



**PARTIAL DECISION ON ADMISSIBILITY**  
(delivered on 8 March 2002)

**Case no. CH/98/1335**

**Zuhdija RIZVIĆ**

**against**

**THE FEDERATION OF BOSNIA AND HERZEGOVINA**

**and**

**DECISION ON THE MERITS**

**Cases nos. CH/98/1335, CH/98/1370, CH/99/1505,  
CH/99/2805, CH/00/4371**

**Zuhdija RIZVIĆ, Sead HUSKIĆ, Almir ŠABANČEVIĆ,  
Ahmet SEFIĆ, Ismet GRAČANIN**

**against**

**THE FEDERATION OF BOSNIA AND HERZEGOVINA**

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 5 March 2002 with the following members present:

Ms. Michèle PICARD, President  
Mr. Rona AYBAY, Vice-President  
Mr. Dietrich RAUSCHNING  
Mr. Hasan BALIĆ  
Mr. Želimir JUKA  
Mr. Miodrag PAJIĆ  
Mr. Andrew GROTRIAN

Mr. Ulrich GARMS, Registrar  
Ms. Olga KAPIĆ, Deputy Registrar

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

Adopts the following decision pursuant to Articles VIII(2) and XI of the Agreement and Rules 52, 57 and 58 of the Chamber's Rules of Procedure:

## **I. INTRODUCTION**

1. On 27 September 1993 Mr. Fikret Abdić proclaimed the "Autonomous Province of Western Bosnia" ("the Autonomy") over the territory of the Velika Kladuša and Cazin municipalities. After this proclamation hostilities broke out several times between the supporters of Mr. Abdić and the 5<sup>th</sup> Corps of the Army of the Republic of Bosnia and Herzegovina ("the 5<sup>th</sup> Corps"). The applicants Mr. Zuhdija Rizvić, Mr. Sead Huskić, Mr. Almir Šabančević and Mr. Ismet Gračanin, who are all of Bosniak origin, were members of the armed forces of the Autonomy.
2. The applicant Mr. Ahmet Sefić, who is also of Bosniak origin, was a prisoner in a Serb-run concentration camp, in the nearby municipality of Sanski Most.
3. The applicants claim that they were maltreated while in police custody in the Bihać police station and/or during their pre-trial detention in the District Prison in Bihać in order to extort confessions. They also claim that the deprivation of their liberty was not in accordance with the law and that they did not receive fair trials before the Cantonal Court in Bihać (prior to 1997 known as the Higher Court in Bihać), leading to their convictions for serious violations of international humanitarian law committed during the above-mentioned hostilities ("war crimes") or ordinary murder.
4. The cases raise issues under Articles 3, 5, 6 and 13 of the European Convention on Human Rights ("the Convention") and Article 4 to Protocol No. 7 of the Convention.

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

5. Mr. Rizvić lodged his application on 8 December 1998. Mr. Huskić did so on 18 December 1998 and on 28 January 1999 Mr. Šabančević filed his application with the Chamber. On 26 August 1999 Mr. Sefić lodged his application and Mr. Gračanin did so on 26 August 1999.
6. The Huskić case was initially transmitted to the respondent Party for its observations under Article 5 of the Convention on 19 July 1999. The case was however retransmitted, together with the Rizvić, Šabančević and Sefić cases, on 27 September 1999. The Gračanin case was transmitted on 12 April 2001. In all cases the respondent Party was requested to submit its observations under Articles 3, 5 and 6 of the Convention. In the Gračanin case it was at first also requested to submit its observations under Article 4 of the Convention. On 22 October 2001 this case was retransmitted under Article 4 of Protocol No. 7 to the Convention.
7. The respondent Party submitted its observations on admissibility and merits in the Rizvić case on 20 September 1999. In the cases Huskić, Šabančević and Sefić it did so on 27 November 1999 and in the Gračanin case on 11 May and 5 November 2001.
8. The applicants submitted responses to the respondent Party's observations. Mr. Rizvić did so on 7 December 1999, Mr. Huskić on 7 October 1999, Mr. Šabančević on 10 February 2000, Mr. Sefić on 9 December 1999 and Mr. Gračanin on 20 July 2001.
9. Compensation claims were submitted to the Chamber on 29 December 1999 by Mr. Šabančević and Mr. Sefić. Mr. Gračanin submitted his claim for compensation on 20 July 2001.
10. The respondent Party submitted its observations on the compensation claims of Mr. Šabančević and Mr. Sefić on 10 February 2001. No observations were received on the compensation claim of Mr. Gračanin.
11. On 3 July 2001 the Chamber adopted its decision on the admissibility of case no. CH/98/1335, Zuhdija Rizvić. The Chamber declared inadmissible the applicant's complaint that he had been maltreated while detained in the Bihać police station. It declared admissible the applicant's complaint that he had not received a fair trial and the issue of compliance by the respondent Party with Article 5 of the Agreed Measures of 18 February 1996 ("the Rules of the Road"). The Chamber did not rule on the admissibility of the applicant's complaint that he had been maltreated during his detention in the District Prison in Bihać.

12. On 3 July 2001 the Chamber adopted its decision on the admissibility of case no. CH/98/1370, Sead Huskić. The Chamber declared the case admissible in its entirety.
13. On 3 July 2001 the Chamber adopted its decision on the admissibility of case no. CH/99/1505, Almir Šabančević. The Chamber declared the case admissible in its entirety.
14. On 12 October 2001 the Chamber adopted its decision on the admissibility of case no. CH/99/2805, Ahmet Sefić. The Chamber declared inadmissible the applicant's complaints that he had been maltreated while detained in Bihać, that he had not been informed promptly of the reasons for his arrest and that he had not been brought promptly before a judge. The Chamber declared admissible the applicant's complaint that he had not received a fair trial and the issue of compliance by the respondent Party with the Rules of the Road.
15. On 7 November 2001 the Chamber adopted its decision on the admissibility of case no. CH/00/4371, Ismet Gračanin. The Chamber declared inadmissible the application against Bosnia and Herzegovina. The Chamber declared the case against the Federation of Bosnia and Herzegovina admissible in its entirety.
16. On 7 November 2001 the Chamber decided to hold a public hearing in the Rizvić case on the admissibility and merits of the case in so far as it related to the facts of the case concerning Article 3 as they took place after 14 December 1995 and on the merits in so far as the case was declared admissible in the Chamber's decision on admissibility of 3 July 2001. It decided to hold a public hearing in the Huskić, Šabančević, Sefić and Gračanin cases on the merits in so far as the cases were declared admissible in the Chamber's decisions as mentioned in paragraphs 12-15 above.
17. The following persons were summoned to testify in the Rizvić case: Mr. Nasko Suljanović, Mr. Mujo Korčić, Mr. Mehmet Ljubijankić, Mr. Fehret Šupuković, Dr. Nevzeta Ibrahimpašić, Mr. Nazif Cerić, Mr. Mehmed Semanić and Ms. Carolyn Buff, all as witnesses.
18. The following persons were summoned to testify in the Huskić case: Mr. Damir Grahović, Mr. Murat Rekanović, Mr. Alaga Bajramović, Mr. Besim Dervišević, Mr. Hamdija Tabaković, Mr. Ismet Alibegić, and Ms. Carolyn Buff, all as witnesses.
19. The following persons were summoned to testify in the Šabančević case: Mr. Samir Torić, Ms. Ilvana Pračić, Mr. Sulejman Muslić, Mr. Mehmed Semanić and Ms. Carolyn Buff, all as witnesses.
20. The following persons were summoned to testify in the Sefić case: Mr. Mehmed Semanić, Mr. Senad Velić, Ms. Silva Seferagić and Ms. Carolyn Buff, all as witnesses.
21. The following persons were summoned to testify in the Gračanin case: Mr. Mujo Korčić, Mr. Mehmet Ljubijankić, Dr. Jure Paunović, Mr. Nazif Cerić, Mr. Muhamed Budimlić and Ms. Carolyn Buff, all as witnesses.
22. By letter of 16 November 2001 the Chamber requested the Independent Judicial Commission ("IJC") to participate in the proceedings in the cases as *amicus curiae* and to submit written observations on the relevant issues.
23. The Chamber held the public hearing in the Cantonal Court in Sarajevo on 5 and 6 December 2001.
24. In the Rizvić case, the respondent Party was represented by Ms. Seada Palavrić, the Agent for the respondent Party, who was assisted by Ms. Branka Fetahagić, her advisor, Mr. Mirsad Gačanin, her assistant, Mr. Osman Hadžić, former judge of the Cantonal Court in Bihać, Ms. Nizana Sarač, judge of the Cantonal Court in Bihać, Mr. Ismet Karabegović, Director of the Cantonal Prison in Bihać (formerly known as the District Prison in Bihać), Mr. Kemal Jodanović, judge of the Cantonal Court in Bihać, Mr. Muhamed Babić, Minister of Internal Affairs of the Canton Bihać, and Mr. Milan Marčetić, investigative judge of the Cantonal Court in Bihać. The applicant appeared in person. Of the persons summoned to testify appeared Mr. Nasko Suljanović, Mr. Mujo Korčić,

Mr. Mehmet Ljubijankić, Mr. Nazif Cerić, Mr. Mehmed Semanić and Ms. Carolyn Buff.

25. In the Huskić case, the respondent Party was represented by Ms. Seada Palavrić, who was assisted by Ms. Zumreta Joldžo, Ms. Aida Kulenović and Ms. Maida Bikić, her assistants, Mr. Osman Hadžić, Ms. Nizana Sarač, Mr. Ismet Karabegović, and Mr. Kemal Jodanović. The applicant appeared in person. Of the persons summoned to testify appeared Mr. Damir Grahović, Mr. Murat Rekanović, Mr. Alaga Bajramović, Mr. Besim Dervišević and Ms. Carolyn Buff.

26. In the Šabančević case, the respondent Party was represented by Ms. Seada Palavrić, who was assisted by Ms. Zumreta Joldžo, Ms. Aida Kulenović and Mr. Mirsad Gačanin. The applicant appeared in person. Of the persons summoned to testify appeared Mr. Samir Torić, Ms. Ilvana Pračić, Mr. Sulejman Muslić, Mr. Mehmed Semanić and Ms. Carolyn Buff.

27. In the Sefić case, the respondent Party was represented by Ms. Zumreta Joldžo, Ms. Aida Kulenović and Mr. Mirsad Gačanin. The applicant appeared in person. Of the persons summoned to testify appeared only Ms. Carolyn Buff.

28. In the Gračanin case, the respondent Party was represented by Ms. Seada Palavrić, who was assisted by Ms. Branka Fetahagić, Mr. Mirsad Gačanin, Mr. Osman Hadžić, Mr. Nazif Salman, Ms. Nizana Sarač, Mr. Ismet Karabegović, Mr. Kemal Jodanović, Mr. Muhamed Babić and Mr. Milan Marčetić. The applicant appeared in person. Of the persons summoned to testify appeared Mr. Mujo Korčić, Mr. Mehmet Ljubijankić, Mr. Nazif Cerić, Mr. Muhamed Budimlić and Ms. Carolyn Buff.

29. During the public hearing, the Chamber requested the respondent Party to submit several documents. On 15 January 2002 the Chamber requested the respondent Party to submit all the documents it had previously requested during the public hearing and to submit some additional documents. The Chamber received some of the requested documents on 8 and 24 January 2001.

30. On 18 January 2002 the Chamber received the *amicus curiae* report from the IJC and transmitted it to the parties on 14 February 2002.

31. The Chamber deliberated on the remaining issue of admissibility and on the merits of case no. CH/98/1335, Zuhdija Rizvić and the merits of the other cases on 7 December 2001, 12 January, 7 February, on which date it decided to join the applications, 8 February and 4 and 5 March 2002. It adopted the present decision on the latter date.

### **III. ESTABLISHMENT OF THE FACTS**

#### **A. The facts of the individual cases**

##### **1. Case no. CH/98/1335, Zuhdija Rizvić**

32. The applicant had joined the armed forces of the Autonomy by 27 September 1993.

33. On 24 August 1995 the applicant was arrested in Velika Kladuša and detained in a holding cell in the police station there. On 25 August 1995 the applicant was transferred to Bihać and detained in a holding cell in the police station again.

34. On 28 August 1995 the applicant was brought before the investigative judge in the presence of his defence counsel. On the same date the Higher Court in Bihać issued a procedural decision on the applicant's detention.

35. On 21 February 1996 the Bihać Public Prosecutor issued an indictment against the applicant for war crimes against prisoners of war.

36. On 3 December 1996 the Higher Court in Bihać submitted the case to the International Criminal Tribunal for the former Yugoslavia ("the ICTY") for review under the Rules of the Road. On 10 March 1997 the Prosecutor of the ICTY informed the Higher Court in Bihać that the evidence was

sufficient by international standards to provide reasonable grounds for believing that the applicant had committed a serious violation of international humanitarian law.

37. On 27 May 1997 the Cantonal Court in Bihać issued a decision convicting the applicant of war crimes against prisoners of war and sentencing him to 12 years of imprisonment. In particular, the applicant was found guilty of having shot I.M. once, after he had already been shot several times by other men.

38. On 18 June 1997 the applicant appealed to the Supreme Court. The applicant claimed that he had been ordered to shoot by a superior officer. He further claimed that I.M. was already dead when he approached him and that he had shot into the ground next to I.M. Finally, the applicant claimed that he had told the other soldiers that he had shot at I.M. because he was afraid of his superior officer.

39. On 13 January 1998 the Supreme Court issued its decision upholding the decision of the Cantonal Court in Bihać of 27 May 1997.

## **2. Case no. CH/98/1370, Sead Huskić**

40. The applicant joined the armed forces of the Autonomy on or around 31 October 1993.

41. In March 1996 the applicant was arrested in Velika Kladuša and brought to the police station there. The applicant was transferred to Bihać on the same day and detained in a holding cell in the police station there.

42. On 20 March 1996 the applicant was transferred to the District Prison in Bihać.

43. On 21 March 1996 the applicant was brought before the investigative judge in the presence of his *ex officio* defence counsel. The applicant complained to the investigative judge that he had been badly beaten in the police station in order to force a confession. The investigative judge did not undertake any steps to investigate the applicant's complaint. On the same date the Higher Court in Bihać issued a procedural decision on the applicant's detention.

44. On 31 May 1996 the Bihać Public Prosecutor issued an indictment against the applicant for ordinary murder as held punishable by Article 36 of the Criminal Code.

45. On 2 September 1996 the Higher Court in Bihać issued its decision convicting the applicant of the war crime held punishable by Article 146 of the Criminal Code, namely the unlawful killing of the enemy, and sentencing him to 11 years of imprisonment. The court found that the applicant, "as a member of the paramilitary formation" of the armed forces of the Autonomy, upon finding the wounded R.O., commander of the 510<sup>th</sup> Fighting Group of the 5<sup>th</sup> Corps, shot him several times point blank in the chest with an automatic rifle, causing his immediate death.

46. The case was never submitted to the ICTY for review under the Rules of the Road.

47. The applicant appealed to the Supreme Court. He complained only about the length of his prison sentence.

48. On 15 May 1997 the Supreme Court issued its decision, upholding the decision of the Higher Court in Bihać of 2 September 1996.

## **3. Case no. CH/99/1505, Almir Šabančević**

49. The applicant joined the armed forces of the Autonomy on or around 20 March 1994.

50. There is a dispute over the exact date of the applicant's arrest, which took place in Cazin. On the day of his arrest he was taken to Bihać and detained in a holding cell in the police station.

51. During his custody the applicant was taken to the scene of the crime which he was suspected of having committed, for “re-enactment”.

52. On 6 April 1996 the applicant was brought before the investigative judge in the presence of his *ex officio* defence counsel. The applicant complained to the investigative judge that he had been badly beaten in the police station in order to force a confession. The investigative judge however did not undertake any steps to investigate the applicant’s complaint. On the same date the Higher Court in Bihać issued a procedural decision on the applicant’s detention.

53. On 1 October 1996 the Bihać Public Prosecutor issued an indictment against the applicant for war crimes against prisoners of war.

54. In December 1996 the case was submitted to the ICTY for review under the Rules of the Road. On 10 March 1997 the Prosecutor of the ICTY informed the Higher Court in Bihać that the evidence was sufficient by international standards to provide reasonable grounds for believing that the applicant had committed a serious violation of international humanitarian law.

55. On 5 May 1997 the Cantonal Court Bihać issued a decision convicting the applicant of war crimes against prisoners of war and sentencing him to 14 years of imprisonment. In particular, the applicant was found guilty of killing N.D. and beating up other persons who had been captured by the armed forces of the Autonomy.

56. On 10 June 1997 the applicant appealed to the Supreme Court. He claimed that Dž.Đ. had killed N.D. The applicant further claimed that one of two witnesses who had testified against him had not been present when N.D. was killed.

57. On 10 March 1998 the Supreme Court issued its decision, reducing the applicant’s sentence to 12 years of imprisonment and upholding the rest of the decision of 5 May 1997.

#### **4. Case no. CH/99/2805, Ahmet Sefić**

58. The applicant was detained in the Serb run concentration camp “Sana Keran” in Donji Kamengrad, Municipality of Sanski Most, from 16 May 1995 until 30 October 1995. On the day of his release he was arrested and brought to the police station in Bihać, presumably by authorities of the Federation of Bosnia and Herzegovina, on the suspicion of having committed ordinary murder.

59. On 17 November 1995 the applicant was brought before the investigative judge in the presence of his *ex officio* defence counsel. On the same date the Higher Court in Bihać issued a procedural decision on the applicant’s detention.

60. On 23 November 1995 the Bihać Public Prosecutor submitted a request to the investigative judge to open an investigation against the applicant on the count of war crimes.

61. On 16 May 1996 the Bihać Public Prosecutor issued an indictment against the applicant for war crimes against civilians.

62. On 9 December 1996 the Higher Court in Bihać issued a decision convicting the applicant of ordinary murder of nine people, committed during his stay in the “Sana Keran” concentration camp on 11 October 1995, and sentencing him to 15 years of imprisonment. The court did not qualify the crime committed to be a war crime, since the applicant did not serve in any military force, nor was he “in the service of the aggressor” at the time of the crime. The applicant was found guilty of lining the people up and shooting them with the automatic gun of a guard, who had ordered him to do so. The court found that he had acted under the threat of his father and brother being killed if he did not do as the guard ordered. However, although the father and brother of the applicant were detained in the same concentration camp, as they were not present at the scene of the crime, the court did not consider the threat to be immediate.

63. Several witness statements were read out in trial and one witness, who was heard in court, testified that the applicant's situation was even worse than that of the other prisoners, as he was beaten and verbally abused even more.

64. During the trial, the applicant's defence counsel requested a medical expertise of the applicant's physical condition in order to show that the applicant was violently forced to carry out the guard's orders to commit the crime of which he was suspected. This request was rejected.

65. The court further rejected the defence's request for an expert's opinion of the applicant's mental state at the time of the alleged offence. The defence's request for re-examination of a number of witnesses was also rejected.

66. The applicant's defence counsel lodged an appeal against the court's decision on 28 December 1996 on the grounds that the applicant was indicted for war crimes and convicted of and sentenced for ordinary murder without the indictment having been changed. The defence claimed that the court did not take the applicant's motive to shoot his fellow prisoners into account. Furthermore, the applicant's defence counsel complained of the fact that the court took a neuro-psychiatric expertise into consideration that was vague on the issue of the applicant's mental condition at the time of the shooting.

67. The applicant also lodged an appeal of his own accord based on the same reasoning as the appeal his defence counsel lodged, added with the complaints that witnesses proposed by the defence were not heard by the court and that the court did not take into consideration the fact that the applicant suffered mental damage due to the fact that his mother was allegedly raped before his eyes by three men of Serb descent.

68. In January 1997 the case was transmitted to the ICTY for review under the Rules of the Road. On 10 March 1997 the Prosecutor for the ICTY informed the Higher Court in Bihać that the submitted evidence was sufficient by international standards to provide reasonable grounds for believing that the applicant committed a serious violation of international law.

69. On 2 May 1997 the Supreme Court issued a decision rejecting both appeals and upholding the decision of the Higher Court of 9 December 1996.

## **5. Case no. CH/00/4371, Ismet Gračanin**

70. On 23 April 1993 the Military Court in Bihać issued a decision convicting the applicant of assaulting S.J., which assault then led to his death. The applicant was sentenced to one year of imprisonment. On 23 April 1993 the Military Court in Bihać issued a decision ordering his release.

71. The applicant joined the armed forces of the Autonomy in 1993.

72. The applicant was arrested in late 1995. On 21 December 1995 the applicant was brought before the investigative judge in the presence of his lawyer. On the same date the Higher Court in Bihać issued a decision on the applicant's detention and he was taken to the District Prison in Bihać.

73. In January 1996 the applicant was temporarily released into the custody of the Bihać police, in order to give a statement about the crimes of which he was accused.

74. On 10 October 1996 the Bihać Public Prosecutor issued an indictment against the applicant on three counts of ordinary murder as held punishable by Article 36 of the Criminal Code, one of them concerning the victim S.J.

75. On 9 December 1997 the Cantonal Court in Bihać issued a decision convicting the applicant of ordinary murder on three counts and sentencing him to 15 years of imprisonment.

76. The applicant's defence counsel lodged an appeal against the court's decision of 9 December 1997.

77. On 4 June 1998 the Supreme Court quashed the decision of the Cantonal Court and returned the case for reconsideration.

78. On 10 March 1999 the Cantonal Court in Bihać issued a decision convicting the applicant of ordinary murder as held punishable by Article 171 of the Criminal Code, on three counts and sentencing him to 15 years of imprisonment. He was firstly found guilty of, together with E.K., having taken S.J. by car to a remote area on 28 January 1993. There they took him out of the car and beat him severely. They then left him unconscious at a nearby stream, where he died of his injuries. Secondly, the Court found that the applicant, in his capacity of commander of the military unit "Šejle", together with several other soldiers, had beaten I.O., who had been captured by the military police and was being held in a prison in Velika Kladuša, to death on 7 January 1994. Finally, the court found that the applicant, in his capacity of commander of the 3<sup>rd</sup> Brigade "NOAPZB", together with several other soldiers, captured Š.J. on 10 August 1994 because he had refused to join the armed forces of the Autonomy. They then beat him severely, hanged him and shot him.

79. On 26 April 1999 the applicant's defence counsel appealed against the decision of the Cantonal Court of 10 March 1999. The defence claimed that there was evidence that at least one witness was forced by the authorities to testify against the applicant and that requests to have witnesses heard on behalf of the applicant were rejected.

80. On 28 September 1999 the Supreme Court issued a decision rejecting the appeal and upholding the Cantonal Court's decision of 10 March 1999.

**B. Oral evidence by witnesses**

**1. Case no. CH/98/1335, Zuhdija Rizvić**

**(a) Mr. Nasko Suljanović**

81. Mr. Suljanović stated that in 1995, but mostly in 1996, he used to drive the family of the applicant to the District Prison in Bihać to visit him. It was on these occasions that he saw the applicant. He stated that the applicant was all beaten up. He was blue under his eyes and yellow in his face.

**(b) Mr. Mujo Korčić**

82. Mr. Korčić stated that he worked as a prison guard in the District Prison in Bihać in 1996, when the applicant was detained there. He stated that he did not remember the applicant having been beaten, nor did he notice any bruises or other injuries to the applicant's face during his detention in the District Prison in Bihać.

**(c) Mr. Mehmet Ljubijankić**

83. Mr. Ljubijankić stated that he was a prison guard in the District Prison in Bihać in 1996 and still works there now. He stated that he remembers the applicant, but never noticed he had been beaten. He further stated that he himself did not beat the applicant and to his knowledge, none of his colleagues did either.

**(d) Mr. Nazif Cerić**

84. Mr. Cerić stated that he was the applicant's lawyer from the time he was brought before the investigative judge in August 1995. The witness further stated that the only injury he noticed on the applicant was an old head wound. He went on to state that he was sure that no prisoners were beaten by the prison guards, as they would have lost their jobs. According to the witness, if the applicant was beaten, it was by the police.



**(e) Mr. Mehmed Semanić**

85. Mr. Semanić stated that he was the applicant's lawyer during the main trial in 1997. He stated that Mr. Rizvić did not complain to him that he was being or had been maltreated in the District Prison in Bihać.

86. The witness further stated that the applicant told him that the witnesses that were heard at the trial gave false testimonies.

**(f) Ms. Carolyn Buff**

87. Ms. Buff stated that she worked as Senior Human Rights Officer for the Organisation for Security and Co-operation in Europe ("OSCE") in the Bihać region in 1996-1997. She then worked as Senior Human Rights Officer for the Office of the High Representative ("OHR") in the region until 2000. She stated not to be a lawyer, but to have experience in the monitoring of judicial systems as she had done so in a previous mission with the United Nations in Haiti.

88. The witness went on to state that her predecessor informed her that in the summer of 1996 she had informed the Bihać authorities of the existence of the Rules of the Road. Although a strict interpretation of the Rules of the Road would have meant that suspected war criminals who were arrested prior to the entering into force of the Rules of the Road should have been released, the OSCE and the OHR did not insist on such an interpretation. They did, however, urge the authorities to send the files promptly to the ICTY.

89. Ms. Buff further stated that the presumption of innocence was not a principle that was well respected by the Cantonal Court in Bihać. She also stated that it was not impossible that witnesses were intimidated, although she stated to have no reason to believe that it happened in this particular case. Given the climate in the region however, it could be possible. In general the witness was of the opinion that the defence was not always given a fair opportunity to put forward its witnesses. Furthermore, in this particular case, she felt that there was not sufficient psychiatric expertise.

90. The witness informed the Chamber that no criminal proceedings were ever initiated against any member of the 5<sup>th</sup> Corps, although she had made the judicial authorities aware of several cases that should have been investigated. She went on to state that no police officer, public prosecutor or judge in the Bihać region had been a supporter of the Autonomy.

91. She further stated that nearly all former members of the forces of the Autonomy that she visited in the District Prison in Bihać complained of having been maltreated in the police station, not in the prison. The maltreatment in the police station stopped from one day to the next in the autumn of 1996 due to the fact that the prison director decided to have every prisoner that arrived at the prison from that date on, medically examined.

**2. Case no. CH/98/1370, Sead Huskić****(a) Mr. Damir Grahović**

92. Mr. Grahović stated that he was a prisoner in the District Prison in Bihać when the applicant arrived there. He stated that on his arrival, the applicant had black and yellow bruises in his face and over his whole body.

**(b) Mr. Murat Rekanović**

93. Mr. Rekanović stated that he was a prisoner in the District Prison in Bihać when the applicant arrived there. The witness stated that he was too much absorbed with his own situation to pay much attention to the applicant, but that he did notice some light bruises on the applicant's body.

**(c) Mr. Alaga Bajramović**

94. Mr. Bajramović stated that he was the applicant's lawyer throughout the criminal proceedings at hand. He stated that he first met the witness on 21 March 1996 when he was brought before the investigative judge and that he did not notice any injuries to the applicant's face. He further stated that he thought that the applicant told the investigative judge, when asked, that he had received several blows whilst in police custody at the Bihać police station in order to extort a confession.

95. The witness stated that he had asked the applicant whether the witnesses that testified against him at the trial were telling the truth, and that the applicant had responded affirmatively. Furthermore, he stated that he was not aware of the fact that the court changed the legal qualification of the offence of which the applicant was accused until the verdict was given. The witness stated that he could not challenge this, as the court is not bound by the qualification of the indictment.

**(d) Mr. Besim Dervisević**

96. Mr. Dervisević stated that he was and still is an inspector of police in Bihać. He stated that when he interrogated the applicant when he was held in custody at the police station in 1996, he treated the applicant correctly and in a fair and professional manner. He further stated that during the interrogations the applicant might have been handcuffed to a radiator.

**(e) Ms. Carolyn Buff**

97. Ms. Buff stated that the applicant had told her that he had expected the two witnesses that testified against him during the trial, to have spoken in his favour. Therefore, he had not requested the examination of any additional witnesses.

98. The witness further stated that, in her opinion, as the crime of which the applicant was accused concerned the killing of a wounded enemy soldier, which cannot be said to be a crime unrelated to the conflict, he should have been arrested and indicted for war crimes. Therefore, the Rules of the Road should have been taken into consideration.

**3. Case no. CH/99/1505, Almir Šabančević**

**(a) Mr. Samir Torić**

99. Mr. Torić stated that he was a prisoner in the District Prison in Bihać when the applicant arrived there. He stated that on his arrival, the applicant had bruises on his back and blisters on his feet and that he walked as if his feet were on fire.

100. Mr. Torić further stated that he himself was held in garages behind the Bihać police station for eleven days and heard shouting and kicking and beating coming from other rooms.

**(b) Ms. Ivana Pračić**

101. Ms. Pračić stated that she acted as the applicant's *ex officio* lawyer in 1996. She stated that she was present when he was brought before the investigative judge on 6 April 1996, where she met him for the first time. She did not notice any signs of maltreatment, but recalled that the applicant did complain to the investigative judge that he had been maltreated by the police.

102. Ms. Pračić further stated that she had not been present at the re-enactment of the crime that took place during the applicant's custody, as she was not yet appointed as his lawyer at that time.

**(c) Mr. Sulejman Muslić**

103. Mr. Muslić stated that he was a member of the 5<sup>th</sup> Corps. He further stated that the applicant was one of the persons who arrested him and other members of the 5<sup>th</sup> Corps. He stated that during

the public hearing that was held in the criminal proceedings against the applicant in May 1997, he testified that he saw the applicant shoot N.D. However, he had been mistaken and had not spoken the truth at the trial. He had not been forced to do so by anyone.

104. The witness further stated that he saw the applicant when he was being held in the police station in Bihać. The applicant had a scratch on one side of his face and was sweating. His face was red as if he had been slapped two or three times. The witness further stated that he thought that the applicant's right hand had been tied up.

105. Mr. Muslić testified that he was present at the time of the re-enactment of the crime by the applicant, together with two other witnesses, several police officers and a photographer. He was driven there by the police in the same car as the applicant.

**(d) Mr. Mehmed Semanić**

106. Mr. Semanić stated that he acted as the applicant's lawyer throughout the trial in the criminal proceedings. He stated that the court rejected his requests to hear several witnesses, one of them being the man whom the applicant claimed to be the real killer and two others who were eyewitnesses to the shooting and had given contradicting testimonies on the description of the person that shot N.D. He had wished to confront the latter two with each other's testimony. However, this was not permitted by the court. He further recalled that photos were shown during the trial of the applicant re-enacting the crime. He stated that, in his opinion, the trial was conducted fairly.

**(e) Ms. Carolyn Buff**

107. Ms. Buff stated that she was present at the applicant's trial. She recalled that eleven witnesses were heard in his case, nine called by the court and two by the prosecution. She further recalled that the judge in the case stated that he did not see the point of calling any witnesses for the defence as the court already knew everything about the case. Any additional witnesses would be superfluous.

108. Ms. Buff also recalled that photos were shown during the trial which seemed to show the applicant re-enacting the crime. She stated that she thought the applicant had told her that they were photos of him acting out what he had witnessed. In addition, she stated that she had asked someone to look at transcripts of the trial and had been told that there was no mention of any photos having been shown.

109. Ms. Buff further stated that the applicant had complained to her that he had been mistreated in order to extort a confession.

**4. Case no. CH/99/2805, Ahmet Sefić**

**(a) Ms. Carolyn Buff**

110. Ms. Buff stated that she did not attend the applicant's trial herself, but that her staff had and had then reported to her on it. She stated that during the trial two main witnesses were heard for the prosecution and one for the defence. The defence had a list of witnesses it wanted to hear. However, these witnesses were refused, as was the defence's request to have medical experts examine the applicant. Furthermore, the psychiatric expertise appeared to be insufficient. In addition, the witness testified that the guard who ordered the applicant to commit the crime, was never prosecuted.

111. The witness further stated that, when dealing with the applicant's defence that he acted under duress, the Higher Court did not go into the issue of proportionality, but merely considered the act to have been committed voluntarily. Further, the authorities considered the crime committed by the applicant to be ordinary murder as opposed to a war crime. The witness also mentioned that, as the applicant was found guilty of ordinary murder, the issue of pardon should have been looked into.

**5. Case no. CH/00/4371, Ismet Gračanin**

**(a) Mr. Mujo Korčić**

112. Mr. Korčić stated that he worked in the District Prison in Bihać at the time when the applicant was detained there. He stated that he never witnessed any use of force. He did however, remember that the applicant had injuries when he was brought to the prison.

**(b) Mr. Nazif Cerić**

113. Mr. Cerić stated that he was the applicant's lawyer in the proceedings that took place in 1993 and in 1995-1996, until the acceptance of the first appeal by the Supreme Court. Concerning the criminal proceedings that started in 1995, he stated that he saw the applicant for the first time at the hearing before the investigative judge on 21 December 1995, on which date he was also taken into detention. He stated that the applicant had told him that the Croatian authorities had handed him over one month prior to that.

114. The witness further stated that when he visited the applicant at the District Prison in Bihać, a day or two after the hearing before the investigative judge, he lifted his shirt and the witness saw that his body was badly bruised and that his ribs were probably broken. He further noticed that the soles of the applicant's feet had been beaten, they were swollen and he could hardly walk. He stated that the applicant had not complained of having been maltreated in the District Prison, but that he had told him that he was beaten consistently throughout his stay in the police station.

115. The witness stated that once, during his detention in the District Prison, the applicant was taken out of the prison by the police authorities, with approval of the court, and beaten up again. He further stated that the judge approved the taking out of prison of the applicant by the police, despite the fact that the witness had warned him of the applicant's physical condition.

116. As to the criminal proceedings that took place in 1993, the witness stated that the decision of the Military Court in Bihać of 23 April 1993 was later quashed upon the appeal of the public prosecutor. The applicant was released and the case was returned for a retrial. However, the applicant was then not available to the judicial authorities due to the ongoing hostilities.

**(c) Mr. Muhamed Budimlić**

117. Mr. Budimlić stated that he was the applicant's lawyer as from 15 October 1998, after the Supreme Court had quashed the first decision of the Cantonal Court. In his opinion the trial itself was conducted in a fair manner. However, he stated that when the witnesses were heard by the police, they had been pressured. He gave the Chamber the example of the witness G.L. who was called in by the police three times during the night for two hours each time. At the trial, Mr. Budimlić stated, she could not answer the questions he put to her, but merely said that the applicant shot Š.J. Mr. Budimlić stated that the witness apologised to the applicant for her statement after the trial. He is of the opinion that her statement was decisive for the court.

118. The witness further stated that the applicant told him that he was handed over to the Bosnian authorities by the Croatian authorities and that he then spent 28 days in police custody before he was brought before the investigative judge. The applicant had told the witness that he had been maltreated by the police during this period.

**(d) Ms. Carolyn Buff**

119. Ms. Buff stated that, in her opinion, this case should have been characterised as a case concerning war crimes, in which case the Rules of the Road would have been applicable. She stated that the court had tried to get around the Rules of the Road in many ways and she thought it may have done so in this case, too. She further stated that she spoke to the President of the court about the applicability of the Rules of the Road in this case. However, he merely stated that he was of the opinion that the Rules of the Road did not apply.

120. The witness stated that whenever she brought this case up with the judicial authorities in Bihać, they would respond violently and were reluctant to discuss the case. The witness is of the opinion that this was due to the fact that the applicant was a high-ranking officer in the forces of the Autonomy, as this was very much in everybody's mind when discussing the case.

121. She further stated that she thought that the applicant had told her that during his pre-trial detention he had been taken from the District Prison in Bihać by the police and beaten again.

### **C. Written submissions of the *amicus curiae***

122. The IJC states in relation to the Rizvić case that seven witnesses were examined on the proposal of the Bihać Public Prosecutor. The defence proposed two witnesses to be heard. However, the court refused this, considering that the case had been sufficiently clarified and did not give any other specific reason for its refusal. The IJC states that, in such a situation where the defendant changed his assertions during the different stages of the proceedings (from a confession during the investigation to denial in the trial), the facts should be thoroughly examined with regard to a possible violation of Article 6 (3)(d) of the Convention.

123. Concerning the Huskić case, the IJC informs the Chamber that, although it is noted in the minutes of the applicant's hearing before the investigative judge on 21 March 1996 that he complained of having been maltreated whilst in police custody, no evidence was found in the file that the investigative judge and/or the court undertook any action to investigate the applicant's allegations. The IJC further states that the decision of the Cantonal Court in Bihać was based on the confession of the applicant and the testimony of two witnesses of the prosecution. No witnesses were requested or heard on the proposal of the defence. It further suggests the Chamber thoroughly examine the issue of equality of arms.

124. In the Šabančević case the IJC informs the Chamber that, although the minutes of the applicant's hearing before the investigative judge of 6 April 1996 note that he complained of having been maltreated by the police while held in their custody, the files do not indicate that any action was taken by the investigative judge and/or the court to investigate these allegations. The IJC further discloses that on 5 September 1996 the Bihać Public Prosecutor asked for extension of the indictment and summoning of the person named by the applicant to be the actual perpetrator of the crime of which the applicant was convicted. However, the investigative judge did not act on the prosecutor's request. The IJC further states that during the trial eight witnesses were heard on the proposal of the prosecution and four on the proposal of the defence. The defence proposed four more witnesses, which the court refused as it considered the case to be sufficiently clarified.

125. The IJC states in the Sefić case that the decision of the Cantonal Court Bihać was based on the applicant's confession and the testimony of six witnesses requested by the prosecution. No evidence was found in the file that the defence counsel or the applicant had asked the court to examine any additional witnesses.

126. The IJC did not submit any information concerning the Gračanin case.

### **D. Relevant domestic law**

#### **1. The relevant provisions on criminal law**

127. At the time of the applicants' arrest and trials the applicable criminal provisions were contained in the Criminal Code of the former Socialist Federal Republic of Yugoslavia ("SFRY"), adopted as the Republic of Bosnia and Herzegovina's law by the Decree with the Force of Law of the Presidency of the Republic of Bosnia and Herzegovina on 2 June 1992 and continued as the law applicable within the territory of Bosnia and Herzegovina under paragraph 2 ("Continuation of Laws") of Annex II ("Transitional Arrangements") to Annex 4 ("Constitution") of the General Framework Agreement for Peace in Bosnia and Herzegovina (Official Gazette of the SFRY – hereinafter "OG SFRY" – nos. 44/76, 36/77, 56/77, 34/84, 37/84, 74/87, 57/89, 3/90, 38/90 and 45/90; Official Gazette of the Republic of Bosnia and Herzegovina – hereinafter "OG R BiH" – nos. 2/92, 8/92, 10/92, 16/92 and

13/94). Murder is now punishable under Article 171 of the new Criminal Code of the Federation of Bosnia and Herzegovina, which entered into force on 28 November 1998 (Official Gazette of the Federation of Bosnia and Herzegovina – hereinafter “OG FBiH” – no. 43/98).

128. Article 10 provided – in so far as relevant - as follows:

- “(1) An act committed out of extreme necessity is not considered a criminal offence.
- (2) An act is committed out of extreme necessity, if committed for the purpose of averting from himself or from another the immediate and unprovoked attack which could have not been averted in any other way, provided that the harm thereby done did not exceed the harm threatened. (...)”

129. Article 16 read – in so far as relevant - as follows:

- “(1) A person is not criminally responsible if at the time of committing the criminal offence he/she was not aware of some element thereof which had been proscribed by law; or if he/she has mistakenly believed that circumstances existed which, if they had actually existed, would render such conduct permissible. (...)”

130. Article 36 concerned common murder and provided – in so far as relevant - as follows:

- “(1) Any person who deprives another person of his/her life, will be punished by imprisonment of at least five years.
- (2) A term in prison of at least ten years or the death penalty will be imposed to: (...)
  - 4) any person who deprives another person of his/her life out of self-interest, with an intention to execute or conceal another crime, or out of ruthless revenge or other vulgar motive; (...)
  - 5) any person who deprives an official or military person of his/her life (...)
  - 6) any person who commits, with premeditation, two or more murders (...).”

131. Article 142 concerned war crimes against the civilian population and provided as follows:

“Anyone who – in violation of the rules of international law in time of war, armed conflict or occupation – orders the subjection of the civilian population to murders, torture, inhuman treatment, biological experiments, great suffering, injuries to physical integrity or health, expatriation or displacement, deprivation of national identity by force, conversion to another religion, forced prostitution or rape, acts of intimidation or terror, the taking of hostages, collective punishment, unlawful confinement in concentration camps or other unlawful taking into custody, deprivation of the right to a fair and impartial hearing, forced service in the enemy armed forces or intelligence service or administration, the performance of forced labour, starvation, confiscation of property, looting of property, excessive confiscation of property without military necessity, unlawful and deliberate devastation, the taking of unlawful, substantial and disproportionate contributions and requisitions, inflation of the domestic currency, or unlawful issue of currency, or anyone who commits any of the aforementioned crimes, shall be punished by imprisonment for at least five years or by the death penalty.”

132. Article 144 concerned war crimes against prisoners of war and read as follows:

“Anyone who – in violation of the rules of international law - has ordered that prisoners of war be subjected to killing, torture, inhuman actions, biological experiments, major suffering, violations of their bodily integrity or health, forcibly joining the enemy armed forces, or deprives them of the right to a fair and just trial, or anyone who commits one of the above crimes, shall be punished by at least five years of imprisonment or by the death penalty.”

133. Article 146 of the Criminal Code concerned the unlawful killing or wounding of the enemy. Paragraph 1 to this article provided as follows:

“(1) Everyone who breaks the international law during war or armed conflict by killing or wounding an enemy who laid aside his/her arms or surrounded with no conditions or has no means to defend himself/herself, shall be punished with a sentence of imprisonment for not less than one year.”

134. Article 191 provided - in so far as relevant – as follows:

“(1) A witness (...) who gives a false statement in the course of proceedings before a court (...) shall be punished by imprisonment for a term not exceeding three years.

(...)

(3) If the false statement has been made in the course of criminal proceedings, the perpetrator shall be punished by imprisonment for a term between six months and five years.

(4) If particularly grave consequences for the accused occur as a result of the act referred to in paragraph 3 of this Article, the perpetrator shall be punished by imprisonment for not less than one year.

(...)”

## **2. The relevant provisions on criminal procedure**

135. The criminal procedure provisions relevant to the present cases were contained in the Code on Criminal Procedure of the SFRY (OG SFRY nos. 26/86, 74/87, 57/89 and 3/90), adopted as the Republic of Bosnia and Herzegovina's law by the Decree with the Force of Law of the Presidency of the Republic of Bosnia and Herzegovina on 2 June 1992 and continued as the law applicable within the territory of Bosnia and Herzegovina under paragraph 2 (“Continuation of Laws”) of Annex II (“Transitional Arrangements”) to Annex 4 (“Constitution”) of the General Framework Agreement for Peace in Bosnia and Herzegovina (OG R BiH nos. 2/92, 9/92, 16/92 and 13/94). On 28 November 1998 the new Code of Criminal Procedure of the Federation of Bosnia and Herzegovina entered into force (OG FBiH no. 43/98).

136. Article 192 provided - in so far as relevant - as follows:

“(2) Custody shall be ordered in a written decision containing the following: the first and last name of the person being taken into custody, the crime he is charged with, the legal basis for custody, instruction as to the right of appeal, a brief substantiation in which the basis for ordering custody is specifically argued, the official seal, and the signature of the judge ordering custody.

(3) The decision on custody shall be presented to the person to whom it pertains at the moment when he is arrested, and no later than 24 hours from the moment he is deprived of his liberty. The time of his detention and the time of presentation of the warrant must be indicated in the record.”

137. Article 4(a) of the Law on Application of the Code on Criminal Procedure (OG R BiH no. 6/92, 9/92, 13/94 and 33/95) supersedes and is identical to Article 196 of the Code on Criminal Procedure. In so far as relevant it provided as follows:

“(3) Custody ordered by the Ministry of Internal Affairs may last up to three days, from the moment of arrest. The provisions of Article 192 paragraphs 2 and 3 of this law shall apply. (...)”

138. Article 346 provided as follows:

“(1) The verdict may pertain solely to the person accused and solely to the crime which is the subject of the charge contained in the indicting proposal or plea filed originally or as amended or expanded during the main trial.

(2) The court shall not be bound by the recommendations of the prosecutor concerning his legal evaluation of the act.”

139. Article 363 provided – in so far as relevant – as follows:

“A verdict may be contested on the following grounds:

- 1) because of an essential violation of the provisions of criminal procedure;  
(...)”

140. Article 364 read – in so far as relevant – as follows:

- “(1) The following constitute an essential violation of the provisions of criminal procedure:  
(...)  
9) if the charge has been exceeded (Article 346, paragraph 1)  
(...)”

### **3. The Rome Agreement of 18 February 1996, Agreed Measures (“The Rules of the Road”)**

141. On 18 February 1996, the signatories to the General Framework Agreement for Peace in Bosnia and Herzegovina, meeting in Rome, agreed on certain measures to strengthen and advance the peace process. The second paragraph of Article 5, entitled “Cooperation on War Crimes and Respect for Human Rights”, reads as follows:

“Persons, other than those already indicted by the International Tribunal, may be arrested and detained for serious violations of international humanitarian law only pursuant to a previously issued order, warrant or indictment that has been reviewed and deemed consistent with international legal standards by the International Tribunal. Procedures will be developed for expeditious decision by the Tribunal and will be effective immediately upon such action.”

142. The expressions “International Tribunal” and “Tribunal” refer to the ICTY, which has its seat in The Hague. The above-quoted provision is normally referred to as the “Rules of the Road”.

143. At the public hearing before the Chamber in cases no. CH/96/21 *Čegar*, no. CH/97/41 *Marčeta* and no. CH/97/45 *Hermas*, the Agent of the Federation stated, in relation to the legal status of the Rome Agreement, as follows (see case no. CH/97/45, *Hermas*, decision on admissibility and merits delivered on 18 February 1998, paragraph 18, Decisions and Reports 1998):

“Legally, the Rome Agreement, The Rules of the Road, dated 18 February 1996, for the Federation of Bosnia and Herzegovina, has an obligatory character. The Federal Ministry of Justice in Sarajevo has delivered the text of this Agreement promptly on time to all courts within the Federation of Bosnia and Herzegovina in order to comply with it. The courts within the Federation were informed on time of its content and it is in force and legally binding because the Parties who signed the Agreement of 18 February 1996 in Rome agreed about the procedure and instructions to the Parties in the event of prosecution for war crimes against the civilian population and other crimes against humanity under international law.”

144. This view of the direct applicability as domestic law of the Rules of the Road is confirmed and elaborated in the decision (no. Kž-465/97) of the Supreme Court of the Federation of 28 May 1998 in the case of D.B. The accused in this case had been found guilty of war crimes against the civilian population under Article 142 of the Criminal Law by the (then) High Court in Mostar in the absence of an opinion by the ICTY Prosecutor on the charges against him. The Supreme Court quashed the conviction and sent the case back to the High Court for renewed proceedings with the following reasoning:

“... the courts in the Federation of Bosnia and Herzegovina are obliged to apply the Rome Agreement (‘The Rules of the Road’). According to the Rome Agreement (‘The Rules of the Road’), the court of first instance cannot begin a criminal procedure before the Prosecutor of the ICTY reviews the indictment and gives his or her opinion on whether the indictment is consistent with international legal standards. This Court is also of the opinion that doing so violated Article 349, paragraph 1(4) of the Law on Criminal Procedure, because an approval or



opinion of the competent authority necessary for the criminal proceedings was not previously obtained. This Court finds a violation of the provisions of an international agreement (the Rome Agreement), that has been signed and approved by Bosnia and Herzegovina, and the courts in the Federation of Bosnia and Herzegovina are obliged to apply it.”

#### **IV. COMPLAINTS**

##### **A. Case no. CH/98/1335, Zuhdija Rizvić**

145. The applicant complains that during his detention in the District Prison in Bihać he was hit and threatened with being hit by several prison guards (Article 3 of the Convention).

146. He further complains that he did not receive a fair trial (Article 6 of the Convention). He claims that witnesses gave false testimony at the trial and that the Higher Court in Bihać refused to hear witnesses requested by the defence. Finally, he complains that the defence’s request for a neuro-psychological expertise was rejected.

##### **B. Case no. CH/98/1370, Sead Huskić**

147. The applicant complains that he was severely maltreated during his custody in the Bihać police station in order to extort a confession. He claims that he was handcuffed to a radiator whilst being kicked, punched and beaten with a baseball bat (Article 3 of the Convention).

148. He further complains that he did not receive a fair trial (Article 6 of the Convention). He claims that witnesses had been forced by the police to give false testimony at the trial.

##### **C. Case no. CH/99/1505, Almir Šabančević**

149. The applicant complains that he was severely maltreated during his custody in the Bihać police station in order to extort a confession. He claims that he was tied to a radiator whilst being kicked, punched and beaten with baseball bats and rubber truncheons over his whole body, in his face and on his feet. He further claims that he was threatened by the police that he would be killed if he did not give a statement confessing to the crime of which he was accused. Finally, he claims that, when taken to the scene of the crime and having been told to re-enact the crime, he was beaten again as the police were not satisfied with his demonstration (Article 3 of the Convention).

150. The applicant further complains that he did not receive a fair trial (Article 6 of the Convention). He complains that witnesses gave false testimony at the trial, that his lawyer’s request to have him examined by a medical expert was denied, as was his request to have additional witnesses heard.

151. The applicant also complains that the investigative judge did not undertake any steps to investigate his complaint that he had been beaten while in police custody (Article 13 of the Convention).

##### **D. Case no. CH/99/2805, Ahmet Sefić**

152. The applicant complains that he did not receive a fair trial (Article 6 of the Convention). He complains that the Higher Court in Bihać did not hear any of the witnesses that were suggested by his lawyer and him, nor did it accept their proposal to have the applicant examined by medical experts in order to establish his mental and physical condition at the time of the shooting. Furthermore, he complains that he did not have the possibility to confront any of the witnesses that testified against him. Finally, the applicant complains that the court did not take into consideration the fact that he committed the crime for which he was convicted under duress.

**E. Case no. CH/00/4371, Ismet Gračanin**

153. The applicant complains that during his custody in the Bihać police station he was severely maltreated in order to extort a confession. He stated that he was kicked and punched over his whole body by several people at once, hit with hard objects on his body and head, hit with rubber truncheons on the soles of his feet and denied sleep for several nights in a row. He also claims that, when he was taken to the Bihać police station during his detention in the District Prison in Bihać, he was beaten again (Article 3 of the Convention).

154. The applicant complains that he did not receive a fair trial (Article 6 of the Convention). He claims that witnesses gave false testimony at the trial.

155. Finally, he complains that he was tried and punished for the same crime twice, this rendering his detention unlawful (Article 4 of Protocol No. 7 to the Convention).

**F. Ex officio**

156. The Chamber established *ex officio* that all cases raise issues of compliance by the respondent Party with the Rules of the Road (Article 5 of the Convention).

**V. SUBMISSIONS OF THE PARTIES**

**A. The respondent Party**

157. In regard to the applicants' complaints under Article 3 of the Convention the respondent Party states that none of the applicants submitted any evidence to substantiate their claims of having been maltreated.

158. As to the compliance with the Rules of the Road, the respondent Party claims that these rules do not apply in the cases Sefić and Gračanin, as these applicants were not convicted of war crimes. As far as the other applicants are concerned the respondent Party is of the opinion that it complied by the Rules of the Road as all cases were submitted to the ICTY for its approval. The fact that the cases were not transmitted prior to December 1996 lay in the fact that the Higher Court in Bihać was not aware of the Rules of the Road until 25 October 1996, when the Federal Ministry of Justice communicated them to the Una-Sana Canton. Therefore, the respondent Party argued, the Rules of the Road did not become positive law until this date.

159. The respondent Party further states that the impartiality of the judges that decided the cases at hand was guaranteed, as they were appointed in accordance with the prescribed procedure. As to the refusal to hear witnesses proposed by the defence, the respondent Party states that it is within the court's discretion to decide on what evidence to hear a case. In addition, it states that the applicants' lawyers were present throughout the trial and therefore concludes that there was no violation of Article 6 of the Convention.

160. As to the complaint that the investigative judges did not undertake any steps to investigate the applicants' claims of maltreatment, the respondent Party stated that this lay in the fact that these claims were not substantiated.

161. Regarding the complaint of Mr. Gračanin that he was tried and punished for the same crime twice, the respondent Party states that the decision of the Military Court in Bihać of 23 April 1993 was not a final one. The decision was quashed by the Supreme Court and referred back in order to be retried. However, as the hostilities had started by that time, the applicant was unavailable to stand trial. Therefore, the applicant was not indicted for this crime again until 1996.

162. Finally, the respondent Party is of the opinion that the compensation claims of Messrs. Šabančević and Sefić are manifestly ill-founded.

**B. The applicants**

163. All applicants maintain their complaints.

164. In addition, Mr. Huskić and Mr. Gračanin claim that they complained to the investigative judges that they had been maltreated while in police custody. However, the investigative judges did not undertake any steps to investigate their allegations.

**VI. OPINION OF THE CHAMBER****A. Scope of the cases before the Chamber****1. Case no. CH/98/1335, Zuhdija Rizvić**

165. The Chamber recalls that in its decision on admissibility of 3 July 2001 it declared the case admissible in so far as it concerns the applicant's complaint that he had not received a fair trial and the issue of compliance by the respondent Party with the Rules of the Road. The Chamber declared inadmissible as outside its competence *ratione temporis* the applicant's complaint that he was maltreated while detained in the Bihać police station.

**(a) Admissibility**

166. The Chamber did not rule on the admissibility of the applicant's complaint that he was maltreated during his detention in the District Prison in Bihać. Therefore, before examining the merits, it shall decide whether to accept this part of the application.

167. Taking into account the admissibility criteria set out in Article VIII(2) of the Agreement and the findings it had already made in its decision of 3 July 2001, the Chamber finds that no reason for declaring this part of the application inadmissible has been established. Therefore, this part of the application shall be declared admissible.

**(b) Conclusion**

168. The case before the Chamber for examination on the merits is therefore limited to three issues, i.e. firstly, the applicant's complaint that he was maltreated during his detention in the District Prison in Bihać; secondly, the issue of compliance by the respondent Party with the Rules of the Road; and thirdly, the complaint that he did not receive a fair trial.

**2. Case no. CH/98/1370, Sead Huskić**

169. The Chamber recalls that in its decision on admissibility of 3 July 2001 it declared the case admissible in its entirety.

170. The case before the Chamber for examination on the merits therefore concerns three issues, i.e. firstly, the applicant's complaint that he was maltreated while in police custody; secondly, the issue of compliance by the respondent Party with the Rules of the Road; and thirdly, the complaint that he did not receive a fair trial.

**3. Case no. CH/99/1505, Almir Šabančević**

171. The Chamber recalls that in its decision on admissibility of 3 July 2001 it declared the case admissible in its entirety.

172. The case before the Chamber for examination on the merits therefore concerns four issues, i.e. firstly, the applicant's complaint that he was maltreated while in police custody; secondly, the complaint that the investigative judge did not investigate the aforementioned allegations; thirdly, the issue of compliance by the respondent Party with the Rules of the Road; and fourthly, the complaint

that he did not receive a fair trial.

**4. Case no. CH/99/2805, Ahmet Sefić**

173. The Chamber recalls that in its decision on admissibility of 12 October 2001 it declared the case admissible in so far as it concerns the issue of compliance by the respondent Party with the Rules of the Road and the applicant's complaint that he did not receive a fair trial. The Chamber declared inadmissible as outside its competence *ratione temporis* the applicant's complaints of maltreatment and violation of his right to liberty.

174. The case before the Chamber for examination on the merits is therefore limited to two issues, i.e. firstly, the issue of compliance by the respondent Party with the Rules of the Road; and secondly, the applicant's complaint that he did not receive a fair trial.

**5. Case no. CH/00/4371, Ismet Gračanin**

175. The Chamber recalls that in its decision on admissibility of 7 November 2001 it declared the case against the Federation of Bosnia and Herzegovina admissible in its entirety. The Chamber declared inadmissible as outside its competence *ratione materiae* the application against Bosnia and Herzegovina.

176. The case before the Chamber for examination on the merits therefore concerns four issues, i.e. firstly, the applicant's complaint that he was maltreated by the Bihać police; secondly, the complaint that his detention was unlawful, including the issue of compliance of the respondent Party with the Rules of the Road; thirdly, the applicant's complaint that he did not receive a fair trial; and fourthly, the complaint that he was tried and punished for the same crime twice.

**B. Merits**

**1. Article 3 of the Convention**

177. Article 3 of the Convention provides as follows:

"No one shall be subjected to torture or inhuman or degrading treatment or punishment."

**(a) Assessment of the evidence**

178. The Chamber recalls that where a person is taken into custody by police organs in good health and is, after release from that custody, found to be injured, the respondent Party bears the burden to provide a plausible explanation as to the causes of the injury, failing which an issue arises under Article 3 of the Convention (see case no. CH/98/1374, *Pržuji*, decision on admissibility and merits of 13 January 2000, paragraph 146, Decisions January-June 2000 and Eur. Court HR, *Tomasi v. France* judgment of 27 August 1992, Series A no. 241, paragraphs 108-111).

**(i) Case no. CH/98/1335, Zuhdija Rizvić**

179. The applicant claims that during his detention in the District Prison in Bihać he was hit and threatened with being hit by several prison guards.

180. The Chamber recalls the statements of Mr. Korčić and Mr. Ljubijankić, prison guards in the District Prison in Bihać, that they never noticed that the applicant was beaten, never saw any injuries on him and had not beaten him themselves. Although the Chamber notes that these witnesses cannot be considered to be independent witnesses, it also recalls the testimony of the applicant's lawyers Messrs. Cerić and Semanić, who also stated that they did not see any injuries on him or ever heard him complain of being maltreated during his detention in the District Prison in Bihać.

181. The Chamber further recalls the testimony of Mr. Suljanović that, when he visited the applicant in the District Prison in Bihać, he saw that he was all beaten up. He stated that the

applicant was blue under his eyes and yellow in his face. However, the witness was not clear on which date he saw the injuries.

182. Finally, the Chamber recalls the written statement of Mr. Fehret Šupuković of 19 February 2001 in which he states that after being transferred to the District Prison in Bihać on 25 February 1996, he was fed soup by, amongst others, the applicant. On this occasion he recognised traces of maltreatment in the applicant's face. Furthermore, he states that he saw prison guards beat the applicant and other prisoners. The Chamber notes that this is a mere written statement that was submitted by the applicant. Mr. Šupuković did not appear at the public hearing to give his oral testimony before the Chamber.

183. The Chamber firstly notes that the available testimony on this issue is contradictory. It considers however that the two testimonies in favour of the applicant's allegations are vague and one a mere written statement. The witnesses that testified in favour of the respondent Parties submissions on the other hand, were more precise in their statements and confirmed one another. The Chamber further notes that there is no evidence that the applicant ever complained about the alleged maltreatment to any official authority other than the Chamber. In light of these findings and taking into account that none of the other applicants complain of having been beaten during their detention in the District Prison in Bihać, the Chamber does not consider it established that the applicant was maltreated whilst in detention.

(ii) Case no. CH/98/1370, Sead Huskić

184. The applicant claims that during his custody in the Bihać police station he was severely maltreated. He claims that he was handcuffed to a radiator whilst being kicked, punched and beaten with a baseball bat by the police in order to extort a confession.

185. The Chamber notes that the applicant has stated that he was taken from his house by the police on 16 March 1996. The decision ordering the applicant's arrest however, is dated 17 March 1996. On request of the Chamber to provide it with all reports concerning the applicant's arrest, the respondent Party merely submitted the aforementioned decision concerning the applicant's arrest dated 17 March 1996. However, this does not provide the evidence that the applicant was not taken from his house prior to that date. A report on the applicant's arrest could possibly provide the relevant information, however, the respondent Party did not submit a report of any kind. As the respondent Party failed to provide the Chamber with any documentation proving otherwise, the Chamber accepts the applicant's statement that he was taken into police custody on 16 March 1996.

186. The applicant was not brought before the investigative judge until 21 March 1996, 5 days after his arrest, thus in violation of Article 4a of the Law on Application of the Code on Criminal Procedure and Article 5(3) of the Convention. Therefore, the applicant was at the full disposal of the police without any control from or contact with the outside world for five days.

187. Furthermore, the Chamber recalls the testimony of Mr. Grahović, stating that when the applicant was brought to the District Prison in Bihać he had black and yellow bruises in his face and over his whole body, that of Mr. Rekanović, who also saw bruises on the applicant's body, and that of Mr. Dervišević, who stated that the applicant might have been handcuffed to a radiator during the interrogations by the police.

188. In addition, the Chamber notes that the minutes of the hearing before the investigative judge of 21 March 1996 state that the applicant complained to the investigative judge that he had been maltreated by the police. This is supported by the testimony of the applicant's *ex officio* lawyer, Mr. Bajramović.

189. In light of the above, the Chamber finds it established that the applicant was found to be injured after his custody in the Bihać police station. In accordance with what the Chamber has stated in paragraph 178 above, it is therefore the respondent Party that bears the burden to provide a plausible explanation as to the causes of these injuries. The Chamber requested the respondent Party to submit all reports and medical documents concerning the applicant's custody in the Bihać

police station. However, only the decision ordering his arrest dated 17 March 1996 was received.

190. The Chamber further considers that the claims of the applicants Mr. Huskić (paragraph 184 above), Mr. Šabančević (paragraph 192 below) and Mr. Gračanin (paragraph 201 below) are very similar on various points. For example, the being handcuffed or tied to radiators, the beating with baseball bats and rubber truncheons and the beating on foot soles are specific details in the statements that correspond with each other. Taking into account all these similarities, the Chamber finds that the applicants' statements reinforce each other's credibility.

191. The fact that the applicant was deprived of his liberty unlawfully for five days provided the police with ample opportunity to treat the applicant in whatever manner they wanted, without any control from the outside world. This, in combination with the testimony of Messrs. Grahović, Rekanović and Dervišević, the Chamber's findings as mentioned in paragraph 188 above, the fact that the statements of the applicants Huskić, Šabančević and Gračanin reinforce each others credibility (see paragraph 190 above), and the failure of the respondent Party to provide any plausible explanation for the applicant's injuries or any proof to the contrary, leads the Chamber to conclude that the applicant was maltreated during his custody in the Bihać police station.

(iii) Case no. CH/99/1505, Almir Šabančević

192. The applicant claims that during his custody in the Bihać police station he was severely maltreated. He claims that he was tied to a radiator whilst being kicked, punched and beaten with baseball bats and rubber truncheons over his whole body, in his face and on his feet by the police in order to extort a confession. He further claims that he was threatened by the police that he would be killed if he did not give a statement confessing to the crime of which he was accused. Finally, he claims that, when taken to the scene of the crime and having been told to re-enact the crime, he was beaten again as the police were not satisfied with his demonstration.

193. The Chamber notes that the applicant claims that he was taken from his house by the police on 29 March 1996. The respondent Party however, claims that the applicant was arrested on 4 April 1996. On request of the Chamber to provide it with all reports concerning the applicant's arrest, the respondent Party merely submitted the decision ordering the applicant's arrest dated 4 April 1996. However, this does not provide the evidence that the applicant was not taken from his house prior to that date. A report on the applicant's arrest could possibly provide the relevant information, however, the respondent Party did not submit a report of any kind. As the respondent Party failed to provide the Chamber with any documentation proving otherwise, the Chamber accepts the applicant's statement that he was taken into police custody on 29 March 1996.

194. The applicant was not brought before the investigative judge until 6 April 1996, 7 days after his irregular arrest, thus in violation of Article 4a of the Law on Application of the Code on Criminal Procedure and Article 5(3) of the Convention. Therefore, the applicant was at the full disposal of the police without any control from or contact with the outside world for seven days.

195. Furthermore, the Chamber recalls the testimony of Mr. Torić that on his arrival in the District Prison in Bihać, the applicant had bruises on his back and blisters on his feet and that he walked as if his feet were on fire, and that of Mr. Muslić that, when he saw the applicant in the police station, he had a scratch on one side of his face, he was sweating, his face was red as if he had been slapped two or three times and that he thought the applicant had been tied up.

196. The Chamber further recalls that the applicant was taken to the scene of the crime where he had to conduct a re-enactment, during his unlawful detention. It also recalls the testimony of Mr. Muslić that, besides himself, several other people who were to testify in court were present at the time of the re-enactment together with several police officers. It also recalls the testimony of Ms. Pračić, the applicant's *ex officio* lawyer, that she was not appointed to represent the applicant until his first hearing before the investigative judge on 6 April 1996 and that she therefore was not present at the time of the re-enactment.

197. In addition, the Chamber notes that the minutes of the hearing before the investigative judge of 6 April 1996 state that the applicant complained to the investigative judge that he had been

maltreated by the police. This is supported by the testimony of Ms. Pračić.

198. Ms. Buff also testified that the applicant complained to her that he had been maltreated in order to extort a confession.

199. In light of the above, the Chamber finds it established that the applicant was found to be injured after his custody in the Bihać police station. In accordance with what the Chamber has stated in paragraph 178 above, it is therefore the respondent Party that bears the burden to provide a plausible explanation as to the causes of these injuries. The Chamber requested the respondent Party to submit all reports and medical documents concerning the applicant's custody in the Bihać police station. However, only the decision ordering his arrest dated 4 April 1996 was received.

200. The fact that the applicant was deprived of his liberty unlawfully for seven days provided the police with ample opportunity to treat the applicant in whatever manner they wanted, without any control from the outside world. This, in combination with the testimony of Mr. Torić, Mr. Muslić, Ms. Pračić and Ms. Buff, the Chamber's findings as mentioned in paragraph 196 above, the fact that the statements of the applicants Huskić, Šabančević and Gračanin reinforce each others credibility (see paragraph 190 above), and the failure of the respondent Party to provide any plausible explanation for the applicant's injuries or any proof to the contrary, leads the Chamber to conclude that the applicant was maltreated whilst held in custody by the Bihać police.

(iv) Case no. CH/00/4371, Ismet Gračanin

201. The applicant claims that during his custody in the Bihać police station he was severely maltreated in order to extort a confession. He stated that he was kicked and punched over his whole body by several people at once, hit with hard objects on his body and head, hit with rubber truncheons on the soles of his feet and denied sleep for several nights in a row. He further claims that, when he was taken to the Bihać police station during his detention in the District Prison in Bihać, he was beaten again.

202. The Chamber notes that the applicant claims that he was handed over by the Croatian authorities to the Velika Kladuša police mid November 1995. He claims that he was taken to the Bihać police station on the same day and kept there until he was brought before the investigative judge on 21 December 1995. The Chamber recalls the testimony of the witnesses Cerić and Budimlić stating that the applicant also informed them of his deportation by the Croatian authorities and the period of time he spent in the Bihać police station. The respondent Party claims that the applicant was arrested on 21 December 1995. Although the Chamber requested the respondent Party to provide it with all the documents concerning the applicant's arrest, it received nothing concerning this issue.

203. As the respondent Party failed to provide the Chamber with any documentation proving otherwise and the Chamber finds its claim that the applicant was arrested, brought before the investigative judge and taken to the District Prison in Bihać all on the same day implausible, the Chamber accepts the applicant's statement that he was taken into police custody mid November 1995.

204. The applicant was not brought before the investigative judge until 21 December 1995, approximately one month after his irregular arrest, thus in violation of Article 4a of the Law on Application of the Code on Criminal Procedure and Article 5(3) of the Convention. Therefore, the applicant was at the full disposal of the police without any control from or contact with the outside world for one month.

205. The Chamber notes in this respect that it 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, take relevant evidence of such events into consideration as 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 104-106, Decisions January–July 1999).

206. The Chamber recalls the testimony of Mr. Korčić that he saw injuries on the applicant's body on his arrival at the District Prison in Bihać. It further recalls the testimony of Mr. Cerić that he saw that the applicant's body was badly bruised, that his ribs were probably broken, that the soles of his feet had been beaten and that he could hardly walk.

207. In addition, the Chamber notes that Mr. Cerić, Mr. Budimlić and Ms. Buff all stated that the applicant complained to them of having been maltreated by the police, both during his custody in the Bihać police station and when he was released temporarily into their custody during his detention in the District Prison in Bihać.

208. In light of the above, the Chamber finds it established that the applicant was injured whilst in custody of the Bihać police. In accordance with what the Chamber has stated in paragraph 178 above, it is therefore the respondent Party that bears the burden to provide a plausible explanation as to the causes of these injuries. The Chamber requested the respondent Party to submit all reports and medical documents concerning the applicant's custody in the Bihać police station. However, nothing was received.

209. The fact that the applicant was deprived of his liberty unlawfully for approximately one month provided the police with ample opportunity to treat the applicant in whatever manner they wanted, without any control from the outside world. This, in combination with the testimony of Messrs. Korčić and Cerić, the Chamber's findings as mentioned in paragraph 207 above, the fact that the statements of the applicants Huskić, Šabančević and Gračanin reinforce each others credibility (see paragraph 190 above), and the failure of the respondent Party to provide any plausible explanation for the applicant's injuries or any proof to the contrary, leads the Chamber to conclude that the applicant was maltreated by the Bihać police during his custody in the Bihać police station and when he was temporarily released into their custody during his pre-trial detention in the District Prison in Bihać.

**(b) The gravity of the maltreatment**

210. The Chamber recalls that the European Court of Human Rights has held that the treatment complained of must have attained a minimum level of severity if it is to fall within the scope of Article 3 (see Eur. Court HR. *Ireland v. The United Kingdom* judgment of 18 January 1978, series A no. 25, paragraph 162).

211. In this respect the Chamber notes the particular vulnerability of a person held in police custody and its considerations in previous decisions that any recourse to physical force against a person held in police custody, which has not been made strictly necessary by the person's own conduct diminishes human dignity and is, in principle, an infringement of Article 3 (see e.g. case no. CH/97/45, *Hermas*, decision on admissibility and merits of 18 February 1998, paragraph 29, Decisions and reports 1998, with reference to the corresponding case law of the European Court).

212. In the cases at hand the applicants were handcuffed or tied to radiators and maltreated by several people at once. They could therefore not protect themselves against the police officers punching, kicking and beating their bodies, heads and foot soles with baseball bats and rubber truncheons. The applicants were subjected to this treatment and the whim of the police for five, seven and approximately 30 days on end. The Chamber finds that this treatment that was inflicted to the applicants by the police amounted to inhuman and degrading treatment as mentioned in Article 3 of the Convention.

**(c) Positive obligation**

213. The Chamber recalls that, in accordance with the jurisprudence of the European Court (see e.g. Eur. Court HR *X and Y v. Netherlands* judgment of 26 March 1985, Series A no. 91, paragraph 23, Eur. Court HR *Plattform "Ärzte für das Leben" v. Austria* judgement of 21 June 1988, Series A no. 139, paragraph 32, Eur. Court HR *Aydın v. Turkey* judgment of 25 September 1997, Reports of Judgments and Decisions 1997-VI, paragraph 103 and Eur. Court HR *Osman v. United Kingdom* judgment of 28 October 1998, Reports of Judgments and Decisions 1998-VIII, paragraphs 115-116), the obligation on states, contained in Article 1 of the 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. In line with this jurisprudence, the Chamber has held in *Matanović* (case no. CH/96/1, decision on the merits of 11 July 1997, paragraph 56, Decisions on Admissibility and Merits 1996-1997) that the same principle applies to the obligation on the Parties to the Annex 6 Agreement to “secure” the rights and freedoms mentioned in the Agreement. In the Chamber’s opinion this responsibility of the Parties to ensure and protect human rights means that the Parties have to provide not only the appropriate structures to guarantee the exercise of rights, but also appropriate means whereby violations will be prevented, investigated and, where necessary, punished (see also case no. CH/99/1568, *Čoralić*, decision on admissibility and merits of 7 December 2001, paragraph 39).

214. In the cases *Huskić* and *Šabančević* the minutes of the hearings of the applicants before the investigative judge show that both applicants complained of having been maltreated by the police while in their custody. This is in accordance with the testimonies of both the *ex officio* lawyer of Mr. Huskić, Mr. Bajramović and the *ex officio* lawyer of Mr. Šabančević, Ms. Pračić.

215. Nothing in the Chamber’s case files indicates that the investigative judge initiated any form of investigation whatsoever into the applicants’ allegations, as were also the findings of the *amicus curiae*. Moreover, the Chamber recalls the submission of Mr. Šabančević that in response to his complaint the investigative judge merely replied that he was not a doctor.

216. Mr. Gračanin stated that he complained to the investigative judge of having been maltreated by the police. The Chamber requested the respondent party to submit the minutes of the hearings of the applicant before the investigative judge. Although several documents concerning hearings before the investigative judge were received, that of the hearing of the applicant of 21 December 1996 was not among them. Taking this into consideration, along with the fact that the applicant complained to several people on several occasions of having been maltreated by the police (see paragraphs 114-115, 118 and 121 above) leads the Chamber to credit the applicant’s submission on this point.

217. Nothing in the Chamber’s case file indicates that the investigative judge initiated any form of investigation whatsoever into the applicant’s allegations. Moreover, it considers the testimony of Mr. Cerić that the investigative judge gave his approval for the applicant’s temporary release from the District Prison in Bihać into the custody of the Bihać police, despite the fact that Mr. Cerić had informed him of the physical condition of the applicant after he had been held in their custody in November and December 1995.

218. In light of its considerations as mentioned in paragraph 213 above, the Chamber finds that the failure of the investigative judge to take any steps to investigate the allegations made by the applicants, violates the positive obligation of the respondent Party to secure the applicants’ rights as protected by Article 3 of the Convention.

#### **(d) Conclusion**

219. The Chamber concludes that the applicants *Huskić*, *Šabančević* and *Gračanin* were subjected to inhuman and degrading treatment in violation of Article 3 of the Convention.

220. Furthermore, the Chamber is of the opinion that, in the cases *Huskić*, *Šabančević* and *Gračanin*, the respondent Party’s failure to comply with its positive obligation to secure the applicants’ right not to be subjected to inhuman and degrading treatment also constitutes a breach of Article 3 of the Convention.

### **2. Article 5 of the Convention - the compliance by the respondent Party with the Rules of the Road**

221. The relevant parts of Article 5 paragraph 1 of the Convention provide as follows:

“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: (...)

- (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;  
(...)"

**(a) The entering into force of the Rules of the Road**

222. At the public hearing in the cases at hand, the respondent Party stated that the Higher Court in Bihać was not aware of the Rules of the Road until 25 October 1996, when the Federal Ministry of Justice communicated them to the Una-Sana Canton. Therefore, it argued, the Rules of the Road did not become positive law until this date.

223. However, the Chamber recalls its findings in paragraphs 141-144 above and its decisions *Pržulj* (case co. CH/98/1374, decision on admissibility and merits of 10 January 2000, paragraph 135, Decisions January –June 2000) and *V.Č* (case no. CH/99/1366, decision on admissibility and merits of 7 March 2000, paragraph 65, Decisions January-June 2000) in which it held that the Rules of the Road entered into force on 18 February 1996.

224. The Chamber also recalls the testimony of Ms. Buff that her predecessor informed her that in the summer of 1996 she had informed the Bihać authorities of the existence of the Rules of the Road.

225. The Chamber further notes that the prompt distribution of the text of the Rules of the Road to the judicial authorities is a responsibility of the respondent Party. If, as the respondent Party stated at the public hearing, the Federal Ministry did indeed wait until 25 October 1996 to inform the courts of the existence of the Rules of the Road, it is the respondent Party that is to be held responsible for the consequences of this omission.

226. With regard to the situation in which a person was arrested prior to the entering into force of the Rules of the Road, the Chamber finds that the domestic authorities could not be expected to immediately release the person. They did however, have an obligation to send the relevant files promptly, i.e. within a reasonable time to the ICTY Prosecutor for his opinion.

**(b) The applicability of the Rules of the Road**

227. The Chamber is of the opinion that for the question whether the Rules of the Road should be taken into account in a case, one should firstly take into consideration the legal qualification of the underlying act by the domestic authorities. If the domestic authorities have determined the alleged act to have constituted a war crime, i.e. a serious violation of international humanitarian law, the Rules of the Road undoubtedly apply. However, if the domestic authorities have determined the alleged crime to constitute a common crime, the Chamber is of the opinion that one should then look at the factual allegations against the person in order to determine whether the correct qualification was given to the act the person was accused of having committed. For, a serious violation of international humanitarian law is an autonomous concept. The question whether an act constitutes such a violation is not reliant on the legal classification given to it by the prosecuting authorities or the courts, but is to be assessed independently. Furthermore, if one were unquestionably bound to the qualification by the domestic authorities, it would be facile to circumvent the Rules of the Road by simply indicting someone for or convicting someone of a common crime instead of the *lex specialis*, i.e. the war crime. If, after assessing whether the offence was given the correct legal qualification, one reaches the conclusion that it should have been obvious to the domestic authorities that the act at hand should have been qualified as a war crime, the Rules of the Road apply.

(i) Case no. CH/98/1335, Zuhdija Rizvić

228. The Chamber recalls that the applicant was arrested on 24 August 1995 and indicted for war crimes on 21 February 1996. The case was not transmitted to the ICTY until December 1996. On 10 March 1997 the Prosecutor of the ICTY stated that the submitted evidence was sufficient by international standards to provide reasonable grounds for believing that the applicant committed a

serious violation of international law. On 27 May 1997 the Cantonal Court in Bihać convicted the applicant of war crimes. This decision was upheld by the Supreme Court on 13 January 1998.

229. The applicant was indicted three days after the signing of the Rules of the Road. The Chamber finds that the domestic authorities cannot have been expected to have obtained the opinion of the Prosecutor of the ICTY prior to the applicant's arrest. It does find however, that the domestic authorities were under the obligation to send the applicant's file to the Prosecutor of the ICTY within a reasonable time (see paragraph 226 above), i.e. no more than one month after his arrest. The Chamber concludes that, as the domestic authorities did not transmit the applicant's case to the ICTY Prosecutor for his opinion until December 1996 and no order, warrant or indictment against the applicant had been preliminarily submitted to the ICTY after the Rules of the Road had entered into force on 18 February 1996, as required by these Rules, the applicant's detention from mid March 1996 to December 1996, i.e. for nine months, was therefore not "lawful" as required by paragraph 1(c) of Article 5 of the Convention.

(ii) Case no. CH/98/1370, Sead Huskić

230. The Chamber recalls that the applicant was arrested on 16 March 1996. The decision ordering his arrest dated 17 March 1996 states that he was suspected of having committed ordinary murder. On 31 May 1996 the applicant was indicted for ordinary murder. On 2 September 1996 the Higher Court in Bihać convicted the applicant of war crimes, which decision was upheld by the Supreme Court on 15 May 1997. The case was never transmitted to the ICTY for its opinion.

231. In accordance with the Chamber's findings in paragraph 227 above, it shall look at the factual allegations against the applicant in order to establish whether, upon his arrest, the offence he was suspected of having committed was correctly determined to have been a common crime.

232. The order for the applicant's arrest dated 17 March 1996 states that the applicant was arrested on the suspicion of – in short – "as a member of the Paramilitary forces of the National Defence of the Autonomous Province of Western Bosnia" having shot a wounded enemy soldier of the 5<sup>th</sup> Corps. The Chamber considers that the above-described crime was clearly related to the hostilities and should undoubtedly have been qualified as a war crime. This should have been obvious to the Bihać authorities. The Chamber therefore considers the Rules of the Road to be applicable in this case.

233. In light of the above, the Chamber concludes that, as the applicant was arrested on 16 March 1996 without the required opinion of the ICTY Prosecutor and no order, warrant or indictment against the applicant had been preliminarily submitted to the ICTY after the Rules of the Road had entered into force on 18 February 1996, as required by these Rules, the applicant's detention as from 16 March 1996 was therefore not "lawful" as required by paragraph 1(c) of Article 5 of the Convention.

(iii) Case no. CH/99/1505, Almir Šabančević

234. The Chamber recalls that the applicant was arrested on 29 March 1996. The decision ordering his arrest dated 4 April 1996 states that he was suspected of having committed a war crime. The case was not transmitted to the ICTY until December 1996. On 10 March 1997 the Prosecutor for the ICTY stated that the submitted evidence was sufficient by international standards to provide reasonable grounds for believing that the applicant committed a serious violation of international law. On 5 May 1997 the Cantonal Court in Bihać convicted the applicant of war crimes. This conviction was upheld by the Supreme Court in its decision of 10 March 1998.

235. In light of the above, the Chamber concludes that as the applicant was arrested on the suspicion of having committed a war crime on 29 March 1996 and the above-mentioned opinion of the ICTY Prosecutor was obtained only on 10 March 1997 and no order, warrant or indictment against the applicant had been preliminarily submitted to the ICTY after the Rules of the Road had entered into force on 18 February 1996, as required by these Rules, the applicant's detention from 29 March 1996 to 10 March 1997, i.e. for twelve months, was therefore not "lawful" as required by paragraph 1(c) of Article 5 of the Convention.

(iv) Case no. CH/99/2805, Ahmet Sefić

236. The Chamber recalls that the applicant was initially arrested for ordinary murder and later, on 16 May 1996, indicted for war crimes. On 9 December 1996 the Higher Court in Bihać convicted him of ordinary murder, which decision was upheld by the Supreme Court on 2 May 1997. The case was not transmitted to the ICTY until January 1997. On 10 March 1997 the Prosecutor for the ICTY stated that the submitted evidence was sufficient by international standards to provide reasonable grounds for believing that the applicant committed a serious violation of international law.

237. The Chamber is of the opinion that, as the domestic authorities qualified the crime of which the applicant was accused, as a war crime, the Rules of the Road should have been taken into account in this case. The fact that the Higher Court in Bihać later convicted the applicant of common murder, which decision was upheld by the Supreme Court, does not retrospectively cover the non-compliance of the respondent Party with the Rules of the Road.

238. In light of the above, the Chamber concludes that, as the applicant was indicted for war crimes on 16 May 1996 and the above-mentioned opinion of the ICTY Prosecutor was obtained only on 10 March 1997 and no order, warrant or indictment against the applicant had been preliminarily submitted to the ICTY after the Rules of the Road had entered into force on 18 February 1996, as required by these Rules, the applicant's detention from 16 May 1996 to 9 December 1996, i.e. for 7 months, was therefore not "lawful" as required by paragraph 1(c) of Article 5 of the Convention.

(v) Case no. CH/00/4371, Ismet Gračanin

239. The Chamber recalls that the applicant was arrested mid November 1995 on the suspicion of having committed ordinary murder. He was indicted for the same offence on 10 October 1996. On 10 March 1999 the Cantonal Court in Bihać convicted the applicant of ordinary murder, which decision was upheld by the Supreme Court on 28 September 1999. The case was never transmitted to the ICTY for its opinion.

240. In accordance with the Chamber's findings in paragraph 227 above, it shall look at the factual allegations against the applicant in order to establish whether, upon his arrest, the offences he was suspected of having committed were correctly determined to have been common crimes. This could most effectively be done by regarding the order for the applicant's arrest, as the Chamber has done in the Huskić case (see paragraphs 231-232 above). However, as mentioned above (see paragraph 208), the respondent Party failed to submit the documents concerning the applicant's arrest to the Chamber. Therefore, the Chamber shall consider the underlying facts of the conviction of the applicant.

241. The Chamber notes that the first crime of which the applicant was convicted that took place on 28 January 1993, was not related to the hostilities. The crime that took place on 7 January 1994 concerns the beating to death by the applicant, in his capacity of commander of the military unit "Sejle", of a civilian prisoner who had been taken into custody by the military police. The crime that took place on 10 August 1994 concerns the beating and killing of a man, captured because he refused to fight with the Autonomy, by the applicant in his capacity of commander of the 3<sup>rd</sup> Brigade "NOAPZB", together with other members of that brigade.

242. The Chamber is of the opinion that the facts of the two last mentioned crimes leave no room for a different interpretation than that they concern offences undoubtedly related to the hostilities. It should therefore have been obvious to the Bihać authorities at the moment of the applicant's arrest that these offences should have been qualified as war crimes. In this respect the Chamber also takes into account the testimony of Ms. Buff on this issue. The Chamber therefore considers the Rules of the Road to be applicable in this case.

243. The applicant was arrested prior to the entering into force of the Rules of the Road. The domestic authorities were therefore not obliged to have obtained the opinion of the Prosecutor of the ICTY prior to the applicant's arrest. The Chamber finds however, that the domestic authorities were under the obligation to send the applicant's file to the Prosecutor of the ICTY within a reasonable time (see paragraph 226 above), i.e. no more than one month after the entering force of the Rules of

the Road. The Chamber concludes that, as the domestic authorities omitted to transmit the applicant's case to the ICTY Prosecutor for his opinion and no order, warrant or indictment against the applicant had been preliminarily submitted to the ICTY after the Rules of the Road had entered into force on 18 February 1996, as required by these Rules, the applicant's detention as from mid March 1996 was therefore not "lawful" as required by paragraph 1(c) of Article 5 of the Convention.

### 3. Article 6 of the Convention

244. Article 6 of the Convention provides – in so far as relevant - as follows:

"1. In the determination of (...) any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

(...)

3. Everyone charged with a criminal offence has the following minimum rights:  
 (a) to be informed promptly, (...) and in detail, of the nature and cause of the accusation against him;  
 (b) to have adequate time and facilities for the preparation of his defence;  
 (c) to defend himself in person or through legal assistance (...);  
 (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;  
 (...)"

245. As the requirements of Article 6(3) of the Convention are to be seen as particular aspects of the right to a fair trial guaranteed by Article 6(1) of the Convention, the Chamber will examine the applicant's complaints under paragraphs 1 and 3 of Article 6 of the Convention together (see also, *inter alia*, Eur. Court HR, *Delta v. France* judgment of 19 December 1990, Series A no. 191, paragraph 34).

246. Prior to examining whether the applicant's complaints of not having received fair trials are legitimate, the Chamber notes that it is not an appellate court and is not in a position to reassess the available evidence in the individual cases or re-apply the law. It is therefore not competent to re-try the applicants' cases, but can merely establish whether the applicants' trials were conducted in a fair manner as guaranteed by Article 6 of the Convention.

247. The Chamber further notes that, in order to determine whether the trials in the cases at hand were fair, it in general takes into account its findings concerning Article 3 of the Convention, namely that the applicants were severely maltreated before the trial and the intimidating effect that comes forth from that. It further takes into consideration its findings concerning Article 5 of the Convention, namely the systematic failure of the Bihać authorities to comply with the Rules of the Road, demonstrating their will not to subject these trials, in a politically overcharged atmosphere, to outside scrutiny. Moreover, the Chamber considers the fact that four of the five trials at hand concern trials against defeated soldiers of the Autonomy, whereas no trials were held in the Una-Sana Canton against soldiers of the 5<sup>th</sup> Corps.

#### (a) Case no. CH/98/1335, Zuhdija Rizvić

248. The applicant's complaints raise three different issues with regard to Article 6 of the Convention. The first issue concerns the allegation that witnesses gave false testimony at the trial. The second issue concerns the applicant's claim that he was not permitted to call witnesses on his behalf. The third issue concerns the court's rejection of the applicant's request for a neuro-psychiatric expertise.

##### (i) The complaint of false testimony

249. As to the issue of false testimony, the Chamber notes that if it were to be established that witnesses gave false testimony during the trial, this does not necessarily lead to the conclusion that the applicant was denied a fair trial. If it were to be established that the witnesses had been forced

to do so under pressure of the authorities, an issue would arise under Article 6 of the Convention.

250. The Chamber notes that the only evidence in its case file in support of the applicant's above-mentioned claim is the testimony of Mr. Bajramović that the applicant told him that the witnesses that were heard at the trial testified falsely. The applicant has not further substantiated his allegations, nor does it appear from the Chamber's case file that he requested the public prosecutor to initiate criminal proceedings against the witnesses that allegedly gave false testimony. It therefore cannot be established that the witnesses at the trial gave false testimony and even less so that they gave false testimony under pressure of the authorities. The Chamber therefore finds that this complaint does not reveal a violation of Article 6 of the Convention.

(ii) The right to examine and call witnesses

251. Concerning the issue of the court's rejection of the applicant's request to hear witnesses, the Chamber recalls the well established case law of the European Court that, as a general rule, it is for the domestic courts to assess the evidence before them as well as the relevance of the evidence which defendants seek to adduce (see, *inter alia*, Eur. Court HR, *Barbèra, Messegué and Jabardo v. Spain* judgment of 6 December 1988, Series A no. 146, paragraph 68). More specifically, Article 6(3)(d) of the Convention leaves it to the domestic courts, again as a general rule, to assess whether it is appropriate to call witnesses; it "does not require the attendance and examination of every witness on the accused's behalf: its essential aim, as is indicated by the words 'under the same conditions', is a full 'equality of arms' in the matter" (see Eur. Court HR, *Engel and others v. the Netherlands* judgment of 8 June 1976, Series A no. 22, paragraph 91). The Chamber's task therefore, is to ascertain whether the proceedings considered as a whole, including the way in which evidence was taken, were fair (see, *inter alia*, Eur. Court HR, *Asch v. Austria* judgment of 26 April 1991, Series A, No. 203, paragraphs 25-26 and *Vidal v. Belgium* judgment of 22 April 1992, Series A, No. 235-B, paragraph 33).

252. Bearing in mind the above-mentioned discretion of the Higher Court in Bihać, the Chamber recalls the findings of the *amicus curiae* that seven witnesses were examined on proposal of the prosecution and none on proposal of the defence. In addition, the Chamber recalls that the applicant claimed that one of the witnesses proposed on his behalf was an eyewitness to the underlying events. Considering the disproportion between the amount of witnesses heard on proposal of the prosecution and on proposal of the defence, in combination with the fact that the testimony of at least one of the witnesses for the defence appeared to have possibly been of significant importance to the outcome of the proceedings, the Chamber is of the opinion that the court's reasoning in rejecting the defence's request that "the matter had been discussed long enough", is insufficient and not consistent with the concept of a fair trial (see in this respect Eur. Court HR, *Vidal v. Belgium*, *loc. cit.*, paragraph 34).

(iii) The request for medical expertise

253. In light of the Chamber's findings as mentioned in paragraph 251 above, the Chamber considers it to lie within the discretion of the Higher Court in Bihać to assess the taking into evidence of a neuro-psychiatric expertise in the case at hand. The applicant requested the taking into evidence of a neuro-psychiatric expertise in order to show that he had acted under duress as he was ordered by his superior to shoot the victim, whilst this superior officer was pointing a gun at the applicant. The court rejected this request as one of the witnesses testified that the lay of the land was such that the applicant could not be seen by his superior officer when committing the offence. Therefore, the court reasoned, there was no immediate threat to the applicant so that he could not have committed the crime under duress. Having regard to these circumstances, the court was entitled to take the view that it had sufficient information to decide the case on the basis of the evidence before it. The court's reasoning in this respect that, as the legal responsibility of the applicant was not in question, there was no need of a neuro-psychiatric expertise, is consistent with the concept of a fair trial (see Eur. Court HR, *H. v. France* judgment of 24 October 1989, series A no. 162-A, paragraph 70 and *Vidal v. Belgium*, *loc. cit.*, paragraph 34).

**(b) Case no. CH/98/1370, Sead Huskić**

254. The applicant's complaint under Article 6 of the Convention concerns the allegation that witnesses gave false testimony at the trial.

255. In addition, the Chamber has established *ex officio* that a second issue with regard to Article 6 of the Convention arises in this case, as the applicant was convicted of an offence different from the one he was charged with.

**(i) The complaint of false testimony**

256. In light of its considerations in paragraph 249 above, the Chamber recalls the submission of the applicant that the two witnesses that testified against him at the trial were forced to do so by the Bihać police. The applicant alleges that he was held in the Bihać police station at the same time as both these witnesses. He further alleges that he was confronted with one of the witnesses who himself was handcuffed to a radiator and had also been maltreated by the police. This witness allegedly visited the applicant's family after the trial and explained that he had been forced by the Bihać police to testify against the applicant. The applicant states that the reason he did not request the hearing of any additional witnesses was that he had expected the two witnesses to testify in his favour.

257. The Chamber further recalls the testimony of Mr. Bajramović that the applicant told him that the witnesses had told the truth at the trial and the testimony of Ms. Buff, going in the opposite direction, that the applicant had told her that he had expected the witnesses to testify in his favour.

258. The Chamber finds that, although it believes the applicant had not anticipated the harm of the testimony of the witnesses to his case, it does not find it established that the two witnesses that were heard at the trial testified falsely. Nor does it find established that, if one were to consider the possibility that they had testified untruthfully, they did so under pressure of the Bihać police. The Chamber therefore finds that this complaint does not reveal a violation of Article 6 of the Convention.

**(ii) The issue of conviction of an offence different from the one charged with**

259. The Chamber recalls that the applicant was arrested on 16 March 1996 on suspicion of having committed ordinary murder. He was indicted on 31 May 1996 on the same grounds. On 2 September 1996 the Higher Court in Bihać convicted the applicant of war crimes, namely "the unlawful killing of the enemy". This decision was upheld by the Supreme Court on 15 May 1997.

260. The Chamber notes that Article 346(2) of the Code on Criminal Procedure provided that the court was not bound to the legal qualification given to the occurred events by the public prosecutor. However, it also notes the right of the applicant guaranteed by Article 6(3)(a) of the Convention to be informed in detail of the nature and cause of the accusation against him. In this respect the Chamber considers that sub-paragraphs (a) and (b) of paragraph 3 of Article 6 of the Convention are connected and that the right to be informed of the nature and the cause of the accusation must be considered in the light of the accused's right to prepare his defence (see Eur. Court HR, *Pélissier and Sassi v. France* judgment of 25 March 1999, Reports of Judgments and Decisions 1999-II, paragraph 54).

261. The Chamber recalls the testimony of Mr. Bajramović that he was not aware of the court's change of the legal qualification of the events until it delivered its verdict. As it does not appear from the Chamber's case file that anywhere during the course of the proceedings the subject of war crimes was raised, it establishes that the applicant was not aware of the possibility of a conviction of this crime.

262. The Chamber must now determine whether the applicant ought to have been aware of the possibility that a verdict of "unlawful killing of the enemy" might be returned instead of one of ordinary murder. The Chamber considers that the crime of ordinary murder and that of the war crime of "unlawful killing of the enemy" are crimes with two very different notions. The objective of the penalisation of the two acts is different to the core. For example, where ordinary murder forbids the

killing of another person, the war crime has as starting-point that the killing of the person in question is legitimate. However, under certain circumstances the legitimacy of the killing can cease to exist. Therefore, the Chamber concludes that the defence against a charge with the war crime of “unlawful killing of the enemy” would differ substantially from the defence against a charge with ordinary murder.

263. In light of the above, the Chamber considers that the applicant was not informed sufficiently of the accusation against him and not given adequate opportunity to prepare his defence. In addition, the Chamber notes that under domestic law, there is no possibility for the applicant to appeal against his conviction on the ground that he was found guilty of an offence different from the one charged with (see paragraphs 138-140 above). Consequently the Chamber considers that there has been a violation of Article 6 of the Convention.

**(c) Case no. CH/99/1505, Almir Šabančević**

264. The applicant’s complaints raise three different issues with regard to Article 6 of the Convention. The first issue concerns the allegation that witnesses gave false testimony at the trial. The second issue concerns the applicant’s claim that he was not permitted to call witnesses on his behalf. The third issue concerns the court’s rejection of the request to have the applicant medically examined.

265. The Chamber established *ex officio* that the showing of the photos of the re-enactment of the crime raises an issue under Article 6 of the Convention.

(i) The complaint of false testimony

266. The Chamber recalls the testimony of Mr. Muslić who stated that he had indeed testified contrary to the truth at the applicant’s trial. However, the Chamber further notes that he also stated that he had not been forced to do so by anybody. In light of the Chamber’s findings in paragraph 249 above, the Chamber concludes that the fact that Mr. Muslić did not testify in accordance with the truth, does not raise an issue under Article 6 of the Convention. As no evidence of any other witnesses having testified falsely has been established, the Chamber considers that no violation of Article 6 of the Convention has been revealed.

(ii) The right to examine and call witnesses

267. The Chamber recalls its findings in paragraph 251 above. Bearing in mind the established discretion of the Cantonal Court in its decision on what evidence to hear a case, the Chamber recalls the submission of the *amicus curiae* that eight witnesses were examined on proposal of the prosecution and four on proposal of the defence. The court rejected the defence’s proposal to hear four other witnesses. The Chamber further recalls the testimony of Mr. Semanić that one of the witnesses that were refused was the person whom the applicant claimed was the actual perpetrator. He further stated that two other witnesses that were refused had given contradicting testimonies as to the description of the perpetrator and he had wanted to confront them with this.

268. The Chamber finds that the amount of witnesses heard on proposal of the prosecution and on proposal of the defence is not necessarily disproportionate. However, in combination with the fact that the testimony of one of the refused witnesses appeared to have possibly been of significant importance to the outcome of the proceedings, and the importance of confronting witnesses with the fact that their testimony is contradictory on decisive points, the Chamber is of the opinion that the court’s reasoning in rejecting the defence’s request that there had been enough hearings and testimony in the case in order for the court to reach a decision, is insufficient and not consistent with the concept of a fair trial (see in this respect Eur. Court HR, *Vidal v. Belgium*, *loc. cit.*, paragraph 34).

(iii) The request for medical expertise

269. The Chamber recalls the applicant’s complaint that his lawyer’s request to have a psychological expertise carried out on him was refused by the court. However, neither the minutes of the hearings in the applicant’s case before the Cantonal Court in Bihać, nor its decision in the case



of 5 May 1997 reveal that the applicant's lawyer ever made such a request. The Chamber therefore finds that this complaint does not reveal a violation of Article 6 of the Convention.

(iv) The showing of the photos of the re-enactment of the crime

270. Bearing in mind the discretion of the court, as established in paragraph 251 above, on what evidence to hear a case, it is for the Chamber to consider whether the manner in which evidence was taken was in compliance with Article 6 of the Convention.

271. The Chamber recalls the applicant's statement that he was forced by the police to re-enact the crime of which he was accused. Moreover, the Chamber recalls that he stated to have been beaten as the police were not satisfied at first with his demonstration. The Chamber further recalls the circumstances under which the applicant was held in custody by the police as established in its considerations under Article 3 of the Convention (paragraphs 193-200 and 212 above). In addition, it recalls its findings in paragraph 196 above, that Mr. Muslić and several other persons that were to testify in court, along with several police officers were present at the time of the re-enactment and that the applicant was not accompanied by a lawyer. The Chamber further considers the testimony of Ms. Buff that photos were shown during the trial that seemed to show the applicant re-enacting the crime and that the minutes of the trial did not mention the showing of the photos.

272. Taking into consideration the above-mentioned circumstances under which the re-enactment took place, the Chamber finds that the re-enactment was conducted in a most improper manner. This, in combination with the manner in which the photos were presented at the trial, leads the Chamber to conclude that the taking into evidence of the photos of the applicant re-enacting the crime was in violation of his right to a fair trial as guaranteed by Article 6 of the Convention.

**(d) Case no. CH/99/2805, Ahmet Sefić**

273. The applicant's complaints raise three different issues with regard to Article 6 of the Convention. The first issue concerns the applicant's claim that he was not permitted to call witnesses on his behalf or confront the witnesses that testified against him. The second issue concerns his complaint that the court rejected the applicant's requests to be medically examined. The third issue concerns the applicant's complaint that the court did not take into consideration the fact that the applicant claimed to have committed the crime of which he was accused under duress.

274. In addition, the Chamber has established *ex officio* that a fourth issue with regard to Article 6 of the Convention arises in this case, as the applicant was convicted of an offence different from the one he was charged with.

(i) The right to examine and call witnesses

275. The Chamber recalls the findings of the *amicus curiae* that the defence did not ask for any witnesses to be heard. This is in accordance with the Chamber's findings on examination of its case file, with the exception of the testimony of Ms. Buff that the defence had in fact a list of witnesses it wanted to hear. The Chamber further notes the decision of the Supreme Court in this case, in which it is stated that the applicant requested to hear witnesses, but neglected to state the names of the people he wanted to be heard. In light of these findings, the Chamber considers that the applicant did not submit a request to hear witnesses in his case, at least, not a request that the Higher Court could fulfil. Therefore, the Chamber concludes that the applicant's complaint does not reveal a violation of Article 6 of the Convention.

276. The applicant further complained that he was not given the opportunity to confront the witnesses that testified against him. In this respect, the Chamber notes that it appears from its case file that the statements of the witnesses were read out during the trial, this with the approval of the applicant's lawyer. By approving this, the applicant's defence conceded the possibility to confront the witnesses. The Chamber therefore concludes that also in this respect the applicant's complaint does not reveal a violation of Article 6 of the Convention.

(ii) The requests for medical expertise

277. In light of its findings as mentioned in paragraph 251 above, the Chamber considers it to lie within the discretion of the Higher Court in Bihać to assess the taking into evidence of medical expertise. The applicant requested physical medical expertise in order to show that he was violently forced to carry out the guard's orders to commit the crime of which he was accused. The Higher Court rejected this request as it considered it sufficiently established, on the basis of witness testimony, that the applicant had not been violently forced to carry out the order to shoot his fellow prisoners.

278. The applicant also requested a psychological medical expertise in order to establish his mental state at the time of the crime. The court rejected this request on the grounds that a psychological expertise had already been carried out and taken into consideration by the court, on the basis of which it concluded that the applicant's responsibility toward and understanding of the significance of the committed crime was somewhat diminished.

279. Having regard to the above-mentioned circumstances, the court was entitled to take the view that it had sufficient information to decide the case on the basis of the evidence before it. Accordingly, the fact that the court did not order the requested medical expertise did not infringe the applicant's right to a fair trial (see Eur. Court HR, *H. v. France loc. cit.*, paragraph 70).

(iii) The issue of duress

280. The applicant states that the court did not take into consideration the fact that he committed the crime of which he was accused under duress. Namely, the applicant alleges that the guard who ordered him to shoot his fellow prisoners, threatened to kill his father and brother, who were detained in the same camp, if the applicant did not comply with his order. The Chamber recalls the reasoning of the Higher Court in rejecting this defence, namely that it found the established threat not to be immediate, as the applicant's father and brother were not present at the scene of the crime.

281. The Chamber recalls its findings in paragraph 251 above, that the court has discretion in assessing the evidence before it. The Chamber further recalls that the Higher Court in Bihać did address the defence of the applicant that he committed the crime under duress. In its decision of 9 December 1996 the court reasoned that, although it found the threat that the applicant complained of, to have been established, it was of the opinion that the threat was not immediate, as the applicant's father and brother were not present at the scene of the crime. The Chamber considers this reasoning to be consistent with the concept of a fair trial (see Eur. Court HR, *Vidal v. Belgium, loc. cit.*, paragraph 34) and does not find that it reveals a violation of Article 6 of the Convention.

(iv) The issue of conviction of an offence different from the one charged with

282. The Chamber recalls that the applicant was arrested on 30 October 1995 on suspicion of having committed ordinary murder. He was indicted on 16 May 1996 for "war crimes against the civilian population". On 9 December 1996 the Higher Court in Bihać convicted him of ordinary murder, which decision was upheld by the Supreme Court on 2 May 1997.

283. The Chamber recalls its findings in paragraph 260 above, that the Higher Court was not bound by the legal qualification of the public prosecutor, but that the applicant's rights as guaranteed under Article 6 needed to be taken into consideration if the court wished to convict him for a crime different from the one charged with.

284. In this respect the Chamber considers the reasoning of the Higher Court in Bihać for changing the qualification of the act from that of "war crimes against the civilian population" to ordinary murder. It stated that, as the applicant did not serve in any military force, nor was he "in service of the aggressor", it could not convict him of "war crimes against the civilian population".

285. Although the Chamber's case file does not reveal whether the applicant was aware of the court's intention to consider a conviction of ordinary murder, it notes that the applicant was initially

arrested on this suspicion. The Chamber further notes that, when considering the crimes of ordinary murder and that of “war crimes against the civilian population”, it can be said that the issue of serving in a military force or being “in service of the aggressor” is an aggravating circumstance to the ordinary murder. Therefore, if the aggravating circumstance falls away, the ordinary murder remains. Although the possibility of a conviction of ordinary murder instead of “war crimes against the civilian population” might not have explicitly been raised during the trial, in light of the above, the applicant ought to have been aware of this possibility. The Chamber therefore concludes that this issue does not reveal a violation of Article 6 of the Convention.

**(e) Case no. CH/00/4371, Ismet Gračanin**

286. The applicant’s complaint that Article 6 of the Convention was violated concerns the allegation that witnesses gave false testimony at the trial.

287. The Chamber notes that the only evidence in its case file in support of the applicant’s above-mentioned claim is the testimony of Mr. Bajramović that the witnesses that were heard at the trial had been pressured into testifying against the applicant by the police. Mr. Bajramović gave the example of G.L. who, he stated, had been called in by the police several times during the night to give a statement and could not answer the questions he put to her during the trial. He further stated that G.L. had apologised to the applicant after the trial. As it is not clear how Mr. Bajramović obtained the knowledge of the circumstances under which G.L. was heard by the police and no evidence in support of his testimony was found, the Chamber can not establish that G.L. or any other witness testified falsely at the applicant’s trial. Even less so can it establish that they had done so under pressure of the police (see paragraph 249 above). The Chamber therefore finds that the applicant’s complaint does not reveal a violation of Article 6 of the Convention.

**(f) Conclusion**

288. The Chamber concludes that there have been violations of the applicants’ right to a fair trial as guaranteed by Article 6 of the Convention in the cases Rizvić, Huskić and Šabančević.

**D. Article 13 of the Convention**

289. Article 13 of the Convention reads as follows:

“Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

290. In its decision on admissibility in the Šabančević case, the Chamber declared admissible the applicant’s complaint of a violation of Article 13 of the Convention.

291. In view of its findings under Article 3 of the Convention the Chamber does not find it necessary to consider the case under this Article.

**E. Article 4 of Protocol No. 7 to the Convention**

292. Article 4 of Protocol No. 7 to the Convention reads – in so far as relevant – as follows:

“No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State.”

293. In its decision on admissibility in the Gračanin case, the Chamber declared admissible the applicant’s complaint of a violation of Article 4 of Protocol No. 7 to the Convention.

294. The Chamber recalls the submissions of the respondent Party and the testimony of Mr. Cerić that the decision of the Military Court in Bihać of 23 April 1993 was quashed by the Supreme Court and referred back in order to be re-tried. Therefore, the Chamber concludes that the decision of the

Military Court in Bihać of 23 April 1993 was not final and binding so that there has been no violation of Article 4 of Protocol No. 7 to the Convention.

## VII. REMEDIES

295. In accordance with Article XI(1)(b) of the Agreement, the Chamber must next address the question which steps should be taken by the respondent Party to remedy the established breaches of the Agreement. In this regard, the Chamber shall consider orders to cease and desist, pecuniary compensation and provisional measures.

### A. Case no. CH/98/1335, Zuhdija Rizvić

296. The Chamber has found that the applicant has suffered violations of his right to liberty and security of person and his right to a fair trial.

297. As to the violation of the applicant's right to liberty, the Chamber notes that the violation was constituted by the fact that no opinion of the ICTY Prosecutor was obtained within a reasonable time as required by the Rules of the Road, this rendering the applicant's detention unlawful. The ICTY Prosecutor gave a positive opinion in the case on 10 March 1997. The Chamber considers that, although the positive opinion of the ICTY Prosecutor does not retrospectively cover the unlawfulness of the applicant's detention, it does reveal that, if the respondent Party had complied with the Rules of the Road, this would not have changed the applicant's factual situation. Therefore, the Chamber is of the opinion that the finding of a violation of the applicant's right to liberty is an appropriate remedy for the moral harm suffered by him.

298. As to the violation of the applicant's right to a fair trial, the Chamber finds it appropriate, given the circumstances as established above, to order the respondent Party to re-try the applicant's case upon request of the applicant or the public prosecutor.

### B. Case no. CH/98/1370, Sead Huskić

299. The Chamber has found that the applicant has suffered violations of his right not to be subjected to inhuman and degrading treatment, his right to liberty and security of person and his right to a fair trial.

300. As to the violation of the applicant's right not to be subjected to inhuman and degrading treatment, the Chamber takes into account the severity of the maltreatment the applicant endured, the circumstances under which the maltreatment took place and the amount of time the applicant was subjected to it. The Chamber notes the difficulties inherent in the determination of an adequate monetary compensation for this violation. It also notes that the present decision in itself will in large part constitute recognition of the wrongs done to the applicant. Nevertheless, the Chamber considers it appropriate to award the applicant a monetary sum as compensation for the treatment he suffered. It considers an appropriate sum to be 3,000 Convertible Marks (*Konvertibilnih Maraka*; "KM") and will accordingly order the respondent Party to pay this sum to the applicant, at the latest within one month from the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure.

301. The Chamber further awards simple interest at an annual rate of 10 per cent as of the date of the expiry of the one month period set in paragraph 300 for the implementation of the present decision, on the sum awarded in paragraph 300 or any unpaid portion thereof until the date of settlement in full.

302. As to the violation of the applicant's right to liberty and security of person, the Chamber notes that the violation was constituted by the fact that no opinion of the ICTY Prosecutor was ever requested as required by the Rules of the Road, this rendering the applicant's detention unlawful from 16 March 1996 to the present date. The Chamber therefore finds it appropriate to order the applicant's release from detention, at the latest on the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure.

303. As to the violation of the applicant's right to a fair trial, the Chamber finds it appropriate, given the circumstances as established above, to order the respondent Party to re-try the applicant's case upon request of the applicant or the public prosecutor and subject to the approval of the ICTY Prosecutor.

**C. Case no. CH/99/1505, Almir Šabančević**

304. The Chamber has found that the applicant has suffered violations of his right not to be subjected to inhuman and degrading treatment, his right to liberty and security of person and his right to a fair trial.

305. As to the violation of the applicant's right not to be subjected to inhuman and degrading treatment, the Chamber takes into account the severity of the maltreatment the applicant endured, the circumstances under which the maltreatment took place and the amount of time the applicant was subjected to it. The Chamber notes the difficulties inherent in the determination of an adequate monetary compensation for this violation. It also notes that the present decision in itself will in large part constitute recognition of the wrongs done to the applicant. Nevertheless, the Chamber considers it appropriate to award the applicant a monetary sum as compensation for the treatment he suffered. It considers an appropriate sum to be KM 3,000 and will accordingly order the respondent Party to pay this sum to the applicant, at the latest within one month from the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure.

306. The Chamber further awards simple interest at an annual rate of 10 per cent as of the date of the expiry of the one month period set in paragraph 305 for the implementation of the present decision, on the sum awarded in paragraph 305 or any unpaid portion thereof until the date of settlement in full.

307. As to the violation of the applicant's right to liberty the Chamber notes that the violation was constituted by the fact that no opinion of the ICTY Prosecutor was obtained prior to the applicant's arrest as required by the Rules of the Road, this rendering the applicant's detention unlawful. The ICTY Prosecutor gave a positive opinion in the case on 10 March 1997. The Chamber considers that, although the positive opinion of the ICTY Prosecutor does not retrospectively cover the unlawfulness of the applicant's detention, it does reveal that, if the respondent Party had complied with the Rules of the Road, this would not have changed the applicant's factual situation. Therefore, the Chamber is of the opinion that the finding of a violation of the applicant's right to liberty is an appropriate remedy for the moral harm suffered by him.

308. As to the violation of the applicant's right to a fair trial, the Chamber finds it appropriate, given the circumstances as established above, to order the respondent Party to re-try the applicant's case upon request of the applicant or the public prosecutor.

**D. Case no. CH/99/2805, Ahmet Sefić**

309. The Chamber has found that the applicant has suffered a violation of his right to liberty and security of person. The Chamber notes that this violation was constituted by the fact that no opinion of the ICTY Prosecutor had been obtained within a reasonable time as required by the Rules of the Road, this rendering the applicant's detention unlawful. The ICTY Prosecutor gave a positive opinion in the case on 10 March 1997. The Chamber considers that, although the positive opinion of the ICTY Prosecutor does not retrospectively cover the unlawfulness of the applicant's detention, it does reveal that, if the respondent Party had complied with the Rules of the Road, this would not have changed the applicant's factual situation. Therefore, the Chamber is of the opinion that the finding of a violation of the applicant's right to liberty is an appropriate remedy for the moral harm suffered by him.

**E. Case no. CH/00/4371, Ismet Gračanin**

310. The Chamber has found that the applicant has suffered violations of his right not to be subjected to inhuman and degrading treatment and his right to liberty and security of person.

311. As to the violation of the applicant's right not to be subjected to inhuman and degrading treatment, the Chamber takes into account the severity of the maltreatment the applicant endured, the circumstances under which the maltreatment took place and the amount of time the applicant was subjected to it. The Chamber notes the difficulties inherent in the determination of an adequate monetary compensation for this violation. It also notes that the present decision in itself will in large part constitute recognition of the wrongs done to the applicant. Nevertheless, the Chamber considers it appropriate to award the applicant a monetary sum as compensation for the treatment he suffered. It considers an appropriate sum to be KM 3,000 and will accordingly order the respondent Party to pay this sum to the applicant, at the latest within one month from the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure.

312. The Chamber further awards simple interest at an annual rate of 10 per cent as of the date of the expiry of the one month period set in paragraph 311 for the implementation of the present decision, on the sum awarded in paragraph 311 or any unpaid portion thereof until the date of settlement in full.

313. As to the violation of the applicant's right to liberty the Chamber notes that the violation was constituted by the fact that no opinion of the ICTY Prosecutor was ever requested as required by the Rules of the Road, this rendering the applicant's detention unlawful from mid March 1996. Although no opinion of the ICTY Prosecutor was ever obtained, the Chamber notes that it established no irregularities in the applicant's trial. It considers its findings in this respect to cover the absence of the positive opinion of the ICTY Prosecutor. However, it does consider it appropriate to award the applicant a monetary sum of KM 2,000 as compensation for his unlawful detention and will accordingly order the respondent Party to pay this sum to the applicant, at the latest within one month from the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure.

314. The Chamber further awards simple interest at an annual rate of 10 per cent as of the date of the expiry of the one month period set in paragraph 313 for the implementation of the present decision, on the sum awarded in paragraph 313 or any unpaid portion thereof until the date of settlement in full.

## **VIII. CONCLUSIONS**

315. For the above reasons the Chamber decides,

1. unanimously, to declare admissible the application of Mr. Rizvić under Article 3 of the European Convention on Human Rights in so far as it concerns his complaint that he was maltreated during his detention in the District Prison in Bihać;
2. unanimously, that there has been no violation of the right of Mr. Rizvić not to be subjected to inhuman or degrading treatment, as guaranteed by Article 3 of the Convention;
3. unanimously, that the treatment to which Mr. Huskić was subjected whilst in custody of the Bihać police from 16 March 1996 to 21 March 1996 constituted inhuman and degrading treatment and thus violated his rights under Article 3 of the Convention, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Human Rights Agreement;
4. unanimously, that the treatment to which Mr. Šabančević was subjected whilst in custody of the Bihać police from 29 March 1996 to 6 April 1996 constituted inhuman and degrading treatment and thus violated his rights under Article 3 of the Convention, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Agreement;
5. unanimously, that the treatment to which Mr. Gračanin was subjected whilst in custody of the Bihać police from 14 December 1995 to 21 December 1995 and in January 1996 constituted inhuman and degrading treatment and thus violated his rights under Article 3 of the Convention, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Agreement;

6. by 6 votes to 1, that the detention of Mr. Rizvić from mid March 1996 to December 1996 constituted a violation of his right to liberty and security of person as guaranteed by Article 5 paragraph 1 of the Convention, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Agreement;
7. by 6 votes to 1, that the detention of Mr. Huskić as from 16 March 1996 constitutes a violation of his right to liberty and security of person as guaranteed by Article 5 paragraph 1 of the Convention, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Agreement;
8. by 6 votes to 1, that the detention of Mr. Šabančević from 29 March 1996 to 10 March 1997 constituted a violation of his right to liberty and security of person as guaranteed by Article 5 paragraph 1 of the Convention, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Agreement;
9. by 6 votes to 1, that the detention of Mr. Sefić from 16 May 1996 to 9 December 1996 constituted a violation of his right to liberty and security of person as guaranteed by Article 5 paragraph 1 of the Convention, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Agreement;
10. by 6 votes to 1, that the detention of Mr. Gračanin as from mid March 1996 constitutes a violation of his right to liberty and security of person as guaranteed by Article 5 paragraph 1 of the Convention, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Agreement;
11. unanimously, that there has been no violation of the right of Messrs. Sefić and Gračanin to a fair trial, as guaranteed by Article 6 paragraph 1 of the Convention;
12. by 6 votes to 1, that in the case of Mr. Rizvić the rejection by the Cantonal Court in Bihać of his request to have certain witnesses heard constituted a violation of his right to a fair trial as guaranteed by Article 6 paragraph 1 of the Convention, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Agreement;
13. by 6 votes to 1, that in the case of Mr. Huskić the conviction by the Cantonal Court in Bihać of an offence different from the one charged with, constituted a violation of his right to a fair trial as guaranteed by Article 6 paragraph 1 of the Convention, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Agreement;
14. by 6 votes to 1, that in the case of Mr. Šabančević the rejection by the Cantonal Court in Bihać of his request to have certain witnesses heard and the showing of the photos of the re-enactment of the crime during the trial constituted a violation of his right to a fair trial as guaranteed by Article 6 paragraph 1 of the Convention, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Agreement;
15. unanimously, that there has been no violation of the right of Mr. Gračanin not to be tried or punished for the same crime twice, as guaranteed by Article 4 of Protocol No. 7 to the Convention;
16. by 6 votes to 1, to order the Federation of Bosnia and Herzegovina to pay Mr. Huskić, at the latest within one month from the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure, 3,000 (three thousand) Convertible Marks (*Konvertibilnih Maraka*; "KM") by way of compensation for the maltreatment suffered whilst in custody of the Bihać police;
17. by 6 votes to 1, to order the Federation of Bosnia and Herzegovina to pay Mr. Šabančević, at the latest within one month from the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure, KM 3,000 (three thousand) by way of compensation for the maltreatment suffered whilst in custody of the Bihać police;

18. by 6 votes to 1, to order the Federation of Bosnia and Herzegovina to pay Mr. Gračanin, at the latest within one month from the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure, KM 3,000 (three thousand) by way of compensation for the maltreatment suffered whilst in custody of the Bihać police;

19. by 6 votes to 1, to order the Federation of Bosnia and Herzegovina to release Mr. Huskić from detention, at the latest on the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure;

20. by 6 votes to 1, to order the Federation of Bosnia and Herzegovina to pay Mr. Gračanin, at the latest within one month from the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure, KM 2,000 (two thousand) by way of compensation for his unlawful detention;

21. by 6 votes to 1, to order the Federation of Bosnia and Herzegovina to take all necessary steps to re-try the criminal case against Mr. Rizvić upon request of the applicant or the public prosecutor;

22. by 6 votes to 1, to order the Federation of Bosnia and Herzegovina to take all necessary steps to re-try the criminal case against Mr. Huskić upon request of the applicant or the public prosecutor and subject to the approval of the Prosecutor of the International Criminal Tribunal for the former Yugoslavia;

23. by 6 votes to 1, to order the Federation of Bosnia and Herzegovina to take all necessary steps to re-try the criminal case against Mr. Šabančević upon request of the applicant or the public prosecutor;

24. unanimously, to order that simple interest at an annual rate of 10 (ten) per cent will be payable on the amounts, or any unpaid portion thereof, awarded in conclusions 16, 17, 18 and 20 above outstanding to the applicants at the end of the period set out in those conclusions for such payment;

25. unanimously, to order the Federation of Bosnia and Herzegovina to report to it within six months from the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure on the steps taken by it to comply with the above orders.

(signed)  
Ulrich GARMS  
Registrar of the Chamber

(signed)  
Michèle PICARD  
President of the First Panel