



## International Covenant on Civil and Political Rights

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### Human Rights Committee

#### Communications Nos. 1917/2009, 1918/2009, 1925/2009 and 1953/2010

#### Views adopted by the Committee at its 107th session (11–28 March 2013)

<i>Submitted by:</i>	Fatima Prutina, Asmir Prutina, Hasib Prutina, Hasiba Zlatarac, Alma Čardaković, Mihra Kozica, Bajazit Kozica, Selima Kozica, Ema Čekić, Sanela Bašić, Sead Čekić and Samir Čekić (represented by counsel, Track Impunity Always–TRIAL)
<i>Alleged victims:</i>	The authors and their missing relatives, Fikret Prutina, Huso Zlatarac, Nedžad Zlatarac, Safet Kozica and Salih Čekić
<i>State party:</i>	Bosnia and Herzegovina
<i>Dates of communications:</i>	24 July 2009, 26 August 2009, 12 November 2009 and 3 December 2009 (initial submissions)
<i>Document references:</i>	Special Rapporteur's rule 97 decisions, transmitted to the State party on 18 November 2009, 24 November 2009, 29 December 2009 and 1 June 2010 (not issued in document form)
<i>Date of adoption of Views:</i>	28 March 2013 <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, and every child's right to such measures of protection as are required by their status as minor
<i>Procedural issues:</i>	Insufficient substantiation
<i>Articles of the Covenant:</i>	2(3); 6; 7; 9; 10; 16; 24(1)
<i>Articles of the Optional Protocol:</i>	2

## 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 (107th session)**

concerning

#### **Communications Nos. 1917/2009, 1918/2009, 1925/2009 and 1953/2010\***

*Submitted by:* Fatima Prutina, Asmir Prutina, Hasib Prutina, Hasiba Zlatarac, Alma Čardaković, Mihra Kozica, Bajazit Kozica, Selima Kozica, Ema Čekić, Sanela Bašić, Sead Čekić and Samir Čekić (represented by counsel, Track Impunity Always–TRIAL)

*Alleged victims:* The authors and their missing relatives, Fikret Prutina, Huso Zlatarac, Nedžad Zlatarac, Safet Kozica and Salih Čekić

*State party:* Bosnia and Herzegovina

*Dates of communications:* 24 July 2009, 26 August 2009, 12 November 2009 and 3 December 2009 (initial submissions)

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

*Meeting on 28 March 2013,*

*Having concluded* its consideration of Communications Nos. 1917/2009, 1918/2009, 1925/2009 and 1953/2010, submitted to the Human Rights Committee by Fatima Prutina, Asmir Prutina, Hasib Prutina, Hasiba Zlatarac, Alma Čardaković, Mihra Kozica, Bajazit Kozica, Selima Kozica, Ema Čekić, Sanela Bašić, Sead Čekić and Samir Čekić 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 communications and the State party,

*Adopts* the following:

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\* The following members of the Committee participated in the examination of the present communication: Mr. Yadh Ben Achour, Mr. Lazhari Bouzid, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Mr. Kheshoe Parsad Matadeen, Ms. Iulia Antoanella Motoc, Mr. Gerald L. Neuman, Sir. Nigel Rodley, Mr. Victor Manuel Rodríguez-Rescia, Mr. Fabián Omar Salvioli, Ms. Anja Seibert-Fohr, Mr. Yuval Shany, Mr. Konstantine Vardzelashvili and Ms. Margo Waterval. The texts of two individual opinions by Committee members Mr. Fabián Omar Salvioli and Mr. Victor Manuel Rodríguez-Rescia are appended to the present Views.

## Views under article 5, paragraph 4, of the Optional Protocol

1.1 The authors of the communications are Fatima Prutina, Asmir Prutina, Hasib Prutina, Hasiba Zlatarac, Alma Čardaković, Mihra Kozica, Bajazit Kozica, Selima Kozica, Ema Čekić, Sanela Bašić, Sead Čekić and Samir Čekić, citizens of Bosnia and Herzegovina born in 1953, 1975, 1973, 1949, 1978, 1929, 1962, 1969, 1955, 1975, 1976 and 1978, respectively. The authors present their claims on their behalf and on behalf of their missing relatives, namely Fikret Prutina, born on 4 April 1950; Huso Zlatarac, born on 17 June 1939; Nedžad Zlatarc, born on 25 October 1971; Safet Kozica, born on 9 October 1965; and Salih Čekić, born on 4 March 1949. They claim that Bosnia and Herzegovina Bosnia and Herzegovina violated their relatives' rights under articles 6, 7, 9, 10 and 16, read in conjunction with article 2, paragraph 3, of the International Covenant on Civil and Political Rights. They also claim that Bosnia and Herzegovina Bosnia and Herzegovina violated their own rights under article 7, read in conjunction with article 2, paragraph 3, of the Covenant. Alma Čardaković and Samir Čekić further allege that the State party violated their right for special protection as minors until they reached their majority.<sup>1</sup> It is therefore alleged that article 7 and article 2, paragraph 3 were violated in their regard, in conjunction with article 24, paragraph 1 of the Covenant. The authors are represented by counsel, Track Impunity Always–TRIAL.<sup>2</sup>

1.2 On 28 March 2013, pursuant to rule 94, paragraph 2, of its rules of procedure, the Committee decided to join the present communications in view of their substantial factual and legal similarity.

### Facts as presented by the authors

2.1 After its declaration of independence in March 1992, an armed conflict started in Bosnia and Herzegovina. The key local parties to the conflict were *Armija Republike Bosne i Hercegovine* (ARBiH; mostly made up of Bosniacs<sup>3</sup> and loyal to the central authorities), *Vojska Republike Srpske* (VRS; mostly made up of Serbs) and *Hrvatsko vijeće obrane* (mostly made up of Croats).<sup>4</sup>

2.2 On 4 May 1992, the authors and their missing relatives were arrested in the village of Svrake (Bosnia and Herzegovina) by members of the VRS. They were subsequently transferred to a concentration camp called Kasarna JNA in Semizovac, together with most of the inhabitants of their village. On 13 May 1992, the women and children, including the authors, were allowed to leave the camp. On 16 May 1992, Fikret Prutina, Huso Zlatarac, Nedžad Zlatarc, Safet Kozica and Salih Čekić, along with all other men aged from 16 to 85, were taken to the concentration camp called Nakina Garaža. According to survivors, they were tortured, frequently beaten and forced to work without receiving any food for over 24 hours consecutively. On 24 May 1992, they were all taken to the Planjina Kuća concentration camp, where they were kept as prisoners. On 16 June 1992, eyewitnesses stated that the victims, along with other prisoners, were taken to an unknown destination by a member of the VRS, Dragan Damjanovic.<sup>5</sup> This is the last time they were seen alive.

<sup>1</sup> Alma Čardaković and Samir Čekić reached their majority on 4 March 1996 and 17 August 1996, respectively.

<sup>2</sup> The Optional Protocol entered into force for the State party on 1 June 1995.

<sup>3</sup> Bosniacs were known as Muslims until the 1992–1995 war. The term “Bosniacs” (*Bošnjaci*) should not be confused with the term “Bosnians” (*Bosanci*) which is commonly used to denote citizens of Bosnia and Herzegovina irrespective of their ethnic origin.

<sup>4</sup> After the war, the ARBiH, the VRS and the *Hrvatsko vijeće obrane* gradually merged into the Armed Forces of Bosnia and Herzegovina.

<sup>5</sup> With regard to Dragan Damjanovic's fate, see the information in paragraph 2.10 below.

Hasib Prutina, one of the authors, was kept in Planjina Kuća for another month, until a Serbian friend helped him get out and reach an area controlled by the ARBiH.

2.3 The authors learned that their relatives had been taken from Planjina Kuća to an unknown location through the local radio, which broadcasted the news based on the statements of an eyewitness to the events. The authors immediately reported the disappearance of their relatives to the local police of Visoko and to the International Committee of the Red Cross in Breza. They also reported the enforced disappearance of their relatives to the State Commission for Missing Persons in Sarajevo. In spite of the complaints promptly filed by the authors, no *ex officio*, prompt, thorough, independent and effective investigation was carried out.

2.4 The armed conflict came to an end in December 1995 when the General Framework Agreement for Peace in Bosnia and Herzegovina (hereinafter “the Dayton Agreement”) entered into force.<sup>6</sup>

2.5 At the authors’ request, the competent court issued declarations of presumed death with respect to Fikret Prutina on 29 August 2002, Huso Zlatarac on 26 April 2002, Nedžad Zlatarac on 13 July 2006, Safet Kozica on 29 March 2010 and Salih Čekić on 17 May 2005. The authors received a pension and social assistance. However, they never considered this to be a form of compensation for the trauma caused and the loss of their relatives.

2.6 On 16 August 2005, the authors, together with other members of the Association of Families of Missing Persons from Vogošća, reported the kidnapping<sup>7</sup> of their missing relatives to the Fifth Police Station in Vogošća. On 9 September 2005, they filed a criminal complaint with the Sarajevo Cantonal Prosecutor against unidentified members of the VRS in relation to the disappearance of their relatives. They did not receive any response from that Prosecutor until September 2011, when a statement was taken from one of the authors (Ema Čekić, see paragraph 7.2 below).

2.7 On 26 September 2005, the authors submitted an application to the Human Rights Commission of the Constitutional Court of Bosnia and Herzegovina, claiming a violation of articles 3 and 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter “the European Convention on Human Rights”) and of articles II.3(b) and (f) of the Constitution of Bosnia and Herzegovina. On 23 February 2006, the Constitutional Court found a violation of articles 3 and 8 of the European Convention on Human Rights and the corresponding constitutional provisions. According to the Constitutional Court, “the fact that even ten years after the end of the war activities in Bosnia and Herzegovina the authorities have not given to the applicants information about the destiny of their family members that went missing during the war activities in Bosnia and Herzegovina is enough to the Constitutional Court to make a conclusion that there has been a violation of the right not to be subjected to inhuman treatment from the article II.3.(b) of the Constitution of Bosnia and Herzegovina and article 3 of the European Convention, and the right to respect of private and family life and home from article 8 of the European Convention”.<sup>8</sup>

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<sup>6</sup> In accordance with the Dayton Agreement, Bosnia and Herzegovina consists of two entities: the Federation of Bosnia and Herzegovina and the Republika Srpska. The Dayton Agreement failed to resolve the Inter-Entity Boundary Line in the Brčko area, but the parties agreed to a binding arbitration in this regard under the rules of the United Nations Commission on International Trade Law (UNCITRAL). The Brčko District, under the exclusive sovereignty of the State and international supervision, was formally inaugurated on 8 March 2000.

<sup>7</sup> “Kidnapping” is the word used by the authors.

<sup>8</sup> See Constitutional Court of Bosnia and Herzegovina, *Selimovic and others, Judgment of 23 February 2006*, para. 371.

2.8 The Court ordered the Council of Ministers of Bosnia and Herzegovina, the Government of the Federation of Bosnia and Herzegovina, the Republika Srpska and the Brčko District to release all information in their possession pertaining to the fate or whereabouts of the authors' missing relatives and to ensure that the State agencies envisaged by the Law on Missing Persons 2004<sup>9</sup> (the Missing Persons Institute, the Central Records and the Fund for Support to the Families of Missing Persons) become operational. No compensation was awarded.

2.9 On 18 November 2006, the Constitutional Court held that its decision of 23 February 2006 had not been fully enforced. While the Republika Srpska had released all information in its possession, the other entity (the Federation of Bosnia and Herzegovina), the State and the Brčko District had not. Furthermore, the Missing Persons Institute, the Central Records and the Fund for Support to the Families of Missing Persons had not yet become operational. This decision was submitted to the State Prosecutor, as non-enforcement of the decisions of the Constitutional Court constitutes a criminal offence.

2.10 On 15 December 2006, the State Court of Bosnia and Herzegovina sentenced Dragan Damjanovic to 20 years of imprisonment for crimes against humanity. The indictment alleged that on several occasions he had gone to the Planjina Kuća camp and that, with the help of camp guards, he also reportedly used a large number of prisoners as human shields, resulting in serious injury and even in the death of some. However, he was not summoned or convicted for the torture and enforced disappearance of the authors' missing relatives.<sup>10</sup>

2.11 The authors' relatives are still missing and no *ex officio*, prompt and effective investigation has been carried out.

### **The complaint**

3.1 The authors claim that the enforced disappearance of their missing relatives is in violation of articles 6, 7, 9, 10 and 16 read in conjunction with article 2, paragraph 3 of the Covenant.

3.2 The authors consider that the responsibility for shedding light on the fate of their missing relatives lies with the State party. They refer to an expert report of the Working Group on Enforced or Involuntary Disappearances (WGEID) which states that the primary responsibility for carrying out these tasks remains with the authorities under whose jurisdiction a suspected mass grave falls.<sup>11</sup> The authors further argue that the State party has an obligation to conduct a prompt, impartial, thorough and independent investigation of gross human rights violations, such as enforced disappearances, torture or arbitrary killings. In general, it should be pointed out that 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 these 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 which may impede the enjoyment of their human rights.<sup>12</sup>

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<sup>9</sup> *Official Gazette of Bosnia and Herzegovina*, No. 50/04 (9 November 2004).

<sup>10</sup> See *Dragan Damjanovic, Judgment of 15 December 2006*, which became final on 13 June 2007.

<sup>11</sup> The authors refer to the report by Manfred Nowak, expert member of the WGEID, Special process on missing persons in the territory of the former Yugoslavia, document E/CN.4/1996/36, para. 78.

<sup>12</sup> The authors refer to Committee's General Comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties, para. 8; *Velasquez Rodriguez v. Honduras, Judgment of 29 July 1988*, Inter-American Court of Human Rights, Series C, No. 4, para. 172; and *Demiray v. Turkey, Application no. 27308/95, Judgement of 21 November 2000*, European Court of Human Rights, para. 50; *Tanrikulu v. Turkey, Application no. 23763/94, Judgement of 8 July 1999*, European Court of

3.3 With regard to article 6, the authors refer to the Committee's jurisprudence according to which a State party has a primary duty to take appropriate measures to protect the life of a person. In cases of enforced disappearances, the State party has an obligation to investigate and bring perpetrators to justice. By not doing so, the State party continues to violate the victims' right to life (see article 6 read in conjunction with article 2, paragraph 3, of the Covenant). The victims in the present case were illegally detained by State agents and have remained unaccounted for since 16 June 1992. Despite numerous efforts by the authors, no *ex officio*, prompt, impartial, thorough and independent investigation has been carried out and the victims' fate and whereabouts remain unknown.

3.4 The authors further submit that their missing relatives were illegally detained without charge by members of the VRS and that they were held indefinitely, without communication with the outside world, while repeatedly ill-treated and subjected to forced labour. Their enforced disappearance constitutes in itself a form of torture, on which no *ex officio*, prompt, impartial, thorough and independent investigation has yet been carried out by the State party in order to identify, prosecute, judge and sanction those responsible. This amounts to a violation of article 7 read in conjunction with article 2, paragraph 3 of the Covenant.

3.5 The victims were arrested on 4 May 1992 by members of the Serb army without an arrest warrant, nor was their detention recorded in any official register or proceedings brought before a court to challenge the lawfulness of their detention. As no explanation has been given by the State party and no efforts were made to clarify the fate of the victims, article 9 read in conjunction with article 2, paragraph 3, of the Covenant has been violated.

3.6 The victims were held in three different concentration camps and were subjected to torture, and inhuman and degrading treatment, including forced labour. The authors recall the Committee's jurisprudence, which has recognized that enforced disappearance itself constitutes a violation of article 10 of the Covenant.<sup>13</sup> Since the torture and inhuman and degrading treatment the victims suffered in detention have never been investigated, the State party has violated article 10, read in conjunction with article 2, paragraph 3, of the Covenant.

3.7 The enforced disappearance places the victims outside the protection of the law, thus suspending the enjoyment of all other human rights of the disappeared person, who is confined in a condition of absolute defencelessness. The ceaseless efforts undertaken by the authors to shed light on the fate of their relatives have been impeded since their disappearance. The State party is therefore also allegedly responsible for a continuing violation of article 16 read in conjunction with article 2, paragraph 3 of the Covenant.

3.8 The authors consider that the acute emotional distress caused by the disappearance of their relatives, the procedure to declare the victims dead and the continued uncertainty about their fate and whereabouts entails a separate violation of article 7 read in conjunction with article 2, paragraph 3, of the Covenant.

3.9 Finally, two of the authors, namely Alma Čardaković and Samir Čekić, submit that they were 14 years old and 13 years old respectively when they were detained, ill-treated and witnessed the enforced disappearance of their missing relatives. They have experienced the ongoing anguish of not knowing the truth of what happened to the victims. They never received any compensation for the harm suffered. It is therefore submitted that the State

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Human Rights, para. 103; and *Ergi v. Turkey*, Application no. 23818/94, Judgement of 28 July 1998, European Court of Human Rights, para. 82.

<sup>13</sup> The authors refer to *Yasoda Sharma v. Nepal*, Communication No. 1469/2006, Views adopted on 28 October 2008, para. 7.7.

party has violated their rights under article 7 read in conjunction with article 2, paragraph 3, of the Covenant and, until March 1996 and August 1996 respectively, when they attained majority, that the State party has also violated the same rights in conjunction with article 24, paragraph 1, of the Covenant as these two authors were minors in need of special protection.

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

4.1 The State party submitted observations regarding Communications Nos. 1917/2009, 1918/2009 and 1925/2009 on 13 April 2010 and 27 April 2011. It submitted observations regarding Communication No. 1953/2010 on 12 April 2011, 21 June 2011 and 11 August 2011. These observations are overlapping to a large extent and may be summarized as follows.

4.2 As regards the general framework, the State party submits that a lot of effort has been made and a lot of success achieved in the quest to determine the whereabouts or fate of all missing persons. During the war, nearly 32,000 people went missing, of which more than 21,000 have already been identified. The Missing Persons Institute and, within that Institute, the Central Records, have been set up pursuant to the Law on Missing Persons 2004; the third State agency envisaged by that Law, the Fund for Support to the Families of Missing Persons, has not yet been established. Furthermore, the criminal legislation has been amended and war crimes chambers have been set up within the State Court with the aim of dealing more efficiently with enforced disappearances and other war crimes cases. In view of the large number of war crime cases (more than 1,700 cases against more than 9,000 suspects), the National War Crimes Strategy was adopted in 2008, one of its objectives being to process priority cases by the end of 2015 and other war crimes cases by the end of 2023.

4.3 As regards the authors' situation, the State party submits that VRS soldiers took the authors' missing relatives and 23 other persons from the Planjina Kuća internment camp to an unknown location on or about 16 June 1992. From that group, the bodies of two persons were found in the Bosna River during the war. They were first buried in unmarked graves in Visoko and Zenica, and then subsequently exhumed and identified as the bodies of the late Enes Alić and Rešad Dević. In view of the fact that a number of other bodies were found in the Bosna River and were interred in unmarked graves in Visoko and Zenica during the war, the authorities requested the International Commission on Missing Persons<sup>14</sup> to carry out a "target identification" (that is, to compare the DNA samples from all such bodies with the DNA samples of the relatives of the remaining 26 missing persons). However, there was no match for any of those 26 persons. The State party also submits that 99 individual, collective and mass graves with remains of 155 missing persons have been discovered in the municipality of Vogošća and the adjacent municipality of Centar; 132 of them have been identified. The DNA samples from the remaining 23 unidentified bodies have been compared with the authors' DNA samples, again to no avail. It would appear from the documents submitted by the State party that the Association of the Families of Missing Persons from the Municipality of Vogošća, headed by one of the authors, has been in contact with the Missing Persons Institute on a regular basis. It would further appear that a memorial for all missing persons from the municipality of Vogošća,

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<sup>14</sup> The International Commission on Missing Persons was established at the initiative of United States President Clinton in 1996. It is currently headquartered in Sarajevo. In addition to its work in the former Yugoslavia, the Commission is now actively involved in helping Governments and other institutions in various parts of the world address social and political issues related to missing persons and establish effective identification systems in the wake of conflict or natural disaster.

including the authors' missing relatives, has been erected and that the day of their disappearance is commemorated every year.

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

5.1 The authors of Communications No. 1917/2009, 1918/2009 and 1925/2009 submitted their comments on 8 July 2010 and 23 May 2011. As for the authors of Communication No. 1953/2010, they submitted their comments on 23 May 2011, 24 August 2011 and 13 September 2011. Those comments are overlapping to a large extent and may be summarized as follows.

5.2 The authors reiterate that the responsibility to clarify the fate of the missing persons lies with the State party. With regard to the State party's submission that to date, conditions for beginning the work of the Fund for Support to the Families of Missing Persons have not yet been created or do not conform the text of the Agreement (see paragraph 4.2 above), the authors' response is that the Constitutional Court of Bosnia and Herzegovina delivered a number of decisions concerning cases of relatives of missing persons, including the authors, whereby it found a violation of articles 3 and 8 of the European Convention on Human Rights because of the lack of information about the destiny of their missing loved ones. In the mentioned decisions, the Constitutional Court did not pronounce on the issue of compensation, as it considered the latter to be covered by the provisions of the Law on Missing Persons. Unfortunately, as confirmed by the State party, to date the provisions referred to above remain a dead letter and, consequently, the Constitutional Court's rulings remain unimplemented. In any event, the establishment of the Fund will not replace appropriate compensation as, in the authors' opinion, the Fund has been conceived to be a measure of social welfare which is different from compensation for human rights violations. The authors add that reparations are not only financial in nature but include compensation, restitution, rehabilitation, satisfaction and guarantees of non-repetition. Reparations should take into account the gender perspective, considering that most relatives of missing persons are women.

5.3 In its rulings, the Constitutional Court ordered that all accessible and available information on missing relatives be transmitted to the authors no later than 30 days from the date of receipt of the rulings. At the time of the authors' comments, this information had not yet been provided. The authors consider that those responsible for not implementing the rulings of the Constitutional Court should be prosecuted in conformity with the law of Bosnia and Herzegovina.<sup>15</sup>

5.4 One of the authors of Communication No. 1925/2009, Mirha Kozica, adds that on 29 March 2010, she obtained from the Municipal Court of Sarajevo a decision declaring her son dead. Being over 80 years old and in a precarious situation, she explains that she was forced to obtain such a decision in order to maintain her monthly pension. The date of death was fixed randomly and contradicts testimonies of the eyewitnesses who had last seen her son alive. In spite of the fact that the date of death was randomly set, the authors of Communication No. 1925/2009 still do not know with certainty that their missing relative is dead and consider the death certificate to be an extreme psychological burden. The authors recall the Committee's view that obliging families of disappeared persons to have the family member declared dead in order to be eligible for compensation raises issues under articles 2, 6 and 7 of the Covenant.<sup>16</sup>

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<sup>15</sup> The authors quote the WGEID press release of 21 June 2010 on the visit to Bosnia and Herzegovina.

<sup>16</sup> The authors refer to the Committee's concluding observations on Algeria, CCPR/C/DZA/CO/3, 12 December 2007, para. 13.

5.5 The authors note the State party's submission that target identification was requested from the International Commission on Missing Persons in the areas where mortal remains could be found and potential identification could be carried out. They stress, however, that so far, they have not been contacted by the personnel of the Regional Office of Istočno Sarajevo and the Field Office in Sarajevo. The authors are convinced that they would be in a position to provide the Commission with information that may be useful to determining the location of the missing persons. Moreover, to their knowledge, none of the eyewitnesses who last saw the missing relatives alive have been heard by the relevant authorities. The authors further note that it is with the State party's observations to the Committee that they have learnt that missing persons who could potentially include their relatives could indeed be located in the areas mentioned (see paragraph 4.3 above). They consider that this information should have been provided to them directly and promptly.

5.6 In the specific case of Communication No. 1953/2010, the authors contend that six years after their filing of the original complaint for enforced disappearance with the police, the authors had still received no feedback on whether an investigation was being carried out and whether their case had been given a specific number. However, on 29 April 2011, Ema Čekić received a reply from the Cantonal Prosecutor's Office stating that, after conducting necessary verifications, a case had been filed against Radosavljević Drago *et al.* for war crimes against civilians in accordance with article 142 of the Criminal Code of the Socialist Federal Republic of Yugoslavia. On 1 March 2011, a prosecutor was assigned to this case. While welcoming such developments, the authors raised some concerns at the fact that the prosecutor intends to prosecute the alleged suspects under the Criminal Code of the Socialist Federal Republic of Yugoslavia and not the 2003 Criminal Code of Bosnia and Herzegovina.<sup>17</sup> The authors note that this important piece of information had not been transmitted by the State party in its observations on admissibility and merits. Without taking the initiative to seek information from the authorities directly, the authors would have been remained ignorant of the developments in the investigations.

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

6.1 On 17 August (regarding Communications No. 1917/2009, 1918/2009 and 1925/2009) and on 19 August 2011 and 12 September 2011 (regarding Communication No. 1953/2010), in reply to the authors' comments, the State party provided further information related to the criminal investigations under way. It stated that the Prosecutor's Office of Bosnia and Herzegovina (the Special Department for War Crimes) is conducting an investigation on a number of persons accused of taking part in planning and organizing the enforced relocation of thousands of non-Serb civilians; forming, organizing and operating camps and prisons in the territory of municipalities of Hadžići, Vogošća and Ilidža in which they imprisoned non-Serb civilians; directly taking part in the interrogation of detainees; deciding on the length of their captivity; and categorizing the detained civilians, thereby deciding their fate.

6.2 The suspects, as former managers and responsible personnel in correctional institutions on the territory of Republika Srpska under the direct command of the Minister of Justice, are charged with killing, torturing, and inflicting mental abuse, forced labour and enforced disappearance of non-Serb civilians who were arbitrarily kept in the institutions mentioned during the period of April to December 1992. In the period between 1992 and 1994, during the conflict between the Army of Republika Srpska and the army of Bosnia and Herzegovina, Serbian police and paramilitary forces launched attacks against non-Serb civilians and committed serious human rights violations.

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<sup>17</sup> The authors do not elaborate further on this issue.

6.3 The State party contends that the Prosecutor's Office of Bosnia and Herzegovina is currently taking the necessary investigative actions, including steps to locate the whereabouts of mortal remains of the missing persons, hearing witnesses, collecting physical evidence and determining facts that will prove the crimes and criminal liability of suspects. The enforced disappearance of all of the authors' relatives is in the stage of "active investigation" and has been registered under the numbers KTRZ 55/06 and KTRZ 42/05. Their cases are considered a high priority under the National War Crimes Strategy and should accordingly be concluded by the end of 2015.

6.4 In reply to the authors' contention regarding the hearing of witnesses, the State party notes that these witnesses have been heard by the police but unfortunately, not a single witness who was at that time confined in the Planjina Kuća camp had any knowledge about the fate of the inmates, including the authors' relatives, once the latter were brought to an unknown location.

6.5 As for the alleged perpetrators, the State party contends that among the suspects, some such as the guards and camp administrators have not yet been located by the prosecution. As for the high-ranking commanders, the Missing Persons Institute has not made any contacts with them as the task of arresting and interrogating war criminals is not a responsibility of those offices but of other state agencies and institutions.

6.6 The State party further contends that the families of all missing persons in Bosnia and Herzegovina, through the media or personal contact with the investigators and the management of the Missing Persons Institute, are able to obtain information relating to the fate of their relatives. The State party is in direct contact with the Associations of the Families of Missing Persons from the Municipality of Vogošća and the cooperation between this organization and the authorities is high and constant.

#### **Further comments from the authors**

7.1 On 9 September 2011 (regarding Communications Nos. 1917/2009, 1918/2009 and 1925/2009), the authors reiterated their previous comments on the State party's obligation to investigate and added that one of the persons running the concentration camp in Vogošća at the time, Branki Vlaco, had been arrested in Montenegro and should be extradited to Bosnia and Herzegovina. It is the authors' view that he could greatly contribute to the investigation and thereby clarify the fate and whereabouts of the authors' relatives. This information could also be useful for the Missing Persons Institute in establishing the potential location of the mortal remains of those who went missing in Vogošća.

7.2 On 12 October 2011, the authors of Communication No. 1953/2010 expressed their appreciation for the fact that at the beginning of September 2011, Ema Čekić had been invited to meet with the Cantonal Prosecutor in order to give a statement on the events which occurred in Vogošća in June 1992. On 15 September 2011, she gave a statement indicating the details of the event and the identity of potential witnesses. The authors are persuaded that the prosecutor taking such a step is intimately linked to the authors' submission of their complaint to the Committee. While this should be considered a positive development, it is only the first step of a long-standing procedure involving the framing of charges, arrest, judgement and potential sentencing of those responsible. In view of the fact that the events took place more than 19 years ago,<sup>18</sup> the requirements of promptness and thoroughness of the investigation of gross human rights violations have not been met by the State party.

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<sup>18</sup> Almost 21 years at the time of adoption of the current Views.

## 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, 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 communications and that the authors' allegations have been sufficiently substantiated for the purposes of admissibility. All admissibility criteria having been met, the Committee declares the communications admissible and proceeds to their examination on the merits.

### *Consideration of merits*

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

9.2 The authors, in the present communications, claim that their relatives have been victims of enforced disappearance since their illegal arrest on 16 June 1992 and that, despite their numerous efforts, no prompt, impartial, thorough and independent investigation has been carried out to clarify the victims' fate and whereabouts and to bring the perpetrators to justice. In this respect, the Committee recalls its General Comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, according to which a failure by a State party to investigate allegations of violations and a failure by a State party 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 is directly responsible for the enforced disappearance of their relatives.

9.4 The Committee takes note of the State party's contention that it has made considerable efforts at the general level and in this particular case in order to establish the fate or whereabouts of the authors' missing relatives and to bring those responsible to justice. Notably, a domestic tribunal has established that authorities are responsible for the disappearance of the authors' relatives (see paragraph 2.7 above); domestic mechanisms have been set up to deal professionally, efficiently and without discrimination with enforced disappearances and other war crimes cases (see paragraph 4.2 above); DNA samples from a number of unidentified bodies have been compared with the authors' DNA samples; a criminal investigation into the disappearance of the authors' relatives has been opened; a memorial for all missing persons from the municipality of Vogošća, including the authors' missing relatives, has been erected; and the day of their disappearance is commemorated every year (see paragraph 4.3 above).

9.5 The Committee considers that the obligation to investigate allegations of enforced disappearances and to bring the culprits 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>19</sup> Therefore, while acknowledging the gravity of the disappearances and the suffering of the authors because the fate or whereabouts of their missing relatives has not yet been clarified and the culprits have not yet been brought to justice, this in itself is not sufficient to find a breach of article 2, paragraph 3 of the Covenant in the particular circumstances of this communication.

9.6 That being said, the authors also claim that they have learned about certain important steps taken by the authorities in their case, such as the fact that target identification of mortal remains was carried out in locations belonging to Vogošća and neighbouring municipalities, only during the proceedings before the Committee (see paragraphs 4.3 and 5.5 above). The State party does not refute that claim. The Committee considers that information on the investigation of enforced disappearances must be made promptly accessible to the families. The Committee further notes that the social allowance provided to the authors depends upon their acceptance to recognize their missing relatives as dead. The Committee considers that for a State which is investigating disappearances conducted on its territory 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, is a breach of article 2, paragraph 3, read in conjunction with articles 6, 7 and 9 in that it makes the availability of compensation dependent on the family's willingness to have the family member declared dead.

9.7 On all those grounds, the Committee finds a breach of article 2, paragraph 3, of the Covenant, read in conjunction with articles 6, 7 and 9 with regard to the authors and their disappeared relatives.

9.8 The Committee further notes the additional allegations submitted by Alma Čardaković and Samir Čekić, who in 1992 were minors aged 14 years old and 13 years old respectively when they were detained and ill-treated and witnessed the enforced disappearance of their missing relatives. The Committee notes that the State party has not contradicted those allegations. The Committee recalls in this regard its General Comment No. 17 (1989), according to which the implementation of article 24 entails the adoption of special measures to protect children, in addition to the measures that States are required to take under article 2 to ensure that everyone enjoys the rights provided for in the Covenant. In the present case, the State party has not taken the two authors' status as minors into account to offer them special protection. The Committee therefore finds that the State party has also violated the rights of Alma Čardaković and Samir Čekić under article 24, paragraph 1, of the Covenant as minors in need of special protection.

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

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 facts before it reveal a violation by Bosnia and Herzegovina of article 2, paragraph 3, of the

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<sup>19</sup> See WGEID, General Comment on the Right to the Truth in Relation to Enforced Disappearances, paragraph 5. The relevant part of that paragraph reads as follows: "There is an absolute obligation to take all the necessary steps to find the person, but there is no absolute obligation of result. Indeed, in certain cases, clarification is difficult or impossible to attain, for instance when the body, for various reasons, cannot be found. A person may have been summarily executed, but the remains cannot be found because the person who buried the body is no longer alive, and nobody else has information on the person's fate. The State still has an obligation to investigate until it can determine by presumption the fate or whereabouts of the person." See also, *Palić v. Bosnia and Herzegovina*, Judgement of 15 February 2011, Application No. 4704/04, European Court of Human Rights, paragraphs 65 and 70.

Covenant, read in conjunction with articles 6, 7 and 9 of the Covenant with regard to all of the authors and their disappeared relatives; and also a violation of article 24, paragraph 1 of the Covenant with regard to Alma Čardaković and Samir Čekić.

11. In accordance with article 2, paragraph 3, of the Covenant, the State party is under an obligation to provide the authors with an effective remedy, including (a) continuing its efforts to establish the fate or whereabouts of their relatives, as required by the Law on Missing Persons 2004; (b) continuing its efforts to bring to justice those responsible for their disappearance and to do so by the end of 2015, as required by the National War Crimes Strategy; (c) abolishing the obligation for family members to declare their missing relatives dead to benefit from social allowances or any other forms of compensation; (d) and 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.

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.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

## Appendix

### **Individual opinion of Committee member Fabián Salvioli (partly dissenting)**

1. I generally concur with the Committee's decision in the case of *Prutina et al. v. Bosnia and Herzegovina* (Communications Nos. 1917/2009, 1918/2009, 1925/2009 and 1953/2010), although I regret to say that I disagree with the considerations set forth in paragraphs 9.5 and 9.6 of the Committee's Views and the legal consequences thereof. I must therefore clearly state my position in respect of two basic issues: first, the legal nature of the obligation to investigate enforced disappearance and second, the Committee's assessment of the evidence which led it to its conclusions, since in the present case the Committee ought to have found that there had been an independent violation of article 7 of the International Covenant on Civil and Political Rights.

#### **I. The legal nature of the obligation to investigate enforced disappearances**

2. In the joint dissenting opinion delivered in the case of *Cifuentes Elgueta v. Chile* (Communication No. 1536/2006), I explained my view with regard to the scope of the obligations relating to enforced disappearance, the latter's legal treatment in the International Covenant on Civil and Political Rights, the nature of the obligation under article 2.3 of the Covenant – which entails obligations of means and result for the States parties – and the approach to the right to truth as part of the progressive development of the protection of human rights. I refer to these arguments to avoid repeating them.<sup>1</sup>

3. When a person is subjected to enforced disappearance, his or her family suffers particular anguish on account of the uncertainty of what has happened to that person. This particular situation (regardless of other factors) ends only once the fate and whereabouts of the disappeared person are known. Thus, while the duty to investigate human rights violations and to bring their perpetrators to justice is an obligation of means, in the case of enforced disappearance the State has a duty towards the victim's family members to fully establish his or her whereabouts (or those of his or her mortal remains if the person has died); to put it more plainly, *there is an obligation of result in such cases*, otherwise the cruel and inhuman treatment of the disappeared person's family continues and, for this reason, the family also becomes a victim of a breach of article 7 of the International Covenant on Civil and Political Rights.<sup>2</sup>

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<sup>1</sup> Human Rights Committee, *Cifuentes Elgueta v. Chile*, Communication No. 1536/2006, decision of 28 July 2009, individual opinion of Committee members Helen Keller and Fabián Salvioli (dissenting), para. 31.

<sup>2</sup> On the prohibition of torture and cruel, inhuman or degrading treatment.

## II. Failure to find an independent violation of article 7 of the Covenant in the case of *Prutina et al. v. Bosnia and Herzegovina*: inappropriate application by the Human Rights Committee of criteria for assessing evidence

4. In the present case, it has been shown that Mihra Kozica was obliged to request a death certificate for her disappeared son in order to maintain her monthly pension. The author alleges that this represents an extreme psychological burden for her.<sup>3</sup> The State has not refuted these facts in any of its submissions; therefore, the Committee has deemed them valid.

5. From a legal standpoint, the Committee found a breach of article 2, paragraph 3, read in conjunction with articles 6, 7 and 9. In other words, the Committee concluded that there had been a violation of the right to obtain reparation for human rights violations.

6. In fact, however, there is a more flagrant and obvious violation: the requirement by the State that the relative of a disappeared person must apply for a death certificate in order to obtain a benefit or compensation has an unacceptable consequence, in that *it obliges that person to recognize the death of his or her relative, even though that person's fate is uncertain*. This constitutes cruel and inhuman treatment within the meaning of article 7 of the International Covenant on Civil and Political Rights.

7. It is unclear why the Committee failed to comment on the issue, even though the petitioner's allegations were fully substantiated and not refuted by the State. There is no logical answer to this question.

8. The Human Rights Committee is not a civil law body that rules on the legal claims presented by the parties. International human rights bodies must reach a decision and apply the provisions of the corresponding instrument solely on the basis of the *proven facts* in the communication (in this case, the Committee must interpret and apply the provisions of the International Covenant on Civil and Political Rights).

9. The authors describe the facts and the State has the possibility to refute them and to draw attention to other facts. Once the facts have been proven, the parties' legal approaches are merely indicative and cannot restrict or condition the work of the Human Rights Committee.

10. Its present vague and imprecise manner of proceeding results in incongruous decisions, such as in the instant case of *Prutina et al. v. Bosnia and Herzegovina*, in which the Committee has not been able to pinpoint the direct violation of article 7, to the detriment of the authors.

11. Ever since I joined the Committee, I have maintained that it has inexplicably restricted its own competence to find a violation of the Covenant in the absence of a specific legal claim by the parties. Whenever the facts disclosed by the parties clearly establish such a violation, the Committee can and must – by virtue of the principle of *iura novit curia* – document the violation in proper legal form. The legal basis for this position and the reason why neither the States nor the complainant will be left without a defence may be found in my partially dissenting opinion in the case of *Anura Weerawansa v. Sri Lanka*, to which I refer in order to avoid repeating.<sup>4</sup>

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<sup>3</sup> See paragraph 5.4 of the Views of the Committee in this case.

<sup>4</sup> Human Rights Committee, *Anura Weerawansa v. Sri Lanka*, Communication No. 1406/2005, Views of 17 March 2009, individual opinion by Committee member Mr. Fabián Salvioli (partially dissenting), paras. 3–5.

12. Human rights bodies constantly apply the principle of *iura novit curia*, as do international courts such as the European Court of Human Rights<sup>5</sup> and the Inter-American Court of Human Rights,<sup>6</sup> and this is also standard practice in quasi-judicial human rights bodies (the Inter-American Commission on Human Rights, the African Commission on Human and Peoples' Rights and the former European Commission of Human Rights).

13. The Human Rights Committee has itself on occasion applied this principle, although it has not mentioned it explicitly in its Views. In recent years, there have been various examples of the Committee's correct application of the provisions of the Covenant, on the basis of the evidence, rather than on that of legal arguments or the specific articles cited by the parties.<sup>7</sup>

14. Unfortunately, the Committee did not do so in the present case of *Prutina et al. v. Bosnia and Herzegovina*. Non-application of the principle of *iura novit curia* produced unreasonable results. By inexplicably restricting its own competence, the Committee failed to conclude that there had been an independent violation of article 7 of the Covenant, based on proven facts as adduced by the petitioner and not refuted by the State.

15. In its Views on the case of *Prutina et al. v. Bosnia and Herzegovina*, the Committee should have stated that *the requirement by the State that the relative of a disappeared person must apply for a death certificate in order to obtain a benefit or compensation constitutes inhuman and cruel treatment*. By virtue of this proven fact, there is a violation of article 7 of the International Covenant on Civil and Political Rights.

16. I hope that, in the near future, the Human Rights Committee will be able to discuss the criteria governing the application of the law on individual communications, to ensure that each established violation receives the legal treatment which the victims deserve, which would be more consistent with the object and purpose of the International Covenant on Civil and Political Rights.

[Done in English, French and Spanish, the Spanish text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

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<sup>5</sup> See, for example, *Handyside v. the United Kingdom*, Judgment of 7 December 1976, Application no. 5493/72, European Court of Human Rights, Series A, No. 24, paragraph 41.

<sup>6</sup> *Godínez Cruz case*, Judgment of 20 January 1989, Inter-American Court of Human Rights, Series C, No. 5, para. 172.

<sup>7</sup> See the following Views of the Human Rights Committee: *Anna Koreba v. Belarus*, Communication No. 1390/2005, Views of 25 October 2010; *Olimzhon Eshonov v. Uzbekistan*, Communication No. 1225/2003, Views of 22 July 2010, para. 8.3; *R.M. and S.I. v. Uzbekistan*, Communication No. 1206/2003, Views of 10 March 2010, paras. 6.3 and 9.2 (finding of non-violation); *Munguwambuto Kabwe Mwamba v. Zambia*, Communication No. 1520/2006, Views of 10 March 2010; *Mariano Pimentel et al. v. Philippines*, Communication No. 1320/2004, Views of 19 March 2007, paras. 3 and 8.3; *Willy Wenga Ilombe and Shandwe v. Democratic Republic of the Congo*, Communication No. 1177/2003, Views of 17 March 2006, paras 5.5, 6.5 and 9; *Validzhon Khalilova v. Tajikistan*, Communication No. 973/2001, Views of 30 March 2005, para. 3.7; and *Davlatbibi Shukurova v. Tajikistan*, Communication No. 1044/2002, Views of 17 March 2006, para. 3.

### **Individual opinion by Committee member Victor Rodríguez-Rescia (partly dissenting)**

1. The present opinion concurs with the decision of the Human Rights Committee concerning Communications Nos. 1917/2009, 1918/2009, 1925/2009 and 1953/2010 in respect of the violation of article 2, paragraph 3, of the Covenant, read in conjunction with articles 6, 7 and 9 of the Covenant, with regard to the authors of these communications, for failure to investigate and make reparation following the enforced disappearance of their relatives.

2. However, taking as proven the facts of the Communications regarding the missing persons' families being obliged to produce a death certificate for their relative in order to be eligible for compensation or social allowances (paras. 5.4 and 9.6), I believe that the Committee should also have established a separate violation of article 7 with regard to the authors, in view of the moral and psychological repercussions they suffered at the hands of the State when it obliged them to declare their missing relatives dead in order to claim compensation (monthly pensions). This enforced certification of death amounts to an additional psychological burden and institutional revictimization, as is clearly and painfully illustrated in the description of the facts in paragraph 5.4, in which the author, Mihra Kozica, was obliged by reason of her advanced age to go through this procedure in order to keep her monthly pension, even though the presumed date of death given on her son's death certificate was random and incongruous.

3. It is difficult to understand why, even though these points were raised by the authors – and, what is more, were not contested by the State – the Committee systematically restricts its mandate to find violations of the Covenant, when the authors do not invoke or mention a specific article of the Covenant or – and this is worse – even where the authors do so, as here, but in conjunction with other articles of the Covenant and not separately. In accordance with the principle of *iura novit curia*, the Committee should have followed the normal practice of determining the law to be applied to the undisputed facts of the communication, following the legal adage, “the court knows the law” or “tell me the facts and I will tell you the law”.

4. In the very first communication I considered as a member of this Committee, (*Olechkevitch v. Belarus*, Communication No. 1785/2008), I noted with concern that the principle of *iura novit curia* was not applied by this international treaty body, and I endorsed a concurring opinion along with Fabián Salvioli and Yuval Shany. In that case, the author had not expressly alleged a violation of other Covenant rights, yet in my opinion, a violation of those rights should have been found. My concern is even greater in the present case because the authors did in fact claim a violation of article 7 but, because they did not invoke it independently of other rights, the Committee failed not only to establish a separate violation of article 7 but also to award reparation for the effect on the authors of being obliged to declare their relatives dead in an ongoing situation of enforced disappearance. The removal of the obligation on relatives to obtain a death certificate for their missing relatives in order to receive social allowances or other forms of compensation is not sufficient to redress the moral injury caused by being forced to declare their relatives dead, which, in my opinion, amounted to cruel and inhuman treatment, that is to say a violation of their psychological integrity and therefore a separate violation of article 7 of the Covenant.

5. The Committee should have applied the principle of *iura novit curia* to the Communications concerning Prutina, Zlatarac *et al.* Moreover, the Committee should, in the future, consider applying it as a normal part of its interpretative practice. Not to do so would mean that the authors of an individual communication, whether represented or –

even worse – not represented by counsel, would be required to become experts in the application and interpretation of international human rights law, which would place a burden upon authors that is neither required nor justified by the Covenant. The non-application of the principle of *iura novit curia* could be justified in civil courts, where judges cannot decide *infra petita* or *ultra petita*, but not in human rights treaty bodies, be they national or international, where the discussion of human right violations always favours the individual (the principle of *pro homine*) (Covenant, art. 5). The determination by the decision-making body must rest on the reported and proven facts, not on the arguments of the parties, namely the authors and the respondent State, which may be correct or incorrect, precise or imprecise, or argued in different ways.

6. To oblige the authors of a communication to specify each and every one of the articles of the Covenant they consider to have been violated is to place upon them a burden of argument that is incompatible with their status as victims and petitioners, whether or not they have legal representation. The authors' main obligation is to prove the facts put forward as grounds for the admissibility of the communication, and it is on that basis that the State will exercise its right to a defence – a right that can never be impaired as long as those facts are transmitted to it when it is first notified of the communication. In this way, the respondent State can never be taken by surprise provided that the case is based on facts that have been reported and thoroughly discussed.

7. The principle of *iura novit curia* implies more than an academic exercise in which the Committee considers whether the complainant has shown the legal precision and learning needed to understand how international human rights law applies to their human tragedy – that tragedy being to have suffered human rights violations at the hands of a State that itself ought to have a proper understanding of human rights safeguards for all its people. The procedural obligations of authors are by no means comparable with those of the State in an international case of human rights violations.

8. In the communication under consideration, the facts and claims presented by one of the authors could not be clearer. She states that “she was forced to obtain such decision in order to maintain her monthly pension. The date of death was fixed randomly and contradicts testimonies of eye witnesses who have last seen her son alive.” This should have been sufficient for the Committee to find a violation of article 7 of the Covenant with regard to the author, and thus expand reparations to ensure comprehensive redress for the injury caused by being obliged to make a declaration that is incompatible with the search for relatives or, if they are not found alive, for their remains. The requirement to declare their missing relatives dead in order to obtain compensation for enforced disappearances is a further indignity, on top of the ineffectiveness of the remedies available for investigation of the facts, and constitutes institutional revictimization. By virtue of this fact, then – stated, proven and not refuted by the State party – the Committee should have found a separate violation of article 7 of the Covenant, over and above the violations established in relation to other articles, but on the basis of the facts relating to the failure to investigate and the absence of guarantees of an effective judicial remedy (Covenant, art. 2, para. 3).

#### **Decision on the merits**

9. Consequently, the relevant part of paragraph 9.6 of the Committee's Views should have read: “In the light of the foregoing, the Committee, in accordance with article 5, paragraph 4, of the Optional Protocol to the Covenant, considers that the obligation imposed by the State on the relatives to produce a death certificate for their relative in order to receive the corresponding compensation, while the investigation is still ongoing, is a violation of article 7 of the Covenant.”

**Full reparation and the obligation to prevent repetition**

10. Given the additional impact on the authors of revictimization, insofar as they were formally obliged to declare their missing relatives dead in order to receive compensation for the consequences of the failure to investigate their disappearance, paragraph 11 of the Committee's Views should have been broadened to have an *erga omnes* effect, and the State should have been urged to do away with declarations of this kind, not only in respect of the authors of this communication, but also for the relatives of other missing persons in similar cases of enforced disappearance, as a guarantee that it will not happen again.

[Done in English, French and Spanish, the Spanish text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

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