Human Rights Chamber Decisions – Status of Compliance

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Summary:

- JNA apartment cases – Legislative changes have been published in the Official Gazette. Galic reinstated, but Panic has not yet been reinstated.
- Compensation – Federation has paid 6 of 8 of large awards (Damjanovic, Hermas, Rizvanovic on 5 May 1999), Cegar (30 June 1999), Marceta (30 June 1999), Bulatovic (30 June 1999)). In Galic and D.M., the Agent is trying to obtain payment through local authorities rather than the Federation, but the Federation will pay if there is nothing forthcoming from the Cantons. In the RS, payment has been made in 0 of 3 cases, but the RS passed a government resolution to pay on 21 July. Payment is now with the Finance Ministry.
- Abandoned apartment cases – Federation has reinstated Kevesevic, but not Erakovic, Onic, D.M., or Matic. The Sarajevo Minister responsible has written that compliance will be achieved shortly in Sarajevo. DM now has a Court decision ordering reinstatement.
- Death penalty cases – Law changed in Federation, and sentences commuted now to 20 years, from 40 previously (Damjanovic, Rizvanovic and Herak).
- Employment discrimination – Zahirovic (Livno Bus Company case) has been reinstated in his former position. The compensation award has not yet been paid.
- Disappearance – RS has no information on Matanovic. IPTF has agreed to monitor an investigation carried out by RS authorities.
- Religion – Discussions have been held on this issue (e.g. OHR with BL authorities), with some progress. The Prime Minister of the RS has stated that fences or shrubbery will be allowed to be erected around the sites, and that permits will be granted for the building of the mosques (although not Ferhadija in the immediate future), and the Islamic Community will be permitted to register in the RS. Compliance has not yet been achieved.
- Evictions and threatened evictions – RS authorities have written that three of the four applicants would not be evicted, with more information to follow on the fourth. Legislation aimed at eliminating future violations is being drafted.

A. Federation of Bosnia and Herzegovina [and the State of Bosnia and Herzegovina]

1. **JNA Apartment Cases**

   In late 1991 and early 1992, the Socialist Federal Republic of Yugoslavia began privatising 'military' JNA apartments. Under the Law on Security Housing for the Yugoslav National Army[(1)], the holder of an occupancy right residing in an apartment of the JNA Housing Fund could purchase that apartment.

   On 15 February 1992, the Socialist Republic of Bosnia and Herzegovina issued a Decree imposing a one-year prohibition on the future sale of socially owned property, including JNA apartments[(2)]. On 15 June 1992, the Republic of Bosnia and Herzegovina transferred ownership of JNA resources, including JNA apartments, from the Federal Republic of Yugoslavia to the Republic of Bosnia and Herzegovina. [(3)] A Decree with force of law in 1994 required that contracts for the sale of socially-owned housing be verified by a competent court, [(4)] and on 3 February 1995, a further decree required that courts and other state authorities adjourn proceedings relating to the purchase of JNA apartments. [(5)]

   After the entry into force of the Dayton Peace Agreement, the Presidency of the Republic of Bosnia and

Herzegovina issued a Decree on 22 December 1995 which rendered invalid all previously formed contracts for the purchase of JNA apartments. This Decree became a law on 18 January 1996. [6]

To early August, 1999, over 900 applicants had introduced applications to the Human Rights Chamber which involve JNA purchase contracts. Many of these persons reside in the JNA apartment, but have not been able to register the purchase of the apartments with courts.

The Human Rights Chamber, in its first decision (and in all of its decisions) [7] on the matter, held that the retroactive annulment of the purchase contracts was an unproportional interference with the contractual "possession" right held by the applicants. It therefore found a violation of Article 1 of the First Protocol to the European Convention on Human Rights, and found a violation of Article 6 of the Convention in that due to the compulsory court adjournment of all JNA contract cases, the applicants were not able to have their civil claims determined in a reasonable time. The Chamber therefore ordered the respondents (usually the Federation of Bosnia and Herzegovina and Bosnia and Herzegovina, although occasionally the Federation alone) to:

- take all necessary steps by way of legislative or administrative action to render ineffective the annulment of the applicants' contracts imposed by the Decree of 22 December 1995 and
- lift the compulsory adjournment of the court proceedings instituted by the applicants and to take all necessary steps to secure the applicants' right of access to court

In two cases decided by the Chamber, the applicant was not resident in the JNA apartment, because the apartment was declared abandoned during or after the war, and because his or her occupancy right was cancelled. In these cases, there is another individual or individuals residing in the apartment. In other cases, the applicant is resident, but has been threatened with eviction. In such cases, the Chamber also issued the following orders:

- to take all necessary steps by way of legislative or administrative action to allow the applicant to take appropriate steps to have himself registered as the owner of [the apartment]. [8]
- to revoke the decision ordering eviction and to not evict the applicant from the apartment. [9]
- to take all necessary steps to process the applicant's repossession claim in substance without delay, with a view to its being granted and the decision swiftly enforced. [10]

The Federation passed property legislation in late 1997 [11] and early 1998 [12] which permitted persons holding JNA purchase contracts over non-abandoned apartments to purchase and register their ownership of the apartment under a new scheme, which would take into account the amount paid in 1991 and 1992. However, the Chamber rejected Federation arguments that the new scheme had cured the previously-held violation. [13]

In addition, relatively small compensation awards have been granted to the applicants, to cover legal and associated costs. [14] To date, these have not been paid, although the Agent is currently undertaking a payment mechanism.

Of particular note is the case of Galic v. FBH (12 June 1998, 97/40) because the applicant was forcibly evicted from his JNA apartment, which he had contracted to purchase in 1992. Unlike other JNA apartment purchase contract holders for which Chamber decisions have been issued, he had not yet regained possession of the apartment, from which he and his father were forcibly evicted (and his father assaulted) in 1997 by soldiers and Military Police of the Army of the Federation.

Steps taken toward compliance:

Legislative amendments implementing the orders of the Chamber are now in force in the Federation. While these amendments do not resolve all potential legal issues surrounding military apartments, it is hoped that most decided Chamber cases will now be able to be

resolved. The Agent of the Federation and the OHR will continue to follow the application of the legislative amendments, and determine whether they are being applied in the individual cases before the Chamber.

The legislative amendments allow those persons who had a legally binding (signed and dated) purchase contract prior to 6 April 1992 to register their ownership right in the property books. Those persons who had not paid the entire amount will be required to pay outstanding amounts prior to registration. A limited class of persons (essentially those who stayed in the service of a foreign army after the constitution of the armies of the Federation and the RS) will be excluded from the right to return to their apartments, and will instead be fully compensated for the amount already paid toward their apartment.

In addition, Mr. Galic (CH/97/40) was reinstated into his apartment on 24 June 1999, one year after the delivery of the decision of the Human Rights Chamber. The Federation has indicated that it will pay all outstanding amounts due to Mr. Galic, with 24 June being used as the date for the calculation of default interest and the amount owing for non-possession of the apartment. However, the applicant in the Panic case has not yet been reinstated.

Note, however, a recent case of the Chamber on a related topic, whose deadline (8 Jan 2000) has not yet expired:

CH/97/70, Cazim LACEVIC v. THE FEDERATION OF BOSNIA AND HERZEGOVINA

Facts

The decision concerns an applicant who exchanged his house in Herceg Novi (Montenegro) for a Yugoslav National Army ("JNA") apartment in Sarajevo which had been purchased by another person from the Army Housing Fund in December 1991. In January 1992 the applicant concluded the exchange contract with the other person and shortly afterwards the other person moved into the house in Herceg Novi and the applicant's daughter's family moved into the apartment in Sarajevo. The applicant also moved to the apartment in September 1992. Neither the other person nor the applicant had their respective ownership recognized or entered into the Land Register. In September 1992 the apartment in Sarajevo was declared abandoned. The applicant and his family were threatened by the Army Housing Fund with eviction throughout and after the war, until the beginning of 1998.

Alleged violations :

The applicant alleges a violation of his right to peaceful enjoyment of his apartment which he considers to be his property. The case raises issues under Article 1 of Protocol No. 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms which guarantees the right to peaceful enjoyment of one's possessions.

Findings of the Chamber

The Chamber finds that the apartment in question was a possession of the applicant and that the conduct of the authorities violated his right to peaceful enjoyment of his possession. Therefore, the Chamber finds the respondent Parties Bosnia and Herzegovina and the Federation in violation of Article 1 of Protocol No. 1 to the European Convention, thus breaching their obligations under Article 1 of the Human Rights Agreement as set out in Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina.

Bosnia and Herzegovina is in violation of Article 1 of Protocol No. 1 to the European Convention because of non-recognition of the applicant's right to the apartment based primarily on the legislation passed by the authorities of Bosnia and Herzegovina. The Federation is in violation of the above-mentioned Article because of the Federation authorities' attempts to evict the applicant and his family from the apartment.

The Chamber orders the Federation to refrain from any act threatening the applicant and his family with eviction from the apartment in question. The Chamber further orders the Federation, in recognition of the purchase contract of 6 December 1991 and the exchange contract of 15 January 1992, to permit the applicant to validly apply for registration as owner of the apartment in question in accordance with the

applicable law. The Federation must report to the Chamber on the steps taken to comply with its decision by 8 January 2000.

2. Compensation awards

The Chamber issued the following compensation awards:

a. Cegar v. FBH (6 April 1998 – 96/21)

In Cegar, the applicant, a resident of the Republika Srpska, was arrested in 1996 in Livno by Bosnian Croat police officers for the apparent purpose of exchanging him against prisoners held in the Republika Srpska. He was held for one and a half months, suffered physically, and had items taken from him, some of which were never returned.

The Chamber found that there had been an illegal arrest and an illegal interference with the applicant's property, and therefore found a violation of both article 5 of the European Convention on Human Rights, and a violation of article 1 of the First Protocol thereto.

The Chamber ordered the Respondent party to pay a total of DM 8.500 plus interest at an annual rate of 4%. This sum included DM 3.500 for the items seized and not returned to him (agricultural tools, car tires, cassette player, etc.), and DM 5.000 for non-pecuniary damages, including physical and mental suffering.

Steps taken towards compliance

Compliance (compensation payment) was achieved on 30 June 1999.

b. Marceta v. FBH (3 October 1998 – 97/41) [(15)]

In Marceta, the applicant, a Bosnian Serb formerly resident in Sanski Most, returned to visit his former home and local cemetery on 22 October 1996, and was arrested and charged with war crimes. Ten months later, following numerous legal proceedings, he was eventually released after the ICTY Prosecutor's office decided that there was not enough evidence to proceed with the case. The Ombudsperson referred the case to the Chamber noting that there had been a violation of the Rome Agreement known as the "Rules of the Road", which requires authorities wishing to make a war crimes related arrest to seek approval of the ICTY Prosecutor before doing so.

At the hearing, the Respondent agent admitted that there had indeed been a violation of article 5 of the ECHR, in that the "Rules of the Road" were not respected, given that the "Rules of the Road" form part of the domestic law of Bosnia and Herzegovina. The Chamber also found violations of the International Covenant on Civil and Political Rights – article 9 (arbitrary arrest), article 12 (freedom of movement) and article 26 (equal protection under the law – discrimination).

The Chamber awarded DM 30.000 in respect of all damage suffered, including extreme length of the detention, which was illegal from the beginning, and the discrimination suffered. In a subsequent decision, the Chamber also awarded to the applicant KM 1.710 for legal costs, for a total of KM 31.710.

Steps taken towards compliance

Compliance (including the compensation payment) was achieved on 30 June 1999.

c. Rizvanovic v. FBH (12 June 1998 – 97/59)

In August 1993, the applicant was sentenced to death for murder, under article 36(2)(6) of the Criminal Law of the Republic of Bosnia and Herzegovina. Various post-1995 requests for mitigation and reduction of sentences were refused. The Chamber found a violation of article 2 of Protocol number 6 to the Convention, because in order for the death penalty to be permissible, the acts complained of must have been carried out in a time of war or imminent threat of war. Because the Criminal Law was applicable to acts not committed in war, there was a violation of article 2 of the

Sixth Protocol (citing Damjanovic, for which there has been compliance).

The Chamber ordered the respondent not to execute the death penalty against him, to lift the death penalty without delay and to pay the applicant DEM 3,000 by way of compensation for non-pecuniary injury (plus 4% annual interest).

Steps taken towards compliance

Compliance (compensation payment) was achieved on May 5, 1999.

d. Galic v. FBH (12 June 1998 – 97/40)

While Galic is a JNA apartment case and is mentioned above, it is the only such JNA case to date in which a substantial compensation award was issued. The Chamber awarded KM 4,132 for his inability to use his apartment during the operative period of time, plus KM 16.50 for each day from the date of delivery until the applicant regains possession of the apartment, plus 4% annual interest.

Steps taken towards compliance

As stated above, the applicant has regained the apartment, and the Agent of the Federation has indicated her intention to ensure that the applicant receives all monies outstanding.

e. Bulatovic v. FBH (29 July 1998 – 96/22)

In this JNA case, the Chamber awarded the applicant 1500KM (plus 4% annual interest) for harassment he suffered at the hands of the authorities of the Federation, who were attempting to evict him from his apartment.

Steps taken towards compliance

Compliance (compensation payment) was achieved on 30 June 1999.

f. Kevesevic v. FBH (CH/97/46) Compensation award on 15 May 1999, but not distributed until August 1999.

The Chamber awarded the applicant 4250 KM in compensation for non-pecuniary, pecuniary expenses associated with her claim (see below for details), plus 4% annual interest. Deadline for payment is November 1999.

Steps taken towards compliance

No compliance yet (deadline in November 1999).

3. **Abandoned civilian apartment cases**

a. Erakovic v. FBH (15 January 1999 – 97/42)

The applicant held an occupancy right over an apartment in Sarajevo. In 1995 he left Sarajevo to obtain medical treatment. While away, his apartment was declared abandoned. On 28 July 1998, the Cantonal Administration for Housing Affairs, acting under the 1998 Law on the Cessation of the Application of the Law on Abandoned Apartments, confirmed his occupancy right and entitled him to reclaim his apartment. He has not been able to obtain a final decision on his claim for repossession.

The Chamber found that the November 1996 decision to declare his apartment permanently abandoned was a violation of Article 8 of the ECHR and article 1 of the First Protocol, because the declaration was not “according to the law”, and because of the failure to reinstate the applicant within the time granted by the law.

The Chamber ordered the respondent party to take all necessary steps to process the applicant’s repossession claim in substance without further delay, with a view to its being granted and the

decision swiftly enforced.

Steps taken towards compliance

The Minister for Housing in Sarajevo, has written that the applicant would be reinstated before 15 October 1999. No report has been received subsequent to this, however.

b. Onic v. FBH (12 February 1999 – 97/58)

The applicant held an occupancy right over an apartment in Sarajevo. She moved to another apartment in 1992, due to the hostilities. Her apartment was declared abandoned in 1993. On 4 July 1998, the Cantonal Administration for Housing Affairs confirmed the applicant's occupancy right pursuant to the 1998 Law on the Cessation of the Application of the Law on Abandoned Apartments, which required the current occupant to vacate the apartment within 90 days. The applicant has not yet been able to gain possession of the apartment. The authorities told her that there was no alternative accommodation for the current occupant, and therefore that occupant could not be evicted.

The Chamber found a violation of article 8 of the ECHR and article 1 of the First Protocol thereto given the failure to enforce the decision of 4 July 1998 effectively entitling her to return to that dwelling.

The Chamber ordered the respondent party to take all necessary steps to enable the applicant to return swiftly to her apartment.

Steps taken towards compliance

The Minister for Housing in Sarajevo, has written that the applicant would be reinstated before 15 October 1999. No report has been received subsequent to this, however.

c. D.M. v. FBH (14 May 1999, CH/98/756)

In 1997 the applicant, a citizen of Bosnia and Herzegovina of Bosniak origin, initiated proceedings before the Municipal Court and municipal authorities in Livno, Canton 10, seeking to regain possession of her house. She claimed she was forced out of it by persons of Croat origin in 1993, and thereafter lived abroad before returning in January 1998. The applicant complained that due to her ethnic origin she was denied her right to a fair hearing before an independent and impartial tribunal, her right to equality before the law, her right to respect for her home, her right to an effective remedy and her right to the peaceful enjoyment of property.

On 24 September 1997 the applicant applied to the Department of Urbanism, Building and Housing Affairs of the Municipality of Livno for the return of her house pursuant to Article 25 of the Law on Temporarily Abandoned Real Property Owned By Citizens. She did not receive any response. On 15 October 1997 the applicant initiated civil proceedings before the Municipal Court in Livno against B.J., seeking to regain physical possession of her house and the eviction of the temporary occupants. The applicant's action was registered on the same day. There were no subsequent developments in these proceedings to date. On 18 May 1998 the applicant petitioned the Department of Geodetic and Legal Affairs of the Municipality of Livno, reclaiming her property "as soon as possible" on the basis of Article 12 of the 1998 Law on the Cessation of the Law on Temporarily Abandoned Real Property Owned By Citizens ("the 1998 Law"). There was no response. On 18 May 1998 the applicant also submitted an application to the Commission for Real Property Claims of Displaced Persons and Refugees (established by Annex 7 to the General Framework Agreement; henceforth "the Annex 7 Commission"). On 2 November 1998 the applicant complained about "the silence of the administration" to the Cantonal Ministry of Justice and Administration. There was no response.

The Chamber concluded that the case concerned a failure by the authorities to protect the applicant against a continuing unlawful occupation of her possessions within the meaning of the first sentence of the first paragraph of Article 1 of protocol No. 1. The Chamber found, for essentially the same reasons as it gave in relation to Article 8 of the Convention, that this failure of the authorities to assist the applicant in recovering her property also amounted to a breach of her rights under Article 1 of

Protocol No. 1 in isolation.

The Chamber ordered the respondent party to take immediate steps to reinstate the applicant into her house, to pay 4000 KM by way of compensation for non-pecuniary damage, to pay KM 10 for each day from the date of delivery of the present decision until she is reinstated into her house, and that interest at 4% be paid after the expiry of the three-month period.

Status of compliance

No compliance. The Agent has written to the authorities in Livno, requesting them to pay the compensation award and to reinstate the applicant. The OHR, together with the OSCE will be examining steps to be taken in order to obtain compliance. The court before which proceedings were pending has issued an order that the applicant be reinstated into her house. She has not yet been reinstated.

d. Matic v. FBH (11 June 1999, CH/97/93)

The applicant is a citizen of BiH of Serb decent. She was forced from her apartment in Sarajevo in April 1992 by soldiers of the RBiH. In March 1995, the apartment was declared abandoned and allocated to B.H. The applicant has not been able to be reinstated into her apartment. On 19 November 1998 the Cantonal Ministry for Urban Planning and Housing Affairs annulled a previous decision and returned it to the Cantonal Administration for Housing Affairs for reconsideration. In addition, a claim for repossession of her effects in the apartment at the time she left, has been heard by the first instance court, then on appeal was referred back to the first instance court, where the matter had not been resolved.

The Chamber found violations of article 6(1) length of civil proceedings regarding the length of civil proceedings relating to her movable property and article 1 of the first protocol (property rights), and article 8 (respect for home) in respect of her inability to return to her apartment.

The Chamber ordered the respondent party to take all necessary steps to process the applicant's repossession claim without further delay, and to enable the applicant to return swiftly to her apartment.

Status of Compliance

No compliance yet. The Minister for Housing in Sarajevo, has written that the applicant would be reinstated before 15 October 1999. No report has been received subsequent to this, however.

e. Stanivuk v. FBH (11 June 1999, CH/97/51)

In June 1999, the applicant (of Serb descent) obtained permission to operate a barber shop in Sarajevo. During the war, the applicant was not able to enter the shop. In 1994, it was allocated to a woman of Bosniak descent. Attempts to have the current occupant evicted have not succeeded.

The Chamber found violations of article 6(1) (impartial tribunal), 6(1) (length of civil proceedings), and the right to property (article 1 of the First Protocol). The Chamber ordered the respondent party to take all necessary steps to reinstate the applicant into her business premises, and to pay compensation for income lost during the war (KM 7,500) plus 250KM for each month that she has not been reinstated plus 1000 KM legal expenses and interest at 4%.

Status of Compliance – The Agent requested a review of the proceedings, which has since been rejected.

4. **Employment discrimination:**

a. Sakib Zahirovic vs. BiH and Federation of BiH, Case No. CH/97/67

The applicant was an employee of the Livno Bus Company, for approximately 30 years. On 21 July 1993, the applicant and 51 other employees of Bosniak origin were sent home and put on a 'waiting

list'. Instead of their salaries they received compensation. The company continued to pay contributions based on this amount to the pension and social security fund until January 1994. In the meantime about 40 persons of Croat origin joined the company to fill in for the employees on the waiting list. In April 1996, the Livno-Bus Company concluded formal employment contracts with these persons. The applicant and his Bosniak colleagues remained on the waiting list. The company stopped the payment of compensation in July 1997. The applicant together with other employees seek their reinstatement and compensation with the Governing Board of the Livno-Bus Company and the Municipal Court of Livno. In March 1998 the company offered the applicant work as a doorman or mechanic.

The Chamber found a violation of article 6 of the ECHR, and Articles 6 and 7 of the International Covenant on Economic, Social, and Cultural Rights, and ordered the following:

- to order the Federation to ensure through its authorities that the applicant is immediately offered the possibility of resuming his work as driver in the Livno-Bus Company without suffering any further discrimination;
- to order the Federation to undertake all necessary steps to ensure that the applicant's civil action against the Livno-Bus Company is examined by an independent and impartial judiciary;
- to order the Federation to pay to the applicant, within three months, 24,000 Konvertibilnih Maraka (KM) by way of compensation for non-pecuniary and pecuniary damage;
- to order the Federation to pay to the applicant, by way of further compensation for non-pecuniary damages, 15 KM for each day from the date of delivery of the present decision until the date of compliance with the order in conclusion no. 7. The cumulative amount of 15 KM per day will mature on the last day of each month from the date of delivery of the present decision until the date of compliance with the order in conclusion no. 7;
- to order the Federation to pay to the applicant, within three months, 160 KM by way of compensation for incurred expenses;
- that simple interest at an annual rate of 4 % will be payable over the sums awarded in conclusions nos. 9 and 11 or any unpaid portion thereof, from the day of expiry of the three-month period referred to in conclusions no. 9 and 11 and from the date of maturity at the end of each month referred to in conclusion no. 10, until the date of the settlement;
- to order the Federation to report to it by 8 October 1999 on the steps taken by it to comply with the above orders.

Status of Compliance – The applicant has been reinstated into his former employment, but the compensation award has not yet been paid.

Other cases in which compliance has been achieved

- The death penalty has been revoked in the Federation and death sentences have been commuted to 40 and 20 years in prison (Damjanovic v. FBH (8 October 1997, CH/96/30), Rizvanovic v. FBH (12 June 1998, CH/97/59), Herak v. FBH (12 June 1998, CH/96/69)
- Compensation awards have been made (Damjanovic v. FBH (8 October 1997, CH/96/30), Rizvanovic v. FBH (12 June 1998, CH/97/59), Hermas v. FBH (18 February 1998, CH97/45)
- An applicant has been reinstated into her apartment in Vares (Kevesevic v. FBH (10 September 1998, CH/97/46)

B. Respondent – Republika Srpska

1. **Disappearance Case**
    a. Matanovic v. RS (11 July 1997 – 96/1)

    The Chamber found that Father Matanovic and his parents were arrested in July 1995 in Banja Luka and were held continuously in detention within the territory of the Republika Srpska after their disappearance in September 1995. The Chamber rejected evidence put forward by the respondent that the applicants were released on 10 October 1995. The Chamber found that the persons responsible had connections with the police or military forces of the Republika Srpska.

    The Chamber found a violation of article 5 (arbitrary detention), and ordered the respondent party to take all necessary steps to ascertain the whereabouts or fate of the applicants and to secure their release if still alive.

    Prior to the Chamber hearing, the Republika Srpska established a Commission in which it concluded on 5 December 1996 that "the Matanovics were not arrested at all" and "the Catholic Priest Matanovic, probably with his parents, left the territory of RS in Teslic, on October 10, 1995".

    However, in a letter dated 5 November 1997 (but sent on 5 December 1997), the then President of the Republika Srpska wrote that:

    "The Ministry of the Interior has worked on this case since it was established on September 1, 1997. The result of the investigation conducted so far is the understanding that the Matanovic family, after the arrest, was taken by car in an unknown direction and killed, because later on there was no reliable evidence of them being alive. The Ministry of the Interior still works on the case in order to locate the graves, which will be difficult, because there are certain indications that the people who were directly involved are not alive. The investigation is made more difficult because the Ministry of the Interior in Banja Luka was established on September 1, and has problems in its work which are well known."

    Steps taken towards compliance

    The Agent of the RS has not been able to report when compliance would be achieved in this case. The international community is invited to raise this issue with RS authorities. The OHR has requested UNMIBH to monitor an investigation. UNMIBH has agreed and has taken steps to begin an investigation.

2. **Compensation awards**
    a. Blentic v. RS (22 July 1998 – 96/17)

    In Blentic, the applicant and his wife were forcibly evicted from their privately owned hose in Banja Luka. The applicant instituted proceedings before the Court of First Instance in Banja Luka which ordered the eviction of the illegal occupant. Several attempts were made to execute the Court's decision. It appeared that on each occasion a crowd assembled to obstruct the eviction and the police took no action.

    The Chamber found that the non-enforcement of the Court's decision and the failure of the Respondent to comply with its positive obligation under the Convention to secure the rights and freedoms guaranteed thereunder, was a breach of article 8 of the ECHR, article 1 of the First Protocol, and article 6 of the ECHR.

    The Chamber awarded the applicant KM 3.750 for pecuniary damages suffered as a result of rent he was required to pay in the interim while evicted from his house (KM 150 per month times 25 months), plus 4% annual interest.

    The Respondent party has complied with the initial order to reinstate the applicant in the apartment, but has not yet complied with the compensation order. The Respondent Agent has made

representations to the RS government to pay the amount ordered by the Chamber, most recently in a letter dated 1 March 1999, but the government has not yet complied with the compensation order of the Chamber.

Steps taken towards compliance

The OHR wrote a further letter to the RS Ministry of Justice on 14 April 1999, reminding the government of its obligation under the GFAP to comply with orders of the Human Rights Chamber, and pointing out that the RS was in non-compliance with this case. The RS government passed an order to pay the amount outstanding on 21 July. All required information is now with the Ministry of Finance.

b. Bejdic v. RS (22 July 1998 – 96/27)

In Bejdic, the applicant's son and his family were forcibly evicted in August 1995 from their apartment on the first floor of a house in Banja Luka owned by the applicant. The applicant instituted proceedings before the Court of First Instance in Banja Luka, which ordered the eviction of the illegal occupant. Several attempts were made to execute the Court's decision. These were unsuccessful because the police did not take any action to assist the Court officials. In September 1996, the apartment was allocated to the illegal occupant.

The Chamber found a violation of articles 8 and 6 of the ECHR and of article 1 of the First Protocol. The applicant regained possession of his apartment on 31 October 1997. The Chamber ordered the respondent party to pay compensation for 17 months of rent that the applicant was required to pay following the eviction (at a rate of 300 DEM per month), for a total of KM 5100 plus KM 250 for expenses (total = 5350), plus interest at 4% per year.

The Respondent Agent has made representations to the RS government to pay the amount ordered by the Chamber, most recently in a letter dated 1 March 1999, but the government has not yet complied with the compensation order of the Chamber.

Steps taken towards compliance

The OHR wrote a further letter to the RS Ministry of Justice on 14 April 1999, reminding the government of its obligation under the GFAP to comply with orders of the Human Rights Chamber, and pointing out that the RS was in non-compliance with this case. The RS government passed an order to pay the amount outstanding on 21 July. All required information is now with the Ministry of Finance.

c. M.J. v. RS (14 October 1998 – 96/28)

In M.J., the applicant and his family were forcibly evicted from their apartment in Banja Luka on 19 September 1995. On 12 October 1995, the applicant instituted proceedings before the Court of First Instance in Banja Luka against the illegal occupant for "disturbance of possession." On 19 December 1995, the Court issued a decision ordering the eviction of the illegal occupant. Several attempts were made to execute the decision but without success due to the failure of the police on each occasion to take any action to assist court officials.

On 30 May 1998 the applicant regained possession of his apartment.

The Chamber ordered the respondent to pay KM 4000 for rent that the applicant paid for alternative accommodation while out of his apartment, plus KM 250 for expenses (total = KM 4250) plus 4% annual interest.

Steps taken towards compliance

The Respondent Agent has made representations to the RS government to pay the amount ordered by the Chamber, most recently in a letter dated 1 March 1999, but the government has not yet complied with the compensation order of the Chamber.

The OHR wrote a further letter to the RS Ministry of Justice on 14 April 1999, reminding the government of its obligation under the GFAP to comply with orders of the Human Rights Chamber, and pointing out that the RS was in non-compliance with this case. The RS government passed an order to pay the amount outstanding on 21 July. All required information is now with the Ministry of Finance.

3. **Discrimination cases**
   a. Islamic Community v. RS (11 June 1999, CH/96/29)

This case concerned the destruction of 15 mosques in Banja Luka in 1993 and other alleged violations of the rights of the applicant, the Islamic Community in Bosnia and Herzegovina (henceforth "the Islamic Community" or "the applicant"), in the city of Banja Luka. The Islamic Community maintained, inter alia, that after the entry into force of the General Framework Agreement on 14 December 1995 the municipal bodies of Banja Luka destroyed and removed remains of the mosques, desecrated adjoining graveyards – or allowed these acts to happen – and failed to take certain action requested by the applicant for the protection of the rights of its members. In particular, the Municipality had refused the Islamic Community permission to rebuild destroyed mosques. The applicant alleged that these actions, in addition to violating its property rights and the freedom of religion of its members, discriminated against it on the grounds of the religion and national origin of its members.

The Chamber found the respondent Party to be in breach of its obligation to ensure to everyone within in its jurisdiction, without discrimination, the rights guaranteed in the Agreement. The discrimination found was of a wide-scale character, being directed against the Muslim population of Banja Luka. As earlier recalled, the prohibition of discrimination is a central objective of the General Framework Agreement to which both the Chamber and the parties must attach particular importance. However, the respondent Party is already obliged by the Agreement to enable Muslims in Banja Luka to enjoy, without discrimination, now and in the future, the rights secured by the Agreement. The Chamber did not, therefore, consider it appropriate to make an order in general terms in that respect, as sought by the applicant.

The Chamber found it appropriate to order the respondent Party to take immediate steps to allow the applicant to erect enclosures around the sites of the 15 destroyed mosques and to maintain those enclosures. The respondent Party was further ordered to take all necessary action to refrain from the construction of buildings or objects of any nature on the sites of the 15 destroyed mosques and on the cemeteries and other Islamic sites indicated in the application, and not to permit any such construction by any other institution or person, whether public or private, apart from the applicant and persons acting under its authority. The respondent Party must further refrain from destroying or removing any object remaining on the sites of any of the 15 mosques and on the cemeteries and other Islamic sites indicated in the application, and not to permit any such destruction or removal by any other institution or person, whether public or private, apart from the applicant and persons acting under its authority.

The Chamber further ordered the respondent Party to swiftly grant the applicant, as requested, the necessary permits for reconstruction of seven of the destroyed mosques (Ferhadija, Arnaudija, Gazanferija, Sefer Bey's, Hadzi-Perviz, Stupnica and Hisecka) at the location where they previously existed.

Status of Compliance.

No compliance. An initial request by the Agent to grant the permits for reconstruction were refused by the Municipal bodies responsible, and referred to the government for a decision. Permission was granted to provide "live fences" around the sites (for Ferhadjia this was a flower-pot). OHR is currently examining the matter to determine further action.

   b. CH/98/892 Dzevad MAHMUTOVIC v. THE REPUBLIKA SRPSKA

Facts

In 1994 the Prnjavor Municipal Assembly adopted a decision to close the Muslim cemetery located in the town of Prnjavor.

The applicant's wife died in May 1998 and was buried in the closed Muslim cemetery. On 30 July 1998 the Prnjavor municipal authorities ordered the applicant to exhume his wife from her grave, and to re-bury her in a new cemetery which, according to the applicant, does not exist.

The application was submitted to the Chamber on 20 August 1998. The applicant requested, as a provisional measure, that the execution of the order of the Prnjavor Municipality be prevented. On 24 August 1998, the President of the Chamber issued an Order for provisional measures, ordering the respondent Party to desist from implementing the exhumation order. On 12 February 1999 the Chamber held a public hearing on the admissibility and the merits of the case.

Alleged violations

The applicant complains that the order by the municipal authorities discriminates against him in the enjoyment of his rights to respect for private and family life and to manifest his religious beliefs, guaranteed by Articles 8 and 9 of the European Convention. He claims that the order to exhume his wife involves an attempt "to eradicate all traces of the existence of the Muslim nationality by cleansing even cemeteries and not allocating new burial grounds where burials can be conducted".

Findings of the Chamber

As to the admissibility of the application, the Chamber found that the appeal against the exhumation order could not be considered an effective remedy, as the order expressly provided that such an appeal would not have suspensive effect.

With regard to the merits of the applicant's complaints, the Chamber considered that interference with a grave by an order for exhumation of the deceased after a religious burial had taken place fell into the ambit of Article 9 of the European Convention, in so far as it relates to freedom of religion.

The Chamber further accepted the applicant's statements that his family originated from Prnjavor, that for many years family members had been buried at the family plot where his wife had been buried and that several family members had been seriously upset about the order to exhume his wife. Under those circumstances, the Chamber concluded that the exhumation order was so closely related to the private and family life of the applicant that it came within the ambit of Article 8 of the European Convention.

The Chamber noted that the respondent Party had not been able to specify any reasons for the decision to close the Muslim cemetery. It therefore accepted the applicant's suggestion that its aim was to contribute to the elimination of all traces of the Muslim population from the town centre of Prnjavor. The Chamber accordingly held that the continued closure of the Muslim cemetery and the order to exhume the applicant's wife involved discrimination against the applicant. It also identified a number of other factors supporting the view that the exhumation order was arbitrary, unreasonable and lacking any legitimate aim.

The Chamber concluded that the order for the exhumation of the applicant's wife constituted an act of discrimination against the applicant in the enjoyment of his rights to respect for his private and family life under Article 8 of the European Convention, and his freedom of religion under Article 9 of the Convention.

The Chamber ordered the respondent Party to desist from any steps to remove the remains of the applicant's wife from their present place of burial. It refused, however, to issue a more general remedy, such as ordering the respondent Party not to interfere with the burials of members of the Prnjavor Muslim community at the Muslim town cemetery. The Chamber finally ordered the respondent Party to pay the applicant 1,000 KM as monetary compensation for moral damages suffered and to report to it by 8 January 2000 on the steps taken to comply with its decision.

Status of compliance – Deadline not yet expired.

2. Tenancy contracts over private property

Miljkovic et al (4 cases) v. RS (11 June 1999, CH/98/645)

Each of the four cases involved rental agreements over private property in Republika Srpska, and involve facts similar to Miljkovic. In that case, the applicant was a citizen of Yugoslavia of Serb descent. He and his family occupy a house located at Gavrila Principa Street 29 ("the house") in Banja Luka, Republika Srpska. On 19 September 1994, the applicant and his wife entered into a rental agreement with the owner of the house, who is of Bosniak descent, and who was leaving Banja Luka. On 19 May 1998, the Commission for the Accommodation of Refugees and the Administration of Abandoned Property in Banja Luka ("the Commission"), a department of the Ministry for Refugees and Displaced Persons ("the Ministry") declared the applicant to be an illegal occupant of the house and ordered him to vacate it within three days under threat of forcible eviction.

In each of the four cases, the Chamber gave similar orders to that in Miljkovic, that the decision of the Commission for the Resettlement of Refugees and the Administration of Abandoned Property in Banja Luka of 19 May 1998 declaring the applicant an illegal occupant and ordering him, under threat of eviction, to vacate the house he currently occupies constitutes a violation of his right to respect for his home within the meaning of Article 8 of the Convention. The Chamber further found that that the decision of the Commission for the Resettlement of Refugees and the Administration of Abandoned Property in Banja Luka of 19 May 1998 declaring the applicant an illegal occupant and ordering him, under threat of eviction, to vacate the house he currently occupies, constitutes a violation of his right to peaceful enjoyment of his possessions within the meaning of Article 1 of Protocol No. 1 to the Convention. And further that the lack of an effective remedy to the applicant at the national level against the decision of the Commission for the Resettlement of Refugees and the Administration of Abandoned Property in Banja Luka of 19 May 1998 declaring the applicant an illegal occupant and ordering him, under threat of eviction, to vacate the house he currently occupies, constitutes a violation of his right to an effective remedy in domestic law within the meaning of Article 13 of the Convention;

The Chamber therefore ordered the Republika Srpska to take all necessary steps to revoke the decision of the Commission for the Resettlement of Refugees and the Administration of Abandoned Property in Banja Luka of 19 May 1998 and to allow the applicant to enjoy undisturbed occupancy of the house in accordance with the terms of his contract with the owner of 19 August 1998.

Status of Compliance

Partial compliance. The RS has indicated that no eviction would take place in three of the four cases, but has not given such an assurance in one of the four cases. Recent proposed changes to legislation in the RS will render ineffective the declarations of illegal occupation.

Very similar facts exist in the following decided cases: CH/98/764 Milan KALIK v. REPUBLIKA SRPSKA (7 September 1999), and CH/98/1198 Bozidar GLIGIC v. REPUBLIKA SRPSKA (7 September 1999).

3. Abandoned apartments / houses

CH/98/659 et. al. Esfak PLETILIC et. al. v. REPUBLIKA SRPSKA

Facts

These 20 cases concern persons, almost all of whom are of Bosniak origin, who are the owners of real property in the Gradiska area. They are all returnees to, or never left, the Gradiska area. All of them have tried various methods to regain possession of their properties, which the majority of them were forced to leave during the war. The applicants have applied to all or some of the following institutions in their efforts to regain possession: the Ministry for Refugees and Displaced Persons of the Republika Srpska (under the old Law on the Use of Abandoned Property and the new Law on the Cessation of the Application of the Law on the Use of Abandoned Property), the Municipal Court in Gradiska, and various national and international political institutions in the Republika Srpska. Some of the applicants have managed to regain possession of all or part of their properties, however the majority

of them have not been successful. The majority of the properties are currently occupied by refugees or displaced persons of Serb origin.

The applicants claim that their following rights have been violated as a result of the failure of the Republika Srpska authorities to deal properly with their applications to regain possession of their properties:

- the right to a fair trial in determining their civil rights (Article 6 of the European Convention)
- the right to respect for their homes (Article 8 of the European Convention)
- the right to peaceful enjoyment of their possessions (i.e. property) (Article 1 of the first Protocol to the European Convention)
- the right to an effective remedy against violations of their rights (Article 13 of the European Convention) and
- the right not to be discriminated against in the enjoyment of their rights (Article 14 of the European Convention).

The applicants are represented by TERRA in Gradiska, a non-Governmental organisation providing free legal assistance to citizens. The respondent Party is represented by its Agent, Mr. Stevan Savic.

Findings of the Chamber

The Chamber declared the cases admissible, as the applicants had exhausted all of the domestic legal remedies available to them. It rejected the argument of the RS that the cases were inadmissible because the applicants had not applied to the Annex 7 Commission. The Chamber reasoned that, under the Dayton Agreement, persons seeking to regain possession of their property are not obliged to apply to the Annex 7 Commission, but rather they have the option of doing so.

On the merits of the cases, the Chamber found that the failure of the RS authorities to process the applicants' claims for the return of their properties and allow them to regain possession of them was a violation of their rights to respect for their homes and to peaceful enjoyment of their possessions (Article 8 of the European Convention and Article 1 of the first Protocol to the Convention). The fact that the applicants, who had started court proceedings before the Municipal Court, had their cases rejected meant that all of the applicants, including those who did not start proceedings, had suffered violations of their rights to a fair trial in determining their civil rights (Article 6 of the European Convention). The Chamber also found that the applicants had been discriminated against in their enjoyment of the above rights. The basis for this finding was that the Law on the Use of Abandoned Property, under which the applicants had tried to regain possession of their properties, was only used to prevent Bosniaks from regaining possession of their properties, as it was only Bosniaks who were forced to leave their properties in the first place. While the Law on the Use of Abandoned Property did not specifically discriminate on the basis of the national origin of an applicant, in practice its effects are discriminatory. Regarding the new Law on the Cessation of the Application of the Law on the Use of Abandoned Property, the Chamber found that although it was adopted by the RS to remedy the violations caused by the old Law, it was still too early to tell if it actually is having this effect. The Chamber finally found, in view of its findings under Article 6 of the Convention, that it was not necessary to examine whether there had been any violation of Article 13.

The Chamber ordered the RS to allow all of the applicants who have not already done so to regain possession of their properties as soon as possible. It also ordered the RS to pay compensation for moral suffering and for rent they were forced to pay for alternative accommodation while waiting to regain possession of their properties. The amounts awarded in each case range from KM 1,200 to KM 6,400. The RS must report to the Chamber on the steps taken to comply with the decision by 10 December 1999.

Status of compliance

Not yet expired. The Agent has indicated that he will request a review of the decisions to the plenary.

2. Length of civil proceedings:

CH/98/1171 Cevala CUTURIC v. REPUBLIKA SRPSKA

This case concerns a person of Bosniak origin who worked for the Institute for Health Protection in Banja Luka. In 1993 she was dismissed from her employment on the ground that a member of her family had failed to comply with a mobilisation order to join the Army of the Republika Srpska. She initiated proceedings before the Court of First Instance ("Osnovni Sud") in Banja Luka, claiming that the basis for the termination of her employment was incorrect. The applicant's proceedings are still pending before the Court.

Alleged violations

The applicant complains that her right to work has been violated.

Findings of the Chamber

The Chamber declared the case admissible, insofar as it relates to the continuation of the applicant's proceedings after 14 December 1995, the date when the General Framework Agreement came into force. The Chamber found that there was no remedy available to the applicant against the failure of the Court to decide on her case.

On the merits, the Chamber finds that the applicant's proceedings are covered by Article 6 of the European Convention, which guarantees, inter alia, the right to a fair trial within a reasonable time.

The Chamber noted that the case was not complex and that the applicant was not to blame for the delay. It examined the conduct of the Court and noted that the apparent reason for its failure to decide the case was the failure of the Institute to provide certain documents. The Chamber found that the reason for such failure was not only dubious in itself but, even if true, could not justify such a delay as in the present case. The Court had merely repeated its request to the Institute to supply the documents, rather than using any coercive powers to force it to do so. The Chamber also noted that under domestic law Courts are required to deal with employment disputes as a matter of urgency. The Chamber found that the conduct of the Court was unreasonable as it had remained passive in the face of the Institute's lack of cooperation. This resulted in a breach of the applicant's rights as guaranteed by Article 6 of the European Convention.

Regarding the applicant's claim that her right to work had been violated, the Chamber found that as this right is not guaranteed by the Human Rights Agreement in the General Framework Agreement, the Chamber could not examine if this right had been violated. The Chamber did not find it established that the applicant had been discriminated against in the enjoyment of any of the rights guaranteed by the Human Rights Agreement.

The Chamber ordered the RS to ensure that the applicant's proceedings are decided upon in a reasonable time and that those proceedings are conducted entirely in accordance with the applicant's rights as guaranteed by the Human Rights Agreement. The RS must report to the Chamber on the steps taken to comply with its decision by 10 December 1999.

Status of compliance – Deadline is not yet expired

Cases in which compliance has been achieved

- Court orders have been enforced and applicants have been reinstated into their homes (Blentic v. RS (3 December 1997, CH/96/17), Bejdic v. RS (14 January 1998, CH/96/27), M.J. v. RS (3 December 1997, CH/96/28)

Notes:

1. SL SFRJ, No. 84/90, entered into force into 6 January 1991.

2. SL SRBH, No. 4/92.
3. SL RBH No. 6/92, and see also SL RBH No. 6/93 and SL RBH No. 33/94.
4. SL RBH 18/94.
5. SL RBH 5/95.
6. SL RBH 50/95 and SL RBH 2/96.
7. 120 cases to 20 October 1999: Medan, Bastijanovic and Markovic v. BH & FBH (7 Nov 97), Bulatovic v. BH & FBH (7 Nov 97), Kalincevic v. BH & FBH (11 Mar 98), Turcinovic v. BH & FBH (11 Mar 98), 16 JNA Cases (12 Jun 98), Galic v. FBH (12 Jun 98), Grbavac and 26 other JNA Cases v. BH & FBH (15 Jan 99), Ostojic and 31 other JNA Cases v. BH & FBH (15 Jan 99), Ivkovic et al (7 JNA cases) v. BH & FBH (10 March 1999), and Maric et al (8 JNA cases) v. BH & FBH (10 March 1999), Vidovic et al (5 cases) v. FBH & BH, Huseljic et al (5 cases), v. BH & FBH (11 June 1999), Laus et al (7 cases) v. BH & FBH (11 June 1999), Secerbegovic et al (4 cases) v. BH & FBH (11 June 1999), Panic (14 May 1999, also including reinstatement) plus Lacevic v. FBIH (8 October 1999) = 120 cases, 5 of which (Bulatovic, Kalincevic, Turcinovic, Galic and Panic) involve regaining (or not being evicted from) the apartment in addition to an unfulfilled purchase contract.
8. Galic v. FBH (12 June 1998 – 97/40)
9. Turcinovic v. FBH (11 March 1998 – 96/23), Bulatovic v. FBH (10 April 1997 – 96/22), and Kalincevic v. BH and FBH (11 March 1998 – 96/23)
10. Erakovic v. FBH (15 January 1999 – 97/42)
11. The Law on the Sale of Apartments with an Occupancy Right (Official Gazette of the Federation, No. 27/97), in force on 6 December 1997.
12. The Law on the Cessation of the Application of the Law on Abandoned Apartments, 4 April 1998.
13. In Grbavac and 26 other JNA cases (15 January 1999 – 97/81 et al), the Chamber wrote that the 1998 legislation "cannot revalidate the applicantąs original purchase contracts retroactively, that is to say with effect from the dates when those contracts were concluded. Accordingly, this legislation can have no bearing on the outcome of the present cases." In Maric et al v. BH & FBH (10 March 1999 – 98/126 et al), the Chamber held that "the new legislation issued after Medan and Others Š did not change the present applicantsą situation. The same was true for Ostojic et al v. FBH & BH (15 January 1999 – 97/82 et al)."
14. For example, in Maric et al v. FBH (10 March 1999 – 98/126 et al), Chamber awarded 30 KM to one applicant and 15 KM to another (of 8 applicants).
15. The decision on the Merits was delivered on 6 April 1998.

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