



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

**Case nos. CH/02/9358, CH/02/10431, CH/02/10432, CH/02/10433,
CH/02/11210, CH/02/11442, CH/02/11566 and CH/02/12094**

**Jusuf MALKIĆ, Hava SMAJLOVIĆ,
H.G., Munevera SARAČEVIĆ, Hava KULJANČIĆ and Alija ČAMDŽIĆ**

against

THE REPUBLIKA SRPSKA

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

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

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

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

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

I. INTRODUCTION

1. The present applications were filed by the immediate family members of persons missing from Vlasenica, a small town in the Republika Srpska in eastern Bosnia and Herzegovina. All the missing persons are of Bosniak¹ origin. They disappeared between June and December 1992. Most of the applicants allege that their missing loved ones were captured by soldiers of the Army of Serbs in Bosnia and Herzegovina (the "RS Army") during the armed conflict in Vlasenica and some were thereafter detained in the infamous Sušica Camp. Tracing requests were opened with the International Committee of the Red Cross ("ICRC") for all the missing persons in 1995 or 1996. All the applicants seek information about the fate and whereabouts of their missing loved ones, but none has received any such specific information from the competent authorities since the events underlying their applications. They further request that the perpetrators of the crimes against their loved ones be punished.

2. The applications raise issues under Article 3 (prohibition of inhuman and degrading treatment) and Article 8 (right to respect for private and family life) of the European Convention on Human Rights (the "Convention"), and discrimination in connection with these rights under Articles I(14) and II(2)(b) of the Agreement. Due to the Chamber's jurisdiction under the Agreement, discussed in more detail below, the Chamber will consider these applications exclusively in connection to the rights of family members to be informed about the fate and whereabouts of their missing loved ones.

II. PROCEEDINGS BEFORE THE CHAMBER

3. The applications were introduced to and registered by the Chamber between 27 February 2002 and 24 December 2002

4. On 11 July 2003, the Chamber transmitted the applications to the respondent Party for its observations on the admissibility and merits. The Republika Srpska submitted its observations on the admissibility and merits the cases on 23 August 2003. The applicant in case no. CH/02/11442 submitted observations in reply on 16 September 2003.

5. On 29 September 2003, the Republika Srpska submitted a report by the Ministry of Internal Affairs of the Republika Srpska dated 18 August 2003.

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

7. Considering the similarity between the facts of the cases and the complaints of the applicants, the Chamber decided to join the present applications in accordance with Rule 34 of the Chamber's Rules of Procedure on the same day it adopted the present decision.

III. STATEMENT OF FACTS

A. Historical context of the Vlasenica events

8. The Chamber notes that on 7 November 1994, the International Criminal Tribunal for the Former Yugoslavia (ICTY) indicted Dragan Nikolić, the Bosnian Serb camp commander of the Sušica prison camp, for war crimes committed in Vlasenica, including murder and torture of prisoners, in case no. IT-94-2-I, *Prosecutor v. Dragan Nikolić*. The ICTY Prosecutor first amended the indictment on 12 February 1999 to include crimes against humanity, violations of the laws or customs of war, and

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

grave breaches of the Geneva Conventions. The Prosecutor amended the indictment two additional times on 15 February 2002 and 27 June 2003 to include additional counts of crimes against humanity, including persecution and sexual violence. On 4 September 2003, the indictment was amended for a fourth time during a motion hearing, and, pursuant to a negotiated plea agreement, the accused plead guilty to all four charges included in the fourth amended indictment (persecution, murder, rape, and torture — all crimes against humanity), as well as the general legal allegations and additional facts. All of the crimes included in the indictment against Dragan Nikolić occur out of the background of the armed conflict in Bosnia and Herzegovina and are related to the widespread attack against the Muslim and non-Serb civilian population in the Vlasenica Municipality, described by the ICTY as follows:

“38. The municipality (*opština*) of Vlasenica is in eastern Bosnia and Herzegovina, approximately 50 kilometres west of the Serbian border and approximately 120 kilometres north-east of Sarajevo. According to the 1991 census, the municipality had approximately 33,817 citizens, of whom approximately 55% were Muslim, 43% were Serb, and 2% were described as "other". The town of Vlasenica is located within the municipality of the same name. In 1991, the town of Vlasenica had approximately 7500 citizens, approximately 65% of whom were Muslim and 35% were Serb.

“39. In January 1992, Serbs from Vlasenica and eight neighbouring municipalities declared the area to be the "Birac Autonomous Region" within the Federal Republic of Yugoslavia. Tensions increased in the spring of 1992 with the referendum on the proposed independence of Bosnia and Herzegovina.

“40. About 21 April 1992, Serb forces took over the town of Vlasenica and declared it to be a Serbian town. JNA soldiers, including soldiers purporting to be from the Novi Sad Corps from Serbia, paramilitary forces and local military soldiers participated in the take-over. During the day, police vehicles drove around Vlasenica town and issued an ultimatum over loud speakers for Muslims to turn in their weapons. The Muslim population complied with the ultimatum and did not resist.

“41. Once the Serbs took control of the municipality, the Crisis Staff (*Križni Stab*) administered the town and appointed Serbs to all official positions. Local Serb men were mobilised and took over military responsibilities from the JNA forces. Among other things, local Serb military forces guarded important facilities and later were formed into companies and used to search surrounding woods for armed Muslims.

“42. After the take-over, conditions for Muslims and other non-Serbs in the municipality deteriorated. The Serb authorities fired Muslims and other non-Serbs from their jobs and limited their withdrawal of funds from banks. The Serb authorities did not permit the Muslims and other non-Serbs to travel without special passes. Muslim men were frequently arrested and brought to the police station for interrogation. Beatings and murders sometimes accompanied the interrogations.

“43. Many Muslims and other non-Serbs fled the Vlasenica area and beginning in May 1992 and continuing until September 1992, those Muslims and other non-Serbs who had remained were either forcibly expelled or arrested. By September 1992, virtually no Muslims or other non-Serbs remained in Vlasenica.

“44. The Serb forces initially held the arrested Muslims and other non-Serbs either at a local school or the local prison in Vlasenica. In approximately late May or early June 1992, the Serb forces established a detention camp at Sušica, the main detention facility in the Vlasenica area, and sent the arrested Muslims and non-Serbs there. The Sušica camp was run by the military and the local police militia. The camp guards were generally soldiers from the local area.

“45. Sušica camp was located approximately one kilometre from the town of Vlasenica, in a military facility that had previously been used for storage of military equipment. Men, women and children were kept in the camp, however, the women and children generally stayed for

only short periods of time before being forcibly transferred to nearby Muslim areas. Before being forcibly transferred, non-Serbs usually had to sign a document stating that they were leaving the area voluntarily, and that they were giving up their possessions.

“46. Sušica camp consisted of two main buildings: a warehouse or hangar ("the hangar"), 50 metres by 30 metres, which was used to house the detainees and a second smaller building which was used for storage of uniforms and equipment. There was also a small house used by the guards and commander of the camp to interrogate detainees when they arrived. Between late May and October 1992, as many as 8,000 Muslim civilians and other non-Serbs from Vlasenica and the surrounding villages were detained in the hangar in Sušica camp.

“47. The number of detainees in the hangar at any one time varied, but was generally between 300 and 500 detainees. The building was severely overcrowded, detainees were not provided with anything to sleep on, toilet facilities were limited, and there were no showers. The food provided was sparse and often spoiled. The guards brutally beat the detainees on a daily basis. Many detainees died from the beatings by the guards.

“48. Many of the detained women were subjected to sexual assaults, including rape. Camp guards or other men who were allowed to enter the camp frequently took women out of the hangar at night. When the women returned, they were often in a traumatised state and other detainees observed that the women were distraught” (ICTY, case no. IT-94-2-I, *Prosecutor v. Dragan Nikolić*, third amended indictment of 27 June 2003).

9. According to information provided to the United Nations Security Council by the United States Department of State in an effort to gather information on war crimes committed in the former Yugoslavia (Supplemental United States Submission of Information to the United Nations Security Council in accordance with Paragraph 5 of Resolution 771 (1992) and Paragraph 1 of Resolution 780 (1992), 8th Report, Part II, 16 June 1993), the following information about the events at Vlasenica in 1992 has been substantiated and is based upon eye-witness testimony:

“A 44-year-old Bosnian Muslim from Vlasenica, Bosnia, who was captured by Serbian forces on June 24, 1992, in Vlasenica, was sent to a prison camp in the Sušica River Valley where he witnessed numerous atrocities committed by local Bosnian Serb troops. ...

“On April 17, 1992, the first Serbian troops entered the village of Vlasenica. The troops that initially occupied the village were from Novi Sad, Serbia, and were led by an unidentified lieutenant colonel who held a megaphone and demanded that all Muslim residents surrender their weapons and insisted that no harm would come to them.

“The troops from Novi Sad left on May 2 when Bosnian Serb troops from Šekovići, Bosnia, took over the town. Local Serbian troops from Vlasenica also assisted the other troops with the occupation of their village. Over the course of five weeks, the troops captured residents of Vlasenica at random, took them to the police station for beatings, and then released them.

“On June 24, local Serbian troops evacuated about 50 Muslim families who lived on a street in Vlasenica called Ulica Zarka Vukovica. After the evacuation, five houses were set ablaze and the men, women, and children were forced to walk to a prison camp in the Sušica River Valley, located a few hundred meters from the town's main street. The camp was located on the west side of the highway leading to Han Pijesak. Soon after the residents from Vlasenica arrived on June 24, Durmo Handžić and Asim Zildsić, who had been taken to the camp earlier, died from injuries sustained from beatings suffered on June 22.

“In the early morning hours of June 26, a reign of terror began at the Sušica camp. At 1:00 am, two Serbian guards entered the warehouse and forced four men, including Muharam Kolarević and Rasid Ferhatbegović, outside. Immediately thereafter, four gun shots were heard outside the warehouse accompanied by screaming from the four men. At 1:30 am, two Serbian brothers from Vlasenica went into the warehouse and took three women away and raped them. Soon after daybreak, two brothers were selected to dispose of the four corpses. The men buried the victims in a grave near the camp.

“Food was virtually non-existent at Sušica camp. Each person was given only one slice of bread for a 24-hour period. As the summer progressed, soup was occasionally given in addition to bread. Prisoners commonly lost consciousness from malnutrition. No exception was made for women or children. The witness’s 65-year-old uncle died of starvation. Prisoners who had to use the bathroom were forced to run to a toilet outside; another prisoner was given a stick and forced to beat the individuals while they were defecating or urinating.

“On June 30, several prisoners were moved from the Sušica camp to one in Batković, located approximately 10 kilometers north of Bijeljina, Bosnia. As the men from Sušica got off the bus, they were beaten. From the very first day, everyone was subjected to harsh beatings. Many of the guards at Batković were brutal men but the witness identified one of the worst, the man who killed Zulfo Hadžiomerović on July 4 by beating him to death. This guard used the stock of his machine gun to beat the prisoner about 10 times on that day.”

B. Facts of the individual applications

1. CH/02/9358 Jusuf MALKIĆ (for Fadil MALKIĆ)

10. The application was submitted to the Chamber on 27 February 2002.

11. The applicant is the father of Fadil Malkić, who is indicated in the application form as the alleged victim and a missing person. The applicant states that his son was captured by the RS Army on 12 December 1992 near Vlasenica.

12. In April 1995, a tracing request was opened for the applicant’s son with the ICRC registering him as a person whose whereabouts are unknown. The ICRC submitted this request to the Working Group established as part of the “Process for tracing persons unaccounted for in connection with the conflict on the territory of Bosnia and Herzegovina and informing the families accordingly” (the “Working Group”), but no answer has been provided.

13. According to a certificate issued on 20 February 2002, the applicant’s son was registered with the State Commission as a missing person since 12 December 1992.

2. CH/02/10431 Hava SMAJLOVIĆ (for Alija SMAJLOVIĆ)

14. The application was submitted to the Chamber on 6 May 2002.

15. The applicant is the mother of Alija Smajlović, who is indicated in the application form as the alleged victim and a missing person. The applicant states that her family was captured by the RS Army on 11 July 1992 and taken to Sušica Camp. After 8 days the family was separated, and the applicant lost every trace of her husband and sons (see also case nos. CH/02/10432 and CH/02/10433).

16. In March 1995, a tracing request was opened for the applicant’s son with the ICRC registering him as a person whose whereabouts are unknown since 11 July 1992. The ICRC submitted this request to the Working Group, but no answer has been provided.

17. According to a certificate issued on 6 March 2002, the applicant’s son was registered with the State Commission as a missing person since 11 July 1992.

3. CH/02/10432 Hava SMAJLOVIĆ (for Mujo SMAJLOVIĆ)

18. The application was submitted to the Chamber on 6 May 2002.

19. The applicant is the wife of Mujo Smajlović, who is indicated in the application form as the alleged victim and a missing person. The applicant states that her family was captured by the RS Army on 11 July 1992 and taken to Sušica Camp. After 8 days the family was separated, and the

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applicant lost every trace of her husband and sons (see case nos. CH/02/10431 and CH/02/10433).

20. In March 1995, a tracing request was opened for the applicant's husband with the ICRC registering him as a person whose whereabouts are unknown since 11 July 1992. The ICRC submitted this request to the Working Group, but no answer has been provided.

21. According to a certificate issued on 6 March 2002, the applicant's husband was registered with the State Commission as a missing person since 11 July 1992.

4. CH/02/10433 Hava SMAJLOVIĆ (for Hazim SMAJLOVIĆ)

22. The application was submitted to the Chamber on 6 May 2002.

23. The applicant is the mother of Hazim Smajlović, who is indicated in the application form as the alleged victim and a missing person. The applicant states that her family was captured by the RS Army on 11 July 1992 and taken to Sušica Camp. After 8 days the family was separated, and the applicant lost every trace of her husband and sons (see case nos. CH/02/10431 and CH/02/10432).

24. In March 1995, a tracing request was opened for the applicant's son with the ICRC registering him as a person whose whereabouts are unknown since 11 July 1992. The ICRC submitted this request to the Working Group, but no answer has been provided.

25. According to a certificate issued on 6 March 2002, the applicant's son was registered with the State Commission as a missing person since 1 May 1992.

5. CH/02/11210 "H.G." (for Azema, Sanela, Amela GEROVIĆ and Rasema and Minela ČAMDŽIĆ)

26. The application was submitted to the Chamber on 26 June 2002.

27. The applicant is the husband of Azema Gerović, father of Sanela and Amela Gerović, brother-in-law of Rasema Čamdžić, and uncle of Minela Čamdžić, who are all indicated in the application form as the alleged victims and missing persons. The applicant states that his missing family members were captured by the RS Army in Vlasenica and taken to Sušica Camp on an unidentified date. Since then, the applicant lost every trace of them.

28. In March 1995, a tracing request was opened with the ICRC for the applicant's wife, Azema Gerović, registering her as a person whose whereabouts are unknown since 9 July 1992. In May 1995, tracing requests were further opened with the ICRC for the applicant's daughters, Sanela and Amela Gerović, registering them as persons whose whereabouts are unknown since 9 July 1992. The ICRC submitted these three requests to the Working Group, but no answer has been provided.

29. In March 1995 a tracing request was opened with the ICRC for the applicant's sister-in-law, Rasema Čamdžić, registering her as a person whose whereabouts are unknown. In May 1995, a tracing request was also opened with the ICRC for the applicant's niece, Minela Čamdžić, registering her as a person whose whereabouts are unknown. The ICRC submitted these two requests to the Working Group, but no answer has been provided.

30. According to certificates issued on 30 April 1998, Azema, Sanela and Amela Gerović were registered with the State Commission as missing persons since 9 July 1992. In addition, according to certificates issued on 21 July 2003, Rasema and Minela Čamdžić were also registered with the State Commission as missing persons since 9 July 1992.

31. On 5 June 1993, the Ministry of Defence, Bosnia and Herzegovina, Department Tuzla, issued a certificate recognising Azema, Sanela and Amela Gerović, and Rasema and Minela Čamdžić as prisoners-of-war, whose names are on the list for potential exchange of war prisoners in Pelemiš.

6. CH/01/11442 Munevera SARAČEVIĆ (for Mustafa SARAČEVIĆ)

32. The application was submitted to the Chamber on 22 July 2002.

33. The applicant is the sister of Mustafa Saračević, who is indicated in the application form as the alleged victim and a missing person. The applicant states that her brother has been missing since 2 June 1992, when he was taken by three soldiers of the RS Army from his family house in Vlasenica to the Ministry of Internal Affairs in Vlasenica.

34. In December 1996, a tracing request was opened for the applicant's brother with the ICRC registering him as a person whose whereabouts are unknown since 2 June 1992. The ICRC submitted this request to the Working Group, but no answer has been provided.

35. According to a certificate issued on 9 April 2002, the applicant's brother was registered with the State Commission as a missing person since 2 June 1992.

7. CH/02/11566 Hava KULJANČIĆ (for Ramo KULJANČIĆ)

36. The application was submitted to the Chamber on 22 July 2002.

37. The applicant did not state her relationship to Ramo Kuljančić, who is indicated in the application form as the alleged victim and a missing person. The applicant states that Ramo Kuljančić was last seen on 4 June 1992, when he was allegedly taken to Sušica Camp.

38. In March 1995, a tracing request was opened for Ramo Kuljančić with the ICRC registering him as a person whose whereabouts are unknown since 4 June 1992. The ICRC submitted this request to the Working Group, but no answer has been provided.

39. According to a certificate issued on 6 November 2000, Ramo Kuljančić was registered with the State Commission as a missing person since 4 June 1992.

8. CH/02/12094 Alija ČAMDŽIĆ (for Merim ČAMDŽIĆ)

40. The application was submitted to the Chamber on 26 August 2002.

41. The applicant is the father of Merim Čamdžić, who is indicated in the application form as the alleged victim and a missing person. The applicant states that his son has been missing since July 1992.

42. In February 1995, a tracing request was opened for the applicant's son with the ICRC registering him as a person whose whereabouts are unknown since 2 July 1992. The ICRC submitted this request to the Working Group, but no answer has been provided.

43. According to a certificate issued on 3 July 2002, Merim Čamdžić was registered with the State Commission as a missing person since 2 July 1992.

IV. RELEVANT LEGISLATION

A. Agreement on Refugees and Displaced Persons

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

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

B. International Law and Activities regarding Missing Persons

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

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

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

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

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

47. Article 1 provides as follows:

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

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

48. Article 2 provides as follows:

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

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

49. Article 7 provides as follows:

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

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

“1. Each State shall ensure that any person having knowledge or a legitimate interest who alleges that a person has been subjected to enforced disappearance has the right to complain to a competent and independent State authority and to have that complaint promptly, thoroughly and impartially investigated by that authority. Whenever there are reasonable grounds to believe that an enforced disappearance has been committed, the State

shall promptly refer the matter to that authority for such an investigation, even if there has been no formal complaint. No measure shall be taken to curtail or impede the investigation.

...

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

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

2. ICRC Process for Tracing and Identifying Unaccounted for Persons

51. 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 44 above). In order to implement its responsibilities under Article V of Annex 7 and international humanitarian law, the State of Bosnia and Herzegovina and the Entities, as well as the ICRC, established a “Process for tracing persons unaccounted for in connection with the conflict on the territory of Bosnia and Herzegovina and informing the families accordingly”.

52. 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.”

53. 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).

54. 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

55. During the armed conflict in Bosnia and Herzegovina, various commissions existed or were established for the primary purpose of exchanging prisoners of war. One commission represented the interests of Bosnian Muslims, another represented the interests of Croats, and a third represented the interests of Serbs. After the armed conflict, these commissions also represented the interests of their respective ethnic/religious group with respect to the great problem of the missing persons (see Report of the Independent Expert, UN Commission, 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

56. 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.

57. 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

58. 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.

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

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

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

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

61. 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).

V. COMPLAINTS

62. The applicants are or appear to be immediate family members or close relatives of Bosniaks who have disappeared and presumably were killed during the events in Vlasenica in 1992. The applicants 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 whereabouts of their loved ones last seen in Vlasenica in 1992. They seek to know the truth. Some applicants specifically request to be given possession of the remains of their missing loved ones, if they have been killed, so that they may be properly buried. The applicants seek compensation for their continuing suffering. Some further request that the perpetrators of the crimes against their loved ones be duly punished.

VI. SUBMISSIONS OF THE PARTIES

A. The respondent Party

63. In its observations of 23 August 2003, the Republika Srpska claims that the applications, as regards their factual statements, are incomplete, vague and of little informative value for the purpose of any action to be taken by the respondent Party. Furthermore, the Republika Srpska expresses doubts as to whether the applicants are seriously pursuing their cases, since a number of them have, it submits, applied to the State Commission or the ICRC only in 2002.

64. The respondent Party suggests that the applications should be declared inadmissible in their entirety, for a variety of reasons. Firstly, the applicants failed to address any organ of the respondent Party to obtain information on the fate of their missing family members; therefore, they failed to exhaust a domestic remedy available to them. In this context, the respondent Party states that no tracing requests pertaining to the present applications were transmitted to it by the ICRC, presumably because “these requests have been lodged with the ICRC only in 2002”. Secondly, as the underlying events occurred before the entry into force of the Agreement, it is asserted that the Chamber lacks jurisdiction *ratione temporis* to consider the cases. Thirdly, as the tracing process opened with the State Commission and the ICRC have never been officially closed, the respondent Party proposes that the applications should, alternatively, be declared inadmissible on grounds of *lis alibi pendens*, pursuant to Article VIII(2)(d) of the Agreement.

65. On the merits, the Republika Srpska argues that the applications are ill-founded because the

applicants were not subjected to any treatment that falls within the scope of Article 3, and there was no interference with or violation of the applicant's rights under Article 8 of the Convention. In support, the respondent Party reiterates the arguments on the admissibility of the cases, having regard in particular to the fact that it claims some of the applicants have only in recent times applied to the State Commission and to the ICRC with a view to gaining information about their missing family members. In light of this, no rights of the applicants under the Convention have been violated. Consequently, the respondent Party also considers the compensation claims submitted by the applicants to be ill-founded.

66. In its supplemental observations of 29 September 2003, the respondent Party notes that it has "initiated an investigation to establish the fate of the relatives of the applicants" in case nos. CH/02/11442, CH/02/11566, and CH/02/12094.² It attaches a report of the Ministry of Internal Affairs of the Republika Srpska dated 18 August 2003. This report includes biographical data on the missing persons and information from the ICRC records, including data of their registration with the ICRC. The report states that

"upon checking the criminal, petty offence and operative records of the Vlasenica police station, it has been established that the mentioned persons were not registered there, that is, members of the Vlasenica police station did not deprive them of their liberty, take them into custody, nor criminally process them. The Vlasenica police station cooperated with the competent bodies of the RS Army, specifically with the 55th logistical base, Headquarters Vlasenica, and with the Ministry of Defence of the Republika Srpska, Vlasenica Department, and they did not obtain any data that the mentioned persons were held in Sušica Camp."

The report further notes the military registration numbers of the missing persons. According to the Ministry of Internal Affairs, "there is a possibility that some of the mentioned persons have been exhumed from gravesites in the Vlasenica area in the past period, but the whole identification process of the mortal remains has not been completed yet."

67. The report of 18 August 2003, the Ministry of Internal Affairs reports that Vlasenica police officers spoke with Bosniak returnees and obtained the following additional information:

"Mustafa Saračević was in Vlasenica on 6 June 1992, in his house at Trg Oslobodilaca no. 3 and we obtained no concrete information on his whereabouts since then, as his sister, Munevera Saračević, lives in Tuzla, his wife, nicknamed "Sida", is in Austria, and his sons Mustafa and Muhamed went to America before the war; thus, we have no other data on his disappearance.

"We found out that Ramo Kuljančić, with a group of over 100 men, fit for military service, left Džamdžići for Kladanj in early June 1992, and they were ambushed in the settlement Cvijetanj, Vlasenica Municipality, from where they were allegedly taken to the Sušica Camp in Vlasenica, and allegedly, as he was a construction worker, he performed construction works on the military facilities next to the High School Centre in Vlasenica for one month. We have no specific information on his disappearance.

"It was established for Merim Čamdžić that he left Džamdžići for Cerska on 11 June 1992, and on 5 July 1992, he and a group of 10 men, fit for military service, started for Džamdžići Village and were ambushed in the settlement Pijuci, more exactly Pijučka Rijeka, Vlasenica Municipality, when he was killed."

In closing, the report states that "the requested checks are still ongoing, and you will be informed of any possible new data in a timely manner."

B. The applicants

² The Chamber notes that in its observations, the respondent Party identifies different case numbers, but in fact the information contained in the report of 18 August 2003 pertains to the missing persons mentioned in these cases listed by the Chamber.

68. In the reply observations submitted on 16 September 2003 in case no. CH/02/11442, the applicant disputes the respondent Party's statement that the facts presented in her application are unclear and that she has failed to pursue her case by not addressing the bodies of the respondent Party. She further notes that she submitted tracing requests to both the ICRC and the State Commission for her missing brother, and it was not necessary for her to further submit a request to the RS Commission, since the ICRC and State Commission played the leading role in searching for missing Bosniaks. She also explains that at the time of his disappearance all attempts to obtain information about the whereabouts of her missing brother from the local police were unsuccessful. The remaining applicants did not submit any reply observations; they maintain their complaints (see paragraph 62 above).

VII. OPINION OF THE CHAMBER

A. Admissibility

69. 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.

1. Exhaustion of effective remedies

70. In accordance with Article VIII(2) of the Agreement, "the Chamber shall decide which applications to accept.... In so doing, the Chamber shall take into account the following criteria: (a) Whether effective remedies exist, and the applicant has demonstrated that they have been exhausted...".

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

72. The respondent Party argues that the applicants have failed to exhaust effective domestic remedies in that they have not addressed any of its organs with a request to obtain information on the fate of their missing family members. Specifically, they did not request information directly from the RS Commission.

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

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

74. Furthermore, the Chamber recalls that under the *Process for tracing persons unaccounted for* (see paragraphs 51-54 above), as well as in Article V of Annex 7 quoted above, the State of Bosnia and Herzegovina and the Entities, including the Republika Srpska, agreed to co-operate in the effort to trace unaccounted for persons. The *Process for tracing persons unaccounted for* further clarifies that the Parties shall share information, and a copy of all tracing requests are provided to the Working Group, which has three representatives of the Republika Srpska (see paragraph 52 above). All the applicants addressed the ICRC and opened tracing requests for their loved ones in 1995 or 1996. The respondent Party admits that the applicants all have addressed the ICRC, although it believes

that these tracing requests were not pursued seriously by the applicants due to the alleged late filing dates, which is, in fact, incorrect, as shown by the evidence submitted. Moreover, the ICRC has specifically confirmed that it submitted all the tracing requests to the Working Group of the *Process for tracing persons unaccounted for*.

75. Taking into account the respondent Party's obligation under Article V of Annex 7 to "cooperate fully with the ICRC in its efforts to determine the identities, whereabouts and fate of the unaccounted for" and the fact that all tracing requests were provided to representatives of the Republika Srpska through the Working Group, the Chamber considers that the relevant authorities of the respondent Party were made aware of the applicants' requests for information about the fate and whereabouts of their loved ones missing from Vlasenica through the *Process for tracing persons unaccounted for*. In the present cases the respondent Party has had at least seven years since the tracing requests were opened to gather such information, and in most of the present applications, the authorities have provided no information whatsoever on the fate and whereabouts of the applicants' missing loved ones. In the three cases addressed in the Ministry of Internal Affairs report of 18 August 2003, the information provided is superficial and unsubstantiated (see paragraphs 66-67 above). Such response, while a beginning, is not sufficient to constitute satisfaction of the obligations under Annex 7.

76. Considering that all the applicants opened tracing requests with the ICRC in 1995 or 1996, and in some cases also with the State Commission, and they registered their loved ones as missing from Vlasenica, the Chamber concludes that the applicants have exhausted the remedy provided for in Annex 7 for the purposes of Article VIII(2)(a) of the Agreement. Therefore, the Chamber rejects this ground for declaring the applications inadmissible.

2. *Ratione temporis*

77. 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."

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

79. 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).

80. 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).

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

82. The Chamber recalls that all the applicants opened tracing requests with the ICRC in 1995 or 1996, and some additionally opened requests with the State Commission. These requests were opened after 14 December 1995, when the Agreement entered into force. Yet, more than 11 years after the events in question, none of the applicants has been officially informed about the fate and whereabouts of their missing loved ones to a satisfactory extent. 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.

3. *Lis alibi pendens*

83. As the Chamber explained in the case of *Savka Kovačević v. The Federation of Bosnia and Herzegovina* (case no. CH/98/1066, decision on review delivered on 12 October 2001, Decisions July–December 2001, paragraph 45), the principle of *lis alibi pendens* generally prevents an applicant who has proceedings pending against a respondent Party in one court from having additional proceedings against the same respondent Party in another court on the same subject matter. This principle is reflected in Article VIII(2)(d) of the Agreement, which provides that “The Chamber may reject or defer further consideration if the application concerns a matter currently pending before any other international human rights body responsible for the adjudication of applications or the decision of cases, or any other Commission established by the Annexes to the General Framework Agreement.”

84. The respondent Party suggests that the applications be declared inadmissible pursuant to this provision, on the ground that the State Commission and the ICRC are continuing to process the applicants’ requests to obtain information on the fate of their missing family members.

85. The Chamber notes that the State of Bosnia and Herzegovina and the Entities, as well as the ICRC, have established a *Process for tracing persons unaccounted for* in order to implement its responsibilities under Article V of Annex 7 of the General Framework Agreement (see paragraphs 51-54 above). The mandate of the State Commission and the ICRC in this Process, as outlined above, is confined to facilitate the gathering of information on persons unaccounted for, and to provide a forum to exchange such information between the Parties.

86. The Chamber considers that in the present cases, the applicants have raised complaints broader in scope and different from the tracing requests that they made to the State Commission and the ICRC, involving Articles 3 and 8 of the Convention and claims for compensation for violations of their human rights by the respondent Party. Moreover, neither the State Commission nor the ICRC can be considered a “Commission established by the Annexes to the General Framework Agreement”. Therefore, the Chamber finds that the applicants’ tracing requests with the State Commission and the ICRC do not preclude it from examining the present cases and the Chamber will reject the objection to the admissibility of the applications under Article VIII(2)(d) of the Agreement.

4. Conclusion as to admissibility

87. As explained above, the Chamber has rejected the respondent Party’s objections to the applications based upon failure to exhaust domestic remedies, incompatibility *ratione temporis* and

lis alibi pendens. As no other grounds for declaring the applications inadmissible have been raised or appear from the applications, the Chamber declares the applications admissible in their entirety with respect to claims arising or continuing after 14 December 1995 under Articles 3 and 8 of the Convention, and discrimination in connection with these rights under I(14) and II(2)(b) of the Agreement.

B. Merits

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

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

89. 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.”

90. 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).

91. In the present applications, the applicants’ family members were taken into custody by Bosnian Serb forces in 1992, during a time period when many Bosniaks and non-Serbs went missing from Vlasenica. In several cases, the applicants’ family members were detained in the infamous Sušica Camp, where many atrocities were committed against prisoners, and then they were never seen again. Although tracing requests were opened for all their missing loved ones with the ICRC in 1995 or 1996, and some also with the State Commission, most of the applicants have received no official information on their fate or whereabouts. For those three missing persons addressed in the Ministry of Internal Affairs report of 18 August 2003, the Chamber notes that the information provided does not fully clarify the fate and whereabouts of the missing persons. For Mustafa Saračević and Ramo Kuljančić, the Ministry admits that it does not have specific information on their disappearances, and for Merim Čamdžić, the Ministry states that he was “killed”, but it does not indicate any further information such as how he was killed and the location of his mortal remains (see paragraph 67 above).

92. Despite the respondent Party's statement that the police station in Vlasenica contains no records on the missing persons and that they obtained no data that they were held in the Sušica Camp (see paragraph 66 above), from the underlying facts, the Chamber concludes that the authorities of the respondent Party had within their "possession or control" information about the Bosniaks from Vlasenica who were detained in the Sušica Camp or who disappeared without being previously held in custody. 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 or police of the respondent Party does not relieve the respondent Party of its positive obligations under Article 8 of the Convention. Rather, it appears that the authorities of the Republika Srpska arbitrarily and without justification failed to take any meaningful action to locate, discover, or disclose information sought by the applicants about their missing loved ones. It appears that after the Chamber transmitted these cases to the Republika Srpska, an initial investigation was conducted by the Ministry of Internal Affairs, which included taking statements from anonymous Bosniaks (see paragraph 67 above), but this investigation does not reveal any meaningful information relevant to the fate and whereabouts of the missing persons. Thus, there remains no evidence, for example, that the authorities of the Republika Srpska have interviewed any of the members of its armed forces who were involved in the events in Vlasenica and the treatment of the Bosniaks, interviewed any other possible witnesses, or disclosed any physical evidence still in its possession with a view to making the requested information available to the families of the victims from Vlasenica. Such inaction or passivity is a breach of the Republika Srpska's responsibilities due under Annex 7 to the General Framework Agreement and the *Process for tracing persons unaccounted for*.

93. 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)

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

95. 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).

96. 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).

97. Applying the above factors to the applicants in the present cases, the Chamber observes that all the applicants are close family members (*i.e.*, father, mother, brother, sister, uncle, husband or wife) of the persons who have been missing from Vlasenica since 1992. That the applicants have suffered as a result of the events taking place in Vlasenica in 1992 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.

98. Applying the above factors to the respondent Party, the Chamber observes that the authorities of the Republika Srpska have done little to clarify the fate and whereabouts of the presumed victims of the Vlasenica events or to take any other action to relieve the suffering of their surviving family members. Apart from the initial investigation conducted by the Ministry of Internal Affairs dated 18 August 2003 (see paragraphs 66-67 above), the authorities have not investigated in a meaningful way the facts concerning the illegal detention of Bosniak men and women at the Sušica Camp or the circumstances of disappearances of Bosniaks occurring in Vlasenica in 1992, not interviewed any of the participating members of its armed forces who took part in the operation, not contacted the surviving family members, and not undertaken action substantively to assist the actions of others (*e.g.*, the ICRC, the State Commission, the International Commission on Missing Persons, or the ICTY) to clarify the events at Vlasenica. Moreover, the Chamber must note that according to the allegations of the ICTY contained in the indictment against Dragan Nikolić, the authorities of the Republika Srpska were directly involved in the disappearances in Vlasenica. None the less, the applicants and other survivors of the Vlasenica events of 1992 have waited for more than eleven years for clarification of the fate and whereabouts of their missing loved ones by the competent authorities. As no meaningful information has been forthcoming, the reaction of the authorities of the Republika Srpska can only be described as “complacency” or indifference, which aggravates an already tragic situation.

99. 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 Vlasenica since 1992.

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

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

4. Conclusion as to the merits

101. In summary, the Chamber concludes that the respondent Party's failure to make accessible and disclose information requested by the applicants about their missing loved ones from Vlasenica constitutes a violation of its positive obligations to secure respect for their rights to private and family life, as guaranteed by Article 8 of the Convention. In addition, the respondent Party's failure to inform the applicants about the truth of the fate and whereabouts of their missing loved ones, including conducting a meaningful and effective investigation into the events at Vlasenica in 1992, violates their rights to be free from inhuman and degrading treatment, as guaranteed by Article 3 of the Convention.

VIII. REMEDIES

102. 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.

103. The Chamber recalls that the applicants seek to know the truth about their missing loved ones, who may be presumed victims of the events in Vlasenica in 1992. The applicants also seek compensation for their suffering. 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.

104. In accordance with its previous case law in missing persons cases (see, *e.g.*, case no. 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 Republika Srpska, as a matter of urgency, to release all information presently within its possession, control, and knowledge with respect to the fate and whereabouts of the missing loved ones of the applicants, including information on whether any of the missing persons are still alive and held in detention and if so, the location of their detention, and whether any of the missing persons are known to have been killed in the Vlasenica events and if so, the location of their mortal remains. The Republika Srpska shall immediately release any such missing persons who are still alive and held in detention unlawfully. The Republika Srpska shall also, as a matter of urgency, disclose to the ICRC, the International Commission on Missing Persons, and the State Commission all information within its possession, control, and knowledge with respect to the location of any gravesites, individual or mass, primary or secondary, of the victims of the Vlasenica events not previously disclosed.

105. The Chamber will further order the Republika Srpska to conduct a full, meaningful, thorough, and detailed investigation into the events giving rise to the established human rights violations, with a view to making known to the applicants, all other family members, and the public, the Republika Srpska's role in the facts surrounding events in Vlasenica in 1992 and the subsequent assaults on the non-Serb population, its subsequent efforts to cover up those facts, and the fate and whereabouts of the persons missing from Vlasenica since 1992. Such investigation should also be conducted with a view to bringing the perpetrators of any crimes committed in connection with the missing persons from Vlasenica 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 Vlasenica events. This investigation should include, among other necessary measures, an internal investigation of present and former members of the armed forces of the respondent Party who may have relevant personal knowledge of the Vlasenica events. The Republika Srpska shall disclose the results of this investigation to the Chamber or its successor institution, the ICRC, the International Commission on Missing Persons, the State Commission, and

the ICTY, as well as to the OHR, the Organisation for Security and Co-operation in Europe (the "OSCE") Mission to Bosnia and Herzegovina, and the Office of the Council of Europe in Bosnia and Herzegovina, at the latest within six months after the date of delivery of this decision.

106. The Chamber further finds it appropriate to make a collective compensation award to benefit all the family members of the persons missing from Vlasenica since 1992. In this regard, the Chamber particularly highlights that in the present decision, it has found violations of the rights of the family members protected by Articles 8 and 3 of the Convention, but it has not found any violations of the rights of the missing persons because such claims are outside the competence of the Chamber *ratione temporis* (see paragraph 79 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 Vlasenica events, then the applicants would like to bury the remains of their loved ones in accordance with their traditions and beliefs.

107. 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.

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

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

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

IX. CONCLUSIONS

111. For the above reasons, the Chamber decides,

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

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

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

4. by 11 votes to 2, that the failure of the Republika Srpska to inform the applicants about the truth of the fate and whereabouts of their missing loved ones, including conducting a meaningful and effective investigation into the events during and after the take-over of the Municipality of Vlasenica in 1992, violates their rights to be free from inhuman and degrading treatment, as guaranteed by Article 3 of the Convention, the Republika Srpska thereby being in breach of Article I of the Agreement;

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

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

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

8. by 11 votes to 2, to order the Republika Srpska to make a lump sum contribution to the Institute for Missing Persons in the total amount of one-hundred thousand Convertible Marks (100,000 KM), to be used in accordance with the Statute of the Institute for Missing Persons for the purpose of collecting information on the fate and whereabouts of missing persons primarily from the Municipality of Vlasenica, to be paid within six months from the date of delivery of this decision, *i.e.* by 22 June 2004;

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

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

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

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Michèle PICARD
President of the Chamber