DECISION ON THE MERITS

of

CASE No. CH/96/1

Josip, Božana and Tomislav MATANOVIĆ

against

Republika Srpska

The Human Rights Chamber for Bosnia and Herzegovina, sitting on 11 July 1997, with the following members present:

Jakob MÖLLER, Vice-President, (Acting President)
Dietrich RAUSCHNING
Hasan BALIĆ
Rona AYBAY
Vlatko MARKOTIĆ
Želimir JUKA
Mehmed DEKOVIĆ
Giovanni GRASSO
Miodrag PAJIĆ
Manfred NOWAK
Michèle PICARD
Vitomir POPOVIĆ
Viktor MASENKO-MAVI

Andrew GROTRIAN, Registrar
Olga KAPIĆ, Deputy Registrar

Having considered the merits of the Application on behalf of Josip MATANOVIĆ, Božana MATANOVIĆ and Tomislav MATANOVIĆ against the Republika SRPSKA, registered under Case No. CH/96/1 and declared admissible by the Chamber on 13 September 1996 under Article VIII paragraph 2 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 on the merits of the case under Article XI of the Agreement and Rules 57 and 58 of its Rules of Procedure.

I. INTRODUCTION

1. The three applicants are Josip and Božana Matanović, residents of Prijedor in the Republika Srpska, and their son Tomislav Matanović, a Roman Catholic priest in that town. The case concerns their alleged arrest and subsequent detention by authorities of the Republika Srpska, which is the respondent Party. The case was referred to the Chamber by the Human Rights Ombudsperson for Bosnia and Herzegovina ("the Ombudsperson") on 6 June 1996 under Article V paragraph 7 of the Annex 6 Agreement. In her Report on the case the Ombudsperson found that the applicants, after a period under house arrest, had been taken to a police station in Prijedor in September 1995 and had been missing since. She also found that in December 1995 and March 1996 the authorities of the Republika Srpska offered to exchange them for prisoners held by the Federation of Bosnia and Herzegovina but that they had not been exchanged or released. She concluded that there had been a violation of Article 5, paragraphs (1) to (4) of the European Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and thus a violation of Article I of the Agreement.

2. In her letter referring the case to the Chamber the Ombudsperson stated that her object in bringing the case before the Chamber was to obtain the Chamber's decision on the question whether the persons concerned were victims of a violation of the rights guaranteed by Article I of the Agreement.

II. PROCEEDINGS BEFORE THE CHAMBER

3. The case was referred to the Chamber by the Ombudsperson on 6 June 1996. The Chamber considered the case on 20 June 1996 and decided to request certain factual information from the respondent Party. It fixed a time-limit expiring on 5 July 1996 for the submission of this information. The Chamber also requested the Ombudsperson to submit details of the evidence on which the findings in her Report were based. The Ombudsperson submitted copies of a number of documents in response to the Chamber's request. The Chamber again considered the case on 11 July 1996. It decided to transmit certain documents submitted by the Ombudsperson to the respondent Party for information and again requested the respondent Party to submit the information previously requested.

4. The Chamber again considered the case on 15 August 1996 and decided to request the respondent Party to submit written observations on the admissibility and merits of the case by 5 September 1996. It further requested the respondent Party to take such interim measures as might be necessary to safeguard the lives and well-being of the three alleged victims and also to inform the Chamber of their whereabouts. It also decided to inform the Ombudsperson and the respondent Party that it was at their disposal with a view to achieving an amicable resolution of the matter under Article IX of the Agreement.

5. No response was received from the respondent Party to any of the communications from the Chamber. On 13 September 1996 the Chamber declared the application admissible in so far as it related to the claim that the applicants had been detained after 14 December 1995 (the date of entry into force of the Agreement) in violation of Article 5 of the Convention. It also decided again to request the respondent Party to make written submissions on the merits of the case and fixed a new time-limit expiring on 10 October 1996 for doing so. On 17 October 1996 the Chamber, noting that no written observations had been received from the respondent Party, decided to hold an oral hearing on the merits of the case on 10 December 1996. It requested the parties to inform it before 1 November 1996 of any proposals they might wish to make for the hearing of oral testimony and also to submit before 19 November 1996 any written observations and documentary evidence they wished to put before the Chamber. On 22 October 1996 at a meeting between the President of the Republika Srpska and the President and two other members of the Chamber, three documents relating to the case were handed to the members of the Chamber. By letter of 24 October 1996 the Minister of the Interior of the Republika Srpska submitted information concerning the case.

6. By letter of 1 November 1996 the Ombudsperson submitted proposals for obtaining oral and other evidence. By letter dated 8 November 1996 the respondent Party requested postponement of

the hearing due to the recent elections, the process of constituting a new Government and the need to appoint an Agent to represent the Government in Chamber proceedings.

7. The Chamber considered the case further on 6, 7 and 8 November 1996. It decided by a majority to accede to the respondent Party's request for a postponement of the hearing and fixed 6 February 1997 as the new date of the hearing. It also took a number of decisions relating to the investigation of the case. In particular it decided to invite the Ombudsperson to inspect the records of relevant police stations and prisoner exchange authorities. It ordered the Ombudsperson to produce certain documents so far as in her possession. It also requested the respondent Party, the Federation of Bosnia and Herzegovina and a number of organisations to produce information and documents. It also decided to hear five individuals as witnesses at the hearing.

8. On 26 November 1996 the President of the Chamber agreed to a request by the Ombudsperson for an extension, to 9 December 1996, of the time limit for submission of her observations on the merits of the case. On 2 December 1996 the Ombudsperson submitted certain documents in accordance with the Chamber's order. By letter of 5 December 1996 the respondent Party submitted a copy of the Report of a Commission established to investigate the case. On 9 December 1996 the Ombudsperson submitted observations on the case and copies of a number of documents. In response to its requests for information the Chamber also received documents from the Bishopric of Banja Luka and the Office of the High Representative. On 30 January 1997 the Ombudsperson submitted copies of a report on investigations carried out by members of her Office in response to the Chamber's request and copies of certain other documents.

9. The hearing before the Chamber took place on 6 February 1997 in the Palace of Justice in Sarajevo. The Ombudsperson, Dr Gret Haller, was present in person and was accompanied by Mr Milan Blasko, Deputy Ombudsperson, and Ms Jessica Simor, an international lawyer from her office. The respondent Party was represented by its Agent, Mr Stevan Savic. At the outset of the hearing the respondent Party requested that the hearing should be postponed due to the unavoidable absence of the two members of the Chamber appointed by the Republika Srpska. The Chamber decided to hear the evidence of two witnesses who were present and to accede to the request for a postponement as regards the remainder of the hearing. The Chamber heard opening submissions from the parties and heard the evidence of Bishop Franjo Komarica, Bishop of Banja Luka, and Mr Berislav Pušić, Head of the Office for Exchange of Prisoners and Missing Persons, Federation of Bosnia and Herzegovina - Croatian Party.

10. Following the hearing the Chamber decided to hear a number of further persons as witnesses and also to seek certain further factual information. The continued hearing was held on 18 and 19 March 1997 at the meeting room of the Chamber of Commerce in Sarajevo. The Chamber heard the evidence of Mr Amor Mašović, President of the State Commission for Missing Persons of the Federation of Bosnia and Herzegovina, and Mr Dragan Bulajić, former head of the Republika Srpska State Commission for the Exchange of War Prisoners and Missing Persons. It also heard further evidence from Bishop Komarica and Mr Berislav Pušić. Following the hearing of these witnesses the Agent for the respondent Party requested that the hearing be adjourned so that the evidence of three other witnesses who had been summoned but who had not appeared could be heard. He also asked the Chamber to hear two police officers from Prijedor as additional witnesses. The Chamber decided to postpone a decision on the request to hear further evidence, reserving the right to summon further witnesses, and to invite the parties to make submissions on the basis of the evidence so far heard. The Agent of the respondent Party informed the Chamber that he was not ready to make final submissions but that he would wish to do so after all the evidence had been heard. The Chamber then heard submissions from the Ombudsperson. A number of questions were also put to the parties' representatives by the Chamber.

11. On 20 March 1997 the Chamber deliberated on the case and decided not to hear any further witnesses. It also decided to give the parties the opportunity to submit final observations on the case in writing before 3 April 1997. By letter dated 2 April 1997 the Ombudsperson informed the Chamber that she would not submit any further observations. By letters dated 25 March and 1 and 3 April 1997 the Agent of the respondent Party asked to be supplied with the verbatim record of the continued hearing for the purpose of making his submissions. The Chamber considered this request on 7 April 1997 and decided to inform the respondent Party that its Rules of Procedure did not

require that the verbatim record of evidence should be available to the parties before they made their final submissions, which would normally be made orally at the hearing. It decided however as an exceptional measure to fix a further time limit for submission of the respondent Party's final observations, of two weeks from the date of receipt of the letter informing the respondent Party of its decision. On 23 April 1997 the respondent Party submitted its final observations on the merits of the case.

12. The Chamber deliberated on the merits of the case on 7 May 1997. It decided not to accede to a suggestion in the observations of the respondent Party that further oral evidence should be heard. It further deliberated on the merits on 7, 8 and 9 July1997. On 11 July1997 it adopted the present decision on the merits.

III. ESTABLISHMENT OF THE FACTS

13. The facts of the case are in dispute. There follows a brief outline of the facts as presented by the parties and of the evidence before the Chamber. The Chamber's findings as to the facts of the case are set out in Section V of this decision.

The Facts as presented by the Parties

14. The Ombudsperson, who presented the case to the Chamber on behalf of the applicants, has found in her Report: that the applicant Tomislav Matanović was arrested at his home in Prijedor on the night of 24 August 1995 by local Bosnian Serb police officers; that he was taken and detained at the police station in Prijedor; that he was then taken to his parents' home in Prijedor where he remained guarded by police officers of the Urije police station of Prijedor; that on 19 September 1995 all three applicants were taken to the Urije police station; that they have been missing since then; that on 21 December 1995 and 23 March 1996 the authorities of the Republika Srpska offered to exchange them for prisoners of war held by the Federation of Bosnia and Herzegovina but that they have not been exchanged or released.

15. The respondent Party, in the proceedings on the merits before the Chamber, has contested these facts and has maintained that the applicants were not arrested or detained at any time and that they left the Republika Srpska by bus on 10 October 1995 in the Teslić area in accordance with an agreement between the International Committee of the Red Cross ("ICRC") and the authorities of the Republika Srpska. According to a letter to the Chamber from the Minister of the Interior of the Republika Srpska their departure was organised by the Prijedor Red Cross.

The Evidence Obtained by the Chamber

16. The Chamber has obtained oral and documentary evidence in relation to the facts of the case. There follows a brief outline of the oral evidence obtained and a brief description of the documentary evidence.

17. **Bishop Franjo Komarica**, the Roman Catholic Bishop of Banja Luka, was the superior of Father Tomislav Matanović in the church hierarchy. He stated that Father Matanović was arrested at about 22.30 hours on the night of 24-25 August 1995 at his parish house and taken, together with his father, Josip Matanović, to the Urije police station. From there they were taken, a few hours later, to the Matanović family house in Prijedor. There all three applicants were held under police guard until 19 September 1995 when they were taken away by car to an unknown destination. During the period of house arrest the applicants were guarded day and night by police officers working in shifts. Bishop Komarica did not have direct personal knowledge of these matters but had received reports, in particular from the ICRC and from three priests whom he had sent to visit the family.

18. After these events Bishop Komarica made numerous written and oral representations to the authorities of the Republika Srpska and other persons attempting to obtain the applicants' release.

He stated that in conversations with the Deputy Minister for Religion, Mr Jovo Turanjanin, and the President of the Prijedor Municipality, Mr Srdjo Srdjic, he was told that Father Matanović was innocent and in a safe place. On one occasion he was told by the Prime Minister of the Republika Srpska, Mr Kasagic, that he could not order the Chief of the Centre for Public Security, Mr Simo Drljača, to release Father Matanović. Later Mr Kasagić told him by phone that he had ordered Mr Drljača to release Father Matanović "dead or alive". He was also approached by the brothers of a Major Lakić. They told him that Major Lakic was imprisoned by the HVO (Croatian Council of Defence) or a Croatian/Bosniac unit and spoke about the possibility of exchanging him for Father Matanović. The Bishop said that he favoured the release of Major Lakić in so far as he was innocent but did not favour linking the case to that of Father Matanović. He tried on many occasions to arrange a meeting with Mr Drljača, but was always told that he was not available. He had been informed by Mr Srdjo Srdjić, head of the Prijedor Red Cross, that the Red Cross had not organised any bus transport from Prijedor in the direction of Teslić on 10 October 1995.

19. **Mr Berislav Pušić** was the head of the Commission for the Exchange of Prisoners and Missing Persons of the Croatian Party of the Federation. He stated that he had been informed at a meeting of the Prisoner Exchange Commissions of the Republika Srpska and the Croatian Party of the Federation, held on 22 August 1995 on the lines of severance near Žepče, that Father Matanović was under house arrest accused of certain offences. This was the first time he had heard of Father Matanović. He had later been informed by Bishop Komarica that Father Matanović and his parents had been arrested on 24 August 1995. He had made many attempts in the course of bilateral negotiations to obtain their release, but without success.

20. On 16 December 1995 an Agreement had been signed, at the UNPROFOR base at Sarajevo airport, between the Croatian and Serb sides for the exchange of a number of prisoners including Father Matanović. The exchange of all the prisoners was accomplished, apart from Father Matanović. The Serb side gave assurances that they had all necessary documents for Father Matanović and his parents to leave the Republika Srpska. The list of twelve prisoners on which Father Matanović's name appeared was offered from the Serb side and by the Secretary of their Commission, Mr Darko Krtinić. It was typed in the UNPROFOR base and was signed by Mr Dragan Bulajić. The exchange should have happened on 21 December 1995 but representatives of I and II Krajina Corps cancelled it. Meetings of the Exchange Commissions continued. At a meeting held on 30 January 1997 the Serb side gave assurances that the problem of Father Matanović would be solved that week. A meeting was to be arranged by the Serb side in Bosanska Gradiška to solve that case and others. At a meeting in Banja Luka on 25 June 1996 Mr Pušic had been approached during a break in the meeting by an unknown man who stated that he was ready to solve the case of Father Matanović in exchange for his brother. He had told Mr Bulajić of this approach and had asked him to solve the case.

21. Mr Pušić was also a member of the Joint Military Commission. At their monthly meetings he had the opportunity to meet General Tolimir of the Republika Srpska. He said that he would do his best to obtain the release of Father Matanović and also said that the legal authorities of Prijedor were not behind his detention but ungovernable groups.

22. At the hearing on 6 February 1997 Mr Pušić said that he had received information that Josip Matanović had died of natural causes but that Father Matanović and his mother were still alive. On 18 March 1997 he said that he had received information that Father Matanović's mother had also died. According to his information Father Matanović was not under the control of the authorities of the Republika Srpska but was controlled by the Lakić brothers. The authorities of the Republika Srpska could not deliver him. He was not in a position to disclose the source of his information and its accuracy, he said, could only be judged when Father Matanović was freed.

23. **Mr Amor Mašović** was the President of the State Commission for Missing Persons, the body responsible on the Bosniac side for negotiations over prisoner exchanges. He had first heard of the Matanović case in September or October 1995. He had been present at the meeting of the Exchange Commissions at Sarajevo Airport on 16 December 1995. He had asked Mr Bulajić directly whether he knew about the case and he had confirmed that Father Matanović had been arrested and was in jail and that he was negotiating with the Croat representative in Mostar about the case. The applicants had not been released following the meeting and Mr Mašović had continued to press for information about the case. It had not been suggested that the Matanović family had left the Republika Srpska by

bus in October 1995. On the contrary Mr Bulajić had said after March 1996 that Father Matanović was still in jail and had mentioned difficulties reaching him.

24. Mr Mašović said that there had been prisons in private houses or other buildings in the Republika Srpska but he questioned whether they could properly be described as private prisons. No-one could detain people in the Republika Srpska without the authority of the Government.

25. **Mr Dragan Bulajić** was the President of the Republika Srpska State Commission for the Exchange of War Prisoners and Missing Persons. He confirmed that he had signed the list of twelve persons, including Father Matanović, who were to be exchanged on 21 December 1995. Father Matanović's name appeared on the list at the request of the Croat side. Such lists were made by local Committees. All the larger military units had their own Committees. They were not directly under the jurisdiction of the State Commission but the State Commission co-ordinated them. The Croats would submit lists to the local Committees who decided whether to accept them or not. The State Commission would not normally dispute agreements reached locally.

26. According to Mr Bulajić, Father Matanović had never been in an official prison in the Republika Srpska. The intervention of the international community had not been helpful. The involvement of the Lakić brothers had appeared, as a parallel institution outside the State authorities. He personally thought the problem could be solved with more time and a quieter atmosphere. There had been private prisons on all three sides during the war. The Republika Srpska had fought them.

27. The **documentary evidence** before the Chamber includes correspondence between various individuals and organisations, including in particular correspondence with authorities of the respondent Party, reports of meetings including discussions under the auspices of the Office of the High Representative, memoranda on investigations carried out by the International Police Task Force (the "IPTF") and a Report on investigations carried out by the Office of the Human Rights Ombudsperson at the request of the Chamber. The respondent Party also submitted a copy of the Report, dated 5 December 1996, of a Commission established by the Government of the Republika Srpska to investigate the case. This evidence is further elaborated on in Part V of this Decision.

IV. FINAL SUBMISSIONS OF THE PARTIES

28. In her submissions to the Chamber the Ombudsperson has suggested that the respondent Party has failed to secure the applicants' right to liberty and security of person as guaranteed by Article 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and furthermore, in her oral submissions, that issues may also arise under Articles 2 and 3 of the Convention, which respectively protect the right to life and prohibit torture, inhuman and degrading treatment or punishment.

29. The respondent Party has submitted that no violation of the Convention or the Agreement has been proved.

V. THE CHAMBER'S ASSESSMENT OF THE FACTS

Preliminary Matters

30. In her observations on the merits of the case the Ombudsperson has pointed out that the respondent Party first contested the facts of the case, and raised the allegation that the applicants had voluntarily left the Republika Srpska, after the case had been declared admissible and after the expiry of the time limit for submission of written observations on the merits of the case. She has

submitted that the respondent Party should be stopped from introducing these allegations at this stage of the proceedings.

31. The Chamber notes that the respondent Party took no part in the proceedings before the Ombudsperson or the Chamber until after the case had been declared admissible. It further notes that under Article X paragraph 5 and Article XIII paragraph 4 of the Agreement the Parties are obliged to co-operate with the Chamber and the Ombudsperson. In the Chamber's opinion such co-operation demands that the Parties should respond fully to requests for information or observations and should comply with time limits set. In accordance with generally recognised principles of procedural law the Chamber may decline to take into account information or argument which is not submitted at the appropriate stage of proceedings or which is submitted after a time-limit has expired. In the present case, however, the Chamber will take into account all the information and argument which has been submitted.

32. The Chamber also recalls that, as indicated in its decision on the admissibility of the case, it has no competence to consider allegations of human rights violations arising before the entry into force of the Agreement on 14 December 1995. Evidence of events which occurred before that date may, however, be relevant as evidence of an applicant's situation after the relevant date. In particular evidence that an applicant was arrested or in detention before the Agreement came into force, or evidence that he was released, may well be relevant to the question whether he has been in custody since, (see also *Case No, CH/96/15,* Grgić v. Republika Srpska, Decision of 5 February 1997). In this case the Chamber has therefore examined evidence relating to events both before and after the relevant date.

Examination of the Evidence and Findings in Fact

33. The first question to be considered is whether the applicants were arrested and disappeared as alleged. The principal evidence on this matter was that of Bishop Komarica who had received reports from three priests who visited the applicants and described their being under house arrest. A letter dated 17 January 1996 from Alex Braunwalder, Head of the ICRC Delegation in Zagreb, to Mrs Doris Pack, a Member of the European Parliament, states that Delegates of the Red Cross called on Father Matanović on several occasions while the applicants were under house arrest in Prijedor and that they were informed about his disappearance on 19 September 1995 and that the whereabouts of the three applicants remains unknown to date. Mr Pušić gave evidence to the effect that he was informed on 22 August 1995, by representatives of the Republika Srpska, that Father Matanović was under house arrest. This was two days before the arrest is said to have taken place. Amongst the documentary evidence the Chamber has also taken particular note of a Report of the United Nations International Police Task Force ("the IPTF") on investigations which it carried out into the case in the summer of 1996. This reveals abundant evidence that the applicants were arrested and disappeared as described by the Bishop. The Chamber notes furthermore that although the respondent Party denies that the applicants were ever arrested, the evidence relating to the initial arrests has scarcely been contested. The Commission established by the respondent Party for the investigation of the case does not appear to have investigated the allegations relating to the initial arrests in any detail, if at all. The Agent of the respondent Party indicated at the hearing that their investigation had been concentrated on the question whether the applicants had left the Republika Srpska by bus in October 1995. No attempt seems to have been made by the Commission to interview any witnesses other than police officers, although neighbours, priests and officials of the Red Cross would all have been able to provide information about the house arrest and disappearance of the applicants.

34. On the evidence before it the Chamber finds that it is established that Father Matanović was arrested at his home in Prijedor in the late evening of 24 August 1995 by police officers of the Republika Srpska. He was taken to the Urije police station at Prijedor and held there until some time later in the night. He was then taken to his parents' house in Prijedor. He and his parents were held there under house arrest by members of the police until about 19 September 1995, when they were driven off to an unknown destination. Their whereabouts have been unknown since.

35. The Chamber recalls that the European Commission of Human Rights has held that the disappearance of a person from official custody creates a presumption of responsibility on the part of the Government in question for that person's fate, (Koceri Kurt v. Turkey, Report of the Commission

dated 5 December 1996). It has further stated that in order to rebut that presumption the relevant authorities "must provide a credible and substantiated explanation of what has happened and show that they have taken effective steps to investigate the occurrence and ascertain the fate of the individual concerned" (ibid.). The Commission has also held that "any unaccounted disappearance of a detained person" must be considered as a particularly serious violation of Article 5 of the European Convention and that that Article "can...be understood as a guarantee against such disappearances", (Application No. 8007/77, Cyprus v. Turkey, 72 DR at p.38). The Chamber also agrees with the views as to evidence expressed by the Inter-American Court of Human Rights in the case of Velasquez Rodriguez v. Honduras (Judgement of 29 July 1988), where the Court stated as follows:

> "130. The practice of international and domestic courts shows that direct evidence, whether testimonial or documentary, is not the only type of evidence that may be considered, so long as they lead to conclusions consistent with the facts.
>
> 131. Circumstantial or presumptive evidence is especially important in allegations of disappearances, because this type of repression is characterized by an attempt to suppress all information about the kidnapping or the whereabouts and fate of the victim."

In the present case the applicants were taken into custody and disappeared before the Dayton Agreement came into force. In the Chamber's view such events occurring before the Agreement came into force cannot on their own raise a presumption that the Agreement has been violated. However they may be taken into account as evidence which, along with other evidence, may show that the detention of the applicants has continued after the Agreement came into force.

36. There is no direct evidence before the Chamber as to the fate of the applicants after their disappearance in September 1995. The respondent Party has provided no explanation of the applicants' disappearance from house arrest. It has, however, submitted that the three applicants left the Republika Srpska voluntarily on 10 October 1995. Against that submission there are substantial indications in the evidence suggesting that the applicants remained in custody after their disappearance. Such indications are to be found in particular in the evidence relating to proposed prisoner exchanges and in the responses of authorities of the respondent Party to representations made to them about the case by Bishop Komarica and others.

37. As to the suggestion that the applicants left the Republika Srpska on 10 October 1995, the Chamber has had particular regard to two documents in the case file, namely a copy police report dated 10 October 1995 and a letter dated 23 April 1996 from Mr Simo Drljača, chief of police in Prijedor, to the IPTF.

38. The police report purports to be a report by two police officers to the Chief of the Prijedor police station on their observations during an eight hour period on duty on 10 October 1995. It narrates that the officers in question were present at a parking place in Prijedor from 18.30 to 20.00 hours because a lot of people were trying to embark on buses allegedly leaving for Teslić and that the officers noticed Father Matanović in one of the buses "with two older persons, a man and a woman". The Chamber notes that this Report, which appears to be a transcript rather than a photocopy of an original, was produced only in January 1997 in the course of the inspection of police records carried out by the Office of the Ombudsperson and that it was only at the very end of the Chamber's hearings of evidence that the respondent Party proposed for the first time that the officers in question should be heard as witnesses. The Chamber considers that that proposal was made too late. The Chamber finds it surprising that the alleged sighting of Father Matanović and two older people should be singled out for mention in a written report, particularly since it appears from the Report of the Office of the Ombudsperson on their inspection of records, that virtually no written records were kept in the Prijedor police stations at the relevant time.

39. The letter from Mr Drljača to the IPTF relates that the three applicants left the Republika Srpska by bus at 23.40 hours on 10 October 1995 and that their departure was organised by the Prijedor Red Cross under an Agreement between the International Red Cross and the Republika Srpska regarding movement of the civil population from the territory. The Chamber notes that Mr Drljača was interviewed about this matter in September 1996 by a staff delegation from the International Relations Committee of the United States Congress but, according to their Report, did

not repeat the suggestion that the Matanović family had left the territory as described. It notes furthermore that the suggestion of Red Cross involvement in the alleged departure of the family is contradicted by information given by Mr Srdjo Srdjić, head of the Prijedor Red Cross, to Bishop Komarica, and by the Report of the Commission established by the Republika Srpska to investigate the matter. Neither Mr Srdjic nor the alleged driver of the bus was available to give evidence before the Chamber.

40. In relation to the alleged departure of the applicants the Chamber also notes that there is no evidence to suggest that the applicants were at liberty at any time between their disappearance from house arrest and their alleged departure or that they reappeared after they had left the Republika Srpska. If they had been at liberty at any time after their disappearance, either before or after 10 October 1995 it is difficult to conceive that they would not have made contact with anyone, including the Roman Catholic community in Prijedor or elsewhere. Furthermore the Chamber notes that the claimed departure of the Matanović family was not mentioned in meetings of high authorities of the Republika Srpska with the Office of the High Representative.

41. The Chamber has next considered the evidence relating to the representations and discussions about the case which took place after the applicants' disappearance from house arrest and, in particular to the discussions about the possible exchange of the applicants for other prisoners.

42. It is not contested, and in the Chamber's opinion is established beyond doubt, that the name of Father Matanović appeared on a list of prisoners offered by the authorities of the Republika Srpska in exchange for other prisoners. The list in question is dated 16 December 1995 and is signed by Mr Dragan Bulajić, Chairman of the Republika Srpska State Commission for the Exchange of War Prisoners. It narrates that on 21 December 1995 at 11.00 hours "we... are ready to free the following prisoners of Croat nationality, following the request of the representative of Croatian Republic of Herceg- Bosna". There follows a list of twelve names including Father Matanović.

43. Both Mr Pušić and Mr Bulajić gave evidence before the Chamber as to how the list of 16 December 1995 was established. According to Mr Pušić the list was offered by the Serb side and was typed in the UNPROFOR base in Sarajevo. Mr Pušić also said that he remarked to Mr Bulajić on the fact that the parents of Father Matanović were not on the list and that Mr Bulajić replied that it went without saying that they would also be released. Mr Bulajić said in his evidence that the name of Father Matanović was on the list at the request of the Croatian side. He indicated that the procedure was that the Croatian side submitted lists of persons whom they wished to have released and that the lists were submitted to local Commissions who said yes or no to the release.

44. The Chamber does not consider it essential to establish exactly how the list of 16 December 1995 was drawn up. It notes that it constitutes an official acknowledgement by the competent authority of the Republika Srpska that Father Matanović was held prisoner. On the evidence of Mr Bulajić the authorities of the Republika Srpska, in the shape of the local exchange commissions, would have been involved in agreeing or not agreeing to the release of prisoners named by the Croatian side. The Chamber accepts on the evidence before it that mistakes could, and sometimes did, occur in the drawing up of such lists so that names were included of persons who, for one reason or another, were not in custody. However in the absence of specific evidence of such an error having occurred in this case, the Chamber regards the list in question as powerful evidence that at the relevant time Father Matanović was a prisoner whom the authorities of the Republika Srpska were in a position to release. Having regard to the evidence of Mr Pušić, referred to above, as to the position of the parents, the Chamber considers that the presence of Father Matanović's name on the list suggests that the parents are likely also to have been in the same position.

45. Looking more generally at the evidence of the three witnesses involved in the prisoner exchange bodies, the Chamber notes that the case was frequently discussed but no solution was reached. These three witnesses enjoyed a close and professional working relationship characterised by mutual trust. All three appear to have approached the case, initially at least, on the basis that the applicants were alive and that the case was soluble. None of them appears to have attached credence to the suggestion that the applicants had left the Republika Srpska. Mr Mašović, for

instance, stated that Mr Bulajić had confirmed to him that Father Matanović was detained and that he had never mentioned the story about their leaving the Republika Srpska on a bus.

46. Bishop Komarica made numerous representations to the authorities of the Republika Srpska about the case. The response of those authorities was frequently such as to suggest that they knew that the applicants were or had been detained. Thus according to the Bishop Mr Jovo Turanjanin, the Deputy Minister of Religion and Mr Srdjo Srdjić, the President of the Prijedor Municipality, both told him after the family had disappeared that Father Matanović was innocent and that he was in a safe place, having already been exchanged. Mr Gojko Kličković told him, after the date when the applicants had supposedly left the Republika Srpska, that Father Matanović was in Ljubija and that he had passed on regards to him there. The Prime Minister of the Republika Srpska, Mr Kasagić told the Bishop that he could not order the Chief of the Centre for Public Security in Prijedor, Mr Simo Drljača, to release Father Matanović and his parents. Later Mr Kasagić told him by phone that he had ordered Mr Drljača to release Father Matanović dead or alive. In March 1996 Mr Pećanac and Mr Krnjajić, chiefs of the Public Security Centre of Banja Luka told the Bishop that they would speak with Mr Drljača about the release of Father Matanović.

47. Mr Pušić similarly spoke of receiving assurances from various official sources of the Republika Srpska in terms which appear to the Chamber to suggest that the applicants were or had been detained. In particular he stated that at the time of the abortive exchange proposal the Serb side gave assurances that they had all necessary documents for the applicants to leave the Republika Srpska. On 26 March 1996 Mr Pušić and the President of the Federation, Mr Zubak, attended a meeting in the Republika Srpska where they received assurances from President Krajišnik and Mr Aleksa Buha, the Minister of Foreign Affairs, that they would do everything possible to release Father Matanović. He also said that at monthly meetings of the Joint Military Commission General Tolimir gave similar assurances and also said that the legal authorities in Prijedor were not behind the detention of Father Matanović but that "ungovernable groups" were. As late as 30 January 1997 Mr Pušić had, according to him, been assured during a bilateral meeting with the Republika Srpska Exchange Commission that the problem of Father Matanović would be solved during the week.

48. The fate of the applicants was also raised in numerous high level talks, in particular with the Office of the High Representative. On 2 June 1996 a meeting took place between Mr Steiner, the Deputy High Representative and President Krajišnik and other officials of the Republika Srpska. According to the record of the meeting President Krajišnik "repeated his order žfrom the highest authorities' to Bulajić to have Matanović released".

49. There is little evidence before the Chamber as to the location or locations at which the applicants might have been detained after their disappearance or as to the persons who might be responsible for detaining them. Most of the evidence tends to suggest that the applicants may latterly have been held in some form of unofficial prison, possibly in the custody of the brothers of a Major Lakić, a Serb officer who was allegedly imprisoned in Croatia. In particular Bishop Komarica said that he was approached by the Lakić brothers who wanted to arrange an exchange of Father Matanović for their brother. Mr Pušić also gave evidence of an approach by a person who appears to have been one of the Lakić brothers, in Banja Luka in June 1996. On the second occasion when he gave evidence he also stated that Father Matanović, according to his information, was not under the control of the Republika Srpska but was held in Prijedor by the Lakić brothers. Mr Bulajić suggested that the Lakić brothers operated as a parallel institution outside the state. At various times other suggestions as to responsibility for the applicants' detention have been made, including that they have been held by or under the authority of Mr Simo Drljača head of public security in Prijedor, or particular military units, namely the 43rd Brigade or the V Kozara Brigade.

50. It has been suggested in the evidence that Josip and Božana Matanović may have died since their disappearance. Mr Pušić in particular claimed on the first occasion when he gave evidence that he had information to the effect that Josip had died of natural causes. Earlier, in a letter dated 19 November 1996 to the Office of the Human Rights Ombudsperson, he stated that he had found out that Josip had been beaten to death, but that Father Matanović and his mother were still alive. He explained in evidence that the difference between these two statements arose from the fact that they were based on different sources of information. On the second occasion when he gave evidence he said that he had since learned that Father Matanović's mother, Božana had also died.

51. Having considered the whole evidence, the Chamber finds that it leads to the reasonable conclusion that the three applicants have been held continuously in detention within the territory of the Republika Srpska after their disappearance in September 1995 and after the Agreement entered into force on 14 December 1995. It does not find the account of the applicants' departure on 10 October 1995 convincing and rejects that account. The evidence before it is not sufficient to allow the Chamber to make any more specific finding as to the place of the applicants' detention at any time since their disappearance although they may well have been held in some form of unofficial prison. Nor can the Chamber make any specific finding as to the persons directly responsible for the detention since the applicants' disappearance. It considers , however, that the evidence leads to the reasonable conclusion that the persons responsible have had connections with the police or military forces of the respondent Party, although it is not possible to say whether they have been acting with the approval of the higher governmental authorities. It is possible that one or more of the applicants has died in detention but the evidence does not permit any definite finding to be made on that matter.

VI. OPINION OF THE CHAMBER

52. In terms of Article XI paragraph 1 (a) of the Annex 6 Agreement the Chamber must, in the present decision, address the question whether the facts found indicate a breach by the respondent Party of its obligations under the Agreement.

53. Article I of the Agreement provides that the Parties to the Agreement "shall secure to all persons within their jurisdiction the highest level of internationally recognised human rights and fundamental freedoms, including the rights and freedoms provided in the European Convention for the Protection of Human Rights and Fundamental Freedoms..." These include the right to liberty and security of person, which is guaranteed by Article 5 of the European Convention. By virtue of Article II paragraph 2 of the Agreement the Chamber has jurisdiction to consider "alleged or apparent violations of human rights as provided in the European Convention...where such violation is alleged or appears to have been committed by the Parties, including by any official or organ of the Parties, Cantons, Municipalities, or any individual acting under the authority of such official or organ."

54. Article 5 of the European Convention, so far as relevant, is in the following terms:

> ***Article 5***
>
> 1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> (a) the lawful detention of a person after conviction by a competent court;
>
> (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
>
> . . .
>
> 2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.
>
> 3. Everyone arrested or detained in accordance with the provisions of paragraph 1.c of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial....

> 4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his arrest or detention shall be decided speedily by a court and his release ordered if the detention is not lawful.
>
> 5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

55. The Ombudsperson has argued that there has been a failure by the respondent Party to secure to the applicants the rights guaranteed by Article 5. The respondent Party has contested the case on its facts but has not attempted to argue that the applicants' detention, if it did take place, could be considered justifiable under Article 5 (1) of the Convention or that any of the requirements of paragraphs (2) to (5) of Article 5 were met.

56. The Chamber first recalls that the obligation on states, contained in Article 1 of the European Convention, to "secure" the rights and freedoms set out in the Convention to all persons within their jurisdiction not only obliges states to refrain from violating those rights and freedoms, but also entails positive obligations on the states to protect those rights,(see Judgements of Eur. Court HR in X and Y v. Netherlands, 1985, Series A No. 91, para. 23, Plattform "Arzte fur das Leben" v. Austria, 1988, Series A No. 139, para.32 and McCann & Others v. United Kingdom, Series A No. 324, para. 161). The same principle applies, in the Chamber's opinion, to the obligation on the Parties to the Annex 6 Agreement to "secure" the rights and freedoms mentioned in the Agreement.

57. The Chamber also recalls that in the case of Kurt v. Turkey (*sup. cit.)* the European Commission of Human Rights held that the fact that a missing person had been in the custody of the security forces when last seen created a presumption of responsibility of the respondent Government for his fate. The Commission also said as follows:

> " In order to discharge this responsibility, the Government must provide a credible and substantiated explanation of what has happened and show that they have taken effective steps to investigate the occurrence and ascertain the fate of the individual concerned. In this assessment, it is of relevance to ascertain what safeguards, if any, exist within domestic law and practice to protect against involuntary disappearances. In this context, the Commission recalls that the United Nations Human Rights Committee…has emphasised the importance that State Parties should take specific and effective measures to prevent disappearances and establish effective facilities and procedures to investigate thoroughly, by an appropriate and impartial body, cases of disappearances that may involve a violation of the right to life…" (para.202 of the Commission's Report).

58. In the present case the Chamber considers that a presumption of responsibility of the respondent Party for the fate of the applicants since the Dayton Agreement came into force similarly arises from the evidence. Such a presumption arises in particular from the established fact that the applicants disappeared whilst under house arrest, combined with the official acknowledgement since the Dayton Agreement came into force that Father Matanović was held as a prisoner, the evidence that his parents were most probably in the same position (see para. 44 above) and the other evidence suggesting that the authorities were aware that the applicants were detained after the Agreement came into force.

59. In the Chamber's opinion the respondent Party has failed either to provide a credible and substantiated explanation for the applicants' disappearance or to show that they have taken effective steps to investigate the matter. The only explanation put forward in relation to the applicants' fate is the account of their having left the Republika Srpska by bus in October 1995, an account which the Chamber does not find credible for the reasons already indicated. The only investigation carried out appears on the evidence to have been that of the Commission established by the respondent Party in December 1996. As the Chamber has already noted the Commission appears only to have interviewed police officers and its main objective appears to have been only to establish whether the applicants left the Republika Srpska in October 1995 as alleged by the police. No investigation at all appears to have been made into the numerous reports suggesting that the applicants were arrested in August 1995 and kept in detention after that date. The Commission was not established until

nearly a year after the Dayton Agreement came into force, despite numerous representations to the authorities about the case, and appears to have carried out its investigation and produced its Report within two days. In the Chamber's opinion the investigation was not adequate for the purposes of Article 5 of the Convention.

60. Such a forced disappearance of the applicants, according to the European Commission of Human Rights, "raises fundamental and grave issues under Article 5" (Report in the case Kurt v. Turkey, *sup. cit.*, para. 201). It is necessary to recall that the European Commission of Human Rights has held that:

> "Article 5 aims to provide a framework of guarantees against abuse of power in relation to persons taken into custody. Such persons are vulnerable to a wide range of arbitrary treatment and infringements of their personal integrity and dignity. Article 5 plays an essential role in the system of protection under the Convention in effectively preventing the risk of treatment contrary to Article 3 and extra-judicial execution contrary to Article 2 and in holding State authorities accountable to independent judicial control for the detention of persons taken into custody." (Report, Kurt v. Turkey*, sup. cit.* para. 201)

In this case the Chamber refrains from considering whether the forced disappearance of the three applicants constitutes also a violation of Article 2 and Article 3 of the Convention. That issue was not raised until towards the end of the proceedings, thus preventing contradictory discussion of the matter. However, it is necessary to point out that, according to the jurisprudence of the European Commission of Human Rights, "any unaccounted disappearance of a detained person" must be considered as a particularly serious violation of Article 5 of the European Convention, (see Application No. 8007/77, Cyprus v. Turkey, Report of the Commission, 72 DR at p.38; see also the Report of the Ombudsperson in the present case at para.25).

61. In these circumstances the Chamber is of the opinion that the respondent Party has, since 14 December 1995, failed to secure the applicants' rights to liberty and security of person as guaranteed by Article 5 of the European Convention and is therefore in breach of its obligations under Article I of the Annex 6 Agreement.

VII. REMEDIES

62. Under Article XI paragraph 1 (b) of the Annex 6 Agreement, the Chamber must also address in its decision the question "what steps shall be taken by the respondent Party to remedy such breach, including orders to cease and desist, monetary relief…and provisional measures."

63. In the present case the Chamber finds it appropriate at this stage of proceedings to order the respondent Party immediately to take all necessary steps to ascertain the whereabouts or fate of the applicants and to secure their release if still alive. It will also order the respondent Party to report to the Chamber on the steps taken and the results of any investigations carried out. It further considers it appropriate to leave open the possibility of ordering further steps to be taken by the respondent Party as may appear appropriate in the future. It will also reserve the question of monetary relief pursuant to Rule 59 of its Rules of Procedure.

VIII. CONCLUSIONS

64. For the reasons given above the Chamber:

> -1. **Decides** by eleven votes to two that the respondent Party has breached the applicants' rights to liberty and security of person as guaranteed by Article 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and is thereby in breach of its obligations under Article I of Annex 6 to the General Framework Agreement for Peace in Bosnia and Herzegovina;

-2. By eleven votes to two **orders** the respondent Party immediately to take all necessary steps to ascertain the whereabouts or fate of the applicants and to secure their release if still alive; **further orders** the Respondent Party to report to it without delay and in any event before 6 October 1997 on the steps taken by it to comply with this order and on the results of any investigations carried out;

3. By eleven votes to two **reserves** the possibility of making further orders under Article XI paragraph 1 (b) of Annex 6 including in particular orders for monetary relief and **further reserves** for future decision the question of further procedure in that regard.

(signed) Andrew GROTRIAN
Registrar of the Chamber

(signed) Jakob MÖLLER
Vice-President of the Chamber
(Acting President)

ANNEX

In accordance with Rule 61 of the Chamber's Rules of Procedure this Annex contains a separate concurring opinion by Mr Manfred NOWAK and a separate dissenting opinion by MM Miodrag PAJIĆ and Vitomir POPOVIĆ.

CONCURRING OPINION OF MR MANFRED NOWAK

1. While I fully agree with the finding of the Chamber that the facts as established in the present case disclose a violation of the applicants' rights to liberty and security of person under Article 5 of the European Convention by the respondent Party, I cannot agree with the opinion of the Chamber that it should refrain from considering whether there have also been other breaches of the Convention. Although the Ombudsperson in her report of 5 June 1996 only alleged violations of Article 5, the Chamber is not bound by this restrictive approach and should have, both in its admissibility decision and in the present decision on the merits, considered the case in respect to possible violations of various articles of the European Convention on Human Rights and even other treaties listed in the Annex to Annex 6 of the Dayton Peace Agreement.

2. The facts as established by the Chamber do not only relate to arbitrary deprivation of personal liberty and security but to the enforced disappearance of Father Matanović and his parents. It is established that he was arrested by police officers of the respondent Party on 24 August 1995, that he was kept under house arrest by members of the police until about 19 September 1995, when he was driven together with his parents off to an unknown destination (para. 34). At that date they disappeared and their fate and whereabouts remain unknown until today. The authorities of the respondent Party officially refuse to acknowledge the deprivation of the liberty and have failed so far to disclose their fate and whereabouts and/or to seriously investigate their disappearance. On the other hand, there is strong evidence that Father Matanović was offered by the authorities of the Republika Srpska in exchange for other prisoners in December 1995 and even during 1996, and the Chamber concludes that the three applicants have been held continuously in detention within the territory of the Republika Srpska, either by the authorities or by persons with direct connection with the police or military forces of the respondent Party (para. 51). There are also certain indications that one or more of the applicants might have died in detention.

3. The UN Declaration on the Protection of All Persons from Enforced Disappearance, which was unanimously adopted by the General Assembly on 18 December 1992 and, although not legally binding, constitutes the most elaborate and authoritative international instrument in this field, should in my opinion be taken into account when applying the European Convention to a case of enforced disappearance, i.e. a human rights violation which is not explicitly referred to in the European Convention. The UN Declaration defines in its preamble enforced disappearances "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 the liberty, which places such persons outside the protection of the law."

4. There can be no doubt that the facts as established by the Chamber disclose that the applicants are victims of enforced disappearance in the sense of the UN Declaration. The very act of enforced disappearance is a particularly serious violation of human rights which clearly goes beyond mere arbitrary deprivation of personal liberty and security. According to Article 1 of the UN Declaration any act of enforced disappearance is "an offence to human dignity" and "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."

5. While Article 3 of the Inter-American Convention on Forced Disappearance of Persons of 9 June 1994 regards any individual act of forced disappearance as a crime against humanity, the preamble of the UN Declaration only stipulates "that the systematic practice of such acts is of the nature of a crime against humanity". There is ample evidence that the disappearance of the applicants is not an isolated case. That is why the United Nations Commission on Human Rights in 1994 established a "Special process on missing persons in the territory of the former Yugoslavia". Both the expert member of the UN Working Group on Enforced or Involuntary Disappearances, responsible for the special process, and the International Committee of the Red Cross estimate that presently some 20.000 persons are still missing in Bosnia and Herzegovina (cf. UN Doc. E/CN. 4/1997/55).

6. In its judgement in Velasquez Rodriguez v. Honduras of 29 July 1988, the Inter-American Court of Human Rights ruled that "circumstantial or presumptive evidence is especially important in allegations of disappearances, because this type of repression is characterised by an attempt to suppress all information about the kidnapping or the whereabouts and fate of the victim" (para. 131). When the Inter-American Court found that the enforced disappearance of Mr. Velasquez constituted a violation of Articles 4,5 and 7 of the American Convention on Human Rights (rights to life, humane treatment, personal liberty and security) by Honduras, it took the overall situation of human rights in the country and systematic practice of disappearance into account. Similarly, the UN Human Rights Committee in a number of cases, most recently in its views on Laureano v. Peru of 25 March 1996 (Communication No. 540/1993), held that acts of enforced disappearance constitute a violation of the same human rights (Articles 6,7 and 9 of the International Covenant on Civil and Political Rights) and that the respondent Parties had failed to effectively protect the right to life although the death of the victim has not been established. In addition, both international bodies ruled that prolonged incommunicado detention, which in fact is proven in every case of enforced disappearance, as such constitutes cruel and inhuman treatment (e.g. Velasquez Roderiguez, para. 156; Laureano, para. 8.5). In its report on the case Kurt v. Turkey of 5 December 1996, the European Commission of Human Rights found a violation of Article 3 of the European Convention on Human Rights. It is, however, somewhat surprising that this violation was found only in respect of the applicant (the mother of the disappeared person) but that the Commission did not find it necessary to examine separately whether the disappeared person himself was also a victim of inhuman treatment (paras. 197 and 221).

7. The fact that the applicants in the present case, as most of the other missing persons in Bosnia and Herzegovina, in fact disappeared before the entry into force of the Dayton Peace Agreement, does not preclude the Chamber from considering such cases if there is presumptive evidence that they were still held in detention after 14 December 1995. In this context Article 17 paragraph (1) of the UN Declaration on the Protection of All Persons from Enforced Disappearance needs to be taken into account: "Acts constituting enforced disappearance shall be considered a continuing offence as long as the perpetrators continue to conceal the fate and the whereabouts of persons who have disappeared and these facts remain unclarified".

8. Article 1 of Annex 6 of the Dayton Peace Agreement provides that the Parties "shall secure to all persons within their jurisdiction the highest level of internationally recognised human rights and fundamental freedoms, including the rights and freedoms provided in the European Convention". The Chamber rightly stresses that the term "secure" also entails positive obligations on the Parties to protect these rights (para. 56). In the case of enforced disappearances these positive obligations include effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearances (e.g. by prohibiting incommunicado detention), to fully and effectively investigate all cases of enforced disappearances as well as to bring the perpetrators to justice. These and other obligations are spelled out in detail in the UN Declaration on the Protection of All Persons from Enforced Disappearance.

9. Taking into account the provisions of the UN Declaration as well as the relevant international case-law on acts of enforced disappearance as a tool for interpreting the European Convention and applying it to the present case, I conclude that the respondent Party has violated, in addition to their right to liberty and security of person under Article 5, the following other human rights:

- Article 3 because the prolonged period of incommunicado detention to which the applicants have been exposed, constitutes as such inhuman treatment;

- Article 2 paragraph (1) in conjunction with Article 1 because the enforced disappearance of the applicants for a period of one and a half years as from the entry into force of the Dayton Peace Agreement constitutes a grave threat to the right to life, because there are certain indications that one or more of the applicants might have died in detention, and because the respondent Party has failed to secure and protect the applicant's right to life.

10. In addition to ascertaining without any further delay the fate and whereabouts of the applicants and to securing their release if still alive, the respondent Party is under an obligation to fully investigate the enforced disappearance of the applicants, to grant them their right to an effective remedy before a national authority in accordance with Article 13 of the European Convention including adequate compensation, and to bring the perpetrators to justice.

(signed) Manfred Nowak

DISSENTING OPINION OF MM MIODRAG PAJIĆ AND VITOMIR POPOVIĆ

1. The Government of the Republika Srpska appointed a commission to consider the Matanović case and they submitted, in co-operation with the Office of the Ombudsperson, their opinion, namely the conclusion they had reached within a pre-set time limit. It is unmistakably established by this opinion, which was not put in doubt during the procedure before the Human Rights Chamber, that the "Matanović family" left the territory of the Republika Srpska at Teslić on 10 October 1995 at 23.40 hours together with other persons who were voluntarily leaving the territory of the Municipality of Prijedor in accordance with the "Samaruga-Koljević" Agreement. However since the Matanović family had left the territory before the time, on 14 December 1995, when the Dayton Agreement came into force, it must be concluded that the Human Rights Chamber for Bosnia and Herzegovina is not competent to decide upon this concrete case. It could possibly be within the jurisdiction of the Commission for Refugees and Displaced Persons, which was formed in accordance with the Dayton Agreement and has jurisdiction in relation to such and similar agreements regardless of the temporal validity of the Agreement.

2. We are of the opinion that the statements of the witness Bishop Franjo Komarica and others cannot have the force of evidence, although they were accepted as such by the Human Rights Chamber, because this witness is not personally familiar with anything and did not have any personal knowledge. He allegedly heard everything from others, for example from his priests whose names he did not want to reveal and from some other representatives of the Republika Srpska who were not heard in relation to these matters. On the contrary, the Chamber rejected the proposal of the Agent for the Republika Srpska to hear the evidence of Mr Srđo Srdić, the President of the Red Cross, who should be informed about circumstances relating to the Matanović family being imprisoned, which were referred to by the witness Komarica. Similarly, no hearing was conducted of the evidence of the driver relating to the presence of the Matanović family in the bus that day, which was clearly referred to in the statement of the representatives of the police of the Republika Srpska, who were on the spot, as well as in the report of the Government Commission No. 02-41343-1/96 dated 5 December 1996.

3. During the proceedings Mr Berislav Pušić, the Croatian representative of the Federation for exchange matters, clearly stated that the other members of the Matanović family were killed, that is to say they were maltreated by the authorities of the Republika Srpska. He then later stated that they died a natural death, which leads to the conclusion that this witness, as well as others, did not have any personal knowledge and that they testified on the basis of "hearsay" information received from different kinds of sources which are in principle unofficial and unchecked.

4. The Chamber did not conduct any particular analysis of statements as to the circumstances on the basis of which the Croatian party insisted on putting the Matanović family on the list without any confirmation as to whether this family was exchanged or could have been the subject of an exchange. The witness Amor Mašović stated that he was indirectly informed about the Matanović case in a contact with Mr Berislav Pušić, and the statements of MM Berislav Pušić and Dragan Bulajić are contradictory regarding many issues and, in view of that, a new presentation of evidence should be conducted by hearing and confronting them.

5. During the proceedings it was not established whether the Matanović family was imprisoned by the legal authorities of the Republika Srpska or by paramilitary authorities as stated by the witnesses, and it was also not established during what period and in which prison the family was held, from which it could be seen whether there is responsibility of the respondent Party.

6. The decision to enter into the merits, as well as a number of other procedural decisions relating to the obtaining of evidence, were taken by the outvoting of the members of the Human Rights Chamber from the Republika Srpska, and in our opinion it is in deep contradiction to the principle of material truth. That leads to the conclusion that, on the basis of an incorrectly and incompletely established situation, this decision was made to the disadvantage of the respondent Party, namely the Republika Srpska.

7. We stress that we also agree with the opinion of the Agent for the Republika Srpska, Mr Stevan Savić, No. D-1/97 dated 23 April 1997 and that we stand by the objections that we previously stated during the procedure.

8. For the aforementioned reasons we consider the decision which finds that the Republika Srpska committed human rights violations to be premature and we think that no human rights violations occurred.

(signed) Miodrag Pajić

(signed) Vitomir Popović