



# International Covenant on Civil and Political Rights

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## Human Rights Committee

### Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2206/2012\*, \*\*

<i>Communication submitted by:</i>	Vide Lale and Milojka Blagojević (represented by TRIAL: Track Impunity Always)
<i>Alleged victim:</i>	The authors and their respective mothers, Anđa Lale and Staka Popović
<i>State Party:</i>	Bosnia and Herzegovina
<i>Date of communication:</i>	26 September 2012 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 20 November 2012 (not issued in a document form)
<i>Date of adoption of Views:</i>	17 March 2017
<i>Subject matter:</i>	Arbitrary killing, disappearance and effective remedy
<i>Procedural issues:</i>	None
<i>Substantive issues:</i>	Right to life; cruel, inhuman or degrading treatment or punishment; right to privacy; right to family life; right to an effective remedy
<i>Articles of the Covenant:</i>	2 (3); 6; 7; 17; and 23 (1)
<i>Article of the Optional Protocol:</i>	2

1. The authors of the communication are Vide Lale and Milojka Blagojević, nationals of Bosnia and Herzegovina, born on 3 June 1949 and 1 July 1949, respectively. Mr. Lale submits the communication on his behalf and on behalf of his mother, Anđa Lale, a national of Bosnia and Herzegovina, born on 7 July 1907. Mrs. Blagojević submits the communication on her own behalf and on behalf of her mother, Staka Popović, a national of Bosnia and Herzegovina born on 26 January 1919. The authors allege that Mrs. Lale and Mrs. Popović were victims of arbitrary execution in 1992 and that their remains were

\* Adopted by the Committee at its 119th session (6 March-29 March 2017).

\*\* The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Sarah Cleveland, Ahmed Amin Fathalla, Olivier de Frouville, Christof Heyns, Yuji Iwasawa, Bamariam Koita, Marcia Kran, Duncan Laki Muhumuza, Mauro Politi, José Manuel Santos Pais, Anja Seibert-Fohr, Yuval Shany and Margo Waterval.



subsequently removed and concealed. As a consequence, the fate and whereabouts of Mrs. Lale and Mrs. Popović have remained unknown since. The authors claim a violation by Bosnia and Herzegovina of article 6 read in conjunction with article 2 (3) of the Covenant in respect of Mrs. Lale and Mrs. Popović. They also claim that they are themselves victims of a violation of their rights under articles 7, 17 and 23 (1) read in conjunction with article 2 (3) of the Covenant. The authors are represented by the organization Track Impunity Always (TRIAL). The Optional Protocol entered into force for the State party on 1 June 1995.

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

2.1 The events occurred during the armed conflict that took place on the territory of Bosnia and Herzegovina between 1992 and 1995. Before the armed conflict started, Mrs. Popović had lived in Tošići, in the municipality of Trnovo, in the canton of Sarajevo, with her husband, Svetko Popović, and one of her sons. Mrs. Lale had lived in east Sarajevo with her son, Vide Lale.

2.2 At the beginning of July 1992 Mrs. Lale went to visit her son, Rajko Lale, who lived in Šišići, a village in the municipality of Trnovo, with the intention of staying there for around 10 to 15 days.

2.3 On 11 June 1992, the municipality of Trnovo had been declared a war zone and was caught in crossfire between the Bosnian Serb Army and the Green Berets.<sup>1</sup> When the Bosnian army attacked Šišići, Mrs. Lale and Rajko Lale, along with his wife and daughter, escaped to the town of Trnovo. Following another military attack against the town in mid-July 1992, many of the residents fled. Mrs. Lale, Mrs. Popović, Mr. Popović, Rajko Lale and four other people escaped to the village of Širokari, located in the municipality of Trnovo, and sought refuge in an empty cottage.

2.4 On 2 August 1992, as they were preparing for dinner in the cottage, Rajko Lale heard and saw dozens of Bosnian soldiers<sup>2</sup> approaching. The eight people who had sought shelter in the cottage were all present, except for Mr. Popović, who had gone to collect food nearby. When Rajko Lale realized that the soldiers were about to reach the cottage, he escaped through a window and hid in a bush very close to the cottage. He stayed hidden all night and saw the cottage being set on fire by the soldiers. He presumed that all those in the building were burned inside it. Mrs. Lale, Mrs. Popović and the other four persons who were inside the cottage have not been seen since.

2.5 The next morning, Rajko Lale moved out from his hiding place and saw that the cottage had been completely burned down. He could not find any bodies inside the building. It seemed as if the persons who had been inside the building had been taken away by the soldiers. He was psychologically traumatized by the events and ran away from the cottage towards the village of Šišići. He was not able to enter the village because Bosnian soldiers surrounded it. He was captured the same day by the Bosnian army and taken to Bogatići, where he was severely beaten and detained for 10 to 15 days. After that, he was transferred to Godinja, in the municipality of Trnovo, where he was held for nearly a month. He was subsequently sent to a health facility, after which he was transferred to a police station, where he was subjected to forced labour. In November 1992, he was released in the framework of a prisoner exchange between the Bosnian Serb army and the Bosnian army.

2.6 Later the same month, Rajko Lale visited his brother Vide Lale to inform him of what had happened. Vide Lale had not received any information about his mother after he had left her at Rajko Lale's house early in July 1992. A few days after learning about the disappearance of his mother, Vide Lale reported her missing to the International Committee of the Red Cross (ICRC) in Pale. He did not receive any written confirmation of the report at the time. However, on 9 August 2004, he received a letter from the ICRC Central Tracing Agency in Sarajevo, confirming that a tracking request had been drawn up for Mrs.

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<sup>1</sup> The authors refer to case *Bundalo Ratko et al.* (X-KRŽ 07/419), Court of Bosnia and Herzegovina, First Judgment, 21 December 2009, p. 65. The Green Berets were also referred to as Zelene Beretke, a Muslim paramilitary formation, *Krajisnik*, ICTY Judgment, IT-00-39-T, 27 September 2006, p. 6.

<sup>2</sup> The authors do not provide further information as to which armed unit the soldiers belonged to.

Lale and that the case remained open. To date, Mrs. Lale remains registered as a missing person in the ICRC Family Links database.

2.7 Mrs. Blagojević submits that, in July 1992, she lived in the Serb parts of Sarajevo. She could not reach Trnovo owing to the security situation and the lack of a functioning communication system. She therefore did not know anything about what had happened to Mrs. Popović, her mother, until 30 July 1993 when she managed to visit Trnovo together with her family. In Trnovo, she was told by people living there that her father and brother had been killed and that her mother was missing. In September 1993, she was informed by persons from Trnovo that, in August 1992 during their transfer to a detention facility in Kalinovik, they had seen a man hanging from a tree in the vicinity of the cottage where her parents had sought shelter. In September 1993, while looking for his father's body, Mrs. Blagojević's brother, Dragan Popović, found a shoe about one kilometre from the cottage and saw fresh soil nearby. Scratching the surface he found his father's body wrapped in a blanket. The body was exhumed by a pathologist, who concluded that Svetko Popović's skull had been smashed and that he later had been hanged. Svetko Popović's body was buried in Trnovo a few days later.

2.8 Shortly afterwards, Mrs. Blagojević spoke to a woman<sup>3</sup> who had been detained by Bosnian forces in a house in Širokari in August 1992. The woman had requested that the commander of the Bosnian forces in the area allow her to be transferred to the cottage where Mrs. Lale and Mrs. Popović had been staying. The commander replied that she should not go to the cottage as all the people there were dead.

2.9 Late in 1993, Mrs. Blagojević reported Mrs. Popović as missing to the ICRC in Grbavica. In April 1996, she reported her as missing to the ICRC in Illidža. Her brother also reported their mother missing to the ICRC in Illidža in April 1994. They did not receive written confirmation of their reports. On 18 December 2003, Mrs. Blagojević received a letter from the ICRC Central Tracking Agency in Sarajevo confirming that a tracking request had been drawn up for Mrs. Popović and that the case remained open. To date, Mrs. Popović remains registered as a missing person in the ICRC Family Links database.

2.10 In the third quarter of 1995, Mrs. Blagojević met Rajko Lale,<sup>4</sup> who told her about what had happened at the cottage.

2.11 Owing to the difficult security situation during the armed conflict and their own dire financial situation, the authors and their families had difficulties in obtaining information on the whereabouts of Mrs. Lale and Mrs. Popović. Until the end of the conflict in 1995, the only functioning domestic institution for missing persons was the State Commission of Bosnia and Herzegovina for the Tracing of Missing Persons, which was confined to the Bosnian-controlled parts of Sarajevo. As a consequence the authors did not have access to that institution.

2.12 Because of the failure of the domestic institutions established after the Peace Agreement in dealing promptly with the issue of missing persons, the authors, together with relatives of other missing persons from the region of Trnovo, formed a non-governmental organization (NGO) called the Association of Families of Missing Persons in the Sarajevo-Romanija Region in 2001. The authors instituted criminal proceedings concerning the fate of their mothers through the NGO. In 2001 the Association, with the legal support of the Republika Srpska Ministry of the Interior, submitted a collective complaint to the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 on alleged war crimes perpetrated in Trnovo. The complaint included allegations of the arbitrary killing of Mrs. Lale and Mrs. Popović and subsequent concealment of their remains. Towards the end of 2001, the complaint was transferred from the Tribunal to the Bosnia and Herzegovina Prosecutor's Office with mark "A", meaning it had been approved for trial and should be prioritized. In 2002, the case was transferred to the District Prosecutor's Office in Lukavica, east Sarajevo, then transferred again in 2003 to the Bosnia

<sup>3</sup> The woman who provided Mrs. Blagojević with the information died at the end of the war.

<sup>4</sup> Mr. Rajko Lale passed away in May 2011.

and Herzegovina Prosecutor's Office, where it has remained since. In 2006, the President of the Association gave a statement to the prosecutor in charge of the case and in 2008 the authors, together with Rajko Lale, did the same. Twice in 2008, once in September 2009, and once in 2010, the President of the Association met with the prosecutor in charge of the case in order to obtain information on the progress of the case, but was informed that the case was ongoing. On 19 September 2012, the authors sent a letter to the Prosecutor's Office requesting information on the most recent developments and progress made by the office in the case. No reply was received. Consequently, at the time when the authors filed their communication before the Committee, more than 11 years had passed since they had submitted their complaint to national authorities, without receiving any information on the status of the case. The authors argue that the lack of information about the steps taken in the case make them doubt whether any action or any progress has in fact been made.

2.13 Late in 2003, Mrs. Blagojević sent a request to the Republika Srpska Office for Tracing Missing and Captured Persons for a certificate registering Mrs. Popović as a missing person. On 15 December 2003, she received a certificate declaring that Mrs. Popović had been reported as missing for the purpose of "regulating the rights of the family prescribed by the law", together with a missing person's card for her mother. She did not receive any other information from the Office. On 29 June 2004, Vide Lale received the same certificate and card in respect of his mother.

2.14 In 2004 the authors, represented by the Association, filed an application before the Constitutional Court alleging various violations of the rights of the members of the association in the handling of the cases of their missing relatives. In a decision dated 13 July 2005, the Constitutional Court found that the authors' rights to not be subjected to torture or inhuman and degrading treatment or punishment and to private and family life<sup>5</sup> had been violated by the Council of Ministers of Bosnia and Herzegovina, the government of the Federation of Bosnia and Herzegovina, the Government of Republika Srpska and the government of the Brčko District of Bosnia and Herzegovina in handling the cases of several missing persons, including the cases of Mrs. Lale and Mrs. Popović.

2.15 The Constitutional Court found that the authors had been relieved from pursuing remedies before Bosnian lower courts and declared itself competent to hear the case as "the applicants did not have at their disposal effective legal remedies for the protection of their rights". On the merits, the Court found that the disappearances had taken place on the territory of the Federation of Bosnia and Herzegovina, which it noted had an obligation to investigate reports of disappearances on its territory, but had not provided any of the applicants with individual information about what had happened to their family members. The Court found that the Federation must have had certain information at its disposal about the reported disappearances of the applicants' relatives that had not been submitted to the applicants. The Court found this fact sufficient to conclude that the competent organs in the Federation were refusing without any evident and reasonable justification to present to the applicants the information on the missing persons they had at their disposal. The Court ordered all relevant Bosnian institutions to send to it all accessible and available information relating to the victims who had gone missing during the conflict, no later than 30 days from the receipt of the Court's decision. It also ordered, as stipulated in the 2004 Law on Missing Persons, the establishment of the Missing Persons Institute, the Fund for Support of Families of Missing Persons in Bosnia and Herzegovina and the Central Records of Missing Persons in Bosnia and Herzegovina.

2.16 The Constitutional Court did not adopt any decision on the issue of compensation, considering that it was covered by the provisions of the Law on Missing Persons concerning "financial support" and by the establishment of the Fund for Support to the Families of Missing Persons. The authors argue that the referred dispositions on financial support have not been implemented and that the Fund still has not been established. As the authorities had not complied with the order of the Constitutional Court, the President of the Association sent a complaint to the Court on 6 February 2006, on behalf of the authors and other relatives of victims.

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<sup>5</sup> Under articles 2.3 (b) and 2.3 (f) of the Constitution, and articles 3 and 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

2.17 On 20 and 28 February 2006, the Federation of Bosnia and Herzegovina Commission on Missing Persons sent two letters respectively to Vide Lale and Mrs. Blagojević stating that they had searched their registry and come to the conclusion that Mrs. Lale and Mrs. Popović were both missing persons. In the letter regarding Mrs. Lale, it was incorrectly stated that she had gone missing on 2 August 1993. The letters further stated that none of the family members had contacted the State and Federal Commissions, and requested that those institutions be contacted. The Commission added that it had forwarded the letters to the Federal Ministry of Justice and all the Cantonal Ministries of the Interior requesting information from them about Mrs. Lale and Mrs. Popović. The authors have not received any information about the outcome of the requests sent to the Ministries to date.

2.18 Following the complaint sent by the President of the Association to the Constitutional Court regarding the non-enforcement of the Court's decision of 13 July 2005, the Court found on 27 May 2006 that the decision had not been fully enforced. It found that all available information had been released to the authors but that the authorities had failed to establish the Missing Persons Institute, the Fund for Support of Families of Missing Persons and the Central Records of Missing Persons in accordance with the Law on Missing Persons. As a result, the ruling was transmitted to the Prosecutor's Office. To date, however, nobody has been prosecuted for the lack of implementation of the decision of the Court.<sup>6</sup>

2.19 On 31 March 2010, the Union of Associations of Families of Detained and Missing Persons of Republika Srpska sent a letter to the parliament of the Federation of Bosnia and Herzegovina and the government of the Federation of Bosnia and Herzegovina seeking the enforcement of, among other decisions, the 13 July 2005 decision of the Constitutional Court. In the letter, the Union requested the relevant authorities to deliver all information about the circumstances of the disappearances of persons of Serbian origin, in particular whether they had been victims of a war crime, who had committed those crimes and which persons had organized them. There has been no response to date.

2.20 On 2 November 2010, the Missing Persons Institute issued two certificates confirming that Mrs. Lale and Mrs. Popović had been registered as missing persons by the Office for Tracing Missing Persons of the Republika Srpska, and that they remained missing. Mrs. Lale's certificate incorrectly states that she has been missing since 30 July 1992. This is the last official documentation received by the authors concerning the case of their mothers.

2.21 As regards compensation, the Fund for Victims under the Law on Missing Persons has not yet been established. The authors submit that, even if the fund were to be established, it would only provide for welfare "disability pensions" and not for measures of compensation in compliance with international standards. Moreover, the right to financial support for the authors would be extremely limited as article 12 of the Law on Missing Persons prescribes that financial support cannot be received concurrently with support based on other grounds. According to the Ministry for Human Rights and Refugees, support under article 12 includes pension, social welfare, veteran disability insurance and income from work. As both authors have a minimum income they would be prevented from receiving any financial support from the fund. The authors are residents of Republika Srpska and thus not eligible for social welfare in the Federation of Bosnia and Herzegovina. They are also not eligible for any compensation available in Republika Srpska. The authors have consequently not received any form of compensation for the alleged enforced disappearance of their mothers.

2.22 The authors argue that they have exhausted all available domestic remedies dealing with the issue of missing persons in order to shed light on the fate of their mothers. They further refer to the findings of the 13 July 2005 decision by the Constitutional Court of Bosnia and Herzegovina, in which the Court acknowledged the lack of existence of effective local remedies and to the ruling of the same Court on 26 May 2006, declaring that the relevant authorities failed to enforce the decision concerned.

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<sup>6</sup> Under article 239 of the 2003 Bosnian Criminal Code failure to enforce decisions of the Constitutional Court is a criminal offence.

2.23 On the admissibility of the communication *ratione temporis*, the authors note that Mrs. Lale and Mrs. Popović went missing before the Optional Protocol entered into force in the State party. They submit, however, that from both the general context and the particular circumstances of the case, it can be inferred that they were subjected to an irreparable and arbitrary violation of their personal integrity and life and that, in such cases of alleged arbitrary killings or executions of missing persons, the appropriate legal analysis for the purpose of competence *ratione temporis* is that, *mutatis mutandis*, of enforced disappearance cases. The authors also argue the various violations of the State's procedural obligations have continued since 1992 and after the entry into force of the Optional Protocol for the State party.

2.24 In reference to article 96 (c) of the rules of procedures of the Committee, the authors argue that their communication does not constitute an abuse of rights as the investigations on the fate or whereabouts of their mothers are still ongoing. They argue that the existence of a series of procedures at the domestic level have kept alive the hope of progress being made for thousands of relatives of victims, including the authors in the present case. Eventually, however, the ongoing situation of impunity and the failure to establish the truth on the fate and whereabouts of Mrs. Lale and Mrs. Popović have convinced the authors of the necessity to send a communication to the Human Rights Committee.

### **The complaint**

3.1 The authors claim a violation by Bosnia and Herzegovina of article 6, read in conjunction with article 2 (3), of the Covenant in respect of Mrs. Lale and Mrs. Popović. They also claim that they are themselves victims of a violation of their rights under articles 7, 17 and 23 (1), read in conjunction with article 2 (3), of the Covenant.

3.2 As regards the alleged violation of article 6, read in conjunction with article 2 (3), of the Covenant in respect of Mrs. Lale and Mrs. Popović, the authors argue that the fact that when the victims were last seen they were being approached by Bosnian soldiers in life-threatening conditions prompts the conclusion that they were placed in a situation of grave risk to suffer irreparable damages to their personal integrity and life. The authors submit that the State party has an obligation to conduct an *ex officio* prompt, impartial, thorough and independent investigation into gross human rights violations, such as enforced disappearances, torture or arbitrary killings. They note that the obligation to investigate also applies in cases of killings, or other acts affecting the enjoyment of human rights, that are not imputable to the State. In those cases, the obligation arises from the duty of the State to protect all individuals under its jurisdiction from acts committed by private persons or groups of persons that may impede the enjoyment of the human rights of those individuals.<sup>7</sup> The authors also refer to the Committee's jurisprudence, according to which a State party has a primary duty to take appropriate measures to protect the life of a person.<sup>8</sup> The authors note that, at the time of submitting their communication, Mrs. Lale and Mrs. Popović had been missing for over 20 years and had gone missing while they were in a vulnerable situation as old women fleeing a conflict where violations to the right to life were committed by all parties. The authors note that Mrs. Lale and Mrs. Popović were Bosnian nationals of Serb ethnicity and therefore seen as part of a group opposing the Bosnian army.

3.3 The authors submit that they have promptly and incessantly requested the competent national authorities to establish the whereabouts of Mrs. Lale and Mrs. Popović and to prosecute, judge and sanction those responsible. However, their efforts have been

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<sup>7</sup> The authors refer to the Committee's general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 8; Inter-American Court of Human Rights, *Chitay Nech and others v. Guatemala*, judgment of 25 May 2010, Series C No. 212, para. 92; Inter-American Court of Human Rights, *Velásquez Rodríguez v. Honduras*, judgment of 29 July 1988, Series C No. 4, para. 172; European Court of Human Rights, *Demiray v. Turkey*, Application No. 27308/95, judgment of 21 November 2000, para. 50; European Court of Human Rights, *Tanrikulu v. Turkey*, Application No. 23763/94, judgment of 8 July 1999, para. 103; and European Court of Human Rights, *Ergi v. Turkey*, Application no. 23818/94, judgment of 28 July 1998, para. 82.

<sup>8</sup> See communication No. 84/1981, *Dermit Barbato v. Uruguay*, Views adopted on 21 October 1982, para. 10.

systematically frustrated and a prompt, independent, impartial and thorough investigation has not been carried out, in violation of article 6, read in conjunction with article 2 (3), of the Covenant. The whereabouts and, in the likely case of their death, the whereabouts of the remains of Mrs. Lale and Mrs. Popović, remain unknown to date.

3.4 The authors allege that they are victims of a violation by Bosnia and Herzegovina of article 7 read in conjunction with article 2 (3), of the Covenant, because of the severe mental distress and anguish caused by: (a) the disappearances of Mrs. Lale and Mrs. Popović; (b) the continued uncertainty about their mothers' fate and whereabouts; (c) the failure to locate, exhume, identify, respect and return the mortal remains of Mrs. Lale and Mrs. Popović; (d) the failure to investigate and ensure an effective remedy; (e) the lack of response from the authorities in regards to their request for information on the case of Mrs. Lale and Mrs. Popović, which violate their right to the truth; (f) the non-implementation of various provisions of the Law on Missing Persons, including those concerning the establishment of the Fund for Support to the Families of Missing Persons, which has deprived the authors of their right to compensation; and (g) the failure by the State party to implement the judgment of the Constitutional Court of 13 July 2005. The authors argue that, as soon as it was feasible for them, they reported their mothers as missing and requested the intervention of the relevant domestic authorities in order to establish the fate and whereabouts of their mothers. The authors further argue that, at the time of submitting their communication, they had been requesting information from the authorities for over 20 years, to which they not only failed to respond but placed a number of obstacles in their way, leaving the authors to bear the responsibility to shed light on the fate of their mothers. The authors therefore consider that they have been victims of a separate violation of article 7, read in conjunction with article 2 (3), of the Covenant.

3.5 The authors further claim a violation of their rights under articles 17 and 23 (1), read in conjunction with article 2 (3), of the Covenant. They argue that they provided DNA samples to the authorities in 2003 in order to facilitate the identification of the mortal remains of Mrs. Lale and Mrs. Popović, but that they never received a response from the competent authorities. They argue that the lack of response on the outcome of the process of exhumation and identification, and the failure of the authorities of the State party to return their mothers' mortal remains, is causing them anguish and distress as they have been unable to give their mothers a proper burial.

3.6 The authors request the Committee to recommend that the State party: (a) order prompt, impartial and thorough investigations concerning the fate and whereabouts of their mothers; (b) bring the perpetrators before the competent authorities for prosecution, judgment and sanction; and (c) provide the authors with adequate compensation that covers material and moral damages, as well as other measures of reparation, including measures of rehabilitation and satisfaction. In particular, the authors request that the State party acknowledge publicly its international responsibility, provide them with medical and psychological care free of charge and establish an educational programme on international human rights law and international humanitarian law for all members of its security forces and the judiciary.

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

4.1 In its observations dated 2 April 2013, the State party refers to letters received from State institutions and entities providing information on the steps taken with regard to the cases of Mrs. Lale and Mrs. Popović. In a letter dated 26 February 2013, the Ministry of Justice of Bosnia and Herzegovina notes that, after the ratification of the General Framework Agreement for Peace in Bosnia and Herzegovina, the authorities made efforts to find an effective and equitable way to resolve thousands of war crimes indictments. Along with the establishment of a legal framework for war crimes prosecution, the Court of Bosnia and Herzegovina and the Prosecutor's Office were set up with exclusive jurisdiction over war crimes cases. Any report of war crimes received by other prosecutors or courts must be submitted to the Prosecutor's Office for consideration and reviewed in accordance with established criteria. Owing to the large number of war crimes, the Council of Ministers for Bosnia and Herzegovina adopted on 29 December 2008 a National War Crimes Prosecution Strategy with the objective to resolve within seven years the prosecution of the

most complex war crimes, and that of “other war crimes” within 15 years, after the adoption of the Strategy. The State party further refers to the adoption of the 2004 Law on Missing Persons creating the Missing Persons Institute. At the proposal of the Ministry of Justice, the Council of Ministers established a supervisory body to monitor the implementation of the Strategy. The Ministry of Justice further notes that the Prosecutor’s offices in Bosnia and Herzegovina have recorded a large number of alleged war crimes cases and that, consequently, adjudicating all the indictments in a fair and efficient manner will take a long period of time.

4.2 In a letter dated 15 February 2013 the Prosecutor’s Office of Bosnia and Herzegovina notes that, in 2005, the Constitutional Court found that the authorities of Bosnia and Herzegovina had violated the right of the authors not to be subjected to torture or inhuman or degrading treatment or punishment, and their right to private family life, in adjudicating the cases of their mothers. The Office further notes that the Court issued a ruling on 27 May 2006 on the failure to enforce its earlier decision of 2005. The Office notes that, after having received that ruling, the Office initiated an investigation on 15 May 2007 against unknown persons in the Council of Ministers of Bosnia and Herzegovina, the government of the Federation of Bosnia and Herzegovina, the Republika Srpska Government and the government of the Brcko District of Bosnia and Herzegovina for the failure to implement the 2005 decision of the Court. The office notes that, over the course of the investigation, a number of measures were taken, including the collection of detailed reports on measures and activities carried out by the Office for Cooperation and Representation of the government of the Federation of Bosnia and Herzegovina before the Court, the Office of the Legal Representative of the Republika Srpska before the Court, the Council of Ministers of Bosnia and Herzegovina, the government of the Federation of Bosnia and Herzegovina, the government of the Republika Srpska and the government of the Brcko District of Bosnia and Herzegovina. The Office further notes that, after a detailed analysis, it was concluded that there was no evidence to support a reasonable suspicion that someone in the Council of Ministers of Bosnia and Herzegovina, the government of the Federation of Bosnia and Herzegovina, the government of the Republika Srpska or the government of the Brcko District of Bosnia and Herzegovina had taken any passive or active action in order to deny, prevent or otherwise impede the execution of the decision of the Court. Accordingly, on 6 April 2011 the Office issued an order to suspend the investigation of the case on the failure to enforce the decision of the Court. That decision has become final and the case has been closed.

4.3 As regards the investigation into the disappearance of the authors’ mothers, the Prosecutor’s Office notes that the Special Department for War Crimes has been investigating a number of people suspected of having participated in the planning and organizing of systematic detention, ill-treatment and murder of Serb civilians in the wider Trnovo area during the conflict. The Office further notes that one of those suspects has since been charged in his capacity as head of the Public Security Station of Trnovo with having planned and initiated the establishment of police forces, military formations and units of special purpose and of having incited and ordered the unlawful detention and inhuman treatment of Serb civilians in the Trnovo area. The case is currently pending and has the status of an active investigation. The suspects are alleged to have participated in the commission of war crimes against civilians under article 173 of the Criminal Code of Bosnia and Herzegovina. The Office further notes that Mrs. Popović is listed as a victim in the case together with a large number of other victims. The Office notes that it has issued an order of investigation in the case and argues that it has taken necessary investigative actions in order to determine the circumstances of the crime. The Office further submits that the outcome of the case is likely to have bearing on the case of the authors’ mothers given that it refers to the disappearance of Serb civilians in the wider territory of the municipality of Trnovo. The Office notes that the case is considered to be of high priority under the National War Crimes Prosecution Strategy and should therefore be resolved within the seven-year deadline established by the Strategy. The Office, however, notes that, bearing in mind the complexity of the case and number of witnesses and victims involved, and the quantity of evidence to be identified, it is impossible to give a precise time frame for when the investigation may be completed. Finally, the Office submits that the investigation into the disappearances of Mrs. Lale and Mrs. Popović meets the requirements



of efficiency, impartiality and independence and that the Office fully respects the right of victims to be informed about measures taken in the case.

4.4 In a letter dated 12 March 2013, the Office for Cooperation and Representation of the government of the Federation of Bosnia and Herzegovina before the Constitutional Court provides information on the actions taken by the authorities of the Federation in order to comply with the order of the Constitutional Court of 13 July 2005. The Office notes that, pursuant to the order of the Court, the Commission for Missing Persons gave the applicants the information available on the case. It also notes that, pursuant to the order of the Court, and as prescribed in the Law on Missing Persons, the Missing Persons Institute became operational on 1 January 2008, following which a central record of missing persons was established. The Office however acknowledges that the Fund for Support to the Families of Missing Persons has not yet been made operational.

4.5 In a letter dated 4 March 2013, the Missing Persons Institute of Bosnia and Herzegovina notes that Mrs. Lale went missing on 2 August 1992 and that Mrs. Popović went missing on 30 July 1992 and that they are recorded as such in the databases of ICRC, the International Commission for Missing Persons, the Operational Team of the Republika Srpska and the Missing Persons Institute of Bosnia and Herzegovina. The Institute further notes that it has taken all action available to find Mrs. Lale and Mrs. Popović and has, to that end, cooperated with the Prosecutor's Office of Bosnia and Herzegovina and with the entity Ministries of Justice and the Interior, the Cantonal Ministries of the Interior, Centres for Public Security of the Republika Srpska and with security agencies.

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

5.1 On 3 July 2013, the authors submitted their comments on the State party's observations. They note that the State party does not object to the admissibility of the communication or dispute any of the alleged facts and does not challenge the alleged ongoing violation of their rights under article 2 (3), read in conjunction with articles 7, 17 and 23 (1), of the Covenant.

5.2 The authors note that, at the time of submitting their communication, more than 20 years had passed since the disappearance of their mothers. They further argue that they have been submitting detailed information about the case to relevant authorities since 2001, including the identity of the alleged perpetrators. Nonetheless, little or no progress has been made in the investigation and no information has been made accessible to them. The whereabouts of their mothers remain unknown and no one has been prosecuted or sanctioned for their disappearance. They express their concern that even if the seven-year deadline referred to in the National War Crimes Prosecution Strategy is applied in their case, it would still entail waiting over 23 years in order for the case to be concluded and the perpetrators brought to justice. They argue that such a long delay does not meet the standards of promptness and effectiveness that shall characterize an investigation into gross human rights violations.

5.3 The authors argue that the information provided by the Prosecutor's Office on the investigation into the fate of their mothers does not meet the standards required of an effective investigation. They submit that an investigation concerning human rights violations must be carried out ex officio by the State party. They note that the State party has been aware since 1993 of the crimes committed in the Trnovo area and the disappearance of their mothers. However, the State party did not open an investigation into the events or conduct an official inquiry into the events prior to 2001, when they filed their criminal complaint. The authors further note that only Mrs. Popović is listed as a victim in the ongoing case before the Prosecutor's Office and that, even though they have submitted several complaints about the disappearance of Mrs. Lale, she is not listed as a victim in the case.

5.4 While noting the Prosecutor's Office statement in its letter that it respects the rights of the victims to be informed about the measures taken in the investigation of the case of their mothers, the authors submit that they have not had access to any information in that regard, despite their continuous inquiries.

## Issues and proceedings before the Committee

### *Consideration of admissibility*

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

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

6.3 The Committee notes the authors' claim that they have exhausted all effective domestic remedies available to them. In the absence of any objection by the State party in that connection, the Committee considers that the requirements of article 5 (2) (b) of the Optional Protocol have been met.

6.4 The Committee notes that the State party has not challenged the admissibility of the communication and that the authors' allegations regarding violations of articles 6, 7, 17 and 23 (1), read in conjunction with article 2 (3), of the Covenant, have been sufficiently substantiated for the purposes of admissibility.

6.5 All admissibility criteria having been met, the Committee declares the communication admissible and proceeds to its examination on the merits.

### *Consideration of the merits*

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

7.2 The Committee takes note of the authors' claim that, on 2 August 1992, Bosnian soldiers set on fire the building in which Mrs. Lale and Mrs. Popović had sought refuge. The Committee further notes the authors' claim that, according to an eyewitness, Mrs. Lale and Mrs. Popović were inside the building just before it was set on fire, that on the following day no bodies were found inside the building and that Mrs. Lale's and Mrs. Popović's fate and whereabouts remain unknown since. The Committee also notes the authors' argument that, against this background, it is reasonable to presume that Mrs. Lale and Mrs. Popović went missing in life-threatening circumstances on 2 August 1992. The Committee notes the authors' argument that no *ex officio*, prompt, impartial, thorough and independent investigation has been carried out by the State party to clarify Mrs. Lale's and Mrs. Popović's fate and whereabouts and to bring the perpetrators to justice. In this respect, the Committee recalls its general comment No. 31 (2004), according to which a failure by a State party to investigate allegations of violations and to bring to justice perpetrators of certain violations — notably torture and cruel, inhuman and degrading treatment, summary and arbitrary killings and enforced disappearances — could give rise to a separate breach of the Covenant.<sup>9</sup> The Committee considers that the authorities investigating violations such as summary and arbitrary killings and enforced disappearances must be diligent so as to ensure the effectiveness of the investigation and must give the families a timely opportunity to contribute their knowledge to the investigation. Information regarding the progress of the investigation must be made promptly accessible to the families.

7.3 The Committee notes that the authors' claim that the State party is under an ongoing obligation to locate, exhume, identify and return the victim's mortal remains to the family and to identify, prosecute and sanction those responsible for the crimes. In that connection, the Committee recognizes the difficulties that a State party may face in investigating crimes that may have been committed on its territory during a complex armed conflict in which multiple forces were involved. Therefore, while acknowledging the gravity of the alleged crimes and the suffering of the authors because the location of the remains of their missing mothers has not yet been clarified and the culprits have not yet been brought to justice, that

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<sup>9</sup> See general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, adopted on 29 March 2004, paras. 8, 15 and 18.

in itself is not sufficient to find a breach of article 2 (3) of the Covenant in the circumstances of the present communication.<sup>10</sup>

7.4 The Committee notes in that regard the State party's information that it has made efforts to find effective ways to process the high number of war crimes cases. Notably, the Constitutional Court has established that the authorities are responsible for investigating the disappearance of Mrs. Lale and Mrs. Popović (see para. 2.15 above), and domestic mechanisms have been set up to deal with enforced disappearances and other war crimes cases (see paras. 4.1 and 4.5 above). The Committee also notes the State party's information that the Special Department for War Crimes within the Prosecutor's Office has initiated an investigation into alleged war crimes carried out against Serb civilians in the wider Trnovo area during the conflict and that this investigation is likely to have bearing on the case of the authors' mothers, given that it refers to the disappearance of Serb civilians in the wider territory of the municipality of Trnovo. The Committee notes that the investigation is ongoing. The Committee further notes the State party's argument that the investigation into the disappearances of Mrs. Lale and Mrs. Popović meets the requirements of efficiency, impartiality and independence, and that the Commission for Missing Persons has given the authors all the information available on the case of their mothers.

7.5 However the Committee notes the authors' claim that, at the time they filed their communication, 20 years after the disappearance of their mothers, and 7 years after the decision of the Constitutional Court of 13 July 2005, the investigative authorities have not provided them with any relevant information regarding the investigation into the disappearances of their mothers. On 6 February 2006, the authors applied to the Court and requested it to adopt a ruling establishing that the authorities had failed to enforce its decision of 13 July 2005. On 27 May 2006, the Court found that all available information had been released to the authors but that its decision had not been fully enforced as the authorities had failed to establish certain institutions in accordance with the Law on Missing Persons. The State party has provided general information about its efforts to ascertain the fate and whereabouts of missing persons and to prosecute perpetrators. Nevertheless, it has failed to provide the authors or the Committee with specific and relevant information concerning Mrs. Lale's and Mrs. Popović's case and the steps taken to establish their fate and whereabouts. The Committee concludes that the facts before it reveal a violation of article 6 read in conjunction with article 2 (3), of the Covenant with regard to Mrs. Lale and Mrs. Popović.

7.6 The Committee notes the authors' claims that their rights under articles 7, 17 and 23 (1), read in conjunction with article 2 (3), of the Covenant have been violated. It also notes the anguish and distress caused to the authors by the continuing uncertainty resulting from not knowing where their mothers' remains may be and the impossibility, if they are deceased, of giving them a proper burial. It further notes that, although the authors provided DNA samples to the authorities in 2003 in order to facilitate the identification of the mortal remains of Mrs. Lale and Mrs. Popović, they have not received a response from the competent authorities. The Committee considers that these circumstances, together with the lack of information as to the fate and whereabouts of Mrs. Lale and Mrs. Popović, amount to inhuman and degrading treatment in violation of article 7, read in conjunction with article 2 (3), of the Covenant, with regard to the authors.

7.7 In the light of the above findings, the Committee will not examine separately the authors' allegations under articles 17 and 23 (1), read in conjunction with article 2 (3), of the Covenant.<sup>11</sup>

8. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the State party has violated article 6, read in conjunction with article 2 (3), of the Covenant with regard to Mrs. Lale and Mrs. Popović, and article 7, read in conjunction with article 2 (3), with regard to the authors.

<sup>10</sup> See communication No. 2064/2011, *Milan Mandić v. Bosnia and Herzegovina*, Views adopted on 5 November 2015, para. 8.3.

<sup>11</sup> *Ibid.*, para. 8.5.

9. Pursuant to article 2 (3) (a) of the Covenant, the Committee considers that the State party is under an obligation to provide the authors with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. Accordingly, the State party is obligated, inter alia, to: (a) intensify its investigations to establish the fate or whereabouts of Mrs. Lale and Mrs. Popović, as required by the Law on Missing Persons of 2004; (b) strengthen its efforts to bring to justice those responsible for Mrs. Lale's and Mrs. Popović's disappearances without unnecessary delay, as required by the National War Crimes Prosecution Strategy; (c) ensure that any necessary psychological rehabilitation and medical care is made available to the authors for the psychological harm they have suffered; and (d) provide adequate compensation and appropriate measures of satisfaction. The State party is also under an obligation to prevent similar violations in the future and must ensure, in particular, that investigations into allegations of enforced disappearances and adequate measures of reparation are accessible to the families of missing persons.

10. 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 or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or 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 Committee's Views. The State party is also requested to publish the Committee's Views and to have them widely disseminated in all three official languages of the State party.

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