



**DECISION ON ADMISSIBILITY AND MERITS**  
(delivered on 22 December 2003)

**Case nos. CH/02/9851, CH/02/10458, CH/02/10459, CH/02/10460,  
CH/02/10461, CH/02/10462, CH/02/10463, CH/02/10464, CH/02/11032  
and CH/02/11246**

**M.Ć., H.A.Ć., S.Ć.,  
M.Ć., F.V., Razija Ć.  
and M.Z.**

**against**

**THE REPUBLIKA SRPSKA**

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 4 December 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 (“the General Framework Agreement”);

Adopts the following decision pursuant to Article VIII(2) and Article XI of the Agreement and Rules 34, 52, 57 and 58 of its Rules of Procedure:

## **I. INTRODUCTION**

1. The present applications were filed by the immediate family members of four Bosniak<sup>1</sup> men, who are members of the Ć. family from the Municipality of Rogatica. The four Ć. men disappeared on 3 and 4 June 1992, allegedly after being taken away for an interview by soldiers of the Army of the Republika Srpska (hereinafter: "RS Army"). Tracing requests were opened for all the missing persons mentioned in the present applications with the International Committee of the Red Cross (the "ICRC") in 1996, and one missing person has been additionally registered with the "State Commission for Tracing Missing Persons" (the "State Commission"). All of the applicants further attempted to obtain information from the Helsinki Committee for Human Rights in Bosnia and Herzegovina. The applicants seek information about the fate and whereabouts of their missing loved ones. None of the applicants have received any such specific information from the competent authorities since the events underlying their applications.

2. The applications raise issues under Article 3 (prohibition of inhuman and degrading treatment) and Article 8 (right to respect for private and family life) of the European Convention on Human Rights ("the Convention"). Due to the Chamber's jurisdiction under the Agreement, discussed in more detail below, the Chamber will consider these applications exclusively in connection to the rights of family members to be informed about the fate and whereabouts of their missing loved ones.

## **II. PROCEEDINGS BEFORE THE CHAMBER**

3. The applications were introduced to and registered by the Chamber between 4 April 2002 and 2 July 2002.

4. On 24 July 2003, the Chamber transmitted the applications to the respondent Party for its observations on the admissibility and merits under Articles 3 and 8 of the Convention and discrimination in the enjoyment of these rights.

5. The Chamber received the observations of the Republika Srpska on the admissibility and merits of the cases on 26 August 2003. The applicants submitted their observations in reply between 1 and 11 September 2003.

6. The First Panel deliberated on the admissibility and merits of the applications on 3 July, 4 November, and 1 December 2003. Pursuant to Rule 29 of the Chamber's Rules of Procedure, on 4 November 2003, the First Panel referred the applications to the plenary Chamber. The plenary Chamber then deliberated on the admissibility and merits of the applications on 4 December 2003 and adopted the present decision. 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.

## **III. STATEMENT OF FACTS**

### **A. Facts and complaints of the individual applications**

#### **1. CH/02/9851 M.Ć.**

7. The applicant's brother, Uzeir Ć., disappeared on 4 June 1992 after being taken away from his house in S., supposedly for an interview, by soldiers of the RS Army. After that date, all trace of him was lost. On 9 July 2003, the ICRC confirmed that an ICRC tracing request was opened for the applicant's brother in December 1996. The ICRC submitted this request to the Working Group established as part of the "Process for tracing persons unaccounted for in connection with the

---

<sup>1</sup> Citizens of Bosnia and Herzegovina of Muslim origin and Islamic belief refer to themselves as "Bosniaks". For the most part throughout the text of this decision, the Chamber adopts this terminology. However, in sections where the Chamber is referring to other sources, Bosniaks are also called "Bosnian Muslims" and "Muslims".

conflict on the territory of Bosnia and Herzegovina and informing the families accordingly” (the “Working Group”), but no answer has been provided. Also, the State Commission confirmed on 22 September 2003 that the applicant’s brother disappeared on 3 June 1992 and is registered as a missing person as of 15 August 1992. Also, on 24 June 2003, the State Commission confirmed that during exhumations conducted in October 1998 and May 1999, the expert team of the State Commission and the Cantonal Court in Sarajevo did not find the body in question. In addition to the claims under Articles 3 and 8 of the Convention, the applicant also alleges that the family’s property was plundered after the disappearance of his loved one.

**2. CH/02/10458 H.A.Ć.**

8. The applicant’s older brother, Sejdalija Ć., disappeared on 4 June 1992 after being taken away from his house in S., supposedly for an interview, by soldiers of the RS Army. After that date, all trace of him was lost. On 9 July 2003, the ICRC confirmed that that an ICRC tracing request was opened for the applicant’s brother in November 1996. The ICRC submitted this request to the Working Group, but no answer has been provided. Also, on 24 June 2003, the State Commission confirmed that during exhumations conducted in October 1998 and May 1999, the expert team of the State Commission and the Cantonal Court in Sarajevo did not find the body in question. In addition to the claims under Articles 3 and 8 of the Convention, the applicant also alleges that the missing person’s property was plundered after his disappearance, allegedly by members of the RS police and RS Army.

**3. CH/02/10459 H.A.Ć.**

9. The applicant’s younger brother, Sunija Ć., disappeared on 3 June 1992 after being taken away from his house in S., supposedly for an interview, by soldiers of the RS Army. After that date, all trace of him was lost. On 9 July 2003, the ICRC confirmed that that an ICRC tracing request was opened for the applicant’s brother in November 1996. The ICRC submitted this request to the Working Group, but no answer has been provided. Also, on 24 June 2003, the State Commission confirmed that during exhumations conducted in October 1998 and May 1999, the expert team of the State Commission and the Cantonal Court in Sarajevo did not find the body in question. In addition to the claims under Articles 3 and 8 of the Convention, the applicant also alleges that the missing person’s property was plundered after his disappearance, allegedly by members of the RS police and RS Army.

**4. CH/02/10460 S.Ć.**

10. The applicant’s father, Emin Ć., disappeared on 3 June 1992 after being taken away from his house in S., supposedly for an interview, by soldiers of the RS Army. After that date, all trace of him was lost. On 9 July 2003, the ICRC confirmed that that an ICRC tracing request was opened for the applicant’s father in November 1996. The ICRC submitted this request to the Working Group, but no answer has been provided. Also, on 24 June 2003, the State Commission confirmed that during exhumations conducted in October 1998 and May 1999, the expert team of the State Commission and the Cantonal Court in Sarajevo did not find the body in question. In addition to the claims under Articles 3 and 8 of the Convention, the applicant also alleges that the missing person’s property was plundered after his disappearance allegedly by members of the RS police and RS Army.

**5. CH/02/10461 M.Ć.**

11. The applicant’s father, Emin Ć. (the same missing person as in the preceding paragraph), disappeared on 3 June 1992 after being taken away from his house in S., supposedly for an interview, by soldiers of the RS Army. After that date, all trace of him was lost. On 9 July 2003, the ICRC confirmed that that an ICRC tracing request was opened for the applicant’s father in November 1996. The ICRC submitted this request to the Working Group, but no answer has been provided. Also, on 24 June 2003, the State Commission confirmed that during exhumations conducted in October 1998 and May 1999, the expert team of the State Commission and the Cantonal Court in Sarajevo did not find the body in question.

**6. CH/02/10462 Š.Ć.**

12. The applicant's husband, Sejdalija Ć. (the same missing person as in paragraph 8 above), disappeared on 4 June 1992 after being taken away from his house in S., supposedly for an interview, by soldiers of the RS Army. After that date, all trace of him was lost. On 9 July 2003, the ICRC confirmed that that an ICRC tracing request was opened for the applicant's husband in November 1996. The ICRC submitted this request to the Working Group, but no answer has been provided. Also, on 24 June 2003, the State Commission confirmed that during exhumations conducted in October 1998 and May 1999, the expert team of the State Commission and the Cantonal Court in Sarajevo did not find the body in question.

**7. CH/02/10463 F.V.**

13. The applicant's brother, Sunija Ć. (the same missing person as in the paragraph 9 above), disappeared on 3 June 1992 after being taken away from his house in S., supposedly for an interview, by soldiers of the RS Army. After that date, all trace of him was lost. On 9 July 2003, the ICRC confirmed that that an ICRC tracing request was opened for the applicant's brother in November 1996. The ICRC submitted this request to the Working Group, but no answer has been provided. Also, on 24 June 2003, the State Commission confirmed that during exhumations conducted in October 1998 and May 1999, the expert team of the State Commission and the Cantonal Court in Sarajevo did not find the body in question. In addition to the claims under Articles 3 and 8 of the Convention, the applicant also alleges that their property was plundered.

**8. CH/02/10464 F.V.**

14. The applicant's brother, Sejdalija Ć. (the same missing person as in the paragraphs 8 and 12 above), disappeared on 4 June 1992 after being taken away from his house in S., supposedly for an interview, by soldiers of the RS Army. After that date, all trace of him was lost. On 9 July 2003, the ICRC confirmed that that an ICRC tracing request was opened for the applicant's brother in November 1996. The ICRC submitted this request to the Working Group, but no answer has been provided. Also, on 24 June 2003, the State Commission confirmed that during exhumations conducted in October 1998 and May 1999, the expert team of the State Commission and the Cantonal Court in Sarajevo did not find the body in question.

**9. CH/02/11032 Razija Ć.**

15. The applicant's husband, Uzeir Ć. (the same missing person as in the paragraph 7 above), disappeared on 4 June 1992 after being taken away from his house in S., supposedly for an interview, by soldiers of the RS Army. After that date, all trace of him was lost. On 9 July 2003, the ICRC confirmed that an ICRC tracing request was opened for the applicant's husband in December 1996. The ICRC submitted this request to the Working Group, but no answer has been provided. Also, on 22 September 2003, the State Commission confirmed that the applicant's husband disappeared on 3 June 1992 and is registered as a missing person as of 15 August 1992. On 24 September 2003, the State Commission further confirmed that during exhumations conducted in October 1998 and May 1999, the expert team of the State Commission and the Cantonal Court in Sarajevo did not find the body in question. In addition to the claims under Articles 3 and 8 of the Convention, the applicant also alleges that her and her missing husband's property was plundered.

**10. CH/02/11246 M.Z.**

16. The applicant's brother, Uzeir Ć. (the same missing person as in the paragraphs 7 and 15 above), disappeared on 4 June 1992 after being taken away from his house in S., supposedly for an interview, by soldiers of the RS Army. After that date, all trace of him was lost. On 9 July 2003, the ICRC confirmed that an ICRC tracing request was opened for the applicant's brother in December 1996. The ICRC submitted this request to the Working Group, but no answer has been provided. Also, on 22 September 2003, the State Commission confirmed that the applicant's brother disappeared on 3 June 1992 and is registered as a missing person as of 15 August 1992. On 24 September 2003, the State Commission further confirmed that during exhumations conducted in

October 1998 and May 1999, the expert team of the State Commission and the Cantonal Court in Sarajevo did not find the body in question. In addition to the claims under Articles 3 and 8 of the Convention, the applicant also alleges that her family's property was plundered.

#### **IV. RELEVANT LEGISLATION**

##### **A. Agreement on Refugees and Displaced Persons**

17. The Agreement on Refugees and Displaced Persons, which is set out in Annex 7 to the General Framework Agreement and entered into force on 14 December 1995, provides in Article V:

“The Parties shall provide information through the tracing mechanisms of the ICRC on all persons unaccounted for. The Parties shall also cooperate fully with the ICRC in its efforts to determine the identities, whereabouts and fate of the unaccounted for.”

##### **B. International Law and Activities regarding Missing Persons**

###### **1. United Nations Declaration on the Protection of All Persons from Enforced Disappearances of 18 December 1992**

18. On 18 December 1992, the General Assembly of the United Nations adopted the UN Declaration on the Protection of All Persons from Enforced Disappearances (A/RES/47/133).

19. The Preamble proclaims “the present Declaration on the Protection of All Persons from Enforced Disappearance, as a body of principles for all States”. It further provides, in pertinent part:

“Deeply concerned that in many countries, often in a persistent manner, enforced disappearances occur, in the sense that persons are arrested, detained or abducted against their will or otherwise deprived of their liberty by officials of different branches or levels of Government, or by organised groups or private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government, followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, which places such persons outside the protection of the law,

“Considering that enforced disappearance undermines the deepest values of any society committed to respect for the rule of law, human rights and fundamental freedoms, and that the systematic practice of such acts is of the nature of a crime against humanity, ....”

20. Article 1 provides as follows:

“1. Any act of enforced disappearance is an offence to human dignity. It is condemned as a denial of the purposes of the Charter of the United Nations and as a grave and flagrant violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and reaffirmed and developed in international instruments in this field.

“2. Any act of enforced disappearance places the persons subjected thereto outside the protection of the law and inflicts severe suffering on them and their families. It constitutes a violation of the rules of international law guaranteeing, *inter alia*, the right to recognition as a person before the law, the right to liberty and security of the person and the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment. It also violates or constitutes a grave threat to the right to life.”

21. Article 2 provides as follows:

“1. No State shall practise, permit or tolerate enforced disappearances.

“2. States shall act at the national and regional levels and in co-operation with the United Nations to contribute by all means to the prevention and eradication of enforced disappearance.”

22. Article 7 provides as follows:

“No circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances.”

23. Article 13 provides, in pertinent part, as follows:

“1. Each State shall ensure that any person having knowledge or a legitimate interest who alleges that a person has been subjected to enforced disappearance has the right to complain to a competent and independent State authority and to have that complaint promptly, thoroughly and impartially investigated by that authority. Whenever there are reasonable grounds to believe that an enforced disappearance has been committed, the State shall promptly refer the matter to that authority for such an investigation, even if there has been no formal complaint. No measure shall be taken to curtail or impede the investigation. ...

“4. The findings of such an investigation shall be made available upon request to all persons concerned, unless doing so would jeopardise an ongoing criminal investigation. ...

“6. An investigation, in accordance with the procedures described above, should be able to be conducted for as long as the fate of the victim of enforced disappearance remains unclarified.”

## **2. ICRC Process for Tracing and Identifying Unaccounted for Persons**

24. Under international humanitarian law, the ICRC is the principal agency authorised to collect information about missing persons, and all parties to armed conflicts are under an obligation to provide all necessary information at their disposal to trace missing persons (both combatants and civilians) and to satisfy the “right of family members to know the fate of their relatives” pursuant to Article 32 of Protocol No. 1 to the Geneva Conventions. This general obligation is also reflected in Article V of Annex 7 to the General Framework Agreement (see paragraph 17 above). In order to implement its responsibilities under Article V of Annex 7 and international humanitarian law, the State of Bosnia and Herzegovina and the Entities, as well as the ICRC, established a “Process for tracing persons unaccounted for in connection with the conflict on the territory of Bosnia and Herzegovina and informing the families accordingly”.

25. Under Section 1.1 of the general framework and terms of reference of this Process, “the parties shall take all necessary steps to enable families ... to exercise their right to know the fate of persons unaccounted for, and to this end shall provide all relevant information through the tracing mechanisms of the ICRC and co-operate within a Working Group.” The ICRC will chair the Working Group “comprising representatives of all the parties concerned in order to facilitate the gathering of information for all families not knowing the fate of missing relatives”. Its members include three representatives each for the Republika Srpska, Bosniaks of the Federation of Bosnia and Herzegovina, and Croats of the Federation of Bosnia and Herzegovina, as well as a representative of Bosnia and Herzegovina, the High Representative, and several observers. For the Republika Srpska, the representatives are “a senior official of the Republika Srpska, a civilian adviser to the latter, a senior military commander of the *Vojska Republike Srpske* (VRS)” (Terms of reference of the Process). The ICRC established this Working Group on 30 March 1996. The Parties agreed to respect the Process at the session of the Working Group held on 7 May 1996. In Section 1.2 of the terms of reference of the Process, “the parties recognise that the success of any tracing effort made by ICRC and the Working Group depends entirely on the co-operation of the parties, in particular of the parties which were in control of the area where and when the person sought reportedly disappeared.”

26. The Process is to be implemented by the Federation of Bosnia and Herzegovina, the Republika Srpska, and Bosnia and Herzegovina (Section 1.4.A of the terms of reference of the Process). Each party shall “identify spontaneously any dead person found in an area under its control, and notify those belonging to another party to the ICRC or the Working Group without delay” (*id.*). When approached with a request for information on the whereabouts or fate of an unaccounted for person, the parties “shall make any internal enquiries necessary to obtain the information requested” (*id.*). Each party shall “cooperate with the ICRC and the Working Group to elucidate the fate of persons unaccounted for” (*id.*). “Chaired by the ICRC the Working Group will be the forum through which the parties will provide all required information and take the necessary steps to trace persons unaccounted for and to inform their families accordingly” (Section 1.4.C of the terms of reference of the Process).

27. In accordance with the terms of reference, a copy of all tracing requests shall be provided to the Working Group (Section 2.2 of the terms of reference of the Process). Moreover, “with the aim of clarifying the fate of missing persons, the Members, and, if relevant, Observers of the Working Group will: a) share all factual information relevant to the Process; b) organise, support and, if requested by the Working Group, participate in the implementation of tracing mechanisms at regional or local level” (*id.*). In addition, “should any Member or Observer of the Working Group obtain information on the identity of deceased persons exhumed from places of burial, whether individual or mass, or that might help determine the fate of missing persons, it will make such information available to the Working Group” (*id.* at Section 2.4(a)). “For unresolved cases [of persons unaccounted for], the State and Entity Members of the Working Group undertake to facilitate a rapid and fair settlement of the legal consequences of the situation for their families. To this end, they will encourage adoption of the necessary legislative, administrative and judicial measures” (Section 2.1 of the terms of reference of the Process). “No party may cease to fulfil its obligations aimed at informing families about the fate of relatives unaccounted for on the grounds that mortal remains have not been located or handed over” (*id.* at Section 2.4(b)).

### **C. National Activities regarding Missing Persons**

28. During the armed conflict in Bosnia and Herzegovina, various commissions existed or were established for the primary purpose of exchanging prisoners of war. One commission represented the interests of Bosnian Muslims, another represented the interests of Croats, and a third represented the interests of Serbs. After the armed conflict, these commissions also represented the interests of their respective ethnic/religious group with respect to the great problem of the missing persons (see Report of the Independent Expert, UN Commission, 53<sup>rd</sup> Session, U.N. Doc. E/CN.4/1997/55 (15 January 1997)). Under the General Framework Agreement, these commissions representing the three ethnic/religious groups were gradually transformed into institutions of the State of Bosnia and Herzegovina and its two Entities, as described below in relevant part.

#### **1. State Commission on Tracing Missing Persons**

29. On 16 July 1992, the Government of the Republic of Bosnia and Herzegovina enacted the Decision on Establishment of the State Commission on Exchange of Prisoners-of-War (Official Gazette of the Republic of Bosnia and Herzegovina—hereinafter “OG RBiH”—no. 10/92 of 23 July 1992). This Decision entered into force on 23 July 1992. Paragraph I of this Decision establishes “the State Commission on exchange of prisoners-of-war, persons deprived of liberty and the mortal remains of the killed, and for registering killed, wounded and missing persons on the territory of the Republic of Bosnia and Herzegovina”. On 31 October 1992, the Government of the Republic of Bosnia and Herzegovina enacted the Decision on Amendments to the Decision on Establishment of the State Commission on Exchange of Prisoners-of-War, which concerned, *inter alia*, the establishment of regional commissions (OG RBiH no. 20/92 of 9 November 1992). This Decision on Amendments entered into force on 9 November 1992.

30. On 15 March 1996, the Government of the Republic of Bosnia and Herzegovina enacted the Decision on Establishment of the State Commission on Tracing Missing Persons (OG RBiH no. 9/96 of 24 March 1996), which entered into force on 24 March 1996. Paragraph I of this Decision establishes the State Commission on tracing citizens of the Republic of Bosnia and Herzegovina who

disappeared during the aggression on the Republic of Bosnia and Herzegovina (the “State Commission”). Paragraph II provides that the State Commission shall carry out the following duties: maintain records of citizens of the Republic of Bosnia and Herzegovina who went missing due to the hostilities in the former Yugoslavia; undertake direct activities to trace such persons and to establish the truth on their fate; undertake activities to register, trace, identify, and take-over the mortal remains of killed persons; provide information to authorised institutions; issue certificates to the families of the missing, detained, and killed; and co-operate with specialised national and international agencies and institutions that deal with the issue of missing, detained, and killed persons. Paragraph X states that the State Commission on Tracing Missing Persons shall assume the archives and other documentation of the State Commission and regional commissions described in the preceding paragraph. Paragraph XI renders the Decision on Establishment of the State Commission on Exchange of Prisoners-of-War (OG RBiH nos. 10/92 and 20/92) ineffective upon the entry into force of this Decision. On 10 May 1996, the Government of the Republic of Bosnia and Herzegovina enacted the Decision on Amendments to the Decision on Establishment of the State Commission on Tracing Missing Persons (OG RBiH no. 17/96 of 31 May 1996). The amendments, which mostly concern the establishment of the Expert Team for Locating Mass Graves and Identification of Victims, entered into force on 31 May 1996.

## **2. Federal Commission for Missing Persons**

31. On 3 July 1997, the Government of the Federation of Bosnia and Herzegovina enacted the Decree on Establishment of the Federal Commission for Missing Persons (Official Gazette of the Federation of Bosnia and Herzegovina—hereinafter “OG FBiH”—no. 15/97 of 14 July 1997). The Decree entered into force on 15 July 1997. Article I establishes the Federal Commission for persons who disappeared during the war in Bosnia and Herzegovina (the “Federal Commission”) and also regulates the duties and responsibilities of the Federal Commission. Article II prescribes that the Federal Commission shall perform the following duties: registering citizens of Bosnia and Herzegovina who disappeared or were detained during the war activities on the territory of Bosnia and Herzegovina and neighbouring countries; undertaking direct activities to register, locate, identify and take over the mortal remains of the missing, *i.e.* killed persons; collecting information about mass and individual graves; locating and marking graves; participating in digging graves; informing the public about the results of research; issuing adequate certificates to the families of the missing persons; *etc.*,. Article IV stipulates that the Federal Commission shall collaborate with the respective commission for missing, detained and killed persons in the Republika Srpska to undertake certain measures to identify missing persons and to obtain adequate permissions from the respective commission of the Republika Srpska to dig and exhume mass and individual graves on the territory of Republika Srpska by the nearest competent court in the Federation of Bosnia and Herzegovina. Article X provides that on the date of entering into force of this Decree on the territory of Bosnia and Herzegovina, all the commissions, which have been performing the duties falling within the scope of responsibility of the Federal Commission, shall be dissolved. Significantly, the Decree contains no provision explicitly assuming the archives or documentation or continuing the work commenced by the State Commission.

32. The Chamber notes that both the State Commission and the Federal Commission presently exist *de jure* because a decree enacted on the Federation level cannot over-ride a decision enacted by the Republic of Bosnia and Herzegovina, which was then taken over as law in Bosnia and Herzegovina pursuant to Article 2 of Annex II to the Constitution of Bosnia and Herzegovina. Mr. Amor Mašović is the President of the State Commission; he is also a co-President of the Federal Commission, along with his Croat colleague, Mr. Marko Jurišić. However, the State Commission does not receive any money from Bosnia and Herzegovina, and as a practical matter, most of the work presently conducted with respect to the registration, search, exhumation, and identification of missing persons of Bosniak or Croat origin is in fact conducted by the Federal Commission. None the less, the State Commission does continue to serve citizens of Bosniak origin in some capacities.

## **3. Commission for Tracing Missing and Detained Persons of the Republika Srpska**

33. According to the respondent Party, the Commission for Tracing Missing and Detained Persons of the Republika Srpska (the “RS Commission”) operates on the basis of the Banja Luka Agreement of 25 June 1996 and its mandate follows from that Agreement. The RS Commission undertakes



special activities such as, *inter alia*, research and temporary burial of recovered remains on the territory of the former Yugoslavia; exhumation of remains from individual and mass graves on the territory of the former Yugoslavia; activities in the domain of forensic medicine and criminology; hand over and take over of the remains of deceased persons; identification of deceased persons and unidentified bodies; working with families during the identification process; other activities related to exhumation, identification, burial, etc.,.

#### **4. Resolution on the persons unaccounted for in Bosnia and Herzegovina**

34. On 24 October 2001, the House of Representatives of the Parliament of Bosnia and Herzegovina issued a Resolution on the persons unaccounted for in Bosnia and Herzegovina. In that Resolution, the House of Representatives “*expresse[d]* its great dissatisfaction with the fact that after almost six years after the end of the war in Bosnia and Herzegovina, the fate of 28,000 missing persons still has not been clarified. Therefore, the House of Representatives is of the opinion that the competent state and entity bodies are insufficiently engaged in intensification of activities aimed at solving this painful issue” (Resolution at paragraph 1). The House of Representatives requested the Presidency and Council of Ministers of Bosnia and Herzegovina to “engage themselves actively in elucidating the whereabouts of the missing persons, as well as to contribute to accelerated solution of the missing [persons] issue on the basis of intensive coordination with Entity governments, International Committee of the Red Cross, International Commission on Missing Persons, and other involved actors” (Resolution at paragraph 2). The House of Representatives further requested that competent Entity bodies “provide full support to the delegations of Entity governments in the Working Group for Tracing the Missing Persons in its endeavours to clarify the destiny of the missing [persons], and to guarantee full access to all the sources of information and witnesses” (Resolution at paragraph 3). Lastly, the House of Representatives requested that the competent State and Entity bodies “ensure that the Working Group has all the necessary financial and other means for a more efficient implementation of this humanitarian activity in order to put an end to the suffering of the anguished families” (Resolution at paragraph 4).

#### **D. Criminal Code of the Republika Srpska (Official Gazette of the Republika Srpska nos. 22/00 and 37/01)**

35. Article 148 provides as follows:

“(1) Whoever imperils the security of a person by a serious threat to kill, inflict grievous bodily injury, deprive of freedom or abduct him or a person close to him, or inflict harm by arson, explosion or other generally dangerous deed or means, shall be fined or punished by imprisonment term not exceeding one year.

“(2) If the offence described under paragraph 1 of this Article had been committed against an official in relation to execution of his duty, or against a number of persons, or within a group or criminal organization, the perpetrator shall be punished by imprisonment term not exceeding three years.”

36. Article 149 provides as follows:

“(1) Whoever enters without authorization into an apartment or closed premises of another, or fails to leave them upon request of the authorized person, shall be fined or punished by imprisonment term not exceeding one year.

“(2) The punishment described under paragraph 1 shall also be pronounced to whoever searches the dwelling or premises from the previous paragraph of this Article without appropriate authorization.

“(3) If the act referred to in paragraph 1 of this article had been committed by an official abusing position or authority of office, the perpetrator shall be punished by imprisonment not exceeding three years.

“(4) Attempt is also punishable.”

37. Article 150 provides as follows:

“(1) Whoever without authorization searches a person or his things, shall be fined or punished by imprisonment not exceeding one year.

“(2) If the offence described under paragraph 1 of this Article had been carried out by an official abusing his position or authority of his office, the perpetrator shall be punished by imprisonment term not exceeding three years.

“(3) Attempt is also punishable.”

## **V. COMPLAINTS**

38. The applicants are all immediate family members of four Bosniak men from the Ć. family who disappeared and presumably have been killed during or following the armed take-over of the Municipality of Rogatica by Bosnian Serb forces in June 1992. They allege 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 the whereabouts of their loved ones last seen in 1992. They seek to know the truth. All of the applicants also seek compensation for their continuing suffering in the amount of 140,000 KM each. Some applicants, as noted above, further allege that their property was plundered in the time period after their loved ones disappeared.

## **VI. SUBMISSIONS OF THE PARTIES**

### **A. The respondent Party**

39. In its observations of 21 August 2003, the Republika Srpska claims that the applications, as regards their factual statements, are vague, contradictory and do not contain any supporting documentation. The Republika Srpska submitted documents from the Ministry of Internal Affairs, stating that the alleged war criminals mentioned in the applications are not indicted or being sought by the police in the Rogatica Municipality. Moreover, the applicants never addressed the Ministry of Internal Affairs in this regard. The Republika Srpska also attached a letter from the First Instance Court in Rogatica dated 8 August 2003, stating that the applicants never addressed the Court in question. The Republika Srpska points out that some applications are contradictory, as the applicants claim that the respondent Party refused to give information whilst other applicants state that they never addressed the respondent Party. Furthermore, the Republika Srpska expresses doubts as to whether the applicants are seriously pursuing their cases, as it claims a number of them have applied to the Helsinki Committee in Sarajevo, which is not an organ of the Republika Srpska, and to the ICRC only in June 2003.

40. The respondent Party suggests that the applications should be declared inadmissible in their entirety, for a variety of reasons. Firstly, the applicants failed to address any organ of the respondent Party to obtain information on the fate of their missing family members; therefore, they failed to exhaust a domestic remedy available to them. In this context, the respondent Party states that no tracing requests pertaining to the present applications were transmitted to it by the ICRC, presumably because “these requests have been lodged with the ICRC only in 2003”. Also, the applicants could have addressed the Public Prosecutor to initiate criminal proceedings, and they could have filed a compensation claim under Articles 148-150 Criminal Code of the Republika Srpska (see paragraphs 35-37 above). Secondly, the respondent Party argues that the ICRC never transmitted the tracing requests to the respondent Party; therefore, the responsibility lies with the ICRC and not the respondent Party. The respondent Party therefore regards the applications as inadmissible *ratione personae*. Thirdly, as the underlying events occurred before the entry into force of the Agreement, it is asserted that the Chamber lacks jurisdiction *ratione temporis* to consider the applications.

41. On the merits, the Republika Srpska argues that it did not violate Article 3 of the Convention, as the applicants were not subjected to any treatment that falls within the scope of this Article.

Firstly, the respondent Party argues that such inhumane treatment must be invoked intentionally. The respondent Party, however, claims that it was never addressed in this regard and it did not know that the applicants were seeking information; therefore, it could not have purposefully refused to give them information. The respondent Party claims that when the Chamber informed it about the existence of the present applicants and the fact that they are seeking information, the respondent Party immediately initiated investigations. Moreover, it points out that not every type of mental suffering constitutes inhumane treatment under Article 3 of the Convention. Also, the respondent Party points out that not every family member can be regarded as a victim, referring to the Chamber's decision on review in *Đorđo Unković v. The Federation of Bosnia and Herzegovina*. The respondent Party acknowledges that the present applicants are suffering; however, taking in account all the above-mentioned reasons, the applicants' rights as protected under Article 3 of the Convention were not violated.

42. The respondent Party also argues that there was no violation of the applicants' rights under Article 8 of the Convention. The respondent Party points out that in order for Article 8 of the Convention to be applicable, the applicants should have shown that their relationship with the missing persons was serious, deep and committed enough in order to establish a family life as protected under Article 8 of the Convention. Moreover, the respondent Party is of the opinion that a violation of Article 8 of the Convention can only be found when the respondent Party wilfully refuses to give the information. In support, the respondent Party reiterates the arguments on the admissibility of the cases, having regard in particular to the fact that some of the applicants have, it claims, only in recent times applied to the State Commission and the ICRC with a view to gaining information about their missing family members. Therefore, the respondent Party submits that it was not able to give the information, and it did not wilfully refuse to give the information.

43. With regard to the discrimination claim under I(14) and II(2)(b) of the Agreement, the respondent Party states that this claim cannot exist as such in isolation. A violation can only be found in connection with a violation of another Article of the Convention.

44. Consequently, the respondent Party also considers the compensation claims submitted by the applicants to be ill-founded.

## **B. The applicants**

45. The applicants maintain all their complaints raised in their applications.

## **VII. OPINION OF THE CHAMBER**

### **A. Admissibility**

46. Before considering the merits of these applications, the Chamber must decide whether to accept them, taking into account the admissibility criteria set forth in Article VIII(2) of the Agreement. In accordance with Article VIII(2) of the Agreement, "the Chamber shall decide which applications to accept.... In so doing, the Chamber shall take into account the following criteria: (a) Whether effective remedies exist, and the applicant has demonstrated that they have been exhausted.... (c) The Chamber shall also dismiss any application which it considers incompatible with this Agreement, manifestly ill-founded, or an abuse of the right of petition."

#### **1. As to the loss of moveable property**

47. Several of the applicants have raised claims concerning damage to or loss of moveable property from their and the missing persons' houses in that they allege that their property was plundered. The Chamber notes, however, that the applicants have not shown that this alleged damage was directly caused by the respondent Party or any person acting on its behalf, nor did they show when the damage was caused. Therefore, the Chamber finds that these parts of the applications do not disclose any appearance of a violation of the rights and freedoms guaranteed under the Agreement. It follows that these parts of the applications are manifestly ill-founded, within the meaning of Article VIII(c) of the Agreement, and consequently inadmissible.

## **2. Exhaustion of effective remedies**

48. According to Article VIII(2)(a) of the Agreement, the Chamber must consider whether effective remedies exist and whether the applicant has demonstrated that they have been exhausted. In *Blentić* (case no. CH/96/17, decision on admissibility and merits of 5 November 1997, paragraphs 19-21, Decisions on Admissibility and Merits 1996-1997), the Chamber considered this admissibility criterion in light of the corresponding requirement to exhaust domestic remedies in the former Article 26 of the Convention (now Article 35(1) of the Convention). The European Court of Human Rights has found that such remedies must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness. The Court has, moreover, considered that in applying the rule on exhaustion, it is necessary to take realistic account not only of the existence of formal remedies in the legal system of the Contracting Party concerned, but also of the general legal and political context in which they operate, as well as of the personal circumstances of the applicants.

49. The respondent Party argues that the applicants have failed to exhaust effective domestic remedies in that they have not addressed any of its organs with a request to obtain information on the fate of their missing family members. Although the applicants in the present cases undeniably requested information from the Helsinki Committee and the ICRC, and in at least 3 cases from the State Commission as well, they did not request information directly from the RS Commission.

50. The Chamber notes that according to Article V of Annex 7 (the Agreement on Refugees and Displaced Persons) to the General Framework Agreement,

“[t]he Parties shall provide information through the tracing mechanisms of the ICRC on all persons unaccounted for. The Parties shall also co-operate fully with the ICRC in its efforts to determine the identities, whereabouts and fate of the unaccounted for.”

51. Furthermore, the Chamber recalls that under the *Process for tracing persons unaccounted for* (see paragraphs 24-27 above), as well as in Article V of Annex 7 quoted above, the State of Bosnia and Herzegovina and the Entities, including the Republika Srpska, agreed to co-operate in the effort to trace unaccounted for persons. The *Process for tracing persons unaccounted for* further clarifies that the Parties shall share information, and a copy of all tracing requests are provided to the Working Group, which has three representatives of the Republika Srpska (see paragraph 25 above). As can be seen above, all of the applicants registered their loved ones as missing from Rogatica with the ICRC in November and December 1996. The applicants related to Uzeir Ć. have further registered him with both the ICRC and the State Commission. The respondent Party admits that the applicants all have addressed the ICRC, although it believes that these tracing requests were not pursued seriously by the applicants due to the alleged late filing dates, which is, in fact, incorrect, as shown by the evidence submitted. Moreover, the ICRC has specifically confirmed that it submitted all the tracing requests to the Working Group of the *Process for tracing persons unaccounted for*.

52. Taking into account the respondent Party's obligation under Article V of Annex 7 to “cooperate fully with the ICRC in its efforts to determine the identities, whereabouts and fate of the unaccounted for” and the fact that all tracing requests were provided to representatives of the Republika Srpska through the Working Group, the Chamber considers that the relevant authorities of the respondent Party were made aware of the applicants' requests for information about the fate and whereabouts of their loved ones missing from Rogatica through the *Process for tracing persons unaccounted for*.

53. Considering that all the applicants have addressed the ICRC in 1996, and in three applications both the ICRC and the State Commission, with a tracing request registering their loved ones as missing from Rogatica, the Chamber concludes that the applicants have exhausted the remedy provided for in Annex 7 for the purposes of Article VIII(2)(a) of the Agreement. Therefore, the Chamber rejects this ground for declaring the applications inadmissible.

## **3. Compatibility *ratione personae***

54. Similar to its argument with respect to exhaustion of domestic remedies, the respondent

Party contends that the applications are incompatible *ratione personae* with the Agreement because the applicants failed to request information about the fate and whereabouts of their loved ones directly from the RS Commission. Rather, the applicants addressed the Helsinki Committee, the ICRC and the State Commission. The respondent Party claims the ICRC never transmitted the tracing requests to it; as a result, the respondent Party argues that any obligation to provide information to the applicants was transferred to the ICRC and the Working Group.

55. However, for the reasons described above, taking into account the respondent Party's obligation under Article V of Annex 7 to "cooperate fully with the ICRC in its efforts to determine the identities, whereabouts and fate of the unaccounted for" and the fact that all tracing requests were provided to representatives of the respondent Party through the Working Group, as specifically confirmed by the ICRC in these cases, the Chamber has concluded that the relevant authorities of the respondent Party were made aware of the applicants' requests for information about the fate and whereabouts of their loved ones missing from Rogatica through the *Process for tracing persons unaccounted for* (see paragraphs 24-27 above). This conclusion applies equally to the admissibility criterion of compatibility *ratione personae* in the context of the present applications.

56. The Chamber finds that the applications raise claims under the Agreement in relation to whether the authorities of the Republika Srpska have treated the applicants in a manner compatible with their obligations under the Agreement in response to the applicants' requests for information about the fate and whereabouts of their missing loved ones from Rogatica. Such claims fall within the responsibility of the respondent Party. Therefore, the applications, as directed against the Republika Srpska, are compatible *ratione personae* with the provisions of the Agreement, within the meaning of Article VIII(2)(c).

#### 4. Compatibility *ratione temporis*

57. The respondent Party also objects to the applications as incompatible *ratione temporis* with the Agreement.

58. In accordance with the Chamber's previous practice, claims on behalf of missing persons directly related to acts exclusively occurring prior to 14 December 1995 (and in the absence of a continuing violation) are inadmissible as outside the Chamber's competence *ratione temporis*. One leading case on this principle is *Matanović v. the Republika Srpska*, which involved the alleged unlawful detention of a Roman Catholic priest and his parents, commencing prior to 14 December 1995 and continuing thereafter. In describing its competence *ratione temporis*, the Chamber stated as follows:

"In accordance with generally accepted principles of law, the Agreement cannot be applied retroactively. Accordingly, the Chamber is not competent to consider events that took place prior to 14 December 1995, including the arrest and detention of the alleged victims up to 14 December 1995. However, in so far as it is claimed that the alleged victims have continued to be arbitrarily detained and thus deprived of their liberty after 14 December 1995, the subject matter is compatible with the Agreement and comes within the competence of the Chamber *ratione temporis*" (case no. CH/96/1, *Matanović*, decision on admissibility of 13 September 1996, at section IV, Decisions on Admissibility and Merits March 1996-December 1997).

59. Thus, the Chamber is not competent *ratione temporis* to consider whether events occurring before the entry into force of the Agreement on 14 December 1995 gave rise to violations of human rights. The Chamber may, however, consider relevant evidence of such events as contextual or background information to events occurring after 14 December 1995 (case no. CH/97/67, *Zahirović*, decision on admissibility and merits of 10 June 1999, paragraphs 104-105, Decisions January-July 1999).

60. However, as the Chamber explained in *Unković v. the Federation of Bosnia and Herzegovina* (case no. CH/99/2150, decision on review of 6 May 2002, paragraphs 84-90, Decisions January-June 2002), claims of family members seeking information about the fate and whereabouts of loved ones who have been missing since the armed conflict raise allegations of a continuing violation of the

human rights of the family members by the respondent Party. Both Articles 3 and 8 of the Convention impose a positive obligation on the respondent Party “to investigate thoroughly into allegations of arbitrary deprivations of liberty even in cases where it cannot be established, although it is alleged, that the deprivation of liberty is attributable to the authorities” (*id.* at paragraph 88 (quoting *Demirović, Berbić, and Berbić v. Republika Srpska* (application no. 7/96, Report of the Ombudsperson of 30 September 1998))).

61. The Chamber recalls that all of the applicants registered their loved ones as missing persons with the ICRC in November and December 1996, and Uzeir Ć. was further registered with the State Commission. These tracing requests were all opened after 14 December 1995, when the Agreement entered into force. Yet, more than 7 years after the initiation of these requests for information, none of the applicants has been officially informed about the fate and whereabouts of their missing loved ones. Therefore, the allegations contained in the applications concern a continuing violation of the human rights of the applicants by the respondent Party, which commenced on 14 December 1995 and continues to the present date. As such, the applications fall within the Chamber’s competence *ratione temporis*, within the meaning of Article VIII(2)(c) of the Agreement, and they are admissible.

## **5. Conclusion as to admissibility**

62. As explained above, the Chamber has rejected the respondent Party’s objections to the applications based upon failure to exhaust domestic remedies, incompatibility *ratione personae* and incompatibility *ratione temporis*. The Chamber also declared inadmissible the claims concerning plundered property. As no other grounds for declaring the applications inadmissible have been raised or appear from the applications, the Chamber declares the applications admissible in their entirety with respect to claims arising or continuing after 14 December 1995 under Articles 3 and 8 of the Convention, and discrimination in connection with these rights under Articles I(14) and II(2)(b) of the Agreement.

## **B. Merits**

63. Under Article XI of the Agreement, the Chamber must next address the question of whether the facts established above disclose a breach by the respondent Party of its obligations under the Agreement. Under Article I of the Agreement, the parties are obliged to “secure to all persons within their jurisdiction the highest level of internationally recognised human rights and fundamental freedoms,” including the rights and freedoms provided for in the Convention and the other international agreements listed in the Appendix to the Agreement.

### **1. Article 8 of the Convention (Right to Respect for Private and Family Life – i.e., Right to Access to Information)**

64. Article 8 of the Convention provides, in relevant part, as follows:

“Every one has the right to respect for his private and family life....

“There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

65. In its previous case law, the Chamber has recognised the right of family members of missing persons to access to information about their missing loved ones. In *Unković v. the Federation of Bosnia and Herzegovina*, the Chamber considered “that information concerning the fate and whereabouts of a family member falls within the ambit of ‘the right to respect for his private and family life’, protected by Article 8 of the Convention. When such information exists within the possession or control of the respondent Party and the respondent Party arbitrarily and without justification refuses to disclose it to the family member, upon his or her request, properly submitted to a competent organ of the respondent Party or the ICRC, then the respondent Party has failed to

fulfil its positive obligation to secure the family member's right protected by Article 8" (case no. CH/99/2150, *Unković v. the Federation of Bosnia and Herzegovina*, decision on review of 6 May 2002, paragraph 126, Decisions January—June 2002; accord case nos. CH/99/3196, *Palić v. the Republika Srpska*, decision on admissibility and merits of 9 December 2000, paragraphs 82-84, Decisions January—June 2001; CH/01/8365 et al., *Selimović and Others v. The Republika Srpska*, decision on admissibility and merits of 3 March 2003, paragraphs 173-174; see also Eur. Court HR, *Gaskin v. United Kingdom*, judgment of 7 July 1989, Series A no. 160; Eur. Court HR, *M.G. v. United Kingdom*, judgment of 24 September 2002).

66. In the present applications, the applicants' loved ones were taken away from their homes by Bosnian Serb forces, supposedly for an interview, during the take-over of the Municipality of Rogatica in June 1992. Each applicant has obtained a document from the ICRC, and in three cases also the State Commission, confirming that his or her loved one, who was a member of his or her immediate family, is registered as a missing person from Rogatica. The tracing requests with the ICRC were opened in November and December 1996. No applicant has received any official information on the fate and whereabouts of his or her missing loved one.

67. The Chamber notes that the authorities of the respondent Party must have had within their "possession or control" information about the Č. men who disappeared from Rogatica, since they were taken away from their homes by soldiers of the RS Army. In any event, the possibility that information and evidence pertaining to the fate of these persons was lost or destroyed by members of the armed forces of the respondent Party does not relieve the respondent Party of its positive obligations under Article 8 of the Convention. Rather, it appears that the authorities of the Republika Srpska arbitrarily and without justification failed to take any action whatsoever to locate, discover, or disclose information sought by the applicants about their missing loved ones. There is no evidence, for example, that the authorities of the Republika Srpska have interviewed any of the members of its armed forces who were involved in the events of the take-over of Rogatica and the treatment of the Bosniak male population, interviewed any other possible witnesses, disclosed any physical evidence still in its possession with a view to making the requested information available to the families of the victims of the Rogatica take-over. Such inaction or passivity is a breach of the Republika Srpska's responsibilities due under Annex 7 to the General Framework Agreement and the *Process for tracing persons unaccounted for*.

68. Therefore, the Chamber concludes that the respondent Party has breached its positive obligations to secure respect for the applicants' rights protected by Article 8 of the Convention in that it has failed to make accessible and disclose information requested about the applicants' missing loved ones.

## **2. Article 3 of the Convention (Prohibition of Inhuman or Degrading Treatment — i.e., Right to Know the Truth)**

69. Article 3 of the Convention provides that: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

70. In its previous case law, the Chamber has recognised the right of family members of missing persons to know the truth about the fate and whereabouts of their missing loved ones (case nos. CH/99/2150, *Unković*, decision on review of 6 May 2002, paragraphs 101-119, Decisions January—June 2002; CH/01/8365 et al., *Selimović and Others v. The Republika Srpska*, decision on admissibility and merits of 3 March 2003, paragraphs 182-191; see also case no. CH/99/3196, *Palić*, decision on admissibility and merits of 9 December 2000, paragraphs 75-80, Decisions January—June 2001). In *Unković v. the Federation of Bosnia and Herzegovina*, the Chamber held that "the special factors considered with respect to the applicant family member claiming an Article 3 violation for inhuman treatment due to lack of official information on the whereabouts of a loved one are the following:

- primary consideration is the dimension and character of the emotional distress caused to the family member, distinct from that which would be inevitable for all relatives of victims of serious human rights violations;
- proximity of the family tie, with weight attached to parent-child relationships;
- particular circumstances of the relationship between the missing person and the family member;
- extent to which the family member witnessed the events resulting in the disappearance—however, the absence of this factor may not deprive the family member of victim status;
- overall context of the disappearance, *i.e.*, state of war, breadth of armed conflict, extent of loss of life;
- amount of anguish and stress caused to the family member as a result of the disappearance;
- involvement of the family member in attempts to obtain information about the missing person—however, the absence of complaints may not necessarily deprive the family member of victim status;
- persistence of the family member in making complaints, seeking information about the whereabouts of the missing person, and substantiating his or her complaints” (case no. CH/99/2150, *Unković*, decision on review of 6 May 2002, paragraph 114, Decisions January—June 2002).

71. Moreover, “the essential characteristic of the family member’s claim under Article 3 is the reaction and attitude of the authorities when the disappearance is brought to their attention. In this respect, the special factors considered as to the respondent Party are the following:

- response, reactions, and attitude of the authorities to the complaints and inquiries for information about the fate of missing person—complacency, intimidation, and harassment by authorities may be considered aggravating circumstances;
- extent to which the authorities conducted a meaningful and full investigation into the disappearance;
- amount of credible information provided to the authorities to assist in their investigation;
- extent to which the authorities provided a credible, substantiated explanation for a missing person last seen in the custody of the authorities;
- duration of lack of information—a prolonged period of uncertainty for the family member may be an aggravating circumstance;
- involvement of the authorities in the disappearance” (case no. CH/99/2150, *Unković*, decision on review of 6 May 2002, paragraph 115, Decisions January—June 2002).

72. Applying the above factors to the applicants in the present cases, the Chamber observes that all the applicants are close family members (*i.e.*, brother, sisters, wives and children) of the Bosniak men who have been missing from Rogatica since June 1992. In fact, all four missing men are relatives from the Ć. family, who were taken from their homes by Bosnian Serb forces. All of the applicants registered the missing persons with the ICRC in November and December 1996, and some also with the State Commission. That the applicants have suffered as a result of the events taking place in Rogatica in 1992 and the resultant loss of four members of their family under such conditions is indisputable and apparent from the applications. Such emotional suffering, in the view of the Chamber, is of a dimension and character to constitute “inhuman treatment” within the meaning of Article 3 of the Convention.

73. Applying the above factors to the respondent Party, the Chamber observes that the authorities of the Republika Srpska have done nothing to clarify the fate and whereabouts of the presumed victims of the Rogatica events from the Ć. family or to take any other action to relieve the suffering of their surviving family members. In particular, they have not investigated the facts concerning the circumstances of disappearances of Bosniak men occurring in Rogatica between in June 1992, not interviewed any of the participating members of its armed forces who took part in the operation, not contacted the surviving family members, and not undertaken action substantively to assist the actions of others (*e.g.*, the ICRC, the State Commission, the International Commission on Missing Persons, or the ICTY) to clarify the events at Rogatica. Moreover, the Chamber must note that the



authorities of the Republika Srpska were directly involved in the disappearances at Rogatica. None the less, the applicants and other survivors of the Rogatica events of June 1992 have waited for more than eleven years for clarification of the fate and whereabouts of their missing loved ones by the competent authorities. As no meaningful information has been forthcoming, the reaction of the authorities of the Republika Srpska can only be described as “complacency” or indifference, which aggravates an already tragic situation.

74. Taking all of the applicable factors into account, both with respect to the applicants and the respondent Party, the Chamber concludes that the respondent Party has violated the rights of the applicants to be free from “inhuman and degrading treatment”, as guaranteed by Article 3 of the Convention, in that it has failed to inform the applicants about the truth of the fate and whereabouts of their loved ones missing from Rogatica since June 1992.

### **3. Discrimination in the enjoyment of Articles 8 and 3 of the Convention**

75. Taking into consideration its conclusion that the Republika Srpska has violated the applicants’ rights protected by Articles 8 and 3 of the Convention, the Chamber decides that it is not necessary separately to examine the applications with respect to discrimination.

### **4. Conclusion as to the merits**

76. In summary, the Chamber concludes that the respondent Party’s failure to make accessible and disclose information requested by the applicants about their missing loved ones constitutes a violation of its positive obligations to secure respect for their rights to private and family life, as guaranteed by Article 8 of the Convention. In addition, the respondent Party’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 events at Rogatica in June 1992, violates their rights to be free from inhuman and degrading treatment, as guaranteed by Article 3 of the Convention.

## **VIII. REMEDIES**

77. Under Article XI(1)(b) of the Agreement, the Chamber must next address the question of what steps shall be taken by the respondent Party to remedy the established breaches of the Agreement. In this connection the Chamber shall consider issuing orders to cease and desist, monetary relief (including pecuniary and non-pecuniary damages), as well as provisional measures.

78. The Chamber recalls that the applicants seek to know the truth about their missing loved ones, who may be presumed victims of the events in Rogatica in June 1992 and thereafter. The applicants also seek compensation for their suffering in the amount of 140,000 KM each. In fashioning a remedy for the established breaches of the Agreement, Article XI(1)(b) provides the Chamber with broad remedial powers and the Chamber is not limited to the requests of the applicants.

79. In accordance with its previous case law in missing persons cases (see, CH/01/8365 *et al.*, *Selimović v. The Republika Srpska*, decision on admissibility and merits of 3 March 2003, paragraphs 205-210), the Chamber will order the Republika Srpska, as a matter of urgency, to release all information presently within its possession, control, and knowledge with respect to the fate and whereabouts of the missing loved ones of the applicants, including information on whether any of the missing persons are still alive and held in detention and if so, the location of their detention, and whether any of the missing persons are known to have been killed in the Rogatica events and if so, the location of their mortal remains. The Republika Srpska shall immediately release any such missing persons who are still alive and held in detention unlawfully. The Republika Srpska shall also, as a matter of urgency, disclose to the ICRC, the International Commission on Missing Persons, and the State Commission all information within its possession, control, and knowledge with respect to the location of any gravesites, individual or mass, primary or secondary, of the victims of the Rogatica events not previously disclosed.

80. The Chamber will further order 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 events in Rogatica in 1992 and the subsequent assaults on the Bosniak population, its subsequent efforts to cover up those facts, and the fate and whereabouts of the persons missing from Rogatica since summer 1992. Such investigation should also be conducted with a view to bringing the perpetrators of any crimes committed in connection with the missing persons from Rogatica to justice before the competent domestic criminal courts or to transferring persons wanted by the ICTY for prosecution for war crimes, genocide, or crimes against humanity in connection with the Rogatica events. This investigation should include, among other necessary measures, an internal investigation of present and former members of the armed forces of the respondent Party who may have relevant personal knowledge of the Rogatica events. The Republika Srpska shall disclose the results of this investigation to the Chamber, the ICRC, the International Commission on Missing Persons, the State Commission, and the ICTY, as well as to the OHR, the Organisation for Security and Co-operation in Europe (the "OSCE") Mission to Bosnia and Herzegovina, and the Office of the Council of Europe in Bosnia and Herzegovina, at the latest within six months after the date of delivery of this decision.

81. The Chamber further finds it appropriate to make a collective compensation award to benefit all the family members of the persons missing from Rogatica since summer 1992. In this regard, the Chamber particularly highlights that in the present decision, it has found violations of the rights of the family members protected by Articles 8 and 3 of the Convention, but it has not found any violations of the rights of the missing persons because such claims are outside the competence of the Chamber *ratione temporis* (see paragraph 58 above). 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 Rogatica events, then the applicants would like to bury the remains of their loved ones in accordance with their traditions and beliefs.

82. The Chamber notes that on 15 June 2000, the Institute for Missing Persons (hereinafter "MPI") was founded on the initiative and with the support of all domestic missing persons commissions, the International Commission on Missing Persons, the ICRC and family associations of missing persons. Furthermore, the Chamber notes that the Presidency of Bosnia and Herzegovina is a co-founder of the MPI pursuant to a decision of 11 June 2003. The MPI is a legal entity on the State level registered with the Cantonal Court in Sarajevo, serving the aim of collecting, registering, and storing remains and data about missing persons; exhuming and identifying missing persons from the armed conflict; and advocating for the release of information.

83. Therefore, the Chamber finds it appropriate to order the Republika Srpska to make a lump sum contribution to the MPI for the collective benefit of all the applicants and the families of the victims of the Rogatica events in the total amount of one-hundred thousand Convertible Marks (100,000 KM), to be used in accordance with the Statute of the MPI for the purpose of collecting information on the fate and whereabouts of missing persons primarily from the Municipality of Rogatica. This amount shall be paid by the Republika Srpska at the latest six months after the delivery of the present decision. The Chamber will further order the Republika Srpska to pay simple interest at an annual rate of 10% (ten per cent) on the lump sum specified or any unpaid portion thereof after the expiry of six months from the date of delivery of this decision, *i.e.*, 22 June 2004, until the date of settlement in full.

84. Although the Chamber recognises that the applicants have personally suffered pecuniary and non-pecuniary damages, the Chamber will not make any individual awards of compensation. The lump sum payment specified in the preceding paragraph, which shall be used for the collective benefit of all the applicants, will, in the Chamber's view, provide the best form of reparation for the violations found of the applicants' rights guaranteed by Articles 3 and 8 of the Convention to know the fate and whereabouts of their missing loved ones from Rogatica.

85. In light of the violations found in the present cases, the Chamber considers that a further appropriate remedy would be for the Republika Srpska to make a public acknowledgement of responsibility for the Rogatica events and a public apology to the victims' relatives and the Bosniak

community of Bosnia and Herzegovina as a whole. However, a public acknowledgement of responsibility and a public apology can only provide a real remedy for the applicants when the statements are honest, genuine, sincere, and self-initiated, *i.e.*, not compelled by a court order. Therefore, the Chamber will refrain from ordering the Republika Srpska to make such a public acknowledgement of responsibility or a public apology because, in the context of the Rogatica cases, the Chamber finds such an order inopportune. The Chamber expresses the hope, however, that these statements will be forthcoming from the Republika Srpska on its own initiative.

## **IX. CONCLUSIONS**

86. For the above reasons, the Chamber decides,

1. by 11 votes to 2, that the applicants' claims arising or continuing after 14 December 1995 under Articles 3 and 8 of the European Convention on Human Rights and discrimination in connection with these rights under Article I(14) and II(2)(b) of the Human Rights Agreement are admissible;

2. unanimously, that any remaining portions of the applications are inadmissible;

3. by 11 votes to 2, that the failure of the Republika Srpska to make accessible and disclose information requested by the applicants about their missing loved ones from Rogatica violates its positive obligations to secure respect for their rights to private and family life, as guaranteed by Article 8 of the Convention, the Republika Srpska thereby being in breach of Article I of the Agreement;

4. by 11 votes to 2, that the failure of the Republika Srpska 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 events during and after the take-over of the Municipality of Rogatica in 1992, violates their rights to be free from inhuman and degrading treatment, as guaranteed by Article 3 of the Convention, the Republika Srpska thereby being in breach of Article I of the Agreement;

5. unanimously, that it is not necessary separately to examine the applications with respect to discrimination;

6. by 12 votes to 1, to order the Republika Srpska, as a matter of urgency, to release all information presently within its possession, control, and knowledge with respect to the fate and whereabouts of the missing loved ones of the applicants, including information on whether any of the missing persons are still alive and held in detention and if so, the location of their detention, and whether any of the missing persons are known to have been killed in the events in Rogatica in 1992 and if so, the location of their mortal remains. The Republika Srpska shall immediately release any such missing persons who are still alive and held in detention unlawfully. The Republika Srpska shall also, as a matter of urgency, disclose to the ICRC, the International Commission on Missing Persons, and the State Commission all information within its possession, control, and knowledge with respect to the location of any gravesites, individual or mass, primary or secondary, of the victims of the Rogatica events not previously disclosed;

7. unanimously, to order the Republika Srpska to conduct a full, meaningful, thorough, and detailed investigation into the events giving rise to the established human rights violations; the Republika Srpska shall disclose the results of this investigation to the ICRC, the International Commission on Missing Persons, the State Commission, and the ICTY, as well as to the OHR, the OSCE Mission to Bosnia and Herzegovina, and the Office of the Council of Europe in Bosnia and Herzegovina, within six months from the date of delivery of this decision, *i.e.* by 22 June 2004;

8. by 10 votes to 3, to order the Republika Srpska to make a lump sum contribution to the Institute for Missing Persons in the total amount of one-hundred thousand Convertible Marks (100,000 KM), to be used in accordance with the Statute of the Institute for Missing Persons for the purpose of collecting information on the fate and whereabouts of missing persons primarily from the

Municipality of Rogatica, to be paid within six months from the date of delivery of this decision, *i.e.* by 22 June 2004;

9. by 11 votes to 2, that simple interest at an annual rate of 10 % (ten per cent) will be payable on the sum awarded in the previous conclusion from the expiry of the six-month period set for such payment until the date of final settlement;

10. unanimously, to dismiss any remaining claims for compensation; and

11. unanimously, to order the Republika Srpska to submit to the Human Rights Commission within the Constitutional Court of Bosnia and Herzegovina a full report on the steps taken by it to comply with these orders within six months after the date of delivery of this decision, *i.e.* by 22 June 2004.

(signed)  
Ulrich GARMS  
Registrar of the Chamber

(signed)  
Michèle PICARD  
President of the Chamber