



**DECISION ON ADMISSIBILITY AND MERITS  
(delivered on 5 December 2003)**

**Case no. CH/02/9180**

**Boško and Mara JOVANOVIĆ**

**against**

**THE FEDERATION OF BOSNIA AND HERZEGOVINA**

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

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

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

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

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

## **I. INTRODUCTION**

1. The applicants Mara and Boško Jovanović are a married couple of Serb origin who were forced to flee from Glamoč when the Croatian Defence Council (*Hrvatsko Vijeće Obrane*, "HVO") attacked the town on 28 June 1995 during the armed conflict in Bosnia and Herzegovina. They spent three months as refugees travelling towards Banja Luka, when, on 9 September 1995, the HVO attacked Mrkonjić Grad and intercepted the line of refugees. Mara Jovanović disappeared during this attack, and her husband has never seen her again. On 11 January 1996, Boško Jovanović opened a tracing request vis-à-vis his missing wife with the International Committee of the Red Cross. He also registered Mara Jovanović as a missing person with the Commission for Tracing Missing and Detained Persons of the Republika Srpska. The authorities of the respondent Party have provided no information whatsoever on the fate or whereabouts of Mara Jovanović to date and she remains missing.

2. The application raises issues with respect to the applicant Mara Jovanović under Article 2 (right to life) and Article 5 (right to liberty and security of person) of the European Convention on Human Rights (the "Convention"). It further raises issues with respect to the applicant Boško Jovanović under Article 3 (prohibition of torture, inhuman and degrading treatment) and Article 8 (right to respect for private and family life) of the Convention.

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

3. The Chamber received the application on 5 April 2002 and registered it on the same day. The application was filed by Boško Jovanović, and Mara Jovanović is listed in the application form as the "alleged victim" and a missing person.

4. On 11 June 2003, the Chamber wrote to the parties asking them to clarify the identity of the attacking army alleged in the statement of facts.

5. On the same day, 11 June 2003, the Chamber wrote to the Republika Srpska, asking it to provide additional information on the date of disappearance of Mara Jovanović mentioned in the certificate issued by the Commission for Tracing Missing and Detained Persons of the Republika Srpska (the "RS Commission") (see paragraph 19 below). The Chamber notes that the Republika Srpska is not a respondent Party in this case.

6. On 13 June 2003, the Republika Srpska submitted the requested information obtained from the RS Commission.

7. On 17 June 2003, the applicant Boško Jovanović also submitted information responsive to the Chamber's request.

8. On 11 July 2003, the Chamber transmitted the application to the Federation of Bosnia and Herzegovina, as the respondent Party, for its observations on the admissibility and merits under Articles 2, 3, 5, and 8 of the Convention.

9. On 15 August 2003, the respondent Party submitted its observations on the admissibility and merits of the case. The Chamber sent these to the applicant Boško Jovanović on 26 August 2003. On 10 September 2003, Boško Jovanović submitted his observations in reply.

10. On 23 October 2003, the Chamber held a special evidentiary hearing, presided over by Judge Mehmed Deković, at its main office in Sarajevo. In the invitation letters and summons, the parties and witnesses were informed that the critical issue to be determined at the evidentiary hearing was whether or not Mara Jovanović was alive and held in detention by the HVO after 14 December 1995. The following witnesses offered testimony at the evidentiary hearing: Mr. Ostoja Anđelić (proposed by the applicant), Mr. Aleksandar Radeta (Director of the RS Commission), and Mr. Marko Jurišić (Croat Co-President of the Federal Commission for Missing Persons). The applicant Boško Jovanović

and Ms. Safija Kulovac, Acting Secretary of the Office for Cooperation and Representation before the Human Rights Commission, were also present and participated in the evidentiary hearing.

11. Upon the applicant's proposal, the Chamber further summoned Mr. Vojin Todić and Ms. Joka Zeljković to appear as witnesses at the special evidentiary hearing held on 23 October 2003, but the evening before the evidentiary hearing the applicant informed the Chamber that they were unable to travel from Mrkonjić Grad to Sarajevo due to their advanced age. Lastly, the Chamber summoned Mr. Milan Ivančević of the RS Commission to appear as a witness, but the RS Commission decided that only Mr. Radeta would attend the evidentiary hearing and offer testimony.

12. On 28 October 2003, Boško Jovanović submitted an original receipt for his travel expenses to attend the special evidentiary hearing in Sarajevo in the amount of 180 KM.

13. On 3 and 17 November 2003, the applicant submitted a written proposal for the Chamber to hear the testimony of two additional witnesses, Borivoj Azarić and Vlado Đaković, in Mrkonjić Grad.

14. On 12 November 2003, the Chamber transmitted the verbatim record of the special evidentiary hearing to the parties and provided them with an opportunity to propose any corrections pursuant to Rule 42 of the Chamber's Rules of Procedure. The Chamber received no proposed corrections to the text of the verbatim record.

15. The Chamber deliberated on the application on 5 June, 2 July, 9 October, 7 November, and 1 and 2 December 2003. On the latter date the Second Panel rejected the applicant's proposal to hear additional witnesses and referred the application to the plenary Chamber pursuant to Rule 29 of the Chamber's Rules of Procedure. The plenary Chamber adopted the present decision on admissibility and merits on 3 December 2003.

### **III. STATEMENT OF FACTS**

#### **A. Summary of documents in case file**

16. The applicants are husband and wife of Serb origin, who are displaced persons from Glamoč, the Federation of Bosnia and Herzegovina. They have one son and one daughter.

17. The applicants lived in Glamoč until 28 June 1995, when, due to an offensive by the Croatian Defence Council (*Hrvatsko Vijeće Obrane*, "HVO") during the armed conflict in Bosnia and Herzegovina, they were forced to leave their home and flee. They spent three months travelling and seeking refuge amidst the line of people fleeing towards Mrkonjić Grad and Banja Luka from Glamoč. When Mrkonjić Grad was attacked, the line of people seeking refuge was intercepted by the HVO on 9 September 1995, and Mara Jovanović was "forcibly and violently taken away". Boško Jovanović never saw his wife again. He heard she was raped, tortured, and most likely killed thereafter. He reported his wife's disappearance to the International Committee of the Red Cross ("ICRC"), the RS Commission, and Caritas (a Catholic charitable organisation). He filed official tracing requests with both the ICRC and the RS Commission in respect of Mara Jovanović's disappearance on 9 September 1995.

18. On 12 January 2000, the ICRC issued a certificate confirming that on 11 January 1996, a tracing request was opened for Mara Jovanović, whose whereabouts are unknown after 9 September 1995. As of the date of the certificate, the ICRC considered the case still open.

19. On 5 February 2002, the RS Commission issued a certificate declaring Mara Jovanović captured by the HVO, ostensibly last seen on 20 December 1995 in Podgorja-Mrkonjić Grad. On 13 June 2003, the RS Commission elaborated upon the basis for the certificate and explained that "when Glamoč was taken over by the HVO, according to available data, she was captured. She cooked and did laundry for the soldiers who held her in captivity. She was last seen in the village Podgorja-Mrkonjić Grad, on 20 December 1995, when the HVO unit which held her in captivity was located there. The persons mentioned in the application were taken to the borderline a few days

later and released to territory under the control of the VRS [Army of the Republika Srpska]". Thereafter, the RS Commission has no further information about Mara Jovanović.

20. Based on the request of Boško Jovanović of 16 October 2001, the First Instance Court in Banja Luka issued a procedural decision in out-of-court proceedings on 15 March 2002 declaring the missing person Mara Jovanović dead as of 9 September 1995. The Court ordered the Registration Office of the Glamoč Municipality to enter her into the official register of deceased persons. The reasoning explains that the claimant (Boško Jovanović) stated that on 9 September 1995, his wife was taken from the line of refugees fleeing from Glamoč towards Banja Luka by the Croatian Army<sup>1</sup>, and since then nothing has been known of her. She is assumed to have died on that date. The claimant requested that she be declared dead so that he could realise certain property rights. In support of its decision, the Court heard two witnesses, Slobodan Šolak and Mile Marinović, in addition to the claimant, who were also part of the line of refugees; they confirmed that on 9 September 1995, Glamoč was attacked. Mara was towards the back of the line of refugees, taking care of the cattle. The line was attacked by the Croatian Army, some people were captured, and others were killed immediately. The witnesses stated that when they noticed that Mara was missing, they went looking for her, and they found the body of a neighbour, Mihajlo Ninković, who had been with her. The neighbour had been killed on the road, but Mara was nowhere to be seen. They stated that when they arrived in Mrkonjić Grad, they reported her missing with the ICRC, but to date she has not been found. The Court publicised an announcement in the Official Gazette of the Republika Srpska of 3 December 2001 calling for any persons knowing anything about the life of Mara Jovanović to report to the Court within 3 months. As no reports were made during the time limit, the Court declared Mara dead as of 9 September 1995 "because it is assumed that the missing person did not survive that day".

## **B. Summary of witness statements**

21. As stated above, on 23 October 2003, the Chamber held a special evidentiary hearing, presided over by Judge Mehmed Deković, in order to determine whether Mara Jovanović was alive and held in detention by the HVO after 14 December 1995 (see paragraph 10 above). The witness statements from this special hearing, in relevant part, are summarised as follows:

### **1. Testimony from the applicant Boško Jovanović**

22. Mr. Jovanović described the events of 9 September 1995, the day he last saw his wife, Mara Jovanović. Mr. Jovanović stated that they were travelling in a column of refugees from the village of Podgorje towards Mrkonjić Grad and Banja Luka. He was travelling ahead of his wife with the tractor, while his wife was well behind him with their livestock. His wife was also with Vojin Todić, Ostoja Anđelić, and Mihajlo Ninković. The army attacked the line of refugees and his wife was abducted. Mr. Ninković was killed, while Mr. Todić and Mr. Anđelić managed to escape. The following day he returned to the site from where his wife was abducted, and he informed the Army of the Republika Srpska of her abduction, but they told him to leave the area. Mr. Jovanović also explained that Joka Zeljković and Dušan Zeljković, who were both abducted for a period of four days, described to him seeing Mara Jovanović held in captivity.

23. Mr. Jovanović stated that he did not report his wife as missing to the Federal Commission for Missing Persons. His son and daughter were in Belgrade at the time of his wife's abduction, but when their daughter returned she had a nervous breakdown and he was preoccupied with taking care of her at that time.

24. Mr. Jovanović stated that upon reporting his wife missing to the RS Commission, he also identified Mr. Anđelić and Mr. Todić as witnesses.

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<sup>1</sup> The Chamber notes that although the procedural decision of the First Instance Court in Banja Luka of 15 March 2002 refers to the "Croatian Army", the submissions in the case file clarify that the attacking army was the HVO and not the Army of the Republic of Croatia.

25. As to the issuance of Mara Jovanović's death certificate, he stated that he was present in court at the time the witnesses were heard, but that his son had proposed these two witnesses.

26. At the close of the evidentiary hearing, Mr. Jovanović stated that he had informed the RS Commission of the date of 20 December 1995 as the date his wife was last seen based on the testimony of witnesses. He suggested that the Chamber should call "Vlado Đaković" to testify as a witness. He admitted that he last saw his wife on 9 September 1995, but he insists that she is still alive. He stated, "I consider that my wife is still alive, she was abducted alive, that day she was abducted she was still alive, and 4 to 5 days after her abduction she was still alive, and then 20 or so days after her abduction she was still alive, and that she is to this day still alive, and that is all I can say".

## **2. Testimony from the witness Ostoja Anđelić**

27. Mr. Anđelić testified that he is a long time friend of Boško and Mara Jovanović. On 9 September 1995, Mr. Anđelić was travelling in the column of refugees with Boško and Mara Jovanović. He saw Mara Jovanović being abducted by the HVO and was nearly abducted himself, but he managed to escape. He has not seen Mara Jovanović since that day, 9 September 1995. Upon returning to the area in February 1996, he learned from neighbours, Dušan Zeljković and Joka Zeljković, that Mara Jovanović had been held captive by the HVO and seen three or four days after being abducted on 9 September 1995. Dušan Zeljković died two years ago, and Joka Zeljković is ill and elderly and not able to testify before the Chamber. As to the date of 20 December 1995, Mr. Anđelić could not confirm that Mara Jovanović was seen on this date. He stated that he has never given any statement in connection with the abduction of Mara Jovanović to any body, before being called to testify before the Chamber.

## **3. Testimony from the witness Aleksandar Radeta, Director of the RS Commission**

28. Mr. Radeta testified that he met Mr. Jovanović for the first time in October 1997, when Mr. Jovanović came to his office to report his wife missing.

29. He stated that, when Mr. Jovanović submitted his tracing request to the RS Commission, Mr. Radeta and his colleague accompanied Mr. Jovanović to the site where Mara Jovanović was abducted, but they did not find any trace of the body. The RS Commission further submitted the information to the police. His colleague, Mr. Ivančević, also made a second visit most probably this year (2003) to the site where Mara Jovanović was abducted, accompanied by Mr. Jovanović, and he made contact with persons at the location. Mr. Radeta offered to forward to the Chamber the minutes from this site visit.

30. As to the two documents issued by his office, dated 5 February 2002 and 13 June 2003, both asserting that Mara Jovanović was seen alive on 20 December 1995, Mr. Radeta stated that this assertion was based exclusively on the statement of Mr. Jovanović and that he could not verify this information.

31. Mr. Radeta testified that he has been in contact with the criminal unit of the Police Department in Mrkonjić Grad surrounding missing person cases from Mrkonjić Grad, including Mara Jovanović, but he has not obtained any information regarding her case.

## **4. Testimony from the witness Marko Jurišić, Co-President of the Federal Commission for Missing Persons**

32. Mr. Jurišić stated that until he received the invitation to testify before the Chamber, he had not heard of the case of Mara Jovanović and that she has not been reported as a missing person to the Federal Commission for Missing Persons (the "Federal Commission"). When questioned as to whether anyone at the Federal Commission has information regarding the fate and whereabouts of Mara Jovanović, Mr. Jurišić stated that he could not answer that question as he did not know. As to whether anyone else in the Federal Commission has been contacted regarding Mara Jovanović, he stated that it was not known to him, although he added that, "I can only speak on my own behalf, and not in the name of the institution which I represent".

#### **IV. RELEVANT LEGISLATION**

##### **A. Agreement on Refugees and Displaced Persons**

33. 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**

34. 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).

35. 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, ....”

36. 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.”

37. 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.”

38. 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.”

39. 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**

40. 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 33 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”.

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

42. 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).

43. 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**

44. 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, 53<sup>rd</sup> 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**

45. 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.

46. 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**

47. 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.

48. 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**

49. According to Republika Srpska, 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**

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

#### **D. Law on Obligations**

51. The Law on Obligations of the Federation of Bosnia and Herzegovina (Official Gazette of the Republic of Bosnia and Herzegovina nos. 2/92, 13/93 and 13/94; Official Gazette of the Federation of Bosnia and Herzegovina no. 29/03) “regulates obligations which arise from contracts, the infliction of damage, acquisition without legal grounds, business conduct without order, unilateral statements of will and other facts stipulated by law” (Article 1).

52. Article 200 provides for monetary compensation, as follows:

“(1) The court shall allocate just monetary compensation for suffered bodily pain, mental suffering due to a decrease of life activity, impairment, violated reputation, honour, freedom or personal right, death of a close person, as well as for fear, if it establishes that this is justified taking into account the circumstances of the case and especially the intensity of the pain and fear, regardless of whether compensation for material damage exists or not.

“(2) While deciding about the request for compensation of consequential damage, as well as about the amount of compensation, the court shall take into account the significance of the damaged goods and the purpose of the compensation, as well as ensure that the compensation does not favour tendencies which would not be compatible with its nature and social purpose.”

53. Article 201 concerns persons entitled to monetary compensation in the event of death or severe disability. It provides, in pertinent part:

“(1) In the event of death of a person, the court may award to the members of his/her close family (spouse, children and parents) just monetary compensation for their mental suffering. ...”

## V. COMPLAINTS

54. The applicant Boško Jovanović alleges violations of Articles 2 (right to life), 5 (right to liberty and security of person), 3 (prohibition of torture, inhuman or degrading treatment), and 8 (right to respect for private and family life) of the Convention. He states, “I never received any information on the fate of my wife, who is also the mother of my daughter. Our private and family lives were destroyed, as well as all these years of anxiety and anguish caused by the uncertain fate of my wife.” He further refers to the Chamber’s decision in *Avdo and Esma Palić v. The Republika Srpska* (case no. CH/99/3196, decision on admissibility and merits delivered on 11 January 2001, Decisions January—June 2001), in support of his claims. He seeks compensation for non-pecuniary damages in the amount of 90,000 KM.

## VI. SUBMISSIONS OF THE PARTIES

### A. The respondent Party

55. The respondent Party does not set forth any information relevant to the fate or whereabouts of Mara Jovanović, nor does it describe any actions it has taken to clarify her fate or whereabouts.

56. The respondent Party notes that Boško Jovanović did not approach the State Commission for Tracing Missing Persons with a view to obtaining information about his missing wife. It further expressly disputes the facts submitted by the RS Commission, especially vis-à-vis the date of disappearance and presumed death of Mara Jovanović. The respondent Party argues as follows:

“In the present case, the respondent Party emphasises the fact that, according to the report from the International Committee of the Red Cross (the “ICRC”) dated 12 January 2000, it was established that Mara Jovanović had been unaccounted for since 9 September 1995, and the same date was determined as the date of her death by the decision of the First Instance Court of 15 March 2002. Namely, in the course of hearing the evidence, the First Instance Court in Banja Luka heard a series of witnesses who confirmed that Mara Jovanović was last seen on 9 September 1995. Thus, the respondent Party notes that the certificates of the RS Commission for Tracing Missing and Detained Persons of 5 February 2002 and 13 June 2003, respectively, are obviously in discrepancy with the ICRC report of 12 January 2000 and with the First Instance Court decision of 15 March 2002. Therefore, the certificates of the RS Commission for Tracing Missing and Detained Persons of 5 February 2002 and 13 June 2003 do not meet the basic conditions, either in form or in substance, to place any trust in them, *i.e.* they are not based upon objective evidence.”

57. With respect to admissibility, the respondent Party submits that the application is inadmissible in its entirety. Firstly, it argues that the application is not compatible with the Agreement *ratione temporis* because Mara Jovanović was last seen on 9 September 1995. According to the respondent Party, “there is no evidence that his wife was imprisoned after [14 December 1995], no evidence that the respondent Party held the applicant’s wife in detention after 14 December 1995, and no evidence that the applicant’s wife was ever seen after 14 December 1995”.

58. Secondly, the respondent Party contends that effective domestic remedies have not been exhausted because Boško Jovanović did not address any body of the respondent Party, nor the State Commission, regarding the disappearance of his wife. Moreover, Boško Jovanović should have submitted a claim for compensation pursuant to Articles 542, 543, and 545 of the Code of Criminal Procedure. However, recognising that these provisions of the Code of Criminal Procedure were not applicable at the relevant time, the respondent Party suggests that Boško Jovanović should have initiated a lawsuit before the competent domestic court to realise his compensation claim for damages in accordance with the Law on Obligations.

59. The respondent Party further opines that the application is ill-founded on the merits. With respect to Article 2 of the Convention, the respondent Party states that there has been no violation

because, although Boško Jovanović reported the disappearance of his wife to the ICRC on 11 January 1996, “he did not take any legal action whereby the bodies of the respondent Party would penalise the intentional killing by an individual or representatives of the authorities who acted beyond the scope of their legal authority”.

60. With respect to Article 5 of the Convention, the respondent Party emphasises that “the applicant has no evidence that Mrs. Mara Jovanović was imprisoned by the HVO after 14 December 1995, nor evidence that the respondent Party held his wife in detention after 14 December 1995”. Considering that Boško Jovanović did not address the authorities of the respondent Party concerning his wife’s fate and that “no investigation was conducted before the authorities of the respondent Party upon the applicant’s request”, the respondent Party also did not violate Article 5 of the Convention.

61. Concerning Article 3 of the Convention, the respondent Party again notes that Mara Jovanović was last seen on 9 September 1995, during the armed conflict, as confirmed by the procedural decision of the First Instance Court in Banja Luka of 15 March 2002. It states that Boško Jovanović has not provided evidence that his wife was the victim of an enforced disappearance, nor that she was subjected to any physical abuse. Therefore, there can be no violation of Mara Jovanović’s rights protected by Article 3 of the Convention. In addition, since Boško Jovanović did not address the authorities of the respondent Party for an explanation of his wife’s disappearance, there also can be no violation of his rights under Article 3 of the Convention. For the same reasons, the respondent Party submits it did not violate Boško Jovanović’s rights protected by Article 8 of the Convention.

## **B. The applicants**

62. In response to the observations of the respondent Party, the applicant Boško Jovanović clarifies that he reported the disappearance of his wife to the ICRC on 11 January 1996 based upon the information available to him at that time. Thereafter, he learned about the witnesses Ostoja Anđelić and Vojin Todić from Podgorje-Mrkonjić Grad, who provided him with “further information” about the fate of his wife (see paragraphs 22-26 above). He reported this information to the RS Commission, which visited the site where Mara Jovanović was abducted, “but the visits were unsuccessful” (see paragraph 29 above). The certificate of the RS Commission was issued based upon “that information and conversations with the witnesses” (see paragraph 30 above). Boško Jovanović requests the Chamber to invite the witnesses Ostoja Anđelić and Vojin Todić to testify before it about the fate of Mara Jovanović. He further notes that as a consequence of his wife’s disappearance, his daughter has suffered a nervous breakdown, and he submits medical findings dated 7 February 2002 supporting this claim.

63. With respect to exhaustion of domestic remedies, Boško Jovanović notes that he reported the disappearance of his wife to the RS Commission. He points out that the arguments of the respondent Party, contending that he should have addressed the authorities of the Federation of Bosnia and Herzegovina, are “incorrect because the information in possession of one side (Commission) is submitted to the other side through the Working Group, and the opposite party is obliged to process the mentioned information”. As authority, he cites the Chamber’s decision in the Srebrenica cases (case nos. CH/01/8365 *et al.*, *Selimović and Others*, decision on admissibility and merits delivered on 7 March 2003).

## **VII. OPINION OF THE CHAMBER**

### **A. Admissibility**

64. Before considering the merits of the application, the Chamber must decide whether to accept it, taking into account the admissibility criteria set forth in Article VIII(2) of the Agreement. In accordance with Article VIII(2) of the Agreement, “the Chamber shall decide which applications to accept.... In so doing, the Chamber shall take into account the following criteria: (a) Whether effective remedies exist, and the applicant has demonstrated that they have been exhausted....

(c) The Chamber shall also dismiss any application which it considers incompatible with this Agreement, manifestly ill-founded, or an abuse of the right of petition.”

### **1. Compatibility *ratione temporis***

65. Firstly, the respondent Party argues that the application is incompatible *ratione temporis* with the Agreement because Mara Jovanović was last seen alive on 9 September 1995.

66. 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).

67. Thus, whilst 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, it is fully competent to consider whether events occurring and continuing after 14 December 1995 have resulted in violations of human rights (*id.*). The Chamber may also consider events occurring prior to 14 December 1995 as relevant evidence or contextual or background information to events occurring after 14 December 1995 (case no. CH/97/67, *Zahirović*, decision on admissibility and merits delivered on 8 July 1999, paragraphs 104-105, Decisions January–July 1999).

#### **a. As applied to the alleged violations of Articles 2 and 5 of the Convention on behalf of Mara Jovanović**

68. In *Palić v. The Republika Srpska*, the Chamber explained that it may consider claims on behalf of missing persons who disappeared prior to the entry into force of the Agreement when there is “circumstantial evidence” that the missing person was alive and held in detention on or after 14 December 1995. Such was the case in *Palić*, where two witnesses provided evidence that suggested that Colonel Palić was alive and held in detention after 14 December 1995. Accordingly, the Chamber declared the application admissible under Articles 2 and 5 of the Convention on behalf of Colonel Palić (case no. CH/99/3196, *Palić*, decision on admissibility and merits delivered on 11 January 2001, Decisions January–June 2001, paragraphs 41-44).

69. In the present case, the Chamber notes that according to the certificate received from the RS Commission, Mara Jovanović was ostensibly last seen alive on 20 December 1995 (see paragraph 19 above), six days after the entry into force of the Agreement. However, during the special evidentiary hearing, no witnesses were able to confirm this information or clearly explain the basis for it. The Director of the RS Commission explained that the certificate was prepared based exclusively upon the statement of the applicant Boško Jovanović, but the last time he saw his wife was on 9 September 1995 (see paragraph 30 above). The witness proposed by the applicant, Mr. Anđelić, also could not confirm that Mara Jovanović was alive after 14 December 1995 (see paragraph 27 above). Moreover, the First Instance Court in Banja Luka, in extra-judicial proceedings, declared Mara Jovanović dead as of 9 September 1995 “because it is assumed that the missing person did not survive that day” (see paragraph 20 above).

70. Upon the record before the Chamber, the Chamber finds that insufficient evidence exists that Mara Jovanović might have been alive and held in detention by the HVO after the entry into force of the Agreement on 14 December 1995. Therefore, insofar as the application alleges violations of her rights protected by Articles 2 and 5 of the Convention, it is incompatible with the Agreement *ratione temporis*. Accordingly, the Chamber decides to declare the part of the application concerning claims on behalf of Mara Jovanović inadmissible.

**b. As applied to the alleged violations of Articles 3 and 8 of the Convention on behalf of Boško Jovanović**

71. As the Chamber explained in *Unković v. the Federation of Bosnia and Herzegovina* (case no. CH/99/2150, decision on review delivered on 10 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))).

72. The applicant Boško Jovanović reported the disappearance of his wife to the ICRC on 11 January 1996. He further, additionally, reported her disappearance to the RS Commission. However, to date, he has received no information from the authorities of the respondent Party on the fate and whereabouts of his wife. As such, the application raises allegations of a continuing violation of Boško Jovanović’s rights protected by Articles 3 and 8 of the Convention. This part of the application on behalf of Boško Jovanović’s rights is therefore compatible with the Agreement *ratione temporis*.

**2. Exhaustion of effective remedies**

73. According to Article VIII(2)(a) of the Agreement, the Chamber must consider whether effective remedies exist and whether the applicant has 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.

**a. With respect to the tracing mechanisms of Annex 7**

74. The respondent Party argues that Boško Jovanović has failed to exhaust effective domestic remedies in that he has not addressed any of its organs with a request to obtain information on the fate of his missing wife. It highlights that although Boško Jovanović undeniably requested information about his missing wife from the ICRC as well as the RS Commission, he did not request information directly from the State or Federal Commissions.

75. 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.”

76. Furthermore, the Chamber recalls that under the *Process for tracing persons unaccounted for* (see paragraphs 40-43 above), as well as in Article V of Annex 7 quoted above, the State of Bosnia and Herzegovina and the Entities, including the Federation of Bosnia and Herzegovina, agreed to cooperate in the effort to trace unaccounted for persons. The *Process for tracing persons unaccounted for* further clarifies that the Parties shall share information, and a copy of all tracing requests are provided to the Working Group, which has six representatives of the Federation of Bosnia and Herzegovina (see paragraph 41 above). As can be seen above, it is indisputable that the applicant Boško Jovanović filed tracing requests with both the ICRC and the RS Commission, as early as 11 January 1996. Taking into account the respondent Party's obligation under Article V of Annex 7 to "cooperate fully with the ICRC in its efforts to determine the identities, whereabouts and fate of the unaccounted for" and the fact that all tracing requests were provided to representatives of the Federation of Bosnia and Herzegovina through the Working Group, the Chamber considers that the relevant authorities of the respondent Party were made aware of the applicant's requests for information about the fate and whereabouts of his missing wife through the *Process for tracing persons unaccounted for*.

77. Considering that Boško Jovanović registered Mara Jovanović as a missing person since 9 September 1995 with both the ICRC and the RS Commission, the Chamber concludes that the remedy provided for in Annex 7 has been exhausted for the purposes of Article VIII(2)(a) of the Agreement. Therefore, the Chamber rejects this ground for declaring the application inadmissible.

**b. With respect to the claim for compensation**

78. The respondent Party further objects to the claim for compensation for non-pecuniary damages because Boško Jovanović has failed to initiate civil proceedings for compensation pursuant to the Law on Obligations (see paragraphs 52-53 above).

79. However, taking into consideration that Boško Jovanović is claiming compensation for non-pecuniary damages before the Chamber as a remedy for the alleged violations of his and his wife's human rights protected under the Agreement, the respondent Party's argument that he failed to exhaust domestic remedies is ill-founded and based upon a misunderstanding of Article VIII(2)(a) of the Agreement. This provision requires an applicant to avail himself of domestic remedies regarding the alleged violations, and not regarding compensation claimed before the Chamber as a remedy for those violations. The Chamber may therefore award compensation, if — having found a breach of the Agreement — it deems that compensation would provide a proper remedy for an established breach. In this respect it is irrelevant whether or not the applicant has submitted a similar claim for compensation to a competent domestic authority (see case no. CH/99/2150, *Unković v. The Federation of Bosnia and Herzegovina*, decision on review delivered on 10 May 2002, Decisions January—June 2002, paragraph 98).

80. Therefore, the Chamber rejects this ground for declaring the applicants' claim for compensation inadmissible.

**3. Conclusion as to admissibility**

81. As explained above, the Chamber has rejected the respondent Party's objections to the application based upon failure to exhaust domestic remedies. In response to the objection based upon compatibility *ratione temporis*, on the one hand, the Chamber declares the application inadmissible *ratione temporis* on behalf of Mara Jovanović under Articles 2 and 5 of the Convention due to the lack of sufficient evidence that she was alive and held in detention after 14 December 1995. On the other hand, it declares the application admissible with respect to claims arising or continuing after 14 December 1995 under Articles 3 and 8 of the Convention on behalf of Boško Jovanović.

**B. Merits**

82. Under Article XI of the Agreement, the Chamber must next address the question of whether the facts established above disclose a breach by the respondent Party of its obligations under the

Agreement. Under Article I of the Agreement, the parties are obliged to “secure to all persons within their jurisdiction the highest level of internationally recognised human rights and fundamental freedoms,” including the rights and freedoms provided for in the Convention.

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

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

84. The respondent Party contends that it has not violated Article 3 of the Convention because Boško Jovanović has not provided evidence that his wife was the victim of an enforced disappearance and because he did not address the authorities of the respondent Party for an explanation of his wife’s disappearance (see paragraph 61 above).

85. 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 delivered on 10 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 delivered on 7 March 2003, paragraphs 182-191; see also case no. CH/99/3196, *Palić*, decision on admissibility and merits delivered on 11 January 2001, 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 delivered on 10 May 2002, paragraph 114, Decisions January—June 2002).

86. 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).

87. Applying the above factors to the applicant Boško Jovanović, the Chamber observes that he is the husband of Mara Jovanović, who has been missing from Mrkonjić Grad since 9 September 1995. They had been travelling together as refugees for three months as a result of the armed conflict between the Serbs and the Croats in Bosnia and Herzegovina when the HVO attacked the line of refugees in Mrkonjić Grad and captured his wife. Mr. Anđelić, a long time friend of the Jovanovićs, saw Mara being abducted by the HVO and barely escaped himself. He and Mr. Jovanović both testified that two neighbours, Dušan and Joka Zeljković, said they were held captive by the HVO along with Mara Jovanović for three or four days after their abduction. Boško Jovanović opened a tracing request with the ICRC for his wife on 11 January 1996. He also registered her as a missing person with the RS Commission. Thereafter, when he discovered eye-witnesses of his wife’s unlawful detention by the HVO, he brought these witnesses to the attention of the RS Commission in an effort to clarify the fate and whereabouts of his missing wife. He and the RS Commission further visited the site of Mara’s abduction on two occasions, but these visits did not result in a clarification of Mara’s fate and whereabouts. That he and his children, especially his daughter, have suffered emotional anguish and trauma as a result of the events taking place in Glamoč and then Mrkonjić Grad in 1995 and the resultant loss of their wife and mother under such conditions is apparent from the application. 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.

88. Applying the above factors to the respondent Party, the Chamber observes that the authorities of the Federation of Bosnia and Herzegovina have done nothing to clarify the fate and whereabouts of Mara Jovanović nor to take any other action to relieve the suffering of her husband and children. In particular, they have not investigated the facts concerning the alleged unlawful detention of Mara Jovanović by the HVO in the village of Podgorja-Mrkonjić Grad. They further have produced no evidence of interviewing any of the members of the HVO who took part in the attack against Mrkonjić Grad and the detention of captives in Podgorja-Mrkonjić Grad, no evidence of contacting any surviving captives or family members for information, and no evidence of substantively assisting the actions of others (e.g., the ICRC, the RS Commission, the International Commission on Missing Persons (ICMP), or the International Criminal Tribunal for the former Yugoslavia (ICTY)) to clarify the fate of Mara Jovanović or any other persons missing since the HVO attack against Mrkonjić Grad in September 1995. This is so, despite the information brought forward to the RS Commission by Mr. Jovanović. The Chamber further observes that in preparing its observations in this case, the respondent Party did not even consult the Federal Commission for Missing Persons for information prior to submitting its observations, as confirmed by the testimony of its Co-President Mr. Jurišić (see paragraph 32 above). Consequently, Boško Jovanović has waited for nearly nine years for official clarification of the fate and whereabouts of his wife, last seen under the control of the HVO, for which the respondent Party bears responsibility. As no meaningful information has been forthcoming, the reaction of the authorities of the Federation of Bosnia and Herzegovina can only be described as “complacency” or indifference.

89. Taking all of the applicable factors into account, both with respect to the applicant and the respondent Party, the Chamber concludes that the respondent Party has violated the right of Boško Jovanović to be free from “inhuman and degrading treatment”, as guaranteed by Article 3 of the Convention, in that it has failed to inform him about the truth of the fate and whereabouts of his missing wife and thereby subjected him to serious, long-lasting emotional suffering.

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

90. 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.”

91. The respondent Party raises the same objection to the claim under Article 8 of the Convention as to the claim under Article 3 of the Convention. Namely, it contends that it has not violated Article 8 because Boško Jovanović did not address the authorities of the respondent Party for an explanation of his wife's disappearance (see paragraph 61 above).

92. 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 delivered on 10 May 2002, paragraph 126, Decisions January—June 2002; *accord* case no. CH/99/3196, *Palić v. the Republika Srpska*, decision on admissibility and merits delivered on 11 January 2001, paragraphs 82-84, Decisions January—June 2001; CH/01/8365 *et al.*, *Selimović and Others v. The Republika Srpska*, decision on admissibility and merits delivered on 7 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).

93. As established above, Mara Jovanović was captured by the HVO on 9 September 1995 and held in unlawful detention for several days thereafter. Therefore, there can be absolutely no dispute that some information about her fate and whereabouts existed in the possession or control of the authorities of the HVO, and thereby the respondent Party. However, the respondent Party has produced to the Chamber absolutely no information or records about her fate or whereabouts. Neither has it produced any information to Boško Jovanović, despite his official requests filed with the ICRC and the RS Commission, made known to the competent authorities of the respondent Party through the *Process for tracing persons unaccounted for*. As the Chamber has previously explained, the possibility that such information and evidence pertaining to the fate of missing persons was lost or destroyed by members of the armed forces of the respondent Party does not relieve the respondent Party of its positive obligations under Article 8 of the Convention (CH/01/8365 *et al.*, *Selimović and Others v. The Republika Srpska*, decision on admissibility and merits delivered on 7 March 2003, paragraph 178). To the contrary, on the record before the Chamber it is clear that the authorities of the Federation of Bosnia and Herzegovina arbitrarily and without justification have failed to take any action whatsoever to locate, discover, or disclose information sought by Boško Jovanović about his missing wife, last seen as a captive of the HVO in September 1995.

94. Therefore, the Chamber concludes that the respondent Party has breached its positive obligation to secure respect for Boško Jovanović's rights protected by Article 8 of the Convention in that it has failed to make accessible and disclose information requested about Mara Jovanović, his missing wife.

### **3. Conclusion as to the merits**

95. In summary, the Chamber concludes that the respondent Party has violated the human rights of Boško Jovanović guaranteed by Articles 3 and 8 of the Convention in that it has failed to clarify the fate and whereabouts of his missing wife, and in addition, it has failed to disclose to the applicant information within its possession and control about the fate and whereabouts of his missing wife.

## VIII. REMEDIES

96. 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. In fashioning a remedy for 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.

97. The Chamber recalls that Boško Jovanović has requested compensation for non-pecuniary damages in the amount of 90,000 KM. He particularly notes that his daughter suffers from a serious mental illness as a result of the disappearance of her mother, and he submits medical findings to support this claim. The respondent Party objects to the compensation claim, arguing that it is ill-founded because Boško Jovanović has not established that he has suffered emotionally over the loss of his wife. Boško Jovanović also submitted an original receipt for his travel expenses to attend the special evidentiary hearing in Sarajevo on 23 October 2003 in the amount of 180 KM.

98. Taking into account its conclusion that the respondent Party has violated the human rights of Boško Jovanović by failing to clarify the fate and whereabouts his missing wife, the Chamber will order the Federation of Bosnia and Herzegovina to conduct a full, meaningful, thorough, and detailed investigation into the events giving rise to the established human rights violations, with a view to making known the fate and whereabouts of Mara Jovanović. Such investigation should also be conducted with a view to bringing the perpetrators of any crimes committed against Mara Jovanović to justice before the competent domestic or international criminal courts. The respondent Party shall disclose the results of this investigation to the Human Rights Commission within the Constitutional Court of Bosnia and Herzegovina at the latest within three months after the date of delivery of this decision, *i.e.* by 5 March 2004.

99. In addition, the Chamber will order the Federation of Bosnia and Herzegovina, as a matter of urgency, to release to Boško Jovanović and the Chamber or its successor institution all information presently within its possession, control, and knowledge with respect to the fate and whereabouts of Mara Jovanović, in particular, whether she was killed or has died and if so, the circumstances of her death and the location of her mortal remains. In the context of releasing this information, the Federation of Bosnia and Herzegovina is obliged to locate and release all such information formerly within the possession or control of the authorities of the HVO, who abducted and held Mara Jovanović captive in September 1995.

100. Taking into consideration that the Chamber has found violations of Boško Jovanović's human rights, the Chamber finds it appropriate to order the respondent Party to pay compensation for non-pecuniary damages to Boško Jovanović in respect of his own mental suffering in the amount of six thousand Convertible Marks (6,000 KM). The respondent Party shall also reimburse Boško Jovanović for his travel expenses to attend the special evidentiary hearing in the amount of 180 KM. These sums shall be paid within one month from the date of delivery of this decision, *i.e.* by 5 January 2004.

101. The Chamber further awards simple interest at an annual rate of 10%, as of the date of expiry of the one-month period set in the preceding paragraph for the implementation of the present decision on the sums awarded or any unpaid portion thereof until the date of settlement in full.

## IX. CONCLUSIONS

102. For the above reasons, the Chamber decides,

1. unanimously, that the claims on behalf of Mara Jovanović under Articles 2 and 5 of the European Convention on Human Rights are inadmissible as incompatible *ratione temporis* with the Human Rights Agreement;

2. by 11 votes to 2, that the claims of Boško Jovanović arising or continuing after 14 December 1995 under Articles 3 and 8 of the European Convention on Human Rights are admissible;

3. by 7 votes to 6, that the failure of the respondent Party to inform Boško Jovanović about the truth of the fate and whereabouts of his missing wife violates his right to be free from inhuman and degrading treatment, as guaranteed by Article 3 of the European Convention on Human Rights, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Human Rights Agreement;

4. by 10 votes to 3, that the failure of the Federation of Bosnia and Herzegovina to make accessible and disclose information requested by Boško Jovanović about his missing wife violates its positive obligation to secure respect for his right to private and family life, as guaranteed by Article 8 of the European Convention on Human Rights, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Human Rights Agreement;

5. unanimously, to order the Federation of Bosnia and Herzegovina to conduct a full, meaningful, thorough, and detailed investigation into the events giving rise to the established human rights violations, with a view to making known the fate and whereabouts of Mara Jovanović. Such investigation should also be conducted with a view to bringing the perpetrators of any crimes committed against Mara Jovanović to justice before the competent domestic or international criminal courts. The respondent Party shall disclose the results of this investigation to the Human Rights Commission within the Constitutional Court of Bosnia and Herzegovina at the latest within three months after the date of delivery of this decision, *i.e.* by 5 March 2004;

6. unanimously, to order the Federation of Bosnia and Herzegovina, as a matter of urgency, to release to Boško Jovanović and the Chamber or the Human Rights Commission within the Constitutional Court of Bosnia and Herzegovina all information presently within its possession, control, and knowledge with respect to the fate and whereabouts of Mara Jovanović, in particular, whether she was killed or has died and if so, the circumstances of her death and the location of her mortal remains;

7. by 9 votes to 4, to order the Federation of Bosnia and Herzegovina to pay compensation for non-pecuniary damages to Boško Jovanović in respect of his own mental suffering in the amount of six thousand Convertible Marks (6,000 KM); such sum to be paid within one month from the date of delivery of this decision, *i.e.* by 5 January 2004;

8. by 11 votes to 2, to order the Federation of Bosnia and Herzegovina to reimburse Boško Jovanović for his travel expenses to attend the special evidentiary hearing in the amount of one-hundred and eighty Convertible Marks (180 KM); such sum to be paid within one month from the date of delivery of this decision, *i.e.* by 5 January 2004;

9. by 11 votes to 2, to order the Federation of Bosnia and Herzegovina to pay simple interest at the rate of 10% (ten percent) per annum over the above sums or any unpaid portion thereof from the date of expiry of the one-month period set for implementation until the date of settlement in full; and

10. unanimously, to order the Federation of Bosnia and Herzegovina to report to the Human Rights Commission within the Constitutional Court of Bosnia and Herzegovina no later than three months after the date of delivery of the present decision, *i.e.* by 5 March 2004, on the steps taken by it to comply with the above orders.

(signed)  
Ulrich GARMS  
Registrar of the Chamber

(signed)  
Michèle PICARD  
President of the Chamber