DECISION ON ADMISSIBILITY AND MERITS
(delivered on 4 July 2003)

Case no. CH/98/668

Ranko and Goran ĆEBIĆ

against

BOSNIA AND HERZEGOVINA
and
THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 2 June 2003 with the following members present:

Mr. Mato TADIĆ, President
Mr. Jakob MÖLLER
Mr. Mehmed DEKOVIĆ
Mr. Giovanni GRASSO
Mr. Manfred NOWAK
Mr. Vitomir POPOVIĆ
Mr. Viktor MASENKO-MAVI

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;

Recalling the Second Panel's decision of 11 October 2002 to strike out case no. CH/99/1518, *Ranko Ćebić v. the Federation of Bosnia and Herzegovina and Bosnia and Herzegovina*;

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

I. INTRODUCTION

1. The application was brought before the Chamber by Ranko Ćebić in his own right and on behalf of his son, Goran Ćebić, in accordance with Article VIII(1) of the Agreement, which provides in relevant part that "the Chamber shall receive ... from any person ... acting on behalf of alleged victims who are deceased or missing, for resolution or decision applications concerning alleged or apparent violations of human rights ..."[1].

2. Around 15 September 1996, Goran Ćebić disappeared from Sarajevo; he was officially registered as a missing person on 4 May 1998. Meanwhile, on 28 September 1996, an unidentified dead body was found in the River Bosna next to the Reljevo Bridge. After an autopsy was performed, the body was buried in the Municipal Cemetery of Visoko. On 22 June 2000, the corpse was exhumed and on 25 June 2000 officially identified as Goran Ćebić's body by the Commission for Tracing Missing and Detained Persons of the Republika Srpska ("the RS Commission").

3. Although his son suffered from a serious neurological disease (see paragraph 15 below), the applicant has, since the beginning of his search to discover the fate of his son, always maintained that he was killed and that his murder was covered up by the authorities of the Federation of Bosnia and Herzegovina ("the Federation"). He is convinced that the disappearance and death of Goran Ćebić are connected to the fact that his apartment in Sarajevo was re-allocated quickly after his disappearance. He argues that the authorities of the Federation purposely did not take the appropriate steps to locate the body of his son and later to investigate his death and find the perpetrators of what he insists must have been a murder. To date no physical evidence exists to support the applicant's theory.

4. The case raises issues under Article 2 (right to life) of the European Convention on Human Rights ("the Convention") in regard to the applicant's son Goran Ćebić. It further raises issues under Article 8 (right to respect for private and family life) of the Convention in regard to the applicant Ranko Ćebić himself.

II. PROCEEDINGS BEFORE THE CHAMBER

5. The application was received on 1 June 1998 and registered on 9 June 1998.

6. On 16 October 1998, the Chamber transmitted the case to the Federation for its observations on the admissibility and merits. On 26 April 1999, the Federation submitted its observations on admissibility and merits. On 2 June 1999, the Chamber received the applicant's response to the Federation's observations.

7. Although the application was directed against Bosnia and Herzegovina as a respondent Party, the Chamber did not see any reason to transmit the application to it since none of the authorities of Bosnia and Herzegovina was involved in the facts complained of. Furthermore, Bosnia and Herzegovina has no competence for the issues raised in this application (see paragraph 67 below).

8. On 19 March 1999, the applicant submitted a claim for compensation. For his efforts to trace his son and his physical and mental pain and suffering caused by his continued anticipation of the truth about the fate of his son, he requested KM 20,000. As compensation for mental suffering for the loss of his only son, he requested KM 50,000. He later requested that the truth about his son's disappearance be established and that the perpetrators of his murder be punished appropriately.

9. The Federation submitted further observations on 15 June 2000, 28 June and 1 November 2002, and 19 February, 20 March and 1 April 2003.

10. As requested by the Chamber, on 19 and 27 March 2003, the Republika Srpska submitted

[1] Although Ranko and Goran Ćebić are both registered as applicants, the decision refers to Ranko Ćebić as "the applicant".

relevant documents issued by its authorities. Although the Chamber received such documentation from the Republika Srpska, the Republika Srpska is not a respondent Party in the current case.

11. The applicant submitted several letters and observations to the Chamber during the proceedings before the Chamber.

12. On 2 April 2003, the Chamber held a public hearing in the premises of the Sarajevo Cantonal Court. The applicant Ranko Ćebić was present and represented himself and his late son. The Federation was represented by Safija Kulovac and Mirsad Gačanin, assistants of the Secretary of the Office for Co-ordination with and Representation before the Human Rights Chamber. The following witnesses were heard: Milan Bogdanić, former President of the Sub-Committee of Srpsko Sarajevo of the Commission for Tracing Missing and Detained Persons of the Republika Srpska and currently employed by it; Mustafa Bisić, Cantonal Prosecutor in Sarajevo; Branko Šljivar, Deputy Cantonal Prosecutor in Sarajevo; Ilijas Dobrača, court medical expert; and Hajrudin Isaković, housing inspector.

13. On 16 October 1998, 13 May 2000, 8 October 2002, and 10 January, 6 March, 9 May and 2 June 2003, the Chamber considered the admissibility and merits of the application. On the latter date the Chamber adopted the present decision.

III. FACTS

A. Background facts and disappearance of Goran Ćebić

14. The applicant Ranko Ćebić alleged in his application that his son, Goran Ćebić, disappeared from his apartment in Sarajevo during the night between 14 and 15 September 1996.

15. Goran Ćebić was married to A.M. and had a daughter with her. Before the outbreak of the armed conflict, Goran Ćebić and his wife divorced. The daughter now lives with her mother. Goran Ćebić had had a number of problems with his neighbours, due to his chronic alcoholism and the anti-social behaviour associated with that disease. He also suffered from depression with suicidal tendencies. On 16 April 1982, while Goran Ćebić was doing his military service in Zagreb, a Military Medical Commission of the Yugoslav National Army ("JNA") issued a certificate concerning his mental health. The certificate states that Goran Ćebić was affected by a *neurosis nuclearis* illness (*i.e.*, phobic anxiety disorder, anxiety hysteria) before the beginning of his military service, and since his illness did not improve, the Commission ordered his release from military duty.

16. In 1994 Goran Ćebić was injured in a gas explosion in his apartment; the skin on his face and hands was burned. After this accident, he started to consume tranquillisers.

17. After the armed conflict, Goran Ćebić was involved in several fights, mainly with his neighbours. On 5 September 1996, he physically attacked one of his neighbours, who reported the incident to the Municipal Police and brought charges against him. According to his father, he was physically assaulted on a number of occasions by his neighbours because he played loud music late at night. Ranko Ćebić considered that the music was an excuse and that the violence was due to the fact that the neighbours accused his son of being a "chetnik".

18. At the time of the disappearance of Goran Ćebić, criminal proceedings were also outstanding against him relating to the theft of an electricity cable. Since he did not appear before the investigative judge on a number of occasions after September 1996, a warrant for his arrest was issued on 1 February 1997.

B. Proceedings concerning the applicant's apartment

19. The applicant had an occupancy right over an apartment located at Džamiljska St. 13/VII in Sarajevo. This apartment was owned by the City Development Institute – Sarajevo City ("the Institute"). The applicant's son Goran Ćebić started to reside alone in this apartment during the armed conflict. However, according to the information submitted to the Chamber, it seems that Goran Ćebić was often absent from the apartment, for example, when he visited his former girlfriend

in Croatia.

20. On 1 June 1996, the Administration for Housing Affairs of the Sarajevo City issued a decision declaring the apartment permanently abandoned. This decision became valid on 13 June 1996. Although the applicant recognised that his son was not always in the apartment, he alleged that his son was still living in the flat at that time. During the public hearing, Mr. Isaković explained that he has "to seal any apartment that is free of persons and abandoned. When [he] come[s] to an apartment, even today, [he] leave[s] a summons for the party and if the party does not appear within seven days, then [he] leave[s] another summons. The third time [he] seal[s] the apartment and put[s] a notice by the Cantonal housing administration." Therefore, the apartment could have been declared abandoned while Goran Ćebić was visiting his girlfriend in Croatia, as the applicant stated.

21. On 31 July 1996, the First Corps of the Army of the Republic of Bosnia and Herzegovina requested the Institute to allocate an apartment to N.B.

22. On 1 June 1997, the Institute issued a procedural decision allocating the apartment in question to N.B. The decision mentions that the apartment is empty and devastated. Since the apartment was damaged by a gas explosion (see paragraph 16 above), the new occupant invested a significant amount of money to make the apartment habitable. Due to this significant investment and because N.B.'s relatives are, allegedly, important and powerful people in the Federation, the applicant suspects him of having participated in the disappearance and death of his son in order to gain rights over the apartment.

23. On 30 September 1997, the applicant submitted a request for reinstatement into possession of the apartment to the Administration for Housing Affairs of Canton Sarajevo ("the Administration"). On 26 November 1997, the Administration rejected his request.

24. On 22 April 1998, based on the new Law on Cessation of Application of the Law on Abandoned Apartments, the applicant submitted a new request to the Administration. On 1 July 1998, the Administration issued a procedural decision confirming the applicant's occupancy right but also considering that the current user was legally occupying the apartment, leaving the final decision about reinstatement to the competent Cantonal organ. The applicant appealed against this procedural decision.

25. On 28 January 1999, the Commission for Real Property Claims of Displaced Persons and Refugees ("CRPC") issued a decision confirming the applicant's occupancy right to the apartment.

26. On 13 September 1999, the Administration issued a new procedural decision that annulled the previous one, confirmed the applicant's occupancy right and stated that the current occupant was obliged to leave the apartment within 15 days.

27. On 4 May 2000, the applicant entered into possession of his pre-war apartment.

C. Proceedings concerning an unidentified body found in the River Bosna

28. On 28 September 1996, a dead body was discovered in the River Bosna next to the Reljevo Bridge, about 15 kilometres from Sarajevo. This body was registered as N.N. – the abbreviation for *nomen nescium*, *i.e.* unknown – since no elements were present with which to identify the body. Upon the request of the Higher Court in Sarajevo, on 29 September 1996, a court medical expert, Mr. Dobrača, performed the autopsy of the N.N. 522 RA body. He established that the cause of death was the cessation of blood circulation due to a sudden immersion in water (*i.e.* hydrocution). In the autopsy minutes the expert stated that the death was violent – *i.e.* not natural –, but he could not establish whether this unnatural death was due to a murder, a suicide, or an accident. He also stated that the body was alive at the moment of falling into the water and that no traces of injuries or violence were found. During the public hearing, Mr. Dobrača confirmed the findings of the autopsy and stated that the cause of death cannot be established clearly. According to him, when the body was found, it had been in the water for at least 72 hours. He recalled that the level of the River Bosna was high and the flow of the water was fast at this period of the year. He was, therefore, of the

opinion that the N.N. body probably did not fall into the water at the place where it was found, but most probably from somewhere upstream, closer to Sarajevo. He also stated that some minor injuries were found on the body, but these injuries were superficial and did not affect any vital organ or function and thus were not the cause of death. Therefore, the body did not show any sign of physical assault prior to the impact of immersion in the water. After the issuance of this autopsy, the N.N. body was buried in the Municipal Cemetery of Visoko.

29. On 23 March 1998, the Deputy Cantonal Prosecutor of Sarajevo requested the Sarajevo Cantonal Court to transmit to his office photo-documentation and the record of the autopsy of the body found in the River Bosna on 28 September 1996 next to the Reljevo Bridge.

30. On 10 September 1998, based on the documentation transmitted, the Deputy Cantonal Prosecutor of Sarajevo issued an official note stating that "according to the documents in the case-file, I [, the Deputy Cantonal Prosecutor,] state that no acts by a third person with elements of criminal activity are present" with respect to the N.N. 522 RA body.

D. Tracing proceedings concerning Goran Ćebić

31. On 4 February 1997, the applicant reported his son's disappearance to the Ministry of Interior of Sarajevo Canton in writing. He made the same report to the International Committee of the Red Cross, to the Office of the United Nations High Commissioner for Refugees, and to several other international organisations. In an unsigned "information" note dated 21 April 1997, the Tracing Division of the Ministry of Interior of Sarajevo Canton states that the alleged victim, *i.e.* Goran Ćebić, is believed to be living somewhere in Croatia, taking care of elderly persons.

32. On 4 May 1998, Goran Ćebić was officially registered as a missing person, when the applicant submitted a written "request to initiate the search for a missing person" to the Ministry of Interior of the Federation.

33. The applicant also submitted an application to the Human Rights Ombudsperson for Bosnia and Herzegovina concerning the same matter. On 2 July 1998, the Chamber contacted the Ombudsperson and was informed that the applicant had requested to withdraw his application before that organ so that an application could be submitted to the Chamber. On 1 February 1999, the Ombudsperson decided not to open an investigation.

34. On 17 January 2000, the applicant filed criminal charges at the Sarajevo Canton Ministry of Interior against two persons in relation to the disappearance and alleged murder of his son. He alleged that the "official organs [of the Federation] undertook a 'campaign' against [his] son" and that these two persons were involved in the disappearance of Goran Ćebić.

35. On 2 February 2000, the Criminal Police of Sarajevo Canton took a statement of Ranko Ćebić concerning the disappearance of his son. During his statement, Ranko Ćebić repeated his accusations against these two persons for the murder of his son and stated that they had also threatened him.

36. On the same day, the Criminal Police contacted Goran Ćebić's ex-wife and had a conversation with her. Her statement was officially registered. She said that Goran Ćebić probably disappeared around September 1996, since he did not contact their daughter after that period. She explained that Goran had been "under the influence of alcohol almost all the time" and that he "almost always showed signs of restlessness, nervousness, and low spirits", which she attributed to the combination of alcohol and tranquillisers. She further said that she did not know what had happened to him.

37. Based on the statement of Ranko Ćebić, the two accused persons were heard by the Criminal Police on 9 February and 22 February 2000.

38. On 21 February 2000, the Criminal Police took a telephonic statement of Goran's former girlfriend from Zagreb. She declared that she had been in a relationship with Goran Ćebić until September 1995 and that he had had serious difficulties accepting the end of their relationship. After September 1995, she had met Goran several times and had stayed in contact with him. She

stated that Goran Ćebić had drinking problems and that he used tranquillisers together with alcohol. She further explained that he had tried to commit suicide in the past while serving in the former JNA, and he had threatened this again in 1996 and had generally lost the will for living. She spoke with him for the last time on 12 September 1996. She finally declared that she does not think that "Goran had any enemy, and the reason for his disappearance could not be the apartment".

39. On 22 February 2000, the Criminal Police transmitted its files concerning the disappearance of Goran Ćebić to the Sarajevo Cantonal Prosecutor's Office.

40. According to the applicant's statement during the public hearing, sometime after May 1998, he contacted "his old friend", Mr. Zovko, then President of the Constitutional Court of Bosnia and Herzegovina to request his support to discover the fate of his son. The applicant stated that Mr. Zovko "sent him" to the Cantonal Prosecutor Office to meet with Mr. Čavka for assistance in establishing the facts of his son's disappearance. However, the Chamber has no further information on these allegations or on whether Mr. Zovko supported the applicant in any manner.

41. A few days after his visit with Mr. Čavka, on 7 or 8 March 2000, the applicant was called to the Cantonal Prosecutor's Office, where the authorities informed him that they thought they had found his son's body. During the public hearing, Mr. Šlijvar, Deputy Cantonal Prosecutor, explained that the case was "re-opened" due to several documents provided by the applicant and due to his insistence. The Prosecutor's Office presented to the applicant photographs of the N.N. body found in the River Bosna on 28 September 1996 next to the Reljevo Bridge. On that occasion, the applicant stated that he was almost sure that the dead body was his son. The applicant further explained at the public hearing that when he was called into the Office, he asked how they had found his son, and Mr. Čavka of the Cantonal Prosecutor's Office told him "that he started from the point when my son had disappeared, and he separated all the files of missing persons in that period at the Prosecutor's Office, so he selectively came to the conclusion that it [the N.N. 522 RA body] could be my son, which was also confirmed".

42. On 20 April 2000, upon the request of the applicant, the Sarajevo Cantonal Prosecutor's Office presented pictures taken in September 1996 of the N.N. 522 RA body to two neighbours of Goran Ćebić. The first neighbour stated that "he thinks that it is Ćebić Goran because he finds a likeness between the photos and Goran Ćebić, but because of major changes to the body due to the fact that it stayed in the water for many days, he cannot confirm it with certainty". The second neighbour said he "cannot state that it is Goran Ćebić since it is difficult to identify the body".

E. Proceedings concerning the exhumation of the body found in the River Bosna

43. As explained by Mr. Bogdanić during the public hearing, the applicant contacted the RS Commission on 8 March 2000. In his letter, the applicant opined that the authorities of the Federation knew fundamental elements about his son's fate but "until today nothing concrete has been said". Based on these suspicions, the applicant requested the RS Commission to undertake the exhumation and autopsy of the body corresponding to the pictures that were presented to him earlier that day or the day before in the Cantonal Prosecutor's Office. The RS Commission did not have direct territorial competence to exhume the body in question since it was buried within the territory of the Federation. However, because the applicant and his son were of Serb origin, the RS Commission had the possibility to undertake such actions pursuant to the joint exhumation process.[2]

[2] As the Chamber has already explained in the case *Selimović and others* (case nos. CH/01/8365 *et al.*, *Selimović and others*, decision on admissibility and merits of 3 March 2003, paragraph 125), the representatives of Bosnia and Herzegovina, the Federation, the Republika Srpska and the Office of the High Representative ("the OHR") established in 1996 the Rules for Exhumations and the Clearing of Unburied Mortal Remains. Together with the Banja Luka and Sarajevo Agreements (for more details on these Agreements, see *Selimović and others*, *op. cit.,* paragraphs 124 and following), these Rules prescribe a process that has become known as the Joint Exhumation Process, whereby the competent authorities of the interested Party initiate and conduct the exhumation of a gravesite on the territory of the Party controlling that area. The Party controlling the area provides security for the exhumation team. For example, for gravesites of Bosniak victims of the Srebrenica events, the competent authorities of the Federation initiate and conduct the exhumation of gravesites located on the territory of the Republika Srpska, with local police of the Republika Srpska providing security. Various international experts and authorities supervise and monitor the entire process. Although not

44. The applicant provided the RS Commission with *ante-mortem* information on his son and a sketch where his late son could possibly have been buried in the Municipal Cemetery of Visoko, which he learned about when the pictures of the N.N. 522 RA body were shown to him by an officer of the Sarajevo Cantonal Prosecutor's Office.

45. On 27 April 2000, a representative of the Federal Commission for Missing Persons informed the Sarajevo Cantonal Prosecutor's Office that they had met with Ranko Ćebić and promised to perform DNA analysis of the mortal remains of the N.N. body, buried in the Municipal Cemetery of Visoko, in order to determine whether it is the body of Goran Ćebić.

46. On 1 June 2000, the exhumation and identification of the body found in the River Bosna in 1996 was ordered upon the proposal of the RS Commission. Mr. Bogdanić stated that the exhumation was authorised by an investigative judge from the Zenica-Doboj Canton and the District Court of Sprsko Sarajevo "under the condition to rebury the body if the identification is not confirmed". On 22 June 2002, the exhumation was conducted by the RS Commission. According to the minutes of the exhumation, those present on the spot were an investigative judge of the First Instance Court of Srpsko Sarajevo, the Deputy Prosecutor of Srpsko Sarajevo, the forensic medical expert and four members of the RS Commission. Information contained in the report of the director of the Visoko Cemetery, combined with information given by Mr. Bogdanić during the public hearing, establish that representatives of the following organisations were also present at the exhumation: the Ministry of Interior of the Republika Srpska, the Investigative Judge's Office of the Zenica Cantonal Court, the Commission for Missing Persons of the Federation, the International Committee of the Red Cross, and the Office of the High Representative. Mr. Bogdanić has further explained that there were no specific reasons to undertake the exhumation only three weeks after the order was issued. He stated that exhumation processes were organised periodically and that the RS Commission was only trying to combine exhumations at the same cemetery at one time.

47. On 25 June 2000, a medical expert of the RS Commission issued a death certificate for Goran Ćebić. The identification was performed in the presence of the applicant.

48. After the exhumation and identification, Goran Ćebić's body was transported to the Sopotnica Monastery in Kopaci, the Republika Srpska, and buried in the family tomb, upon the request of Ranko Ćebić.

49. Meanwhile, on 7 June 2000, the Deputy Prosecutor of the Sarajevo Canton issued a "proposal" to the investigative judge of the Sarajevo Cantonal Court "for the determination of the exhumation and DNA analysis of an unidentified corpse by the Institute for Genetics of the Koševo Hospital Sarajevo", as the Institute for Genetics became equipped for DNA analysis in May 2000 (see paragraph 60 below). On 24 November 2000, an Investigative Judge of the Zenica Cantonal Court issued an "official note" stating that on the same day he had been informed by representatives of the Visoko Cemetery that the mortal remains buried in lot no. A-3 4/3 were considered to be those of the late Goran Ćebić.

F. Criminal proceedings initiated by the applicant

50. On 24 April 2002, the Cantonal Prosecutor rejected Ranko Ćebić's criminal complaint against another person whom he suspected of being the murderer of his son. After that Ranko Ćebić took over the criminal prosecution, and on 6 May 2002, he filed a request with the Sarajevo Cantonal Court to conduct an investigation against this person. On 24 July 2002, the Sarajevo Cantonal Court decided to open an investigation against him on the suspicion that he had murdered Goran Ćebić by four hits to the head using a hard object. To date these proceedings are still pending before the domestic authorities.

51. On 20 November 2002, the applicant brought criminal charges against his son's former girlfriend for abandonment of a helpless person, failure to render help, and fraud. In his charges, the

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stated in the texts of these Agreements, the joint exhumation process was intended to be utilised in the context of persons missing from the 1992-1995 armed conflict on the territory of Bosnia and Herzegovina.

applicant stated that Goran Ćebić told the accused on 12 September 1996 that "he knew what he has to do". Based on this, the applicant considers that the former girlfriend should have assumed that his son would commit suicide and should have prevented this. On 25 December 2002, the Office of the Cantonal Prosecutor in Sarajevo rejected these charges.

IV. RELEVANT LEGAL PROVISIONS

52. The Law on Criminal Procedure of the Federation (Official Gazette of the Federation of Bosnia and Herzegovina – "OG FBiH" – no. 43/98) provides in relevant parts as follows:

Article 41

"(1) Prosecution of criminal perpetrators is the basic right and basic duty of the competent prosecutor.
(2) The competent prosecutor has the following powers and duties concerning crimes which are automatically prosecuted:

1. to take the necessary steps to discover crimes and to identify the perpetrators and to guide preliminary criminal proceedings and supervise the activities of the law enforcement agencies pertaining to the identification of crimes and their perpetrators".

Article 56

"(1) When the competent prosecutor finds that there are not grounds to undertake prosecution of a crime which is automatically prosecuted or when he finds that there are no grounds to prosecute any of the reported accomplices, or when it is considered by this Law that he has withdrawn from prosecution, he must inform the injured party of this within a period of 8 days and instruct him that he may undertake prosecution himself. The same procedure shall also be followed by a court if it has rendered a decision to halt proceedings because the competent prosecutor has withdrawn from prosecution, or when by this Law it is considered that the competent prosecutor has withdrawn from prosecution.
(2) The injured party has the right to undertake or to resume prosecution within 8 days from the date of receipt of the notification referred to in paragraph 1 of this Article."

Article 59

"(1) The injured party as prosecutor shall have the same rights as the competent prosecutor, except those belonging to the competent prosecutor as an official of the government.
(2) In proceedings conducted on the petition of an injured party as prosecutor, up until the end of the main trial, the competent prosecutor has the right to undertake prosecution himself and to defend the charge."

Article 141

"1. Private citizens are entitled to report crimes which are automatically prosecuted, and they have a duty to do so in the case when failure to report crimes constitutes a crime of itself."

Article 142

"1. A report shall be filed with the competent prosecutor in writing or orally."

Article 143

"1. If there are grounds to suspect that a crime which is automatically prosecuted has been committed, law enforcement agencies must take the steps necessary to locate the perpetrator of the crime, to prevent the perpetrator or accomplice from hiding or fleeing, to detect and secure the clues to the crime and articles which might serve as evidence, and to gather all information which might be of use to effective conduct of criminal proceedings."

Article 147

"When the perpetrator of a crime is unknown, the competent prosecutor may request that certain investigative actions be taken by the investigative judge, or if an autopsy or exhumation of a corpse should be done, he shall propose the taking of that action to the

investigative judge. If the investigative judge does not agree with that proposal, he shall ask the panel of judges to decide on the issue (Article 21 paragraph 6)."

Article 247

"1. The examination and autopsy of a corpse shall be undertaken in any case of death when there is suspicion or when it is obvious that the death was caused by a crime or is related to the commission of a crime. If the corpse has already been buried, then the exhumation shall be ordered for purposes of its examination and autopsy.

2. In the autopsy the necessary steps shall be taken to establish the identity of the corpse, and data concerning the external and internal physical peculiarities of the corpse shall be specifically described for that purpose."

V. COMPLAINTS

53. The applicant complains that in spite of his numerous requests to national and international authorities, his son's disappearance during the night between 14 and 15 September 1996 was not clarified until March 2000, and the circumstances of his death still have not been determined to date. He further complains about the reallocation to another person of his pre-war apartment, which was occupied by his son before he disappeared. During the public hearing, the applicant alleged that "his son was murdered in Sarajevo, transported to Reljevo and thrown from the Bridge into the water". Therefore, he requested the Chamber to declare the respondent Party responsible for the premeditated concealment of the crime [of the murder of his son] for more than four years by the Ministry of Interior of the Sarajevo Canton, and to condemn for negligence and irresponsibility the Cantonal Prosecutor's Office in Sarajevo".

54. Mr. Ranko Ćebić believes that the disappearance and death of his son, in combination with the declaration that his apartment was abandoned while his son was still alive and its re-allocation shortly thereafter to another person under "suspect circumstances" can only be explained by a conspiracy and collusion among the authorities of the Federation to protect the murderer(s) of his son. He further claims that the authorities of the Federation concealed from him for four years the fact that an unidentified male body had been found in the River Bosna at approximately the time when his son disappeared; therefore, he concludes that the authorities intentionally kept this information secret in order to protect someone.

55. From the application and later correspondence, it can be concluded that the applicant complains that the rights of his late son Goran Ćebić protected by Article 2 of the Convention have been violated. In addition, Ranko Ćebić alleges violations of his rights guaranteed by Article 8 of the Convention. The applicant also complains about the allocation of his pre-war apartment to a third party. This would, in principle, raise issues under Article 8 of the Convention and Article 1 of Protocol No. 1 to the Convention.

VI. SUBMISSIONS OF THE PARTIES

A. The respondent Party

56. In its observations of 26 April 1999, the Federation considers, regarding the admissibility of the application, that it should be declared inadmissible for non-exhaustion of domestic remedies.

57. According to the respondent Party, the applicant had the following possible remedies:

- Under the Law on Extra-Judicial Procedure (OG FBiH no. 2/98): Articles 18, 25, 27, 64 and 68;
- Under the Law on Criminal Procedure (OG FBiH no. 43/98): Articles 56, 141 and 142.

58. The respondent Party did not elaborate any further on the remedies listed.

59. Considering the merits of the case, the Federation opines that the application is ill-founded. Regarding Article 2 of the Convention, it states that its organs and institutions did not contribute to the alleged situation, and consequently, no violation of Article 2 has occurred. Further, the Federation maintains that there has been no violation of Article 8 of the Convention, since the alleged victim abandoned the apartment and the authorities did not contribute to this in any way.

60. The respondent Party, in its additional observations of 1 November 2002, alleges that the identification of the body found in the River Bosna could not have been performed earlier because Bosnia and Herzegovina did not have the technical means to establish such identity. DNA analysis was only enabled in Bosnia and Herzegovina in May 2000. As soon as the Genetics Institute in Sarajevo received the equipment for DNA analysis, the Cantonal Prosecutor suggested to the investigative judge that the exhumation and DNA analysis of the found body be performed. The respondent Party also alleges that the body could not be identified on the basis of its external characteristics.

61. Concerning the applicant's request for compensation, the Federation is of the opinion that the claim for monetary relief for efforts to trace his son is ill-founded and in any case over-estimated. Regarding the disappearance, the respondent Party also considers the claim ill-founded and over-estimated, since the Federation's responsibility for this has not been demonstrated.

B. The applicant

62. In his correspondence with the Chamber, the applicant persistently alleges that his son was deliberately killed. He bases this allegation on circumstantial evidence, including:

- the alleged unwillingness and uncooperativeness of the judge investigating the criminal charges against his son; and
- the fact that another person was permanently allocated his son's apartment very soon after his disappearance and then spent 15,000 KM repairing it. The applicant concludes that nobody would be willing to invest so much money in an apartment unless he was sure that he would remain in possession of it for some time. The applicant considers the fact that the new occupancy right holder is a relative of two active politicians in the Canton and the Federation to be a possible explanation for this quick re-allocation of the apartment and even for the disappearance of his son.

63. In his submission of 2 June 1999, the applicant argues that he had discussed the possible domestic remedies with several distinguished lawyers and also with the President of the Constitutional Court of Bosnia and Herzegovina. The applicant had been told by all of them that an eventual lawsuit instituted by him would be rejected as ill-founded. In spite of this, the applicant requested that his lawyer file a lawsuit against those whom he regards as suspects for the murder of his son, but the lawyer refused to do so when he heard the names of the suspects. Therefore, the applicant contends that he has no available effective legal remedies.

64. In a letter received on 14 March 2000, the applicant maintains his claim regarding the absence of actions taken by the Federation to inquire into his son's death, and he alleges that the medical expert from the RS Commission has established that his son's death was caused by four hits to the head by a hard object. However, the report of the medical expert was never provided to the Chamber.

VII. OPINION OF THE CHAMBER

A. Admissibility

65. 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. As against Bosnia and Herzegovina

66. In accordance with Article VIII(2) of the Agreement, "the Chamber shall decide which applications to accept.... In so doing, the Chamber shall take into account the following criteria: ... (c) The Chamber shall also dismiss any application which it considers incompatible with this Agreement, manifestly ill-founded, or an abuse of the right of petition".

67. The applicant directs his application against Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina. The Chamber notes that the applicant has not provided any indication that Bosnia and Herzegovina is in any way responsible for the actions he complains of, nor can the Chamber on its own motion find any such evidence. The application is therefore incompatible *ratione personae* with the Agreement insofar as it is directed against Bosnia and Herzegovina. The Chamber therefore declares the application inadmissible as against Bosnia and Herzegovina.

2. As against the Federation of Bosnia and Herzegovina

68. Under Article VIII(2)(a) of the Agreement, the Chamber shall consider whether effective remedies exist and the applicant has demonstrated that they have been exhausted.

69. 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 (the "European Court") 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 European 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. In previous cases the Chamber has held that the burden of proof is on the respondent Party to satisfy the Chamber that there was a remedy available to the applicant both in theory and in practice (*see, e.g.*, case no. CH/96/21, *Čegar*, decision on admissibility of 11 April 1997, paragraph 12, Decisions March 1996-December 1997).

70. In its observations of 2 June 1999, the respondent Party claims that the application is inadmissible for non-exhaustion of domestic remedies. However, the Chamber notes that the Federation did not substantiate in any detail its allegation of non-exhaustion of domestic remedies. Rather, it merely listed some possible remedies without explaining how they could have been relevant for the applicant in the particular circumstances of the case. Furthermore, considering all the domestic and international authorities that Ranko Ćebić has addressed and the different legal actions that he took, the Chamber considers that the applicant has exhausted the domestic remedies accessible to him, within the meaning of Article VIII(2)(a) of the Agreement.

3. Regarding the claim related to the pre-war apartment

71. 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: ... (b) The Chamber shall not address any application which is substantially the same as a matter which has already been examined by the Chamber or has already been submitted to another procedure of international investigation or settlement."

72. In his application, the applicant complains that his pre-war apartment was declared permanently abandoned and allocated to another person in 1996. However, the Chamber notes that the applicant raised this issue before the Chamber in another application filed on 29 January 1999, registered as case no. CH/99/1518. On 11 October 2002, the Chamber adopted a decision to strike out that application on the ground that the matter complained of had been resolved, since Ranko Ćebić had entered into possession of his pre-war apartment on 4 May 2000. It follows that the matter has already been examined by the Chamber, within the meaning of Article VIII(2)(b) of the Agreement. Therefore, the Chamber decides to declare inadmissible the part of the application related to the applicant's pre-war apartment.

4. Conclusion as to admissibility

73. The Chamber finds that no other grounds for declaring the case inadmissible have been established. Accordingly, the Chamber declares admissible the part of the application related to the alleged violations of Article 2 of the Convention in respect of Goran Ćebić and Article 8 of the Convention in respect of the applicant, as against the Federation. The Chamber declares inadmissible the remainder of the applicant's complaints.

B. Merits

74. Under Article XI of the Agreement the Chamber must next address the question of whether this case discloses a breach by the respondent Party of its obligations under the Agreement. Article I of the Agreement provides that the Parties shall secure to all persons within their jurisdiction the highest level of internationally recognised human rights and fundamental freedoms, including the rights and freedoms provided in the Convention.

1. Article 2 of the Convention (right to life) in regard to Goran Ćebić

75. The relevant part of Article 2 of the Convention reads as follows:

> "(1) Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law. [...]"

76. As the Chamber has stated in its decision in *E.M. and Š.T.* (case no. CH/01/6979, decision on admissibility and merits delivered on 8 March 2002, paragraphs 50 and 51), the European Court has ruled "that the first sentence of Article 2 paragraph 1 enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction" (see Eur. Court HR, *L.C.B. v. United Kingdom*, judgment of 9 June 1998, Reports of Judgments and Decisions 1998-III, p. 1403, paragraph 36). The State's obligation in this respect requires it to put in place effective criminal-law provisions to deter the commission of offences against the person backed up by law-enforcement machinery for the prevention, suppression and sanctioning of breaches of such provisions" (see Eur. Court HR, *Osman v. United Kingdom,* judgment of 28 October 1998, Reports of Judgments and Decisions 1998-VIII, p. 3159, paragraph 115). It requires, *inter alia*, that there should be "some form of effective official investigation when individuals have been killed as a result of the use of force" (see, *e.g.*, Eur. Court HR, *McKerr v. United Kingdom*, judgment of 4 May 2001, paragraph 111). The essential purpose of such investigation "is to secure the effective implementation of the domestic laws which protect the right to life" (*id.*). The investigation must be effective in the sense that it is capable of leading "[...] to the identification and punishment of those responsible," this being not an obligation of "result but of means" (*id.,* paragraph 113). In examining whether these obligations under Article 2 have been complied with, the European Court has taken into account not only the adequacy of the police investigation, but also the actions of the prosecuting authorities and the courts in relevant criminal proceedings (see, *e.g.*, *id.,* paragraphs 130-136).

77. Furthermore, the Chamber recalls that the positive obligation to carry out an effective investigation is not confined to cases where the implication of State agents has been established (see, *e.g.*, Eur. Court HR, *Yasa v. Turkey,* judgment of 2 September 1998, Reports of Judgments and Decisions 1998-VI, paragraph 100). Also in accordance with the jurisprudence of the European Commission of Human Rights in *Dujardin v. France* (Eur. Commission HR, No. 16734/90, decision of 2 September 1991, Decisions and Reports 72, p. 236), there is a positive obligation for the State to prosecute those who harm life under Article 2 of the Convention.

78. Having considered this constant case-law, the Chamber finds that the absence of established responsibility of the Federation or its agents in the disappearance and death of Goran Ćebić does not exclude the respondent Party from its positive obligation to carry out an effective investigation to protect the right to life as guaranteed by Article 2 of the Convention.

79. In the present case the applicant essentially complains that the authorities of the Federation failed to identify the corpse of his son for almost 4 years, and then they failed to establish precisely the circumstances of his death and to prosecute his killer, if necessary. The Chamber will therefore consider whether the above-mentioned procedural requirements under Article 2 of the Convention were complied with in the proceedings in question.

80. In commencing the application of these legal principles to the present case, the Chamber must highlight that the safeguards of Article 2 of the Convention are triggered "when individuals have been killed as a result of the use of force". Thus, the question for the Chamber is whether the authorities of the respondent Party took sufficient steps to establish whether Goran Ćebić was killed by the use of force, and if he was, whether they performed the necessary procedures to satisfy their positive obligations. Moreover, as the obligation is one of conduct rather than of result, it is possible for the authorities to satisfy their positive obligations under the Convention without in fact concretely establishing the facts and circumstances of the individual's death. Although tragic and painful for the families, the Chamber recognises that not every death can be precisely explained.

81. Concerning the body found in the River Bosna in September 1996, the autopsy of the corpse performed by the court medical expert determined that the circumstances of the cause of death could not be clearly established. The medical expert considered that the unnatural death, which was caused by hydrocution, could have occurred due to an accident, a murder, or a suicide (see paragraph 28 above). The Chamber notes, however, that on 10 September 1998, the Deputy Cantonal Prosecutor, after having considered the relevant documents concerning this unknown body, concluded in an official note that the cause of death did not involve criminal activity (see paragraph 30 above).

82. Considering the disappearance and fate of Goran Ćebić, the Chamber notes that Goran Ćebić was officially registered as a missing person only on 4 May 1998. In 2000, the Sarajevo Cantonal Prosecutor's Office took several testimonies of witnesses and carried out diverse acts of investigation without being able to clarify whether or not Goran Ćebić was killed, as insisted upon by his father, or died accidentally, as some circumstantial evidence in the case file seems to support. The Chamber further recalls that the proceedings are still pending before the domestic authorities. In March 2000, in part due to the insistence of the applicant and perhaps due to the alleged intervention of the then President of the Constitutional Court, the authorities of the Federation finally compared their files and made a connection between the N.N. 522 RA body and the disappearance of Goran Ćebić. The Office of the Cantonal Prosecutor contacted Mr. Ranko Ćebić on 7 or 8 March 2000 to present him with pictures of the N.N. body found on 28 September 1996, thereafter leading to the identification of his missing son.

83. The Chamber notes that no appropriate explanation was given by the respondent Party as to why it took more than 3 years for the Office of the Cantonal Prosecutor to establish a possible link between the disappearance of Goran Ćebić and the body found in the River Bosna in September 1996 — from 4 February 1997, when the applicant first reported his son missing, until March 2000. This is so, even if the 3-month delay by the applicant in first reporting the disappearance of his son could have contribute to the authorities' difficulty in establishing the link. The Chamber can only conclude that the investigation undertaken by the authorities of the Federation was less than diligent. Moreover, the Chamber observes an apparent communication problem between the different administrations of the Federation in charge of this case.

84. None the less, the Chamber recalls that to engage the responsibility of the respondent Party under the positive obligations of Article 2 of the Convention, and to impose upon it an obligation to investigate, the use of force must be established. In the present case, the Chamber considers that the circumstances of the death of Goran Ćebić remain unclear, despite the fact that the authorities undertook the basic investigations required by the domestic law. The Chamber further stresses that Goran Ćebić was affected by a serious neurological disease and that he had exhibited suicidal tendencies; therefore, the likelihood of an accident or suicide cannot be reasonably excluded as the possible cause of his death.

85. The Chamber acknowledges that the authorities of the Federation can be seen as having lacked a degree of efficiency in the investigation concerning the disappearance and fate of Goran Ćebić. However, the Chamber recalls that Article 2 of the Convention does not impose upon the

respondent Party an obligation of result but only an obligation of conduct. Taking into consideration the delay in officially registering Goran Ćebić as a missing person, the lack of certainty over the cause of his death, and the lack of any physical evidence indicating the presence of any criminal activity in his death, the Chamber considers that the authorities of the Federation carried out the minimum investigations necessary, in the special circumstances of this specific case, to satisfy the positive obligations of Article 2 of the Convention. Therefore, the Chamber concludes that the Federation did not violate Goran Ćebić's rights as guaranteed by Article 2 of the Convention.

2. Article 8 of the Convention (right to respect for private and family life — *i.e.*, right to access to Information) – in regard to Ranko Ćebić

86. Article 8 of the European 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."

87. 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. 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" (see case no. CH/99/2150, *Unković,* decision on review of 6 May 2002, paragraph 126, Decisions January—June 2002; case nos. CH/01/8365 *et al. Selimović and others*, decision on admissibility and merits of 3 March 2003, paragraph 174).

88. In its *Avdo and Esma Palić* decision, the Chamber considered that the respondent Party had engaged in "arbitrarily withholding from [Mrs. Palić] information, which must be in its possession, concerning the fate of her husband, including information concerning her husband's body, if he is no longer alive. It follows that the respondent Party has violated her right to respect for her family life under Article 8 of the Convention" (case no. CH/99/3196, decision on admissibility and merits delivered on 11 January 2001, paragraph 84, Decisions January-June 2001).

89. Therefore, the Chamber has established a right, derived from Article 8 of the Convention, for the relatives of missing persons to be informed of their fate and whereabouts when the respondent Party or its authorities were involved in their disappearances.

90. The Chamber also recalls that the European Court considers that "the Convention is a living instrument which must be interpreted in the light of the present-day conditions" (Eur. Court HR, *Mazurek v. France*, judgment of 1 February 2000, Reports of Judgments and Decisions 2000-II, paragraph 49; *see also* Eur. Court HR, *Marckx v. Belgium*, judgment of 13 June 1979, Series A no. 31, paragraph 58). Applying this approach, the European Court in the *Marckx v. Belgium* case utilised the Convention to accelerate the evolution of the law by finding a violation of Article 14 in conjunction with Article 8 of the Convention (*id.* at paragraph 58 (regarding inheritance rights)). Ultimately, the European Court has defined the general principle that Article 8 of the Convention creates a positive obligation toward the State when "a direct and immediate link between the measures sought by an applicant and the latter's private and/or family life" is established (Eur. Court HR, *Botta v. Italy*, judgment of 24 February 1998, Reports of Judgments and Decisions 1998-I, paragraph 34).

91. Having this in mind, the Chamber is of the opinion that Article 8 of the Convention should be interpreted also to impose upon the authorities the positive obligation to affirmatively seek, collect, and investigate information on the fate and whereabouts of missing persons within their jurisdiction, when properly requested to do so by their family members, and then, to share such information with the family members in a timely manner and in good faith. This is so even when the missing persons

disappeared without any involvement of the authorities and in the absence of any evidence of criminal activity. Accordingly, in the Chamber's view, if the authorities withhold, purposefully fail to collect, or negligently fail to analyse and disclose information on the fate and whereabouts of missing persons to their family members, who are actively seeking such information, the authorities may be in breach of their positive obligations due under Article 8 of the Convention. Therefore, the Chamber shall consider whether the respondent Party acted in good faith in responding to the complaints initiated by Ranko Ćebić to attempt to clarify the fate of his missing son.

92. In the Chamber's view, the Federation failed to timely inform the applicant about the fate of his son, whose unidentified corpse was found on 28 September 1996 and only formally identified as the late Goran Ćebić on 25 June 2000. Furthermore, the Chamber recalls that the applicant was misled by the authorities of the respondent Party, when, after Goran Ćebić was reported missing, the Ministry of Interior of the Sarajevo Canton officially informed him that his son was believed to be living in Croatia (see paragraph 31 above). Although the Chamber is aware that this information could have been provided by the Croatian authorities, such false information should have been verified by the authorities of the respondent Party, considering the impact it would have on the applicant, who was actively searching for the truth concerning his son's disappearance.

93. Next, the Chamber considers the particular circumstances, such as the place and the period, of the disappearance. The Chamber notes that Goran Ćebić disappeared in September 1996 during peacetime, almost one year after the entry into force of the General Framework Agreement, in Sarajevo or a suburb. At this time, the respondent Party had a functioning administration and full control over Sarajevo and its region. Furthermore, Sarajevo and its surrounding area is not a geographically large area and not many disappearances occurred during that time. None the less, it still took almost 4 years for the authorities of the Federation to make the link between the disappearance of Goran Ćebić and the unidentified body found at the end of September 1996 in the River Bosna. As stated above, this delay indicates a lack of diligence on the part of the authorities.

94. Due to the request of the applicant, the ultimate exhumation and identification of the body was performed by the RS Commission, although the authorities of the Republika Srpska had no competence, whatsoever, to apply the joint exhumation process to persons who disappeared after the end of the armed conflict. This seemed to be due to the fact that the authorities of the Federation did not act in time. Only on 7 June 2000, *i.e.* after the exhumation had already been ordered by the authorities of the Republika Srpska, did the Deputy Prosecutor of the Sarajevo Canton propose to the investigative judge the exhumation and DNA analysis of the body (see paragraph 49 above).

95. The Chamber finally recalls that in its jurisprudence the criteria related to Article 8 of the Convention take into account the psychological element of the absence of information on the applicant (see *Selimović*, *op. cit.*, paragraph 180). The Chamber therefore takes particular note of the emotional impact of the absence of information concerning the fate of Goran Ćebić between September 1996 and June 2000 on the life of his father. As Ranko Ćebić had earlier lost his wife, he has repeatedly emphasised that he is now alone in the world and was thus desperate to clarify the fate and whereabouts of his only son. The Chamber also notes that to date, the circumstances of Goran Ćebić's death have not been officially established, although the father continues to insist, with no supporting evidence, that some element of foul play must have been present in his death.

96. In such circumstances, the failure of the authorities of the Federation to act in a diligent and efficient manner – between 4 February 1997, when Goran Ćebić was reported as a missing person, and June 2000, when the body was finally exhumed and identified by the RS Commission – cannot be considered to be in good faith. Such bad faith includes the failure of the authorities of the Federation to respond to the complaints and pleas of the applicant and to clarify the fate and whereabouts of his son. It further applies to their provision of false and misleading information to the applicant and their failure to make known to him any available credible information about his son's disappearance.

97. Therefore, the Chamber concludes that the respondent Party has breached its positive obligations to secure respect for the applicant's rights protected by Article 8 of the Convention.

VIII. REMEDIES

98. 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 breaches of the Agreement which it has found, including orders to cease and desist, monetary relief (including pecuniary and non-pecuniary injuries), and provisional measures.

99. The applicant requested as compensation for pecuniary and non-pecuniary damages the sum of KM 70,000 in total. He further requested that the respondent Party properly inquire into what he considers the murder of his son and to condemn the perpetrators of such crime (see paragraph 8 above).

100. As explained above, the Chamber has found that the respondent Party violated Ranko Ćebić's right to access to information about the fate of his son, as guaranteed by Article 8 of the Convention.

101. Therefore, the Chamber considers it appropriate to award a sum to the applicant in recognition of his mental suffering as a result of his inability to receive information concerning his late son from the respondent Party in a timely and diligent manner. Accordingly, the Chamber will order the respondent Party to pay to the applicant the sum of 5,000 Convertible Marks (*Konvertibilnih Maraka*) in recognition of his mental suffering within one month from the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure.

102. The Chamber further awards simple interest at an annual rate of 10% as of one month from the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure on the sum awarded in the preceding paragraph or any unpaid portion thereof until the date of settlement in full.

103. Since the Chamber has not found a violation of Goran Ćebić's rights protected by Article 2 of the Convention, it will not order the authorities of the Federation to conduct any further investigations. The Chamber, therefore, will dismiss the remainder of the applicant's requests for remedies.

IX. CONCLUSIONS

104. For the reasons given above, the Chamber decides:

1. unanimously, to declare inadmissible the application insofar as it is directed against Bosnia and Herzegovina;

2. by 4 votes to 3, to declare admissible the part of the application related to the alleged violations of Article 2 of the European Convention on Human Rights in respect of Goran Ćebić and Article 8 of the European Convention on Human Rights in respect of Ranko Ćebić, as against the Federation of Bosnia and Herzegovina;

3. unanimously, to declare inadmissible the remainder of the application;

4. by 6 votes to 1, that there has been no violation of the positive obligations due to Goran Ćebić under Article 2 of the European Convention on Human Rights;

5. by 4 votes to 3, that there has been a violation of Ranko Ćebić's right to access to information about the fate of his son under 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;

6. by 4 votes to 3, to order the Federation of Bosnia and Herzegovina to pay to Ranko Ćebić, no later than one month after the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure, the sum of five thousand (5000) Convertible Marks ("*Konvertibilnih Maraka*") by way of compensation for his mental suffering;

7. by 4 votes to 3, to order the Federation of Bosnia and Herzegovina to pay simple interest at the rate of 10 (ten) per cent per annum over the above sum or any unpaid portion thereof from the date of expiry of the above one-month period until the date of settlement in full;

8. unanimously, to dismiss the remaining requests for remedies; and

9. unanimously, to order the Federation of Bosnia and Herzegovina to report to it no later than three months after the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure on the steps taken by it to comply with the above orders.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Mato TADIĆ
President of the Second Panel

Annex I: Dissenting opinion of Mr. Giovanni Grasso, joined by Messrs. Mato Tadić and Jakob Möller

ANNEX I

According to Rule 61 of the Chamber's Rules of Procedure, this Annex contains the dissenting opinion of Mr. Giovanni Grasso, joined by Messrs. Mato Tadić and Jakob Möller.

DISSENTING OPINION OF MR. GIOVANNI GRASSO, JOINED BY MESSRS. MATO TADIĆ AND JAKOB MÖLLER

1. I cannot agree with conclusion no. 5 of the decision on admissibility and merits of the Chamber finding a violation of Article 8 of the European Convention by the Federation of Bosnia and Herzegovina. In my opinion such a conclusion is incorrect in the assessment of the facts; wrong in its legal premises in the evaluation of the system of the European Convention and of its own case-law; and contradictory in its result.

2. As for the evaluation of the facts, the Chamber concluded that "the failure of the authorities of the Federation to act in a diligent and efficient manner … cannot be considered to be in good faith" (see paragraph 96 of the decision above). In my opinion nothing proves that the Federation was not acting in good faith. On the contrary, the Chamber did not give sufficient importance to the fact that Mr. Ranko Ćebić reported the disappearance of his son only in February 1997, with several months of delay; such a fact has surely contributed to the difficulties of the authorities to draw a link between the disappearance of Mr. Goran Ćebić and the body found earlier in the River Bosna. Furthermore, the Chamber did not consider in an appropriate way all the elements indicating that the death of Goran Ćebić was a suicide (as also admitted by his father in the criminal charges brought on 20 November 2002 against his son's former girlfriend; see paragraph 51 of the decision above).

3. The Chamber in this decision diverted, without sufficient reasons, from its previous case-law in which the Chamber has recognised a right to access to information by a relative of a missing person in relation to the fate and whereabouts of his (or her) missing family member, but only and exclusively in relation to information *which the respondent Party already has in its possession* (see case no. CH/99/2150, *Unković*, decision on review delivered on 10 May 2002, paragraphs 120–127; see also case no. CH/99/3196, *Palić*, decision on admissibility and merits delivered on 11 January 2001, paragraphs 81–84, Decisions January—June 2001). In the *Unković* decision, for example, the Chamber "considers 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" (*Unković*, decision on review at paragraph 126). According to the Chamber a violation of such a right emerges "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 Red Cross" (*id.*). The same principles were stated in the *Palić* decision, where the Chamber found a violation of Article 8 in the fact that the respondent Party was "withholding … information" from the applicant concerning the fate of his (or her) missing family member (*Palić*, decision on admissibility and merits at paragraph 82).

4. In the present decision the Chamber has enlarged and extended this right of the family member derived from Article 8; according to paragraph 91 of the decision, "the Chamber is of the opinion that Article 8 of the Convention should be interpreted also to impose upon the authorities the positive obligation to affirmatively seek, collect, and investigate information on the fate and whereabouts of missing persons within their jurisdiction, when properly requested to do so by their family members, and then, to share such information with the family members in a timely manner and in good faith".

5. In my opinion such a right to access to information, that the Chamber has never recognised until now, even in cases in which the authorities of the respondent Party were involved in the disappearance of the family member, could even less be recognised in a case in which such an involvement can be positively excluded and all the elements indicate and confirm that the death of the victim was *caused by a suicide*.

6. For the stated reasons, I respectfully dissent from conclusion no. 5 of the decision on admissibility and merits, which finds a violation of the right to access to information granted by Article 8 of the European Convention on Human Rights.

(signed)
Giovanni GRASSO

(signed)
Mato TADIĆ

(signed)
Jakob MÖLLER