



DECISION ON ADMISSIBILITY AND MERITS
(delivered on 9 November 2001)

Case no. CH/99/2150

Đorđo UNKOVIĆ

against

THE FEDERATION OF BOSNIA AND HERZEGOVINA

The Human Rights Chamber for Bosnia and Herzegovina, sitting as the Second Panel on 10 October 2001 with the following members present:

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

Mr. Ulrich GARMS, Registrar
Ms. Olga KAPIĆ, Deputy Registrar

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

Adopts the following decision pursuant to 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 applicant, a citizen of Bosnia and Herzegovina of Serb ethnic origin, is a pensioner living in Sarajevo. At the beginning of the 1992-95 war in Bosnia and Herzegovina, the applicant's daughter, Vlasta Golubović, and her husband and two children, all of Serb ethnic origin, were living in Konjic in the Federation of Bosnia and Herzegovina. The applicant lost contact with his daughter and her family in the summer of 1992. Thereafter, the applicant heard rumours that his daughter's family had been killed, but he did not receive any official information to confirm such rumours. In January 1999, the applicant learned from the newspapers that two men had been arrested for killing the Golubović family in Konjic at the beginning of July 1992. The applicant complains that the authorities of the respondent Party wilfully withheld information from him from 1992 through 1999 concerning his daughter's fate and that this has caused him "mental suffering, pain and sorrow".

2. This case raises issues under Articles 3 (prohibition of torture), 6 (right to a fair trial), 8 (right to respect for private and family life), and 13 (right to an effective remedy) of the European Convention on Human Rights (the "Convention").

II. PROCEEDINGS BEFORE THE CHAMBER

3. The application was introduced on 10 May 1999 and registered on 11 May 1999. The applicant is not represented by a lawyer.

4. On 21 October 1999, the Chamber requested that the applicant submit information to clarify his application. The Chamber received his reply to this request on 18 November 1999.

5. On 14 December 1999, the application was transmitted to the respondent Party for its observations on the admissibility and merits of the case, especially regarding Articles 3, 6 and 8 of the Convention. These observations were received on 14 February 2000.

6. Meanwhile, on 7 January 2000, the applicant submitted supplemental information in support of his application. In addition, on 22 March 2000, he submitted his reply to the respondent Party's observations as well as claims for pecuniary and non-pecuniary compensation.

7. The respondent Party replied to the applicant's compensation claims on 3 May 2000. On 26 July 2001, the respondent Party submitted supplemental observations and information.

8. On 21 August 2001, the Chamber requested that the applicant submit any updated information in the case. On 27 August 2001, the applicant responded to the Chamber's request.

9. The Chamber considered the admissibility and merits of the application on 10 September and 9 December 1999, 6 April 2000 and 10 October 2001.

III. ESTABLISHMENT OF THE FACTS

10. The facts presented to the Chamber are not materially disputed between the parties except as specifically indicated below. In addition to information provided by the parties, the Chamber also requested international organizations to provide supplemental information, in accordance with its practice in previous cases (see, e.g., case no. CH/98/1374 *Pržulj*, decision on admissibility and merits of 10 January 2000, paragraphs 13, 53 and 54, Decisions January- June 2000).

A. Facts of the underlying criminal case

11. The applicant, Đorđo Unković, who is a Bosnian Serb pensioner living in Sarajevo, is the father of Vlasta Golubović, now deceased. Vlasta Golubović, her husband Đuro Golubović, and their two sons Petar and Pavle (born in 1985 and 1987, respectively), all Bosnian Serbs, lived in Konjic, the Federation of Bosnia and Herzegovina, before the 1992-95 war in Bosnia and Herzegovina. Vlasta and Đuro Golubović worked as teachers in Konjic. In the summer of 1992, the applicant lost contact with his daughter and her family in Konjic.

12. On 1 July 1992, the Golubović family was abducted from their home in Konjic by a group of armed and uniformed men, taken to the outskirts of town, and killed with firearms. At that time, Konjic was under the control of the Army of the Republic of Bosnia and Herzegovina.

13. On 20 December 1993, criminal investigators from the local police inspected the site of the killing of the Golubović family. On 9 April 1994, Deputy Public Prosecutor, Ibro Bulić, officially requested that the Konjic Court commence investigative proceedings into the killing of the Golubović family. This request was not made earlier because, due to the hostilities, it was physically impossible to reach Konjic from Mostar. On 11 April 1994, the investigative judge of the Konjic Court initiated investigative proceedings. Four suspects, all of Bosniak ethnic origin, were placed in pre-trial detention. In April and May 1994, investigative hearings were held while the four suspects remained in pre-trial detention.

14. On 7 May 1994, a panel of three judges from the Konjic Court ordered that the suspects be released from pre-trial detention on the basis of the opinion of a psychiatrist from Sarajevo that the suspects were in a state of "significantly diminished mental competence" during the alleged criminal acts. On 9 May 1994, Public Prosecutor Bulić appealed the decision to release the suspects, but the Supreme Court of the Republic of Bosnia and Herzegovina rejected the appeal.

15. In early December 1995, the Konjic Court officially concluded the investigative proceedings against the suspects in the killing of the Golubović family. On 8 December 1995, Public Prosecutor Bulić indicted six suspects in connection with the murder of the Golubović family: three men were charged with committing war crimes against civilians, two men were charged with failure to report the preparation of a crime, and the last man was charged with failure to report the commission of a crime.

16. Despite the requirement in domestic criminal procedure law that the trial must commence within two months of the indictment and several requests by Public Prosecutor Bulić, the first hearing in the main criminal trial against the three men charged with committing war crimes against civilians was not held until 16 October 1996. The hearing was held at the East Mostar High Court. During the hearing, Public Prosecutor Bulić announced that he would amend the indictment down from war crimes against civilians to murder. Due to lack of heating in the courtroom, the hearing was postponed until 6 November 1996, when the second hearing took place. On 28 November 1996, the third hearing in the main trial occurred, and on 27 December 1996, the fourth hearing occurred. On 8 January 1997, the fifth hearing in the main trial failed to take place. No further hearings were scheduled in 1997 or 1998, and the accused men remained at large.

17. On 7 January 1999, Public Prosecutor Bulić filed a request for the three men charged with murder to be detained. In mid-January 1999, the President of the East Mostar High Court appointed a new panel of judges to preside over the main criminal trial. On 15 January 1999, the Court issued a detention order for the three men charged with murder. On 18 January 1999, two of the men were arrested, and shortly thereafter, the third man voluntarily gave himself up to the police after he heard about the warrant for his arrest.

18. In February and March 1999, the Organisation for Security and Co-operation in Europe (OSCE) and Office of the High Representative (OHR) investigated whether the indictments in the main criminal trial had been reviewed by the Office of the Prosecutor for the International Criminal Tribunal for the former Yugoslavia (ICTY) in The Hague, in accordance with the Rules of the Road. The President of the East Mostar High Court confirmed that the case had not been submitted to the ICTY. On 11 March 1999, the High Representative requested that the competent authorities of the Federation of Bosnia and Herzegovina immediately transmit the main case to the Office of the Prosecutor for the ICTY for review. The High Representative also requested that the court proceedings in the main case be stayed pending a response from the ICTY. On 12 March 1999, the Minister of Justice of the Federation of Bosnia and Herzegovina ordered the President of the East Mostar High Court to postpone the trial in the main case indefinitely and immediately to transmit the case to the ICTY. On 16 March 1999, the Ministry of Justice submitted the case file to the ICTY. On 26 April 1999, the Office of the Prosecutor of the ICTY sent a letter to the ICTY Liaison Office of the Embassy of Bosnia and Herzegovina in The Hague expressing the view that there was sufficient evidence to provide reasonable grounds to suspect that the three men accused in the main case committed a serious violation of international humanitarian law and that the case file supported criminal prosecution of them for either war crimes against civilians or murder.

19. On 24 May 1999, the main trial commenced at the East Mostar High Court. The five-member panel of judges were all of Bosniak ethnic origin. In May and June 1999, the Court considered several procedural and evidentiary motions filed by the defence, including a motion to terminate the detention of the accused men. On 29 June 1999, the President of the East Mostar High Court informed the OSCE that he reassigned the case to a new panel of judges because under a new Law on Criminal Procedure of the Federation of Bosnia and Herzegovina, he and another member of the panel were disqualified from hearing the case.

20. On 6 July 1999, the High Representative issued a decision ordering that the Canton Seven Cantonal Court be established no later than 1 September 1999 (nearly two years after the High Representative imposed the Canton Seven Law on Courts, which failed to be implemented due to political obstruction). On 23 July 1999, the Canton Seven Cantonal Assembly confirmed the appointment of 18 judges to the Cantonal Court, seven of whom were of Bosniak ethnic origin, seven of Croat ethnic origin, and four of Serb or other ethnic origin. The Cantonal Assembly also confirmed the appointment of a Cantonal Prosecutor and three Deputy Prosecutors, including Ibro Bulić.

21. On 23 August 1999, the main trial of the three men charged with murder re-commenced in the East Mostar High Court. However, only three of the five judges on the panel assigned to preside over the case were present. At the beginning of the hearing, one of the judges stated that the Court lacked jurisdiction to hear the case because the Cantonal Court was not yet properly constituted. The hearing was adjourned without resolution of the jurisdiction issue and no new date for continuation of the hearing was scheduled.

22. In September 1999, the OSCE and OHR took the position that until the Cantonal Court was fully functional, the East Mostar High Court would continue to have jurisdiction over this case and other cases. The OSCE and OHR further stated that, provided the defendants' rights to a trial within a reasonable time were not violated, justice would be better served by having the case heard by a multi-ethnic, properly constituted Cantonal Court, rather than by a mono-ethnic court established during the war. Later in September the legal conditions for the Cantonal Court to begin hearing criminal cases over which it had original jurisdiction were completed.

23. On 28 October 1999, the trial against all six men indicted in connection with the killing of the Golubović family commenced. A panel of five judges (three Bosniak, one Croat, and one Serb) presided over the case. All six defendants were present, and four (those charged with more serious offences) were represented by private attorneys. Deputy Cantonal Prosecutor Ibro Bulić presented the prosecution. Since more than thirty days had passed since the previous hearing in the case, the Court ordered that the main trial should commence from the beginning. The trial resumed on 11 November 1999. Witnesses from the investigative proceedings in 1994-95 testified. The trial was scheduled to continue on 18 November 1999, but on that day the President of the Cantonal Court unexpectedly closed the Court in celebration of "Herceg-Bosna" Day. On 2 December 1999, the trial continued. Additional witnesses from the investigative proceedings in 1994-95 testified.

24. On 8 December 1999, the Cantonal Court issued decisions on various procedural and evidentiary motions earlier made by the prosecution and defence at the hearing on 28 October 1999. These decisions were appealed to the Supreme Court of the Federation of Bosnia and Herzegovina, which issued its decisions on the appeals on 27 December 1999. The Supreme Court returned the case to the Cantonal Court and rejected the defence motion to exclude evidence.

25. On 4 January 2000, the Cantonal Court terminated the criminal proceedings against the three men charged with failure to report the preparation of a crime and failure to report the commission of a crime, respectively, because such crimes fell within the scope of the Law on Amnesty of the Federation of Bosnia and Herzegovina, which entered into force in November 1999.

26. On 2 February 2000, the main criminal trial against the three men charged with murder re-commenced. Once again the trial started from the beginning since more than thirty days had passed since the previous hearing. One of the three defendants was questioned. On 7 February 2000, the main trial continued and the other two defendants were questioned. At the conclusion of the hearing, Cantonal Prosecutor Bulić announced an amendment of the indictment up from murder to war crimes against civilians. According to the amended indictment, the three defendants, together with two other deceased men, as members of the Intervention Unit of the Reserve Police Force of the

Republic of Bosnia and Herzegovina, were accomplices in the 1 July 1992 killing of Đuro and Vlasta Golubović and their two children, Petar and Pavle, in Konjic. The trial continued on 24-25 February, 23-24 March, 20 April, 23-25 May, 12 June, 30 June, 12 July, and 20 July 2000. On 12 July 2000, the Cantonal Court completed the evidentiary proceedings, and on 20 July 2000, the parties presented their closing arguments.

27. On 25 July 2000, the Cantonal Court issued its verdict in the main case (no. K. 10/99). The three defendants were found guilty of war crimes against civilians. The Court found that “the victims were taken from their homes and killed mainly on the basis of their Serb ethnic origin”. The Court also found that “the accused were members of the Armed Forces” and they, as “the direct perpetrators of this criminal offence are responsible for it since they did not receive any order from anyone to commit these acts”. Two defendants were sentenced to 12 years imprisonment each, and the third defendant was sentenced to 9 years imprisonment. The injured families were directed to regular civil proceedings with respect to any possible compensation claim because such claim “has not been submitted to this Panel, and, in this criminal proceeding, it could not be decidedly determined.” This judgment became effective on 8 February 2001 pursuant to the judgment of the Supreme Court of the Federation of Bosnia and Herzegovina (no. Kž. 456/00) confirming it.

B. The applicant’s information on and participation in the underlying criminal case

28. In his application filed with the Chamber on 10 May 1999, the applicant stated that he lost contact with his daughter, Vlasta Golubović, and her family in the summer of 1992. Afterwards, for seven years, he did not receive any official information concerning the fate of the Golubović family from the authorities, nor from the school in Konjic where Vlasta and Đuro Golubović were teachers, nor from neighbours or friends of the family.

29. The applicant claims that his attempts to gather information on the disappearance of his daughter and her family failed due to his fear of the domestic authorities and his lack of financial resources to pursue a private investigation. Most of the information he was able to gather came from newspaper articles. The Chamber notes the existence of the State Commission for Tracing Missing Persons, which was established pursuant to the Decision Forming the State Commission for Tracing Missing Persons which entered into force on 24 March 1996 (Official Gazette of the Republic of Bosnia and Herzegovina, no. 9/96 and 17/96). According to the information in the Chamber’s files, the applicant did not apply for assistance from this State Commission.

30. On 22 January 1999, the *Oslobođenje* newspaper published a story that two men, who later became defendants in the main criminal case, were arrested on suspicion of murdering the Golubović family in Konjic at the beginning of the war in 1992. A third suspect remained at large. The applicant read this news story on or about 22 January 1999.

31. On 5 May 1999, the applicant applied to the Cantonal Court as an injured party in case no. K. 10/99, the main criminal case against the three men charged with murdering the Golubović family in Konjic. Thereafter, he received summons and was sometimes present in the courtroom during the trial in the main case.

32. According to the court records, the applicant participated in the criminal proceedings in the main case. On 24 May 1999, the court record noted that “Mr. Đorđo Unković from Sarajevo entered the courtroom late. He is the representative of the injured party, father of Vlasta Golubović and grandfather of the two killed children, Petar and Pavle.” On 23 August 1999, the court record noted that “Đorđo Unković from Sarajevo, as the representative of the injured party, entered the courtroom late.”

33. On 5 October 1999, on the request of the applicant, the First Instance Court in Konjic established in four individual procedural decisions, the date of death of Vlasta, Đuro, Petar, and Pavle Golubović as 10 July 1992 and the place of death as Konjic. The Court also confirmed that the deceased family was buried in the Orthodox Cemetery in Konjic.

34. On 28 October 1999, the court record in the main criminal case noted the absence of anyone on behalf of the injured party and stated that “the representative of the injured party will be informed in writing about the new trial date [on 11 November 1999]”.

35. On 2 November 1999, *Oslobođenje* published another article related to the case entitled *The Secret of the Crime Committed on the Golubović Family*. In that article it was reported that Neđo Ninković, the President of the Municipal Court in Konjic prior to the 1992-95 war, published his memoirs in Belgrade. According to the article, in his book, Ninković described the abduction and murder of the Golubović family in Konjic on 9-10 July 1992. He reported that the bodies were buried in the Orthodox Cemetery in Musala. The article also stated that legal proceedings were underway against six persons involved in the crime, and each person was identified by name.

36. According to the court record of 2 December 1999, Đorđo Unković filed a power of attorney on 15 November 1999 authorising Dušan Tomić, Secretary General of the Children's Embassy in Sarajevo, to represent the injured party in the main criminal case.

37. On 7 January 2000, the applicant informed the Chamber that he received his first official information from the domestic authorities: that is, a copy of a procedural decision dated 8 December 1999 from the Cantonal Court in Mostar in case no. K. 10/99, the main criminal case against the men charged with murdering the Golubović family.

38. On 2 February 2000, Dušan Tomić questioned one of the defendants in the main criminal case. On 24 February 2000, Dušan Tomić reported to the Cantonal Court that he had been physically attacked outside the court building by an unknown person following the previous hearing.

39. On 20 April 2000, in connection with the trial in the main case, the Cantonal Court was informed that a new gravestone for the Golubović family had been located in the Orthodox Cemetery in Konjic. On 6 May 2000, pursuant to a court order, a forensic expert from Sarajevo exhumed the four bodies of the Golubović family from the Orthodox Cemetery in Konjic. The applicant was present and he positively identified the bodies.

40. On 27 August 2001, the applicant informed the Chamber that he had not to date filed any lawsuit for compensation for damages. He further stated that he never received an official copy of the judgment in the main criminal case from the Cantonal Court. The Chamber had already sent the applicant a copy of the judgment on 21 August 2001.

IV. RELEVANT LEGISLATION

A. UN Declaration on the Protection of All Persons from Enforced Disappearance of 18 December 1992 (A/RES/47/133)

41. The UN Declaration on the Protection of All Persons from Enforced Disappearance of 18 December 1992 defines in its preamble enforced disappearances in the sense that persons are arrested, detained or abducted against their will or otherwise deprived of their liberty by officials of different branches or levels of Government, or by organized groups or private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government, followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of the liberty, which places such persons outside the protection of the law.

42. According to Article 1, any act of enforced disappearance is an offence to human dignity. It is condemned as a denial of the purposes of the Charter of the United Nations and as a grave and flagrant violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and reaffirmed and developed in international instruments in this field. Any act of enforced disappearance places the persons subjected thereto outside the protection of the law and inflicts severe suffering on them and their families. It constitutes a violation of the rules of international law guaranteeing, *inter alia*, the right to recognition as a person before the law, the right to liberty and security of the person and the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment. It also violates or constitutes a grave threat to the right to life.

B. Code of Criminal Procedure

1. Provisions related to the injured party

43. The Code of Criminal Procedure of the Federation of Bosnia and Herzegovina (Official Gazette of the Federation of Bosnia and Herzegovina— hereinafter “OG FBiH”— no. 43/98) provides for the participation of the injured party, that is, “a person injured or threatened in some personal or property right or by a crime”, in criminal proceedings (Article 139(1)(6)). The provisions relevant to this decision are quoted below, as follows:

44. Article 55 concerning the injured party and the private prosecutor provides:

“(1) The injured party and the private prosecutor have the right during the examination to call attention to all facts and suggest evidence which has a bearing on establishing the crime, on finding the perpetrator of the crime or on establishing their claims under property law.

“(2) In the main trial they have the right to propose evidence, to put questions to the accused, witnesses and expert witnesses, and to make remarks and present clarifications concerning their testimony, and also to make other statements and make other proposals.

“(3) The injured party, the injured party as prosecutor and the private prosecutor have the right to examine the records and articles presented as evidence. ...

“(4) The investigative judge and the presiding judge of the panel shall inform the injured party and private prosecutor of their rights as referred to in Paragraphs 1 through 2 of this article.”

45. Article 159 concerning the preliminary examination provides:

“(1) During the inquiry the parties and the defense counsel and the injured party may file motions with the investigative judge that certain investigative actions be taken. ...”

46. Article 160 also concerning the preliminary examination provides:

“(5) The investigative judge must suitably inform the prosecutor, defense counsel, the injured party and the accused concerning the time and place of investigative procedures which they may attend unless postponement is risky. ...

“(7) Persons who attend investigative procedures may propose that the investigative judge for the purpose of clarifying the matter put certain questions to the accused, witness or expert witness, and with permission of the investigative judge they may also put questions directly. Such persons have the right to have their remarks concerning the performance of certain actions entered in the court record, and they may also propose that certain evidence be presented.”

47. Article 276 concerning preparation for the main trial provides:

“(1) The accused and his defense counsel, the prosecutor and injured party and their legal representatives and attorneys, as well as an interpreter shall be summoned to the main trial. ...

“(4) In the summons the court shall inform an injured party who is not being called as a witness that the main trial will be held even without him and that his statements concerning a claim under property law will be read. The injured party shall also be warned that should he not appear, it shall be assumed that he does not wish to continue prosecution if the competent prosecutor drops the charge.”

48. Article 279 also concerning preparation for the main trial provides:

“(3) The parties, defense counsel and injured party shall be informed of the time and place of the examination. When the parties, defense counsel and injured party attend the examination, they shall have the rights referred to in Article 160, Paragraph 7 of this law.” (See paragraph 46 above).

49. Article 308 concerning commencement of the main trial and examination of the accused provides:

“(2) If the injured party is present, but still has not filed his claim under property law, the presiding judge shall instruct him that he may file a petition to realize that claim in criminal proceedings and shall instruct him about his rights under Article 55 of this law.” (See paragraph 44 above).

50. Article 310 also concerning commencement of the main trial and examination of the accused provides:

“(3) If the injured party is present, he may argue in support of a claim under property law; if he is not present, his petition shall be read by the presiding judge.”

51. Article 313 further concerning commencement of the main trial and examination of the accused provides:

“(1) When the presiding judge completes the examination of the accused, the members of the panel may put questions directly to the accused. The prosecutor, defense counsel, the injured party, a legal representative, attorney, co-accused and experts may put questions directly to the accused with the permission of the presiding judge.”

52. Article 322 concerning evidentiary procedure provides:

“(1) When the presiding judge completes the questioning of a witness or expert, the members of the panel may put questions to the witness or expert directly. The prosecutor, accused, defense counsel, injured party, legal representative, attorney and experts may put questions directly to witnesses and experts with permission of the presiding judge.”

53. Article 325 also concerning evidentiary procedures provides:

“(3) The parties, defense counsel and the injured party shall always be informed as to the time and place of the questioning of a witness or conduct of an on-the-spot inquest or reconstruction, with instruction that he may attend these proceedings. When the parties, defense counsel and the injured party are present at these proceedings, they have the right envisaged in Article 160, Paragraph 7, of this law.” (See paragraph 46 above).

54. Article 330 further concerning evidentiary procedures provides:

“After questioning each witness or expert and after the reading of each record or other official document, the presiding judge shall ask the parties, defense counsel and injured party for their comments.”

55. Article 334 concerning the closing arguments of the parties provides:

“Upon completion of the evidentiary proceeding, the presiding judge shall recognize the parties, the injured party and defense counsel. The prosecutor shall speak first, and then the injured party, defense counsel and the accused.”

56. Article 336 also concerning the closing arguments of the parties provides:

“The injured party or his attorney may defend a claim under property law in his speech and point out evidence of the criminal responsibility of the accused.”

57. Article 349 concerning announcement of the verdict provides:

“(1) After announcing the verdict the presiding judge shall instruct the parties and the injured party concerning the right of appeal and the right to answer the appeal.”

58. Article 354 concerning the right to file an appeal provides, in pertinent part:

“(1) An appeal may be filed by the principals, defense counsel, legal representative of the accused and the injured party. ...

“(4) An injured party may contest a verdict only with respect to the court’s decision concerning the punitive sanctions for crimes committed against life or body, against dignity of personality or moral or against public traffic security, concerning the costs of criminal proceedings and the claim under the property law... .”

59. Article 355 concerning the right to waive the right of appeal provides, in pertinent part:

“(2) The prosecutor and injured party may waive the right of appeal from the moment when the verdict is announced to the end of the period allowed for filing an appeal, and they may abandon an appeal already filed until a decision is rendered by the court in the second instance.

“(3) The waiving and abandonment of an appeal cannot be revoked.”

2. Provisions related to property law claims

60. The Code of Criminal Procedure includes provisions allowing property law claims arising out of the commitment of a crime to be considered in the criminal proceedings. Article 96 states:

“(1) A claim under property law which has arisen because of the commitment of a crime shall be deliberated on the motion of the authorized persons in criminal proceedings if this would not considerably prolong those proceedings.

“(2) A claim under property law may pertain to reimbursement of damage, recovery of things, or annulment of a particular legal transaction.”

61. Article 97(1) states: “The petition to realize a claim under property law in criminal proceedings may be filed by the person authorized to pursue that claim in a civil action.”

62. Article 98 states:

“(1) A petition to pursue a claim under property law in criminal proceedings shall be filed with the body or agency to whom the criminal charge is submitted or to the court before which proceedings are being conducted.

“(2) The petition may be submitted no later than the end of the main trial before the court in the first instance.

“(3) The person authorized to submit the petition must state his claim specifically and submit evidence.

“(4) If the authorized person has not filed the petition to pursue his claim under property law in criminal proceedings before the indictment is brought, he shall be informed that he may file that petition up to the end of the main trial. ...”

63. Article 100 states:

“(1) The court before which proceedings are being conducted shall examine the accused concerning the facts alleged in the petition and shall investigate the circumstances that have a bearing on the establishment of the claim under property law. But even before a petition to that effect is presented, the court has a duty to gather evidence and conduct the investigation necessary to making a decision on the claim.

“(2) If the investigation of the claim under property law would considerably prolong criminal proceedings, the court shall restrict itself to the gathering of that data which would be impossible or considerably more difficult to subsequently establish.”

64. Article 101 states:

“(1) The court shall render judgment on claims under property law.

“(2) In a verdict pronouncing the accused guilty, the court may award the injured party the entire claim under property law or may award him part of the claim under property law and refer him to a civil action for the remainder. If the data of criminal proceedings do not afford a reliable basis for either complete or partial award, the court shall instruct the injured party that he may take civil action to pursue his entire claim under property law.”

C. Law on Obligations

65. The Law on Obligations of the Federation of Bosnia and Herzegovina (Official Gazette of the Republic of Bosnia and Herzegovina, nos. 2/92 and 13/94) “regulates obligations which arise from contracts, the infliction of damage, acquisition without legal grounds, business conduct without order, unilateral statements of will and other facts stipulated by law” (Article 1).

66. Article 200 provides for cash compensation, as follows:

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

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

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

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

V. COMPLAINT

68. The applicant states that he cannot indicate which of his human rights have been violated: he is “only seeking justice”. His main complaint in his application (which was filed on 10 May 1999) appears to be that the authorities failed to pursue the truth about the death of his daughter and her family in a timely manner. In addition, the applicant complains that the authorities failed to inform him and willfully withheld information about the fate of the Golubović family and about the proceedings against the suspects involved in the killing of the family. The applicant seeks pecuniary compensation for the property of the Golubović family and non-pecuniary compensation for his “mental suffering, pain and sorrow” resulting from his prolonged uncertainty as to the fate of the Golubović family. He does not appear to seek compensation for the lives of the Golubović family who were taken away from him.

69. On the request of the Chamber, the applicant has confirmed that he intends his application to be filed on his own account, and not on account of the deceased persons, that is, his daughter and her family, as it was in the Chamber’s previous missing person cases (e.g., case no. CH/96/1, *Matanović v. the Republika Srpska*, decision on merits of 11 July 1997, Decisions on Admissibility and Merits March 1996-December 1997; and case no. CH/97/74, *Balić v. the Republika Srpska*, decision on admissibility of 10 September 1998, Decisions and Reports 1998).

VI. SUBMISSIONS OF THE PARTIES

A. The respondent Party

70. The respondent Party submits that the application is inadmissible *ratione temporis*, as the murder of the Golubović family took place on 1 July 1992. The respondent Party also argues that the application is inadmissible because the applicant failed to exhaust domestic remedies. In particular the respondent Party points out that the applicant could have filed a property and legal claim, including a claim for compensation, in the criminal proceedings against the men charged with murdering the Golubović family. According to the respondent Party in its submission of 14 February 2000, the applicant filed such a claim for compensation in the criminal proceedings on 5 May 1999.

71. With regard to the merits, the respondent Party argues that the application is ill-founded because the applicant was not subjected to any treatment that falls within the scope of Article 3, all requirements of Article 6 have been complied with, and there was no interference with or violation of the applicant's rights under Article 8 of the Convention.

B. The applicant

72. In his submissions, the applicant confirms that he does not know to which provisions of the Convention his complaints pertain. He requests the assistance of the Chamber in "seeking the truth".

73. In his submission of 22 March 2000 responding to the respondent Party's argument that he failed to exhaust domestic remedies, the applicant states that the respondent Party "recommends remedies which [he] is not able to achieve". The applicant further explains that he was not invited to participate in the criminal proceedings against the men charged with murdering the Golubović family, and he was not allowed to speak in those proceedings. The applicant emphasizes that he is an elderly poor pensioner suffering from ill health and disability.

74. With respect to his compensation claim for the lost property of the Golubović family, in his submission of 22 March 2000, the applicant stated that he had not requested any kind of compensation from the Cantonal Court in Mostar. Since the criminal case against the men charged with murder was still pending at that time, the applicant claimed he could not file any civil action or request compensation for his property claims. On 27 August 2001, the applicant confirmed that he had not to date filed any lawsuit for compensation for damage.

VII. OPINION OF THE CHAMBER

A. Admissibility

75. Although not specified by the applicant, the Chamber considers that this case raises issues under Articles 3, 6, 8, and 13 of the Convention. In addition, the applicant seeks pecuniary compensation for missing property of the Golubović family and non-pecuniary compensation for his "mental suffering, pain and sorrow" resulting from his prolonged uncertainty as to the fate of his daughter and her family. Before considering the merits of this case, the Chamber must decide whether to accept it, in whole or in part, taking into account the admissibility criteria set out in Article VIII(2) of the Agreement.

1. Exhaustion of effective domestic remedies

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

77. The respondent Party argues that the applicant has not exhausted his domestic remedies with respect to his compensation claims. The respondent Party submits that the applicant could have filed an appeal against the judgment in the main criminal case and could have submitted a property claim for compensation in the criminal proceedings.

78. Pursuant to Articles 96 through 98 of the Code of Criminal Procedure (see paragraphs 60-62 above), the applicant could have filed a property law claim in the criminal proceedings against the men charged with killing the Golubović family. Contrary to the allegations of the respondent Party, the documents in the Chamber's case file and the statements of the applicant establish that he did not do so. In his final statement in the main trial, the authorized representative of the applicant (as the injured party), stated that the Federation of Bosnia and Herzegovina must pay the compensation claim, not the accused men, because the accused men were members of the Bosnia and Herzegovina Armed Forces whose duty it was to protect the civilian population. In the final judgment issued by the Cantonal Court in Mostar on 25 July 2000, which judgment became effective on 8 February 2001 pursuant to the judgment of the Supreme Court of the Federation of Bosnia and Herzegovina confirming it, the Cantonal Court directed the injured party "to civil proceedings for the realization of a possible compensation claim" as such a claim was not submitted to the Court and could not be determined in the criminal proceedings. In a letter received by the Chamber on 27 August 2001, the applicant confirmed that he has not filed civil proceedings for compensation.

79. The Chamber finds that the applicant has not exhausted domestic remedies with respect to his claim for pecuniary compensation for the missing property of the Golubović family. He did not raise his property law claim in the criminal proceedings against the men charged with murdering the Golubović family. He also has not pursued civil proceedings against these men or against the Federation of Bosnia and Herzegovina. The applicant has not shown that these remedies were or would be ineffective, and they do not appear to be so to the Chamber. Accordingly, the Chamber finds that the applicant has not, as required by Article VIII(2)(a) of the Agreement, exhausted the effective domestic remedies. The Chamber, therefore, declares the part of the application concerning the claim for pecuniary compensation for the missing property of the Golubović family inadmissible.

80. However, the same reasoning does not apply to the applicant's claim for non-pecuniary compensation for his mental suffering. The Chamber recognises that the Law on Obligations provides the applicant with the right to initiate a civil lawsuit for compensation for his mental suffering resulting from the death of close family members (see paragraphs 65-67 above). None the less, in the context of a case concerning the mental suffering of an applicant who suffered maltreatment by officials during detention, the Chamber previously stated as follows: "As regards the possibility to initiate civil proceedings against the perpetrators in order to obtain, in civil proceedings, compensation for the damages suffered, the Chamber does not consider this an adequate remedy in case of an alleged violation of Article 3" of the Convention (case no. CH/98/1374, *Velimir Pržulj v. the Federation of Bosnia and Herzegovina*, decision on admissibility and merits of 10 January 2000, paragraph 119, Decisions January-June 2000).

81. In this case, the applicant's primary claim concerns the mental suffering allegedly caused to him by the failure of the authorities of the Federation of Bosnia and Herzegovina to earlier pursue, investigate, and inform him about the fate of the Golubović family, who were murdered by members of the Armed Forces of the Republic of Bosnia and Herzegovina. The applicant does not appear to claim non-pecuniary damages for the lives of the Golubović family who were taken away from him. Thus, the nature of his claim for non-pecuniary compensation is substantially different from the claim provided for in the Law on Obligations (see paragraphs 65-67 above). The Chamber is not aware of, and the respondent Party has not pointed out, any provision in domestic law which would grant the applicant an effective domestic remedy from the Federation of Bosnia and Herzegovina for the mental suffering damages he seeks to recover in his application before the Chamber. The Chamber, therefore, concludes that the applicant's claim for non-pecuniary compensation is admissible.

2. Competence *ratione temporis*

82. In accordance with Article VIII(2)(c) of the Agreement, "[t]he Chamber shall also dismiss any application which it considers incompatible with this Agreement". The respondent Party contends that the application is inadmissible *ratione temporis* because the murder of the Golubović family occurred on 1 July 1992, prior to the entry into force of the Agreement on 14 December 1995.

83. The Chamber notes that while the applicant's claims arise out of the murder of the Golubović family in July 1992, his actual claims concern the failure of the authorities to inform him about the fate of the Golubović family and about the criminal proceedings against the men charged with that

crime. Thus, the applicant alleges an ongoing violation of his human rights by the respondent Party that commenced in July 1992 and continued forward until at least May 1999, when the applicant was recognised as an injured party in the criminal proceedings.

84. The Chamber is not competent *ratione temporis* to consider whether events occurring before the entry into force of the Agreement on 14 December 1995 gave rise to violations of human rights. The Chamber may, however, consider relevant evidence of such events as background information to events occurring after 14 December 1995 (case no. CH/97/67, *Sakib Zahirović v. Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina*, decision on admissibility and merits of 10 June 1999, paragraphs 104-06, Decisions January–July 1999). Thus, insofar as the applicant's claims relate to failures by the respondent Party that continued after 14 December 1995, they fall within the Chamber's competence *ratione temporis* and they are admissible.

3. Competence *ratione materiae*

85. As stated above, in accordance with Article VIII(2)(c) of the Agreement, the Chamber shall dismiss any application that is incompatible with the Agreement.

86. The Chamber interprets one of the applicant's claims to be that the respondent Party violated his right to participate in the criminal proceedings against the men charged with murdering the Golubović family and also violated his right to have such proceedings resolved in a timely and thorough manner. The only Article under which this claim could fall is Article 6 of the Convention which protects the right of everyone to "a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law" and guarantees to everyone charged with a criminal offense certain minimum rights.

87. However, the Chamber recognises that the exact text of Article 6 does not indicate that the applicant, as the relative of a crime victim, has a viable claim under that Article. The applicant has not been charged with a criminal offense nor has he sought to have civil rights and obligations determined in any tribunal. Domestic law provides the applicant with the right to participate in criminal proceedings as an injured party because he is "a person injured or threatened in some personal or property right or by a crime" (Article 139(1)(6) of the Code of Criminal Procedure of the Federation of Bosnia and Herzegovina (OG FBiH no. 43/98) (see paragraphs 43-59 above). However, this right under domestic law is not guaranteed by Article 6. It follows that the applicant's claim under Article 6 is incompatible *ratione materiae* with the Agreement, and the Chamber, therefore, declares it inadmissible.

4. Conclusion as to admissibility

88. Since no other ground for declaring the case inadmissible has been established, the Chamber declares admissible the remainder of the application concerning the applicant's claims under Articles 3, 8, and 13 of the Convention and his claim for non-pecuniary compensation.

B. Merits

89. 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.

1. Article 3 (Prohibition of Torture)

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

91. The applicant claims that he experienced mental suffering as a result of the uncertainty surrounding the fate of his daughter and her family. He submits that the authorities should have earlier pursued the truth about the death of the Golubović family and should have informed him of the information regarding that. The authorities also should have informed him about the criminal proceedings against the suspects involved in the killing of the Golubović family.

92. The Chamber notes that in January 1999 the applicant learned from *Oslobođenje* some of the facts surrounding the killing of the Golubović family and the authorities' pursuit of the men suspected in the murder. Thereafter, on 5 May 1999, the applicant applied to and was acknowledged by the Cantonal Court as an injured party in the main criminal case against the three men charged with murdering the Golubović family. Thus, the Chamber examines whether the applicant's rights protected by Article 3 of the Convention were violated because he lived for approximately six and one half years, from July 1992 through January 1999, without information, official or unofficial, on the fate of his daughter and her family, who, it was later conclusively established, were murdered by uniformed and armed men who were members of the Reserve Police Force of the Republic of Bosnia and Herzegovina. The Chamber may consider events prior to 14 December 1995 when the Agreement entered into force as background information, but it may only find a violation of the applicant's human rights for actions or omissions by the respondent Party occurring after 14 December 1995 (see paragraph 84 above).

93. The Chamber recalls that, according to the European Court of Human Rights, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is, in the nature of things, relative; it depends on all the circumstances of the case, such as the nature and context of the treatment, the manner and method of its execution, its duration, its physical or mental effects, and, in some instances, the sex, age and state of health of the victim (Eur. Court HR, *Cruz Varas and Others v. Sweden*, judgment of 20 March 1991, Series A no. 201, p. 31, paragraph 83; *Kurt v. Turkey*, judgment of 25 May 1998, Reports of Judgments and Decisions 1998-III, paragraph 133). The Court has not, however, established "any general principle that a family member of a 'disappeared person' is thereby a victim of treatment contrary to Article 3". The Court explained as follows:

"Whether a family member is such a victim will depend on the existence of special factors which gives the suffering of the applicant a dimension and character distinct from the emotional distress which may be regarded as inevitably caused to relatives of a victim of a serious human rights violation. Relevant elements will include the proximity of the family tie—in that context, a certain weight will attach to the parent-child bond—, the particular circumstances of the relationship, the extent to which the family member witnessed the events in question, the involvement of the family member in the attempts to obtain information about the disappeared person and the way in which the authorities responded to those enquiries. The Court would further emphasise that the essence of such a violation does not so much lie in the fact of the 'disappearance' of the family member but rather concerns the authorities' reactions and attitudes to the situation when it is brought to their attention. It is especially in respect of the latter that a relative may claim directly to be a victim of the authorities' conduct." (Eur. Court HR, *Çakici v. Turkey*, no. 23657/94 judgment of 8 July 1999, paragraph 98, ECHR 1999-IV, see also Eur. Court HR, *Cyprus v. Turkey*, judgment of 10 May 2001, paragraphs 154-158).

94. Moreover, the Chamber recalls the practice of the UN Human Rights Committee in the case of *Elena Quinteros v. Uruguay* where inhuman treatment was found with respect to the applicant whose daughter had disappeared. The UN Human Rights Committee stated that it "understands the anguish and stress caused to the mother by the disappearance of her daughter and by the continuing uncertainty concerning her fate and whereabouts". It found that the mother of the victim had "the right to know what has happened to her daughter". The Committee then concluded that, in these respects, the mother too was a victim of the violation of Article 7 of the International Covenant on Civil and Political Rights (right not to be subjected to cruel, inhuman or degrading treatment) suffered by her daughter (*Elena Quinteros v. Uruguay*, Communication No. 107/1981 of 17 September 1981, Reports of the Human Rights Committee (1983), paragraph 14).

95. The Chamber also recalls that in *Avdo and Esma Palić v. the Republika Srpska* (case no. CH/99/3196, decision on admissibility and merits of 9 December 2000, Decisions January-July 2001), the Chamber considered whether the wife of Colonel Palić, who was abducted by Bosnian Serb forces in July 1995 and remains a missing person, had a claim under Article 3 for the uncertainty, doubt, and apprehension she suffered for over five years with no official information on the fate of her husband. Noting the "complacency" of the authorities who refused to investigate the disappearance of Colonel Palić and to provide Mrs. Palić with any information on his fate, the Chamber found that the respondent Party violated Mrs. Palić's rights protected by Article 3 of the Convention (*Palić*, decision on admissibility and merits, paragraphs 75-80).

96. In *Hasnija Demirović, Nura Berbić and Džemil Berbić v. the Republika Srpska* (application no. 7/96, Report of the Ombudsperson of 30 September 1998), the Human Rights Ombudsperson for Bosnia and Herzegovina similarly recognized a violation of the applicant's rights protected by Article 3. In that case, the applicant was provided with no official information, despite repeated and persistent requests to domestic authorities, about the fate of his wife and mother-in-law, who were forcibly abducted from their apartment in Banja Luka by police officers in August 1995 and thereafter remained missing persons. The authorities made no efforts whatsoever to discover the fate of the abducted persons, and they threatened, intimidated, and harassed the applicant when he tried to pursue the investigation. Citing the case law of the European Court of Human Rights (Eur. Court HR, *Kurt v. Turkey*, judgment of 25 May 1998, Reports of Judgments and Decisions 1998-III, paragraphs 133-34), the Ombudsperson noted that the Court found "that the effect on the mother of the disappearance of her son combined with a complete absence of official information as to his subsequent fate or investigation by the authorities, constituted treatment contrary to Article 3 of the Convention". In this respect, the Ombudsperson considered that "an obligation is incumbent under Article 3 of the Convention on the authorities to investigate thoroughly into allegations of arbitrary deprivations of liberty... ." Not finding "any acceptable justification for the complete inactivity of the authorities in respect of a complaint of such gravity and in the presence of so detailed allegations," the Ombudsperson found that the applicant "was the victim of inhuman and degrading treatment on account of the competent authorities' complacency, immediately after 14 December 1995, in the face of his anguish and distress". Therefore, the Ombudsperson concluded that the respondent Party violated the applicant's rights protected by Article 3 of the Convention.

97. In this case the Chamber recognises that the respondent Party did, albeit after a lengthy delay and repeated procedural obstacles, conduct an investigation and pursue, to successful completion, criminal charges against the men who abducted and murdered the Golubović family. The applicant participated in the main criminal case after his application as an injured person to the Cantonal Court in May 1999. Thus, unlike the cases cited above, here the authorities did pursue the criminal investigation, did discover the fate of the victims, and did prosecute and punish the men who committed the crime. In addition, during the course of the criminal trial, the applicant finally learned the fate of his daughter and her family, the facts surrounding their death, and their final resting place in the Orthodox Cemetery in Konjic. However, this did not occur until over seven years after the murder of the Golubović family and until after stories and speculation concerning the murder appeared in local newspapers.

98. While the Chamber certainly takes into account the eventual success of the respondent Party to investigate and pursue the perpetrators of the murder of the Golubović family, the Chamber cannot overlook the long period of delay and numerous interruptions in the investigative and criminal proceedings. The criminal trial did not in fact commence and proceed in a meaningful way until February 2000, nearly six years after Public Prosecutor Ibro Bulić officially requested on 9 April 1994 that the Konjic Court commence investigative proceedings into the killing of the Golubović family and over seven years after the underlying criminal acts. The reasons for the delays were numerous and varied. In the Chamber's view, considering all the information before it, such delays indicate a pattern of obstruction by the respondent Party (see paragraphs 11-40 above). In fact, it is obvious from the court records that the successful resolution of the criminal proceedings occurred to a large extent as the result of the admirable diligence and persistence of Public Prosecutor Ibro Bulić. Without his individual efforts, the Chamber believes it is likely that the respondent Party's general pattern of obstruction toward this case would have prevented the successful completion of the case against the murderers of the Golubović family. Throughout this prolonged period, the applicant suffered greatly from his apprehension, distress, and sorrow over the fate of his daughter and her family, including two young grandsons of the applicant. The Chamber finds no reasonable justification for this suffering to have lasted as long as it did.

99. Thus, taking all of this into account, the Chamber concludes that the respondent Party violated the right of the applicant to be free from inhuman or degrading treatment during the period of 14 December 1995 through 5 May 1999, when the applicant was recognised and allowed to participate as an injured party in the main criminal proceedings against the men who murdered the Golubović family.

2. Article 8 (Right to respect for Private and Family Life)

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

“Every one has the right to respect for his private and family life....

“There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

101. The Chamber recalls that it transmitted the case to the respondent Party with respect to Article 8 of the Convention. However, to the extent the application gives rise to claims under both Article 3 and Article 8 of the Convention, these claims are in essence the same and concern the failure of the respondent Party to timely investigate and inform the applicant about the fate of the Golubović family. Therefore, in view of its conclusion with respect to Article 3, the Chamber finds it unnecessary to separately examine the case under Article 8 of the Convention.

3. Article 13 (Right to an Effective Remedy)

102. Article 13 of the Convention provides as follows:

“Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

103. The Chamber notes that a violation of the right protected by Article 13 has been addressed in other cases filed by relatives of missing persons for the failure of the respondent Party to investigate and provide information concerning the fate of the missing persons (*see, e.g., Eur. Court HR, Cakici v. Turkey*, judgment of 8 July 1999, paragraphs 108-14; *Hasnija Demirović, Nura Berbić and Džemil Berbić v. the Republika Srpska*, application no. 7/96, Report of the Ombudsperson of 30 September 1998). However, in the context of a case filed by the relative as opposed to the actual victim of the crime, the right protected by Article 13 is included within the right protected by Article 3 of the Convention. Finding no separate violation of Article 13, the Ombudsperson explained as follows:

“Insofar as the question might arise as to whether there was an effective remedy in respect of the inhuman and degrading treatment suffered by the third applicant on account of the lack of investigation into his relatives’ disappearance, the Ombudsperson, noting that the substance of the violation she found under Article 3 of the Convention is precisely the lack of meaningful investigations, considers that no separate issue arises under Article 13 of the Convention.” (*Hasnija Demirović, Nura Berbić and Džemil Berbić v. the Republika Srpska*, application no. 7/96, Report of the Ombudsperson of 30 September 1998).

104. The Chamber concurs in this approach, and taking into account its finding of a violation of the applicant’s right protected by Article 3 of the Convention, the Chamber finds no separate violation of Article 13 of the Convention.

VIII. REMEDIES

105. Under Article XI(1)(b) of the Agreement, the Chamber must next address the question of what steps shall be taken by the respondent Party to remedy the established breaches of the Agreement. In this connection the Chamber shall consider issuing orders to cease and desist, monetary relief (including pecuniary and non-pecuniary damages), as well as provisional measures.

106. The applicant requests non-pecuniary compensation for his “mental suffering, pain and sorrow” and pecuniary compensation for lost property of the Golubović family, he has itemized in detail in his submission of 22 March 2000, in the amount of 200,000 Convertible Marks

(*Konvertibilnih Maraka*, "KM"). The Chamber has already decided that the applicant's claim for pecuniary compensation is inadmissible, but his claim for non-pecuniary compensation is admissible (see paragraphs 78-81 above). The respondent Party argues that the applicant's claim for non-pecuniary compensation is ill-founded and imprecise.

107. Taking into account the finding of a violation of the applicant's right protected by Article 3 of the Convention (see paragraphs 97-99 above), the Chamber finds it appropriate to order the respondent Party to pay to the applicant 10,000 KM, by way of non-pecuniary compensation for his mental suffering. This sum shall be paid 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.

108. Additionally, the Chamber awards simple interest at an annual rate of 10% on the sum awarded to be paid to the applicant in paragraph 107 above. Interest shall be paid 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 or any unpaid portion thereof until the date of settlement in full.

IX. CONCLUSIONS

109. For the above reasons, the Chamber decides:

1. unanimously, that the applicant's claim under Article 6 of the Convention is inadmissible;

2. unanimously, that the remainder of the application is admissible;

3. unanimously, that the apprehension, distress, and sorrow caused to the applicant as a result of the respondent Party failing to investigate and pursue the fate of the Golubović family in a timely manner constitutes inhuman and degrading treatment of the applicant in violation of his right protected by Article 3 of the Convention, the respondent Party thereby being in breach of Article I of the Agreement;

4. unanimously, that it is unnecessary for the Chamber to separately examine the case under Article 8 of the Convention;

5. unanimously, that it is unnecessary for the Chamber to separately examine the case under Article 13 of the Convention;

6. by 5 votes to 1, to order the respondent Party to pay to the applicant 10,000 KM (ten thousand Convertible Marks), by way of non-pecuniary compensation for 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;

7. unanimously, to order the respondent Party to pay simple interest at the rate of 10 % (ten per cent) per annum over the sum specified in conclusion no. 6 or any unpaid portion thereof after the expiry 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 until the date of settlement in full; and

8. unanimously, to order the respondent Party to report to the Chamber on the steps taken by it to comply with these orders within three months from the date on which this decision becomes final and binding in accordance with Rule 66 of the Chamber's Rules of Procedure.

(signed)
Ulrich GARMS
Registrar of the Chamber

(signed)
Viktor MASENKO-MAVI
Acting President of the Second Panel