



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

**Case nos. CH/02/12551, CH/02/12552, CH/02/12553, CH/02/12554,
CH/02/12555, CH/02/12556, CH/02/12557, CH/02/12558, CH/02/12559,
CH/02/12560, CH/02/12561, CH/02/12562 and CH/02/12563**

**Hasan HUSKOVIĆ, Omer ČEHIĆ, Slobodan MILOJEVIĆ, Rabija GRIZOVIĆ,
Osman ČOLIĆ, Osman ČAMO, Đula BEHMEN, Hamid ŠARANČIĆ, Munevera MEHIĆ, Omer
HUSIĆ, Muškija POBRIĆ, Azra PENAVALA and Ilijas HASIĆ**

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 4 December 2003 with the following members present:

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

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

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

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

I. INTRODUCTION

1. The applications arise from the disappearance of thirteen members of the Army of Bosnia and Herzegovina ("Army of BiH", "Army of RBiH", or "ABiH") seized by units of the Croatian Defence Council (*Hrvatsko vijeće obrane* – "HVO") on 10 May 1993, during the armed conflict between the Army of BiH and the HVO in Mostar. The applicants are the parents, wives and other close relatives of the unaccounted for members of the Army of BiH, who are listed in the application forms as the alleged victims of human rights violations. They are as follows: Feđa HUSKOVIĆ, Senad ČEHIĆ, Nenad MILOJEVIĆ, Mimo GRIZOVIĆ, Dževad ČOLIĆ, Alija ČAMO, Hasan BALIĆ, Nazif ŠARANČIĆ, Zlatko MEHIĆ, Dževad HUSIĆ, Šefik POBRIĆ, Fahir PENAVALA, and Vahidin HASIĆ (hereinafter the "missing thirteen members of the Army of BiH"). All but one of the missing persons are of Bosniak origin¹; the other being of Croat origin. All of the applicants seek information about the fate and whereabouts of their missing loved ones. It appears that none of the applicants have received any such specific information from the competent authorities since the events in question.

2. The applications raise issues under Article 3 (prohibition of inhuman or degrading treatment), Article 8 (right to respect for private and family life), and Article 6 paragraph 1 (right to a hearing within a reasonable time) of the European Convention on Human Rights ("the Convention").

II. PROCEEDINGS BEFORE THE CHAMBER

3. The applications were submitted on 25 December 2002 and registered on the same date. All the applicants are represented by Ms. Edina Rešidović, a lawyer practising in Sarajevo.

4. In their applications, the applicants requested the Chamber to order the respondent Party, as a provisional measure, to complete and draw to a close the proceedings examining all the facts in connection with the fate of their missing loved ones, who were members of the Army of BiH, and immediately to provide the families with all information concerning the fate of the missing thirteen members of the Army of BiH. On 4 March 2003, the Chamber decided to reject the provisional measure requested.

5. On 4 March 2003, considering the similarity between the facts of the applications and the complaints of the applicants, the Chamber decided to join the present applications in accordance with Rule 34 of its Rules of Procedure.

6. On 20 March 2003, the Chamber transmitted the applications to the respondent Party for its observations on admissibility and merits of the applications under Articles 3 and 8 of the Convention in accordance with Rule 49(3)(b) of the Chamber's Rules of Procedure.

7. The respondent Party submitted its written observations on admissibility and merits on 20 May 2003. The Chamber transmitted these observations to the applicants' representative for possible comment. The applicants' representative responded to the respondent Party's observations on 16 June 2003.

8. On 10 September 2003, the Chamber transmitted the applications once again under Article 6 paragraph 1 of the Convention, concerning the length of proceedings, to the respondent Party for its written observations on admissibility and merits in accordance with Rule 49(3)(b) of the Chamber's Rules of Procedure. The respondent Party has failed to submit its observations and the deadline for such submission has expired.

9. On 27 October 2003, the Chamber wrote to the applicants requesting them to state at what stage they properly raised their claims under property law in the criminal proceedings. On 17 November 2003, the applicants submitted the requested information.

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

10. The First Panel deliberated on the admissibility and merits of the applications on 3 July, 5 September, 4 November and 1 December 2003. On 1 December 2003, the First Panel relinquished jurisdiction of the applications in favour of the plenary Chamber in accordance with Rule 29(2) of the Chamber's Rules of Procedure.

11. The Chamber deliberated on the admissibility and merits of the case on 4 December 2003 and adopted the present decision.

III. STATEMENT OF FACTS

A. Historical context as recounted in the ICTY Judgment in *Prosecutor v. Naletilić and Martinović*

12. On 31 March 2003, the Trial Chamber of the International Criminal Tribunal for the former Yugoslavia (the "ICTY") issued its judgment in case no. IT-98-34-T, *Prosecutor v. Mladen Naletilić and Vinko Martinović* ("*Tuta and Štela*"), in which it found the defendants guilty of crimes against humanity and violations of the laws or customs of war².

13. As the *Naletilić and Martinović* judgment contains a comprehensive description of the historical context and underlying events taking place in Mostar during 1993 and thereafter, established after long adversarial proceedings conducted by a reputable international court, the Chamber will utilise this judgment to set forth the historical context and underlying facts important for a full understanding of the applications considered in the present decision.

14. The judgment, referring to the historical context of the armed conflict in Bosnia and Herzegovina, stated with particular reference to Mostar, as follows:

"(24) The incidents between BH Croats and BH Muslims during the end of 1992 and the spring of 1993 had an impact on the formation and composition of the armed forces in Bosnia and Herzegovina. As the former army of Yugoslavia, the JNA, was dominated and mostly controlled by the Serbs. The defence organized by the BH Croats and the BH Muslims mostly consisted of local territorial defence (often referred to as TO) and other units, which the BH Croats and BH Muslims had managed to get control of. The BH Croat and BH Muslim defence was organized under the umbrella of the HVO. However, these units were BH Croat, BH Muslim and mixed units or as one witness described them, "the Armed Forces were composed of all those who were prepared to fight for Bosnia and Herzegovina." A separation and a clearer division started to develop: BH Muslims were either leaving the HVO units taking their weapons with them to join the increasing BH Muslim units, or were dismissed and thrown out of their HVO units.

"(25) Tension increased further, and by mid-April 1993, it turned into a full-scale conflict between the HVO and the ABiH in central Bosnia and in the area relevant to the Indictment...

"(37) Mostar is the largest town in South-eastern Bosnia and Herzegovina and the historic capital of Herzegovina. According to the 1991 census the population of the municipality of Mostar comprised of 126,628 inhabitants, of which 34.6% were BH Muslims, 33.9% BH Croats and 18.8% Serbs. The remainder were "Yugoslavs" and others.... In May 1993, between 16,000 and 20,000 BH Muslim civilians fleeing fighting in other parts of Bosnia and Herzegovina had taken refuge in Mostar. The presence of these BH Muslim refugees from outside Mostar created a BH Muslim majority. The HZ H-B authorities viewed this BH Muslim majority in Mostar as demographic aggression against them and began moves to favour BH Croats expansion in West Mostar. Mostar was politically dominated by the BH Croats. Control in Mostar was exercised on the military side by the HVO and on the civilian side by the HZ H-B, however, these institutions were closely interrelated.

"(38) After the Serbs had left in the summer of 1992, tensions between the BH Croats and the BH Muslims rose and sporadic incidents occurred in Mostar. On 15 April 1993, there was an armed incident between the HVO and an ABiH unit stationed in Hotel Mostar, which was on the separation line between the BH Croat and BH Muslim part of town.

² The entire text of the *Naletilić and Martinović* judgment of 31 March 2003 can be found both in English and in the national language on the ICTY's website (www.un.org/icty).

“(39) Both the HVO and ABiH had military formations positioned in the town. Mostar was divided into a Western part, which was dominated by the HVO and an Eastern part where the ABiH was largely concentrated. However, the ABiH had its headquarters in West Mostar in the basement of a building complex referred to as Vranica. In the early hours of 9 May 1993, the HVO attacked Mostar using artillery, mortars, heavy weapons and small arms. The HVO controlled all roads leading into Mostar and international organisations were denied access. Radio Mostar announced that all BH Muslims should hang out a white flag from their windows. The HVO attack had been well prepared and planned.

“(40) One of the targets was the ABiH headquarters in the Vranica building, which also was residential housing for about 200 civilians. Around midday on 10 May 1993, the building caught fire and both civilians and soldiers surrendered. Before leaving the building 20 to 30 ABiH soldiers changed their uniforms into civilians clothes. They were then assembled in the yard outside the School of Economics, which is situated next to the Vranica building complex. They were met by Juka Prazina, the commander of the Krusko ATG and Colonel Željko Bošnjak, who was also a member of the KB. Juka Prazina ordered the prisoners to be separated into three groups: i) BH Croat men and women, who were free to leave; ii) Muslim civilian men, women, children and elderly who were transported to the Velez stadium; and iii) surrendered ABiH soldiers, who were moved to the Tobacco Institute in Mostar.

“(41) Approximately 30 to 35 Muslim men were made to walk to the Tobacco Institute. Mladen Naletilić accompanied by other HVO officials, and a large group of soldiers received the group of prisoners. This group was taken under guard to the MUP Station in Široki Brijeg, which is fourteen kilometres west of Mostar. It is a BH Croat town, with a population of less than 30,000 people.

“(42) The BH Muslim civilian population of Mostar was targeted on 9 May 1993. From about five o'clock in the morning, armed HVO units surrounded apartment buildings and houses and collected and rounded up BH Muslim civilians. In certain apartment-blocks where both BH Muslims and BH Croats lived, only the BH Muslims were forced to leave. Women, children, men and elderly were forced out of their homes. Witnesses have described these evictions in different manners. One witness testified:

[t]here was intimidation. Shots were fired, threats were uttered. For instance, my brother told me how he and his child, who is about five or six years old, how when they came to their flat, they had woken them up because they were still asleep, how they entered with their automatics, pointed their rifles at them and wanted to fire them. And they treated us arrogantly. They treated us just as arrogantly. Whoever was slower amongst us received the blows from those soldiers either with their feet or with a rifle.

“(43) The Office for Displaced Persons and Refugees of the HVO and HZ H-B issued a decision setting 9 May 1993 as the deadline for people who had taken refuge in Mostar following upheavals in Eastern Bosnia and Herzegovina in abandoned apartments (*i.e.* BH Muslims) to vacate them, without being given an alternative place to live. In addition, they would not be eligible for the humanitarian assistance given to refugees. This decision affected approximately 10,000 BH Muslims.

“(44) International observers noted that the HVO was pursuing ethnic cleansing. Witness Falk Simang, a member of the KB, described how the KB drove BH Muslims from their houses and flats and how they gathered them and transported them mostly to the Velez Stadium.

“(46) Witnesses described how they were awoken by gunfire, and how columns of people started passing through the city. Hundreds of people were taken to the Velez Stadium. Most of them ended up at the Heliodrom, west of Mostar..., which became the main HVO detention centre in the area. In total, between 1, 500 and 2,500 Muslim civilians were rounded up and detained at the Heliodrom detention centre on that day.

“(47) International observers testified that they had the opportunity to see and speak to prisoners at the Heliodrom. They had been arrested without being given a reason and did not know why they were detained. The position of the BH Croatian authorities was that people had been moved there for their own security. International observers testified that the majority of the detainees were of BH Muslim ethnicity, and since no BH Croats were detained, it could not be justified on security grounds. Witnesses also referred to the fact that there were old men and underage boys in the Heliodrom.

“(48) Following international pressure, the detained women and children were released after a few days. On 12 May 1993, a cease-fire agreement was signed between the HVO and ABiH providing the release of all prisoners. Not all prisoners were released. Another meeting on 18 May 1993 was

attended by the President of the Republic of Croatia, Franjo Tuđman, and the President of Bosnia and Herzegovina, Alija Izetbegović, as well as high level international representatives. General Morillon of UNPROFOR was permitted to visit the Heliodrom. Following his visit, a large part of the male BH Muslim prisoners were released.

“(49) The harassment of BH Muslims by forcing them out of their apartments and detaining them became common and widespread from 9 May throughout the autumn of 1993. Many of the BH Muslims, who were taken to the Heliodrom on 9 May 1993 and subsequently released, returned and found that their apartments had been emptied of valuables and movable property.

“(50) Following 9 May 1993, the fighting between the HVO and the ABiH was hard and bitter. The Bulevar, a main street in Mostar separated the two forces. Fighting for each meter and each building, both sides were constantly on guard against attacks and shooting from the other side. The opposing forces took up positions within shouting distance of each other.

“(51) BH Muslims crossed over to the Eastern side of Mostar in large numbers. A reliable estimate of the total number of expelled persons is difficult. The population of East Mostar increased after 29 June 1993 from approximately 30,000 to 55,000. The humanitarian situation on the Eastern side of Mostar was horrific. There was no running water, electricity and food. The Eastern side was completely encircled. The bombardment was constant. An ECMM report from June 1993 describes how the HVO is trying to have total control of Mostar and aiming “at cleaning all non-Croats from the West”.

“(52) The siege of East Mostar continued until the beginning of 1994, which is the period the Indictment is concerned with.”

B. Amnesty International Report

15. On 7 August 2002, Amnesty International published a report entitled “Bosnia and Herzegovina, the Disappeared: Fahir Penava and 12 other Bosnian Army Soldiers captured in Mostar”.³ The report states, insofar as is relevant to the present applications, as follows:

“On 10 May 1993, Fahir Penava and 12 other soldiers in the Bosnian Government Army (ABiH) were captured by military police from the Bosnian Croat armed forces (HVO). The other disappeared soldiers are Alija Čamo, Dževad Čolić, Senad Čehić, Mimo Grizović, Vahidin Hasić, Dževad Husić, Zlatko Mehić, Nenad Milojević, Ševko Pobrić, Nazif Šarančić, Hasan Balić and Fedjo Husković.⁴

“On 10 May their capture was shown on *Dnevnik*, the main Croatian TV evening news, and in a current affairs program (*Slikom na sliku*)⁵. The footage, shot by Croatian TV, shows Fahir Penava and the other ABiH soldiers after they had surrendered. They are seen – unarmed, and with their boots in their hands – walking across the picture, and then lining up against the wall of a building, with their hands above their heads. As the camera focuses on each soldier, he calls out his name and where he comes from.

“Fahir Penava and the other members of his unit were after a two-day battle between the ABiH and the HVO for control of West Mostar. Much of the fighting took place in and around the *Vranica* building – the headquarters of the Fourth Corps of the ABiH. According to the eyewitnesses, after their arrest Fahir Penava and the other prisoners were taken to the Croatian military intelligence headquarters SIS where they were interrogated for several hours. They were then transferred to the HVO military police headquarters, located in a nearby building which formed part of the Engineering Faculty of the University of Mostar.

“As prisoners of war, the 13 men should have been guaranteed the rights afforded to [Prisoners of War] under the Geneva Conventions and like other captured soldiers, they should have been released at the end of the war. However, none of the men have ever been seen since the night of 10-11 May 1993, and no information has ever been made available by the Bosnian Croat authorities to the families about what happened to Fahir Penava and the other men captured that night.

“During a war crimes trial of five former HVO military police officers in Mostar in 2000 and 2001, some information was revealed about events in the Engineering Faculty building. Prisoners, who were

³ AI Index: EUR 63/014/2002 of 7 August 2002

⁴ The Chamber notes the thirteen soldiers identified in the Amnesty International report are the alleged victims identified in the present applications (see paragraph 1 above).

⁵ *Slikom na sliku* – “Picture on Picture”

detained in the cellar of this building, allege that during the night of 10-11 May the captured ABiH soldiers were severely ill-treated and tortured by HVO soldiers, military police and members of paramilitary groups. Members of the HVO military police apparently did nothing to stop them abusing the captured soldiers.

“Some of those detained at the same time in the same building stated in court that they heard shots. One of the witnesses claimed that shots were fired by HVO soldiers into a room where five or six of the ABiH soldiers were detained, and that HVO soldiers then threw a hand grenade into the room. Witnesses also allege that at some time during that night, all 13 of the captured men were shot dead inside the Engineering Faculty building.

“Fahir Penava’s wife believes that her husband was killed in the Engineering Faculty Building, and that his body – and those of the 12 other men – may have been dumped in a disused coal mine at Vihovići in West Mostar. The Bosnian Government Commission for Missing Persons also believes that the mine may contain a mass grave but no investigations have been carried out on the site to date.”

C. Facts of the individual applications

16. The alleged victims were seized on 10 May 1993 by HVO units. At the time of their capture, they were performing their military duties at the “Vranica” facility, the Headquarters of the Fourth Corps of the Army of RBiH in Mostar. The captured members of the Army of RBiH were detained and placed in the building of the Faculty of Mechanical Engineering in Mostar, where, at that time, the Headquarters of the Third Battalion of the HVO Military Police was located and where they were allegedly tortured. Since all trace of the alleged victims has been lost since then, they are presumed dead. Moreover, according to the submissions of the applicants, certain witnesses have stated that the missing thirteen members of the Army of BiH were tortured and killed.

17. On 11 January 2000, the Office of the Cantonal Prosecutor in Mostar filed an indictment against Željko Džidić, Mato Aničić, Ivan Škutor, Erhad Poznić and Zoran Soldo with the Cantonal Court in Mostar for violations of the rules of international law and murder, torture and inhumane treatment of civilians and prisoners of war, which would constitute war crimes against the civilian population and war crimes against prisoners-of-war under Article 154 paragraph 1 and Article 156 of the Code of Criminal Procedure of the Federation of Bosnia and Herzegovina. The indictment states that the defendants, as members of the HVO military formations, from the beginning of May 1993 through the second half of July of 1993, in Mostar, captured several dozen civilians, exclusively Bosniaks, and tortured them inside the Mechanical Engineering Faculty in Mostar; as a result, some of the captured civilians died. It is further alleged that the captured Army of BiH members, *i.e.*, the victims named in the applications, along with another eight unidentified Army of BiH soldiers, were taken to special rooms of the Mechanical Engineering Faculty building, and members of the HVO tortured them and thereafter executed them with firearms. On 11 January 2000, the Cantonal Prosecutor invited the applicants to take part in the criminal proceedings before the Cantonal Court in Mostar as injured parties, as they had properly raised claims under property law (*i.e.*, civil claims for compensation for damages arising out of the commission of a crime, see paragraphs 36-39 and footnote 7 below).

18. On 9 and 10 April 2001, during the main hearing, some of the applicants signalled their intention to pursue claims under property law for pecuniary and non-pecuniary compensation resulting from the criminal acts. On 11 April 2001, the applicants’ legal representative formally raised claims under property law in the criminal proceedings on behalf of all the applicants.

19. On 18 April 2001, the Cantonal Court in Mostar issued a judgment acquitting the defendants mentioned above. Upon examination of the judgment, the Chamber notes that the Cantonal Court’s reasoning in its judgment referred to the lack of evidence substantiating the defendants’ direct involvement in the capture, torture and murder of the victims or their being in command of the actions for which they were charged. On 28 June 2001, the Cantonal Prosecutor appealed to the Supreme Court of the Federation against the judgment of 18 April 2001. On 5 June 2002, the Supreme Court issued a procedural decision partly accepting the Prosecutor’s appeal, thereby annulling the judgment of 18 April 2001 and returning the case to the Cantonal Court in Mostar for renewed proceedings. The Supreme Court held that the first instance court failed to explain why it refused to hear a significant number of witnesses, why it refused to admit into evidence certain statements, why it failed to attempt to obtain original documentation, as it refused to admit into evidence photocopies of

these documents, and more specifically, why the judgment failed to provide any material answer to the official capacity of the first defendant, Mr. Željko Džidić, during the relevant period, despite a statement from the Federation Ministry of Defence that he was in command of the Military Police in Mostar during the relevant time period. The Supreme Court further stated that it doubted the authenticity of certain witness statements as they appeared to have been manipulated or taken tendentiously. The Supreme Court ordered the Cantonal Court, in the renewed proceedings, to eliminate all the defects in the original first instance proceedings, in particular taking into consideration relevant evidence that was previously declared inadmissible, or to state clearly in its judgment the reasons why it is declared inadmissible. The Cantonal Court was further ordered to locate and examine the witnesses previously not heard and to conduct the proceedings in accordance with the relevant legal provisions.

20. At some stage, the applicants established, with a view to tracing information about the fate of the missing members of their families, a parents' association to undertake numerous activities and to address the relevant domestic and international organisations such as: the International Committee of the Red Cross ("ICRC"), commissions for tracing missing persons on all levels (Commission of Fourth Corps of Army of BiH, Commission of the Croatian Community of Herceg-Bosna, and the State Commission for Tracing Missing Persons), Office of the Ombudsperson of the Federation of Bosnia and Herzegovina in Mostar, His Eminence Cardinal Vinko Puljić, former President and Vice-President of the Federation of Bosnia and Herzegovina, the Parliaments of Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina, the Federal Ministry for Affairs of Army Servicemen, the Cantonal Assembly, municipal councils of the Mostar area, the International Group for Missing Persons, the International Commission for Missing Persons, UNMIBH, the Office of the High Representative ("OHR"), the United States Embassy in Sarajevo, the President and Prime Minister of the Republic of Croatia, the International Criminal Tribunal for the former Yugoslavia, SFOR Headquarters, Amnesty International, as well as the media and other individuals. The applicants allege that the attempts by the parents' association has yielded no results.

21. On 21 March 2002, the Government of the Federation of Bosnia and Herzegovina issued a "Conclusion" obliging the Federation Ministry of Defence, Ministry of Interior and Ministry of Justice to submit information that they have withheld within 30 days to the Federation Commission for Tracing Missing Persons and the Federal Ministry for Affairs of Army Servicemen and Disabled Persons concerning the disappearance of the thirteen members of the Army of BiH from the "Vranica" facility and the Mostar Faculty of Mechanical Engineering building, as well as the disappearance of twenty-six Croats in Bugojno. The Federation Commission for Tracing Missing Persons was obliged to submit information about the number of persons unaccounted for and those accounted for, as well as the plan for activities to reveal the fate of the missing persons for the year 2002, along with the names of the institutions that might hold information of significance for the revelation of the truth about the disappearances. It does not appear that any action was taken.

22. The renewed criminal proceedings against the above-named defendants remain pending before the Cantonal Court in Mostar. As of the date of this decision, the proceedings are in the evidentiary stage and so far three hearings have been held. The proceedings are currently postponed for an indefinite period due to the inability of the authorities to contact witnesses not heard during the first proceedings. The Supreme Court ordered the hearing of the witnesses in its appeal judgment, as the witnesses are believed to have been present during 10-11 May 1993 at the Faculty of Mechanical Engineering in Mostar. To date the Chamber has no information on the steps the authorities have taken to locate the missing thirteen members of the Army of BiH and must assume that it has failed to make any further progress. Additionally, in the renewed criminal proceedings no further hearings have been scheduled.

IV. RELEVANT LEGISLATION

A. Agreement on Refugees and Displaced Persons

23. 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. ICRC Process for Tracing and Identifying Unaccounted for Persons

24. Under international humanitarian law, the ICRC is the principal agency authorised to collect information about missing persons, and all parties to armed conflicts are under an obligation to provide all necessary information at their disposal to trace missing persons (both combatants and civilians) and to satisfy the “right of family members to know the fate of their relatives” pursuant to Article 32 of Protocol No. 1 to the Geneva Conventions. This general obligation is also reflected in Article V of Annex 7 to the General Framework Agreement (see paragraph 23 above). In order to implement its responsibilities under Annex 7 and international humanitarian law, the State of Bosnia and Herzegovina and the Entities, as well as the ICRC, established a “Process for tracing persons unaccounted for in connection with the conflict on the territory of Bosnia and Herzegovina and informing the families accordingly”.

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

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

27. In accordance with the terms of reference, a copy of all tracing requests shall be provided to the Working Group (Section 2.2 of the terms of reference of the Process). Moreover, “with the aim of clarifying the fate of missing persons, the Members, and, if relevant, Observers of the Working Group will: a) share all factual information relevant to the Process; b) organise, support and, if requested by the Working Group, participate in the implementation of tracing mechanisms at regional or local level” (*id.*). In addition, “should any Member or Observer of the Working Group obtain information on the

identity of deceased persons exhumed from places of burial, whether individual or mass, or that might help determine the fate of missing persons, it will make such information available to the Working Group” (*id.* at Section 2.4(a)). “For unresolved cases [of persons unaccounted for], the State and Entity Members of the Working Group undertake to facilitate a rapid and fair settlement of the legal consequences of the situation for their families. To this end, they will encourage adoption of the necessary legislative, administrative and judicial measures” (Section 2.1 of the terms of reference of the Process). “No party may cease to fulfil its obligations aimed at informing families about the fate of relatives unaccounted for on the grounds that mortal remains have not been located or handed over” (*id.* at Section 2.4(b)).

C. National Activities regarding Missing Persons

28. During the armed conflict in Bosnia and Herzegovina, various commissions existed or were established for the primary purpose of exchanging prisoners of war. One commission represented the interests of Bosnian Muslims, another represented the interests of 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

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

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

2. Federal Commission for Missing Persons

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

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

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

33. 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. Code of Criminal Procedure of the Federation of Bosnia and Herzegovina (Official Gazette of the Federation of Bosnia and Herzegovina nos. 43/98, 50/01 and 27/02):⁶

1. Provisions related to the injured party

34. The Code of Criminal Procedure of the Federation of Bosnia and Herzegovina provides for the participation of the injured party, that is, “a person injured or threatened in some personal or property right or by a crime”, in criminal proceedings (Article 139(1)(6)).

35. Article 55 concerning injured parties to criminal proceedings provides:

“(1) The injured party and the private prosecutor have the right during the examination to call attention to all facts and suggest evidence which has a bearing on establishing the crime, on finding the perpetrator of the crime or on establishing their claims under property law.

“(2) In the main trial they have the right to propose evidence, to put questions to the accused, witnesses and expert witnesses, and to make remarks and present clarifications concerning their testimony, and also to make other statements and make other proposals.

“(3) The injured party, the injured party as prosecutor, and the private prosecutor have the right to examine the records and articles presented as evidence. In exceptional cases their examination of certain documents or articles may be restricted temporarily if the restriction is required by particular reasons of national defence or security of the country, but in the case of an injured party as prosecutor and a private prosecutor this restriction may persist only until they are informed that the examination has been completed (Article 168). The injured party’s right to examine a document may be restricted even when he has not been examined as a witness. An appeal against a decision to restrict examination of documents and evidence may be filed with the panel (Article 21, paragraph 6), but the appeal shall not stay execution of the decision.

“(4) The investigative judge and the presiding judge of the panel shall inform the injured party and private prosecutor of their rights as referred to in Paragraphs 1 through 3 of this Article.”

2. Provisions related to property law claims⁷

36. The Code of Criminal Procedure includes provisions allowing claims under property law arising out of the commission of a crime to be considered in the criminal proceedings. Article 96 states:

“(1) A claim under property law which has arisen because of the commitment of a crime shall be deliberated on the motion of the authorised persons in criminal proceedings if this would not considerably prolong those proceedings.

“(2) A claim under property law may pertain to reimbursement of damage, recovery of things, or annulment of a particular legal transaction.”

37. Article 98 states:

“(1) A petition to pursue a claim under property law in criminal proceedings shall be filed with the body or agency to whom the criminal charge is submitted or to the court before which proceedings are being conducted.

“(2) The petition may be submitted no later than the end of the main trial before the court in the

⁶ The Chamber notes that on 1 August 2003 the Code of Criminal Procedure of the Federation of Bosnia and Herzegovina (Official Gazette of the Federation of Bosnia and Herzegovina no. 35/03) entered into force. However, as far as it is aware, during the period considered in the present decision the criminal proceedings before the Cantonal Court in Mostar were not subject to the new Code of Criminal Procedure. Accordingly, the Chamber has not assessed the applicant’s complaints in relation to the new legal provisions.

⁷ For the sake of clarification, the concept of “claims under property law” in the domestic law and domestic practice is not exclusively related to property claims, but rather applies more broadly to civil claims (*i.e.*, tort claims or *constitution de partie civile*) for compensation for damages arising out of or related to the commission of a crime.

first instance.

“(3) The person authorised to submit the petition must state his claim specifically and submit evidence.

“(4) If the authorised person has not filed the petition to pursue his claim under property law in criminal proceedings before the indictment is brought, he shall be informed that he may file that petition up to the end of the main trial. ...”

38. Article 100 states:

“(1) The court before which proceedings are being conducted shall examine the accused concerning the facts alleged in the petition and shall investigate the circumstances that have a bearing on the establishment of the claim under property law. But even before a petition to that effect is presented, the court has a duty to gather evidence and conduct the investigation necessary to making a decision on the claim.

“(2) If the investigation of the claim under property law would considerably prolong criminal proceedings, the court shall restrict itself to the gathering of that data which would be impossible or considerably more difficult to subsequently establish.”

39. Article 101 states:

“(1) The court shall render judgment on claims under property law.

“(2) In a verdict pronouncing the accused guilty, the court may award the injured party the entire claim under property law or may award him part of the claim under property law and refer him to a civil action for the remainder. If the data of criminal proceedings do not afford a reliable basis for either complete or partial award, the court shall instruct the injured party that he may take civil action to pursue his entire claim under property law.”

E. 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)

40. 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

41. The applicants are all immediate family members of the thirteen members of the Army of BiH, who are missing and presumed to have been killed subsequent to their arrest by members of the HVO in Mostar between 10-11 May 1993. They allege that, as close family members, they are themselves victims of alleged or apparent human rights violations resulting from the lack of specific information on the fate and the whereabouts of their loved ones last seen on 19 May 1993. They seek to know the truth. They also complain that the criminal proceedings initiated against five members of the HVO alleged to have been involved in the disappearance of their loved ones, upon which their civil claims under property law are dependent, have exceeded a reasonable time.

42. The applicants seek compensation in the amount of KM 30,000 for mental suffering and KM 50,000 per applicant, which the applicants would safeguard for their missing relatives and their beneficiaries.

VI. SUBMISSIONS OF THE PARTIES

A. The respondent Party

1. As to the Facts

43. The respondent Party does not contest the facts of the applications.

44. The respondent Party states that the thirteen members of the Army of BiH were taken into custody at the Faculty of Mechanical Engineering building, which at the time held the Third Battalion of the HVO Military Police. It further alleges that the criminal proceedings are pending before the Cantonal Court in Mostar against persons charged with war crimes against the civilian population and war crimes against prisoners-of-war, including the victims named in the applications. The respondent Party alleges that, based on the available information, the fate of the missing thirteen members of the Army of BiH, after they were taken away from the Faculty of Mechanical Engineering building, cannot be determined.

2. As to the Admissibility

45. The respondent Party has not raised any grounds for declaring the applications inadmissible. Specifically, the respondent Party alleges that the applicants addressed all relevant institutions, international and national, with a view to revealing the fate of their loved ones, but that, unfortunately, all efforts of the respondent Party remain futile, and even the pending criminal proceedings before the Cantonal Court in Mostar have not established the fate of the missing thirteen members of the Army of BiH after they were removed from the Faculty of Mechanical Engineering building in Mostar.

3. As to the Merits

46. The respondent Party declares that the State Commission for Tracing Missing Persons, since the date of its foundation on 15 March 1996, has been investigating the fate of the applicants' missing relatives. Before this State Commission was founded, on 1 March 1996, the Missing Persons Task Force was established, presided over by the International Committee of the Red Cross, and that the Task Force submitted the names of the missing persons – the relatives of the applicants – to the then HVO Exchange Service, requesting information regarding their fate. The respondent Party states that it never received a response.

47. The respondent Party states that the State Commission for Tracing Missing Persons, based on information collected from various sources, has been attempting to locate the site where the mortal remains of the missing thirteen members of the Army of BiH were buried, and that it is still taking further steps to find the missing thirteen members of the Army of BiH. The respondent Party further notes that the search has been aggravated by the complex socio-political situation, as well as the fact that there are over 17,000 missing persons in Bosnia and Herzegovina. The respondent Party

in the present case opines that, under these circumstances, the State Commission for Tracing Missing Persons has taken all necessary steps, and continues to do so, in order to ascertain details concerning the fate of the missing thirteen members of the Army of BiH. However, in its written observations of 26 August 2003, the respondent Party concedes that there is no information in the case file to suggest that the competent organs of the Federation of Bosnia and Herzegovina attempted to ascertain the fate of the missing thirteen members of the Army of BiH or their burial site, apart from the actions of the State Commission on Missing Persons, particularly by the letter of confirmation sent by the State Commission for Exchange of Prisoners on 10 May 1995, signed by the President of the Commission, Mr. Amor Mašović.

48. Taking the above into consideration, the respondent Party makes no further submissions and requests the Chamber to evaluate whether the applicants' rights under Articles 3 and 8 of the Convention have been violated in the present applications.

49. As to the length of proceedings, the respondent Party has failed to submit any written observations specifically in reply to the applicants' allegation under Article 6(1) of the Convention. In its earlier written observations of 1 August 2003, the respondent Party points out that that the criminal proceedings are ongoing before the Cantonal Court in Mostar. In these renewed proceedings, the respondent Party declares that three hearings were held and the proceedings are currently at the evidentiary stage. In its written observations of 26 August 2003, the respondent Party presents an updated appraisal of the current stage of the criminal proceedings before the Cantonal Court in Mostar in which it states that the main hearing was postponed for an indefinite period in order to locate the whereabouts of certain witnesses. The respondent Party notes that the witnesses' presence is required in order to identify two of the defendants who, in the original proceedings, were tried *in absentia*. The respondent Party also points out that the defendants have elected a defence of silence; accordingly, the Court has been unable to ascertain details of the fate of the missing thirteen members of the Army of BiH during the criminal proceedings.

B. The applicants

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

51. In response to the written observations of the respondent Party of 20 May 2003, the applicants raise a number of specific points. Firstly, the respondent Party does not contest the factual allegations in the applications, merely stating that it has taken, and continues to do so, all necessary steps within its power to ascertain the fate of the thirteen missing members of the Army of BiH. However, the applicants dispute that the organs of the respondent Party have in fact taken effective steps to remedy their complaints.

52. The applicants further confirm that the respondent Party started certain activities to discover the fate of the missing thirteen members of the Army of BiH, but without any result, and that the respondent Party has taken no specific actions obliging, primarily, its own officials and bodies to operate with more efficiency and to provide relevant information on the fate of their loved ones. Namely, the applicants state that the respondent Party did not challenge that the alleged victims listed in the applications were captured by the HVO and that the HVO is a component of the respondent Party's Armed Forces, which renders it obliged to provide and make such information available. The applicants allege that the respondent Party cannot be exempted from responsibility when it states that certain organs are attempting to obtain information, whilst other parts of its structures are obstructing, destroying, and even forging relevant data and information.

53. The applicants state that they sent a letter on 29 September 1996 to the former President of the Federation, Mr. Krešimir Zubak, and the Vice-President, Mr. Ejup Ganić, especially since Mr. Zubak was a Herceg-Bosna official, which obliged him to provide the information to the applicants and thereby carry out his obligation towards the Federation Army component, which he failed to do.

54. The applicants addressed Mr. Jadranko Prlić, who was at the time Prime Minister of the "Croat Community of Herceg-Bosna", who performed various duties in the Federation, and who in 1999 was a member of the International Commission on Missing Persons, and thereby obliged to provide necessary information and take necessary steps to solve the issue of missing persons. On

24 January 2001, the applicants wrote to Mr. Ivo Andrić Lužanski, Vice-President of the Federation, but he took no measures which he was obliged to take due to his position. They also addressed Mr. Dragan Ćurić, who, at the time of the disappearances, was in charge of the unit for special purposes of the HVO, and in the Federation, he acted as Deputy Commander of the Federation Army, but he also did nothing to collect and provide data on the missing thirteen members of the Army of BiH. The applicants allege that Mr. Valentin Ćorić – HVO Military Police Commander, and later in the Federation, the Interior Minister of the Hercegovina-Neretva Canton – obstructed the carrying out of his obligations, thereby causing the respondent Party to violate the applicants' rights.

55. The applicants further state that some other persons who were in an official capacity in the "Croat Community of Herceg-Bosna" at the time of the disappearances failed to take *any* steps to institute proceedings against the responsible persons and failed to supply information on the fate of the missing thirteen members of the Army of BiH, which might have ended the inhuman and humiliating treatment of the applicants. The applicants state that some of the officials were giving them hope that their relatives might be alive, whilst some others conditioned the sharing of information on obtaining knowledge on the fate of other missing persons.

56. The applicants consider that the above facts refute the respondent Party's position that all its efforts had no effect, but rather, on the contrary, they affirm that the respondent Party has not taken necessary and possible efforts and steps to protect the applicants. Accordingly, the respondent Party should be found to have violated the applicants' human rights and to be responsible for the damage inflicted upon them.

57. The applicants further recall that Amnesty International, in its report AI Index: EUR 63/014/2002 (see paragraph 15 above), called upon the Government of Bosnia and Herzegovina, the persons who served in official capacity in the Government of the former Herceg-Bosna, and the HVO, who are believed to hold information about the fate of Fahir Penava and the other 12 captured Army of BiH servicemen, to render such information accessible to their family members. Amnesty International also called upon the Government to initiate a criminal investigation into the case and reminded the authorities that the family members of the persons unaccounted for possess the right to adequate compensation.

VII. OPINION OF THE CHAMBER

A. Admissibility

58. Before considering the merits of these applications, the Chamber must decide whether to accept them, taking into account the admissibility criteria set forth in Article VIII(2) of the Agreement. In accordance with Article VIII(2) of the Agreement, "the Chamber shall decide which applications to accept.... In so doing, the Chamber shall take into account the following criteria: ... (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. *Ratione temporis*

59. 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).

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

61. 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 may raise issues 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))).

62. Although the Chamber has no specific information as to whether all of the applicants submitted tracing requests for their missing loved ones to the ICRC or the State or Federal Commissions, it is not in dispute that their requests for information were brought to the attention of the Federal and State Commissions concerning the missing thirteen members of the Army of BiH. The respondent Party has extensively detailed the steps taken by the applicants to obtain information on their missing loved ones. Yet, more than 10 years after the events in question, none of the applicants has been officially informed about the fate and whereabouts of their missing loved ones. Therefore, the allegations contained in the applications concern a continuing violation of the human rights of the applicants by the respondent Party, which commenced on 14 December 1995 and continues to the present date. As such, the applications fall within the Chamber's competence *ratione temporis*, within the meaning of Article VIII(2)(c) of the Agreement, and they are admissible.

2. Conclusion as to admissibility

63. The respondent Party has not objected to the admissibility of the applications on any grounds, and the Chamber finds that no other ground for declaring the applications inadmissible has been established. Therefore, the Chamber declares the applications admissible with respect to claims arising or continuing after 14 December 1995 under Articles 3 and 8 of the Convention in connection to the rights of family members to be informed about the fate and whereabouts of their missing loved ones, as well as under Article 6 paragraph 1 concerning the length of the proceedings to determine the applicants' civil claims under property law.

B. Merits

64. 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.

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

65. 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.”

66. 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).

67. In the present applications, the missing thirteen members of the Army of BiH were captured by members of the HVO on 10 May 1993. On the same day their capture was aired on *Dnevnik*, a Croatian TV evening news programme. During this programme, the cameraman focused on the faces of each of the missing thirteen members of the Army of BiH, who gave their names and stated where they were from. The captured soldiers were unarmed and held their boots in their hands above their heads, in a stance of surrender. It is not in dispute that they were detained in the Mechanical Engineering Faculty in Mostar, although it is not known what happened to them thereafter. None of the missing thirteen members of the Army of BiH were ever seen again. Moreover, no applicant has received any official information on the fate and whereabouts of his or her missing loved one. During the criminal proceedings before the Cantonal Court in Mostar, witnesses, some of whom were also present at the Mechanical Engineering Faculty, testified that detained members of the Army of BiH were held in the basement and tortured. They further testified that some of the detainees were later executed, either by being shot or killed by a hand grenade thrown into the room where they were held.

68. The applicants’ allegations are supported by the findings of the ICTY and Amnesty International (see paragraphs 14-15 above). As the Trial Chamber of the ICTY stated in the *Naletilić and Martinović* judgment, at the relevant time, Bosniak men in Mostar were rounded up in the streets, separated from the women and children and from the Croat population by the HVO. Hundreds of Bosniak civilian men, women and children were transported to the Velez Stadium without being charged with any crime. Surrendered Army of BiH soldiers were taken by the HVO to the Tobacco Institute in Mostar. According to Amnesty International, members of the Army of BiH were detained at the Mechanical Engineering Faculty, and during the war crimes trial of five members of the former HVO in Mostar, witnesses testified that the detainees were tortured and that they heard gunshots and hand grenade explosions in an area where the detained soldiers were held. Amnesty International further states in its report that it believes that the missing thirteen members of the Army of BiH may have been killed and their bodies dumped in a nearby disused coal mine. The report states that the State Commission for Tracing Missing Persons also believes that the disused coal mine may contain a mass grave, but it has taken no steps to investigate this.

69. The applicants have continuously sought information on what happened to their loved ones

between 10-11 May 1993, with little success to date. They have lobbied all relevant national and international bodies with a view of ascertaining the fate and whereabouts of their missing loved ones or the location of their mortal remains, but again to no avail. The respondent Party concedes that the applicants have taken all necessary steps with a view to ascertaining the fate of their missing loved ones. The Chamber notes that many of their requests to the organs of the respondent Party have remained unanswered or where they have in fact received a courtesy reply, very little effective action has been taken.

70. The applicants further complain as to the effectiveness of the investigation and criminal proceedings before the Cantonal Court in Mostar. In this regard the Chamber notes that these proceedings were criticised by the Supreme Court; in particular, it scrutinised the fact that certain essential witnesses had not been heard during the first instance proceedings and that it failed to obtain original documentation as it had refused to admit into evidence photocopies of such documentation (see paragraph 19 above). Additionally, the Supreme Court criticised the Cantonal Court's failure to provide any material answer to the official capacity of the first defendant, Mr. Željko Džidić, during the relevant period, despite a clear written statement from the Federation Ministry of Defence. The Chamber acknowledges that a criminal investigation into the events of 10-11 May 1993 has been conducted by the appropriate authorities resulting in a criminal trial. However, the mere conduct of criminal proceedings does not amount to an effective investigation. Moreover, on examination of the submissions of the parties and the appeal judgment of the Supreme Court, the first instance proceedings appear to have been wholly superficial and not taken particularly seriously. The Chamber finds that this fact aggravates the treatment of the applicants further and seriously undermines the credibility of the entire judicial system in the Federation of Bosnia and Herzegovina. Accordingly, the fact of the conduct of criminal proceedings cannot serve as evidence of the respondent Party's efforts to ascertain the fate of the missing thirteen members of the Army of BiH and to thereby put an end to the suffering and uncertainty of their surviving family members.

71. The Chamber also notes that the respondent Party concedes that the mortal remains of the applicants' loved ones may have been buried in a disused coal mine located in Mostar bordering the Neretva River. However, the respondent Party has failed to show that it has taken sufficient steps to investigate this potential burial site, or alternatively, to explain why it has been unable to inspect the disused coal mine. The respondent Party merely states that tracing the missing thirteen members of the Army of BiH or their mortal remains has been aggravated by the complex socio-political situation and the fact that there are over 17,000 missing persons in Bosnia and Herzegovina. Accordingly, this fact cannot serve as evidence of the respondent Party's efforts.

72. Moreover, taking into account that in accordance with the Law on Defence, the HVO is now part of the armed forces of the Federation of Bosnia and Herzegovina (see paragraph 40 above), it is obvious to the Chamber that some information about the fate and whereabouts of the missing thirteen members of the Army of BiH must exist within the possession or control of the respondent Party. As these men were indisputably captured and detained by the HVO, there must be some record within the files of the former HVO or information about them held in the memories of former soldiers of the HVO. There is no evidence to suggest that the authorities of the respondent Party have questioned members of the HVO who may have been present during the events of 10-11 May 1993. Thus, the Chamber observes that apart from prosecuting the defendants in the criminal proceedings before the Cantonal Court in Mostar, which proceedings have not been effectively or efficiently concluded to date, the respondent Party has done nothing to access or to disclose the requested information within its "possession or control" to the applicants.

73. The respondent Party states that it has taken all effective steps necessary to ascertain the fate of the missing thirteen members of the Army of BiH, but it is unable to disclose the information requested by the applicants. It declares that the State Commission for Missing Persons, since its foundation, has been investigating their fate and the location of where they may be buried. The respondent Party also refers to the criminal proceedings before the Cantonal Court in Mostar and that the defendants have remained silent throughout the proceedings. According to the respondent Party, this further prevents the authorities from obtaining information on the fate of the missing thirteen members of the Army of BiH. However, in its written observations of 26 August 2003, the respondent Party also states that, other than the letter of 10 May 1995 sent by the State Commission, there is no evidence in the case file to support the claim that the competent organs of

the Federation of Bosnia and Herzegovina attempted to ascertain the fate of the missing thirteen members of the Army of BiH. The Chamber observes that other than initiating criminal proceedings against the alleged perpetrators, the organs of the respondent Party have disclosed no information in their possession. As stated above, the respondent Party has failed to explain why the disused coal mine, where a mass grave is believed to exist, has not been fully investigated. Additionally, by the Conclusion issued by the Federation Government on 21 March 2002, the Federation Ministry of Defence, Ministry of Interior and Ministry of Justice were required to disclose information “that they have withheld”, but they failed to do so.

74. The Chamber repeats that the respondent Party has not disputed the factual allegations in the applications, but rather, it offers excuses why its organs have been unable to provide information to the applicants on the fate of their missing loved ones. The Chamber is not convinced by the argument that the failure of the defendants in the criminal trial currently pending before the Cantonal Court in Mostar to reveal such information may in any way absolve the respondent Party of its positive obligation under Article 8 of the Convention.

75. From these underlying facts the Chamber concludes that the authorities of the respondent Party had within their “possession or control” information about the missing thirteen members of the Army of BiH who were detained at the Mechanical Engineering Faculty in Mostar. In any event, the possibility that information and evidence pertaining to the fate of these persons was lost or destroyed by members of the armed forces of the HVO or respondent Party does not relieve the respondent Party of its positive obligations under Article 8 of the Convention. Rather, it appears that the authorities of the Federation of Bosnia and Herzegovina arbitrarily and without justification failed to take any meaningful action to locate, discover, or disclose information sought by the applicants about their missing loved ones. There is no evidence, for example, that the authorities of the Federation of Bosnia and Herzegovina have interviewed any of the members of the HVO who were involved in the events of the take-over of Mostar and the treatment of the Bosniak male population or disclosed any physical evidence still in its possession with a view to making the requested information available to the families of the victims of the Mostar take-over. Additionally, the original criminal proceedings before the Cantonal Court did not find any connection between the defendants and the dramatic events that took place in Mostar. Such inaction or passivity is a breach of the Federation of Bosnia and Herzegovina’s responsibilities due under Annex 7 to the General Framework Agreement and the Process for tracing persons unaccounted for.

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

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

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

78. 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).

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

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

80. Applying the above factors to the applicants in the present cases, the Chamber observes that all the applicants are close family members of the missing thirteen members of the Army of BiH, who have been missing from Mostar since 10 May 1993, during the armed conflict between the Army of BiH and the HVO. As explained in detail above, the missing thirteen members of the Army of BiH were captured and most likely tortured before they disappeared, while held in custody by the HVO. That the applicants have suffered as a result of the events taking place in Mostar in May 1993 and the resultant loss of their loved ones under such conditions is indisputable and apparent from the applications. Such emotional suffering, in the view of the Chamber, is of a dimension and character to constitute “inhuman treatment” within the meaning of Article 3 of the Convention.

81. In particular, the Chamber repeats that the missing thirteen members of the Army of BiH were paraded on national television in the posture of surrender as prisoners-of-war under the control of the HVO, and thereafter they were never seen again. This is a particularly aggravating feature of the present case because it forms the last memory for the applicants of their missing loved ones. The Chamber further notes that the applicants have been very diligent in their search for information. They formed a parents’ association to trace information about the missing thirteen members of the Army of BiH. They repeatedly contacted numerous different national and international organisations, as well as the media, to attempt to disclose any information.

82. Moreover, the Chamber has already examined, in its assessment of the applicants’ complaint under Article 8 of the Convention, the criminal investigation and trial. The Chamber repeats that the initial proceedings before the Cantonal Court in Mostar were conducted in a highly inadequate manner and appear to have been wholly superficial. In addition, only three hearings have been held in the renewed proceedings, and the trial has since been indefinitely postponed until such time as essential

witnesses, who should have been heard in the original trial, have been located. The Chamber finds that this passivity and generally careless attitude shown by the authorities highlights the serious nature of the applicants' complaints.

83. Applying the above factors to the respondent Party, the Chamber observes that the authorities of the respondent Party have done little to clarify the fate and whereabouts of the missing thirteen members of the Army of BiH or to take any sufficient action to relieve the suffering of their surviving family members. After parading the missing thirteen members of the Army of BiH on Croatian television, broadcast nationwide, that the respondent Party can continue to deny any ability to disclose their fate and whereabouts, in the face of such uncontroverted evidence that the men were last seen alive within the custody of the HVO, which is now part of the armed forces of the respondent Party, indicates a wilful failure by the respondent Party. The authorities of the respondent Party have been repeatedly requested by the applicants and by both national and international institutions to provide information to the applicants, but they have failed to do so. Furthermore, as previously stated, the Conclusion of the Federation Government obliged the Ministry of Defence, Ministry of Interior and Ministry of Justice to submit information that they have withheld within 30 days concerning the disappearance of the thirteen members of the Army of BiH, which again they failed to do.

84. Other than the pending criminal proceedings, which the Chamber has already examined above, the authorities of the respondent Party have not fully investigated the facts concerning the illegal detention of members of the Army of BiH at the Mechanical Engineering Faculty in Mostar or the circumstances of disappearances of Bosniak men occurring in Mostar during the same period. Additionally, the respondent Party has failed to obtain sufficient information from the participating members of the HVO who took part in the operation and has not undertaken action substantively to assist the actions of others (e.g., the ICRC, the State or Federal Commissions, the International Commission on Missing Persons, or the ICTY) to clarify the events at Mostar. Moreover, recalling Article 37(2) of the Law on Defence (see paragraph 40 above), as the HVO is an integral part of the armed forces of the Federation of Bosnia and Herzegovina, the Chamber must note that the authorities of the respondent Party were directly involved in the disappearances at Mostar. Nonetheless, the applicants and other survivors of the events of 10 May 1993 have waited for more than ten years for clarification of the fate and whereabouts of their missing loved ones by the competent authorities. As no meaningful information has been forthcoming, the reaction of the authorities of the respondent Party can only be described as "complacency", indifference and wilful avoidance, which aggravates an already tragic situation.

85. Taking all of the applicable factors into account, both with respect to the applicants and the respondent Party, the Chamber concludes that the respondent Party has violated the rights of the applicants to be free from "inhuman and degrading treatment", as guaranteed by Article 3 of the Convention, in that it has failed to inform the applicants about the truth of the fate and whereabouts of their loved ones missing from Mostar subsequent to their arrest on 10 May 1993.

3. Article 6 paragraph 1 of the Convention (length of proceedings)

86. The applicants complain that their right to a hearing within a reasonable time for the determination of their civil claims under property law, as guaranteed by Article 6 paragraph 1 of the Convention, has been violated. However, due to the finding of violations under Articles 8 and 3 of the Convention, the Chamber considers it unnecessary to separately examine the applicants' complaint under Article 6 paragraph 1 of the Convention.

4. Conclusion as to the merits

87. In summary, the Chamber concludes that the respondent Party's failure to make accessible and disclose information requested by the applicants about the missing thirteen members of the Army of BiH constitutes a violation of its positive obligations to secure respect for their rights to private and family life, as guaranteed by Article 8 of the Convention. In addition, the respondent Party's failure to inform the applicants about the truth of the fate and whereabouts of their missing loved ones, including conducting a meaningful and effective investigation into the events of 10 May

1993 and thereafter, violates their rights to be free from inhuman and degrading treatment, as guaranteed by Article 3 of the Convention.

VIII. REMEDIES

88. 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.

89. The Chamber recalls that the applicants seek to know the truth about their missing loved ones, who may be presumed victims of the events of 10 May 1993 and thereafter. The applicants also seek compensation for their suffering. They further request that the criminal proceedings in which their civil claims under property law are pending be concluded effectively and efficiently. In fashioning a remedy for the established breaches of the Agreement, Article XI(1)(b) provides the Chamber with broad remedial powers and the Chamber is not limited to the requests of the applicants.

90. In accordance with its previous case law in missing persons cases (see, CH/01/8365 *et al.*, *Selimović and Others v. The Republika Srpska*, decision on admissibility and merits of 3 March 2003, paragraphs 205-210), the Chamber will order the respondent Party, as a matter of urgency, to release all information presently within its possession, control, and knowledge with respect to the fate and whereabouts of the missing loved ones of the applicants, including information on whether any of the missing thirteen members of the Army of BiH are still alive and held in detention and if so, the location of their detention, and whether any of the missing thirteen members of the Army of BiH are known to have been killed in the events of 10 May 1993 or thereafter and if so, the location of their mortal remains. The respondent Party shall immediately release any such missing persons who are still alive and held in detention unlawfully. The respondent Party shall also, as a matter of urgency, disclose to the ICRC, the International Commission on Missing Persons, and the State Commission all information within its possession, control, and knowledge with respect to the location of any gravesites, individual or mass, primary or secondary, of the victims of the events of 10 May 1993 or thereafter not previously disclosed.

91. The Chamber will further order the respondent Party to conduct a full, meaningful, thorough, and detailed investigation into the events giving rise to the established human rights violations, with a view to making known to the applicants, all other family members, and the public, the respondent Party's role in the facts surrounding the events of 10 May 1993 and the subsequent assaults on the Bosniak population, its subsequent efforts to cover up those facts, and the fate and whereabouts of the missing thirteen members of the Army of BiH. Such investigation should also be conducted with a view to bringing the perpetrators, in addition to the five defendants currently on trial before the Cantonal Court in Mostar, of any crimes committed in connection with the missing thirteen members of the Army of BiH to justice before the competent domestic criminal courts or to transferring persons wanted by the ICTY for prosecution for war crimes, genocide, or crimes against humanity in connection with the events of 10 May 1993. However, this investigation should be conducted with full respect for the rights of the defendants currently on trial before the Cantonal Court in Mostar to be presumed innocent until proven guilty according to law. This investigation should include, among other necessary measures, an internal investigation of present and former members of the armed forces of the respondent Party who may have relevant personal knowledge of the events of 10 May 1993 and thereafter. The respondent Party shall disclose the results of this investigation to the Chamber, the ICRC, the International Commission on Missing Persons, the State Commission, and the ICTY, as well as to the OHR, the Organisation for Security and Co-operation in Europe (the "OSCE") Mission to Bosnia and Herzegovina, and the Office of the Council of Europe in Bosnia and Herzegovina, at the latest within six months from the date of delivery of this decision, *i.e.* by 22 June 2004.

92. The Chamber further finds it appropriate to make a collective compensation award to benefit all the family members of the missing thirteen members of the Army of BiH. In this regard, the Chamber particularly highlights that in the present decision, it has found violations of the rights of the

family members protected by Articles 8 and 3 of the Convention, but it has not found any violations of the rights of the missing persons because such claims are outside the competence of the Chamber *ratione temporis* (see paragraphs 59-62 above). The Chamber understands that the primary goal of the present applications is the applicants' desire to know the fate and whereabouts of their missing loved ones. If it is determined that the missing persons were killed in the events of 10 May 1993 or thereafter, then the applicants would like to bury the remains of their loved ones in accordance with their traditions and beliefs.

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

94. Therefore, the Chamber finds it appropriate to order the respondent Party to make a lump sum contribution to the MPI for the collective benefit of all the applicants and the families of the victims of the events of 10 May 1993 in the total amount of one-hundred thousand Convertible Marks (100,000 KM), to be used in accordance with the Statute of the MPI for the general purpose of collecting information on the fate and whereabouts of missing persons in Bosnia and Herzegovina primarily with a view to ascertaining the fate of the missing thirteen members of the Army of BiH. This amount shall be paid by the respondent Party at the latest six months after the delivery of the present decision, by 22 June 2004.

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

96. Additionally, the Chamber will further award simple interest at an annual rate of 10% on the lump sum payment awarded in paragraph 94 above. The interest shall be paid as of the expiry of the period set for implementation of the compensation award, *i.e.* six months, on the full amount of the award or any unpaid portions thereof until the date of settlement in full.

IX. CONCLUSIONS

97. For the above reasons, the Chamber decides,

1. unanimously, that the applicants' claims arising or continuing after 14 December 1995 under Articles 3, 6(1) and 8 of the European Convention on Human Rights are admissible;

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

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

4. unanimously, that the failure of the Federation of Bosnia and Herzegovina to inform the applicants about the truth of the fate and whereabouts of the missing thirteen members of the Army of BiH, including conducting a meaningful and effective investigation into the events in Mostar in

May 1993, violates their right to be free from inhuman and degrading treatment, as guaranteed by Article 3 of the Convention, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Agreement;

5. unanimously, that it is not necessary to separately examine whether the applicants have been deprived of their right to a hearing within a reasonable time for the determination of their civil claims under property law under Article 6 paragraph 1 of the European Convention on Human Rights;

6. unanimously, to 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 and whereabouts of the missing thirteen members of the Army of BiH, including information on whether any of the missing persons are still alive and held in detention and if so, the location of their detention, and whether any of the missing persons are known to have been killed in the events of 10-11 May 1993 at the Faculty of Mechanical Engineering in Mostar or thereafter and if so, the location of their mortal remains. The Federation of Bosnia and Herzegovina shall immediately release any such missing persons who are still alive and held in detention unlawfully. The Federation of Bosnia and Herzegovina shall also, as a matter of urgency, disclose to the ICRC, the International Commission on Missing Persons, and the State Commission all information within its possession, control, and knowledge with respect to the location of any gravesites, individual or mass, primary or secondary, of the victims of the events of 10-11 May 1993 at the Faculty of Mechanical Engineering in Mostar not previously disclosed;

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

8. by 12 votes to 1, to order the Federation of Bosnia and Herzegovina to make a lump sum contribution to the Institute for Missing Persons in the total amount of one-hundred thousand Convertible Marks (100,000 KM), to be used in accordance with the Statute of the Institute for Missing Persons for the general purpose of collecting information on the fate and whereabouts of missing persons in Bosnia and Herzegovina primarily with a view to ascertaining the fate of the missing thirteen members of the Army of BiH, to be paid within six months from the date of delivery of this decision, *i.e.* by 22 June 2004;

9. by 12 votes to 1, that simple interest at an annual rate of 10 % (ten per cent) will be payable on the lump sum awarded in the preceding conclusion or on any unpaid portions thereof from the expiry of the time period set for implementation of the award, *i.e.* six months until the date of final settlement in full;

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

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

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the Chamber