



**International Covenant on  
Civil and Political Rights**

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**Human Rights Committee**

**Communication No. 2143/2012**

**Views adopted by the Committee at its 114th session  
(29 June-24 July 2015)**

<i>Submitted by:</i>	Dalisa Dovadzija and Sakiba Dovdzija (represented by TRIAL: Track Impunity Always)
<i>Alleged victim:</i>	Salih Dovadžija (Sakiba Dovadžija's husband and Dalisa Dovadžija's father)
<i>State party:</i>	Bosnia and Herzegovina
<i>Date of communication:</i>	12 March 2012 (initial submission)
<i>Document references:</i>	Special Rapporteur's decision under rules 92 and 97, transmitted to the State party on 6 February 2014 (not issued in a document form)
<i>Date of adoption of Views:</i>	22 July 2015
<i>Subject matter:</i>	Enforced disappearance and effective remedy
<i>Procedural issues:</i>	None
<i>Substantive issues:</i>	Right to life; torture; cruel, inhuman or degrading treatment or punishment; liberty and security of person; human dignity; protection of the law; right to an effective remedy; children's rights
<i>Articles of the Covenant:</i>	Articles 2 (3); 6; 7; 9; 16; 17; 23 (1); and 24 (1)
<i>Articles of the Optional Protocol:</i>	Article 2



## Annex

### **Views of the Human Rights Committee under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political rights (114th session)**

concerning

#### **Communication No. 2143/2012\***

*Submitted by:* Dalisa Dovadžija and Sakiba Dovadžija  
(represented by TRIAL: Track Impunity Always)

*Alleged victim:* Salih Dovadžija (Sakiba Dovadžija's husband  
and Dalisa Dovadžija's father)

*State party:* Bosnia and Herzegovina

*Date of communication:* 12 March 2012 (initial submission)

*The Human Rights Committee*, established under article 28 of the International Covenant on Civil and Political Rights,

*Meeting on 22 July 2015,*

*Having concluded* its consideration of communication No. 2143/2012, submitted to the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights,

*Having taken into account* all written information made available to it by the authors of the communication and the State party,

*Adopts* the following:

#### **Views under article 5 (4) of the Optional Protocol**

1. The authors of the communication are Sakiba Dovadžija and Dalisa Dovadžija, nationals of Bosnia and Herzegovina, born on 27 January 1962 and 31 March 1992 respectively. They submit the communication on their own behalf and on behalf of Salih Dovadžija, their husband and father, a national of Bosnia and Herzegovina, born on 10 June 1964. They allege that Mr. Dovadžija was forcibly disappeared in 1992 and that his fate and whereabouts have remained unknown since then. The authors claim a violation by

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\* The following members of the Committee participated in the consideration of the present communication: Yadh Ben Achour, Lazhari Bouzid, Sarah Cleveland, Ahmed Amin Fathalla, Olivier de Frouville, Yuji Iwasawa, Ivana Jelić, Duncan Laki Muhumuza, Photini Pazartzis, Mauro Politi, Sir Nigel Rodley, Víctor Manuel Rodríguez-Rescia, Fabián Omar Salvioli, Dheerujall Seetulsingh, Anja Seibert-Fohr, Yuval Shany, Konstantine Vardzelashvili and Margo Waterval. The texts of an individual opinion of Committee member Anja Seibert-Fohr, joined by Committee member Sir Nigel Rodley (concurring), and a separate opinion of Committee members Olivier de Frouville, Mauro Politi, Víctor Manuel Rodríguez-Rescia and Fabián Omar Salvioli (partly dissenting) are appended to the present Views.

Bosnia and Herzegovina<sup>1</sup> of articles 6, 7, 9, 10 and 16 in conjunction with article 2 (3) of the Covenant in respect of Mr. Dovadžija. They also allege that they are themselves victims of a violation of article 7, read alone and in conjunction with article 2 (3), and of articles 17, 23 (1) and 24 (1) read in conjunction with article 2 (3) of the Covenant. The authors are represented by the organization TRIAL: Track Impunity Always.

### **The facts as submitted by the authors**

2.1 The events took place during the armed conflict prior to the independence of Bosnia and Herzegovina. On 15 April 1992, Mr. Dovadžija started serving as a member of the Territorial Defence of Bosnia and Herzegovina, guarding the village of Kadarići, Illijaš. At the time, he was living there with his wife, Sakiba Dovadžija, and their baby daughter, Dalisa. On 9 June 1992, Mr. Dovadžija was captured by members of the Vojska Republike Srpske<sup>2</sup> and taken to the army barracks known as “27 July” in Illijaš. Sakiba and Dalisa Dovadžija were detained in a red building in Illijaš, together with other civilians. On 9 July 1992, Salih, Sakiba and Dalisa Dovadžija were exchanged with Serb prisoners and taken to Breza, together with 90 other individuals.

2.2 After spending one night in Breza, Mr. Dovadžija, his wife and their daughter took a bus to Kakanj, where Sakiba Dovadžija’s brother and mother lived. They spent one night in the brother’s house, then moved to her mother’s home. Once they had settled, Mr. Dovadžija left for Breza to check in with the local unit of the army of Bosnia and Herzegovina. On about 25 July 1992, Mr. Dovadžija visited his wife and daughter in Kakanj. He told his wife that he was carrying out his duty at Salkanov Han in Breza. On about 10 August 1992, he visited them again. That was the last time that they saw him.

2.3 Ten days later, in the absence of any news from her husband, Ms. Dovadžija decided to go Breza to look for him. She went to the army barracks and asked the guards where her husband was. The soldiers said that they did not know and that they were also searching for him. On the following day, Ms. Dovadžija returned to the barracks with her daughter. While she was there, some of the soldiers told her that her daughter and husband were “Chetnicks”,<sup>3</sup> and that she should look for her husband.

2.4 Ms. Dovadžija was then allowed to talk to the head of the security unit of the army of Bosnia and Herzegovina, Munir Alić, who openly told Ms. Dovadžija that her husband was a Chetnick and that he had joined the enemy (the Vojska Republike Srpske). Ms. Dovadžija and Mr. Alić started to argue. Mr. Alić hit Ms. Dovadžija with his fist, knocking her down, then kicked her on the leg, all in the presence of her baby daughter. Military police entered the room, took Ms. Dovadžija outside and offered her some water, and scolded Mr. Alić. They then took Ms. Dovadžija outside the barracks and told her never to come back as she could be killed.

2.5 Ms. Dovadžija went to see the mayor of Illijaš to ask for help and material support, as she did not have any means to buy food and feed the baby. The mayor refused to provide her with any kind of support as he had heard rumours<sup>4</sup> that her husband had joined the enemy. The guard of the mayor of Illijaš then shared with her a confidential document

<sup>1</sup> Bosnia and Herzegovina is a State party to the International Covenant on Civil and Political Rights (on 1 September 1993, it succeeded the former Yugoslavia, which ratified the Covenant on 2 June 1971), as well as to the first Optional Protocol thereto, which it ratified on 1 March 1995. The Optional Protocol entered into force for Bosnia and Herzegovina on 1 June 1995.

<sup>2</sup> The Vojska Republike Srpske is also commonly referred to as the Bosnian Serb Army.

<sup>3</sup> A derogative term used to refer to Serb nationalists.

<sup>4</sup> No further details are provided on this point.

containing a list of men who had been captured by the Vojska Republike Srpske,<sup>5</sup> including Mr. Dovadžija. The document also indicated that Mr. Dovadžija had been “wounded in Blažuj”.

2.6 Ms. Dovadžija took the list to the army barracks, but obtained no further information. She tried to obtain some material support from the municipality of Breza. The employees in charge of social matters recommended that she stop searching for her husband, as she risked being killed.

2.7 While staying in Breza, Ms. Dovadžija met with two eyewitnesses, Husnija Šehić and Bego Selimović, who had been exchanged with Serb prisoners. They told her that they had been captured with her husband and that, together with him, they had been subjected to ill-treatment and forced labour while being held in the detention facilities at Podlugovi and Planinja Kuća in Semizovac. They stated that they had been used as human shields at the front line in Žuč and that they had last seen Mr. Dovadžija in October 1992. They told her that her husband was in the hands of the Vojska Republike Srpske, had been taken from the camp in Planinja Kuća and had never been seen again.

2.8 In 1993, Ms. Dovadžija reported her husband’s enforced disappearance to the International Committee of the Red Cross (ICRC) in Zenica. Mr. Dovadžija remains registered on the ICRC files as a missing person “unaccounted for” since October 1992. Before 1999, Ms. Dovadžija filled in an ante-mortem questionnaire through ICRC and the Red Cross of Bosnia and Herzegovina to facilitate the process of identifying mortal remains exhumed by local forensic experts. Ms. Dovadžija also gave DNA samples, to no avail.

2.9 In May 1996, the first exhumations took place in Žuč. During a radio broadcast in Illijaš, all those who had a missing family member who could have been killed in Žuč were invited to go to the Visoko facility for identification. Ms. Dovadžija went there and was convinced that she could identify the body of her husband from a piece of blue cloth, a jar and the shape of his head and nose. However, when she informed the staff at the Visoko facility, she was told that the same body had already been identified by another person. Ms. Dovadžija requested that the body not be buried until its true identity could be established using reliable technical methods. However, when she returned to Visoko to take further steps to identify the remains, the corpse had already been buried and she has never been able to locate it.

2.10 The fate and whereabouts of Mr. Dovadžija remain unknown and he is officially registered as a missing person. To date, no one has been judged and punished for his enforced disappearance and his family has not obtained compensation or any other form of reparation. The authors have not even been considered eligible for the so-called “disability pension” as social support. As Ms. Dovadžija has always been deeply offended by the accusation that her husband deserted the army, she took several steps to have him recognized as a veteran. Despite eyewitness testimonies that Mr. Dovadžija did not desert the army, but was arbitrarily detained by the Vojska Republike Srpske, his status as a veteran has never been recognized.

2.11 On 19 July 2002, Municipal Court I in Sarajevo declared that Mr. Dovadžija had died on about 25 July 1992, despite the fact that Ms. Dovadžija has always clearly stated that she saw him for the last time in August 1992, and that eyewitnesses had seen him alive in October 1992. In the spring of 2007, Ms. Dovadžija reported her husband’s enforced disappearance to the Federal Commission on Missing Persons.

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<sup>5</sup> The authors submitted the list as one of the documents annexed to their complaint.

2.12 Ms. Dovadžija also applied to the Human Rights Commission within the Constitutional Court of Bosnia and Herzegovina, claiming violation of articles 3 (prohibition of torture) and 8 (right to respect for private and family life) of the European Convention on Human Rights, as well as articles II (3) (b) and (f) of the Constitution of Bosnia and Herzegovina. The Constitutional Court decided to combine several applications submitted by relatives of missing persons, and dealt with them as one collective case.

2.13 On 16 July 2007, the Constitutional Court decided that the applicants of the collective case were exempt from exhausting domestic remedies before ordinary courts, as “no specialized institution on enforced disappearance in Bosnia and Herzegovina seems to be operating effectively”.<sup>6</sup> The Court found a violation of articles 3 and 8 of the European Convention because of the lack of information on the fate of the disappeared relatives of the applicants, including Mr. Dovadžija. The Court ordered the authorities concerned to provide “all accessible and available information on members of the applicants’ families who went missing during the war ... urgently and without further delay and no later than 30 days from the date of the receipt of the decision”. The Court also ordered the authorities to ensure the operational functioning of the institutions established in accordance with the Law on Missing Persons, namely the Missing Persons Institute, the Fund for Support to the Families of Missing Persons of Bosnia and Herzegovina and the Central Records of Missing Persons in Bosnia and Herzegovina, immediately and without further delay, and no later than 30 days from the date of the court order. The competent authorities were requested to submit information within six months to the Constitutional Court about the measures taken to implement the decision.

2.14 The Constitutional Court did not address the issue of compensation, considering that it was covered by the provisions of the Law on Missing Persons concerning financial support and by the establishment of the Fund for Support to the Families of Missing Persons of Bosnia and Herzegovina. However, the authors argue that the provisions on financial support have not been implemented and that the Fund has not been established.

2.15 In the present case, although the deadlines established by the Constitutional Court have expired and the relevant authorities have failed to enforce the Court’s decision, it has not adopted any ruling to establish that the authorities actually failed to enforce its decision under article 74.6 of its rules of procedure.

2.16 On 17 October 2011, Ms. Dovadžija wrote to the Constitutional Court pointing out that four years had elapsed since the judgement concerning her husband’s case and that the relevant institutions had failed to implement it. She called on the Court to adopt a ruling under article 74.6 of its rules of procedure. On 31 October 2011, she received a letter from the Court informing her that on 27 March 2009 it had adopted “information” stating that its decision was considered to have been enforced.

2.17 The Constitutional Court ruling of 27 March 2009 is final and binding. The authors therefore have no other effective remedy to exhaust. Although the authorities of Bosnia and Herzegovina have been aware of Mr. Dovadžija’s enforced disappearance since 1992, no one has been identified, judged and punished for the crimes concerned. In the spring of 2009, Ms. Dovadžija requested a meeting with a representative of the Cantonal Prosecutor’s Office of Sarajevo. She reported her husband’s enforced disappearance once again and called for a prompt and thorough investigation. She was never contacted by the Prosecutor’s Office. On 18 October 2011, she wrote a letter to the Prosecutor’s Office requesting information on the steps that had been taken to investigate her husband’s case.

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<sup>6</sup> The authors refer to the Constitutional Court judgement in the case of *M.H. and others* (case No. AP-129/04), 27 May 2005, paras. 37-40. Reference is made to that case in the judgement in the case of *Fatima Hasić and others* (case No. AP 95/07), 29 May 2008.

On 1 November 2011, she received a letter from the Cantonal Prosecutor's Office in Sarajevo requesting her to appear before it on 11 November 2011 as a witness in the case of Trifko Radić and others.<sup>7</sup>

2.18 On 11 November 2011, Ms. Dovadžija went to the Cantonal Prosecutor's Office. While she expected to be questioned on events relating to Trifko Radić, she was interrogated about her husband's case. She was surprised and shocked, but once again reported his enforced disappearance and the steps that had been taken over the years to search for him. The Cantonal Prosecutor told Ms. Dovadžija that she would do "something" about her husband's case. Ms. Dovadžija signed the document containing her statement, but was unable to obtain a copy of it. On 4 January 2012, she went to the Cantonal Prosecutor's Office to formally request a copy, but was told that she was not entitled to one. On 16 January 2012, Ms. Dovadžija wrote a letter reiterating her request. She finally received a copy on 19 January 2012.

2.19 Since 1992, the authors of the communication have suffered from severe psychological stress owing to the uncertainty surrounding the fate and whereabouts of Mr. Dovadžija. The length of time and the apparent official indifference to their acute anxiety have led to deep frustration and humiliation on their part. They have been unable to find Mr. Dovadžija's mortal remains and to mourn and bury him in accordance with their religious beliefs and customs. The authors have applied over the past 20 years to various official authorities, both in writing and in person. Despite their attempts, they have never received any plausible information about what happened to Mr. Dovadžija. Most of the few responses they received merely informed them that a tracing process had been initiated.

2.20 The suffering experienced over the past 20 years has particularly affected the psychological state of Sakiba Dovadžija, who has been diagnosed with mixed dissociative (conversion) disorders. Dalisa Dovadžija, who was a few months old when her father disappeared, was forced to grow up without him and has not been able to mourn him properly, which has affected her whole life.

### **The complaint**

3.1 The authors maintain that Mr. Dovadžija was the victim of enforced disappearance perpetrated by members of the Vojska Republike Srpske, that enforced disappearances entail multiple offences and that his disappearance amounts to a violation of articles 6, 7, 9 and 16 read in conjunction with article 2 (3) of the Covenant. His fate and whereabouts remain unknown since October 1992 and his disappearance occurred within the context of widespread and systematic violence. The fact that he was last seen alive in the hands of members of the Vojska Republike Srpske in life-threatening circumstances leads to the conclusion that he was in a situation in which he faced a grave risk of suffering irreparable damage to his personal integrity and life.

3.2 The authors argue that the failure by the State party to respect its positive obligation to investigate, prosecute and punish those responsible for the disappearance of Mr. Dovadžija amounts to a violation of articles 6, 7, 9, 10 and 16 read together with article 2 (3) of the Covenant. They refer to the report of an expert member of the Working Group on Enforced or Involuntary Disappearances, which states that the primary responsibility for carrying out those tasks remains with the authorities under whose jurisdiction a suspected mass grave falls.<sup>8</sup> The authors also argue that the State party has an obligation to conduct a prompt, impartial, thorough and independent investigation into gross human rights

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<sup>7</sup> Case No. T090 0 KTRZ 0016155 95.

<sup>8</sup> See para. 78 of the report on the special process on missing persons in the territory of the former Yugoslavia (E/CN.4/1996/36).

violations, such as enforced disappearances, torture or arbitrary killings. The obligation to investigate also applies in cases of killings, or other acts affecting the enjoyment of human rights, that are not imputable to the State. In those cases, the obligation arises from the duty of the State to protect all individuals under its jurisdiction from acts committed by private persons, or groups of persons, which may impede the enjoyment of the human rights of those individuals.<sup>9</sup>

3.3 With regard to article 6 of the Covenant, the authors refer to the Committee's jurisprudence according to which a State party has a primary duty to take appropriate measures to protect the life of a person.<sup>10</sup> In cases of enforced disappearance, the State party has an obligation to investigate and bring perpetrators to justice. By not doing so, the State party continues to violate its positive procedural obligations under article 6, read in conjunction with article 2 (3) of the Covenant. Mr. Dovadžija was last seen in life-threatening circumstances in the hands of the Vojska Republike Srpske, and since then he has remained unaccounted for. Although there are reasons to believe that he has been arbitrarily executed, his mortal remains have still not been identified and returned to his family. Despite the complaints promptly filed by Ms. Dovadžija, no *ex officio*, prompt, thorough, impartial, independent and effective investigation has been carried out in order to locate Mr. Dovadžija and clarify his fate and whereabouts, and to date no one has been summoned, indicted, judged or convicted for the crimes concerned.

3.4 The authors submit that their missing husband and father was subjected to treatment contrary to article 7, read in conjunction with article 2 (3) of the Covenant, and the State party's authorities failed to carry out an *ex officio*, prompt, impartial, thorough and independent investigation and to identify, prosecute and sanction those responsible. The authors refer to the jurisprudence of the Committee according to which enforced disappearance constitutes in itself a form of torture.<sup>11</sup> They therefore consider that Mr. Dovadžija's disappearance amounts to treatment contrary to article 7, read in conjunction with article 2 (3) of the Covenant.

3.5 The authors argue that Mr. Dovadžija was also a victim of violations of his rights under article 9 of the Covenant. Given the circumstances of his disappearance (see para. 3.1 above), it is reasonable to presume that he was captured by members of the Vojska Republike Srpske in August 2012 and, according to eyewitnesses, he was held in the detention camps of Podlugovi and Planinja Kuća in Semizovac, as well as at the front line in Žuč. However, his detention was not entered on any official record or register and his relatives have never seen him again. He was never charged with a crime, nor was he brought before a judge or any other official authorized by law to exercise judicial power. He was unable to bring proceedings before a court to challenge the lawfulness of his

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<sup>9</sup> The authors refer to the Committee's general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 8; Inter-American Court of Human Rights, *Chitay Nech and others v. Guatemala*, judgement of 25 May 2010, Series C No. 212, para. 89; Inter-American Court of Human Rights, *Velásquez Rodríguez v. Honduras*, judgement of 29 July 1988, Series C No. 4, para. 172; European Court of Human Rights, *Demiray v. Turkey*, Application No. 27308/95, judgement of 21 November 2000, para. 50; European Court of Human Rights, *Tanrikulu v. Turkey*, Application No. 23763/94, judgement of 8 July 1999, para. 103; and European Court of Human Rights, *Ergi v. Turkey*, Application no. 23818/94, judgement of 28 July 1998, para. 82.

<sup>10</sup> See communication No. 84/1981, *Dermitt Barbato v. Uruguay*, Views adopted on 21 October 1982, para. 10.

<sup>11</sup> See communications No. 449/1991, *Mojica v. Dominican Republic*, Views adopted on 15 July 1994, para. 5.7; No. 1327/2004, *Grioua v. Algeria*, Views adopted on 10 July 2007, para. 7.6; and No. 540/1993, *Laureano Atachahua v. Peru*, Views adopted on 25 March 1996, para. 8.5.

apprehension. As no explanation has been given by the State party and no efforts have been made to clarify his fate, the authors consider that the State party has violated his rights under article 9, read in conjunction with article 2 (3) of the Covenant.

3.6 In addition, the authors consider that Mr. Dovadžija's enforced disappearance prevented his enjoyment of all other human rights, confining him to a situation of absolute defencelessness. In that regard, they refer to the jurisprudence of the Committee according to which enforced disappearance may constitute a refusal to recognize the victim before the law, if that person was in the hands of the authorities of the State party when last seen, and if the efforts of their relatives to obtain access to effective remedies have been systematically denied.<sup>12</sup> Mr. Dovadžija was deprived of his liberty by members of the Vojska Republike Srpske and there has been no information as to his fate and whereabouts since then, and no investigation has been conducted by the State party as to his fate and whereabouts. The unceasing efforts made by Mr. Dovadžija's relatives to obtain access to potentially effective remedies have been impeded, thereby placing the disappeared person outside the protection of the law, which amounts to a continuing violation of article 16, read in conjunction with article 2 (3) of the Covenant.

3.7 The authors allege that they are themselves victims of a violation by Bosnia and Herzegovina of article 7, read in conjunction with article 2 (3), of the Covenant, because of the severe mental distress and anguish caused by: (a) the disappearance of Mr. Dovadžija; (b) the continued uncertainty about his fate and whereabouts; (c) the failure to investigate and ensure an effective remedy; (d) the lack of attention to their case; (e) the denial of Mr. Dovadžija's status as veteran, despite the evidence available demonstrating that he was captured while on duty with the army of Bosnia and Herzegovina; (f) the non-implementation of various provisions of the Law on Missing Persons, including those concerning the establishment of the Fund for Support to the Families of Missing Persons in Bosnia and Herzegovina; and (g) the failure by the State party to implement the judgement of the Constitutional Court. The authors therefore consider that they have been victims of a separate violation of article 7, read in conjunction with article 2 (3) of the Covenant.

3.8 The authors claim that articles 6, 7, 9 and 16 have been violated in conjunction with articles 17 and 23 (1) of the Covenant because of the disruption of their family life as a consequence of Mr. Dovadžija's arbitrary deprivation of liberty and his subsequent enforced disappearance. They consider that those violations have prevented them from burying their loved one in accordance with their religious customs and convictions.

3.9 Dalisa Dovadžija submits that she was not even one year old when her father was disappeared. She was forced to grow up in a particularly vulnerable situation, was unable to enjoy family life, and experienced the ongoing anguish of not knowing the truth about what had happened to her father and the frustration of not being able to help her mother while seeing her in a state of constant despair and anguish. She argues that her mother's psychological state affected her right to grow up in a peaceful atmosphere. Although the authorities of Bosnia and Herzegovina were under the obligation to adopt special measures of protection, they left Dalisa Dovadžija in a painful, uncertain situation. She therefore submits that the State party has violated her rights under article 24 (1), read in conjunction with articles 2 (3) and 7 of the Covenant, as she was a child in need of special protection until she reached the age of majority on 31 March 2010.

3.10 The authors stress that their communication does not constitute an abuse of the right of submission pursuant to rule 96 (c) of the Committee's rules of procedure. The term of

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<sup>12</sup> See communications No. 1495/2006, *Zohra Madoui v. Algeria*, Views adopted on 28 October 2008, para. 7.7; and *Grioua v. Algeria*, para. 7.9.

five years from the exhaustion of domestic remedies has not elapsed in the present case. Moreover, taking into account the continuous nature of enforced disappearances, the authors consider that rule 96 (c) rule should not be applied in such cases. The authors submit that, even though the events took place before the entry into force of the Optional Protocol for the State party, enforced disappearances of persons are per se a continuing violation of several human rights.

#### **State party's observations on admissibility and on the merits**

4.1 In its observations dated 6 June 2012, the State party submitted copies of 10 letters from State agencies and entities.<sup>13</sup> According to the letter from the Ministry of Justice dated 9 May 2012, after ratification of the General Framework Agreement for Peace in Bosnia and Herzegovina and the Annexes thereto in 1995, the authorities of Bosnia and Herzegovina made efforts to find an effective and equitable way to dispose of thousands of war crimes indictments. Along with the establishment of the legal framework for war crimes prosecution, the Court of Bosnia and Herzegovina and the Prosecutor's Office were set up with exclusive jurisdiction over war crimes cases. Any report of war crimes received by other prosecutors or courts was to be submitted to the Prosecutor's Office for consideration and review in accordance with established criteria. Thus, considering how serious a case was, the Court might transfer the proceedings to another court on the territory where the crime was committed. Owing to the large number of war crimes, on 29 December 2008, the Council of Ministers adopted the National War Crimes Prosecution Strategy. One of the goals of the Strategy was to finish prosecuting individuals allegedly involved in the most complex war crimes cases in 7 years and prosecution of individuals allegedly involved in other war crimes in 15 years from the adoption of the Strategy. At the proposal of the Ministry of Justice, the Council of Ministers established a supervisory body to monitor the implementation of the Strategy. The Ministry of Justice concluded that the authorities of Bosnia and Herzegovina were taking significant steps in the prosecution of individuals allegedly involved in war crimes and resolving the fate of the missing persons. However, considering the large number of applicants, the process could not end quickly.

4.2 In a letter dated 10 May 1992, the Court of Bosnia and Herzegovina indicated that the authors of the communication had not submitted a complaint to the Court and that they were not registered in the records of the Department for Witness Support. Similarly, the High Judicial and Prosecutorial Council, in a letter dated 8 May 2012, noted that it had no legal obligation or authority to keep records and provide information that would enable it to reply to the allegations presented in the communication. In a letter dated 17 May 2012, the Ministry of Defence indicated that it did not have any information on the case of Salih Dovidžija; and in a letter dated 10 May 1992, the Ministry of Security indicated that the State Investigation and Protection Agency had not intervened in his case.

4.3 According to a letter dated 10 May 2012 from the Prosecutor's Office of Bosnia and Herzegovina, the Special War Crimes Department was investigating a number of persons for their possible participation in the planning and organization of the enforced relocation of thousands of non-Serb civilians; forming, organizing and operating camps and prisons in the municipalities of Hadžići, Ilidža and Vogošća in which they imprisoned non-Serb civilians and deciding their fate. The suspects were charged with direct and command

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<sup>13</sup> The letters were from the following: Ministry of Justice; Ministry of Defence; Court of Bosnia and Herzegovina; High Judicial and Prosecutorial Council of Bosnia and Herzegovina; Prosecutor's Office of Bosnia and Herzegovina; State Investigation and Protection Agency within the Ministry of Security; Missing Persons Institute; Federal Ministry of Labour and Social Policy; Ministry of Labour, Social Policy, Displaced Persons and Refugees of the Canton of Sarajevo; and Mayor of Novo Sarajevo.

responsibility. The Prosecutor's Office stated that it had taken the "necessary investigative actions in order to determine circumstances of these crimes" and that "the outcomes will surely have a bearing on the fate and disappearance of Mr. Salih Dovadžija". The Prosecutor's Office also indicated that Mr. Dovadžija's case was considered a high priority and should therefore be resolved within four years, but that no specific deadline could be provided.

4.4 In a letter dated 16 May 2012, the Missing Persons Institute described the legal framework that had been established for the prosecution of individuals allegedly involved in war crimes in the post-war period, since December 1995. The Institute referred to the adoption of the Law on Missing Persons of 2004, and recalled that, of the almost 32,000 persons who had gone missing during the war, the remains of 23,000 persons had been found and 21,000 had been identified.

4.5 The State party submits that a regional office was established in Istočno, Sarajevo, as well as a field office and organizational units in Sarajevo. It considers that those initiatives provide the conditions for faster and more efficient processes to search for disappeared persons in Žuč. Their investigators are on site every day to collect information on potential mass graves and to establish contact with witnesses. The State party informs the Committee that the remains of Salih Dovadžija could be found in the area of Žuč where eight exhumations have been carried out and nine bodies have been found since 1996. It states that the Missing Persons Institute, with the support of the appropriate authorities, will continue to take the action necessary to find missing persons more quickly and to solve the case of Salih Dovadžija.

4.6 In a letter dated 9 May 2012, the Federal Ministry of Labour and Social Policy argued that family members of civilian victims of war were entitled to disability benefits under the Law on the Basis of Social Welfare, Protection of Civilian War Victims and Families with Children. They would be able to exercise their right to reparation when the law on victims of torture was adopted. On 18 May 2012, the Ministry of Labour, Social Policy, Displaced Persons and Refugees of the Canton of Sarajevo indicated that on 26 December 2007, Ms. Dovadžija had addressed a claim for family benefit to the Department for the Protection of Veterans, People with Disabilities, Social Welfare and Displaced Persons. On 3 March 2008, her request had been rejected "because her husband did not disappear as a civilian victim of war". Ms. Dovadžija had appealed that decision stating that she wanted to exercise rights solely on the grounds of the law on the protection of veterans and people with disabilities since her husband had been a member of the army of Bosnia and Herzegovina at the time of his disappearance. The Ministry had rejected her appeal as unfounded. Ms. Dovadžija had then submitted a complaint before the Cantonal Court. The Ministry had prepared a reply to the complaint and submitted it to the Cantonal Court of Sarajevo. The case remained pending.

4.7 In a letter dated 19 April 2012, the Department for the Protection of Veterans and People with Disabilities of the Municipality of Novo Sarajevo indicated that it had been established that Mr. Dovadžija was not registered in the records of the conscription records of the Municipality of Novi Grad Sarajevo.

#### **Authors' comments on the State party's submission**

5.1 On 28 June 2012, the authors submitted their comments on the State party's submission. They noted that the State party does not object to the admissibility of their communication or dispute any of the alleged facts. The authors noted that several of the institutions cited by the State party replied that they had not been involved in dealing with Mr. Dovadžija's case and did not have any information to provide. The authors expressed concern that the long implementation deadlines provided for in the National Strategy for War Crimes Processing would directly affect their case. If the term of "15 years since the

adoption of the Strategy” was applied to their case, it would be likely that they would have to wait another 15 to 20 years before they had access to their right to truth and justice. Meanwhile, witnesses were dying and the available evidence was therefore disappearing.

5.2 The authors express their interest in learning that the Prosecutor’s Office has taken steps to determine the circumstances of Mr. Dovadžija’s case. However, Sakiba Dovadžija has never been called to provide her testimony and the authors have never been informed about developments in the investigations. On 26 June 2012, Ms. Dovadžija sent a letter to the Prosecutor’s Office of Bosnia and Herzegovina to reiterate her availability and willingness to contribute to the investigation of her husband’s case, and her desire to be kept informed. She has not received a reply.

5.3 The authors welcome the information provided by the Missing Persons Institute that it has carried out a number of exhumations in Žuč. However, they consider that they should be involved in the whole process of location, exhumation and identification of the remains.

5.4 The authors confirm that 20 years after the enforced disappearance of their husband and father, they have not received any form of redress or compensation. They express their concern regarding the reply of the Federal Ministry of Labour and Social Policy, according to which they will be able to exercise their right to reparation only when the law on victims of torture has been adopted, as it refers to a piece of legislation that does not exist and is unlikely to be adopted soon. The authors recall that Bosnia and Herzegovina does not have a general law addressing the rights of people who were victims of torture or inhuman or degrading treatment during the conflict.

5.5 As regards their complaint previously referred to as pending (see para. 4.6 above), the Cantonal Court of Sarajevo adopted a decision on 25 May 2012 in which it upheld the claim presented by Sakiba Dovadžija for a monthly disability pension and ordered that new proceedings be conducted.<sup>14</sup> The authors reiterate the importance for Ms. Dovadžija of having her husband’s status as a veteran recognized.

#### **State party’s additional submissions**

6.1 On 6 August 2012, 25 September 2012 and 5 March 2013, the State party submitted letters from various institutions,<sup>15</sup> mostly reiterating the information provided in the State party’s previous submission. In addition, the Constitutional Court indicated that it had issued decision No. AP-36/06 dated 16 July 2007 closing the case of Mr. Dovadžija, but that it was unable to provide any additional observations or clarifications in that regard. As regards the authors’ allegation that they have not been called on to provide their testimony and that they have not received a reply to their letter dated 26 June 2012, the Prosecutor’s Office states that they will be called to testify.

6.2 The Missing Persons Institute indicated that it continued to take “all necessary actions that will enable finding missing persons faster”, and that “it expects to solve, assisted by appropriate authorities and people having witnessed war crimes, the case of Mr. Salih Dovadžija”. The Federal Ministry of Labour and Social Policy reiterated that the law on victims of torture was in the drafting phase and should be adopted soon, and that the law would regulate reparation and compensation for violations of human rights for the categories of victims to which the authors belonged.

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<sup>14</sup> No further details are provided on this issue.

<sup>15</sup> The letters were from the following: Prosecutor’s Office; Missing Persons Institute; Federal Ministry of Labour and Social Policy; Constitutional Court; Sarajevo Canton, Municipality of Novo Sarajevo; Ministry of Security; Ministry of Justice; Office of the Prime Minister; and Federal Ministry for Veterans and Disabled Veterans of the War of Defence and Liberation.

6.3 The Department for the Protection of Veterans and People with Disabilities indicated that the authors had not requested any allowance from it. Similarly, the Ministry of Security replied that it was working on the issue of war crimes, but that its activities were not related to the authors' comments on the State party's observations.

6.4 The Ministry of Justice stated that, despite the efforts made by the authorities of Bosnia and Herzegovina to prosecute individuals allegedly involved in war crimes, "the existing capacities are inadequate to dispose of all pending cases in a short period of time" and called for additional investment.

#### **Authors' comments on the State party's additional observations**

7.1 On 30 November 2012, 9 April 2013 and 7 February 2014, the authors provided additional comments. They reiterated their concern that the law on victims of torture is referred to by the State party as a remedy for the authors, while its adoption remains pending.

7.2 The authors express their concern at the affirmation of the Ministry of Justice that it does not have sufficient capacity to prosecute all individuals allegedly involved in pending cases shortly. More than 20 years have passed since Mr. Dovadžija's enforced disappearance and the authors are concerned that they will have to wait even longer for his case to be resolved. The authors indicate that they have still not been contacted to provide their testimony in the case of Mr. Dovadžija, despite the commitment made by the Prosecutor's Office.

7.3 As regards Ms. Dovadžija's pension claims, the authors indicate that on 21 August 2012, the Cantonal Court of Sarajevo held that "the allegations from the claim are justified and the disputed first instance ruling has violated the law at the damage of the claimant". It decided that Ms. Dovadžija's claim should be re-examined by the Department for Veterans and Persons with Disabilities, Social Welfare and Displaced Persons of Ilijaš Municipality.

7.4 On 8 September 2012, Sakiba Dovadžija went to that Department to obtain information on the documentation required for the new proceedings. She was received by an officer who, instead of providing her with the required information, threw a copy of the decision of the Cantonal Court on the table and warned Ms. Dovadžija in a threatening tone never to come back again. That episode left Ms. Dovadžija in a state of acute psychological shock, following which she had to be hospitalized at Jagomir Psychiatric Hospital, where she remained from 11 to 26 September 2012.<sup>16</sup> In her release letter from the hospital, Ms. Dovadžija was diagnosed with depression and stress disorders. The letter also highlighted that those pathologies started at the time of her husband's disappearance and had recently been exacerbated by her financial difficulties. The authors claim that the attitude of the authorities of Bosnia and Herzegovina has contributed to the deterioration of her condition. Ms. Dovadžija is in an extremely precarious state of physical and mental health and she has difficulties covering the basic costs of her daily survival and accessing the treatment she needs.

7.5 On 25 October 2012, Ms. Dovadžija wrote a letter to the same Department denouncing the treatment she had received from the officer who she saw in September 2012, and recalling the decision of the Cantonal Court of Sarajevo. She did not receive a reply. On 9 November 2012, she went again to the premises of the Department and spoke to a different officer who offered to send her case to the Federal Ministry for Veterans. A meeting was scheduled on 14 November, but Ms. Dovadžija could not attend owing to health problems. The meeting is due to be rescheduled.

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<sup>16</sup> Documents related to the hospitalization are provided by the author.

7.6 On 29 January 2013, Ms. Dovadžija requested that the Ministry of Justice and Administration of the Canton of Sarajevo conduct an inspection of the work of the Department, given the non-implementation of the decision of the Cantonal Court of Sarajevo. On 20 February 2013, the Cantonal Ministry of Justice and Administration responded that the acting officer of the Department had requested that the Federal Ministry for Veterans deliver a revised report on the circumstances of the disappearance of Mr. Dovadžija. It also suggested that Ms. Dovadžija refer the matter to the Federal Administrative Inspection so that it could order the Federal Ministry for Veterans to act. On 7 March 2013, the Department received an information note from the Federal Ministry for Veterans. On 8 March 2013, it rejected Ms. Dovadžija's claim for a family pension. On 28 March 2013, Ms. Dovadžija appealed that ruling. The proceedings were pending at the time of the authors' submission.

7.7 To date, the fate and whereabouts of Mr. Dovadžija remain unknown. The authors consider that the authorities of Bosnia and Herzegovina have not adopted effective measures to establish the truth about the events, to identify, judge and punish those responsible, or to provide adequate compensation and comprehensive reparation to the family of Mr. Dovadžija. In the meantime, Sakiba Dovadžija's mental and physical state is rapidly deteriorating and she is living in extremely precarious conditions.

#### **State party's further observations**

8.1 In a letter dated 19 April 2013, the State party noted that the appeal presented by Sakiba Dovadžija against the decision of the Department for Veterans and Persons with Disabilities, Social Welfare and Displaced Persons of Illijaš Municipality had been rejected by the Federal Ministry for Veterans and Disabled Veterans of the War of Defence and Liberation. The Department considered the appeal unfounded because Ms. Dovadžija's husband was found to have been a member of the army of Bosnia and Herzegovina from 13 July 1992 to 15 July 1992, when he deserted the armed forces with no intention of returning;<sup>17</sup> that he disappeared in those circumstances; and that his family was therefore not entitled to any pension or allowance from the Department.

8.2 On 4 April 2014, the State party indicated that the High Judicial and Prosecutorial Council of Bosnia and Herzegovina had recruited five more prosecutors to speed up the process of resolving war crimes cases, and that there was no change in the status of Mr. Dovadžija, who was still registered as a missing person. It also indicated that, on 13 March 2014, the Cantonal Court in Sarajevo had accepted Ms. Dovadžija's appeal against the decision of the Department for Veterans of Illijaš Municipality and had ordered new proceedings.

8.3 In a letter dated 14 March 2014, the Municipality of Illijaš stated that it had found out that Sakiba Dovadžija had filed an administrative claim before the Cantonal Court in Sarajevo regarding her husband's status as a veteran. The proceeding was ongoing, but the Court pointed out that it did not have jurisdiction to investigate the circumstances of the disappearance, as that was an issue addressed by the Group for Conscription Records within the Federal Ministry for Veterans and Disabled Veterans of the War of Defence and Liberation.

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<sup>17</sup> The authors provide a document stating that Salih Dovadžija joined the army on 15 April 1992 (see para. 2.1 above) and they argue that he remained attached to the army until his disappearance in October 1992, as is clear from the testimony of eyewitnesses.

**Authors' further comments**

9.1 In a letter dated 7 February 2014, the authors indicated that Ms. Dovadžija's mental health, depression and living conditions deteriorated further following the rejection of her claim for a monthly pension on the ground that her husband had "voluntarily deserted the unit".

9.2 The authors argue that the decision of the Federal Ministry for Veterans amounts to a denial of the disappearance of their husband and father. They recall that Mr. Dovadžija was last seen in October 1992 in life-threatening circumstances in the hands of the Vojska Republike Srpske. They recall that the State party's authorities have not provided any information to the contrary and that Mr. Dovadžija remains officially registered as a missing person. The authors have been struggling over the years to unveil the truth about the fate and whereabouts of Mr. Dovadžija, to no avail, and they face perpetual revictimization.

**Issues and proceedings before the Committee***Consideration of admissibility*

10.1 Before considering any claims contained in a communication, the Committee must decide, in accordance with rule 93 of its rules of procedure, whether or not it is admissible under the Optional Protocol to the Covenant.

10.2 As required under article 5 (2) (a) of the Optional Protocol, the Committee has ascertained that the same matter is not being examined under another procedure of international investigation or settlement. The Committee notes that it is undisputed that the authors have exhausted all available domestic remedies, as required under article 5 (2) (b) of the Optional Protocol.

10.3 The Committee notes that the State party has not challenged the admissibility of the communication and that the authors' allegations regarding violations of articles 6, 7, 9, 10, 16, 17, 23 (1) and 24 (1) read in conjunction with article 2 (3) of the Covenant, and of article 7 read alone, have been sufficiently substantiated for the purposes of admissibility. All admissibility criteria having been met, the Committee declares the communication admissible and proceeds to its examination on the merits.

*Consideration of the merits*

11.1 The Committee has considered the present communication in the light of all information made available to it by the parties, as required under article 5 (1) of the Optional Protocol.

11.2 The Committee takes note of the authors' claims that on 9 June 1992, Mr. Dovadžija was apprehended by Vojska Republike Srpske soldiers and taken to the army barracks in Illijaš; after having been released, he returned to the army; his name appeared in a confidential list of men who had been captured by the Vojska Republike Srpske, and that document also indicated that he had been "wounded in Blažuj". The Committee notes that, according to eyewitnesses, Mr. Dovadžija was captured and deprived of his liberty with them; they were all subjected to ill-treatment and forced labour while held in detention facilities in Semizovac; they were used as human shields at the front line in Žuč; and they saw Mr. Dovadžija for the last time in October 1992, when he was in the hands of the Vojska Republike Srpske, in life-threatening circumstances. The Committee also notes the authors' argument that against that background, it is reasonable to presume that their husband and father became a victim of enforced disappearance by the Vojska Republike Srpske sometime after June 1992. No investigation has been carried out by the State party to clarify Mr. Dovadžija's fate and whereabouts and to bring the perpetrators to justice. In

this respect, the Committee recalls its general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, according to which a failure by a State party to investigate allegations of violations and to bring to justice perpetrators of certain violations, including enforced disappearances, could give rise to a separate breach of the Covenant.

11.3 The authors do not allege that the State party was directly responsible for the enforced disappearance of Mr. Dovadžija. Indeed, they allege that the disappearance was initiated in the State party's territory by the Vojska Republike Srpske. The Committee observes that the term "enforced disappearance" may be used in an extended sense, referring to disappearances initiated by forces independent of or hostile to a State party, in addition to disappearances attributable to a State party.<sup>18</sup> The Committee also notes that the observations of the State party do not contest the characterization of the events as an enforced disappearance.

11.4 The Committee notes the State party's information that it has made considerable efforts in view of the more than 30,000 cases of enforced disappearance that occurred during the conflict. Notably, the Constitutional Court has established that the authorities are responsible for investigating the disappearance of the applicants' relatives, including Mr. Dovadžija (see para. 2.13 above), and domestic mechanisms have been set up to deal with enforced disappearances and other war crimes cases (see para. 4.1 above).

11.5 Without prejudice to the continuing obligation of States parties to investigate all dimensions of an enforced disappearance, including bringing those responsible to justice, the Committee recognizes the particular difficulties that a State party may face in investigating crimes that may have been committed on its territory by hostile forces. Therefore, while acknowledging the gravity of the disappearances and the suffering of the authors because the fate or whereabouts of their missing husband and father has not yet been clarified and the culprits have not yet been brought to justice, that in itself is not sufficient to find a breach of article 2 (3) of the Covenant in the particular circumstances of the present communication.

11.6 That being said, the authors claim that, at the time they filed their communication, more than 20 years after the alleged disappearance of their husband and father, and almost 4 years after the judgement of the Constitutional Court of 13 May 2008, the investigative authorities had not contacted them for information regarding the disappearance of Mr. Dovadžija. On 17 October 2011, Ms. Dovadžija wrote a letter to the Constitutional Court pointing out that 4 years had elapsed since the judgement adopted in her husband's case and that the relevant institutions had failed to implement it; however the Constitutional Court has taken no decision and no effective action has been carried out by the authorities in Mr. Dovadžija's case. The State party has provided general information about its efforts to ascertain the fate and whereabouts of missing persons and to prosecute perpetrators. Nevertheless, it has failed to provide the authors or the Committee with specific and relevant information concerning the steps taken to establish Mr. Dovadžija's fate and whereabouts, and to locate his mortal remains, in case of his death. The Committee

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<sup>18</sup> Compare art. 7 (2) (i) of the Rome Statute of the International Criminal Court (defining enforced disappearance as including disappearances conducted by a political organization) with arts. 2 and 3 of the International Convention for the Protection of All Persons from Enforced Disappearance (distinguishing between enforced disappearances conducted by States or by persons or groups acting with their authorization, support or acquiescence, and similar acts conducted by persons or groups acting without such authorization, support or acquiescence). See also communication No. 1956/2010, *Durić v. Bosnia and Herzegovina*, Views adopted on 16 July 2014, para. 9.3.

concludes that the facts before it reveal a violation of articles 6, 7 and 9 read in conjunction with article 2 (3) of the Covenant with regard to Mr. Dovadžija.

11.7 The Committee observes that the information with which the authorities have provided the authors concerning Mr. Dovadžija's case has been extremely limited and general. The Committee considers that authorities investigating enforced disappearances must give victims' families a timely opportunity to contribute their knowledge to the investigation, and that information regarding the progress of the investigation must be made accessible to the families promptly. It also takes note of the anguish and distress caused to the authors by the continuing uncertainty resulting from the disappearance of their husband and father.

11.8 The Committee notes the authors' claim that they have been victims of revictimization throughout the 20 years of their struggle to clarify the fate and whereabouts of their husband and father. In this connection, the Committee notes various examples: (a) at the time of the first exhumations carried out in 1996 in Žuč, Sakiba Dovadžija was convinced that she had identified one of the bodies as being her husband's, however, the authorities did not take into account her request to have it properly identified using reliable technical methods, because the same body had supposedly been identified previously by another person (see para. 2.9 above); (b) even though she reiterated on various occasions her availability to do so, Sakiba Dovadžija was never called by State authorities to provide additional information on the disappearance of her husband, and the information she provided in connection with the investigation of Trifko Radić's case (see para. 2.18 above) was never followed up; and (c) the authorities of the State party in charge of determining the victims' entitlements to monthly pensions<sup>19</sup> concluded on two occasions that Mr. Dovadžija had deserted the army of Bosnia and Herzegovina, without providing any evidence to that effect (see paras. 8.1 and 9.1 above). The Committee notes that Ms. Dovadžija's claim for a monthly allowance was rejected on the basis of that conclusion, which was never corroborated. On the contrary, the Committee notes that the conclusion is contradicted by various pieces of evidence attesting that Mr. Dovadžija was captured by the Vojska Republike Srpske and disappeared in that context (see the confidential document of the army attesting that Mr. Dovadžija had been captured by the Vojska Republike Srpske (para. 2.5 above) and the testimonies of two eyewitnesses (para. 2.7 above)). The Committee considers that those revictimizing circumstances, together with the lack of information as to the fate and whereabouts of Mr. Dovadžija, amount to inhuman and degrading treatment in violation of article 7, read alone and in conjunction with article 2 (3) of the Covenant with respect to the authors.

11.9 In the light of the above findings, the Committee will not examine separately the authors' allegations under articles 10, 16, 17, 23 (1) and 24 (1) read in conjunction with article 2 (3) of the Covenant.<sup>20</sup>

12. The Committee, acting under article 5 (4) of the Optional Protocol to the Covenant, is of the view that the State party has violated articles 6, 7 and 9 read in conjunction with article 2 (3) of the Covenant with regard to Mr. Dovadžija, and article 7, read alone and in conjunction with article 2 (3), with regard to the authors.

13. In accordance with article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the authors with effective remedy, including by: (a) intensifying its investigations to establish the fate or whereabouts of Mr. Dovadžija, as required by the Law

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<sup>19</sup> The Department for Veterans and People with Disabilities, Social Welfare and Displaced Persons of Illijaš Municipality.

<sup>20</sup> See *Rizvanović and Rizvanović v. Bosnia and Herzegovina*, communication No. 1997/2010, Views adopted on 21 March 2014, para. 9.7.

on Missing Persons of 2004, and having its investigators contact the authors as soon as possible to obtain the information that they can contribute to the investigation; (b) strengthening its efforts to bring to justice those responsible for Mr. Dovadžija's disappearance without unnecessary delay, as required by the national war crimes strategy; (c) ensuring that the psychological rehabilitation and medical care necessary are provided to the authors for the psychological harm they have suffered (see paras. 7.4 and 9.1 above); and (d) providing effective reparation to the authors, including adequate compensation and appropriate measures of satisfaction. The State party is also under an obligation to prevent similar violations in the future and must ensure, in particular, that investigations into allegations of enforced disappearances and adequate measures of reparation are accessible to the families of missing persons.

14. Bearing in mind that by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the present Views. The State party is also requested to publish the present Views and to have them widely disseminated in all three official languages of the State party.

## Appendix I

### **Individual opinion of Committee member Anja Seibert-Fohr, joined by Committee member Sir Nigel Rodley (concurring)**

I concur with the Committee's conclusion on this communication and refer to my individual opinion in *Ičić v. Bosnia and Herzegovina*.<sup>a</sup> In the present case, the Committee again has defensibly chosen not to examine separately the allegations under articles 10 and 16, read in conjunction with article 2 (3) of the Covenant. I would like to address these claims because in my opinion they have not been substantiated. The authors of the communication do not allege that the enforced disappearance of Mr. Dovadžija was attributable to Bosnia and Herzegovina, but rather to armed forces that opposed it. These forces were not acting on behalf of a State as an entity that can recognize persons under the law or deny such recognition. It is difficult to see how actors who are not agents of a State, acting without collusion by that State, could themselves negate the recognition by that State of a victim as a person before the law. Without a further basis for connecting the State party to the disappearance, the authors have not substantiated a violation of article 16, which is a necessary precondition for the claimed respective right to an effective remedy.<sup>b</sup> Neither have the authors substantiated their claim with respect to article 10. The State's obligations under article 10 concern the conditions of detention under their jurisdiction, not the forms of lawless deprivations of liberty by others without any link to the State.<sup>c</sup> Therefore, if the disappearance is not linked to the State, there is, without further substantiation, insufficient ground for finding a violation in connection with article 10. In support of this approach, I also refer to my separate opinion in *Hamulić and Hodžić v. Bosnia and Herzegovina*.<sup>d</sup>

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<sup>a</sup> See *Ičić v. Bosnia and Herzegovina*, communication No. 2028/2011, Views adopted on 30 March 2015, appendix I. See also *Rizvanović and others v. Bosnia and Herzegovina*, appendix.

<sup>b</sup> See *Hamulić and Hodžić v. Bosnia and Herzegovina*, communication No. 2022/2011, View adopted on 30 March 2015, appendix I, notes (a) and (b).

<sup>c</sup> See general comment No. 21 (1992) on the humane treatment of persons deprived of their liberty, para. 2.

<sup>d</sup> See *Hamulić and Hodžić v. Bosnia and Herzegovina*, appendix I, paras. 5-7.

## Appendix II

[Original: French]

### **Separate opinion of Committee members Olivier de Frouville, Mauro Politi, Víctor Manuel Rodríguez-Rescia and Fabián Omar Salvioli (partly dissenting)**

In paragraph 9.7 of its Views, the Committee decided not to examine separately the authors' allegations under article 16 read in conjunction with article 2 (3) of the Covenant. In this regard, we would like to reiterate respectfully that we disagree with this position for the reasons given in our separate opinion appended to the Views on *Hamulić and Hodžić v. Bosnia and Herzegovina* (communication No. 2022/2011) and *Ičić v. Bosnia and Herzegovina* (communication No. 2028/2011).

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