DECISION TO STRIKE OUT

Case no. CH/01/7604 *et al.* (see Annex for list of 1805 Srebrenica Cases)

Alija IBIŠEVIĆ and 1804 Others

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 3 June 2003 with the following members present:

Ms. Michèle PICARD, President
Mr. Mato TADIĆ, Vice-President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
Mr. Rona AYBAY
Mr. Želimir JUKA
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Giovanni GRASSO
Mr. Miodrag PAJIĆ
Mr. Manfred NOWAK
Mr. Vitomir POPOVIĆ
Mr. Viktor MASENKO-MAVI
Mr. Andrew GROTRIAN

Mr. Ulrich GARMS, Registrar
Ms. Olga KAPIĆ, Deputy Registrar
Ms. Antonia DE MEO, Deputy Registrar

Having considered the aforementioned applications introduced pursuant to Article VIII(1) of the Human Rights Agreement (the "Agreement"), set out in Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina;

Adopts the following decision pursuant to Article VIII(3)(c) of the Agreement and Rules 34, 49(2) and 52 of the Chamber's Rules of Procedure:

I. INTRODUCTION

1. The applications were introduced to and registered by the Chamber between 14 June 2001 and 21 March 2003. The details of the individual applications are set out in the Annex of 1805 Srebrenica Cases (*i.e.*, the case numbers, names of applicants, and names of missing persons), which forms part of the present decision.

2. The applications were filed by immediate family members of Bosniak men presumed to have been killed as part of the mass execution of some 7,000 to 8,000 Bosniaks undertaken by the Army of the Republika Srpska during the period of 10-19 July 1995 in and around Srebrenica, the Republika Srpska. The applicants allege, either directly or indirectly, that, as close family members, they are themselves victims of alleged or apparent human rights violations resulting from the lack of specific information on the fate and whereabouts of their missing loved ones, last seen in Srebrenica in July 1995. They seek to know the truth. They request the authorities to bring the perpetrators to justice. Most also seek compensation for their suffering in an unspecified amount.

3. The Chamber is not competent to consider any possible violations of the human rights of the Bosniak men missing as a result of the Srebrenica events. This is so because those violations necessarily would have occurred during the period of 10-19 July 1995. However, the Chamber is only competent to consider violations or continuing violations of human rights occurring after 14 December 1995, the date when the Agreement entered into force. In accordance with generally accepted legal principles, the Agreement cannot be applied retroactively, that is before 14 December 1995.

4. The Chamber may only consider the present applications in connection with the human rights of the family members of the missing persons of the Srebrenica events to be informed by the authorities of the Republika Srpska, since 14 December 1995, about the fate and whereabouts of their missing loved ones. These cases thereby raise issues under Article 3 (prohibition of inhuman or degrading treatment — *i.e.*, right to know the truth), Article 8 (right to respect for private and family life — *i.e.*, right to access to information), and Article 13 (right to an effective remedy) of the European Convention on Human Rights (the "European Convention"), and of discrimination in connection with these rights under Article II(2)(b) of the Agreement.

5. Considering the similarity between the facts of the cases and the complaints of the applicants, the Chamber decided to join the present applications in accordance with Rule 34 of the Chamber's Rules of Procedure on the same day it adopted the present decision.

II. OPINION OF THE CHAMBER

A. Decision on admissibility and merits in the Srebrenica Cases

6. The Chamber notes that the applicants lodged their applications with a view to obtaining information on the fate and whereabouts of their missing loved ones, last seen in Srebrenica in July 1995. In this respect, the Chamber recalls that on 7 March 2003, it delivered its decision on admissibility and merits in case nos. CH/01/8365 *et al., Ferida Selimović and Others v. the Republika Srpska — the "Srebrenica Cases"* (please see the enclosed abridged decision)[1]. In this decision the Chamber found that the Republika Srpska violated the human rights of the applicants protected by Articles 8 and 3 of the European Convention and discriminated against the applicants in the enjoyment of these rights.

7. More specifically, the Chamber concluded that the Republika Srpska's failure to make accessible and disclose information requested by the applicants about their missing loved ones constituted a violation of its positive obligations to secure respect for their rights to private and family life, as guaranteed by Article 8 of the European Convention. In addition, the Chamber found that the

[1] The Chamber notes that the full text of the *Selimović and Others* decision was published in the Official Gazette of the Republika Srpska on 21 April 2003 (Official Gazette of the Republika Srpska no. 28/03). It is further available on the website of the Human Rights Chamber at www.hrc.ba.

Republika Srpska's failure to inform the applicants about the truth of the fate and whereabouts of their missing loved ones, including conducting a meaningful and effective investigation into the massacre at Srebrenica in July 1995, violated their rights to be free from inhuman and degrading treatment, as guaranteed by Article 3 of the European Convention. Lastly, the Chamber concluded that in failing to fulfil its obligations owed to the applicants under the European Convention, the Republika Srpska discriminated against them due to their Bosniak origin (case nos. CH/01/8365 *et al.*, *Selimović and Others*, decision on admissibility and merits of 3 March 2003, paragraph 202, Decisions January— June 2003).

8. In the context of the Srebrenica Cases, the Chamber considered the violations to be particularly egregious since this event resulted in the largest and most horrific mass execution of civilians in Europe in the second half of the twentieth century. Moreover, the violations reflect a total indifference by the authorities of the Republika Srpska to the suffering of the Bosniak community (*id.* at paragraph 202).

9. As remedies for the established violations of human rights in the *Selimović and Others* decision, the Chamber ordered the Republika Srpska, *inter alia*, "as a matter of urgency, to release all information presently within its possession, control, and knowledge with respect to the fate and whereabouts of the missing loved ones of the applicants" and with respect to the location of any gravesites of the victims of the Srebrenica events.

10. The Chamber further ordered the Republika Srpska "to conduct a full, meaningful, thorough, and detailed investigation into the events giving rise to the established human rights violations, with a view to making known to the applicants, all other family members, and the public, the Republika Srpska's role in the facts surrounding the massacre at Srebrenica in July 1995, its subsequent efforts to cover up those facts, and the fate and whereabouts of the persons missing from Srebrenica since July 1995" (*id.* at paragraph 212). The Republika Srpska should conduct such investigation also "with a view to bringing the perpetrators of any crimes committed in connection with the missing persons from Srebrenica to justice before the competent domestic criminal courts or to extradicting persons wanted by the ICTY for prosecution for war crimes, genocide, or crimes against humanity in connection with the Srebrenica events" (*id.*).

11. The Chamber recognised that "it cannot order a perfect remedy which will re-establish the *status quo ante* — it cannot restore what was taken from the applicants in July 1995 at Srebrenica, and it cannot repair the suffering and torment caused to them by seven [now eight] years of uncertainty about the fate and whereabouts of their missing loved ones" (*id.* at paragraph 205). Therefore, although the Chamber declined to make any individual compensation awards, it did order the Republika Srpska to pay the lump sum amount of 4 Million Convertible Marks to the Foundation of the Srebrenica-Potočari Memorial and Cemetery for the collective benefit of all the applicants and families of the victims of the Srebrenica events. The payment of this lump sum shall be spread over four years, with 2 Million Convertible Marks to be paid within six months, and the remaining amount to be paid in four annual payments of 500,000 Convertible Marks (*id.* at paragraphs 217-218).

12. As explained in the *Selimović and Others* decision, "the Chamber understands that the primary goal of the present applications is the applicants' desire to know the fate and whereabouts of their missing loved ones. If it is determined that the missing persons were killed in the Srebrenica events, then the applicants would like to bury the remains of their loved ones in accordance with their traditions and beliefs" (*id.* at paragraph 214). To this extent, the Chamber recalls that the purpose of the Srebrenica-Potočari Memorial and Cemetery is to erect a memorial and create a solemn burial place for those persons who met their tragic deaths in the massacre at Srebrenica in July 1995 (*id.* at paragraph 215).

B. Special reasons for striking out the applications

13. In accordance with Article VIII(3) of the Agreement, "the Chamber may decide at any point in its proceedings to suspend consideration of, reject or strike out, an application on the ground that … (c) for any other reason established by the Chamber, it is no longer justified to continue the examination of the application; provided that such a result is consistent with the objective of respect for human rights."

14. The Chamber considers that its decision on admissibility and merits in *Selimović and Others – the "Srebrenica Cases"* addresses the complaints of the applicants in the present applications as well. Since the applicants in the present applications are in the same situation as the applicants in *Selimović and Others*, they in fact suffered the same violations of human rights guaranteed by Articles 8 and 3 of the European Convention and discrimination in connection with these rights due to their Bosniak origin. Moreover, in the Chamber's view, even if it were to consider the admissibility and merits of the present applications individually and to explicitly find the same violations of human rights, it could not provide any more extensive remedy than the collective remedies provided for all the families of victims of the Srebrenica events in the *Selimović and Others* decision. The remedies ordered in the *Selimović and Others* decision are applicable for the relatives of all missing Bosniaks who disappeared during the period of 10-19 July 1995 in Srebrenica, including the applicants in the present Srebrenica cases. Accordingly, the main issues raised in the present applications have already been examined to the greatest extent possible by the Chamber, and further examination could not lead to any further remedies than those already ordered in the *Selimović and Others* decision.

15. Therefore, the Chamber finds that "it is no longer justified to continue the examination of the application[s]" within the meaning of Article VIII(3)(c) of the Agreement. The Chamber moreover finds that this result is "consistent with the objective of respect for human rights", as the Chamber's decision in *Selimović and Others* in fact addressed the concerns of the present applicants.

16. The Chamber, therefore, decides to strike out the applications, pursuant to Article VIII(3)(c) of the Agreement.

III. CONCLUSION

17. For these reasons, the Chamber, by 13 votes to 1,

JOINS THE APPLICATIONS and
STRIKES OUT THE APPLICATIONS.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the Chamber

Annex: Dissenting opinion of Mr. Hasan Balić

ANNEX

According to Rule 61 of the Chamber's Rules of Procedure, this Annex contains the dissenting opinion of Mr. Hasan Balić.

DISSENTING OPINION OF MR. HASAN BALIĆ

Why do I disagree with my colleagues' conclusion to strike out these applications?

This is why:

The crime committed at Srebrenica constitutes a crime under international law, subject to punishment in accordance with Article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide of 1948. One aspect of this event has been under deliberation before the Chamber. However, paragraph 15 of the strike out decision in *Ibišević and 1804 Others*, and paragraph 19 of the strike out decision in *Sulejmanović and 20 Others*, state that "it is no longer justified to continue the examination of the application[s]".

With all due respect to the leading decision on admissibility and merits in *Selimović and 48 Others – the "Srebrenica cases"* – all the victims of the Srebrenica events, including those mentioned in the 49 applications of the *Selimović* decision, the 21 applications of the *Sulejmanović* decision, and the 1805 applications of the *Ibišević* decision (for a total of 1875 applications), deserve to have the Chamber specifically address their complaints. For the 1805 plus 21 applications resolved in the *Ibišević* and *Sulejmanović* decisions to strike out, the remedies and conclusions ordered by the Chamber in the *Selimović and 48 Others* decision on admissibility and merits are only partially justified. A serious and thorough general investigation into the Srebrenica events (see case no. CH/01/8365 *et al.*, *Selimović and Others*, decision on admissibility and merits of 3 March 2003, paragraphs 212 and 220), is insufficient. These are human victims who are not just plain numbers. All of them bear their individual identification, name, surname, place of birth, and place and circumstances where they fell victim to the heinous criminal acts committed at Srebrenica. The geographic area is relatively small and the victims and their families were systematically destroyed according to a well-orchestrated plan. The victims and the criminals alike belong to the same civilizational circle of European peoples — with the difference being that the criminals are Serbs and the victims are European peoples: Bosniaks, Croats, Roma, and others. In the present cases, the victims are Bosniaks of Islamic faith or atheists. The authorities of the respondent Party acted from a position of hatred and thus did all they could to hide and cover-up the bodies in individual and mass graves. It may be presumed that its cartographers were aware of the burial places and the names of the victims. Hence, I opine that the Chamber should have ordered the respondent Party to tell the truth about each of the missing persons identified in the 1826 applications struck out in the *Ibišević* and *Sulejmanović* decisions within 6 months. This is, indeed, what the applicants sought. Therefore, specific individual human rights are at stake in these applications, and thereafter also collective rights engaging the individual criminal responsibility of the criminals and the wider responsibility of the respondent Party for the mass violations of human rights. All of these rights are protected by the provisions set out in Articles 3 and 8 of the European Convention on Human Rights and Article I of the Human Rights Agreement.

As to compensation, in my opinion, the Chamber should have ordered the Republika Srpska to pay an increased amount to the Foundation of the Srebrenica-Potočari Memorial and Cemetery, as it is not the same to bury some 49 victims (as mentioned in the *Selimović* decision) and some 1805 plus 21 victims (as mentioned in the *Ibišević* and *Sulejmanović* decisions), and further up to 10,000 victims, whose only fault was being of a different religion and faith than the criminals. I therefore hold that the Chamber should have ordered the respondent Party to pay the full or the largest part of the costs for the construction of the Srebrenica-Potočari Memorial and Cemetery.

As regards the some 21 victims mentioned in the *Sulejmanović* decision, whose identity has been established, my opinion is that the Chamber should have ordered compensation. The respondent Party is guilty in these cases, not because the victims were murdered prior to 14 December 1995 (the Chamber is not competent *ratione temporis* to consider these human rights

violations and so a remedy is not permitted), but due to the suffering caused to the applicants as surviving family members as a result of their uncertainty about the fate and whereabouts of their missing loved ones after 14 December 1995.

In my opinion, these facts are covered by the foregoing provisions of the Convention and are the result of discrimination, which was inflicted and is still being inflicted by the respondent Party upon the victims of the Srebrenica events and their surviving family members on ethnic and religious grounds.

I also considered some *sui generis res indicata* – that the matter has been resolved, but even then I was unable to discover any support for striking out these applications. It is especially interesting how these decisions will be implemented in view of the Chamber's limited mandate.

(signed)
Hasan Balić