DECISION ON ADMISSIBILITY AND MERITS

(delivered on 22 December 2003)

Case no. CH/99/2688

Angelina, Dragan and Nikola SAVIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

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

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

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

Having considered 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. During the armed conflict in Bosnia and Herzegovina, Nikola Savić, a member of the Bosnian Serb police force, was captured by the Army of the Republic of Bosnia and Herzegovina in Sanski Most on 10 October 1995. Although his wife and son reported him missing to the International Committee of the Red Cross ("ICRC") in February 1996, as well as to the Commission for Tracing Missing and Detained Persons of the Republika Srpska ("RS Commission"), they have received no official information from the authorities of the Federation of Bosnia and Herzegovina (the "Federation") about his fate. They only learned that he had been tortured and killed after the RS Commission conducted an exhumation of a mass grave near Sanski Most in October 1998 and Nikola Savić's body was identified by the court medical expert on 9 January 1999.

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

II. PROCEEDINGS BEFORE THE CHAMBER

3. The application was submitted on 12 July 1999 and registered on 26 July 1999. Angelina and Dragan Savić (the "applicants") are represented by Ms. Vesna Rujević, a lawyer practicing in Banja Luka. The application was filed in the applicants' own right and on behalf of Nikola Savić, their husband and father, respectively, in accordance with Article VIII(1) of the Agreement, which provides in relevant part that "the Chamber shall receive … from any person … acting on behalf of alleged victims who are deceased or missing, for resolution or decision applications concerning alleged or apparent violations of human rights". Nikola Savić is indicated in the application form as the alleged victim and a missing person.

4. On 11 November 2002 and 2 and 25 June 2003, the applicants submitted additional information to the Chamber.

5. On 2 July 2003, the Chamber decided to request information from the Republika Srpska, although the Republika Srpska is not a respondent Party in the present application. On 14 August and 10 September 2003, the Republika Srpska submitted information in reply.

6. On 9 October 2003, the Second Panel decided to relinquish jurisdiction over this case to the plenary Chamber, pursuant to Rule 29 of the Chamber's Rules of Procedure.

7. On 13 October 2003, the Chamber transmitted the application to the respondent Party for its observations on the admissibility and merits under Articles 3 and 8 of the Convention. On 4 November 2003, the respondent Party submitted its written observations. On 2 December 2003, the applicants submitted their observations in reply.

8. The Chamber deliberated on the admissibility and merits of the case on 7 May, 2 July, 9 and 10 October, 7 November, and 2 and 3 December 2003. The Chamber adopted the present decision on the latter date.

III. FACTS

9. Nikola Savić was the Commander of the Police Station for Traffic Safety in Banja Luka. On 10 October 1995, while he was on an assignment related to the armed conflict in Bosnia and Herzegovina, he, his driver and other three civilians were arrested in Sanski Most by the Army of the Republic of Bosnia and Herzegovina (the "RBiH Army").

10. In February 1996, the applicants reported Nikola Savić missing to the ICRC – Department Banja Luka, and a tracing request was opened for him.

11. The applicants addressed the ICRC, the International Police Task Force ("IPTF") in Banja Luka, IFOR, the French Committee of the Red Cross in Paris, the RS Commission in Banja Luka, and Mr. Karl Bildt, the High Representative in Bosnia and Herzegovina, in order to obtain information about their missing husband and father. Only the Office of the High Representative ("OHR") replied, informing them that their letter had been transferred to the ICRC and the IPTF.

12. The RS Commission does not possess any evidence that Nikola Savić was alive after 14 December 1995. According to the respondent Party, the Federal Commission for Missing Persons (the "Federal Commission"), as well as the former State Commission on Exchange of Prisoners-of-War (the "State Commission"), do not have any records that Nikola Savić was captured or held as a prisoner-of-war.

13. On 19 October 1998, the RS Commission conducted an exhumation from a mass grave near Sanski Most, and the exhumed human remains were transferred to Banja Luka. According to the respondent Party, the exhumation near Sanski Most was conducted under the supervision of the President of the District Court in Banja Luka. Neither the investigative judge of the Cantonal Court in Bihać, nor the Municipal Court in Sanski Most, was included in the investigation in relation to this exhumation. However, upon being informed by the Sanski Most police about the exhumation, the investigative judge of the Municipal Court in Sanski Most attended the exhumation. The respondent Party further states that the Cantonal Prosecutor in Bihać does not have any information about the circumstances under which Nikola Savić died.

14. On 9 January 1999, the court medical expert conducted a forensic expertise in Banja Luka, and he identified one of the exhumed bodies from the mass grave near Sanski Most as Nikola Savić. The medical expert established evidence of torture (broken skull, face, rib and pelvis bones, missing both fists, and traces of burning and animal bites) on the dead body. The first and second applicants were informed about the results of this forensic expertise; this was the first information they received on the fate and whereabouts of their husband and father since his disappearance.

15. Z.M., who was with Nikola Savić when he was arrested by the RBiH Army but who managed to escape from captivity, testified before the First Instance Court in Banja Luka on 30 April 1999 in the investigative proceedings against an unknown person for the murder of Nikola Savić. On that occasion, Z.M. testified in detail about the circumstances of his and Nikola Savić's arrest by members of the RBiH Army, when they were beaten and maltreated. He testified that they were returning to Banja Luka from Fajtovci Village near Sanski Most. They did not know that the RBiH Army had taken over control of Sanski Most from Serb forces; therefore, they drove through the town. Z.M. said that "Muslim soldiers"[1] stopped them, and when the soldiers realised that they were members of the Serb police force, they dragged them out of their vehicle, beat them and placed them in handcuffs. However, Z.M. took advantage of an opportunity to escape, and he hid in a bush in the City Park. From the bush, he could see that "Muslim soldiers" gathered around, placed Nikola Savić in a vehicle, and drove to the opposite side of the Sana River. Z.M. hid in the bush for three days and four nights, and he saw a large number of "Muslim soldiers" escorting captured Serbs and taking them to the opposite side of the Sana River. Later, he managed to escape and reach Serb forces near Prijedor.

16. In 1999 the applicants filed an action against the Republika Srpska (Army of the Republika Srpska and Ministry of Internal Affairs of the Republika Srpska) before the First Instance Court in Banja Luka requesting compensation for pecuniary and non-pecuniary damages resulting from the death of Nikola Savić. On 19 June 2001, the First Instance Court in Banja Luka issued a judgment ordering the Republika Srpska to pay the applicants compensation for pecuniary and non-pecuniary damages in the total amount of 18,000.00 KM. The defendants appealed against the judgment to

[1] Z.M. used the term "Muslim soldiers", but it is clear that members of the RBiH Army arrested Nikola Savić. In the context of the historical events, it is known that the joint forces of the RBiH Army and the Croatian Council of Defence (HVO) in September and October 1995 clashed with the Army of the Republika Srpska in Bosanska Krajina and took over the control of several cities including, *inter alia*, Sanski Most. The term "Muslim soldiers", therefore, must refer to members of the RBiH Army.

the District Court in Banja Luka. The proceedings upon the appeal are still pending.

17. To date, the applicants have not received any official information from the authorities of the Federation about the circumstances of Nikola Savić's death or when he was last alive, *i.e.* when he was killed.

IV. RELEVANT LEGISLATION

A. Agreement on Refugees and Displaced Persons

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

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

B. International Law and Activities regarding Missing Persons

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

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

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

> "Deeply concerned that in many countries, often in a persistent manner, enforced disappearances occur, in the sense that persons are arrested, detained or abducted against their will or otherwise deprived of their liberty by officials of different branches or levels of Government, or by organised groups or private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government, followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, which places such persons outside the protection of the law,
>
> "Considering that enforced disappearance undermines the deepest values of any society committed to respect for the rule of law, human rights and fundamental freedoms, and that the systematic practice of such acts is of the nature of a crime against humanity, …."

21. Article 1 provides as follows:

> "1. Any act of enforced disappearance is an offence to human dignity. It is condemned as a denial of the purposes of the Charter of the United Nations and as a grave and flagrant violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and reaffirmed and developed in international instruments in this field.
>
> "2. Any act of enforced disappearance places the persons subjected thereto outside the protection of the law and inflicts severe suffering on them and their families. It constitutes a violation of the rules of international law guaranteeing, *inter alia*, the right to recognition as a person before the law, the right to liberty and security of the person and the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment. It also violates or constitutes a grave threat to the right to life."

22. Article 2 provides as follows:

> "1. No State shall practise, permit or tolerate enforced disappearances.
>
> "2. States shall act at the national and regional levels and in co-operation with the United Nations to contribute by all means to the prevention and eradication of enforced disappearance."

23. Article 7 provides as follows:

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

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

> "1. Each State shall ensure that any person having knowledge or a legitimate interest who alleges that a person has been subjected to enforced disappearance has the right to complain to a competent and independent State authority and to have that complaint promptly, thoroughly and impartially investigated by that authority. Whenever there are reasonable grounds to believe that an enforced disappearance has been committed, the State shall promptly refer the matter to that authority for such an investigation, even if there has been no formal complaint. No measure shall be taken to curtail or impede the investigation. …
>
> "4. The findings of such an investigation shall be made available upon request to all persons concerned, unless doing so would jeopardise an ongoing criminal investigation. …
>
> "6. An investigation, in accordance with the procedures described above, should be able to be conducted for as long as the fate of the victim of enforced disappearance remains unclarified."

2. ICRC Process for Tracing and Identifying Unaccounted for Persons

25. Under international humanitarian law, the ICRC is the principal agency authorised to collect information about missing persons, and all parties to armed conflicts are under an obligation to provide all necessary information at their disposal to trace missing persons (both combatants and civilians) and to satisfy the "right of family members to know the fate of their relatives" pursuant to Article 32 of Protocol No. 1 to the Geneva Conventions. This general obligation is also reflected in Article V of Annex 7 to the General Framework Agreement (see paragraph 18 above). In order to implement its responsibilities under Article V of Annex 7 and international humanitarian law, the State of Bosnia and Herzegovina and the Entities, as well as the ICRC, established a "Process for tracing persons unaccounted for in connection with the conflict on the territory of Bosnia and Herzegovina and informing the families accordingly".

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

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

the Process).

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

3. Banja Luka and Sarajevo Agreements on the Joint Exhumation Process

29. On 25 June 1996 in Banja Luka and again on 4 September 1996 in Sarajevo, representatives of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, the Republika Srpska, and the Office of the High Representative, among others, met to discuss and agree upon measures concerning the tracing of unaccounted for persons and exhumations of mortal remains. At the Banja Luka meeting, the Parties agreed, *inter alia*, "to set priority sites and a preliminary timetable for the exhumation of mass graves for the purposes of identification at the same time". They also "agreed to nominate two forensic pathologists to a joint expert commission that will be tasked with finalising the sites and timetables of inter-Entity exhumations, and with implementing the agreed upon exhumations". "Recognising that the joint exhumation project had been stalled for several weeks," at the Sarajevo meeting, the Parties further agreed, *inter alia*, "to instruct their responsible officials to take the necessary steps to carry out the commitments concerning exhumations".

30. In this context, the parties established Rules for Exhumations and the Clearing of Unburied Mortal Remains. Together with the Banja Luka and Sarajevo Agreements, these Rules prescribe a process that has become known as the Joint Exhumation Process, whereby the competent authorities of the interested Party initiate and conduct the exhumation of a gravesite on the territory of the Party controlling that area. The Party controlling the area provides security for the exhumation team. For example, for gravesites of Serb victims in Sanski Most, the competent authorities of the Republika Srpska initiate and conduct the exhumation of the gravesite located on the territory of the Federation of Bosnia and Herzegovina, while local police of the Federation of Bosnia and Herzegovina provide the security. Various international experts and authorities supervise and monitor the entire process. Up until the end of 2000, the OHR assisted and ensured that the competent national and international institutions co-operated with one another in the Joint Exhumation Process. Thereafter, commencing on 1 January 2001, the OHR formally assigned responsibility for co-ordination of the competent national and international institutions participating in the Joint Exhumation Process to the International Commission on Missing Persons ("ICMP").

C. National Activities regarding Missing Persons

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

1. State Commission on Tracing Missing Persons

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

33. On 15 March 1996, the Government of the Republic of Bosnia and Herzegovina enacted the Decision on Establishment of the State Commission on Tracing Missing Persons (OG RBiH no. 9/96 of 24 March 1996), which entered into force on 24 March 1996. Paragraph I of this Decision establishes the State Commission on tracing citizens of the Republic of Bosnia and Herzegovina who disappeared during the aggression on the Republic of Bosnia and Herzegovina (the "State Commission"). Paragraph II provides that the State Commission shall carry out the following duties: maintain records of citizens of the Republic of Bosnia and Herzegovina who went missing due to the hostilities in the former Yugoslavia; undertake direct activities to trace such persons and to establish the truth on their fate; undertake activities to register, trace, identify, and take-over the mortal remains of killed persons; provide information to authorised institutions; issue certificates to the families of the missing, detained, and killed; and co-operate with specialised national and international agencies and institutions that deal with the issue of missing, detained, and killed persons. Paragraph X states that the State Commission on Tracing Missing Persons shall assume the archives and other documentation of the State Commission and regional commissions described in the preceding paragraph. Paragraph XI renders the Decision on Establishment of the State Commission on Exchange of Prisoners-of-War (OG RBiH nos. 10/92 and 20/92) ineffective upon the entry into force of this Decision. On 10 May 1996, the Government of the Republic of Bosnia and Herzegovina enacted the Decision on Amendments to the Decision on Establishment of the State Commission on Tracing Missing Persons (OG RBiH no. 17/96 of 31 May 1996). The amendments, which mostly concern the establishment of the Expert Team for Locating Mass Graves and Identification of Victims, entered into force on 31 May 1996.

2. Federal Commission for Missing Persons

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

assuming the archives or documentation or continuing the work commenced by the State Commission.

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

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

36. According to the respondent Party, the Commission for Tracing Missing and Detained Persons of the Republika Srpska (the "RS Commission") operates on the basis of the Banja Luka Agreement of 25 June 1996 and its mandate follows from that Agreement. The RS Commission undertakes special activities such as, *inter alia*, research and temporary burial of recovered remains on the territory of the former Yugoslavia; exhumation of remains from individual and mass graves on the territory of the former Yugoslavia; activities in the domain of forensic medicine and criminology; hand over and take over of the remains of deceased persons; identification of deceased persons and unidentified bodies; working with families during the identification process; other activities related to exhumation, identification, burial, *etc.*,.

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

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

D. Law on Defence of the Federation of Bosnia and Herzegovina (Official Gazette of the Federation of Bosnia and Herzegovina nos. 15/96 and 23/02)

38. Article 37 of the Law provides for the structure of the armed forces of the Federation of Bosnia and Herzegovina:

> "(1) The Armed Forces of the Federation consist of: the Army of the Federation, and in case of war also the police (active and reserve services) in the territory of the Federation, which in accordance with this Law comes under the command of the Army of the Federation.
>
> "(2) The Army of the Federation consists of: units of the army of Bosnia and Herzegovina and the Croatian Defence Council, up to corps and operational zone level, and is comprised of the peace and war complement.
>
> "(3) The peace complement is comprised of persons in service in the Army of the Federation, conscripts and professional units.
>
> "(4) The war complement of the Army of the Federation, along with the persons mentioned in Paragraph 2 of this Article, is also comprised of persons deployed in military formations, which are formed on territorial and productive principals. The officials mentioned in Article 22 issue special regulations which determine their duties and the way they are formed."

V. COMPLAINTS

39. The applicants allege violations of the human rights of Nikola Savić, as follows: his right to life guaranteed under Article 2 of the Convention, his right to liberty and security of person guaranteed under Article 5 of the Convention, and his right not to be subjected to torture or to inhuman or degrading treatment guaranteed under Article 3 of the Convention. The applicants further allege that, as family members of Nikola Savić, they have suffered mental pain due to the "long period of uncertainty about his fate" and due to "false hopes … that he was held in captivity", which raises issues under Articles 3 and 8 of the Convention.

VI. SUBMISSIONS OF THE PARTIES

A. The respondent Party

40. According to the respondent Party, since the Municipal Court in Sanski Most was not included in the investigation in relation to the exhumation conducted of the mass grave near Sanski Most, its investigative judge had no obligation to make a record of the exhumation, which he attended after being notified about it by the Sanski Most police. The respondent Party recalls that pursuant to the Joint Exhumation Process, the competent organ of the interested Party initiates and conducts the exhumation of graves located on the territory of the Party controlling the territory, while the Party controlling the territory provides security for the exhumation team. Therefore, the Police Administration of Sanski Most provided full security to the exhumation team from the Republika Srpska, composed of 21 members who conducted the exhumation near Sanski Most.

41. The respondent Party further explains that the competent authorities of the Federation have not conducted any investigation into the cause of Nikola Savić's death, after his body was identified, because all the proceedings are pending or have been completed before the competent organs of the Republika Srpska. The respondent Party has not been informed about the outcome of these proceedings, but it appears obvious that the organs of the Republika Srpska have not rejected competence over this matter (*e.g.*, they issued a judgment upon the applicants' compensation claim, and they conducted criminal proceedings against an unknown person for the murder of Nikola Savić).

42. The respondent Party challenges the admissibility of the application on three grounds. Firstly, the respondent Party objects to the Chamber's competence *ratione temporis*, noting that it is not disputed that no evidence exists that Nikola Savić was a prisoner-of-war of the Federation, nor that his captivity continued after 14 December 1995. This is further supported by the fact that Nikola

Savić is not mentioned in the records of the Federal Commission. Secondly, the respondent Party alleges that whilst the applicants requested information from the ICRC and the RS Commission, they have not requested information directly from the State Commission, Federal Commission, or any other institution of the Federation. Therefore, they have not exhausted the domestic remedies. Thirdly, the Federation points out that the applicants have not filed a compensation claim before the Federation courts; rather, they only initiated civil proceedings before the First Instance Court in Banja Luka against the Republika Srpska. Therefore, the Federation contends that the application is incompatible *ratione personae* with the Agreement.

43. In relation to the alleged violation of Article 3 of the Convention, the respondent Party notes that the applicants reported Nikola Savić missing only to the ICRC and the RS Commission, which conducted the exhumation and identification of his body. The respondent Party did everything possible to enable the exhumation. Further, since the applicants had not reported Nikola Savić missing to the authorities of the Federation in the period from 10 October 1995 until 19 October 1998, the respondent Party could not have provided any official information about his fate or whereabouts, nor take any action in that respect, because it did not know he was missing.

44. In relation to a possible violation of Article 8, the respondent Party admits that information on the fate and whereabouts of a family member falls within the scope of family life protected by Article 8. However, a violation can occur only when the respondent Party possesses or controls information and it arbitrarily and without reasonable justification refuses to disclose it to the family members upon their request to the competent organ of the respondent Party. The applicants do not contest that they have not addressed the authorities of the respondent Party since the day of Nikola Savić's disappearance up to the present date. Therefore, the Federation did not have any information on his fate, and it could not have given any false hope to the applicants, as they allege. Therefore, the respondent Party considers that it did not violate the applicants' right under Article 8.

B. The applicants

45. In their reply observations of 2 December 2003, the applicants maintain their complaints raised in the application. The applicants highlight that it is not correct that the Federal Commission possesses no information about the capture and murder of Nikola Savić in Sanski Most. After Angelina Savić learned that her husband had gone missing, she reported this to the RS Commission, which in turn relayed the information to the Federal Commission. She further claims that until January 1996, a person working for the Republika Srpska Commission informed her that he had learned from the Federation counterpart that Nikola Savić was alive and available for a prisoner-of-war exchange, but that she should not interfere in this process. In December 1996, the State Commission exchanged two bodies from Sanski Most with the RS Commission, claiming that one was Nikola Savić, but the identification established that neither body was Nikola Savić. Therefore, she argues that it is indisputable that, after 14 December 1995, the respondent Party provided false information that Nikola Savić was alive and held in detention and would be available for a prisoner-of-war exchange, and thereby committed a continuing violation of her human rights. She has received no information as to whether the organs of the Federation have conducted any investigation into the capture and murder of Nikola Savić, and it appears that nothing has been done. Consequently, the applicants submit that the Federation has violated their rights protected by Articles 3 and 8 of the Convention.

VII. OPINION OF THE CHAMBER

A. Admissibility

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

1. Compatibility *ratione temporis*

47. The respondent Party objects to the application as incompatible *ratione temporis* with the Agreement, arguing that there is no evidence that Nikola Savić was a prisoner-of-war of the respondent Party or that his captivity continued after 14 December 1995.

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

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

49. Thus, the Chamber is not competent *ratione temporis* to consider whether events occurring before the entry into force of the Agreement on 14 December 1995 gave rise to violations of human rights. The Chamber notes that the applicants, as well as the Republika Srpska authorities, which conducted the exhumation and identification of Nikola Savić's body, do not possess any evidence which would indicate that Nikola Savić was alive after 14 December 1995. The applicants allege that they were told in January 1996 that Nikola Savić was alive in detention and that his exchange with other prisoners was being negotiated, but they refer to this as "false information" (*lažne informacije*). Therefore, the Chamber must declare inadmissible *ratione temporis* the part of the application concerning the alleged violations of Nikola Savić's right to life under Article 2 of the Convention, right not to be subjected to torture or to inhuman or degrading treatment or punishment under Article 3 of the Convention, and right to liberty and security of person under Article 5 of the Convention.

50. The Chamber may, however, consider relevant evidence of such events as contextual or background information to events occurring after 14 December 1995 (case no. CH/97/67, *Zahirović*, decision on admissibility and merits of 10 June 1999, paragraphs 104-105, Decisions January–July 1999).

51. However, as the Chamber explained in *Unković v. the Federation of Bosnia and Herzegovina* (case no. CH/99/2150, decision on review of 6 May 2002, paragraphs 84-90, Decisions January—June 2002), claims of family members seeking information about the fate and whereabouts of loved ones who have been missing since the armed conflict raise allegations of a continuing violation of the human rights of the family members by the respondent Party. Both Articles 3 and 8 of the Convention impose a positive obligation on the respondent Party "to investigate thoroughly into allegations of arbitrary deprivations of liberty even in cases where it cannot be established, although it is alleged, that the deprivation of liberty is attributable to the authorities" *(id.* at paragraph 88 (quoting *Demirović, Berbić, and Berbić v. Republika Srpska* (application no. 7/96, Report of the Ombudsperson of 30 September 1998))).

52. The Chamber recalls that the applicants opened a tracing request with the ICRC in February 1996, *i.e.* after the Agreement entered into force. Further, nearly eight years after the Agreement entered into force, and nearly five years after the body of Nikola Savić was exhumed and identified, the applicants have not been officially informed by the respondent Party about the circumstances of his death. Therefore, the allegations contained in the application concern a violation of the human rights of the applicants by the respondent Party, which continues to the present date. Therefore, in

this part, the application falls within the Chamber's competence *ratione temporis*, within the meaning of Article VIII(2)(c) of the Agreement, and it is admissible.

2. Compatibility *ratione personae*

53. The respondent Party also objects to the applicant's complaints set out in the application as incompatible *ratione personae* with the Agreement. The Federation highlights that the applicants initiated civil proceedings against the Republika Srspka (the Army and the Ministry of Interior) requesting compensation, but they have not filed any compensation claim against the Federation.

54. The Chamber notes that the applicants initiated civil proceedings against the Republika Srpska requesting compensation for pecuniary and non-pecuniary damage due to the loss of their husband and father, on the ground of objective responsibility for dangerous activity provided for under Articles 154(2) and 174 of the Law on Obligations of the Republika Srpska. This claim, however, is not connected to the applicants' complaints of a violation of their human rights guaranteed under Convention, as set forth in their application against the Federation. The Chamber finds that the application raises claims under the Agreement in relation to whether the authorities of the Federation have treated the applicants in a manner compatible with their obligations under the Agreement in response to the applicants' requests for information about the fate and whereabouts of their missing husband and father. Such claims fall within the responsibility of the respondent Party. Therefore, the application, as directed against the Federation, is compatible *ratione personae* with the provisions of the Agreement, within the meaning of Article VIII(2)(c). Therefore, the Chamber rejects this objection to the admissibility of the application.

3. Exhaustion of domestic remedies

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

56. The respondent Party argues that the applicants have failed to exhaust effective domestic remedies in that they have not addressed any of its organs with a request to obtain information on the fate of their missing family member. Although the applicants in the present case undeniably requested information from the ICRC, they did not request information directly from the Federal Commission or any other organ of the Federation.

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

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

58. Furthermore, the Chamber recalls that under the *Process for tracing persons unaccounted for* (see paragraphs 25 *et seq.* above), as well as in Article V of Annex 7 quoted above, the State of Bosnia and Herzegovina and the Entities, including the Federation of Bosnia and Herzegovina, agreed to co-operate in the effort to trace unaccounted for persons. The *Process for tracing persons unaccounted for* further clarifies that the Parties shall share information, and a copy of all tracing requests are provided to the Working Group, which has six representatives of the Federation (see

paragraph 26 above). As explained above, the applicants addressed the ICRC and opened a tracing request for their missing husband and father in February 1996.

59. Taking into account the respondent Party's obligation under Article V of Annex 7 to "cooperate fully with the ICRC in its efforts to determine the identities, whereabouts and fate of the unaccounted for" and the fact that all tracing requests were provided to representatives of the Federation through the Working Group, the Chamber considers that the relevant authorities of the respondent Party were made aware of the applicants' request for information about the fate of their loved one missing through the *Process for tracing persons unaccounted for*. In the present case the respondent Party has had nearly eight years to gather information about the fate of Nikola Savić, yet its authorities have provided no information whatsoever to the applicants.

60. Considering that the applicants opened a tracing request with the ICRC in February 1996, as well as with the RS Commission, registering their husband and father as missing, the Chamber concludes that the applicants have exhausted the remedy provided for in Annex 7 for the purposes of Article VIII(2)(a) of the Agreement. Therefore, the Chamber rejects this ground for declaring the application inadmissible.

4. Conclusion as to admissibility

61. The Chamber declares the application admissible in relation to the applicants Angelina and Dragan Savić's complaints of violations of their rights arising or continuing after the entry into force of the Agreement on 14 December 1995 under Articles 3 and 8 of the Convention. The Chamber declares the remainder of the application inadmissible as incompatible *ratione temporis* with the Agreement.

B. Merits

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

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

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

> "Every one has the right to respect for his private and family life….
>
> "There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

64. In its previous case law, the Chamber has recognised the right of family members of missing persons to access to information about their missing loved ones. In *Unković v. the Federation of Bosnia and Herzegovina*, the Chamber considered "that information concerning the fate and whereabouts of a family member falls within the ambit of 'the right to respect for his private and family life', protected by Article 8 of the Convention. When such information exists within the possession or control of the respondent Party and the respondent Party arbitrarily and without justification refuses to disclose it to the family member, upon his or her request, properly submitted to a competent organ of the respondent Party or the [ICRC], then the respondent Party has failed to fulfil its positive obligation to secure the family member's right protected by Article 8" (case no. CH/99/2150, *Unković v. the Federation of Bosnia and Herzegovina,* decision on review of 6 May

2002, paragraph 126, Decisions January—June 2002; *accord* case nos. CH/99/3196, *Palić v. the Republika Srpska*, decision on admissibility and merits of 9 December 2000, paragraphs 82-84, Decisions January—June 2001; CH/01/8365 *et al.*, *Selimović and Others v. The Republika Srpska*, decision on admissibility and merits of 3 March 2003, paragraphs 173-174; *see also* Eur. Court HR, *Gaskin v. United Kingdom*, judgment of 7 July 1989, Series A no. 160; Eur. Court HR, *M.G. v. United Kingdom*, judgment of 24 September 2002).

65. In the present application, the applicants' husband and father was arrested by soldiers of the RBiH Army in October 1995, after the RBiH Army had taken over control of Sanski Most. In February 1996, the applicants opened tracing request with the ICRC, registering their loved one, who was a member of their immediate family, as a missing person. The applicants received no official information about Nikola Savić until January 1999, when his body was identified by a court medical expert of the Republika Srpska following an exhumation of a mass grave in Sanski Most conducted by the RS Commission. Thereafter, the authorities of the Republika Srpska initiated proceedings against an unknown person for the murder of Nikola Savić. In those investigative proceedings, Z.M., Nikola Savić's driver, who was also arrested together with him in Sanski Most but who managed to escape, testified before the First Instance Court in Banja Luka. Z.M. personally witnessed the circumstances under which Nikola Savić was captured by the RBiH Army, and in his testimony he specifically stated that the members of the RBiH Army had arrested Nikola Savić (see paragraph 15 above). Nikola Savić was never seen alive again.

66. However, it is significant that all of the aforementioned information was made known to the applicants through the efforts of the Republika Srpska, not the Federation. The authorities of the Federation have never provided the applicants with any information whatsoever about the circumstances under which Nikola Savić died. Nor have they provided any official information to the applicants about the fate of their husband and father.

67. According to Article 37 of the Law on Defence of the Federation of Bosnia and Herzegovina, the Army of the Federation consists of units of the Army of Bosnia and Herzegovina and the Croatian Defence Council (HVO) (see paragraph 38 above). Taking this into account, as well as the uncontroverted testimony of Z.M. that Nikola Savić was captured by the RBiH Army in Sanski Most, it is obvious to the Chamber that some information about the fate of Nikola Savić must exist within the possession or control of the respondent Party. As Nikola Savić was indisputably captured by the RBiH Army, there must be some record within the military files of the Army of the Federation or other information about him held in the memories of former soldiers of the RBiH Army. There is no evidence to suggest that the authorities of the Federation have interviewed any members of its armed forces who were possibly involved in the arrest, torture, and killing of Nikola Savić, interviewed any possible witness, or disclosed any physical evidence still in its possession with a view to making the requested information available to the applicants. Furthermore, the possibility that information and evidence pertaining to the fate of Nikola Savić was lost or destroyed does not relieve the respondent Party of its positive obligation under Article 8 of the Convention. Therefore, the Federation's submission that it does not possess any information about Nikola Savić cannot be accepted.

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

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

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

70. In its previous case law, the Chamber has recognised the right of family members of missing persons to know the truth about the fate and whereabouts of their missing loved ones (case nos. CH/99/2150, *Unković*, decision on review of 6 May 2002, paragraphs 101-119, Decisions January—June 2002; CH/01/8365 *et al.*, *Selimović and Others v. The Republika Srpska*, decision on admissibility and merits of 3 March 2003, paragraphs 182-191; *see also* case no. CH/99/3196,

Palić, decision on admissibility and merits of 9 December 2000, paragraphs 75-80, Decisions January— June 2001). In *Unković v. the Federation of Bosnia and Herzegovina*, the Chamber held that "the special factors considered with respect to the applicant family member claiming an Article 3 violation for inhuman treatment due to lack of official information on the whereabouts of a loved one are the following:

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

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

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

72. Applying the above factors to the applicants in the present case, the Chamber observes that the applicants are close family members (wife and son) of Nikola Savić. They registered Mr. Savić as a missing person and opened a tracing request with the ICRC in February 1996. The applicants further addressed various other international organisations and the RS Commission in order to obtain information about their loved one (see paragraph 11 above). As explained above, Nikola Savić, a member of the Serb police force, was arrested by members of the RBiH Army as he was travelling through Sanski Most in the midst of the armed conflict and fall of Sanski Most to the RBiH Army in October 1995. The applicants had no information about his fate and whereabouts until January 1999, more than three years after his disappearance. This information was provided to them by the authorities of the Republika Srpska after the RS Commission conducted an exhumation of a mass grave near Sanki Most, and thereafter, a court medical expert of the Republika Srpska identified Nikola Savić's body and noted evidence of torture. In addition, through the investigative proceedings conducted on 30 April 1999 against an unknown person for the murder of Nikola Savić by the First Instance Court in Banja Luka, the applicants were made aware of details concerning his arrest and

capture (see paragraph 15 above). Thus, while the information provided to the applicants in 1999 about the fate of their husband and father was certainly tragic and no doubt traumatic to them, as of that year, they were aware what had happened to their loved one and they were provided with an opportunity to bury his mortal remains in accordance with their traditions and beliefs.

73. Applying the above factors to the respondent Party, the Chamber observes that the authorities of the Federation complied with the Joint Exhumation Process (see paragraphs 29-30 above). Under the Joint Exhumation Process, the competent authorities of the interested Party (in this case the Republika Srpska) initiate and conduct the exhumation of a gravesite on the territory of the Party controlling the area (in this case the Federation), while the Party controlling the area provides security for the exhumation team. In this case it appears that the Joint Exhumation Process worked as envisaged. On 19 October 1998, the RS Commission conducted an exhumation from a mass grave near Sanski Most, under the supervision of the District Court in Banja Luka. The Sanski Most police provided full security, and upon being notified of the exhumation, the investigative judge of the Municipal Court in Sanski Most attended the exhumation (see paragraph 13 above). Thereafter, on 9 January 1999, the court medical expert from Banja Luka conducted a forensic expertise and identified one of the exhumed bodies as that of Nikola Savić. The applicants were then notified accordingly. Admittedly, the authorities of the Federation played a minor, supporting role in the exhumation and identification of Nikola Savić, but this is precisely the role they were required to play under the Joint Exhumation Process. As such, it cannot be said that the Federation failed to satisfy its obligations in this respect. Moreover, as a result of the successful operation of the Joint Exhumation Process, the applicants learned the fate of their husband and father and were provided with an opportunity to bury his mortal remains.

74. Taking all of the applicable factors into account, both with respect to the applicants and the respondent Party, the Chamber concludes that the respondent Party has not violated the applicants' right to be free from "inhuman and degrading treatment", as guaranteed by Article 3 of the Convention.

3. Conclusion as to the merits

75. In summary, the Chamber concludes that the respondent Party's failure to make accessible and disclose information requested by the applicants about their missing loved one constitutes a violation of its positive obligations to secure respect for their right to private and family life, as guaranteed by Article 8 of the Convention. However, as the respondent Party complied with the Joint Exhumation Process and the applicants were informed of the fate of their husband and father in 1999, the respondent Party did not violate their right to be free from inhuman and degrading treatment, as guaranteed by Article 3 of the Convention.

VIII. REMEDIES

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

77. The Chamber recalls that the applicants seek to know the truth about their missing loved one, who was a victim of a war crime committed in the course of the take-over of Sanski Most by the RBiH Army in October 1995. The applicants also seek compensation in the total amount of 68,000.00 KM for pecuniary and non-pecuniary damages. In fashioning a remedy for the established breaches of the Agreement, Article XI(1)(b) provides the Chamber with broad remedial powers.

78. In accordance with its previous case law in missing persons cases (see, CH/01/8365 *et al.*, *Selimović v. The Republika Srpska*, decision on admissibility and merits of 3 March 2003, paragraphs 205-210), the Chamber will order the Federation of Bosnia and Herzegovina, as a matter of urgency, to release all information presently within its possession, control, and knowledge with respect to the fate of the applicants' husband and father, including information on the circumstances of Nikola Savić's arrest, torture and death, as well as the perpetrators of any crime. The Chamber will further

order the Federation of Bosnia and Herzegovina to conduct a full, meaningful, thorough, and detailed investigation capable of exploring all the facts regarding Nikola Savić's fate from the day when he was forcibly taken away by members of the RBiH Army until his death, both with a view to making such information known to the applicants and with a view to bringing the perpetrators of any crimes to justice.

79. Moreover, the Chamber considers it appropriate to award a sum to the applicants in recognition of their mental suffering as a result of their inability to obtain information concerning their late husband and father from the respondent Party in a timely and diligent manner. Accordingly, the Chamber will order the respondent Party to pay to the applicants the total sum of 5,000 Convertible Marks (*Konvertibilnih Maraka*) in recognition of their mental suffering resulting from the respondent Party's failure to obtain and provide them with information about Nikola Savić's fate. This payment shall be made within one month from the date of delivery of the present decision. The Chamber dismisses the remainder of the applicants' compensation claim.

80. The Chamber further awards simple interest at an annual rate of 10% as of one month from the date of delivery of the present decision on the sum awarded in the preceding paragraph or any unpaid portion thereof until the date of settlement in full.

81. The Chamber will also order the respondent Party to report to the Human Rights Commission within the Constitutional Court no later than three months from the date of delivery of the present decision on the steps taken to comply with the above orders.

IX. CONCLUSION

82. For the above reasons, the Chamber decides,

1. unanimously, to declare the application admissible insofar as it relates to the applicants Angelina and Dragan Savić's complaints of violations of their rights arising or continuing after 14 December 1995 under Articles 3 and 8 of the European Convention on Human Rights;

2. unanimously, to declare the remainder of the application inadmissible;

3. by 9 votes to 3, that the failure of the Federation of Bosnia and Herzegovina to make accessible and disclose information requested by the applicants about their missing loved one violates its positive obligations to secure respect for their right to private and family life, as guaranteed by Article 8 of the Convention, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Human Rights Agreement;

4. by 9 votes to 3, that there has been no violation of Article 3 of the Convention;

5. unanimously, to order the Federation of Bosnia and Herzegovina, as a matter of urgency, to release to the applicants all information presently within its possession, control, and knowledge with respect to the fate of Nikola Savić, including information on the circumstances of his arrest, torture, and death;

6. by 8 votes to 4, to order the Federation of Bosnia and Herzegovina to conduct a full, meaningful, thorough, and detailed investigation capable of exploring all the facts regarding Nikola Savić's fate from the day when he was forcibly taken away by members of the Army of the Republic of Bosnia and Herzegovina until his death both with a view to making such information known to the applicants and with a view to bringing the perpetrators of any crimes to justice;

7. by 8 votes to 4, to order the Federation of Bosnia and Herzegovina to pay to the applicants Angelina and Dragan Savić, no later than one month after the date of delivery of the present decision, *i.e.* 22 January 2004, the total sum of five thousand (5,000) Convertible Marks ("*Konvertibilnih Maraka*") by way of compensation for their mental suffering;

8. by 8 votes to 4, to order the Federation of Bosnia and Herzegovina to pay simple interest at the rate of 10 (ten) per cent per annum over the above sum or any unpaid portion thereof from the date of expiry of the above one-month period until the date of settlement in full;

9. by 11 votes to 1, to dismiss any remaining claims for remedies; and

10. unanimously, to order the Federation of Bosnia and Herzegovina to report to the Human Rights Commission within the Constitutional Court of Bosnia and Herzegovina no later than three months after the date of delivery of the present decision, *i.e.* 22 March 2004, 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 Chamber