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**PRESS RELEASE**

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## Human Rights Chamber Delivers 5 Decisions on Admissibility and Merits

On **Friday, 5 September 2003 at 9:00 a.m.** in the Cantonal Court building, Šenoina St. 1, Sarajevo, the Human Rights Chamber for Bosnia and Herzegovina delivered 5 decisions on admissibility and merits. A summary of each decision follows.

1. CH/02/9892 *Dušan LAZIĆ v. Bosnia and Herzegovina*
2. CH/99/1905 *Živko TANASIĆ v. the Federation of Bosnia and Herzegovina*
3. CH/99/1972 *M.T. v. the Republika Srpska*
4. CH/99/2386 *Pavle DRAGIČEVIĆ v. the Republika Srpska*
5. CH/02/8667 *Mediha NUKIĆ HARBAŠ, Edina, Emina and Jasmina NUKIĆ v. the Federation of Bosnia and Herzegovina*

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### **CH/02/9892 Dušan LAZIĆ v. Bosnia and Herzegovina**

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

In the course of the year 2001 the United Nations Mission to Bosnia and Herzegovina launched a campaign to end the flow of women trafficked into Bosnia and Herzegovina from Eastern Europe. The campaign resulted in police investigations and the closure of several night bars in the Brčko area, including the applicant's night bar Lovać.

Criminal proceedings were initiated against several persons including the applicant and on 12 December 2001 the Court of First Instance of the Brčko District of Bosnia and Herzegovina found the applicant guilty of the crime of mediation in prostitution. He was sentenced to one year and six months imprisonment and fined KM 4,000. The court also prohibited the applicant, as a security measure, to operate dancing bars for a period of three years. The Court held that in the time period between April 2001 and July 2001 the applicant forced women into prostitution in his dancing club in Brčko. On 6 February 2002 this judgement was confirmed by the Appellate Court of the Brčko District.

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

The applicant complains about various violations of his right to a fair trial as protected by Article 6 of the European Convention on Human Rights.

Firstly he claims that his right to an independent tribunal has been violated. He argues that the election process of judges in the Brčko District, the fact that the judges were not appointed by the Assembly, and the fact that they first were elected for a probation period of one year, results in a lack of independence of the judiciary during the probation period. In addition he alleges that the judges were pressured by the representatives of the International Community who remained present at a hearing closed to the public.

Secondly, the applicant alleges a violation of the principle of presumption of innocence as protected by Article 6, paragraph 2 of the Convention. He claims that on 8 August 2001, before the court proceedings were completed, the market inspector prohibited catering activities both in the

applicant's dancing bar and in the adjacent motel "Lovac". He complains that the presumption of innocence has also been violated by the fact that the prosecution informed the TV and other organs of public information about his arrest for prostitution and enslavement, even though the court in its final judgement acquitted him of the enslavement charges.

The applicant further complains that he and his lawyer did not have adequate time to prepare the defence in accordance with Article 6, paragraph 3 (b) of the Convention. He claims that in such a complex case the defence should not have been asked to give its final statement immediately after the presentation of the evidence.

Finally the applicant claims that the right to examine witnesses and evidence as protected by Article 6, paragraph 3 (d) of the Convention has been violated. He claims that the prosecution tried to intimidate a defence witness. In addition the applicant suggests that three potential defence witnesses were expelled from the territory of the Brčko District before they could be heard as witnesses. Furthermore the court relied only on the statements of two "key witnesses" who were heard before the beginning of the main trial and had left the country when it started. He further complains that the First Instance Court, without any valid reason, gave no significance to the statements of the accused persons or to the statements of seven defence witnesses heard during the trial, not even to the statements of police officers who confirmed that during their control checks and raids they had found no evidence of prostitution.

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

The case was declared admissible against Bosnia and Herzegovina. The Chamber then examined in detail the applicant's allegations that his right to a fair trial under Article 6 was violated.

With regard to the independence of the tribunal the Chamber found that the appointment process of judges in Brčko and the fact that the judges who had decided the applicant's case were at first appointed for a one-year probation period is in itself not a sufficient indication to find a violation of the right to an independent tribunal. In addition the Chamber found no indications that the presence of representatives of the International Community at the hearing affected the fairness of the proceedings or that any pressure was exerted on the judge to influence him in any direction.

The Chamber also found that the fact that information was given to the press about the charges against the applicant does not give rise to a violation of the presumption of innocence. The presumption of innocence was also not violated by the fact that on 8 August 2001 the market inspector prohibited catering activities in the applicant's dancing bar and the adjacent motel "Lovac" and later on sealed those facilities because his decision was an administrative temporary measure based upon his own inspection and assessment of facts.

The Chamber could not find it substantiated that the defence lawyer was hindered to adequately express his views and to properly defend the applicant. Therefore it found no violation of Article 6, paragraph 3 (b) of the Convention, the right to adequate time to prepare defence.

Finally, the Chamber did not find a violation of the applicant's right to examine witnesses and have witnesses examined as protected under Article 6, paragraph 3 (d). In particular, the Chamber found that that the hearing of some witnesses prior to the beginning of the main trial was in accordance with Article 176 of the Brčko Code of Criminal Procedure. Bearing in mind that seven defence witnesses were heard the Chamber did not find a violation of the applicant's right to have witnesses on his behalf heard as protected by Article 6, paragraph 3 (d). With regard to the claim that the Brčko courts wrongly evaluated the witness statements the Chamber recalled that it has no general competence to substitute its own assessment of the facts and application of the law for that of the national courts.

In conclusion, the Chamber found that no aspect of Article 6 of the Convention had been violated. Consequently it ordered no remedies.

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## **CH/99/1905 Živko TANASIĆ v. the Federation of Bosnia and Herzegovina**

### ***Factual background***

The case concerns the attempts of the applicant to be compensated for his vehicles, an Audi 80 TD and a Mercedes 207D, which were confiscated in 1992 by the Crisis Headquarters of the Local Community Koševsko Brdo and the Regional Headquarters of the Territorial Defence of Koševsko Brdo. Since 24 January 1997, the applicant has pursued proceedings before judicial bodies in order to obtain compensation for the damaged vehicles. These proceedings are still pending to date.

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

The applicant claims that his rights have been violated due to the length of the court proceedings. Further, he complains that his property was damaged after confiscation and he was not compensated for it. The case raises issues related to the right to a fair hearing within a reasonable time as guaranteed by Article 6 paragraph 1 of the European Convention on Human Rights.

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

The Chamber noted that the application concerned the applicant's attempts to obtain compensation for his confiscated vehicles and not the act of the confiscations themselves. Since the applicant initiated proceedings before the First Instance Court I in Sarajevo on 14 January 1997 in order to obtain compensation and these proceedings are still pending, the Chamber declared the application admissible.

The Chamber found that the court in this case has not met its responsibility to ensure that the proceedings are expedited within a reasonable time, in that they have been pending for over six years and still are not completed. Due to this failure of the court, the applicant has been in a state of uncertainty with regard to his property for a prolonged time. The Chamber thus found a violation of Article 6 paragraph 1 of the Convention because the proceedings in the applicant's case have not been determined within a reasonable time.

### ***Remedies***

The Chamber ordered the Federation of Bosnia and Herzegovina to take all necessary steps to promptly conclude the pending civil proceedings in the applicant's case before the First Instance Court I in Sarajevo. Furthermore, the Chamber awarded the applicant the sum of 1,000 KM as compensation for non-pecuniary damages.

## **CH/99/1972 M.T. v. the Republika Srpska**

### ***Factual background***

The case concerns the applicant's attempts to obtain compensation for the fact that on 8 May 1992 police officers temporarily confiscated and took away technical equipment belonging to him. On 10 August 1992 the local police returned some of the confiscated property to the applicant. Other property, however, had disappeared and could not be returned. On 2 April 1993, the applicant initiated civil proceedings before the First Instance Court in Bjeljina against the Ministry for Internal Affairs, Department Bjeljina, for monetary compensation. To date these proceedings have not been concluded.

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

The applicant alleges a violation of Article 1 of Protocol No. 1 of the European Convention on Human Rights claiming that the compensation granted to him by the domestic courts was too low and that the interest was calculated wrongly. He further complains that his civil claims for compensation were not determined by the court within a reasonable time in violation of Article 6 of the Convention.

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

The Chamber declared admissible the complaint under Article 6, paragraph 1 of the Convention with regard to length of the proceedings since 14 December 1995 and declared the remainder of the application inadmissible.

The Chamber found the Republika Srpska to have violated the applicant's rights under Article 6 paragraph 1 of the Convention with regard to the length of proceedings. In particular, the applicant's claim for civil compensation before the domestic courts did not seem to the Chamber to be so complex as to require more than ten years of proceedings in total and alternatively more than seven and a half years of proceedings since the coming into force of the Agreement.

***Remedies***

The Republika Srpska was ordered to pay the applicant the sum of 500 KM by way of compensation for non-pecuniary damages.

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**CH/99/2386 Pavle DRAGIČEVIĆ v. the Republika Srpska**

***Factual background***

The case concerns the attempts of the applicant to obtain fulfillment of a contract on fixed-term deposit that he concluded with the Company "Certisana" from, at that time, Sanski Most. Since 12 June 1996, the applicant has pursued proceedings before judicial bodies in order to obtain a ruling upon his lawsuit against the Company. These proceedings are still pending to date.

***Alleged violations of human rights***

The applicant claims that his rights as protected under Article 6(1) of the European Convention on Human Rights were violated due to the length of the court proceedings before the organs of the Republika Srpska. He further complains of a violation of his rights as protected under Article 13 of the Convention in relation to his allegations of a violation of Article 6(1) of the Convention.

***Findings of the Chamber***

The Chamber observes that the applicant's primary complaint before it concerns a violation of his right to have his civil claims decided by the courts within a reasonable time, as protected under Article 6 paragraph 1 of the Convention. Since the applicant initiated proceedings before the First Instance Court in Prijedor on 12 June 1996 in order to obtain fulfillment of a contract on fixed-term deposit and these proceedings are still pending, the Chamber declared the application admissible.

The Chamber found that the court in this case has not met its responsibility to ensure that the proceedings are expedited within a reasonable time, in that they have been pending for over seven years and still are not completed. Due to this failure of the court, the applicant has been in a state of uncertainty with regard to his property for a prolonged time. The Chamber thus found a violation of Article 6 paragraph 1 of the Convention because the proceedings in the applicant's case have not been determined within a reasonable time.

***Remedies***

The Chamber ordered the Republika Srpska to take all necessary steps to promptly conclude the pending civil proceedings in the applicant's case before the First Instance Court in Prijedor. Furthermore, the Chamber awarded the applicant the sum of 1.000 KM as compensation for non-pecuniary damages.

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**CH/02/8667 Mediha NUKIĆ HARBAŠ, Edina, Emina and Jasmina NUKIĆ v. the Federation of Bosnia and Herzegovina**

***Factual background***

The applicants are daughters of Mehmed Nukić, who was killed by M.L. in the yard in front of their house in Bihać in 1993. Soon thereafter criminal proceedings against M.L. were initiated and M.L. was charged with committing murder. Since then the Cantonal Court in Bihać has four times issued judgments acquitting M.L. of the charge. The Supreme Court has three times vacated Cantonal Court judgments and sent the case back to the Cantonal Court for retrial. The case is still pending before the domestic courts and the most recent judgement of the Cantonal Court has not become final yet.

***Alleged violations of human rights***

The applicants complain of violations of their rights in relation to the fairness of the trial, the length of the proceedings and that they are deprived of their rights to get compensation.

***Findings of the Chamber***

The Chamber declared admissible the complaint under Article 6, paragraph 1 of the Convention with regard to length of the proceedings since 14 December 1995 and declared the remainder of the application inadmissible.

The Chamber found the Federation of Bosnia and Herzegovina had violated the applicant's rights under Article 6 paragraph 1 of the Convention with regard to the length of proceedings. The Chamber found that the case before the domestic courts did not seem to be so complex as to require nearly ten years of proceedings in total and alternatively more than seven years of proceedings since the coming into force of the Agreement. The Chamber found that the domestic courts had not been able to deal effectively with the case.

***Remedies***

The Federation was ordered to promptly conclude the pending proceedings and to pay to each of the applicants the sum of 1000 KM by way of compensation for non-pecuniary damages.