DECISION ON ADMISSIBILITY AND MERITS

(delivered on 22 December 2003)

Case nos. CH/02/10235, CH/02/11582, CH/02/11608, CH/02/12070, CH/02/12565, CH/02/12655, CH/02/12749, CH/03/13152 and CH/03/13204

Nedžiba MUJIĆ, Hata AVDIĆ, Hasiba HARBAŠ, Kada MUJČIĆ, Zumreta IBIŠEVIĆ, Mevlida SALKIĆ, Fata SALKIĆ, Hiba MALAGIĆ and Hatidža KARIĆ

against

THE REPUBLIKA SRPSKA

The Human Rights Chamber for Bosnia and Herzegovina, sitting in plenary session on 5 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 Bratunac, a small town in the Republika Srpska in eastern Bosnia and Herzegovina. All the missing persons are of Bosniak[1] origin. They disappeared between May and October 1992, allegedly after being taken prisoner by soldiers of the Army of Serbs in Bosnia and Herzegovina (the "RS Army") or Serb paramilitary forces during the armed conflict in the area. Tracing requests were opened with the "State Commission for Tracing Missing Persons" (the "State Commission") and the International Committee of the Red Cross (the "ICRC"). 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.

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 of 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 29 April 2002 and 17 March 2003.

4. On 9 July 2003, the applications were transmitted to the respondent Party. Observations of the Republika Srpska on the admissibility and merits of the cases were received on 4 September 2003. The applicants submitted their observations in reply between 31 July and 22 September 2003.

5. On 1 December 2003, pursuant to a request from the Chamber, the ICRC submitted additional information about the tracing requests opened for the alleged victims. The ICRC further explained that all the "cases have been submitted to the authorities concerned within the framework of the Working Group on Persons Unaccounted for in Bosnia and Herzegovina. Since no answer has been provided to these Tracing Requests as of today they still have a status of pending cases."

6. The Second Panel deliberated on the admissibility and merits of the applications on 2 July and 3 December 2003. On the latter date, it decided to refer the case to the plenary Chamber in accordance with Rule 29(2) of the Chamber's Rules of Procedure. The plenary Chamber considered the case on 5 December 2003. On the same date, it adopted the present decision. 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

7. In the spring of 1992, the RS Army and Serb paramilitary forces carried out an onslaught against municipalities in Eastern Bosnia and Herzegovina with a considerable or predominantly Muslim population. The Municipality of Bratunac came under attack in May 1992, and soon thereafter, the Municipality fell to Serb forces. According to the Prosecutor of the International Criminal Tribunal for the former Yugoslavia ("ICTY"), on 9 May 1992, at least 65 persons of non-Serb

[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".

origin were killed by members of the RS Army or Serb paramilitary forces at Glogova near Bratunac. 14 non-Serb men were killed at the primary school "Vuk Karadžić" in Bratunac between 10 and 16 May 1992. More than 8000 persons of non-Serb origin, almost all of them Bosniaks, were expelled from Bratunac, and an unspecified number of persons went missing in the course of the attack (see case nos. IT-00-39 and 40, *Prosecutor v. Momčilo Krajišnik and Biljana Plavšić*, amended consolidated indictment of 7 March 2002, schedules A and B; case no. IT-01-51, *Prosecutor v. Slobodan Milošević*, indictment of 22 November 2001, schedules A, B and D). As a result, the non-Serb community of Bratunac, with a population of 16,000 persons in 1991, was reduced to only hundreds by 1997 (see case nos. IT-00-39 and 40, *Prosecutor v. Biljana Plavšić,* sentencing judgment of 27 February 2003, paragraph 38)[2].

B. Facts of the individual applications

1. CH/02/10235 Nedžiba MUJIĆ (for Idriz MUJIĆ)

8. In May 1992, the applicant and her family were expelled from their home village on the territory of the Municipality of Srebrenica and fled to the woods. The applicant and Idriz Mujić, her husband, wandered around and managed to survive without shelter until September of that year, when they were apprehended by Serb forces and transferred to a prison in Bratunac. Thereafter, the applicant's husband was separated from her, and all traces of him were lost. A tracing request was opened with the ICRC on 7 April 1995, registering Idriz Mujić as a missing person since 2 October 1992. On 11 April 2002, the State Commission issued a certificate, showing that Idriz Mujić was a missing person since 2 October 1992.

2. CH/02/11582 Hata AVDIĆ (for Meho AVDIĆ)

9. In the morning of 10 May 1992, the applicant and Meho Avdić, her husband, along with other citizens of Bosniak origin from Bratunac, were required to gather at the stadium in Bratunac. From there, Serb soldiers brought them to the primary school "Vuk Karadžić" in Bratunac, where they were to be detained for an uncertain amount of time. In the middle of the following night, the applicant's husband was called out by masked individuals unknown to the applicant and taken away. As from that time, the applicant has no information on what happened to her husband. A tracing request was opened with the ICRC in April 1995. On 30 October 1998, the State Commission issued a certificate, showing that Meho Avdić was a missing person since 10 May 1992.

3. CH/02/11608 Hasiba HARBAŠ (for Latifa BEGZADIĆ)

10. On 5 June 1992, Latifa Begzadić, the applicant's daughter, was apprehended by Serb forces from their family house in Sikirić on the territory of the Municipality of Bratunac and taken in an unknown direction. After this event, all traces of her were lost. A tracing request was opened with the ICRC in April 1995. On 11 April 2002, the State Commission issued a certificate, showing that Latifa Begzadić was a missing person since 5 June 1992.

4. CH/02/12070 Kada MUJČIĆ (for Ibro MUJČIĆ)

11. In May 1992, the applicant and her family were expelled from their home village on the territory of the Municipality of Bratunac. On 13 May 1992, Ibro Mujčić, the applicant's brother, was apprehended by Serb forces while fleeing. There is no further information about his fate. A tracing request was opened with the ICRC in April 1995. On 23 July 2002, the State Commission issued a certificate, showing that Ibro Mujčić was a missing person since 13 May 1992.

5. CH/02/12565 Zumreta IBIŠEVIĆ (for Mehmed IBIŠEVIĆ)

[2] The entire text of all indictments and judgments can be found both in English and in the national language on the ICTY's website (www.un.org/icty).

12. On 10 May 1992, the applicant and Mehmed Ibišević, her husband, fled from Glogova on the territory of the Municipality of Bratunac towards Srebrenica. While fleeing, her husband was apprehended by Serb forces and was never seen again. A tracing request was opened with the ICRC in March 1996. On 19 July 2002, the State Commission issued a certificate, showing that Mehmed Ibišević was a missing person since 9 May 1992.

6. CH/02/12655 Mevlida SALKIĆ (for Džemal SALKIĆ)

13. According to the applicant, on 5 May 1992, their family house in Hranči on the territory of the Municipality of Bratunac was burned down by Serb forces. When the applicant and her husband, Džemal Salkić, fled the area, her husband was apprehended by Serb forces and never seen again. A tracing request was opened with the State Commission on 9 January 1996, and on 19 September 2002, the State Commission issued a certificate, showing that Džemal Salkić was a missing person since 9 May 1992. A tracing request with the ICRC was opened in March 2002.

7. CH/02/12749 Fata SALKIĆ (for Šaban SALKIĆ)

14. On 9 May 1992, the applicant and Šaban Salkić, the applicant's husband, together with their daughter, were apprehended by soldiers of the RS Army and taken to Bratunac. The applicant and her daughter were put on buses to Kladanj, whereas Šaban Salkić stayed behind in Bratunac. His fate from that date on is unknown. A tracing request was opened with the ICRC in March 1995. On 13 August 2002, the State Commission issued a certificate, showing that Šaban Salkić was a missing person since 9 May 1992.

8. CH/03/13152 Hiba MALAGIĆ (for Begajeta MUJIĆ)

15. In June 1992, the applicant and her family fled their home due to the onslaught against Bratunac. While fleeing, Begajeta Mujić, the applicant's daughter, was captured by Serb forces. From that time, all traces of her were lost. A tracing request was opened with the ICRC on 10 April 1995, registering Begajeta Mujić as a missing person since 26 June 1992. On 19 April 2002, the State Commission issued a certificate, showing that Begajeta Mujić was a missing person since 26 June 1992.

9. CH/03/13204 Hatidža KARIĆ (for Dževad KARIĆ)

16. In May 1992, the applicant and her family were apprehended by Serb forces and taken to a camp in Bratunac. Dževad Karić, the applicant's son, was singled out along with other men and taken to the primary school "Vuk Karadžić". Since then all traces of him have been lost. A tracing request was opened with the State Commission in 1994 and with the ICRC on 16 March 1995, registering Dževad Karić as a missing person since 10 May 1992.

IV. RELEVANT LEGISLATION

A. Agreement on Refugees and Displaced Persons

17. 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

18. 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).

19. 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, ..."

20. 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."

21. 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."

22. 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."

23. 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

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 17 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".

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 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

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

33. 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

34. 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

35. The applicants are all immediate family members of Bosniak men and women who have disappeared and presumably have been killed during or following the armed take-over of the Municipality of Bratunac by the RS Army in May 1992 and the months thereafter. 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 in 1992. They seek to know the truth. All of the applicants also seek compensation for their continuing suffering.

VI. SUBMISSIONS OF THE PARTIES

A. The respondent Party

36. In its observations of 4 September 2003, the Republika Srpska claims that the applications, as regards their factual statements, are incomplete, vague and of no probative value to show beyond reasonable doubt that the respondent Party could be held accountable for the fate of the missing persons.

37. 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 or by the Federal Commission for Missing Persons. In this context, the respondent Party submits that the applicants have lodged tracing requests with the State Commission only in 2002, and that the present applications have come to its knowledge only recently. Secondly, as the underlying events occurred before the entry into force of the Agreement, the Republika Srpska could not be held responsible *ratione personae* for the events complained of; moreover, the Chamber lacked jurisdiction *ratione temporis* to consider the cases. Thirdly, the respondent Party proposes that the applications should be declared inadmissible on grounds of *lis alibi pendens*, pursuant to Article VIII(2)(d) of the Agreement, considering that according to the applicants, there had been an "organised visit" to the United Nations Human Rights Committee.

38. 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 applicants' rights under Article 8 of the Convention. Consequently, the respondent Party also considers the compensation claims submitted by the applicants to be ill-founded.

B. The applicants

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

VII. OPINION OF THE CHAMBER

A. Admissibility

40. 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

41. 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...".

42. 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.

43. 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. Although eight of the applicants in the present cases requested information from the ICRC in 1995 or 1996, which was submitted to the authorities concerned within the framework of the Working Group (see paragraph 5 above), and the applicant Mevlida Salkić (case no. CH/02/12655) opened a tracing request with the State Commission in January of 1996, they did not request information directly from the RS Commission.

44. 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."

45. Furthermore, the Chamber recalls that under the *Process for tracing persons unaccounted for* (see paragraphs 24 *et seq.* above), as well as in Article V of Annex 7 quoted above, the State of Bosnia and Herzegovina and the Entities, including the 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 25 above). All of the applicants have addressed the ICRC and opened tracing requests for their missing loved ones. These tracing requests were opened in 1995 or 1996, with the exception of the applicant Mevlida Salkić (case no. CH/02/12655), whose tracing request with the ICRC was only opened in March 2002, but who opened a tracing request with the State Commission in January of 1996. The Chamber further notes that the ICRC has expressly confirmed that all the "cases have been submitted to the Authorities concerned within the framework of the Working Group on Persons Unaccounted for in Bosnia and Herzegovina. Since no answer has been provided to these Tracing Requests as of today they still have a status of pending cases" (see paragraph 5 above).

46. 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 Bratunac through the *Process for tracing persons unaccounted for*. In the present cases the respondent Party has had at least seven years to gather such information, and the authorities have provided no information whatsoever on the fate and whereabouts of any of the applicants' missing loved ones.

47. Considering that eight of the applicants have addressed the ICRC in 1995 or 1996 with a tracing request, and also considering that the applicant Mevlida Salkić (case no. CH/02/12655) has opened a tracing request with the State Commission in January of 1996, and that all applicants registered their loved ones as missing from Bratunac, 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*

48. 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."

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

50. 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).

51. 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).

52. 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))).

53. The Chamber recalls that all of the applicants opened tracing requests with the ICRC or the State Commission in 1995 or 1996. Yet, more than 11 years after the events in question, and eight years after the Agreement entered into force, 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 violation of the human rights of the applicants by the respondent Party, which 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*

54. As the Chamber explained in the case of *Savka Kovačević v. The Federation of Bosnia and Herezgovina* (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."

55. The respondent Party suggests that the applications be declared inadmissible pursuant to this provision, on the ground that the there had been an "organised visit" by the applicants to the Human Rights Committee of the United Nations. The respondent Party, in its observations on the admissibility and merits of the applications of 4 September 2003, submitted that "… it can be assumed that the applicants have initiated proceedings before the Commission of the UN through the law office of Mesud Đonko and Colleagues from Mostar, which was authorised to represent applicants from Srebrenica to claim compensation before the United Nations."

56. The Chamber notes that the Human Rights Committee of the United Nations was established to monitor the implementation of the International Covenant on Civil and Political Rights and to examine individual petitions under the procedure governed by the Optional Protocol to the Covenant. However, on 27 November 2003, the Chamber has ascertained that the applicants have not addressed the Human Rights Committee of the United Nations in any form and that no case concerning them has been registered for consideration by the Committee under the Optional Protocol. In the circumstances, 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

57. 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 Articles I(14) and II(2)(b) of the Agreement.

B. Merits

58. 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)

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

> "(1) Every one has the right to respect for his private and family life….
>
> (2) 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."

60. 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).

61. In the present applications, the applicants' family members were taken into custody by soldiers of the RS Army or Serb paramilitary forces during the take-over of the Municipality of Bratunac in May 1992 or in the aftermath thereof. In several cases, the applicant's family member was initially detained in a camp or in the infamous primary school "Vuk Karadžić" in Bratunac, and in all cases the detained persons were never seen again. Each applicant has opened a tracing request with the ICRC, and with the State Commission as well, registering his or her loved one, who was a member of his or her immediate family, as a missing person from Bratunac. No applicant has received any official information on the fate and whereabouts of his or her missing loved one.

62. As the Prosecutor of the ICTY alleged in the indictments against *Milošević, Krajišnik & Plavšić*, at the relevant time, a widespread attack on the civilian Bosniak population of Bratunac was carried out by Serb forces, in the course of which an unspecified number of persons went missing. These allegations formed the basis of the above-mentioned sentencing judgment in the case of *Biljana Plavšić* (see paragraph 7 above).

63. From these underlying facts the Chamber concludes that the authorities of the respondent Party had within their "possession or control" information about persons of Bosniak origin from Bratunac who were detained 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 paramilitary forces 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 action whatsoever 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 Republika Srpska have interviewed any of the members of its armed forces who were involved in the events of the take-over of Bratunac and the treatment of the Bosniak civilian population, 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 of the Bratunac take-over. 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*.

64. 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)

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

66. 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).

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

- response, reactions, and attitude of the authorities to the complaints and inquiries for information about the fate of missing person—complacency, intimidation, and harassment by authorities may be considered aggravating circumstances;

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

68. Applying the above factors to the applicants in the present cases, the Chamber observes that all the applicants are close family members (*i.e.*, wives, mothers or sisters) of persons of Bosniak origin who went missing from Bratunac between May and October 1992. That the applicants have suffered as a result of the events taking place in Bratunac in 1992 and the resultant loss of their loved ones under such conditions and as a result of lack of knowledge about their fate 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.

69. Applying the above factors to the respondent Party, the Chamber observes that the authorities of the Republika Srpska have done nothing to clarify the fate and whereabouts of the presumed victims of the Bratunac events or to take any other action to relieve the suffering of their surviving family members. In particular, they have not investigated the facts concerning the illegal detention of persons of Bosniak origin or the circumstances of disappearances of Bosniak persons occurring in Bratunac between May and October 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 Bratunac. Moreover, the Chamber must note that the authorities of the Republika Srpska were directly involved in the disappearances at Bratunac. None the less, the applicants and other survivors of the Bratunac events of May 1992 and the months thereafter 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.

70. 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 Bratunac during the period of May to October 1992.

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

71. 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

72. 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 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 Bratunac in May 1992 and the

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

VIII. REMEDIES

73. 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.

74. The Chamber recalls that the applicants seek to know the truth about their missing loved ones, who may be presumed victims of the take-over of Bratunac in 1992 and the events thereafter. 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.

75. In accordance with its previous case law in missing persons cases (see, CH/01/8365 *et al.*, *Selimović v. The Republika Srpska*, decision on admissibility and merits of 3 March 2003, paragraphs 205-210), the Chamber will order the 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 Bratunac 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 Bratunac events not previously disclosed.

76. 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 the take-over of Bratunac in 1992 and the accompanying assaults on the non-Serb population, its subsequent efforts to cover up those facts, and the fate and whereabouts of the persons missing from Bratunac since May 1992 and the months thereafter. Such investigation should also be conducted with a view to bringing the perpetrators of any crimes committed in connection with the missing persons from Bratunac 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 Bratunac 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 Bratunac events. The Republika Srpska 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 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 delivery of this decision.

77. The Chamber further finds it appropriate to make a collective compensation award to benefit all the family members of the persons missing since the onslaught on Bratunac in 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 paragraphs 48-53 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 Bratunac events, then the applicants would like to bury the remains of their loved ones in accordance with their traditions and beliefs.

78. 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 for 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.

79. 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 Bratunac 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 Bratunac. 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, until the date of settlement in full.

80. 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 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 Bratunac.

81. 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 Bratunac 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 Bratunac 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

82. 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 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 Human Rights 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 Bratunac in May 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. by 12 votes to 1, 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 accompanying the take-over of Bratunac 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 Bratunac events not previously disclosed;

7. by 12 votes to 1, 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 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 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 Bratunac, to be paid within six months from the date of delivery of this decision, *i.e.*, by 22 June 2004;

9. by 11 votes to 2, 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