DECISION ON ADMISSIBILITY AND MERITS
(delivered on 9 June 2000)

Cases nos. CH/98/1027 and CH/99/1842

R.G. and Predrag MATKOVIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the First Panel on 12 May 2000 with the following members present:

Ms. Michèle PICARD, President
Mr. Andrew GROTRIAN, Vice-President
Mr. Dietrich RAUSCHNING
Mr. Hasan BALIĆ
Mr. Rona AYBAY
Mr. Želimir JUKA
Mr. Miodrag PAJIĆ

Mr. Anders MÅNSSON, Registrar
Ms. Olga KAPIĆ, Deputy Registrar

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

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

I. INTRODUCTION

1. The first applicant, R.G., is a citizen of Bosnia and Herzegovina of Serb descent, resident in Trnovo, Republika Srpska. The second applicant, Mr. Matković, is a citizen of Yugoslavia of Montenegrin descent, resident in Serbia.

2. The applications concern their allegations that on 6 September 1996, while driving in the Federation of Bosnia and Herzegovina near Sarajevo, they were shot at and detained by soldiers of the Army of Bosnia and Herzegovina ("BH Army") and that they were detained without any legal basis, until 30 October 1996. R.G. claims that he suffered serious gunshot wounds, that he was treated in hospital under a false name (Mustafa Osmanović) and that after his release from hospital on 23 September 1996 he was detained in different places by the BH Army. Mr. Matković claims that he was detained in various places by the same army until 15 October 1996.

3. On 14 October 1996 an investigation was opened against the applicants on suspicion that they had committed war crimes. On 15 October 1996, they were brought before a judge who ordered their detention. On 30 October 1996 their release from detention was ordered by the (then) Higher Court in Sarajevo and they were released that day.

4. Both cases were referred to the Chamber by the Human Rights Ombudsperson for Bosnia and Herzegovina. They raise issues principally under Articles 3 and 5 of the European Convention on Human Rights and under the provisions of the Agreement guaranteeing freedom from discrimination in the enjoyment of the rights set out in the Appendix to the Agreement.

II. PROCEEDINGS BEFORE THE OMBUDSPERSON

A. Case no. CH/98/1027 R.G.

5. The Ombudsperson adopted her report in the above case (which was registered at her office under number 331/97) on 6 April 1998. The application had been submitted on 6 October 1996. In her report, she established the facts and concluded that there had been violations of the rights of the applicant as protected by Article 3 and Article 5 paragraphs 1, 2, 4 and 5 of the Convention. She also found a violation of the applicant's rights as guaranteed by Article 13 of the Convention, taken together with Article 3 and of his rights as guaranteed by Article 14 of the Convention, taken together with Articles 3 and 5.

6. She recommended to the Government of the Federation that, within four weeks of the date of the report, it pay to the applicant the sum of 15,000 German marks (DEM) as compensation for the non-material damage he suffered and that it issue a written and public apology to the applicant in respect of the illegal detention.

7. Neither of these recommendations has been complied with.

B. Case no. CH/99/1842 Predrag Matković

8. The Ombudsperson decided to open an investigation in the above case (which was registered at her office under number 718/97) on 25 June 1998. The application had been submitted on 6 October 1996. On 29 January 1999, in pursuance of paragraph 5 of Article V of the Agreement, she referred the case to the Chamber.

III. PROCEEDINGS BEFORE THE CHAMBER

9. In relation to the case of R.G., on 1 October 1998 the Ombudsperson, pursuant to paragraph 7 of Article V of the Agreement, initiated proceedings before the Chamber based on her Report referred to at paragraph 5 above. On 12 October 1998 the application was registered under the

above case number. Both applicants are represented by Ms. Gordana Vlačić, a lawyer practising in Pale in the Republika Srpska.

10. On 12 November 1998 the Chamber decided to transmit the application to the Federation for observations on its admissibility and merits, which were received on 18 March 1999. On 7 April 1999 these observations were transmitted to the applicant, who was asked to submit his further observations and also any claim for compensation or other relief which he wished to make. On 7 May 1999 these were received and on 18 June 1999 they were sent to the Federation. The Federation's observations on the claim for compensation were received on 16 July 1999 and on 26 July 1999 they were transmitted to the applicant. All of the above observations were also transmitted to the Ombudsperson, who did not submit any additional observations.

11. The case of Mr. Matković was registered at the Chamber on 16 February 1999 under the above case number.

12. On 18 March 1999 the Chamber transmitted this application to the Federation for its observations on its admissibility and merits, which were received on 18 May 1999. On 1 June 1999 these observations were transmitted to the applicant, who was asked to submit his further observations and also any claim for compensation or other relief which he wished to make. On 16 August 1999 these were received and on 24 August 1999 they were sent to the Federation. The Federation's observations on the claim for compensation were received on 23 September 1999 and on 13 October 1999 they were transmitted to the applicant. All of the above observations were also transmitted to the Ombudsperson, who did not submit any additional observations at that stage.

13. On 20 September 1999 the Chamber wrote to the parties asking them to suggest witnesses for a public hearing on the admissibility and merits of the case. The replies of the parties were received on 11 October 1999 in the case of the Federation and on 22 October 1999 in the case of the applicants.

14. On 21 February 2000 the parties were informed that the Chamber would hold a public hearing on the admissibility and merits of the cases on 8 March 2000.

15. The Chamber summoned the following persons to appear before it as witnesses: Mr. Sekula Mandić, Mr. Čedo Vukadin, Mr. Azim Zulić, Mr. Amir Imamović, Mr. Željko Golijanin, Dr. Bakir Nakaš and Dr. Sead Bašić. The Chamber attempted also to summon Mr. Mustafa Osmanović, but despite prolonged efforts was unable to trace him. The evidence of each of the witnesses as presented at the public hearing is set out in section IV(C) below.

16. On 8 March 2000 the Chamber held a public hearing on the admissibility and merits of the application in the Cantonal Court building in Sarajevo. The applicants were present together with their representative, Ms. Vlačić. The Federation was represented by its agent before the Human Rights Commission for Bosnia and Herzegovina, Ms. Seada Palavrić and by her adviser, Ms. Edina Arnautović. The Ombudsperson was represented by her deputy, Mr. Nedim Osmanagić and by her legal adviser, Mr. Faris Vehabović. All of the witnesses summoned by the Chamber attended.

17. The Chamber heard addresses from the representative of the applicants, the Federation and the Ombudsperson. It also heard the evidence of each of the witnesses set out at paragraph 15 above. The parties requested that the Chamber permit them to submit certain additional documentation. The Chamber decided to grant them a period of fifteen days to do so.

18. The Federation submitted additional information and documents on 23 March 2000. These were transmitted to the applicants on 10 April 2000 and they were given until 25 April 2000 to submit any observations in reply. No such observations were received. The Ombudsperson submitted an intervention in the cases on 28 March 2000.

19. The applicants submitted certain additional information on 21 March 2000, which on 12 April 2000 was sent to the Federation for information.

20. The Chamber deliberated upon the admissibility and merits of the application on 10 March, 6 April and 11 and 12 May 2000. On the latter date it adopted the present decision.

IV. ESTABLISHMENT OF THE FACTS

A. The particular facts of the case

21. The facts of the case are established by the Chamber on the basis of the reports of the Ombudsperson referred to at paragraphs 4-9 above, the submissions of the applicants and the Federation, reports of the United Nations International Police Task Force ("UNIPTF") referred to at paragraphs 33-34 below and the information and evidence presented at the public hearing. The contents of certain documents considered by the Chamber are set out at paragraphs 35-37 below.

22. The facts of the cases are in dispute between the parties. The version of events as put forward by the parties are set out in Section V below. In its establishment of the facts, the Chamber has considered the following factors to be of particular importance: the failure of the Federation to establish the whereabouts of Mr. Mustafa Osmanović, the cogent and convincing evidence of the applicants and their co-detainees Messrs. Mandić and Vukadin, the fact that police officers from both the Federation and the Republika Srpska confirmed that R.G.'s car was seen at Pendičići junction on 6 September 1996 with bullet holes and bloodstains, the fact that the release of the applicant R.G. (treated under the name Mustafa Osmanović) from the State hospital in Sarajevo was requested by members of the 1st Corpus of the BH Army, the fact that a passenger in R.G.'s car went to Trnovo police station in the Republika Srpska on the morning of the abduction in a distressed state, saying that armed men had shot at the car and taken two of the passengers away, the fact that the Federation has failed to provide any record of the alleged arrest of the applicants on 15 October 1996 and also the fact that Dr. Bašić conceded that the wounds of the person treated by him under the name Mustafa Osmanović coincided with those suffered by R.G. (see paragraph 50 below).

23. The facts as established by the Chamber are as follows.

24. On 6 September 1996 the applicants, together with the mother of the first applicant and two minors, were driving in R.G.'s Yugo 45 car from Trnovo in the Republika Srpska to Yugoslavia. Just after setting out, they were driving along the road between Trnovo and Sarajevo. This road enters the Federation for a short distance. When they came to a small junction at Pendičići, which is in the Federation, a group of armed men appeared before them and opened fire on the car with automatic weapons. R.G. received three bullet wounds, to his left leg, right shoulder and the right-hand part of his chest. One of the other passengers in the car, who is not an applicant to the Chamber, also received bullet wounds. The car then came to a stop and the armed men approached it. They removed the applicants from the car and handcuffed them. The applicants were then taken by the armed men and put in a white Lada Niva car, with registration plates of the BH Army. The applicants were then driven around the Sarajevo area for some time, while being continuously beaten by their captors. During this period they were handcuffed and therefore unable to seek to shield themselves from the blows they received.

25. Members of the NATO Intervention Force ("IFOR") and UNIPTF arrived at the scene shortly afterwards. In addition, police officers from the Federation and Republika Srpska were called and attended. An investigation was opened by the Federation police, involving the Security Service Centre of the Federal Ministry of Internal Affairs. The attendees noted that the car at the scene, owned by R.G., had numerous bullet holes in it and that there were bloodstains on it. Further details, including oral testimony from Federation and Republika Srpska police officers, UNIPTF reports and certain written evidence submitted to the Chamber, are set out at paragraphs 33, 35, 52-53, 55 and 58-60 below.

26. After approximately one hour, the applicants were brought to the BH Army barracks in Sezimovac. Mr. Matković remained there, while R.G. was brought to the State Hospital (formerly the Military Hospital) in Marijn Dvor in Sarajevo. When he arrived there his captors registered him under the name Mustafa Osmanović, which is a Bosniak name. He received emergency treatment for his wounds. The doctor who treated him was Dr. Sead Bašić. During his time at the hospital, R.G. was

guarded by soldiers of the BH Army. They warned him not to disclose his true identity and warned him that if he did he would be killed. They insisted on him using Islamic greetings. R.G. remained at the State Hospital until 23 September 1996, all the time receiving professional medical care appropriate to his injuries.

27. Mr. Matković was detained at the Semizovac barracks from 6 September 1996. During his detention he was beaten by his captors on a regular basis. He was told that he was being detained for the purpose of exchange for prisoners held by the authorities of the Republika Srpska and that he would be charged with certain criminal offences in order to "regularise" his detention. On 23 September 1996 he was transferred to another place of detention, a private house at Sokolivić Kolonija. There he was detained with two other persons, Mr. Čedo Vukadin and Mr. Sekula Mandić. These persons appeared as witnesses before the Chamber and their evidence is summarised at paragraphs 61-67 below.

28. On 23 September 1996 R.G. was discharged from the State Hospital, at the request of the 1st Corpus of the BH Army. He was brought to Sokolivić Kolonija, where Mr. Matković had been moved the same day. The applicants were detained there together with Messrs. Mandić and Vukadin. They were often blindfolded and kept in a small dark room. They were guarded by a number of men wearing military uniforms. During their detention here they were forced to sign blank papers. They were all told that they were to be charged with war crimes in order to "regularise" their detention.

29. On 15 October 1996 the applicants were taken to the Viktor Bubanj military prison in Sarajevo. On the same day they were taken to the Higher Court in Sarajevo where they appeared before a judge, in pursuance of a request from the Higher Public Prosecutor's Office in Sarajevo. On that day, the investigative judge issued a decision opening an investigation against the applicants and Messrs. Mandić and Vukadin, on the basis that there was a suspicion that they had committed war crimes. The decision also ordered their detention for a maximum period of three months. The following day the applicants were transferred to the Central Prison in Sarajevo.

30. On 21 October 1996 the Higher Court in Sarajevo issued a decision reducing the length of detention ordered in respect of the applicants from three months to one month, commencing on 16 October 1996. On 30 October 1996 the same court issued a further decision, annulling the decision of 16 October 1996 opening the investigation against the applicants. It also ordered their immediate release from detention, which happened the same day.

31. On 31 October 1996 the Kasindo hospital, in the Republika Srpska, issued a report on R.G.'s medical condition, stating that he was suffering from post-traumatic syndrome and that he had suffered gunshot wounds.

B. Written evidence

32. The Chamber has received certain written evidence, which is summarised briefly below.

1. UNIPTF Reports

33. The Chamber has received a document entitled "Interoffice memorandum" dated 19 September 1996 prepared by the UNIPTF station in Kula and addressed to the UNIPTF Commissioner. It recounted the events of 6 September 1996 and mentioned that R.G.'s mother had heard the abductors say that the action was in retaliation for the arrest a few days earlier by security forces of the RS of a number of members of the Black Swans, a special unit of the BH Army. In addition, a white Lada Niva car was stated to have been seen travelling in the area at around the time the applicants were abducted. UNIPTF monitors ascertained that a number of members of the Black Swans were being detained in prison in Kula, having been detained by security forces of the Republika Srpska on 30 August 1996. The memorandum concludes by noting that the arrest of the applicants had increased tension in the area around the Inter-Entity Boundary Line.

34. The Chamber has also received two documents entitled "Complaint about a human rights violation", dated 6 October 1996, prepared by the UNIPTF and addressed to the Human Rights Commission. These documents contain brief details of the arrest of the applicants.

2. Report of Federal Ministry of Internal Affairs – Security Service Centre

35. The Chamber has received a report, dated 7 September 1996, of the Security Service Centre of the Federal Ministry of Internal Affairs, prepared by Dragan Mioković, an Inspector in the Centre's Department for Blood and Sexual Offences. He had been summoned to attend the scene of the abduction of the applicants. In his report he notes that a green Yugo vehicle, registration SA 345-672, was located on the main road near Mount Igman leading towards Sarajevo. Mr. Mioković found that the vehicle had a number of bullet holes in it and that there were numerous bloodstains and bullet shells in it. The report records a conversation with Mr. Željko Golijanin (see paragraph 59 below), in which Mr. Golijanin stated that he had spoken to one of the passengers in the car, who had informed him that the applicants were abducted by a number of armed men and taken away in an unknown direction.

36. Mr. Mioković states that he was informed by UNIPTF monitors that a white Lada Niva car was seen in the area at the time of the abduction and that soldiers of the BH Army, stationed nearby, had seen his vehicle. Mr. Mioković states that he sought information from this BH Army station but was refused permission to talk to the Commander and ordered to leave the building, which he did.

3. Newspaper article from "Evening News"

37. The representative of the applicants submitted a copy of a newspaper article from the "Evening News" ("*Večernje Novosti*") published in Belgrade, Yugoslavia, on 7 September 1996, the day after the abduction of the applicants. The front page caries the headline "Two Serbs abducted" and also carries a photo of a green Yugo car, with licence plates "SA 345-672". An article in the newspaper refers to the abduction of Messrs. R.G. and Matković the previous day on the road between Trnovo and Sarajevo.

C. Oral testimony

1. Dr. Bakir Nakaš

38. Dr. Bakir Nakaš was the Director of the Sarajevo State hospital in September 1996, and holds the same function today.

39. Dr. Nakaš stated that until May 1992 the hospital was a military hospital and became the State Hospital thereafter. There is no dedicated military hospital in Bosnia and Herzegovina.

40. Dr. Nakaš pointed out that he holds a purely administrative function at the hospital and is not involved in the admission, treatment or discharge of patients. He has no recollection of the admission of a patient under the name of Mustafa Osmanović on 6 September 1996. He stated that he had examined the hospital records of 6 September 1996 and found that a person was admitted under that name on that date, having been brought to the hospital by members of the BH Army. Dr. Nakaš claimed that this was not unusual, in view of the fact that the BH Army does not have its own hospital.

41. Concerning the procedure for admission of patients, Dr. Nakaš stated that a patient should normally have a referral letter and evidence that he or she is insured for medical treatment. In urgent cases, there is no strict requirement to have any such document. There is no obligation on the medical staff at the hospital to seek evidence of identity of a patient. In the case of members of the BH Army treated at the hospital, evidence of insurance would not be sought as they are considered to be insured by virtue of the fact that they are members of that Army.

42. As regards the procedure when a patient is under guard, Dr. Nakaš asserted that the institution responsible for guarding a patient in each case requests approval from the hospital to do so. Approval of such requests is to be sought from the director of the hospital, but there are cases where such approval is given by the head of the relevant department in the hospital. Dr. Nakaš stated that he had no record of the receipt or approval of any such request in respect of the patient

treated under the name Mustafa Osmanović. In cases where a patient is guarded, this is apparent due to the presence of guards.

43. According to Dr. Nakaš, there existed the possibility that a person could be treated at the hospital under a false name, for a number of reasons, including where a person wishes to avail of medical insurance held by another person. He stated that he had never seen documents concerning such a situation but that it did occur occasionally.

44. Referring to the hospital documentation in respect of the persons treated under the name of Mustafa Osmanović, Dr. Nakaš claimed that it is obvious that the discharge of the patient was requested by the 1st Corpus of the BH Army.

2. Dr. Sead Bašić

45. Dr. Bašić was, in September 1996, an orthopaedic surgeon in the State Hospital in Sarajevo, a function which he still holds today. He stated that he treated a patient registered under the name of Mustafa Osmanović between 6 and 23 September 1996. He claimed that he recalled certain details of this patient from memory, but due to the time-lapse he did not have a full recollection. He stated that when a person was admitted who was in need of urgent treatment, he or she would be brought to an operating room straight away. According to Dr. Bašić, when he operates upon a patient he would visit that patient for a number of days afterwards, and manage their care himself until their condition had stabilised. This would include dressing the patient's wounds. He stated that he would only engage in conversation with a patient to the extent necessary to complete the medical records in respect of the patient.

46. Concerning patient records, he, as a doctor, was concerned only with the medical aspects of such records. He would not be responsible for ensuring the veracity of personal details of patients. This is done by administrative staff at the hospital.

47. Dr. Bašić asserted that the national origin or religion of a patient was irrelevant at the hospital and that all patients were treated in the same manner and with the same level of care. He pointed out that persons of all origins and religions are employed at the hospital and always have been.

48. Allegedly, it was not unusual for patients at the hospital to be guarded. He would not inquire as to the reasons for this as it was not relevant to his work as a doctor. In addition, in the event that a patient is admitted with gunshot wounds, the witness stated that he would only inquire from the patient as to how he acquired such wounds insofar as it is relevant for medical purposes. He would not inquire in a general manner concerning such wounds.

49. Dr. Bašić stated that he remembered some details specific to the patient registered under the name Mustafa Osmanović, as his wounds were of an unusual nature. He mentioned that he was surprised at the time that there had not been more serious damage to the patient as the bullets had entered an area of the body where there were a lot of major blood vessels and nerves. He further stated that he would probably be able to recognise the patient by examination of the scars left after the wounds. When asked if he recognised R.G. as the person he treated between 6 and 23 September 1996, he said he did not.

50. Dr. Bašić was asked to examine certain medical reports issued by Kasindo hospital in respect of R.G., with a view to ascertaining whether these referred to the same person in respect of which the medical records issued by the Sarajevo State hospital in respect of Mr. Mustafa Osmanović. Having examined both records, he stated that it was possible that the two sets of records concerned the same person. He stated that it would be impossible to state with total certainty, even after a physical examination and examining X-rays, whether the applicant R.G. was the person treated at the hospital at the relevant time.

3. Mr. Asim Zulić

51. Mr. Asim Zulić was in September 1996 the Chief of the Ledići police station, and still is today.

52. He stated that at about 8 am on the morning of 6 September 1996 he was informed by telephone that an incident had occurred on the road between Sarajevo and Trnovo, at Pendičići. Due to the lack of telephone communication with Sarajevo at the time, he sent one of his officers to summon an expert to conduct a forensic examination. He also ordered certain of his officers to establish road-blocks on the relevant part of the road and to secure the scene. Having done so, he himself went to the scene. There, he met UNIPTF monitors and members of IFOR as well as Mr. Željko Golijanin (see paragraph 56 below). He saw a green Yugo car, registration SA 345-672, at the scene, and some bullet shells around it. He examined the car from a distance of a few metres as the scene had been secured pending the arrival of experts to examine it. At approximately 11 am Mr. Dragan Mioković (see paragraph 35 above) arrived together with an assistant and conducted an examination of the scene.

53. Mr. Zulić stated that he spoke with certain of the other witnesses present concerning the events and was informed of the names of the persons present in the vehicle and of the nature of those events. He also stated that he spoke to members of the BH Army stationed nearby who said that they had seen a white Lada Niva in the area at the time of the abduction of the applicants.

4. Mr. Amir Imamović

54. Mr. Amir Imamović was a Head of Shift at the Federal Trnovo police station in September 1996, a position which he still holds today.

55. He stated that at approximately 8 am on the morning of 6 September 1996 members of the IFOR battalion stationed nearly came to the station and informed him that there had been an incident at Pendičići junction. He immediately sent two officers to the scene and informed Ledići police station. He then went to the scene himself, where he met representatives of IFOR and UNIPTF, as well as Mr. Željko Golijanin. He spoke to a member of the BH Army who stated that at about 7 am that morning he had heard a burst of automatic weapons fire and had seen a white Lada Niva driving very fast towards Mount Igman, in the Federation. He then contacted Ledići police station by radio and requested that they set up road blocks and seek to apprehend the Lada Niva vehicle. He explained that the licence plate of the green Yugo car at the scene was a pre-war (i.e. former Yugoslav) licence plate.

5. Mr. Željko Golijanin

56. Mr. Željko Golijanin was, in September 1996, Head of the Department of Criminal Police in the Trnovo police station in the Republika Srpska and still is today.

57. He first stated that he was distantly related to the applicant R.G. but had never met him before 1996.

58. At approximately 8 am on 6 September 1996 representatives of UNIPTF came to his station and requested that an officer come to the scene of an abduction at Pendičići junction in the Federation. He stated that his colleagues refused to do so, due to fears for their safety. He himself then agreed to go. At the scene he met members of IFOR and representatives of UNIPTF as well as a number of police officers from the Federation. The witness also saw a Yugo car, which had bullet holes in it, and bullet shells scattered on the ground. He also saw bloodstains in the car. He remained at the scene while representatives of the Security Service Centre of the Federal Ministry of Internal Affairs conducted an investigation at the scene.

59. He stated that a young girl, the sister of the applicant R.G., had earlier come to his station in a distressed state, stating that armed men had shot at the car in which she was travelling and abducted two of the passengers.

60. Regarding the level of traffic on the road where the abduction of the applicants occurred, he stated that there was very little traffic on it at the time, due to the prevailing situation in that area. He stated that he himself avoided travelling along the road due to fears for his personal safety.

6. Mr. Sekula Mandić

61. Mr. Sekula Mandić was detained together with the applicants from 23 September until 30 October 1996. He stated that he had been arrested on 2 July 1996 in Trnovo in the Federation, together with Mr. Čedo Vukadin (see paragraphs 66-67 below). He was first brought to Semizovac barracks and then later the same day transferred to Sokolović Kolonija in Stup, a suburb of Sarajevo.

62. He stated that at approximately 8 pm on 23 September 1996 two men were brought to the place where he was detained. He did not know these men at the time but ascertained that they were the applicants before the Chamber. He noticed that one of them had wounds. They remained together in Sokolović Kolonija until 7 October, when they (i.e. Mr. Mandić, the applicants and Mr. Vukadin, in respect of whom see paragraphs 66-67 below) were transferred to Semizovac. They were detained there until 15 October 1996, when they were again transferred to Viktor Bubanj military prison. Soon afterwards they were transferred yet again, this time to the Central Prison in Sarajevo. Mr. Mandić could not remember the exact date, but thought it was 16 October 1996.

63. He confirmed that the two men who were brought to Sokolović Kolonija on 23 September 1996 were the applicants. He also stated that a female doctor came regularly to treat the wounds of the applicant R.G.

64. Mr. Mandić claimed that during his detention, he was charged with having committed war crimes, and that he had been forced to sign a blank piece of paper. He stated that he did so as he had been detained for 75 days without any legal basis and was informed that failure to do so would have adverse consequences for him. He was threatened and told by a general of the BH Army that he had to sign this paper as the BH Army needed a confession from him to be able to inform appropriate international organisations of his detention.

65. During their detention at Sokolović Kolonija, Mr. Mandić and his co-detainees were guarded by persons wearing uniforms of the BH Army. They were periodically blindfolded and all kept in a small room.

7. Mr. Čedo Vukadin

66. Mr. Čedo Vukadin was detained together with the applicants from 23 September until 30 October 1996. He stated that he had been detained on 2 July 1996 in Trnovo in the Federation, together with Mr. Sekula Mandić. As the evidence of this witness is in many respects the same as that of Mr. Mandić, only additional evidence given by Mr. Vukadin is set out below.

67. On 23 September 1996, while being detained at Sokolivić Kolonija, two persons, whom Mr. Vukadin recognised as the applicants, were brought there and held in the same room as him. He stated that during his detention he was forced to sign a blank piece of paper. He was released on 30 October 1996, together with the applicants.

D. Relevant legislation

1. Penal Code of the (former) Socialist Federal Republic of Yugoslavia

68. The Penal Code of the former Socialist Federal Republic of Yugoslavia (Official Gazette of the former Socialist Federal Republic of Yugoslavia – hereinafter "OG SFRY" – no. 44/76, as amended, and Official Gazette of the former Republic of Bosnia and Herzegovina – hereinafter "OG RBiH" – no. 2/92, as amended) was in force in the Federation at the time of the arrest of the applicants. It has since been replaced.

69. Article 142 of the Code reads as follows:

> "Anyone who - in violation of the rules of international law in time of war, armed conflict or occupation - orders the subjection of the civilian population to murders, torture, inhuman treatment, biological experiments, great suffering, injuries to physical integrity or health, expatriation or displacement, deprivation of national identity by force, conversion to another religion, forced prostitution or rape, acts of intimidation or terror, the taking of hostages, collective punishment, unlawful confinement in concentration camps or other unlawful taking into custody, deprivation of the right to a fair and impartial hearing, forced service in the enemy armed forces or intelligence service or administration, the performance of forced labour, starvation, confiscation of property, looting of property, excessive confiscation of property without military necessity, unlawful and deliberate devastation, the taking of unlawful, substantial and disproportionate contributions and requisitions, inflation of the domestic currency, or unlawful issue of currency, or anyone who commits any of the aforementioned crimes, shall be punished by imprisonment for at least five years or by the death penalty."

2. The Law on Criminal Procedure

70. The Law on Criminal Procedure (OG SFRY 26/86, as amended, and OG RBiH 2/92, as amended), was in force in the Federation at the time of the arrest of the applicants.

71. Article 157 reads as follows:

> "(1) An investigation shall be instituted against a particular individual if there is reason for suspicion that he has committed a crime."

72. Article 158 provides:

> "(1) The investigation shall be conducted on the application of the public prosecutor.
>
> (2) The application to conduct an investigation shall be submitted to the investigative judge of the competent court.
>
> (3) The application must indicate the following: the person against whom the investigation is to be conducted, a description of the act which has the legal attributes of a crime, the legal name of the crime, the circumstances justifying the suspicion and the evidence that exists."
>
> (4) The application to conduct an investigation may include a proposal that certain circumstances be investigated, that certain actions be taken, and that certain persons be examined with respect to certain issues, and it may also be recommended that the person against whom the investigation is requested be taken into custody.
>
> (5) The public prosecutor shall deliver to the investigative judge the criminal charge and all papers and records concerning actions which have been taken. The public prosecutor shall at the same time deliver to the investigative judge physical objects which may serve as evidence or shall indicate where they are located."

73. Article 159 paragraph 1 reads, insofar as relevant, as follows:

> "When the investigative judge receives the application for the opening if an investigation, he shall examine the documentation, and if he agrees with the application, he shall order that an investigation be opened .... The decision shall be delivered to the public prosecutor and to the accused."

74. Article 190, insofar as relevant, reads as follows:

> "(1) Custody may be ordered only under the conditions envisaged in this law.

(2) The length of custody must be limited to the shortest necessary time. It is the duty of all bodies and agencies participating in criminal proceedings and of agencies providing legal aid to proceed with particular urgency if the accused is in custody.

(3) Throughout the entire course of the proceedings custody shall be terminated as soon as the grounds on which it was ordered cease to exist."

75. Article 197 paragraph 1 states as follows:

"On the basis of the decision of the investigative judge the accused may not be held in custody for longer than one month from the date of his arrest. At the end of that period the accused may be kept in custody only on the basis of a decision to extend custody.

76. Article 205 imposes a duty on the President of the competent court to survey and visit detainees at least once a week and to take all necessary steps to remedy and irregularities he finds.

77. The Law on Criminal Procedure (OG SFRY nos. 26/86, 74/87, 57/89 and 3/90 and OG RBiH nos. 2/92, 9/92, 16/92 and 13/94) governed criminal procedure in the Federation at the time of the applicant's detention. This law has been replaced by the new Law on Criminal Procedure (Official Gazette of the Federation of Bosnia and Herzegovina no. 43/98) which entered into force on 28 November 1998. The following provisions, quoted from the old law, were taken over without substantive changes.

78. Article 542(2) reads as follows:

"Before submitting a claim for compensation for damages, the person concerned is obliged to address his request to the administrative authority of the Republic which is competent for legal matters."

79. Article 543(1) reads as follows:

"If a claim for compensation for damages is not accepted or no decision by the relevant organ has been made within three months since the date of making it, the person concerned may submit a complaint to the competent court for compensation for damages suffered. If an agreement has been reached concerning part of the claim, the damaged person may submit a complaint regarding the remainder of the claim."

80. Article 545(3) reads as follows:

"The right to compensation for damage belongs ... to a person who is, as a result of a mistake or an illegal act of an organ, deprived of his or her freedom or kept for a longer period of time in custody than is provided for by law."

81. The above provisions were disapplied from 2 June 1992 until 23 December 1996 by the Law on Application of the Law on Criminal Procedure (OG RBiH nos. 6/92, 9/92, 13/94 and 33/95). Since 23 December 1996 they have been in force once more.

3. The Rome Agreement of 18 February 1996, Agreed Measures ("The Rules of the Road")

82. On 18 February 1996 the Parties to the General Framework Agreement for Peace in Bosnia and Herzegovina agreed on certain measures to strengthen and advance the peace process. The second paragraph of item 5 of these Agreed Measures, entitled "Cooperation on War Crimes and Respect for Human Rights", reads as follows:

"Persons, other than those already indicted by the International Tribunal, may be arrested and detained for serious violations of international humanitarian law only pursuant to a previously issued order, warrant or indictment that has been reviewed and deemed consistent with

international legal standards by the International Tribunal. Procedures will be developed for expeditious decision by the Tribunal and will be effective immediately upon such action."

83. The term "International Tribunal" refers to the International Criminal Tribunal for the Former Yugoslavia in the Hague.

84. The procedures referred to in the above text were communicated to, *inter alia*, the Minister of Justice of the Federation by the Prosecutor of the International Tribunal on 10 September 1996.

V. COMPLAINTS

85. The applicant R.G. complains of violations of his rights as guaranteed by Articles 2, 3, 4 and 5 of the Convention. He also complains of violations of his right to freedom of movement, as guaranteed by Article 2 of Protocol No. 4 to the Convention.

86. The applicant Mr. Matković complained in a general manner of his arrest and detention.

VI. FINAL SUBMISSIONS OF THE PARTIES

A. The Ombudsperson

87. The Ombudsperson maintained her conclusions as set out in her Report in the case of R.G. (see paragraph 5 above). On 28 March 2000 she submitted an intervention in the cases. This intervention is briefly summarised below.

1. Facts

88. The Ombudsperson states that the establishment of the facts by her Office in the case of R.G. was hampered by the failure of the Federation to cooperate in her investigation. In respect of Mr. Matković, the Federation did not submit any relevant facts additional to those established by the Ombudsperson. The Ombudsperson states that she is satisfied that she established the facts of the cases beyond a reasonable doubt and refers to the failure of the Federation to investigate the credible claims of the applicants.

2. Admissibility

89. The Ombudsperson first considers to the compliance of Mr. Matković with the six-month time-limit set out in Article VIII(2)(a) of the Agreement. She points out that the date of introduction of an application is considered to be the date of the first submission to her office which identifies the applicant and the substance of the complaint. She states that such a submission was received in respect of Mr. Matković on 6 October 1996, in the form of a "complaint" submitted on his behalf by UNIPTF. In response to the claim by the Federation that this submission is not valid as it was not submitted personally by the applicant, the Ombudsperson points out that this was so as he had been abducted and was being held *incommunicado*. Concerning her decision of 20 October 1997 not to open an investigation in the case due to non-compliance with the six-month time-limit, the Ombudsperson states that this was due to an internal error. This error was corrected by her decisions of 25 June 1998 to open an investigation into the case and of 29 January 1999 to refer the matter to the Chamber.

3. Merits

90. The Ombudsperson first points out that she did not establish the facts of the case of Mr. Matković, as she referred the case to the Chamber. She claims that, insofar as the facts of that case are the same as in the case of R.G., her interventions on the merits of that case also apply equally to the case of Mr. Matković.

91. Concerning Article 2 of the Convention, the Ombudsperson states that as R.G. was not deprived of his life, there has been no violation of this provision of the Convention.

92. The Ombudsperson states that the shooting of R.G., his detention and treatment by members of the BH Army and the fact that the Public Prosecutor took no action against these matters constituted inhuman and degrading treatment, in violation of Article 3 of the Convention.

93. Regarding Article 5 of the Convention, the Ombudsperson states that the applicant R.G. was clearly deprived of his liberty within the meaning of Article 5 paragraph 1 of the Convention. She notes that he was detained for the purposes of exchange against prisoners held by the Republika Srpska and was subsequently charged with war crimes, in violation of the Rules of the Road. Therefore, his detention was not in compliance with Article 5 paragraph 1 of the Convention.

94. Concerning the requirement in paragraph 2 of Article 5 that he be informed of the reasons for his detention, the Ombudsperson states that R.G. was not so informed and therefore this provision was violated. The guarantee contained in paragraph 4 of Article 5, that he have a right to a judicial review of his detention, was also violated as he had no access to such a review.

95. She also states that there has been a violation of the right of the applicant to an enforceable right to compensation for the violations of his rights he suffered, referring to the Chamber's case law in support of her contention that he had no such right available to him in the legal system of the Federation. Therefore there has been a violation of Article 5 paragraph 5 of the Convention.

96. The Ombudsperson also states that the applicant was subjected to discriminatory treatment, as his arrest was solely for the purposes of exchange against prisoners held by the Republika Srpska. Finally she states that no separate issue arises in respect of the right of R.G. to an effective remedy, as guaranteed by Article 13 of the Convention.

B. The respondent Party

1. Facts

97. The Federation contests the facts as presented by the applicants and as found by the Ombudsperson. It significantly changed its version of the facts during the proceedings before the Chamber.

98. The Federation contested the allegation of R.G. that he was shot at and wounded and thereafter treated at the State Hospital in Sarajevo. It claims that Mr. Mustafa Osmanović was treated as a member of the BH Army. However despite having sought to find Mr. Osmanović, it was unable to do so.

99. At first, it denied that the applicants were arrested on 6 September 1996. It claimed that the applicants were detained by officials of the Federal Ministry of Defence on 15 October 1996 and on the following day handed over to the custody of the Regional Military Public Prosecutor. It claimed that the applicants were arrested as they did not possess identification when asked to produce it by officials of the Ministry of Defence. In addition, Mr. Matković was arrested as he is a citizen of Yugoslavia. Despite being requested by the Chamber, the Federation was unable to provide any records of the arrest of the applicants on 15 October 1996. In addition, the Federation claimed that on 14 October 1996 the 1st Corpus of the BH Army submitted a request to the Regional Military Prosecutor in Sarajevo for the opening of an investigation against the applicants (and also against Messrs. Mandić and Vukadin) on the ground that they were suspected of having committed war crimes. On 15 October 1996 the prosecutor did so, before the Higher Court in Sarajevo. The Higher Court ordered the opening of an investigation against the applicants, as well as Messrs. Mandić and Vukadin, the following day.

100. However, after the public hearing the Federation significantly changed its version of the facts. It admitted that the applicants were detained on 6 September 1996 but denied that this detention was carried out by persons for whose actions it is responsible. It maintained its claim that the

applicants were detained by officials of the Federal Ministry of Defence from 15 until 30 October 1996.

101. In conclusion, the Federation claims that the detention of the applicants was legal as it was ordered due to the suspicion of their having committed war crimes. In addition, the applicants' detention was only for a short period of time, as they were released after 15 days.

2. Admissibility

102. In respect of the applicant Mr. Matković, the Federation first claims that as he is a citizen of Yugoslavia, the Chamber has no competence *ratione personae* to consider whether his rights have been violated.

103. The Federation claims that the applicants could have claimed compensation for illegal detention under the Law on Criminal Procedure (see paragraphs 70-81 above). It claims that this is an effective remedy in the legal system of the Federation and therefore the applicants are required to exhaust it before applying to the Chamber, as required by Article VIII(2)(a) of the Agreement.

104. In the case of Mr. Matković, the Federation also contests the admissibility of his application on the ground of non-compliance with the six-month requirement as set out in Article VIII(2)(a) of the Agreement. It claims that the application was submitted to the Ombudsperson on 14 August 1997, after the expiry of this period. The Federation claims that in the event that the applicant was not familiar with this requirement, the Federation cannot be held responsible for this as the Dayton Agreement was published in a number of newspapers throughout Bosnia and Herzegovina.

3. Merits

105. Concerning Article 3 of the Convention, the Federation denies that the applicants were subjected to torture or inhuman or degrading treatment or punishment. It claims that the organs of the Federation acted in a fast and efficient manner and that the detention of the applicants lasted for a very short time, i.e. from 15 until 30 October 1996.

106. The Federation denies that the applicants' rights under Article 5 of the Convention were violated. The Federation claims that the applicants were arrested for a valid reason, as there was a suspicion that they had committed war crimes. In addition, the applicants were informed of the reasons for their arrest and further, their detention only lasted for a very short period of time. Finally, they were brought before a judge the day after their arrest. In conclusion, the Federation claims that there has been no violation of the applicants' rights under this provision.

107. The Federation also denies that the applicants had been discriminated against in the enjoyment of their rights as protected by the Agreement. It reiterates that the detention of the applicants had been legal and therefore no question of discrimination arose.

108. In conclusion, the Federation suggests to the Chamber to declare the applications inadmissible.

C. The applicants

109. The applicants maintain their complaints and previous submissions to the Chamber.

VII. OPINION OF THE CHAMBER

A. Admissibility

110. Before considering the merits of the case the Chamber must decide whether to accept it, taking into account the admissibility criteria set out in Article VIII(2) of the Agreement.

1. The Chamber's competence *ratione personae*

111. The Federation claims that as Mr. Matković is a citizen of Yugoslavia, the Chamber has no competence *ratione personae* to consider his application and should refuse to accept it on this ground.

112. In accordance with paragraph 2 of Article II of the Agreement, the Chamber is competent to consider, *inter alia*, allegations of violations of human rights committed by the parties to the Agreement (i.e. Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina and the Republika Srpska) or by any body for whose actions they are responsible. Paragraph 1 of Article VIII of the Agreement sets out the persons and categories of persons who may lodge applications with the Chamber. This provision does not limit by nationality the categories of persons who may lodge applications with the Chamber. There is therefore no impediment to a person who is not a citizen of Bosnia and Herzegovina from applying to the Chamber. Accordingly this argument of the Federation is without merit and must be rejected.

2. The six-month rule

113. Article VIII(2) of the Agreement requires the Chamber, when deciding upon the admissibility of an application, to take into account, *inter alia*, whether the application was filed with the Human Rights Commission within six months from the date on which the final decision was taken in the matter at national level. The Federation objected to the admissibility of the application submitted by Mr. Matković under this provision, stating that he lodged his application to the Ombudsperson on 7 August 1997, more than six months after his release from detention.

114. The Chamber notes that an application was submitted to the Ombudsperson on 6 October 1996 on behalf of the applicant by UNIPTF. This application was registered on 14 August 1997. Accordingly, the application was submitted to the Ombudsperson during the detention of the applicant and the six-month period had not at that stage begun to run. The Chamber therefore considers that no issue of admissibility arises under this head.

3. Exhaustion of domestic remedies

115. According to Article VIII(2)(a), the Chamber must consider whether effective remedies exist and whether the applicant has demonstrated that they have been exhausted.

116. The Federation claims that it was open to the applicants to seek compensation for alleged illegal detention under the Law on Criminal Procedure (see paragraphs 70-81 above). The applicants denied that this remedy would have been effective in their cases and refer to the jurisprudence of the European Court of Human Rights, stating that the effectiveness of domestic remedies must be looked at in the light of the prevailing circumstances. They claim that the fact that they were only brought before a judge after being detained for 40 days shows that they had no prospect of achieving justice before the organs of the Federation.

117. The Chamber notes that it has established that the applicants were shot at and detained for no reason. They were then detained in unofficial places of detention, and were subsequently charged with war crimes offences, solely to seek retrospectively to justify their detention. In addition, the provisions of the Law on Criminal Procedure were suspended until 23 December 1996 (see paragraph 81 above) and were thus not in force when the applicants were released from detention. The Law on Application of the Law on Criminal Procedure does not specify whether, once the suspension of those provisions has been lifted, claims can be brought in respect of alleged illegal detention prior to 23 December 1996 or only in respect of such detention that occurred after that date. The Chamber therefore considers that this lack of precision would have had the effect of making it even more difficult for the applicants to succeed in any claim under the Law on Criminal Procedure. These facts, coupled with the fact that the Federation still maintains that they were only arrested on 15 October 1996, shows that the applicants would have had no chance of success if they were to initiate proceedings before the organs of the Federation claiming that their arrest and detention had been illegal.

118. The Chamber therefore finds that the remedy apparently available to the applicants in the legal system of the Federation offered no prospect of success and therefore they cannot be required to exhaust it. The applications are therefore not inadmissible on the ground of non-exhaustion of domestic remedies.

119. The Chamber does not consider that any of the other grounds for declaring the cases inadmissible have been established. Accordingly, they are to be declared admissible.

B. Merits

120. Under Article XI of the Agreement the Chamber must next address the question 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 treaties listed in the Appendix to the Agreement.

121. Under Article II(2) of the Agreement the Chamber has competence to consider (a) alleged or apparent violations of human rights as provided in the Convention and its Protocols and (b) alleged or apparent discrimination arising in the enjoyment of the rights and freedoms provided for in the 16 international agreements listed in the Appendix to the Agreement (including the Convention), where such a violation is alleged to or appears to have been committed by the Parties, including by any organ or official of the Parties, Cantons or Municipalities or any individual acting under the authority of such an official or organ.

1. Article II(2)(a) of the Agreement

(a) Article 3 of the Convention

122. Article 3 of the Convention provides as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

123. The applicant R.G. claimed that he had been a victim of a violation of his rights as guaranteed under this provision. Mr. Matković did not specifically claim to be a victim of a violation of his rights under this provision. The Chamber raised it of its own motion when transmitting the case to the Federation for observations on its admissibility and merits.

124. The Ombudsperson found that the arrest and detention of the first applicant, R.G., constituted "inhuman and degrading treatment and punishment" and therefore violated the applicant's rights as protected by Article 3 of the Convention.

125. The Federation denies that the applicant's rights as guaranteed by this provision has been violated. It claims that the arrest and detention of the applicants was lawful.

126. The Chamber has established that the applicants were shot at and arrested by members of the BH Army on 6 September 1996, for no reason other than that army apparently wished to arrest Serbs to exchange for members of one of its units who had been arrested by security forces of the Republika Srpska. In respect of the applicant R.G., it has also established that he was seriously wounded and that both applicants were physically maltreated after their arrest. They were then detained in fear of their lives until 15 October 1996, when they were charged with war crimes, having been forced to sign blank pieces of paper which were then used by the BH Army to procure "confessions" that they had committed war crimes. There is no evidence at all that the applicants were involved in the commission of any crime. On the contrary, they were merely driving down a road when they were arrested.

127. As the Chamber has noted before, Article 3 enshrines one of the fundamental values of a democratic society (case no. CH/97/45, *Hermas,* decision on admissibility and merits delivered on

18 February 1998, paragraph 28, Decisions and Reports 1998). The Chamber considers that all of the above factors, coupled with the fact that the applicants were then charged with the most serious crimes, constituted inhuman and degrading treatment and that the Federation is responsible.

128. In conclusion there has been a violation of the applicants' rights not to be subjected to inhuman and degrading treatment as guaranteed by Article 3 of the Convention.

129. The European Court of Human Rights has described torture as "deliberate inhuman treatment causing very serious and cruel suffering" (*Ireland v. United Kingdom* judgment of 18 January 1978, Judgments and Decisions, Series A vol. 25, paragraph 167). There is therefore a difference in the level of severity of the treatment – for such treatment to constitute torture it must cause very serious and cruel suffering. The Chamber will consider whether the treatment it has found that R.G. was subjected to constitutes torture. It considers that the finding that the treatment suffered by Mr. Matković was inhuman and degrading to be sufficient, but points out that it was merely a matter of good fortune that he was not seriously injured as well.

130. As the Chamber has found, R.G. was shot three times by members of the 1st Corpus of the BH Army and suffered serious injuries. These injuries doubtless caused him excruciating pain and required immediate emergency medical treatment. However, instead of receiving this treatment, he was handcuffed and bundled roughly into a military vehicle by his attackers. He was then driven around Sarajevo for approximately one hour, being beaten regularly and then brought to a military barracks. He doubtless suffered extreme mental and physical distress during this time, as he was being held captive and beaten by persons who had just shot him. Only afterwards was he finally brought to hospital. When he arrived he was told by his captors that if he revealed his true identity, he would be killed. He was threatened with serious consequences if he did not comply with the arbitrary and racist commands of his captors and forced to use Islamic greetings, being beaten when he did not do so. R.G. was, therefore, exposed to recreational and sadistic violence by persons acting with apparent impunity.

131. The Chamber notes that the medical treatment he received at the state hospital in Sarajevo was of a professional standard and appropriate to his medical needs. After being treated at the hospital he was taken by his captors, and detained in an unofficial place of detention. His wounds still required constant medical attention, which he received. During his detention he would doubtless have been in constant pain as a result of his wounds. On 15 October 1996, he was finally charged with the most serious crimes, i.e. with having committed war crimes against the general population, without any basis at all. Finally, on 30 October 1996, he was released from detention.

132. The Chamber notes that the applicant, on the day he was abducted, was driving down a road with friends and family. Therefore the treatment he received is all the more reprehensible.

133. In light of the above, the Chamber considers that the treatment suffered by R.G. at the hands of the 1st Corpus of the BH Army was of such a severe nature and lasted for such a long time, as to constitute torture. Accordingly, there has been a violation of his right to freedom from torture as guaranteed by Article 3 of the Convention.

(b) Article 5 of the Convention

134. Article 5 of the Convention provides, in relevant part, as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> (a) the lawful detention of a person after conviction by a competent court;
>
> (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfillment of any obligations prescribed by law;
>
> (c) the lawful arrest of any detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence

or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

(d) the detention of a minor by lawful order for the purposes of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

(e) the lawful detention of persons for the prevention of the spreading of infectious disease, of persons of unsound mind, alcoholics or drug addicts or vagrants;

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

...

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

135. R.G. claimed to have been a victim of a violation of his rights as guaranteed by this provision. Mr. Matković did not specifically claim to be a victim of a violation of his rights under this provision. The Chamber raised it of its own motion when transmitting the case to the respondent Party for observations on its admissibility and merits.

136. The Ombudsperson, in her report into the case of R.G., found that that applicant's detention had violated paragraphs 1, 2, 4 and 5 of Article 5 of the Convention.

137. The Federation denies that the applicants suffered violations of any of their rights as guaranteed by Article 5 of the Convention, claiming that their detention as and from 15 October 1996 was in accordance with the law and that it was not responsible for their detention prior to that date. It claims that the applicant's detention was lawful as they were detained for failure to provide identification to an authorised person and because Mr. Matković is a citizen of Yugoslavia. They were then charged with war crimes, as a suspicion of their having committed such crimes existed.

(i) *Article 5 paragraph 1 – lawfulness of the applicants' detention*

138. Article 5 of the Convention guarantees in essence the right to liberty and security of person. Article 5 paragraph 1 sets out in detail the permitted circumstances in which a person may be deprived of his liberty.

139. The Chamber has established that the applicants were arrested by members of the BH Army on 6 September 1996, solely for the purposes of exchange against prisoners held by the authorities of the Republika Srpska. This is not a valid reason for deprivation of liberty. The argument of the Federation, that the applicants were not arrested until 15 October 1996 is, in the light of the evidence established by the Chamber, clearly wrong. The Chamber notes that even if the argument of the Federation was true, the arrest of Mr. Matković on the basis of his nationality would constitute a violation of Article 5 paragraph 1 of the Convention.

140. The Chamber notes that the detention of the applicants was ordered by the Higher Court in Sarajevo on 15 October 1996. The question therefore arises of whether their detention was in accordance with the law as and from that date. Article 5 paragraph 1(c) of the Convention allows a person to be detained where there is a reasonable suspicion of him having a committed a criminal offence. In the present case, however, the charges were obviously fabricated, a fact which is borne

out by the fact that the applicants had been forced to sign blank pieces of paper in order that their detention could be regularised (see paragraph 28 above). In any event, the Chamber notes that the law in force at the time provided for a maximum period of detention of one month. The applicants were ordered to be detained for a period of three months and therefore the decision ordering their detention was not even in accordance with the domestic law. In addition, the detention of the applicants was not in accordance with the Rules of the Road (see paragraphs 82-84 above).

141. For these reasons, the arrest and detention of the applicants constituted a violation of their rights as guaranteed by this provision.

(ii) *Article 5 paragraph 2 – right to be informed of reasons for arrest*

142. The Chamber has received no evidence that the applicants were informed of the reasons for their arrest until 15 October 1996. It therefore finds that there has been a violation of their right to be informed promptly of the reasons for their arrest.

(iii) *Article 5 paragraph 4 – right to review of detention*

143. Article 5 paragraph 4 of the Convention, in essence, guarantees the right to a person detained to have a judicial review of that detention. As the Chamber has previously held, even in a case where a violation of Article 5 paragraph 1 has been found, this does not mean that there is no requirement to examine the compliance with Article 5 paragraph 4 (see case no. CH/97/45, *Hermas*, decision on admissibility and merits delivered on 18 February 1998, paragraph 61, Decisions and Reports 1998). In Hermas, the Chamber held that "arrested or detained persons are entitled to a review bearing upon the procedural and substantive conditions which are essential for the "lawfulness", in the sense of the Convention, of their deprivation of liberty...." (sup. cit., paragraph 63).

144. The Chamber notes that it has found that R.G. was treated at the state hospital in Sarajevo under a false name until 23 September 1996. Thereafter, until 15 October 1996, he was held in various places, together with Mr. Matković who had been detained since his abduction on 6 September 1996. At no stage during this period were they able to have the legality of their detention reviewed. Therefore until 15 October 1996 they had no remedy at all available to them and therefore there has been a violation of Article 5 paragraph 4 of the Convention.

(iv) *Article 5 paragraph 5 – right to compensation for illegal detention*

145. Article 5 paragraph 5 requires that national law provide for an enforceable right to compensation in respect of detention which is in contravention of the guarantees provided for in Article 5.

146. The Chamber notes that the legal system of the Federation did not contain a right to compensation for unlawful detention at the time of the applicants' release from detention, 30 October 1996. This is because the relevant provisions of the Law on Criminal Procedure were suspended until 23 December 1996 (see paragraph 81 above).

147. The Chamber therefore finds that there has been a violation of the rights of the applicants as guaranteed by Article 5 paragraph 5 of the Convention.

(c) Articles 6 and 13 of the Convention

148. In view of the findings it has already made, the Chamber does not consider it necessary to examine whether there has been any violation of the rights of the applicants as guaranteed by Articles 6 and 13 of the Convention.

2. Article II(2)(b) of the Agreement

149. The Chamber has previously held on a number of occasions that the prohibition of discrimination is a central objective of the General Framework Agreement for Peace in Bosnia and Herzegovina to which the Chamber must attach particular importance (see, *inter alia*, case no. CH/98/756, *Đ.M.*, decision on admissibility and merits delivered on 14 May 1999, paragraph 68, Decisions January-July 1999). Article II(2)(b) affords to it the jurisdiction to consider alleged or apparent discrimination on any ground in the enjoyment of any of the rights listed in the Appendix to the Agreement.

150. The Chamber notes that it has already found violations of the rights of the applicants as protected by Articles 3 and 5 of the Convention. It must now consider whether they have suffered discrimination in the enjoyment of those rights.

151. In examining whether there has been discrimination contrary to the Agreement the Chamber recalls its previous jurisprudence on the issue of discrimination in the enjoyment of the rights guaranteed under the Agreement. In *Đ.M.* (sup. cit., paragraph 73), the Chamber drew on the experience of other international judicial bodies such as the European Court of Human Rights and the United Nations Human Rights Committee, who have consistently found it necessary first to determine whether the applicant was treated differently from others in the same or relevantly similar situations.

152. Any differential treatment is to be deemed discriminatory if it has no reasonable and objective justification, that is, if it does not pursue a legitimate aim or if there is no reasonable relationship of proportionality between the means employed and the aim sought to be realised. There is a particular onus on the respondent Party to justify differential treatment which is based on any of the grounds explicitly enumerated in the relevant provisions, including religion or national origin.

153. In *Hermas* (sup. cit., paragraph 92), the Chamber found that the arrest and detention of persons on the basis of their belonging to a specific category of persons, for the purpose of exchange of prisoners, "constitutes a difference in treatment for which there is no conceivable justification."

154. Accordingly the applicants were discriminated against on the grounds of their religion and national origin in the enjoyment of their rights to liberty and security of person as guaranteed by Article 5 of the Convention.

155. Concerning the violations of the rights of the applicants as guaranteed by Article 3 of the Convention, the Chamber considers that the fact that they were treated to abusive language and treatment on the basis of their religion and national origin constitutes differential treatment for which there is no possible justification. The Chamber therefore finds that they were subjected to discrimination in the enjoyment of this right also.

156. In conclusion, the Chamber finds that the applicants were discriminated against in the enjoyment of their rights as guaranteed by Articles 3 and 5 of the Convention.

IX. REMEDIES

157. Under Article XI(1)(b) of the Agreement the Chamber must 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 as well as provisional measures.

158. The applicants, at the public hearing before the Chamber, both requested monetary compensation of DEM 50,000. The Chamber notes that the applicant R.G. had previously requested the sum of DEM 15,000 in his written claim for compensation submitted on 7 May 1999.

159. R.G.'s claim for compensation was not broken down into specific heads nor specified.

160. In respect of Mr. Matković, his claim was broken down into DEM 30,000 for pain and fear he suffered during his detention, DEM 10,000 for his damaged reputation and honour and DEM 5,000 in respect of a reduction of his general ability due to his detention. He also claimed DEM 2,000 for medical expenses and DEM 3,000 for lost income. At the public hearing the representative of the applicants was asked to submit any substantiation of these claims. She did not do so.

161. The Federation first contends that the claims submitted by the applicants are too high and points out that it has contested that they suffered any violations of their human rights and therefore denies that they are entitled to any compensation at all. It also points out that the claim submitted by R.G. is totally unspecified.

162. In respect of Mr. Matković, the Federation states that he has not sought to specify his claim for fear and suffering. It claims that he was not in a situation which would reasonably cause fear and suffering. Regarding his claim for damage to his reputation and honour, it claims that as he was released from detention it is clear that he was innocent and therefore he has not suffered any such damage.

163. The Federation also disputes Mr. Matković's claim for damages for reduced general ability and for medical expenses, stating that he has not provided any evidence, for example medical documentation, to support this claim. Finally, the Federation disputes his claim for compensation for lost income, stating that he has not provided any evidence of lost income or even of the type of employment in which he was engaged. At the public hearing before the Chamber the Agent of the Federation stated that if even if all of the allegations made by Mr. Matković were true, it considered that, in light of the jurisprudence of the Chamber, the maximum amount to which he would be entitled was 1,750 Convertible marks (*Konvertibilnih Maraka*, "KM").

164. The Chamber first notes that it has established that the applicants have suffered violations of their rights as protected by Articles 3 and 5 of the Convention and that they have been discriminated against in the enjoyment of those rights. The violations they suffered are of a very serious nature, particularly in the case of R.G. where the Chamber has found that the ill-treatment he suffered amounted to torture. It is therefore appropriate to award the applicants a substantial amount of compensation. The Chamber notes that the applicants, despite having been requested to do so, have not submitted any evidence to support their claims for pecuniary damage, for example certificates of lost earnings etc. The fact that the claims for compensation for pecuniary damage submitted by the applicants have not been substantiated does not preclude the Chamber from awarding them a sum for the moral damages they suffered as a result of their treatment at the hands of the BH Army.

165. In the *Hermas* case (sup. cit.), the Chamber awarded the applicant DEM 18,000 for both pecuniary and non-pecuniary injury. In that case, the Chamber found violations of the applicant's rights as guaranteed by Articles 3, 4 and 5 of the Convention and that he had been discriminated against in the enjoyment of those rights. While the violations suffered by the applicant in that case were of an extremely serious nature, the Chamber considers that the fact that the one of the applicants in the present case suffered serious gunshot wounds to make this case even more serious.

166. Therefore, taking into account the severity of the treatment suffered by R.G., especially the fact that he suffered extremely painful injuries as a result of being shot, and was tortured, the Chamber considers it appropriate to award him the sum of KM 25,000.

167. In respect of Mr. Matković, the Chamber notes that he was not injured during his abduction but otherwise suffered very serious violations of his human rights. Taking into account the jurisprudence of the Chamber, in particular the *Hermas* case, the Chamber considers it appropriate to award Mr. Matković KM 10,000 for moral damage.

168. Additionally the Chamber awards 4 % (four per cent) interest as of the date of expiry of the three month period set for the implementation of the present decision on the sum awarded in paragraphs 166 and 167 above.

X. CONCLUSION

169. For the above reasons, the Chamber decides,

1. unanimously, to declare the applications admissible;

2. unanimously, that the treatment of the applicants by the Army of Bosnia and Herzegovina between 6 September until 15 October 1996 constituted a violation of their rights not to be subjected to 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;

3. unanimously, that the treatment of the applicant R.G. during his arrest and detention on 6 September 1996 by the Army of Bosnia and Herzegovina constituted a violation of his right not to be subjected to torture as guaranteed by Article 3 of the Convention, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Agreement;

4. unanimously, that the arrest and detention of the applicants by the applicants by the Army of Bosnia and Herzegovina constituted a violation of their rights to liberty and security of person as guaranteed by Article 5 paragraphs 1, 2, 4 and 5 of the Convention, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Agreement;

5. unanimously, that it is not necessary to examine the applications under Articles 6 and 13 of the Convention;

6. unanimously, that the applicants have been discriminated against in the enjoyment of their rights as guaranteed by Articles 3 and 5 of the Convention, the Federation of Bosnia and Herzegovina thereby being in breach of Article I of the Agreement;

7. unanimously, to order the Federation of Bosnia and Herzegovina to pay to the applicant R.G., within one month of the date on which this decision becomes final and binding within the meaning of Rule 66 of the Chamber's Rules of Procedure, the sum of KM 25,000 (twenty five thousand Convertible marks) by way of compensation for moral damage suffered;

8. unanimously, to order the Federation of Bosnia and Herzegovina to pay to the applicant Mr. Matković, within one month of the date on which this decision becomes final and binding within the meaning of Rule 66 of the Chamber's Rules of Procedure, the sum of KM 10,000 (ten thousand Convertible marks) by way of compensation for moral damage suffered;

9. unanimously, that simple interest at an annual rate of 4 % (four per cent) will be payable on the sum awarded in conclusions 7 and 8 above from the expiry of the one-month period set for such payment until the date of final settlement of all sums due to the applicant under this decision; and

10. unanimously, to order the Federation of Bosnia and Herzegovina to report to it within one month of the date on which this decision becomes final and binding within the meaning of Rule 66 of the Chamber's Rules of Procedure on the steps taken by it to comply with the above orders.

(signed)
Anders MÅNSSON
Registrar of the Chamber

(signed)
Michèle PICARD
President of the First Panel