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## PRESS RELEASE

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# Human Rights Chamber Delivers 6 Decisions on Admissibility and Merits

On **Friday, 4 April 2003 at 9:00 a.m.** in the Cantonal Court building, Šenoina St. 1, Sarajevo, the Human Rights Chamber for Bosnia and Herzegovina delivered the following 5 decisions on admissibility and merits and 1 partial decision on admissibility and merits:

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### **CH/02/8202, CH/02/9980 and CH/02/11011 M.P., Dušan BRDAR and Zorka ŠTRBAC v. the Federation of Bosnia and Herzegovina**

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

The cases concern three applicants complaining of the fact that Article 3a of the Law on Cessation of the Application of the Law on Abandoned Apartments prevents them from repossessing their pre-war apartments. The applicants are pre-war occupancy right holders over three apartments in the Federation of BiH (two apartments are in Bihać and one is in Visoko). The former Yugoslav National Army was the allocation right holder over the apartments (thus JNA apartments). The applicants M.P. and Brdar were refused because they were not registered, on 30 April 1991, in the citizenship records of Bosnia and Herzegovina. The applicant Štrbac was refused because her husband remained in the foreign armed forces after 14 December 1995.

The cases differ from previous cases decided by the Chamber in the matter of JNA apartments. Namely, in previous cases, and in particular in *Miholić and others* (case nos. CH/97/60 et al, *Miholić and others*, decision on admissibility and merits of 9 November 2001), the Chamber has dealt with the situation where the applicants had purchased their JNA apartments in accordance with the Law on Securing Housing for the Yugoslav National Army. In the present cases, the applicants did not purchase the apartments in question.

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

The cases raise issues under Article 6 of the European Convention on Human Rights (the right to a fair and public hearing within a reasonable time), Article 8 of the Convention (the right to respect for one's home), Article 13 of the Convention (the right to an effective remedy), Article 1 of Protocol No. 1 to the Convention (the right to the peaceful enjoyment of one's possessions) and Article II(2)(b) of the Human Rights Agreement (the right not to be discriminated against).

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

The Chamber found that the applicants' pre-war apartments are their "homes" for the purpose of Article 8 of the Convention and that the applicants' occupancy rights over their pre-war apartments constitute a "possession" for the purpose of Article 1 of Protocol No. 1 to the Convention. The Chamber further found that the Federation, by refusing to reinstate the applicants into their pre-war apartments, interfered with their right to respect for home as guaranteed by Article 8 of the Convention and the right to the peaceful enjoyment of possessions as guaranteed by Article 1 of Protocol No. 1 to the Convention. The Chamber then proceeded to examine whether that interference was justified and proportional.

The Federation refused to reinstate the applicants M.P. and Brdar because they served in the then JNA on 30 April 1991 and were not citizens of Bosnia and Herzegovina on the same date (in accordance with paragraph 1 of Article 3a of the Law on Cessation). In the opinion of the Chamber, these reasons do not provide for a reasonable justification for deprivation of the applicants of their

pre-war apartments. Therefore, the Chamber found a violation by the Federation of their right to respect for home as guaranteed by Article 8 of the Convention and the right to the peaceful enjoyment of possessions as guaranteed by Article 1 of Protocol No. 1 to the Convention. Moreover, the Chamber found that the Federation discriminated against the applicants M.P. and Brdar due to their status as former service members of the then JNA who did not join or, in regard to the applicant Brdar, who left prior to the cessation of the 1992-1995 armed conflict the RBiH Army (Bosniak-dominated armed forces) or HVO (Croat-dominated armed forces).

The Federation refused to reinstate the applicant Štrbac because her husband remained in the armed forces of Serbia and Montenegro after 14 December 1995 (in accordance with paragraph 2 of Article 3a of the Law on Cessation). In the opinion of the Chamber, that decision was justified. Therefore, the Chamber did not find a violation by the Federation of her right to respect for home as guaranteed by Article 8 of the Convention and the right to the peaceful enjoyment of possessions as guaranteed by Article 1 of Protocol No. 1 to the Convention, nor did the Chamber find that the Federation discriminated against the applicant Štrbac.

### **Remedies**

The Federation was ordered to ensure that the applicants M.P. and Brdar are reinstated into their pre-war apartments without further delay and no later than 4 June 2003. Furthermore, the Federation was ordered to pay to the applicant Brdar 5,000 KM, by way of compensation for non-pecuniary damages, no later than 4 June 2003.

## **CH/02/8961 Mustafa AIT IDIR v. Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina**

### ***Factual background***

The applicant in this case was part of the so-called "Algerian Group". The case therefore is based on similar factual background as the cases CH/02/8679 *et al.*, *Boudellaa et al.*, decided in the decision on admissibility and merits of 11 October 2002.

The applicant obtained citizenship of Bosnia and Herzegovina and of the Federation of Bosnia and Herzegovina sometime in 1995. In October 2001 he and a group of co-suspects, the so called "Algerian Group", were arrested and taken into custody on the suspicion of having planned a terrorist attack on the Embassies of the United States and the United Kingdom in Sarajevo. In November 2001 the Federal Ministry of Interior issued a decision revoking the applicant's citizenship of Bosnia and Herzegovina and of the Federation of Bosnia and Herzegovina. The applicant initiated an administrative dispute against the revocation of citizenship. On 17 January 2002 the applicant and the co-suspects were ordered to be released from pre-trial detention. However, instead of being released, they were immediately taken into the custody of the Federation Police, and then the following day they were handed over to the military forces of the United States of America based in Bosnia and Herzegovina as part of the NATO led Stabilisation Forces (.SFOR.). Subsequently, they were transferred to the U.S. military detention facility at Guantanamo Bay, Cuba. On 19 December 2002 the Supreme Court of the Federation of Bosnia and Herzegovina annulled the decision on revocation of citizenship.

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

The expulsion of the applicant raises issues under Article 1 of Protocol No. 7 to the European Convention on Human Rights, which provides for procedural safeguards in relation to the expulsion of aliens. In case that the applicant was still to be considered a citizen of Bosnia and Herzegovina the case raise issues under Article 3 of Protocol No. 4 to the Convention which prohibits the expulsion of nationals.

The case also raises issues under Article 5 of the Convention, the right to liberty and security of person, 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 US authorities and his detention in Guantanamo Bay, Cuba, might give rise to a violation of Article 3, the prohibition of torture or inhuman or degrading treatment, to a violation of Article 1 of Protocol No. 6 to the Convention which contains the abolition of the death penalty and to a violation of Article 6 of the Convention as the applicant claims that any trial that he may face by US authorities might not be a fair trial.

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

The Chamber found that in accordance with the decision of the Supreme Court of the Federation of Bosnia and Herzegovina of 19 December 2002, which annulled the decision on revocation of citizenship, the applicant never lost his citizenship of Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina. He must be considered a citizen of Bosnia and Herzegovina for the entire time period since he was granted that citizenship until to date. The expulsion of the applicant therefore violates Article 3 of Protocol No. 4 to the Convention, which prohibits any expulsion of nationals.

The Chamber has also found that both respondent Parties violated the rights of the applicant protected by Article 5 paragraph 1 of the Convention for the time period of pre-trial detention after the entry into force of the Supreme Court decision to release him on 17 January 2002 until and including his hand-over to US forces, as he was held in detention without any legal basis. In addition, the Chamber found a violation of Article 5, paragraph 1 of the Convention for the time period in which the applicant was in detention after his hand-over to the US forces until his forcible removal from the territory of Bosnia and Herzegovina as the respondent Parties were obliged to protect the applicant from any unlawful detention as long as he was still on their territory.

Next the Chamber examined the obligations of the respondent Parties in handing over the applicant to US forces, which lead to his present detention at Camp X-Ray in Guantanamo Bay, Cuba. Taking into consideration that it remains possible that US authorities may seek and potentially impose the death penalty against the applicant, the Chamber has found that the respondent Parties should have sought assurances from the United States prior to handing over the applicant to US forces that the death penalty would not be imposed upon him; failing to do so constitutes a violation of Article 1 of Protocol No. 6 to the Convention. On the other hand, the Chamber has concluded that the respondent Parties did not violate their obligation under Article 3 of the Convention to protect the applicant from torture or inhuman or degrading treatment or punishment by handing him over to US forces.

### ***Remedies***

The Chamber ordered the Federation to take all necessary steps to annul the decisions on refusal of entry to the applicant of 10 January 2002.

The Chamber further ordered Bosnia and Herzegovina to use diplomatic channels in order to protect the internationally recognised human rights of the applicant and, in particular, his right to liberty and security of person and his right not to be subject to inhuman and degrading treatment and to take all possible steps to establish contacts with the applicant and to provide him with consular support. Bosnia and Herzegovina is further ordered to seek assurances from the United States via diplomatic contacts that the applicant will not be subjected to the death penalty. In addition, Bosnia and Herzegovina was ordered to take all possible steps to obtain the release of the applicant and his return to Bosnia and Herzegovina. The respondent Parties are also ordered to retain a lawyer in order to protect the applicant's rights while in US custody and in case of a possible trial. The respondent Parties will each bear half the cost of the attorney fees and expenses of such a lawyer.

The Chamber further ordered the respondent Parties to compensate the applicant in the amount of 15,000 KM for his suffering arising from the violations found. The respondent Parties shall pay this compensation to the applicant's family in Bosnia and Herzegovina if he does not return until 31 August 2003.

**CH/02/9499 Belkasem BENSAYAH v. Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina**

***Factual background***

The case is based on the similar factual background as the cases CH/02/8679 *et al.*, *Boudellaa et al.*, decided in the decision on admissibility and merits of 11 October 2002 and as the case *Mustafa Ait Idir*, CH/02/8961 above.

However, in addition to the facts as summarized for the case *Mustafa Ait Idir*, CH/02/8961 above, also the applicant's apartment was searched on 8 October 2001 and the applicant was already taken into pre-trial custody in Zenica the same day for the suspicion of having certified untrue matters. Only later, on 16 October 2001, he was transferred to the prison in Sarajevo where he was held for the suspicion of being involved in terrorist activities together with the other members of the "Algerian group". The applicant did not initiate an administrative dispute against the revocation of his citizenship.

***Alleged violations of human rights***

The case raises the same alleged violations of human rights as the case *Mustafa Ait Idir*, CH/02/8961 above.

In addition, the search of the applicants apartment on 8 October 2001 could give rise to a violation of the applicant's right to respect for his home of Article 8 of the Convention and the applicant also complained that he was not properly informed of the reasons for his detention in violation of Article 5, paragraph 2 of the Convention.

***Findings of the Chamber***

As in its decision of 11 October 2002, case no. CH/02/8679 *Boudellaa et al.*, the Chamber has found with respect to the expulsion of the applicant that both respondent Parties failed to act in accordance with the domestic laws of Bosnia and Herzegovina and of the Federation of Bosnia and Herzegovina governing the expulsion of aliens. Although the Chamber did not decide whether the applicant was still a citizen of Bosnia and Herzegovina at the time of his expulsion, it found that by not acting in accordance with the law both respondent Parties violated Article 1 of Protocol No. 7 to the Convention which provides for procedural safeguards in relation to the expulsion of aliens.

The Chamber found no violation of the right to respect for home with respect to the search of the applicant's apartment on 8 October 2001.

The Chamber has also found that both respondent Parties violated the rights of the applicant protected by Article 5 paragraph 1 of the Convention for the time period of pre-trial detention after the entry into force of the Zenica Municipal Court's decision to release the applicant on 16 January 2002 until and including his hand-over to US forces, as he was held in detention without any legal basis. In addition, the Chamber found a violation of Article 5, paragraph 1 of the Convention for the time period in which the applicant was in detention after his hand-over to the US forces until his forcible removal from the territory of Bosnia and Herzegovina as the respondent Parties were obliged to protect the applicant from any unlawful detention as long as he was still on their territory. The Chamber did not find it necessary to make a separate finding with regard to the right to be informed promptly of the reasons of detention as protected under Article 5, paragraph 2 of the Convention.

Next the Chamber examined the obligations of the respondent Parties in handing over the applicant to US forces, which lead to his present detention at Camp X-Ray in Guantanamo Bay, Cuba. Taking into consideration that it remains possible that US authorities may seek and potentially impose the death penalty against the applicant, the Chamber has found that the respondent Parties should have sought assurances from the United States prior to handing over the applicant to US forces that the death penalty would not be imposed upon him; failing to do so constitutes a violation of Article 1 of Protocol No. 6 to the Convention. On the other hand, the Chamber has concluded that the respondent Parties did not violate their obligation under Article 3 of the Convention to protect the applicant from torture or inhuman or degrading treatment or punishment by handing him over to US forces.

**Remedies**

The Chamber ordered the Federation to take all necessary steps to annul the decisions on refusal of entry to the applicant of 10 January 2002.

The Chamber further ordered Bosnia and Herzegovina to use diplomatic channels in order to protect the internationally recognised human rights of the applicant and, in particular, his right to liberty and security of person and his right not to be subject to inhuman and degrading treatment and to take all possible steps to establish contacts with the applicant. Bosnia and Herzegovina is further ordered to seek assurances from the United States via diplomatic contacts that the applicant will not be subjected to the death penalty. The respondent Parties are also ordered to retain a lawyer in order to protect the applicant's rights while in US custody and in case of a possible trial. The respondent Parties will each bear half the cost of the attorney fees and expenses of such a lawyer.

The Chamber further ordered the respondent Parties to compensate the applicant in the amount of 10,000 KM for his suffering arising from the violations found. The respondent Parties shall pay this compensation to the applicant's family in Bosnia and Herzegovina if he does not return until 31 August 2003.

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**CH/01/7728 V.J. v. the Federation of Bosnia and Herzegovina****Factual background**

The case concerns the eviction of the applicant from an apartment in Sarajevo. The applicant claims that she was the (co-)holder of the occupancy right already before the armed conflict in Bosnia and Herzegovina, that she was recognised as the occupancy right holder again in 1996 and that she purchased the apartment in 1999, subsequently registering herself as the owner in the court register. However, in June 1998 another person claiming to be the pre-war occupancy right holder of the same apartment, S.M., applied for recognition of this status to the Commission for Real Property Claims of Displaced Persons and Refugees ("CRPC"). The CRPC issued a decision recognising S.M.'s claim in June 2000. In December 2000 S.M. requested the competent housing administration to enforce the CRPC decision and put him back into possession of the apartment. In March 2001 the applicant was ordered to vacate the apartment, which – after exhaustion of domestic appeals and requests for reconsideration of its decision to CRPC - she finally did in February 2002.

**Alleged violations of human rights**

The applicant claims that the Federation of Bosnia and Herzegovina has violated her right to respect for her home under Article 8 of the European Convention on Human Rights and her right to peaceful enjoyment of possessions under Article 1 of Protocol No. 1 to the Convention. She also claims that she was denied a fair hearing in the administrative procedure and that the CRPC decision is "unlawful". The Organisation for Security and Co-operation in Europe ("OSCE"), which was invited by the Chamber to submit an *amicus curiae* brief, has submitted that the CRPC procedure and the fact that it the CRPC decision cannot be reviewed by domestic courts, violate the applicants right to a fair trial under Article 6 of the Convention. OSCE submits that the Federation is responsible for the failure. CRPC, which was also invited by the Chamber to submit an *amicus curiae* brief, has argued that the Chamber is not competent to review CRPC decisions and the fairness of CRPC proceedings.

**Findings of the Chamber**

The Chamber has decided that it was neither competent to review the contents of the CRPC decision, nor the fairness of the procedure that resulted in the issuing of the CRPC decision. However, this does not prevent the Chamber from examining whether the enforcement of the CRPC decision and the order to the applicant to vacate the apartment constituted a violation of her human rights.

Regarding the applicant's right to respect for her home, the Chamber has noted that the law did not provide the applicant any remedy that would have a suspensive effect. However, the Chamber has found that this lack of procedural safeguards was justified by the pressing need to expeditiously allow pre-war inhabitants to repossess their apartments.

Regarding the applicant's right to property, the Chamber observed that the Federation recognised that the applicant, having purchased the apartment from the Sarajevo Housing Fund, was the owner. However, the Chamber agreed with the Federation that the applicant had, whether she knew it or not, purchased an apartment burdened by an occupancy right. Therefore, the eviction of the applicant and the reinstatement of the pre-war occupancy right holder were justified.

To sum up, the Chamber found no violations of the Human Rights Agreement in this case.

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## **CH/98/1251 Smail SOFTIĆ v. Republika Srpska**

### ***Factual background***

The case concerns the applicant's attempts to regain possession of his property before administrative and judicial authorities of the Republika Srpska. With this aim, the applicant applied to the Ministry for Refugees and Displaced Persons in Gradiška under the Law on the Use of Abandoned Property, which entered into force in February 1996 and under the Law on Cessation of the Application of the Law on the Use of Abandoned Property, which entered into force in December 1998. The applicant also initiated proceedings before the Court of First Instance in Gradiška in 1998. On 17 May 2000 and again on 29 June 2001, the respondent Party informed the Chamber that the applicant had been reinstated into possession of his real property in October 1999. However, the applicant disputed this information, and the respondent Party later explained that it had received incorrect information from the Ministry. Finally, on 18 November 2002, the applicant was in fact reinstated into possession of his real property.

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

The case raises issues principally under Article 6 (right to a fair hearing) and Article 8 (right to home) of the European Convention on Human Rights and under Article 1 of Protocol No. 1 to the Convention (peaceful enjoyment of possessions).

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

In its decision, the Chamber found that the respondent Party violated the applicant's right to respect for his home, as guaranteed by Article 8 of the Convention, because, although the competent Ministry issued a procedural decision allowing the applicant to repossess his pre-war property, it failed, for a long period of time, to enforce that decision and to in fact reinstated the applicant into possession of all his property. For similar reasons, the Chamber also found a violation of the applicant's right to peaceful enjoyment of his possessions, as guaranteed by Article 1 of Protocol No. 1 to the Convention. Further, noting that the conduct of the competent authorities unnecessarily prolonged the proceedings leading up to the applicant's reinstatement more than four years after he first requested repossession, the Chamber found that the respondent Party violated the applicant's right, as protected under Article 6 paragraph 1 of the Convention, to a fair hearing within a reasonable time.

### ***Remedies***

Taking into consideration the established violations of the applicant's human rights, the Chamber considered it appropriate to award a sum to the applicant in recognition of the sense of injustice he has suffered as a result of his inability to regain possession of his property within a reasonable time. The Chamber therefore ordered the respondent Party to pay to the applicant the sum of 1,800 KM as compensation for non-pecuniary damage. Further, the Chamber considered that the sum of 100 KM is appropriate to compensate for the loss of use of the property for each month he did not use it. The Chamber considered it appropriate that this sum should be payable starting two months after the end of the month in which he lodged his first application to the Ministry to regain possession of his property under the old Law, *i.e.* 1 November 1998, until the date he regained possession of his property on 18 November 2002, in the total amount of 4,900 KM.

**Partial decision on admissibility and merits:****CH/99/2239 Jadranka CIPOT-STOJANOVIĆ v. the Federation of Bosnia and Herzegovina*****Factual background***

The applicant, a citizen of Bosnia and Herzegovina of Croat origin, was working in the tobacco factory "Fabrika duhana" in Sarajevo ("FDS") as from 1984. During the conflict, the applicant found herself unable to come to work because the factory was situated on the other side of the front-line. After the end of the armed conflict she attempted to return to work. She sought legal redress to regain her position. After several court decisions her proceedings were suspended and her case was referred to the Cantonal Commission for Implementation of Article 143 of the Labour Law. Her case is currently registered and pending before the Cantonal Commission.

On 9 June 2000 the Chamber delivered a partial decision in this case finding a violation of Article 6 of the European Convention on Human Rights with regard to the, already then, unreasonable length of proceedings, and suspending consideration of the remainder of the application.

***Alleged violations of human rights***

The applicant alleges that she was discriminated against in her right to work on the ground of her ethnic origin. The applicant further complains that her rights under Articles 6 and 13 of the Convention have been violated due to the length of the proceedings and because no final decision has been taken yet.

The remainder of the case raises issues in regard to discrimination in the enjoyment of the right to work and related rights as guaranteed by Articles 6 and 7 of the International Covenant on Economic, Social and Cultural Rights ("ICESCR").

***Findings of the Chamber***

The Chamber noted that the applicant left the country less than a month after the outbreak of the conflict. From the point of view of FDS, the termination could have been justified by economic reasons, especially in a situation of war where the production of goods is limited. The decision to terminate the applicant's employment could be seen to have an objective justification. On the other hand, it was delivered to the applicant only in 1996, when such justification had arguably ceased to exist.

Having in mind that 5 employees of different origin were reinstated into their position after the conflict, the Chamber found that the Federation has demonstrated that the difference in treatment between the applicant and other employees was not motivated by her Croat origin. Therefore the difference of treatment was not discriminatory within the meaning of Article II(2)(b) of the Agreement. The Chamber concluded that the applicant has not been discriminated against in the enjoyment of her right to work, and to just and favourable conditions of work, as defined in Articles 6 and 7 of the ICESCR.