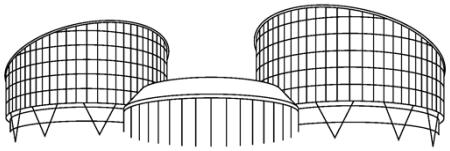

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

DECISION

Application no. 47063/08
Munira MUJKANOVIĆ against Bosnia and Herzegovina
and 5 other applications
(see list appended)

The European Court of Human Rights (Fourth Section), sitting on 3 June 2014 as a Chamber composed of:

Ineta Ziemele, *President,*
Päivi Hirvelä,
George Nicolaou,
Ledi Bianku,
Nona Tsotsoria,
Paul Mahoney,
Krzysztof Wojtyczek, *judges,*

and Fatoş Aracı, *Deputy Section Registrar,*

Faris Vehabović, the judge elected in respect of Bosnia and Herzegovina, was unable to sit in the case (Rule 28). The Government accordingly appointed Nona Tsotsoria, the judge elected in respect of Georgia, to sit in his place (Article 26 § 4 of the Convention and Rule 29).

Having regard to the above applications lodged on 23 September 2008,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,

Having regard to the comments submitted by the Redress Trust and the World Organisation Against Torture,

Having deliberated, decides as follows:

THE FACTS

1. The applicants, Ms Munira Mujkanović, Ms Asima Memić, Mr Vehidin Elezović, Mr Muharem Elezović, Ms Naila Bajrić and Ms Sabiha Huskanović are citizens of Bosnia and Herzegovina who were born in 1964, 1938, 1974, 1943, 1945 and 1965, respectively. They live in

different towns near the city of Prijedor. The applicants were represented by TRIAL (Track Impunity Always), a non-profit organisation based in Geneva. Four of them had been granted legal aid.

2. The Government of Bosnia and Herzegovina ("the Government") were represented by their Deputy Agent, Ms Z. Ibrahimović.

A. The circumstances of the case

3. The facts of the case, as submitted by the parties, may be summarised as follows.

1. Relevant background

4. After its declaration of independence on 6 March 1992, a brutal war started in Bosnia and Herzegovina. It would appear that more than 100,000 people lost their lives and more than 2,000,000 people were displaced in the course of the war. It is estimated that around 30,000 people went missing and that around one quarter of them is still missing. The conflict came to an end on 14 December 1995 when the General Framework Agreement for Peace in Bosnia and Herzegovina entered into force. In accordance with that Agreement, Bosnia and Herzegovina consists of two Entities, the Federation of Bosnia and Herzegovina and the Republika Srpska.

5. In response to atrocities then taking place in Bosnia and Herzegovina, on 25 May 1993 the United Nations Security Council passed Resolution 827 establishing the International Criminal Tribunal for the former Yugoslavia ("the ICTY"), headquartered in The Hague. More than 70 individuals have already been convicted and proceedings are ongoing for 20 accused. In the period from February 1996 until October 2004, local prosecutors in Bosnia and Herzegovina were required to submit case files to the ICTY for review; no person could be arrested on suspicion of war crimes unless the ICTY Office of the Prosecutor had received the case file beforehand and found it to contain credible charges (the "Rules of the Road" procedure). Moreover, the ICTY had primacy over national courts and could take over national investigations and proceedings at any stage in the interest of international justice. As part of the ICTY's completion strategy, in early 2005 war crimes chambers were set up within the Court of Bosnia and Herzegovina ("the State Court") with primacy over other courts in Bosnia and Herzegovina as regards war crimes (for information about that court and its jurisdiction over war crimes cases, see *Maktouf and Damjanović v. Bosnia and Herzegovina* [GC], nos. 2312/08 and 34179/08, §§ 34-40, ECHR 2013). More than 100 persons have been finally convicted by the State Court.

6. Furthermore, the International Commission on Missing Persons ("the ICMP") was established at the initiative of United States President Clinton in 1996. It is currently headquartered in Sarajevo. Reportedly, the ICMP has so far identified by DNA more than 14,000 missing persons in Bosnia and

Herzegovina, whereas local authorities have identified more than 8,000 missing persons by traditional methods. In 2005 the Government of Bosnia and Herzegovina and the ICMP established a Missing Persons Institute, also headquartered in Sarajevo (see paragraph 26 below). It became operational on 1 January 2008.

2. Situation in the Prijedor area in 1992

7. Before the 1992-95 war, the population of the municipality of Prijedor was ethnically mixed: according to a 1991 census, out of a total population of 112,000, 44% were Bosniacs[1], 42.5% Serbs[2], 5.5% Croats[3]; 8% others. On 30 April 1992 the Serbian Democratic Party took control of the city of Prijedor pursuant to a secret plan made in advance (notably, the Instructions for Organisation and Activities of the Organs of the Serb People in Bosnia and Herzegovina in a State of Emergency, adopted by the Main Board of the Serbian Democratic Party on 19 December 1991[4]). Shortly thereafter, ethnic cleansing began. By the end of 1992, there were practically no Bosniacs and Croats left in the municipality of Prijedor (about the situation in the Prijedor area at that time, see the ICTY judgment in the *Stanišić and Župljanin* case, IT-08-91-T, §§ 500-684, 27 March 2013, not yet final).

8. One of the many crimes committed in the context of ethnic cleansing of the Prijedor area was the taking of approximately 150-200 male detainees from Trnopolje camp to the location called *Korićanske stijene* and their killing by Prijedor policemen on 21 August 1992. The men were made to leave the buses and walk towards the gorge where they were told to kneel down. Then the shooting began. The bodies fell into the gorge or were pushed over the edge. Grenades were then thrown into the gorge to make sure no one survived. The incident lasted for approximately half an hour. Fifteen policemen were reported to be involved in the incident. Only twelve persons survived the massacre, mainly by hiding under the corpses of others (ibid., §§ 641-42; and the ICTY judgment in the *Mrđa* case, IT-02-59-S, § 10, 31 March 2004). Mr Fahrudin Mujkanović (the husband of Ms Munira Mujkanović), Mr Asmir Memić (the son of Ms Asima Memić),

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[1] Bosniacs were known as Muslims until the 1992-95 war. The term "Bosniacs" should not be confused with the term "Bosnians" which is commonly used to denote citizens of Bosnia and Herzegovina irrespective of their ethnic origin.

[2] Serbs are an ethnic group whose members may be natives of Serbia or of other former component republics of the SFRY including Bosnia and Herzegovina. The term "Serb" is normally used to refer to members of the ethnic group, regardless of their nationality; it is not to be confused with the term "Serbian", which normally refers to nationals of Serbia.

[3] Croats are an ethnic group whose members may be natives of Croatia or of other former component republics of the SFRY including Bosnia and Herzegovina. The term "Croat" is normally used to refer to members of the ethnic group, regardless of their nationality; it is not to be confused with the term "Croatian", which normally refers to nationals of Croatia.

[4] *Uputstvo o organizovanju i djelovanju organa srpskog naroda u Bosni i Hercegovini u vanrednim okolnostima*; this document was submitted by the respondent Government.

Mr Fahrudin Elezović (Mr Vehidin Elezović's father), Messrs Edin Elezović and Emir Elezović (the sons of Mr Muharem Elezović), Messrs Zafir Bajrić and Šerif Bajrić (Ms Naila Bajrić's son and husband), and Mr Zijad Huskanović (Ms Sabiha Huskanović's husband) were killed in that incident (see the ICTY judgment in the *Stanišić and Župljanin* case, cited above, §§ 1949-50, 2033-34, 2036-37, 2137-38, 2278-79, 2290-92; and the State Court's judgment in the *Ivanković* case, X-KR-08/549-1, p. 2, 2 July 2009).

3. Criminal proceedings

(a) ICTY proceedings

9. On 24 July 2003 Mr Darko Mrđa pleaded guilty before the ICTY to having participated in the killing at *Korićanske stijene*. He was sentenced to 17 years' imprisonment.

10. On 31 July 2003 the ICTY convicted Mr Milomir Stakić, the leading figure in the war-time municipality of Prijedor, for, among other crimes, the killing at *Korićanske stijene* and sentenced him to life imprisonment. On 22 March 2006 an Appeals Chamber upheld the convictions against Mr Stakić and rendered its judgment, sentencing him to 40 years' imprisonment.

11. On 27 March 2013 a Trial Chamber of the ICTY convicted Mr Mićo Stanišić and Mr Stojan Župljanin, key figures in the war-time police of the Republika Srpska, of the participation in a joint criminal enterprise to remove Bosniacs and Croats from the territory of the Republika Srpska, a natural and foreseeable consequence of which was, among other crimes, the killing at *Korićanske stijene* (the third category of joint criminal enterprise –a definition of this form of liability is set out in the ICTY judgment in the *Tadić* case, IT-94-1-A, § 204, 15 July 1999). Each of them was sentenced to 22 years' imprisonment. The case is currently pending before an Appeals Chamber of the ICTY.

12. A case against Mr Radovan Karadžić, the war-time President of the Republika Srpska, is also currently pending before the ICTY. He is charged with, among other crimes, the participation in a joint criminal enterprise to permanently remove Bosniacs and Croats from the Republika Srpska, a natural and foreseeable consequence of which was the killing at *Korićanske stijene* (the third category of joint criminal enterprise).

(b) Domestic proceedings

13. As indicated in paragraph 5 above, war crimes chambers were set up within the State Court in 2005. Shortly thereafter, the Prosecutor of Bosnia and Herzegovina ("the State Prosecutor") opened an investigation into the killing at *Korićanske stijene*. In the next three years, more than 150 persons were questioned. This led to indictments against 13 persons (see

paragraphs 14-15 below). Furthermore, international arrest warrants were issued against two persons who are still on the run, Messrs Draško Krndija and Željko Zec.

14. On 8 January 2009 the State Prosecutor issued an indictment against eight persons for having participated in the killing at *Korićanske stijene* as a crime against humanity (namely, Messrs Damir Ivanković, Gordan Đurić, Ljubiša Četić, Zoran Babić, Milorad Škrbić, Dušan Janković, Željko Stojnić and Milorad Radaković). It entered into force on 12 January 2009. At the arraignment of 13 February 2009, the accused pleaded not guilty. However, on 22 June 2009, 26 August 2009 and 9 March 2010 three of them, Messrs Ivanković, Đurić and Četić, changed their plea to guilty. They were then sentenced to 14, 8 and 13 years' imprisonment, respectively.

15. On 10 July 2009 and 17 September 2009 the State Prosecutor issued indictments against five more individuals for the same crime (Saša Zečević, Radoslav Knežević, Marinko Ljepoja, Petar Čivčić and Branko Topola). They entered into force on 13 July and 18 September 2009, respectively. All the accused pleaded not guilty at their arraignment. The State Court decided to join the cases against those five individuals on 3 November 2009.

16. On 21 December 2010 a Trial Chamber of the State Court found four persons guilty of participation in the killing at *Korićanske stijene* as a crime against humanity (Messrs Zoran Babić, Milorad Škrbić, Dušan Janković and Željko Stojnić) and sentenced them, respectively, to 22, 22, 27 and 15 years' imprisonment. On 25 October 2011 an Appeals Chamber of the State Court quashed that judgment and scheduled a fresh hearing. On 15 February 2013 it convicted those four people of the same offence and sentenced them to 22, 21, 21 and 15 years' imprisonment, respectively. One accused in that case, Mr Milorad Radaković, was acquitted.

17. On 28 June 2012 a Trial Chamber of the State Court found three more persons guilty of that crime (Saša Zečević, Radoslav Knežević and Marinko Ljepoja) and sentenced each of them to 23 years' imprisonment. The other two accused in that case, Petar Čivčić and Branko Topola, were acquitted. An Appeals Chamber of the State Court has recently upheld that judgment.

4. Declarations of presumed death

18. On different dates between 1998 and 2005, the applicants sought and obtained declarations of presumed death with respect to their missing relatives.

5. Identification of mortal remains

19. Four exhumations have so far been carried out at *Korićanske stijene*: May 2003, October 2003, July-August 2009 and April 2013. Ninety victims have been identified by DNA (see the State Court's judgment in the *Zečević*

and Others case, S1 1 K 003365 09 KrI, pp. 88-95, 28 June 2012), including Mr Asmir Memić on the basis of four bones on 23 June 2011 and Mr Zafir Bajrić on the basis of two bones the day later. On 24 June 2011 the ICMP confirmed through DNA tests also that some fragments of bones which had been exhumed at *Korićanske stijene* belonged to either Mr Edin Elezović or Mr Emir Elezović (since they were brothers and did not have children, the available mortal remains were insufficient for definite identification).

20. Around ten burnt bodies were also exhumed (ibid., p. 7). These are impossible to identify.

6. Proceedings before the Constitutional Court of Bosnia and Herzegovina

21. In 2006 all the applicants lodged constitutional appeals alleging that the authorities' reaction to the disappearance of their relatives amounted to a breach of Articles 2, 3, 5, 8 and/or 13 of the Convention.

22. On 16 July 2007 the Constitutional Court decided to join 227 similar cases and rendered a group decision finding a breach of Articles 3 and 8 of the Convention. It ordered the authorities to release any and all information in their custody pertaining to the fate or whereabouts of the missing persons in issue and to ensure that the State agencies envisaged by the Missing Persons Act 2004 (the Missing Persons Institute, Central Records and the Missing Persons Fund) become operational within six months. No compensation was awarded.

23. Under its mandate to examine complaints about non-enforcement of its decisions, on 27 March 2009 the Constitutional Court concluded that the decision of 16 July 2007, mentioned above, was to be considered enforced notwithstanding the fact that some of the State agencies envisaged by the Missing Persons Act 2004 (precisely, the Central Records and the Missing Persons Fund) had not yet become operational. It held that no further action was required from the Constitutional Court as the failure to enforce a similar decision had already been reported to the State Prosecutor (non-enforcement of a final and enforceable decision of the Constitutional Court amounts to a criminal offence; for the relevant law in that regard, see *Bobić v. Bosnia and Herzegovina*, no. 26529/10, §§ 14-15, 3 May 2012).

7. Applicants' attempts to obtain damages from the Republika Srpska

24. On different dates in 2009 and 2010 all of the applicants requested damages from the Republika Srpska for the death of their relatives under the Republika Srpska's general compensation scheme for war damage (for more information about that scheme, see *Čolić and Others v. Bosnia and Herzegovina*, nos. 1218/07 *et al*., § 10, 10 November 2009). Their requests were either rejected as out of time or are still pending. One of the applicants,

Ms Asima Memić, has lodged an appeal with the Constitutional Court of Bosnia and Herzegovina in this connection which is still pending.

B. Relevant domestic law

1. Missing Persons Act 2004

25. The Missing Persons Act 2004 entered into force on 17 November 2004 (Official Gazette of Bosnia and Herzegovina no. 50/04). In accordance with section 3 of the Act, families have the right to know the fate of missing persons (that is, their whereabouts if they are still alive, or the circumstances of death and their place of burial, if they are dead) and to obtain their mortal remains. Under section 4 of the Act, the relevant domestic authorities have the obligation to provide any and all such information in their keeping.

26. Section 7 of that Act provides for the setting up of a Missing Persons Institute. In 2005 the ICMP and the Government of Bosnia and Herzegovina founded the Institute, headquartered in Sarajevo, pursuant to that provision and the Agreement on Assuming the Role of Co-founders of the Missing Persons Institute of Bosnia and Herzegovina (Official Gazette of Bosnia and Herzegovina, International Treaty Series, no. 13/05). It became operational on 1 January 2008. One of the organs of that Institute is an Advisory Board, comprised of six representatives of families of missing persons (see Article 10 of the Agreement mentioned above).

27. In accordance with section 9 of the Act, the status of missing person comes to an end on the date of identification. Therefore, if a missing person is declared dead but the mortal remains have not been found and identified, the process of tracing continues.

28. Pursuant to section 11 of the Act, the families of missing persons are entitled to monthly financial support under some conditions, notably if they were supported by the missing family member until his or her disappearance and if they are still in need of support (in other words, if they are not in paid employment and do not receive welfare benefits beyond 25% of the average salary paid in Bosnia and Herzegovina[1]). Section 15 of the Act provides for the setting up of a Missing Persons Fund for that purpose. However, as the Fund has not yet been established, no payment has been made so far.

29. Families of missing persons are also entitled to, *inter alia*, temporary administration of the property of missing persons, burial of mortal remains at public expense and priority in access to education and employment for the children of missing persons (section 18 of the Act).

30. Section 21 of the Act provides for the setting up of Central Records with the aim of verifying information about missing persons from different sources (government agencies, associations of families of missing persons,

[1] The average salary paid in Bosnia and Herzegovina in 2013 was 423 euros.

the ICMP and the International Committee of the Red Cross) and creating a single database. While Central Records were founded on 3 February 2011, it would appear that the verification process is still ongoing. Once that process is completed, all those recorded as missing will be declared dead (section 27 of the Act), but the tracing process will nevertheless continue (see paragraph 27 above).

2. Declarations of presumed death

31. Despite the fact that the verification process outlined in paragraph 30 above is pending, any person may request that a declaration of presumed death be issued with respect to a missing person (see the Non-Contentious Procedure Act 1998, Official Gazette of the Federation of Bosnia and Herzegovina, nos. 2/98, 39/04, 73/05; the Non-Contentious Procedure Act 2009, Official Gazette of the Republika Srpska, no. 36/09). Pursuant to an amendment to section 69 of the Social Care Act 1999 (Official Gazette of the Federation of Bosnia and Herzegovina no. 39/06), which entered into force in September 2006, relatives of missing persons were required to seek such declarations with respect to their missing relatives by September 2008 if they wished to maintain the social benefits provided by that Act. There is no such an obligation in the legislation of the Republika Srpska where most of the present applicants live (all but Ms Munira Mujkanović).

COMPLAINTS

32. The applicants alleged that there had been no effective investigation into the disappearance and death of their relatives and that the authorities' reactions to their suffering had been lackadaisical. They relied on Articles 2, 3, 5, 8 and 13 of the Convention.

THE LAW

A. Joinder of the applications

33. Given their common factual and legal background, the Court decides that these six applications should be joined pursuant to Rule 42 § 1 of the Rules of Court.

B. Article 2 of the Convention

34. The Government claimed that the Court lacked temporal jurisdiction or that the applications had been lodged out of time because the applicants' relatives had disappeared long before the ratification of the Convention by Bosnia and Herzegovina in 2002 and long before the applications had been lodged with the Court in 2008. Alternatively, they contended that the case was manifestly ill-founded. In the Government's view, the investigation had complied with all the requirements of Article 2.

35. The applicants submitted that the respondent State had failed to fulfil its procedural obligation stemming from Article 2 of the Convention to investigate the disappearance and death of their relatives. They criticised, in particular, the fact that only part of the mortal remains of their relatives had been identified and that not all of those responsible for their relatives' disappearance and death had been brought to justice. They also complained of the lack of transparency and promptness of the investigation. Article 2 on which they relied provides, in so far as relevant, as follows:

> "1. Everyone's right to life shall be protected by law. ..."

36. In view of its conclusion below, the Court considers that it can leave open the question, raised by the Government, as to whether the Court has temporal jurisdiction to deal with this case and whether the applications had been lodged within the six-month time-limit (see, in this connection, *Palić v. Bosnia and Herzegovina*, no. 4704/04, §§ 44-52, 15 February 2011).

37. As to the Government's alternative argument, the Court reiterates that Article 2 of the Convention requires the authorities to conduct an official investigation into an arguable claim that a person who was last seen in their custody subsequently disappeared in a life-threatening context. Where disappearances in life-threatening circumstances are concerned, the procedural obligation to investigate can hardly come to an end on discovery of the body or the presumption of death; this merely casts light on one aspect of the fate of the missing person. An obligation to account for the disappearance and death, and to identify and prosecute any perpetrator of unlawful acts in that connection, will generally remain. According to the Court's settled case-law, the investigation must be independent from all those implicated in the events, must be effective in the sense of being capable of ascertaining the facts and of leading to the identification and punishment of those responsible, must be accessible to the victim's family to the extent necessary to safeguard their legitimate interests and must be carried out with reasonable promptness and expedition (see, among many other authorities, *Kurt v. Turkey*, 25 May 1998, § 124, *Reports of Judgments and Decisions* 1998-III; *Varnava and Others v. Turkey* [GC], nos. 16064/90 *et al*., § 145, ECHR 2009; *Palić*, cited above, § 63; *Association "21 December 1989" and Others v. Romania*, nos. 33810/07 and 18817/08,

§ 97, 24 May 2011; and *Aslakhanova and Others v. Russia*, nos. 2944/06 *et al*., § 121, 18 December 2012).

38. Since the present applicants did not claim, let alone substantiate, that the investigation into the disappearance and death of their missing relatives lacked independence, the Court will turn to the question of its effectiveness. In this regard, it notes that notwithstanding initial delays, the investigation finally led to the identification of bones belonging to Mr Asmir Memić and Mr Zafir Bajrić. The authorities further established that some fragments of bones which had been exhumed at *Korićanske stijene* belonged to either Mr Edin Elezović or Mr Emir Elezović (see paragraph 19 above). In view of the large number of victims of the 1992-95 war in Bosnia and Herzegovina, as well as the circumstances of the crime committed at *Korićanske stijene* (notably, the bodies fell into a deep gorge into which grenades were thrown and some bodies have been burnt – see paragraphs 8 and 20 above), this is in itself a significant achievement. It is unfortunate that the remains of some of the applicants' missing relatives have not yet been identified, but this is not sufficient in itself to find a procedural violation of Article 2. Indeed, as the Court has held on numerous occasions (see *Hugh Jordan v. the United Kingdom*, no. 24746/94, § 107, ECHR 2001-III, and *Palić*, cited above, § 65), the procedural obligation under that Article is not an obligation of result, but of means.

39. The Court further notes that the investigation led to the identification and punishment of ten direct perpetrators by the State Court (see paragraphs 14-17 above). Furthermore, international arrest warrants were issued against two persons, who are still on the run, in connection with this war crime (see paragraph 13 above); one direct perpetrator as well as three organisers of the crime were identified and punished by the ICTY (see paragraphs 9-11 above). It is likely that some of the direct perpetrators have not yet been identified, let alone punished (15 policemen were reported to be involved in the incident – see paragraph 8 above). Nevertheless, it would appear from the case file that there is simply no evidence, beyond rumour, which can be relied upon as identifying other direct perpetrators who are still alive (see, in this regard, *Gürtekin and Others v. Cyprus* (dec.), nos. 60441/13 *et al*., § 20, 11 March 2014). Article 2 of the Convention cannot be interpreted so as to impose a requirement on the authorities to launch a prosecution irrespective of the evidence available. A prosecution, particularly on such a serious charge as involvement in mass unlawful killings, should never be embarked upon lightly as the impact on a defendant who comes under the weight of the criminal justice system is considerable, being held up to public obloquy, with all the attendant repercussions on reputation, private, family and professional life. Given the presumption of innocence enshrined in Article 6 § 2 of the Convention, it can never be assumed that a particular person is so tainted with suspicion that the standard of evidence to be applied is an irrelevance. Rumour and

gossip are a dangerous basis on which to base any steps that can potentially devastate a person's life (ibid., § 27). In light of this, the Court finds that the investigation was effective in the sense of being capable of leading to the identification and punishment of those responsible for the disappearance and death of the applicants' relatives (see *Palić*, cited above, § 65, where the Court held that the investigation was effective, despite the fact that there had not been any convictions).

40. As concerns the applicants' criticisms about the accessibility of the investigation and the existence of sufficient public scrutiny, the Court has already emphasised the importance of the right of victims and their families and heirs to know the truth about the circumstances surrounding events involving a massive violation of rights as fundamental as that of the right to life. However, this aspect of the procedural obligation does not require applicants to have access to police files, or copies of all documents during an ongoing inquiry, or for them to be consulted or informed about every step (*Association "21 December 1989" and Others*, cited above, § 106, and *Gürtekin and Others*, cited above, § 29). It cannot be automatically required that the families be provided with the names of the potential suspects against whom insufficient evidence has been gathered for prosecution. This would lead to the risk that the families and others would assume that the individuals were in fact guilty and to potentially unpleasant repercussions. The Court notes that, in any event, the hearings held in this case were open to the public and that the hearing schedules were easily available on the website of the State Court. Moreover, the applicants have not shown that any of their requests for information has remained unanswered (contrast *Association "21 December 1989" and Others*, cited above, § 102). It is true that the authorities have sometimes resorted to press releases or group meetings with victims and/or their associations, as opposed to individual meetings. However, the Court finds this approach to be reasonable given the large number of war crimes cases pending before domestic courts and the tens of thousands of victims (see paragraph 4 above). In this connection, the Court underlines that the procedural obligation under Article 2 must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities (*Osman v. the United Kingdom*, 28 October 1998, § 116, *Reports* 1998-VIII, and *Palić*, cited above, § 70).

41. Insofar as the applicants make reference to a lack of expedition and to the lapse of time since their relatives disappeared, the Court will take into consideration merely the period since 2005 when the domestic legal system became capable of dealing with disappearance cases (see *Palić*, cited above, § 70, about the situation in post-war Bosnia and Herzegovina, notably in the first ten years following the war; see also paragraph 5 above concerning the relationship between domestic authorities and the ICTY during that period). It should be noted, in this connection, that the standard of expedition in such historical cases is much different from the standard applicable in recent

incidents where time is often of the essence in preserving vital evidence at a scene and questioning witnesses while their memories are fresh and detailed (see *Varnava and Others*, cited above, §§ 191-92, and *Gürtekin and Others*, cited above, §§ 21-22). In this connection, the Court notes that there has been no substantial period of inactivity post-2005 on the part of local authorities in the present case. During that period, the domestic authorities questioned more than 150 persons, issued indictments against 13 persons and finally convicted ten of them. That being the case, the criminal investigation can be considered to have been conducted with reasonable promptness and expedition.

42. The Court finds that, taking into account the special circumstances prevailing in Bosnia and Herzegovina up until 2005 and the large number of war crimes cases pending before local courts, the investigation has not been shown to have infringed the minimum standard required under Article 2 (see *Palić*, cited above, § 71, and *Gürtekin and Others*, cited above, § 32).

43. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

C. Article 3 of the Convention

44. The applicants raised two separate complaints under Article 3. First, they complained on their own behalf about the authorities' reactions to their suffering. Further, they complained on behalf of their missing relatives that disappearance amounted, as such, to a treatment contrary to Article 3 of the Convention and that the respondent State had breached the procedural limb of that Article for the reasons set out in paragraph 35 above. Article 3 reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

1. Complaint on behalf of the applicants themselves

45. The Government maintained that the authorities were making efforts to locate, exhume and identify the mortal remains of all missing persons and to bring to justice all those responsible for serious violations of international humanitarian law committed during the 1992-95 war. They underlined that some mortal remains of several of the applicants' relatives had already been identified (see paragraph 19 above). In addition, many persons had already been punished by the ICTY and the State Court for their participation in the killing at *Korićanske stijene* (see paragraphs 9-17 above).

46. The applicants responded that they were suffering from, among other conditions, insomnia, depression and post-traumatic stress disorder because of the authorities' indifference towards their concerns and anguish. Notably, they disapproved the fact that relatives of missing people had been required

since September 2006 to obtain declarations of presumed death with respect to their missing relatives in order to maintain social benefits (see paragraph 31 above), and the fact that the Missing Persons Fund had not yet been set up (see paragraph 28 above).

47. The Redress Trust and the World Organisation Against Torture, in their third-party submissions, set out the current state of international law on the nature of the link between enforced disappearance and the prohibition of torture and other ill-treatment. In this connection, they relied on, *inter alia*, a number of the Court's judgments, such as *Varnava and Others*, cited above; *Palić*, cited above; and *Aslakhanova and Others*, cited above.

48. The main principles in this connection were restated in *Varnava and Others*, cited above, § 200; *Palić*, cited above, § 74; and *Janowiec and Others v. Russia* [GC], nos. 55508/07 and 29520/09, §§ 178-79, ECHR 2013.

49. In the present case, the Court has found in paragraphs 38-41 above that the authorities have not failed in any duty of reasonable expedition or of notification of the families in accordance with Article 2 of the Convention. As to the applicants' criticism of the 2006 amendment to the Social Care Act 1999 and of the failure to set up the Missing Persons Fund, the Court notes that the applicants have failed to demonstrate that any of those factors might disclose a basis for finding a violation of Article 3 of the Convention in this specific case. All of the applicants obtained declarations of presumed death with respect to their next-of-kin prior to the entry into force of the amendment in question (see paragraph 18 above). Accordingly, even assuming that it could raise an issue under Article 3 of the Convention, their argument that relatives of missing persons might have felt pressured by that amendment to declare their missing relatives dead does not concern the present applicants. Similarly, while it is true that the payment of financial support to relatives of missing persons has not begun because the Missing Persons Fund has not been set up, the applicants have not demonstrated that they would be eligible for such support (the eligibility criteria are set out in paragraph 28 above).

50. Accordingly, while acknowledging the gravity of the phenomenon of disappearances and the suffering of the applicants, the Court finds that, in the circumstances of this case, the authorities' reactions cannot be regarded as inhuman or degrading treatment. This complaint is thus manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

2. Complaint on behalf of the applicants' missing relatives

51. The Court observes that this complaint was not included in the initial applications, but was raised for the first time in the applicants' observations of March 2013. It was thus not raised early enough to allow an exchange of observations between the parties (see *Al Hanchi v. Bosnia and Herzegovina*,

no. 48205/09, § 55, 15 November 2011, and the authorities cited therein). In any event, the Court does not have to decide whether it is appropriate to take this matter up separately at this stage as the complaint is in any event manifestly ill-founded for the reasons given in paragraphs 38-41 above and must be rejected pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

D. Articles 5, 8 and 13 of the Convention

52. Lastly, the applicants alleged a breach of Articles 5, 8 and 13 relying in essence on the considerations underlying their other complaints under the Convention.

Article 5, in so far as relevant, provides as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> (a) the lawful detention of a person after conviction by a competent court;
>
> (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
>
> ...
>
> 2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.
>
> 3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.
>
> 4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.
>
> 5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

Article 8, in so far as relevant, provides:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence. …"

Article 13 reads as follows:

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

53. Having examined the parties' submissions and having regard to its findings regarding Articles 2 and 3 above, the Court considers that the facts complained of do not disclose any appearance of a violation of Articles 5, 8 and/or 13 of the Convention. It follows that this part of the applications is also manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Decides to join the applications;

Declares the applications inadmissible.

Fatoş Aracı	Ineta Ziemele
Deputy Registrar	President

APPENDIX

No	Application No	Applicant
1.	47063/08	**Munira MUJKANOVIĆ**
2.	47067/08	**Asima MEMIĆ**
3.	47091/08	**Vehidin ELEZOVIĆ**
4.	47094/08	**Muharem ELEZOVIĆ**
5.	47096/08	**Naila BAJRIĆ**
6.	47099/08	**Sabiha HUSKANOVIĆ**