9506, CH/02/9507, CH/02/9508, CH/02/9513, CH/02/9514, CH/02/9515, CH/02/9528, CH/02/9529, CH/02/9530, CH/02/9532, CH/02/9542, CH/02/9546, CH/02/9547, CH/02/9548, CH/02/9549, CH/02/9550, CH/02/9552, CH/02/9553, CH/02/9594, CH/02/9595, and CH/02/9596 **Ferida SELIMOVIĆ, Šefika PALIĆ, Šefika PALIĆ, Mejrema JUNUZOVIĆ, Mevlida SULEJMANOVIĆ, Mevlida SULEJMANOVIĆ, Munira SULEJMANOVIĆ, Hazreta DELIĆ, Zilha FEJZIĆ, Hafiza HRUSTIĆ and Adila HRUSTIĆ, Nura OMIĆ, Enver HAMZIĆ, Hajro OKANOVIĆ, Rabija SMAJIĆ, Jusuf MALKIĆ, Šuhra ALIĆ, Raza JUSUFOVIĆ, Ahmija MUJIĆ, Hasena AHMETAGIĆ, Fatija IBRAHIMOVIĆ, Rifet MUHIĆ, Rešida OMEROVIĆ, Timka MUJIĆ, Ifeta SELIMOVIĆ, Ifeta SELIMOVIĆ, Ifeta SELIMOVIĆ, Ifeta SELIMOVIĆ, Hata AHMETOVIĆ, Hata AHMETOVIĆ, Hata AHMETOVIĆ, Hata AHMETOVIĆ, Hanifa SMAILOVIĆ, Amira GURDIĆ, Tima GURDIĆ, Fatima RAMIĆ, Fatima RAMIĆ, Fatima RAMIĆ, Enes ĐOZIĆ, Enes ĐOZIĆ, Azem SMAJIĆ, Tahira SKELEDŽIĆ, Tahira SKELEDŽIĆ, Tahira SKELEDŽIĆ, Hakija ČAKANOVIĆ, Sabra KABILOVIĆ, Sabira JUSUFOVIĆ, Emina SALIHOVIĆ, Hamša ČERIMOVIĆ, and Aiša ADEMOVIĆ v. the Republika Srpska**

### ***Factual background***

The 49 applications comprising the "Srebrenica cases" all involve applications filed by immediate family members of Bosniak men presumed to have been killed as part of the mass execution of some 7,000 to 8,000 Bosniaks undertaken by the Army of the Republika Srpska during the period of 10-19 July 1995 in and around Srebrenica. In the present applications, all the presumed victims of the Srebrenica events have been listed as missing persons with the State Commission for Tracing Missing Persons. Some have additionally been listed as unaccounted for persons with the International Committee of the Red Cross. All of the applicants seek information about the fate and whereabouts of their missing loved ones. It appears that none of the applicants have received any such specific information from the competent authorities since the events in question.

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

As immediate family members of Bosniak men presumed to be victims of the Srebrenica events occurring during the period of 10-19 July 1995, the applicants allege that they are themselves victims of human rights violations resulting from the lack of specific information on the fate and whereabouts of their loved ones last seen in Srebrenica in July 1995. They seek to know the truth.

They request the authorities to bring the perpetrators to justice. Most also seek compensation for their suffering in an unspecified amount. These cases raise issues under Articles 3, 8, and 13 of the European Convention on Human Rights, and of discrimination in connection with these rights under Article II(2)(b) of the Human Rights Agreement. Due to its jurisdiction under the Agreement, the Chamber is considering these Srebrenica cases only in connection to the rights of family members to be informed about the fate and whereabouts of their missing loved ones.

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

In the decision, the Chamber concluded that the Republika Srpska's failure to make accessible and disclose information requested by the applicants about their missing loved ones, last seen in Srebrenica in July 1995, constitutes a violation of its positive obligations to secure respect for their rights to private and family life, as guaranteed by Article 8 of the Convention. In addition, the Republika Srpska's failure to inform the applicants about the truth of the fate and whereabouts of their missing loved ones, including conducting a meaningful and effective investigation into the massacre at Srebrenica in July 1995, violates their rights to be free from inhuman and degrading treatment, as guaranteed by Article 3 of the Convention. Lastly, the Chamber concluded that the Republika Srpska discriminated against the applicants due to their Bosniak origin. The Chamber stated that "in the context of the Srebrenica cases, these violations are particularly egregious since this event resulted in the largest and most horrific mass execution of civilians in Europe in the second half of the twentieth century. Moreover, the violations reflect a total indifference by the authorities of the Republika Srpska to the suffering of the Bosniak community".

### ***Remedies***

As remedies for the established violations, 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 with respect to the location of any gravesites of the victims of the Srebrenica events. The Republika Srpska shall also conduct an investigation into the Srebrenica events, the results of which shall be disclosed to national and international authorities at the latest on 7 September 2003. As a form of reparation for social damage and to disseminate the information contained in the decision as widely as possible, the Chamber ordered the Republika Srpska to publish the entire text of the decision in the Official Gazette of the Republika Srpska.

Although the Chamber recognised that the applicants personally suffered pecuniary and non-pecuniary damages, it decided not to make any individual awards of compensation. Instead, for the collective benefit of all the applicants and the families of the victims of the Srebrenica events, the Chamber ordered the Republika Srpska to pay the lump sum amount of 2 Million Convertible Marks (2,000,000 KM), no later than 7 September 2003, to the Foundation of the Srebrenica-Potočari Memorial and Cemetery, and, in addition, to pay four further annual payments of five-hundred thousand Convertible Marks (500,000 KM), to the Foundation on 7 September 2004, 7 September 2005, 7 September 2006, and 7 September 2007, respectively, to be used in accordance with the Statute of the Foundation.

In making this collective compensation award to benefit all the family members of the persons missing from Srebrenica since July 1995, the Chamber highlighted that in the decision, it found violations of the rights of the family members, but it did not find violations of the rights of the missing persons because such claims are outside the competence of the Chamber *ratione temporis*. The Chamber understands that the applicants' primary goal is to know the fate and whereabouts of their loved ones missing from Srebrenica since July 1995, and if it is determined that the missing persons were killed in the Srebrenica events, then the applicants would like to bury the remains in accordance with their traditions and beliefs. To this extent, the Srebrenica-Potočari Memorial and Cemetery will provide a solemn place for a memorial and graves of those who met their tragic deaths in the massacre at Srebrenica in July 1995.

## **CH/01/8110 D.R. v. Bosnia and Herzegovina and the Republika Srpska**

### ***Factual background***

This application concerns the applicant's attempts to obtain compensation 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. The First Instance Court in Banja Luka issued the permission on enforcement of this judgment, which became final and binding on 3 January 2001. 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" 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.

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

The applicant complains that the organs of the respondent Parties have failed to comply with final and binding court decisions ordering the Republika Srpska to pay compensation to her for "war-damages". The applicant asks the Chamber to order the respondent Parties immediately to enforce the final and binding decisions in her favour and the Republika Srpska "to fulfil its obligation toward its creditor [*i.e.*, the applicant] in the shortest possible time". The application raises 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, the Chamber found that the Republika Srpska's failure to take any steps to enforce the final and binding judgment of 3 October 2000 and to pay the applicant the compensation awarded to her therein prior to 28 May 2002 constitutes an unlawful interference with her protected possession. Moreover, the Law on Postponement, which entered into force on 28 May 2002, further interferes in a disproportionate manner with the applicant's protected possession. For these reasons, the Chamber concluded that the Republika Srpska violated the applicant's right protected by Article 1 of Protocol No. 1 to the Convention, both before and after the Law on Postponement entered into force. In addition, the Chamber concluded that by failing to enforce the final and binding judgment in the applicant's favour, the Republika Srpska violated the applicant's right to a court as guaranteed by paragraph 1 of Article 6 of the Convention, both before and after the Law on Postponement entered into force on 28 May 2002.

### ***Remedies***

As remedies for the established violations of the Convention, the Chamber unanimously ordered the Republika Srpska to enact a new law by 7 September 2003. This new law shall regulate 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, as mentioned in the Law on Postponement. The Chamber further ordered the Republika Srpska to pay compensation to the applicant for non-pecuniary damages in recognition of the sense of injustice she has suffered as a result of her inability to obtain enforcement of the final and binding judgment in her favour. Finally, the Chamber reserved the right to order additional remedies in this case after 7 September 2003.

## **CH/02/8939 M.H. v. the Federation of Bosnia and Herzegovina**

### ***Factual background***

The applicant was allocated an apartment in 1994 in Zenica as the widow of a deceased soldier. The Ministry of Defence also issued a contract on use in 1997 allocating the apartment to the applicant for permanent use. In January 2002, the housing authorities declared that the applicant was a "multiple occupant", according to the Law on Cessation of the Application of the Law on Abandoned Apartments, and ordered her to leave the apartment in question. As the pre-war occupancy right

holder's claim to the apartment in question was denied, the apartment fell into those category of apartments deemed to be "unclaimed", which should be used by the housing authorities as alternative accommodation. The determination of the applicant as a "multiple occupant" was based on the fact that she could return to live in her 1991 family household, the home of her mother-in-law, also in Zenica. The applicant also received a substantial credit to help resolve her housing situation. The applicant was evicted on 14 June 2002.

***Alleged violations of human rights***

The application raises issues with regard to the applicant's right to respect for her home under Article 8 of the European Convention on Human Rights, and her right to an effective remedy under Article 13 of the Convention.

***Findings of the Chamber***

The Chamber found that the provisions of the Law on Cessation which allowed the *ex officio* determination of the applicant as a multiple occupant, with no right to alternative accommodation, and barring the suspensive effect of her appeal, are measures which serve the significant public interest of providing alternative accommodation in order to resolve the thousands of outstanding housing claims in the most efficient manner possible. Thus, the respondent Party's actions were in pursuit of a legitimate aim and on the whole proportional; therefore, there has been no violation of Article 8 of the Convention. Additionally, as to the alleged violation of Article 13 of the Convention, the Chamber found that the applicant had sufficient remedies available to her, in the aggregate, such that there was no violation of the applicant's rights under Article 13 of the Convention.

***CH/02/12421 Safija KULOVAC v. the Federation of Bosnia and Herzegovina***

***Factual background***

The applicant had been living in an apartment in Sarajevo since 1996 with, she claims, the oral consent of the owner of the apartment, the Municipality Centar. In October 2002, the housing authorities determined that the applicant was using the apartment without a legal basis, and therefore considered her an "illegal occupant", with no right to alternative accommodation, in accordance with the Law on Cessation of the Application of the Law on Abandoned Apartments. Without any hearing having been held, the applicant was ordered to leave the apartment by 9 December 2002, which the applicant did. As the pre-war occupancy right holder did not seek repossession of the apartment, the apartment falls into the category of "unclaimed apartments" which should be used as alternative accommodation by the housing authorities.

***Alleged violations of human rights***

The application raises issues with regard to the applicant's right to an effective remedy under Article 13 of the European Convention on Human Rights, in connection with her right to respect for her home under Article 8 of the Convention.

***Findings of the Chamber***

The Chamber found that the provisions of the Law on Cessation which allowed the *ex officio* determination of the applicant as an illegal occupant, with no right to alternative accommodation, and barring the suspensive effect of her appeal, are measures which serve the significant public interest of providing alternative accommodation in order to resolve the thousands of outstanding housing claims in the most efficient manner possible. Thus, the respondent Party's actions were in pursuit of a legitimate aim and on the whole proportional; therefore, there has been no violation of Article 8 of the Convention. Additionally, as to the alleged violation of Article 13 of the Convention, the Chamber found that the applicant had sufficient remedies available to her, in the aggregate, such that there was no violation of the applicant's rights under Article 13 of the Convention.

## **CH/00/3476 M.M. v. the Federation of Bosnia and Herzegovina**

### ***Factual background***

The applicant is a citizen of Bosnia and Herzegovina of Serb origin, married to a citizen of Bosnia and Herzegovina of Croat origin. Before the armed conflict in Bosnia and Herzegovina she worked as a teacher at the primary school in Livno. During the war she was told by the members of the paramilitary force that she could not work at the school any more because of her Serb origin. The school authorities did not allow her to work after that. After the cessation of the war the applicant requested to resume her work but was not successful. The applicant pursued proceedings before domestic courts and the Cantonal Commission for Implementation of Article 143 of the Law on Labour, but was not successful in being fully reinstated into work.

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

The applicant complains about discrimination in the enjoyment of her right to work due to her ethnic origin and refers to Article II(2)(b) of the Agreement in conjunction with Articles 6 and 7 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD). She further complains of a violation of her right to a fair hearing under Article 6 of the European Convention on Human Rights, the right to respect for private and family life as guaranteed by Article 8 of the Convention, as well as the violation of her right to peaceful enjoyment of her possessions under Article 1 of Protocol No. 1 to the Convention due to the loss of salaries and contributions for the Pension and Social Fund.

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

In its decision, the Chamber considered that the applicant has been denied the right to work at the school where she had earlier worked as a teacher. At the same time the school hired new employees to perform her duties. The new employees were of Croat origin. Therefore, the Chamber found that the Federation of Bosnia and Herzegovina has breached its obligations under the Agreement by having discriminated against the applicant on the basis of her Serb origin in the enjoyment of her rights to work and related rights as guaranteed by the International Covenant on Economic, Social and Cultural Rights and the International Convention on the Elimination of All Forms of Racial Discrimination.

### ***Remedies***

As remedies for the established violations, the Chamber unanimously ordered the Federation of Bosnia and Herzegovina to undertake immediate steps to ensure that the applicant is no longer discriminated against in her right to work and to just and favourable conditions of work, and that she be offered the possibility of fully returning to her labour relationship, resuming her work on terms appropriate to her former position and equal to those enjoyed by other employees. The Chamber further ordered the Federation to pay to the applicant the sum of 42,000 KM as pecuniary compensation for lost income.

Decision on Further Remedies:

## **CH/00/5134, CH/00/5136, CH/00/5138 and CH/01/7668 Muhamed ŠKRGIĆ, Raska ĆERIMOVIĆ, Fikret MURTIĆ and the Association for the Protection of Unemployed Shareholders of Agrokomerc v. the Federation of Bosnia and Herzegovina**

### ***Factual background and proceedings***

On 8 March 2002 the Chamber delivered a decision on admissibility and merits in case nos. CH/00/5134 *et. al. Šrkgić and others*. The case concerns the applicants' failed attempts to gain recognition of their claimed rights as shareholders of the Agrokomerc joint-stock company. The applicants Muhamed Šrkgić, Raska Ćerimović and Fikret Murtić and the members of the Association for the Protection of Unemployed Shareholders of Agrokomerc were employed by the company Agrokomerc in Velika Kladuša. All of them claim to hold shares in the company which they allegedly

acquired during the period of 1991 until 1994 under the so-called "Marković scheme" for privatisation. In the decision of 8 March 2002, the Chamber established that the applicants acquired protected possessions in paid internal shares of Agrokomerc and that the respondent Party has violated their property rights under Article 1 of Protocol No. 1 to the Convention by depriving them of these protected possessions and the rights associated with them. The Chamber ordered the respondent Party, as an interim measure, until a forensic audit determining the complete present ownership structure is completed, to recognise the capital structure of Agrokomerc as registered by the competent court in Bihac on 31 October 1991, that is, 53% share capital and 47% state capital. The Federation was ordered to appoint three members to a newly constituted interim supervisory board of Agrokomerc, and to allow the applicants to appoint four members to this interim supervisory board. This arrangement was intended to provide a balance in the governance of Agrokomerc during the interim period between the delivery of the Chamber's decision and the completion of the audit. The interim supervisory board was entitled to dismiss any and all directors of Agrokomerc by a two-thirds majority vote, which the Chamber determined would secure the balance between the management rights of the applicants and the respondent Party in the interim period.

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

The Chamber has found that the applicants have been prevented from meaningfully participating in the management of the company, as required by the decision of 8 March 2002, due to the continued functioning of the "management board" appointed by the Federal Ministry of Energy, Mining and Industry in August 2001. Given that the Chamber ordered the formation of an interim supervisory board in its decision of 8 March 2002 to allow the applicants to participate in the management of the company, the Chamber finds that the existence of the management board is incompatible with the performance of the interim supervisory board and its ability to manage Agrokomerc in accordance with the law. Furthermore, in light of the obstructive conduct of the Agrokomerc management over the last year, the Chamber finds that the presence of the representatives of the applicants on the interim supervisory board has not proved sufficient to allow them to participate in the management of Agrokomerc, and the two-thirds majority voting requirement to change the management appears to have created a deadlock in the interim supervisory board. The Chamber therefore found it necessary to issue this decision on further remedies.

### ***Remedies***

The Chamber decided to order the Federation of Bosnia and Herzegovina to take steps to immediately, and no later than 15 April 2003, ensure that the management board appointed by the Federal Ministry of Energy, Mining and Industry, ceases to function.

The Chamber further decided to partly lift the super majority voting requirement such that the interim supervisory board shall be entitled to replace three of the current six executive directors, and appoint one executive director to the currently vacant position, by a simple majority vote, or four members in agreement of those present. This order shall also have immediate effect, and shall be implemented no later than 15 April 2003.