



## International Covenant on Civil and Political Rights

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### Human Rights Committee

#### Communication No. 1956/2010

##### Views adopted by the Committee at its 111th session (7–25 July 2014)

<i>Submitted by:</i>	Nevzeta Durić and Nedžad Durić (represented by counsel, Track Impunity Always–TRIAL)
<i>Alleged victims:</i>	The authors and their missing relative, Ibrahim Durić
<i>State party:</i>	Bosnia and Herzegovina
<i>Date of communication:</i>	11 January 2010 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 24 June 2010 (not issued in document form).
<i>Date of adoption of Views:</i>	16 July 2014
<i>Subject matter:</i>	Enforced disappearance and effective remedy
<i>Substantive issues:</i>	Right to life, prohibition of torture and other ill-treatment, liberty and security of person, right to be treated with humanity and dignity, recognition of legal personality, right to an effective remedy.
<i>Procedural issues:</i>	–
<i>Articles of the Covenant:</i>	6, 9, 10 and 16 read in conjunction with article 2 (para. 3); 7 read alone and in conjunction with article 2 (para. 3)
<i>Articles of the Optional Protocol:</i>	–



## Annex

### **Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights (111th session)**

concerning

#### **Communications No. 1956/2010\***

*Submitted by:* Nevzeta Durić and Nedžad Durić (represented by counsel, Track Impunity Always–TRIAL)

*Alleged victims:* The authors and their missing relative, Ibrahim Durić

*State party:* Bosnia and Herzegovina

*Date of communication:* 11 January 2010 (initial submission)

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

*Meeting on 16 July 2014,*

*Having concluded* its consideration of communications No. 1956/2010, submitted to the Human Rights Committee on behalf of Nevzeta Durić and Nedžad Durić 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, paragraph 4, of the Optional Protocol**

1. The authors of the communication are Nevzeta Durić, born on 13 September 1947, and Nedžad Durić, born on 6 September 1967, both nationals of Bosnia and Herzegovina (the authors). The authors are submitting the communication on their behalf and on behalf of Ibrahim Durić (son of Nevzeta Durić and brother of Nedžad Durić), a Bosnia and Herzegovina national, born on 1 September 1966. The authors claim to be the victims of a violation of article 7 read alone and in conjunction with article 2, paragraph 3. They further claim, on behalf of Ibrahim Durić, that his rights were violated under articles 6, 7, 9, 10 and 16 in conjunction with article 2, paragraph 3, of the International Covenant on Civil and

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\* The following members of the Committee participated in the examination of the present communication: Yadh Ben Achour, Lazhari Bouzid, Ahmad Amin Fathalla, Cornelis Flinterman, Yuji Iwasawa, Walter Kälin, Zonke Zanele Majodina, Dheerujall B.Seetulsingh, Gerald L. Neuman, Sir Nigel Rodley, Víctor Manuel Rodríguez-Rescia, Fabián Omar Salvioli, Anja Seibert-Fohr, Yuval Shany, Konstantine Vardzelashvili, Margo Waterval and Andrei Paul Zlătescu. The text of a joint opinion by Committee members Fabián Omar Salvioli and Víctor Manuel Rodríguez-Rescia (concurring) is appended to the present Views.

Political Rights. The authors are represented by the organization Track Impunity Always–TRIAL.<sup>1</sup>

### **Facts as presented by the authors**

2.1 The events took place during the armed conflict surrounding the independence of Bosnia and Herzegovina. Since the beginning of the conflict, Ibrahim Durić had been living in Dobrinja, a suburb of Sarajevo opposite Sarajevo airport. When the events described below took place, Dobrinja was being constantly targeted by heavy attacks and shelling by the Vojska Republike Srpske. The area did not have its own hospital. Whenever the inhabitants wished to leave the neighbourhood to go to other parts of Sarajevo, they had to pass through checkpoints controlled by the Vojska Republike Srpske.

2.2 Ibrahim Durić was a locksmith and had been enrolled in the Bosnian army since the beginning of the conflict.<sup>2</sup> On 14 May 1992, Ibrahim Durić was travelling in a van with a friend, Želimir Vidovic, in a civilian capacity, to take a wounded neighbour to Sarajevo hospital. On their way to Sarajevo, they were stopped and interrogated by members of the Vojska Republike Srpske at a checkpoint in Kasindolska Street in Dobrinja. After they had explained where they were going, they were allowed to go through the checkpoint. However, on their way back from the hospital they were stopped and interrogated again. That was the last time Ibrahim Durić and Mr. Vidovic were seen alive.

2.3 Mr. Vidovic was a famous football player and his wife was a Serb. When he disappeared with Ibrahim Durić, his wife immediately tried to use all her contacts to ascertain the fate and whereabouts of her husband and of Ibrahim Durić. On the day of their enforced disappearance, she was told that both had been taken to the military barracks of the National Yugoslav Army (Jugoslavenska Narodna Armija) in the neighbourhood of Nedzarici, near the Kasindolska Street checkpoint, to be interrogated. In the following days, Mr. Vidovic's wife heard rumours that her husband and his friend had been arbitrarily killed, but she did not receive any official information from the local authorities. After the war, Mr. Vidovic's remains were found in Ilidza, another suburb of Sarajevo under the control of the Vojska Republike Srpske during the conflict. Ibrahim Durić's fate remains unknown.

2.4 When the enforced disappearance of Ibrahim Durić took place, the authors and Nazif Durić, Ibrahim Durić's father, were being held in different concentration camps<sup>3</sup> following their arrest by members of the Vojska Republike Srpske on 4 May 1992. On 13 May 1992, women (including Nevzeta Durić) and young people (including Nedzad Durić), were allowed to leave the camp with the help of the local Visoko Red Cross. Later that month, Nazif Durić escaped from the camp where he was being held and managed to reunite with Nevzeta Durić and Nedzad Durić. In June 1992, they moved to Breza, the nearest village to the camp. Once there, they learned of the disappearance of Ibrahim Durić. Nedzad Durić reported his brother's enforced disappearance to the local Red Cross Office in Sarajevo without delay. On 27 November 2002, Nevzeta Durić obtained a certificate issued by the State Commission for Tracing Missing Persons stating that Ibrahim Durić was registered as missing since 14 May 1992. On 9 December 2002, an additional certificate was issued by

<sup>1</sup> The Optional Protocol entered into force for the State party on 1 June 1995.

<sup>2</sup> Military conscription was compulsory during the conflict.

<sup>3</sup> Nevzeta Durić and Nedzad Durić were in the "Kasama JNA" concentration camp, in Semizovac, while Nazif Durić was first in the "Nakina Garaza" concentration camp, at the Vogosca intersection, where men aged 16 to 85 were initially taken, and then in "Planjina Kuća", in Svrake, where all men were transferred.

the International Committee of the Red Cross indicating that Ibrahim Durić had been registered as missing and that a search process had been initiated.

2.5 On 24 September 2003, Nevzeta Durić obtained a decision by the Municipal Court of Sarajevo declaring Ibrahim Durić dead. The official date of his death was fixed at 17 May 1992, and Ilidza was determined as the place of death. No further explanation was provided by the Court as to the criteria applied to fix the date and place of Ibrahim Durić's death, and his fate and whereabouts remain unknown. The declaration of death was necessary, under the law on the rights of demobilized soldiers and their families, for Ibrahim Durić's family to be entitled to a "disability pension". Nazif Durić also obtained a certificate attesting that Ibrahim Durić was a member of the Bosnian army, even though he was in a civilian capacity when he was stopped and disappeared. On 11 January 2004, the Office for Soldiers-Disability Protection of the Municipality of Vogošća issued a decision recognizing the right of Nevzeta Durić to receive a monthly pension of KM315,62.<sup>4</sup> The pension is a form of social assistance and therefore cannot be considered to be an adequate measure of reparation for the violations suffered.

2.6 On 26 July 2005, Nevzeta Durić and other members of the Association of Families of Missing Persons from Vogošća submitted an application to the Human Rights Commission of the Bosnia and Herzegovina Constitutional Court. On 23 February 2006, the Constitutional Court adopted a decision concluding that the applicants in that collective case were relieved of the obligation to exhaust domestic remedies before ordinary courts, as no specialized institution on enforced disappearance in Bosnia and Herzegovina seemed to be operating effectively.<sup>5</sup> The Court also found that there had been a violation of articles 3 and 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), in view of the lack of information on the fate of Ibrahim Durić. The Court ordered the relevant government authorities to provide the families with all available information on Ibrahim Durić; to provide for the operational functioning of the institutions established in accordance with the Law on Missing Persons, and to submit the information to the Constitutional Court on the measures taken to implement the latter's decision. The Court did not adopt a decision on the matter of compensation, considering that that 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. The authors regret that the dispositions on financial support referred to have not been implemented and that the fund has still not been established.

2.7 The time limits set by the Constitutional Court in its decision expired and the institutions concerned failed to provide any relevant information on the missing persons, or submit to the Court any information on the measures taken to implement its decision. On 18 November 2006, the Constitutional Court of Bosnia and Herzegovina adopted a ruling under article 63.6 of the Constitutional Court Rules of Procedure,<sup>6</sup> whereby it declared that the institutions concerned had failed to enforce its decision of 23 February 2006. That

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<sup>4</sup> Approximately EUR 162.

<sup>5</sup> Constitutional Court Bosnia and Herzegovina, *M.H. et al* (Case no. A.P-129/04), decision of 27 May 2005, paras. 37–40.

<sup>6</sup> Art. 74.6 of the Constitutional Court Rules of Procedure: "in the event of a failure to enforce a decision, or a delay in enforcement or in giving information to the Constitutional Court about the measures taken, the Constitutional Court shall render a ruling in which it shall establish that its decision has not been enforced and it may determine the manner of enforcement of the decision. This ruling shall be transmitted to the competent prosecutor or another body competent to enforce the decision, as designated by the Constitutional Court to adopt the mentioned ruling on the lack of enforcement of previous decisions".

decision of the Court is final and binding and should have been transmitted to the Prosecutor's Office, which is responsible for prosecuting those who do not enforce the decisions of the Court. To the authors' knowledge, the Prosecutor's Office has not taken any measures to that end. Nevzeta Durić has applied indefatigably over a period of 17 years to various official authorities with enquiries about her son. Despite her attempts, she and her son Nedzac Durić have never received any plausible information as to the fate of Ibrahim Durić after 14 May 1992. The authors argue that they have no other effective remedy to exhaust. The silence of the authorities, and the attitude of official indifference towards their anxiety to know what had happened to Ibrahim Durić, have generated deep frustration and dejection for the authors.

### The complaint

3.1 As to the exhaustion of domestic remedies, the authors submit that, in order to avoid confusion or duplication, Nedzac Durić and his mother decided that she would be the sole representative of the family and would formally submit complaints to the relevant authorities. Nedzac Durić nonetheless actively supported all the search activities and the submission of complaints. The authors further refer to the findings of the Constitutional Court to the effect that, currently, "referral to ordinary courts would yield no result" and that no specialized institution on enforced disappearance operated effectively.<sup>7</sup> The ruling adopted by the Constitutional Court on 18 December 2006 on the failure of the Bosnia and Herzegovina authorities to enforce the decision of 23 February 2006 is final and binding. The authors therefore have no other effective remedy to exhaust.

3.2 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, enforced disappearances are per se a continuing violation of several human rights.<sup>8</sup> In the present case, the authors refer to (a) the lack of information about the causes and circumstances of the disappearance of Ibrahim Durić; (b) the failure of the national authorities to conduct an ex officio, prompt, impartial, thorough and independent investigation into his arbitrary arrest and subsequent enforced disappearance; (c) the failure to identify, prosecute and sanction those responsible; and (d) the failure to provide an effective remedy to Ibrahim Durić and his family. They consider that those violations of their rights continued after the Protocol's entry into force, and amount to a violation of articles 6, 7, 9, 10 and 16 in conjunction with article 2, paragraph 3, of the Covenant.

3.3 With regard to Ibrahim Durić, the authors claim that he was arbitrarily and illegally detained by State officials on 14 May 1992, and remains unaccounted for. They recall that the enforced disappearance of Ibrahim Durić took place in the context of widespread and systematic attacks against the civilian population, and therefore amounts to a crime against humanity, "triggering an aggravated responsibility of the State".<sup>9</sup> They further argue that Ibrahim Durić was last seen alive on 14 May 1992 in the hands of State agents in life-threatening circumstances, leading to the conclusion that he was placed in a situation whereby he was at grave risk of suffering irreparable damage to his personal integrity and

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<sup>7</sup> Constitutional Court of Bosnia and Herzegovina, *M.H. et al* (see footnote 6), para. 37.

<sup>8</sup> The authors refer to the jurisprudence of various national and regional jurisdictions. See also, inter alia, United Nations Working Group on Enforced and Involuntary Disappearances general comment No. 9 (2010) on enforced disappearance as a continuous crime, available.

<sup>9</sup> Report by Manfred Nowak, Special process on missing persons in the territory of the former Yugoslavia (E/CN.4/1995/37), para. 36; article 7.2(i) of the Rome Statute; Working Group on Enforced or Involuntary Disappearances general comment No. 8, on enforced disappearance as a crime against humanity; Human Rights Committee general comment No. 31 (2004) on the nature of the general legal obligation on States Parties to the Covenant, para. 18.

in danger of his life. The authors consider it noteworthy that the remains of Želimir Vidović, who was deprived of his liberty at the same time as Ibrahim Durić, were found in Iliđa, while Ibrahim Durić's whereabouts remain unknown. The authors claim that the State party failed to comply with its responsibility to take appropriate measures to protect the life of a person, in breach of article 6 read together with article 2, paragraph 3, of the Covenant.<sup>10</sup>

3.4 As to the alleged violation of article 9 of the Covenant, the authors consider that, although a witness statement refers to Ibrahim Durić's presence in the military barracks of the Jugoslavenska Narodna Armija in the neighbourhood of Nedzarici,<sup>11</sup> his detention was not entered in any official register or record. Ibrahim Durić was never brought before a judge, nor could he challenge the lawfulness of his deprivation of liberty. The authors further consider that the responsibility for shedding light on the fate of Ibrahim Durić lies with the State party. They argue that the particular gravity of enforced disappearances and the multi-faceted nature thereof<sup>12</sup> give rise to the conclusion that "the prohibition of the enforced disappearance of persons and the corresponding obligation to investigate and punish those responsible has attained the status of *jus cogens*".<sup>13</sup> Despite the various requests by the authors, no explanation has been given by the State party and no efforts have been made to investigate the arbitrary and illegal detention of Ibrahim Durić and his enforced disappearance, or to clarify his fate. The authors therefore consider the State party to be in violation of article 9 read in conjunction with article 2, paragraph 3, of the Covenant.

3.5 The authors consider that the enforced disappearance of Ibrahim Durić also amounts to treatment contrary to article 7 read in conjunction with article 2, paragraph 3 of the Covenant. In that connection, the authors refer to the jurisprudence of the Committee according to which "the disappearance of persons is inseparably linked to treatment that amounts to a violation of article 7",<sup>14</sup> and the degree of suffering involved in being held indefinitely without contact with the outside world amounts to torture.<sup>15</sup> Furthermore, the State party is under an obligation to investigate all allegations of torture and to ensure that those responsible are brought to justice.

3.6 The authors further claim that there was a violation of article 10 read in conjunction with article 2, paragraph 3, of the Covenant, in that the situation described represents an enforced disappearance scenario whereby Ibrahim Durić did not have the opportunity to communicate with the outside world.

3.7 Additionally, the authors consider that Ibrahim Durić's enforced disappearance had the effect of suspending his enjoyment of all other human rights, reducing him to a situation of absolute defencelessness. They further argue that their efforts to gain access to potential remedies have been obstructed. They refer to the jurisprudence of the Committee whereby it states that the failure by the authorities to conduct an investigation effectively places the

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

<sup>11</sup> See para. 2.3 above.

<sup>12</sup> The authors refer inter alia to communications No. 992/2001, *Bousroual v. Algeria*, Views adopted on 30 March 2006, para. 9.2; and No. 1196/2003, *Boucherf v. Algeria*, Views adopted on 30 March 2006, para. 9.2.

<sup>13</sup> Inter-American Commission on Human Rights, case of *Anzualdo Castro v. Peru*, judgment of 22 September 2009, para. 59; case of *Goiburú et al. v. Paraguay*, judgment of 22 September 2006, para. 84.

<sup>14</sup> Communication No. 449/1991, *Mojica v. Dominican Republic*, Views adopted on 15 July 1994, para. 5.7.

<sup>15</sup> See inter alia: communication No. 992/2001, *Bousroual v. Algeria* (see footnote 13), para. 9.8.

disappeared person outside the protection of the law,<sup>16</sup> in breach of article 16 read in conjunction with article 2, paragraph 3, of the Covenant.

3.8 The authors further allege that they are themselves the victims of a violation by Bosnia and Herzegovina of article 7 read in conjunction with article 2, paragraph 3, of the Covenant owing to the severe mental distress and anguish caused by (a) the disappearance of Ibrahim Durić; (b) the requirement to declare his death in order to be entitled to a pension; (c) the continued uncertainty as to his fate and whereabouts; (d) the failure to investigate and ensure an effective remedy; and (e) the impunity surrounding Ibrahim Durić's case. The authors refer to the jurisprudence of the Committee whereby it found that there had been violations of article 7 of the Covenant owing to the anguish and stress caused to relatives by the enforced disappearance of a loved one and by the continuing uncertainty concerning his or her fate and whereabouts.<sup>17</sup>

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

4.1 The State party submitted its observations on 12 April 2011. It refers to the legal framework established for the prosecution of war crimes in the post-war period as from December 1995. It states that a National Strategy for War Crimes Processing was adopted in December 2008, with the objective of finalizing prosecution of the most complex war crimes in 7 years, and of "other war crimes" within 15 years of the adoption of the strategy. The State party further refers to the adoption of the Law on Missing Persons of 2004 creating the Missing Persons Institute and recalls that, of the nearly 32,000 persons who went missing during the war, the remains of 23,000 have been found, and 21,000 identified.

4.2 In its observations, the State party submits that a regional office was established in Istočno Sarajevo, and a field office and units in Sarajevo. The State party considers that those initiatives provide the conditions for faster and more efficient processes in the search for disappeared persons in the territory of Sarajevo. Their investigators are present on the sites on a daily basis to collect information on potential mass graves and to establish contact with witnesses. The State party further reports that, from 23 to 25 May 2007, the bodies of 38 persons who had disappeared on 14 May 1992 in Kasindolska Street were exhumed, identified and returned to their families. However, although the Missing Persons Institute had blood samples from Ibrahim Durić's family, his body was not found.

4.3 The State party also transmits a report by the Mayor of the Municipality of Vogošća indicating that a memorial for the victims of enforced disappearances has been built, that the municipality has deployed all efforts to support the tracing of missing persons, and that he considered that "all appropriate institutions should take measures necessary to locate, exhume and identify the missing persons and return their mortal remains to their beloved ones to bury them with dignity".

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

5.1 The authors submitted their comments on 12 May 2011. They refer to the general comment of the Working Group on Enforced or Involuntary Disappearances on enforced disappearance as a continuous crime.<sup>18</sup> They consider that the State party's observations corroborate that Ibrahim Durić remains registered as a missing person "unaccounted for" and report that no match has been found through the online inquiry tool set up by the

<sup>16</sup> Communication No. 1327/2004, *Grioua v. Algeria*, Views adopted on 10 July 2007, para. 7.9.

<sup>17</sup> Ibid. para. 7.7; communication No. 1469/2006, *Yasoda Sharma v. Nepal*, Views adopted on 28 October 2008, para. 7.9.

<sup>18</sup> United Nations Working Group on Enforced and Involuntary disappearances, general comment No. 9 (2010) on enforced disappearance as a continuous crime (2010) (see footnote 9).

International Commission on Missing Persons. The tracing process is therefore still open under the Bosnia and Herzegovina authorities.

5.2 The authors consider that the observations of the State party do not raise any challenges to the claims they submitted, and that the State party does not refer to any ongoing investigation to determine those responsible, or to any measures taken to establish the fate or whereabouts of Ibrahim Durić. The authors report that, to date, neither they nor any of the witnesses in the case of Ibrahim Durić have been contacted by the regional office in Istočno Sarajevo or the field office in Sarajevo referred to by the State party, although they consider that they would be able to provide those authorities with information that could be relevant to locating Ibrahim Durić. In particular, the authors argue that the competent authorities have not taken into account the fact that the remains of Želimir Vidović were found in Ilidza and that the remains of Ibrahim Durić might also be there. The authors further argue that they should be associated with the whole process of location, exhumation and identification of the remains of Ibrahim Durić. They consider that the ongoing lack of information on Ibrahim Durić's fate and whereabouts and on the progress and results of the investigation violates their right to know the truth.<sup>19</sup>

5.3 The authors further argue that the large number of war crimes still requiring investigation does not relieve the authorities of the State party of their responsibility to conduct a prompt, impartial, independent and thorough investigation into cases of gross human rights violations and to regularly inform relatives of the victims on the progress and results of such investigation. Since 1992, the enforced disappearance of Ibrahim Durić has been reported to various authorities, including the police in Dobrinja. Nonetheless, the authors have not been contacted or received any feedback from the authorities concerned.

5.4 The authors consider that the implementation of the National Strategy for War Crimes Processing has been deficient and cannot be adduced by the State party in reply to the lack of information on the progress and results of the investigations carried out, or to justify the inactivity of the authorities concerned. The authors further argue that the adoption of a transitional justice strategy cannot replace access to justice and redress for the victims of gross human rights violations and their relatives.

#### **Further submissions from the State party**

6.1 From May to September 2011 and on 10 January and 25 May 2012, replies from various State party authorities were submitted to the Committee,<sup>20</sup> reiterating the information provided, and highlighting the efforts of the State party to determine the fate and whereabouts of all missing persons. The State party further reported that no relevant developments had occurred in the case of Ibrahim Durić, and that no evidence was available as to the circumstances of his death or disappearance.

6.2 With regard to the authors' assertion that they had received no information about the status of the case of Ibrahim Durić, the State party reports that the central database of all pending war crimes cases provided for in the National Strategy for War Crimes Processing is now operational.

6.3 In its submissions of 10 January 2012 and 25 May 2012, the State party further indicated that the name of Ibrahim Durić does not appear in the registers of the War

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<sup>19</sup> The authors refer to general comment No. 10 (2010) of the Working Group on Enforced or Involuntary Disappearances, on the right to the truth in relation to Enforced Disappearances, para. 4.

<sup>20</sup> Submissions were made separately and on different dates by the Ministry of Defense, the Mayor of the Municipality of Vogosca, the Ministry for Human Rights and Refugees of Bosnia Herzegovina, the Missing Persons Institute and the Ministry of Human Rights and Refugees of Sarajevo.

Veterans' Department of the Municipality of Ilidža and that his mother, Nevzeta Durić, was not receiving any form of social benefit. The State party further argues that the family has not taken the necessary action to declare him missing "so that the Group [for the Matter of Conscription Records of the Municipality of Ilidža] could submit the request to the Missing Persons Institute and thereby resolve the case of Mr. Ibrahim Durić".

#### **Further submissions from the authors**

7.1 On 24 August, 14 September and 3 October 2011, the authors sent additional comments in reply to the submissions of the State party, to the effect that they did not provide any new information with regard to the enforced disappearance of Ibrahim Durić, and that a number of the issues that they, the authors, had raised remained unaddressed. The authors therefore reiterate the comments in their previous submissions.

7.2 On 23 January and 7 June 2012, the authors sent additional comments on the State party's submissions of 10 January and 25 May 2012. The authors further indicate that the allegations of the State party, according to which the authors had not taken the necessary action to declare Ibrahim Durić missing and to have their case resolved, is a source of additional suffering and retraumatization for them. They reiterate that they have consistently and repeatedly reported Ibrahim Durić's enforced disappearance. They further recall that his disappearance has been formally recognized and reported through the certificates issued by the State Commission for the Search of Missing Persons, the International Committee of the Red Cross and the International Commission on Missing Persons, and through the decision of the Constitutional Court of 23 February 2006. They consider that none of the letters submitted by the State party contests the arguments they have put forward with regard to the ongoing violation of their rights and those of Ibrahim Durić.

7.3 On 9 July 2013, the authors sent a further submission to the Committee reiterating that, more than 20 years since the enforced disappearance of Ibrahim Durić, no investigation had been opened; his mortal remains had not been located and returned to the family; and the authors of the communication had not received any compensation for the harm suffered. They further recalled that they had been forced to declare Ibrahim Durić dead to enable Nevzeta Durić to obtain a monthly pension, and that that had caused additional suffering to the authors which they characterized as amounting to a violation of article 7, read both alone and in conjunction with article 2, paragraph 3.

#### **Issues and proceedings before the Committee**

##### *Consideration of admissibility*

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

8.2 The Committee has ascertained, as required under article 5, paragraph 2, of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement and that the authors have exhausted all available domestic remedies.

8.3 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 and 16 read in conjunction with article 2, paragraph 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 merits*

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

9.2 The authors claim that Ibrahim Durić has been a victim of enforced disappearance since his illegal arrest by the Vojska Republike Srpske on 14 May 1992 and that, despite numerous efforts on their part, no prompt, impartial, thorough and independent investigation has been carried out by the State party to clarify his fate and whereabouts and to bring the perpetrators to justice. 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 or to bring to justice perpetrators of certain violations (notably torture and similar cruel, inhuman and degrading treatment, summary and arbitrary killings and enforced disappearances) could in and of itself give rise to a separate breach of the Covenant.

9.3 The authors do not allege that the State party was directly responsible for the enforced disappearance of Ibrahim Durić. 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>21</sup>

9.4 The Committee notes the State party’s information that it has made considerable efforts at the general level in view of the more than 30,000 cases of enforced disappearances that occurred during the conflict. Notably, the Constitutional Court has established that State authorities are responsible for the investigation of the disappearance of authors’ relatives; domestic mechanisms have been set up to deal with enforced disappearances and other war crimes cases; and DNA samples from unidentified bodies have been compared with the DNA samples of Ibrahim Durić’s family, mainly further to the exhumation carried out from 23 to 25 May 2007.

9.5 The Committee recalls its jurisprudence according to which the obligation to investigate allegations of enforced disappearances and to bring the perpetrators to justice is not an obligation of result, but of means, and that it must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities.<sup>22</sup>

9.6 However, the Committee notes that in the present case the State party has not provided information to the authors or to the Committee as to the status of the investigation into Ibrahim Durić’s disappearance, or as to the specific measures undertaken to investigate his disappearance and bring to justice those responsible. According to the authors, no efforts have been made to investigate the disappearance or to enforce the Constitutional Court’s decision with regard to him. The Committee also notes the authors’ allegations that the State party has not sought to take advantage of their assistance or that of available witnesses. The State party describes efforts to search for Ibrahim Durić’s remains, but does not identify any steps taken to pursue the investigation by other means such as interviewing

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<sup>21</sup> Compare article 7, paragraph 2(i), of the Rome Statute of the International Criminal Court (defining enforced disappearance as including disappearances conducted by a political organization), with articles 2 and 3 of the International Convention for the Protection of All Persons from Enforced Disappearance (distinguishing between enforced disappearances carried out 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).

<sup>22</sup> See communications Nos. 1917/2009, 1918/2009, 1925/2009 and 1953/2010, *Prutina et al v. Bosnia and Herzegovina*, Views adopted on 28 March 2013, para. 9.5; communication No. 1997/2010, *Rizvanović v. Bosnia Herzegovina*, Views adopted on 21 March 2014, para. 9.5.

witnesses. The Committee further notes that the limited information that the family managed to obtain throughout the proceedings was provided to them only at their own request, or after very long delays, a fact that has not been refuted by the State party. The Committee considers that authorities investigating enforced disappearances 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.<sup>23</sup> Taking all of these circumstances into account, the Committee concludes that the facts before it reveal a violation by the State party of articles 6, 7 and 9, read in conjunction with article 2, paragraph 3, of the Covenant, with regard to Ibrahim Durić.

9.7 The Committee also takes note of the anguish and distress caused to the authors by the continuing uncertainty resulting from Ibrahim Durić's disappearance. For the reasons stated in the preceding paragraph, the Committee concludes that the facts reveal a violation of article 7 of the Covenant, read in conjunction with article 2, paragraph 3, with regard to the authors.

9.8 The Committee further notes that the social allowance provided to the authors depended upon their agreeing to seek the recognition of their missing relative as dead, although there is no certainty as to his fate and whereabouts. The Committee considers that to oblige families of disappeared persons to have the family member declared dead in order to be eligible for compensation while the investigation is ongoing makes the availability of compensation dependent on a harmful process, and constitutes inhuman and degrading treatment in violation of article 7 read alone and in conjunction with article 2, paragraph 3, of the Covenant with respect to the authors.<sup>24</sup>

9.9 In the light of the above findings, the Committee will not examine separately the authors' allegations under articles 10 and 16 read in conjunction with article 2, paragraph 3, of the Covenant.<sup>25</sup>

10. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the State party has violated articles 6, 7 and 9, read in conjunction with article 2, paragraph 3, of the Covenant, with regard to Ibrahim Durić; and article 7 read alone and in conjunction with article 2, paragraph 3, with regard to the authors.

11. In accordance with article 2, paragraph 3, of the Covenant, the State party is under an obligation to provide Nevzeta Durić and Nedžad Durić with an effective remedy, including (a) continuing its efforts to establish the fate or whereabouts of Ibrahim Durić, as required by the Law on Missing Persons 2004; (b) continuing its efforts to bring to justice without unnecessary delay those responsible for his disappearance, as required by the National Strategy for War Crimes Processing; and (c) ensuring adequate compensation. 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 are accessible to the missing persons' families, and that the current legal framework is not applied in a manner that requires relatives of victims of enforced disappearance to obtain certification of the death of the victim as a condition for obtaining social benefits and measures of reparation.

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 or not there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State

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<sup>23</sup> Communication No. 1997/2010, *Rizvanović v. Bosnia Herzegovina* (see footnote 24), para. 9.5

<sup>24</sup> *Ibid.*, para. 9.6.

<sup>25</sup> *Ibid.*, para. 9.7.

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 where 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

### **Joint opinion of Fabián Omar Salvioli and Víctor Manuel Rodríguez-Rescia (concurring)**

1. We concur with the decision of the Committee in *Durić et al. v. Bosnia and Herzegovina* (communication No. 1956/2010). However, we consider that the legal conclusion should have focused on a breach of article 2, paragraph 3, read in conjunction with articles 6, 7 and 9 of the Covenant, since the violation that engages the responsibility of Bosnia and Herzegovina arises from the absence of an effective remedy for the enforced disappearances and their consequences. Those disappearances cannot be attributed to the State of Bosnia and Herzegovina, since they were perpetrated by the army of the Republika Srpska.
  2. In its present Views, in which it finds a violation of articles 6, 7, and 9, read in conjunction with article 2, paragraph 3, the Committee departs from its previous Views in *Rizvanović v. Bosnia and Herzegovina* (communication No. 1997/2010) without offering any explanation.
  3. We do, however, believe that the Committee was right to find a direct violation of article 7 in respect of the authors on the grounds that the provision of certain social benefits depended on their agreeing to acknowledge that their missing relatives were dead even though there was no certainty as to their fate or whereabouts.
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