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Communication No. 2048/2011

Views adopted by the Committee at its 115th session (19 October-6 November 2015)

<i>Submitted by:</i>	Emira Kadirić and Dino Kadirić (represented by counsel, TRIAL: Track Impunity Always)
<i>Alleged victims:</i>	The authors and Ermin Kadirić (their husband and father, respectively)
<i>State party:</i>	Bosnia and Herzegovina
<i>Date of communication:</i>	24 January 2011 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 97 decisions, transmitted to the State party on 15 April 2011 (not issued in document form)
<i>Date of adoption of Views:</i>	5 November 2015
<i>Subject matter:</i>	Arbitrary arrest and detention, torture, inhuman and degrading treatment, extrajudicial killing and subsequent removal and concealment of the mortal remains
<i>Procedural issues:</i>	Exhaustion of domestic remedies
<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; children rights; right to an effective remedy
<i>Articles of the Covenant:</i>	2 (3), 6, 7, 9, 16, 24 and 26
<i>Articles of the Optional Protocol:</i>	5 (2) (b)



Annex

Views of the Human Rights Committee under article 5 (4) of the Optional Protocol to the International Covenant on Civil and Political Rights (115th session)

concerning

Communication No. 2048/2011*

Submitted by: Emira Kadirić and Dino Kadirić (represented by counsel, TRIAL: Track Impunity Always)

Alleged victims: The authors and Ermin Kadirić (their husband and father, respectively)

State party: Bosnia and Herzegovina

Date of communication: 24 January 2011 (initial submission)

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

Meeting on 5 November 2015,

Having concluded its consideration of communication No. 2048/2011, submitted to it by Emira Kadirić and Dino Kadirić 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 Emira Kadirić and Dino Kadirić, nationals of Bosnia and Herzegovina born on 5 November 1961 and 2 September 1987, respectively. They submit their communication on their own behalf and on that of their husband and father, Ermin Kadirić, a Bosnian national born on 25 August 1962. The authors claim that the State party has violated Ermin Kadirić's rights under articles 6, 7, 9 and 16, read in conjunction with article 2 (3). They further allege that they are themselves victims of a violation of articles 7 and 26, read in conjunction with article 2 (3), and, in the case of Dino

* The following members of the Committee participated in the examination of the present communication: Yadh Ben Achour, Lazhari Bouzid, Sarah Cleveland, Olivier de Frouville, Yuji Iwasawa, Ivana Jelić, Duncan Laki Muhumuza, Photini Pazartzis, Mauro Politi, Sir Nigel Rodley, Victor Manuel Rodríguez-Rescia, Fabián Omar Salvioli, Dheerujlall Seetulsingh, Yuval Shany, Konstantine Vardzelashvili and Margo Waterval.

Kadirić, also in conjunction with article 24 of the Covenant.¹ The authors are represented by counsel. The Optional Protocol entered into force for the State party on 1 June 1995.

The facts as submitted by the authors

2.1 The events took place during the armed conflict surrounding the independence of Bosnia and Herzegovina, between the Bosnian governmental forces on one side and the Bosnian Serb forces (VRS) and the Yugoslav National Army on the other. The conflict was characterized by ethnic cleansing operations and other atrocities, in which thousands of people were killed, taken to detention camps or disappeared without a trace.² Several of these disappearances occurred in Bosnian Krajina between May and August 1992, most particularly in the region of Prijedor.³

2.2 On 20 July 1992, VRS attacked the village of Rizvanovići where the Kadirić family used to live, as well as other villages on the left bank of the Sana river.⁴ The authors claim that, at the time of the attack, they were in the family house, together with Ermin Kadirić and other relatives. Heavily armed VRS members went from house to house in groups of three or four. A group of soldiers arrived at the authors' house, apprehended Ermin Kadirić and took him outside. They also ordered Emira Kadirić and the other persons present to remain inside the house and to close the door. The authors claim that this was the last time that they saw their loved one alive. Through the window they saw that all the men captured, including the authors' relative, were gathered together by VRS soldiers and subjected to severe ill-treatment over a number of hours. Ermin Kadirić was forced to watch for over two hours with the mutilation, ill-treatment and systematic humiliation of several men. At a certain point, the soldiers ordered the men who had been captured to run and began shooting at them. The shooting continued for over an hour.

2.3 The authors continued to hide in their house for a day and a half. When they finally went outside, they saw the dead bodies of men, many of them mutilated, all around. Ms. Kadirić located the body of Ermin Kadirić, lying on the ground. She and her sisters attempted to get closer, but they were forced to leave him immediately and return to the house because snipers started shooting at them. They claim that the dead bodies were in a poor condition and had already started decomposing. That was the last time that Ms. Kadirić saw her husband.

2.4 In the following days, VRS members returned to the authors' house, took their valuables and threatened them. Then, the authors, together with others, were forced to walk in line down a road where all the dead bodies had been piled. They were taken to the Trnopolje concentration camp, where they remained for about 21 days. The authors further claim that, in the camp, they were subjected to ill-treatment and forced to live in inhuman conditions. Ms. Kadirić and her children were then transferred to a refugee camp in Travnik. While in the camp, Ms. Kadirić reported for the first time her husband as missing to the authorities in charge of the camp. Afterwards, Ms. Kadirić, together with her children, managed to leave the camp and to flee to Germany, where Ms. Kadirić's father lived. In Germany, Ms. Kadirić met with a person from her village, V.H., who told her that

¹ The authors' claim under article 26, read in conjunction with article 2 (3), of the Covenant, was raised in their comments on the State party observations of 19 July 2011 (see para. 5.10 below).

² The authors refer to E/CN.4/1996/36, paras. 22, 49-60, 67-68, 85 and 88.

³ The authors also refer to E/CN.4/1995/37, paras. 3, 36 and 52, and E/CN.4/1997/55 and Corr.1, paras. 3, 94, 98-106.

⁴ The authors refer to S/1994/674/Add.2 (vol. I), chap. VII.D and F; as well as to the jurisprudence of the International Criminal Tribunal for the former Yugoslavia in relation to *Prosecutor v. Milomir Stakić*, judgement of the Trial Chamber of 31 July 2003 (case No. IT-97-24), paras. 259-261.

he was among the men who had been forced to place the corpses of those killed in Rizvanovići, including her husband, in trucks. That was the last time that the body of Ermin Kadirić had been seen before it was taken to an unknown destination.

2.5 The armed conflict came to an end in December 1995, when the General Framework Agreement for Peace in Bosnia and Herzegovina entered into force.⁵ Thereafter, the authors travelled several times to Bosnia and Herzegovina. They resided in the State party intermittently. They claim that they reported the arbitrary deprivation of liberty, ill-treatment, arbitrary killing and the subsequent removal and concealment of the mortal remains of Ermin Kadirić to the domestic authorities and other institutions dealing with missing people. In 1996, they also reported the disappearance of Ermin Kadirić's mortal remains to the International Committee of the Red Cross (ICRC) and the local Red Cross of Prijedor in Luška Palanka. At the time of the authors' submission, Ermin Kadirić was registered with ICRC and the Missing Persons Institute (MPI) as a missing person.⁶

2.6 On an unspecified date, Ms. Kadirić filed an application before the Municipal Court in Sanski Most requesting that her husband be declared dead. On 19 December 1997, the Court declared Ermin Kadirić dead, fixing the date of his death as 20 July 1992. The Court noted that Ms. Kadirić had alleged that, on 20 July 1992, two soldiers had taken her husband from their home and killed him in the vicinity of the Patrija coffee shop. It also accepted the statements provided by two witnesses presented by the author, who confirmed her account and pointed out that Ermin Kadirić had been easily recognizable among the other bodies because of his coat and the winter boots he wore, and that he had gunshot wounds to his back and the lower part of his head. In 2001, he was entered as dead in the Parish Registry in Prijedor. The authors claim that obtaining a certificate of death was de facto compulsory in order to obtain a disability pension in the Republika Srpska, pursuant to article 25 of the Law on the Protection of Civilian Victims of War and article 190 of the Law on Administrative Procedure, since that is the only evidence accepted by courts in deciding to award a monthly pension to the relatives of missing persons, who, therefore, are obliged to undergo this painful procedure in order to have their rights respected.

2.7 In 2001, the authors and other relatives gave DNA samples to facilitate the process of the exhumation and identification of the mortal remains of Ermin Kadirić. In 2005 and 2006, Ms. Kadirić visited the Šejkovača facilities of the International Commission on Missing Persons in Sanski Most, where the mortal remains exhumed in the region of Bosnian Krajina were kept. She tried to identify anything pertaining to her husband, without success. The authors claim that the Red Cross shared the information concerning Ermin Kadirić's case with the local authorities in 1992. Although they were aware of the reports filed by the authors, the local authorities carried out no ex officio investigation in order to locate, exhume, identify and return his mortal remains to his family. Furthermore, to date, no serious investigation has been carried out regarding the arbitrary deprivation of liberty, ill-treatment, arbitrary execution and the subsequent removal and concealment of his mortal remains. Those responsible have not been summoned, indicted or convicted.

⁵ In accordance with that Agreement, Bosnia and Herzegovina consists of two entities: the Federation of Bosnia and Herzegovina and the Republika Srpska. Brčko District was formally inaugurated on 8 March 2000 under the exclusive sovereignty of the State and international supervision.

⁶ The authors provided copies of two certificates issued by the Federal Commission on Missing Persons on 14 December 2009 and 23 November 2010, stating that their relative was registered as a missing person since 20 July 1992 in Rizvanovići in Prijedor, and of a letter issued by ICRC on 11 December 2009, reporting that Ermin Kadirić's case is considered as still open.

2.8 On 20 February 2007, the Public Facility Centre for Social Work in Sanski Most granted Dino Kadirić and his brother a monthly disability pension of 283 marka.⁷ The right to a monthly pension, starting on 1 September 2006, was awarded to them as civilian victims of the war (for the killing of their father). The authors claim that such a pension is a form of social assistance and cannot replace the adoption of adequate measures of reparation for the serious human rights violations suffered by their relative and by them.

2.9 On 4 March 2008, Dino Kadirić applied to the Human Rights Commission of the Constitutional Court of Bosnia and Herzegovina, claiming a 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 of article II (3) (b) and (f) of the Constitution of Bosnia and Herzegovina. The Constitutional Court decided to join together several applications submitted by relatives of missing people, and to process them as a collective case.

2.10 On 13 May 2008, the Constitutional Court adopted a decision concluding that the applicants of the collective case were relieved from exhausting domestic remedies before ordinary courts, as “no specialized institution on enforced disappearance in Bosnia and Herzegovina seems to be operating effectively”.⁸ The Court further found a violation of articles 3 and 8 of the European Convention, because of the lack of information on the fate of Ermin Kadirić. The Court ordered the Bosnian 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 MPI, the Fund for Support to the Families of Missing Persons in Bosnia and Herzegovina and the Central Records of Missing Persons in Bosnia and Herzegovina. The competent authorities were requested to submit information within six months to the Constitutional Court about the measures taken to implement the decision.

2.11 The Constitutional Court did not adopt a decision on 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 above-mentioned Fund. However, the authors argue that the Law’s section on financial support has not been implemented and that the Fund has not been established.

2.12 On 23 September 2008, MPI informed Dino Kadirić that, in accordance with the Constitutional Court’s decision, it concluded that Ermin Kadirić had been reported missing person to MPI and ICRC; that it would take steps to find out the fate of his father’s body, in cooperation with the State Prosecutor’s Office, the Ministry of the Interior, district and cantonal courts and the security agencies. The authors claim that, as at the time of submitting their communication to the Committee, they had not received any further information from MPI.

2.13 On 30 September 2009, Dino Kadirić stopped receiving the monthly disability pension. On 27 November 2009, the authors filed two requests for compensation under the Law on the Right and Compensation for Pecuniary and Non-pecuniary Damages. At the time that the communication was submitted to the Committee, no decision had been issued by the authorities. The authors claim that, even if some compensation were to eventually be awarded to them, that cannot be considered as a form of integral reparation.

⁷ According to the authors, this is equivalent to 143 euros.

⁸ The authors refer to the Constitutional Court’s judgement concerning *M.H. and others* (case No. AP-129/04), 27 May 2005, paras. 37-40, referred to in the judgement concerning *Fatima Hasić and others* (case No. AP 95/07), 29 May 2008.

2.14 On 14 December 2010, Dino Kadirić sent a letter to MPI and the Republika Srpska Operative Team for Tracing Missing Persons requesting information as to the measures they had adopted to date to implement the Constitutional Court's ruling of 13 May 2008. On the same day, he also applied to the Constitutional Court and requested it to adopt a ruling establishing that the authorities had failed to enforce its decision of 13 May 2008 pursuant to article 74.6 of its rules of procedure. Nevertheless, as at the time of submitting the communication to the Committee, the authors had not received any reply from the Court or the other entities, and no action had been taken by the authorities.

2.15 As to the requirement under article 5 (2) (b) of the Optional Protocol, the authors argue that there was no effective remedy and that the Constitutional Court itself admitted that Dino Kadirić and the other applicants "did not have at their disposal an effective and adequate remedy to protect their rights".⁹ In the light of article VI (4) of the State party's Constitution, the Constitutional Court's ruling of 13 May 2008 must be considered final and binding. Therefore, they do not have any other effective remedy to exhaust. With regard to Ms. Kadirić, they argue that, although she did not formally file an application with the Constitutional Court, she initially submitted several requests to the competent national authorities. Since Dino Kadirić had turned 18 years old and was residing in the State party at the time, he and his family decided that he would be the one to submit the application to this Court. They claim that Ms. Kadirić could not be reasonably requested to duplicate the proceedings already undergone by her son and that, as established by the Constitutional Court, no effective remedy was available.

2.16 On the admissibility of the communication *ratione temporis*, the authors submit that, even though the events took place before the entry into force of the Optional Protocol for the State party, when the mortal remains of the alleged victims of an extrajudicial killing or a massacre have not been found, exhumed, identified and returned to their families, the alleged victims are qualified as "disappeared" or "missing" and the State maintains certain ongoing obligations. In the present case, Ermin Kadirić was arbitrarily deprived of his liberty, ill-treated and arbitrarily executed by VRS members and his mortal remains were subsequently removed and concealed. Those remains have not been located and returned to his family and, thus, his whereabouts have not been ascertained to date. Domestic authorities, including the Constitutional Court, have qualified Ermin Kadirić as a missing person. Finally, the authorities have not implemented the decision of the Constitutional Court of 13 May 2008 and the Prosecutor's Office has not undertaken any measure to sanction those responsible for that failure.

The complaint

3.1 The authors submit that the State party has failed to determine and disclose the whereabouts of Ermin Kadirić's mortal remains, who therefore remains a "missing" person. The State party remains under an ongoing obligation to locate, exhume, identify and return his mortal remains to the family, as well as to prosecute and sanction those responsible for the crimes concerned. The authors maintain that, while the whereabouts of missing persons have not been determined or their remains duly found, the situation is to be considered to be an enforced disappearance. They claim that an enforced disappearance comprises a number of offences and that, in Ermin Kadirić's case, it amounts to a violation of articles 6, 7, 9 and 16, read in conjunction with article 2 (3), of the Covenant. They point out that Ermin Kadirić's whereabouts have been unknown since 20 July 1992 and that his disappearance occurred within the context of a widespread and systematic attack directed against the civilian population. He was arbitrarily deprived of his liberty, ill-treated and arbitrarily

⁹ The authors refer to the Constitutional Court's ruling concerning case *M.H. and others*, para. 37.

executed by VRS members and his mortal remains were subsequently removed and concealed.

3.2 In spite of their efforts, the authors have not received any relevant information concerning the location of Ermin Kadirić's mortal remains. Although the authors reported the events to the relevant State party authorities, no *ex officio*, prompt, impartial, thorough and independent investigation has been carried out into these crimes and the location of Ermin Kadirić's body remains unknown. His mortal remains have not been located and returned to his family, and no one has been prosecuted, judged or sanctioned for the crimes concerned.

3.3 The authors argue that the State party is responsible for investigating all cases of enforced disappearance and providing information on the whereabouts of missing persons. In this respect, they refer to a report of the Working Group on Enforced or Involuntary Disappearances in which it is stated that the primary responsibility for carrying out these tasks remains with the authorities under whose jurisdiction a suspected mass grave falls.¹⁰ They further argue that the State party has an obligation to conduct an *ex officio*, prompt, impartial, thorough and independent investigation of gross human rights violations, such as enforced disappearances, torture or arbitrary killings. The obligation to conduct an investigation also applies in cases of killings or other acts affecting the enjoyment of human rights that are not imputable to the State. In such cases, the obligation to investigate arises from the duty of the State to protect all individuals under its jurisdiction from acts committed by private persons or groups of persons that may impede the enjoyment of their human rights.¹¹

3.4 The authors refer to the Committee's jurisprudence, according to which a State party should investigate thoroughly cases of missing and disappeared persons in circumstances that may involve a violation of the right to life and to criminally prosecute, try and punish those deemed responsible for such violations. In Ermin Kadirić's case, the failure of the State party to conduct an effective and thorough investigation (see paras. 3.1 and 3.2 above) amounts to a violation of his right to life, in breach of article 6, read in conjunction with article 2 (3), of the Covenant.

3.5 The authors submit that enforced disappearance constitutes, in itself, a form of torture.¹² The State is under an ongoing obligation to thoroughly investigate all allegations of torture and to ensure that those responsible are brought to justice. In cases involving massacres or arbitrary killings, it is appropriate to presume a violation of the prohibition of torture and other forms of inhuman or degrading treatment and to shift the burden of proof to the State concerned. In Ermin Kadirić's case, before being extrajudicially killed, he was subjected to merciless treatment over a number of hours, undergoing all types of indignities and severe ill-treatment (see para. 2.2 above). The authors consider that, during that period, Ermin Kadirić would have experienced feelings of deep frustration, anguish and suffering, as he must have feared his imminent execution, while he was being beaten and humiliated.

¹⁰ See E/CN.4/1996/36, para. 78.

¹¹ See 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. See also Inter-American Court of Human Rights, *Chitay Nech and others v. Guatemala*, judgement of 25 May 2010, Series C No. 212, para. 89, and *Velasquez Rodriguez v. Honduras*, judgement of 29 July 1988, Series C No. 4, para. 172; and European Court of Human Rights, *Demiray v. Turkey*, application No. 27308/95, judgement of 21 November 2000, para. 50, *Tanrikulu v. Turkey*, application No. 23763/94, judgement of 8 July 1999, para. 103, and *Ergi v. Turkey*, application No. 23818/94, judgement of 28 July 1998, para. 82.

¹² See communications No. 449/1991, *Mojica v. Dominican Republic*, Views adopted on 10 August 1994, para. 5.7; No. 1327/2004, *Grioua v. Algeria*, Views adopted on 16 August 2007, para. 7.6; No. 1495/2006, *Madoui v. Algeria*, Views adopted on 1 December 2008, para. 7.4.

Although these facts constitute ill-treatment, the State party has failed to carry out an *ex officio*, prompt, impartial, thorough and independent investigation and to identify, prosecute and sanction those responsible, in violation of its positive procedural obligation under article 7, read in conjunction with article 2 (3), of the Covenant.

3.6 Ermin Kadirić was also a victim of violations of his rights under article 9 of the Covenant. He was arbitrarily deprived of his liberty by VRS, who took him out of his house, without giving any explanation or legal ground. In the subsequent hours, he was materially under the authority of VRS. However, his detention was not entered in any official record or register and his relatives never saw him again. As no explanation has been provided by the State party and no efforts have been made by the competent authorities to effectively investigate Ermin Kadirić's arbitrary deprivation of liberty, the authors consider that the State party has violated their relative's rights under article 9, read in conjunction with article 2 (3), of the Covenant.

3.7 The authors 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 his or her relatives to obtain access to effective remedies have been systematically denied.¹³ In the present case, Ermin Kadirić has been registered as missing since 1992 and all the efforts of his relatives to obtain access to potentially effective remedies have been systematically impeded. Moreover, no effective investigation has been conducted by the State party into his whereabouts. Accordingly, the failure of the State party to conduct an effective investigation has placed him outside the protection of the law since 1992 and constitutes a violation of article 16, read in conjunction with article 2 (3), of the Covenant.

3.8 In conclusion, the authors claim that the State party has violated Ermin Kadirić's rights under articles 6, 7, 9 and 16, all read in conjunction with article 2 (3) of the Covenant.

3.9 The authors allege that they are themselves victims of a violation by the State party of article 7, read in conjunction with article 2 (3), of the Covenant. They claim that since 1992 they have undergone deep and severe psychological stress in trying to cope with the events they went through, the uncertainty regarding the whereabouts of the mortal remains of Ermin Kadirić and the fact that they have not been able to give him proper burial. They have regularly requested information from the State party's authorities with regard to their loved one over the past 22 years, but they have never received any relevant information. The State party has not only failed to respond to their requests for information, but has also placed a number of obstacles in their way, leaving them to bear the burden of the effort to uncover any facts. The authors point out that the authorities failed to implement the judgement of the Constitutional Court of 13 May 2008 and the Law on Missing Persons, in particular concerning the establishment of the Fund, leaving families of missing persons without access to appropriate reparation. To date, their right to know the truth about the whereabouts of their loved one and the progress and results of the investigations has been constantly violated by the State party. Moreover, they have not received any pecuniary compensation nor any measure providing rehabilitation or satisfaction. Accordingly, the authors submit that the indifference of the State party's authorities to their requests amounts to a violation of their right under article 7, read in conjunction with article 2 (3), of the Covenant.

¹³ See communications No. 1495/2006, *Madoui v. Algeria*, Views adopted on 1 December 2008, para. 7.7, and No. 1327/2004, *Grioua v. Algeria*, Views adopted on 16 August 2007, para. 7.9.

3.10 Dino Kadirić submits that he was 5 years old when the events took place. He was forced to grow up without his father and the impossibility of adequately mourning him. Being in an especially vulnerable situation, he witnessed his father's apprehension, ill-treatment and arbitrary execution. Despite their obligation to adopt special measures of protection, the State party's authorities left him in a painful situation of uncertainty concerning the whereabouts of his father's body. He therefore submits that the State party has violated his rights under article 24 (1), read in conjunction with articles 2 (3) and 7, of the Covenant, as he was a minor in need of special protection until he reached the age of majority on 2 September 2005.

3.11 The authors request the Committee to recommend the State party to: (a) order an independent investigation as a matter of urgency to locate, exhume, identify and respect Ermin Kadirić's mortal remains and return them to the family; (b) bring the perpetrators before the competent authorities for prosecution, judgement and sanction, and disseminate publicly the results of this measure; (c) ensure that the relatives of Ermin Kadirić obtain integral reparation and prompt, fair and adequate compensation; and (d) ensure that the measures of reparation cover material and moral damage and measures of restitution, rehabilitation, satisfaction and guarantees of non-repetition. The State party should also provide the authors with, inter alia, medical and psychological care immediately and free of charge through its specialized institutions, in order to reduce the psychological and mental suffering that these events have caused them. The State party should also ensure that the interpretation by the State Attorney's Office of the Republika Srpska of the Law on Compensation does not discriminate against relatives of civilian victims of war by systematically excluding them from compensation.

State party's observations on admissibility and the merits

4.1 In a note verbale dated 21 June 2011, the State party submitted its observations on admissibility and the merits. It referred to the legal framework that had been established for the prosecution of war crimes in the post-war period since December 1995. It stated that the National Strategy for War Crimes Processing had been adopted in December 2008, with the objective of finalizing the prosecution of the most complex war crimes within seven years, and of "other war crimes" within 15 years of the adoption of the Strategy. The State party further referred to the adoption of the Law on Missing Persons, creating MPI with the aim of improving the process of tracing missing persons and identifying mortal remains, and recalled that, of the nearly 30,000 persons who had gone missing during the war, the remains of 20,000 persons had been found and 18,000 identified.

4.2 In April 2009, MPI had established a regional office in Sanski Most, as well as a field office and organizational units. The State party considered that those initiatives created the conditions necessary for faster and more efficient processes to search for disappeared persons in the territory of Bosnian Krajina, including Prijedor. Their investigators were on site every day to collect information on potential mass graves and to establish contacts with witnesses. Since 1998, 721 graves had been exhumed and 48 other graves re-exhumed in that area, including the municipality of Prijedor. The State party further informed the Committee that one grave with 15 unidentified human corpses had been located in the area of Rizvanovići and that a request for exhumation had been sent to the Prosecutor's Office of Bosnia and Herzegovina.

4.3 As part of its observations, the State party forwarded to the Committee a letter from the Prosecutor's Office of Bosnia and Herzegovina, in which it was pointed out that, according to its records, the authors had never applied to the Prosecutor's Office for an investigation into Ermin Kadirić's fate and whereabouts, although the events had happened during the armed conflict and involved the possible commission of a war crime. Accordingly, the Prosecutor's Office held that it was "doubtful whether [the authors] have

exhausted all available domestic remedies”. It further noted that it was conducting criminal investigations, including regarding VRS members that allegedly took part in attacks against civilian non-Serbs who had been living in the municipality of Prijedor; that the persons accused had been charged with crimes against humanity; and that two cases had been recorded and were at the investigation stage. Likewise, the Ministry of Justice of the State party and the Prosecutor’s Office of the Republika Srpska stated that they had not received a complaint regarding Ermin Kadirić’s disappearance.

Authors’ comments on the State party’s observations on admissibility and the merits

5.1 On 19 July 2011, the authors submitted their comments on the State party’s observations. They argued that the authorities of the State party acknowledged the merits of the allegations submitted in their communication. They considered of particular relevance the statement of the Prosecutor’s Office that its office was carrying out investigations against persons who had allegedly committed attacks against civilian non-Serbs of the municipality of Prijedor (see para. 4.3 above). They pointed out that they had only become aware of that investigation through the State party’s observations. Nevertheless, at the time of submitting their comments, the authors had not received any official communication about the opening or the progress of that investigation, and they had not been involved with or associated in any way to it, even though they were eyewitnesses to some of the events in question.

5.2 As to the admissibility of the communication, the authors pointed out that they had informed the authorities present on the ground about the arbitrary deprivation of liberty, ill-treatment and arbitrary killing of Ermin Kadirić and the subsequent removal and concealment of his mortal remains since 1992. Indeed, the fact that he was among the civilians who were ill-treated and arbitrarily killed in Rizvanovići was known to the main institutions dealing with missing persons in the State party. The registries of those institutions were available and accessible to the competent judicial authorities in charge of investigating the crimes committed in and around Prijedor in 1992. Furthermore, Ermin Kadirić’s name was included in the list of missing persons from Prijedor contained in the book *Ni krivi ni dužni*,¹⁴ which had twice been sent to the Prosecutor’s Office by the Izvor organization. Accordingly, the Prosecutor’s Office and other competent authorities had in their possession or could have access to sufficient information to initiate an ex officio investigation on the arbitrary deprivation of liberty, ill-treatment, arbitrary killing and subsequent removal and concealment of the mortal remains of Ermin Kadirić.

5.3 The authors also referred to the general comment of the Working Group on Enforced or Involuntary Disappearances on enforced disappearance as a continuous crime (paras. 1, 2, 7 and 8).¹⁵ They considered that the State party’s observations corroborated their allegations that their relative remained registered as an “unaccounted for” missing person. For instance, the online inquiry tool set up by the International Commission on Missing Persons contained his name and indicated that, although DNA samples had been provided by his relatives, no match had been found. The tracing process was, therefore, still open under the responsibility of the Bosnian authorities, who were under the obligation to establish Ermin Kadirić’s fate and whereabouts; to search for, locate, respect and return his remains to his family; to disclose to the latter the truth regarding the circumstances of the crimes committed, the progress and results of the investigation on his fate; and to guarantee his family’s redress for the ongoing violations.

¹⁴ Published by Patria and Izvor (2000).

¹⁵ Contained in A/HRC/16/48, para. 39.

5.4 The authors stated that, at the time of submitting their comments, neither they nor the eyewitnesses to the events that led to Ermin Kadirić's arbitrary deprivation of liberty, ill-treatment and arbitrary killing and the subsequent removal and concealment of his mortal remains had been contacted by the personnel of the MPI regional office in Istočno or the field office in Sarajevo to which the State party referred, while they contended that they would be able to provide those authorities with information that could be relevant to locating him.¹⁶ They pointed out that the State party's observations provided general references to the existence of a mass grave supposedly containing the mortal remains of 15 persons in Rizvanovići and lacked precise information as to where their relative's remains could be. Should MPI have reliable information indicating that the mortal remains of Ermin Kadirić could be at this site, the authors should be informed accordingly without delay and they should be associated with the whole process of location, exhumation and identification of the remains.

5.5 The authors further argued that the high number of war crimes still requiring investigation did not relieve the State party from its responsibility to conduct a prompt and thorough investigation into cases of gross human rights violations or from regularly informing the relatives of the victims of the progress and results of those investigations. Although the authors reported Ermin Kadirić's arbitrary deprivation of liberty, ill-treatment and arbitrary killing and the subsequent removal and concealment of the mortal remains to various authorities, it appeared from the State party's observations that the case had not been assigned a file number, although the Prosecutor's Office recognized that it might be related to the investigations that it was carrying out into two cases (see para. 4.3 above).

5.6 The authors considered that the implementation of the National Strategy for War Crimes Processing had been deficient and could not be used by the State party as a sufficient response concerning the lack of information on the progress and results of the investigations carried out, nor could it justify the inactivity of the authorities concerned. The adoption of the Transitional Justice Strategy could not replace access to justice and redress for the victims of gross human rights violations and their relatives.

5.7 The authors pointed out that, several years after the Law on Missing Persons had entered into force, some of its crucial provisions, including those concerning the establishment of the Fund for Support to the Families of Missing Persons in Bosnia and Herzegovina, had not been implemented. Furthermore, a number of international institutions had noted that the establishment of such a fund would not be enough to guarantee complete and adequate reparation to the relatives of missing persons.¹⁷

5.8 The authors informed the Committee that, on 22 March 2011, Dino Kadirić had received a letter from the Constitutional Court informing him that, on 27 March 2009, it had adopted a document providing information on the enforcement of the Court decisions during the period from 1 January to 31 December 2008, in which the Court had determined that the decision adopted in his case of 13 May 2008 (see para. 2.10 above) was to be considered enforced. On 13 April 2011, he had requested from the Constitutional Court a copy of the said decision and argued that it had not actually been implemented. On 19 April 2011, the Court had provided a copy of the document, but did not provide any argument to justify why it considered the decision of 13 May 2008 to be enforced.

5.9 The Republika Srpska Operative Team for Tracing Missing Persons had contacted Dino Kadirić concerning his request for information as to the implementation of the

¹⁶ The authors refer to A/HRC/AC/6/2, paras. 53, 56 and 80-97, and to the general comment of the Working Group on Enforced or Involuntary Disappearances on the right to the truth in relation to enforced disappearance (para. 4), contained in A/HRC/16/48, para. 39.

¹⁷ The authors refer to A/HRC/16/48/Add.1, paras. 39-48.

Constitutional Court's decision of 13 May 2008 (see para. 2.14 above). In reply to the Operative Team's request, on 13 April 2011, Dino Kadirić had sent a copy of this decision. As at the time of submitting their comments, the authors had not received any further communication from the Operative Team.

5.10 The authors' requests for compensation under the Law on Compensation (see para 2.14 above) had been rejected by the State Attorney's Office of the Republika Srpska on 3 June 2011. It had stated that it was not competent because Ermin Kadirić was a civilian and had not disappeared in connection with the conduct of military services and military defence activities. The authors claimed that it amounted to discrimination between civilian victims of the war and veterans and therefore to a violation of article 26, read in conjunction with article 2 (3). The authors informed the Committee that, on 20 June 2011, they had appealed the State Attorney's decision to the Ministry of Justice of the Republika Srpska. At the time of the submission of their comments to the Committee, the appeal was still pending.

State party's further observations

6.1 On 12 September, 3 October and 2 November 2011, the State party submitted additional information and reiterated its observations.

6.2 The State party forwarded to the Committee a letter from Prosecutor's Office of Bosnia and Herzegovina dated 21 September 2011, in which the Office reiterated that domestic remedies had not been exhausted in the authors' case. The State party also indicated that it continued investigations concerning the crimes committed in the municipality of Prijedor (see para. 4.3 above) and maintained that, on the basis of their complexity, those cases had been included in the category of cases that could last up to seven years before being solved. The Prosecutor's Office noted that, owing to the large number of victims, it considered that it was not practical or rational for it to communicate with each person affected or concerned in order to inform him or her of the status of the investigation. Instead, the Office had adopted a practice of replying to queries submitted by victims' associations. Thus, the authors could request the information concerning their relative through any of those organizations. It further maintained that the transmission of the State party's observations to the authors in the context of the present communication should be considered a means for them to be individually informed about the progress in their relative's case. The Prosecutor also pointed out that the families of missing persons would be called to testify in the course of the investigation, but that the number of pieces of evidence and witnesses must be necessarily limited to ensure the efficiency and cost-effectiveness of criminal proceedings.

6.3 MPI maintained that Ermin Kadirić's fate and whereabouts had not been established with certainty, but it did not exclude the possibility that his mortal remains might be found in the territory of the municipalities where it carried out investigations, such as the municipality of Prijedor. It also informed the Committee of its efforts to trace missing persons in Bosnian Krajina and about the fact that two investigators of the regional office of Bihać and the field office of Sanski Most were in charge of tracing missing persons in that territory.

6.4 As to the authors' request for compensation under the Law on Compensation, the State party highlighted that the State Attorney's Office of the Republika Srpska was not a judicial authority and could not adjudicate civil or damage claims, as only courts had jurisdiction over those matters. In its decision of 3 June 2011, the State Attorney's Office stated simply that it had no competence to conduct the administrative proceedings to conclude an amicable settlement under that Law. However, that decision did not affect the authors' right to file a civil lawsuit. The State party therefore considered that the authors

had not been discriminated against in relation to other citizens since they did not apply to the competent authority to adjudicate a civil lawsuit for non-pecuniary damages.

6.5 The State party further informed the Committee that the Law on Determination and the Manner of Settling the Internal Debt of the Republika Srpska established courts' and other authorities' competence and regulated the proceedings for granting compensation for pecuniary and non-pecuniary damages in cases of disappeared persons.

Additional information submitted by the authors

7.1 On 19 and 21 October and 1 December 2011, the authors provided additional information to the Committee. They reiterated their previous allegations and considered that the State party's further observations did not provide any substantive information concerning the admissibility and merits of their communication.

7.2 The authors expressed their concern about the delays in the investigations. Even if the seven-year deadline for complex cases was respected, that would mean that the whole investigation of the crimes concerned would last for more than 26 years.

7.3 The authors informed the Committee that, on 30 June 2011, the Ministry of Justice of the Republika Srpska had rejected their appeal against the decision of the State Attorney's Office of the Republika Srpska of 3 June 2011 concerning their request for compensation under the Law on Compensation. Although that decision could be appealed, the authors had refrained from doing so as they did not possess the financial means to afford the expenses related to the proceedings before a regular court. Moreover, it was the practice of the regular courts to reject claims for non-pecuniary damage concerning harm suffered during the war, as they applied a statute of limitations of subjective three years and objective five years. Therefore, in practice, the authors did not have an effective remedy through which to obtain compensation for the non-pecuniary damage that they had suffered.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any claim contained in a communication, the Committee must, in accordance with rule 93 of its rules of procedure, decide whether the case is admissible under the Optional Protocol.

8.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

8.3 With regard to the authors' claim of a violation of article 26, read in conjunction with article 2 (3), of the Covenant, the Committee notes the authors' allegation, related to the exhaustion of domestic remedies, that their appeal against the dismissal by the State Attorney's Office of the Republika Srpska of their requests for compensation under the Law on Compensation (see para. 2.14 above) was rejected by the Ministry of Justice of the Republika Srpska on 30 June 2011; that although this decision could be appealed, they refrained from doing so as they did not possess the financial means to afford the expenses related to the proceedings; and that, in any event, it is not an effective remedy, since in practice regular courts reject these requests, applying a statute of limitations. The Committee recalls, however, that ordinarily financial considerations and unsubstantiated doubts about the effectiveness of domestic remedies do not absolve the authors from

exhausting them.¹⁸ Accordingly, the Committee considers the authors' claim concerning article 26, read in conjunction with article 2 (3), of the Covenant inadmissible pursuant to article 5 (2) (b) of the Optional Protocol.

8.4 As to the other claims raised by the authors, the Committee takes note of the State party's observations that, according to the Prosecutor's Office of Bosnia and Herzegovina, the authors have failed to exhaust domestic remedies, since they did not apply to the Prosecutor's Office requesting an investigation into Ermin Kadirić's fate and whereabouts. The Committee also takes notes of the authors' allegations that the Constitutional Court itself held that there was no effective remedy to protect the rights of the relatives of missing persons; that they informed the authorities present on the ground of the arbitrary deprivation of liberty, ill-treatment and arbitrary killing of Ermin Kadirić and the subsequent removal and concealment of his mortal remains since 1992; that, on 13 May 2008, the Constitutional Court found a violation of Dino Kadirić's rights because of the lack of information on the whereabouts of his father; and that this judgement has not been implemented by the competent authorities. The Committee observes that, more than 22 years after the alleged events concerning Ermin Kadirić, the location of his mortal remains is still unknown and that the State party has failed to provide convincing arguments to justify the delay in completing an investigation. Accordingly, the Committee considers that the domestic remedies have been unreasonably prolonged and that it is not precluded from considering the communication under article 5 (2) (b) of the Optional Protocol.

8.5 As regards the authors' claim under article 16, read in conjunction with article 2 (3), of the Covenant, the Committee notes that the authors have failed to provide information in support of this claim and therefore considers it inadmissible under article 2 of the Optional Protocol.

8.6 As all admissibility requirements have been met, the Committee declares the authors' claims under articles 6, 7 and 9, read in conjunction with article 2 (3), in relation to Ermin Kadirić, as well as under articles 7 and 24, read in conjunction with article 2 (3), in relation to the authors, admissible and proceeds to its consideration of the merits.

Consideration of the merits

9.1 The Committee has considered the case in the light of all the information made available to it by the parties, as provided under article 5 (1) of the Optional Protocol.

9.2 The Committee takes note of the authors' claims that Ermin Kadirić was arbitrary deprived of his liberty, ill-treated and arbitrarily executed by members of VRS on 20 July 1992 and that his mortal remains were subsequently removed and concealed; that the whereabouts of his body remain unknown to date; that he is still registered as a missing person; and that, therefore, his case amounts to an enforced disappearance. No ex officio prompt, impartial, thorough and independent investigation has been carried out by the State party to clarify the whereabouts of his mortal remains and to bring the perpetrators to justice. In that regard, the Committee recalls paragraph 18 of 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 a failure by a State party to bring to justice perpetrators of certain violations (notably torture and cruel, inhuman and degrading treatment, summary and arbitrary killings and enforced disappearance) could in and of itself give rise to a separate breach of the Covenant.

¹⁸ See communication No. 397/1990, *P.S. v. Denmark*, decision of inadmissibility adopted on 22 July 1992, para. 5.4.

9.3 The Committee observes that it is not disputed that Ermin Kadirić was apprehended and taken from his house by VRS soldiers, that Ms. Kadirić saw that her husband was captured and subjected to severe ill-treatment over a number of hours together with other men and that, at a certain point, the soldiers ordered the captured men to run and started to shoot at them. One and a half days later, Ms. Kadirić left the house and located Ermin Kadirić's dead body among the others. Nonetheless, she was not able to recover his mortal remains at that time, as she had to run away to protect herself from snipers. Upon her return, the body had been removed. The authors' accounts were also confirmed by the statements of two witnesses presented by Ms. Kadirić before the Municipal Court in Sanski Most in the proceedings carried out to declare Ermin Kadirić dead (see para. 2.6 above). Despite the authors' efforts to recover their relative's remains and their requests for an investigation to the authorities of the State party, the location of Ermin Kadirić's body remains unknown.

9.4 Although the acts of VRS are not directly attributable to the State party, the Committee notes the authors' claim that these acts, together with the subsequent removal and concealment of Ermin Kadirić's remains, were committed in the State party's territory by VRS and that the State party remains under an ongoing obligation to locate, exhume, identify and return the victim's mortal remains to the family, as well as to identify, prosecute and sanction those responsible for the crimes concerned. In this connection, 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 alleged crimes and the suffering of the authors resulting from the State party's failure to locate the remains of their missing husband and father and bring the culprits 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.

9.5 That being said, the authors claim that, at the time of the filing of their communication, more than 19 years after the alleged events concerning Ermin Kadirić took place and more than 2 years after the judgement of the Constitutional Court of 13 May 2008, the investigative authorities have not contacted them for information regarding the location of his mortal remains. On 14 December 2010, Dino Kadirić applied to the Constitutional Court and requested it to adopt a ruling establishing that the authorities had failed to enforce its decision of 13 May 2008. On 22 March 2011, the Constitutional Court informed the authors that it considered the judgement to have been enforced, without providing any reason for that conclusion and in spite of the fact that no effective action had been carried out by the authorities in the case of Ermin Kadirić. The State party has provided general information as to its efforts in searching for the remains of missing persons and prosecuting perpetrators. Nevertheless, it has failed to provide the Committee with specific and relevant information concerning the steps taken to pursue the investigation into the arbitrary detention, ill-treatment and extrajudicial execution of Ermin Kadirić and to locate his mortal remains and return them to his family. The Committee further observes that the authorities have provided very limited and general information to the authors regarding their relative's case. The Committee considers that authorities investigating certain violations, such as torture and cruel, inhuman and degrading treatment, summary and arbitrary killing and enforced disappearance, must give the families a timely opportunity to contribute their knowledge to the investigation, and that information regarding the progress of the investigation must be made promptly accessible to the families. It also takes note of the anguish and distress caused to the authors by the continuing uncertainty resulting from the removal and concealment of their relative's remains. Accordingly, the Committee 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 Ermin Kadirić; and of article 7, read alone and in conjunction with article 2 (3), of the Covenant with regard to the authors.

9.6 In the light of the above findings, the Committee will not examine separately the authors' allegations under article 24 (1), read in conjunction with article 2 (3), of the Covenant.

10. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation by the State party of articles 6, 7 and 9, read in conjunction with article 2 (3), of the Covenant, with regard to Ermin Kadirić, and article 7, read alone and in conjunction with article 2 (3), with regard to the authors.

11. In accordance with article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the authors with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is obligated, *inter alia*: (a) to intensify its efforts to locate Ermin Kadirić's remains, as required by the Law on Missing Persons, and have its investigators contact the authors as soon as possible to obtain from them information that could be helpful in the investigation; (b) to strengthen its efforts to bring to justice those responsible for his arbitrary detention, ill-treatment and extrajudicial execution and for the concealment of his remains, without unnecessary delay, as required by the National Strategy for War Crimes Processing; (c) to ensure that any psychological rehabilitation and medical care necessary is provided to the authors for the psychological harm that they have suffered; and (d) to provide 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 torture and cruel, inhuman and degrading treatment, summary and arbitrary killings and enforced disappearances and adequate measures of reparation are accessible to the families of victims.

12. 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.
