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Communication No. 2064/2011

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

<i>Submitted by:</i>	Milan Mandić (represented by counsel, TRIAL: Track Impunity Always-)
<i>Alleged victim:</i>	Božo Mandić (father of Milan Mandić)
<i>State party:</i>	Bosnia and Herzegovina
<i>Date of communication:</i>	15 April 2011 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 3 June 2011 (not issued in document form)
<i>Date of adoption of Views:</i>	5 November 2015
<i>Subject matter:</i>	Enforced disappearance and effective remedy
<i>Procedural issues:</i>	None
<i>Substantive issues:</i>	Right to life; torture; cruel, inhuman or degrading treatment or punishment; liberty and security of person; enforced disappearance; right to an effective remedy
<i>Articles of the Covenant:</i>	2 (3), 6, 7, 17 and 23 (1)
<i>Articles of the Optional Protocol:</i>	2



Annex

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

concerning

Communication No. 2064/2011*

Submitted by: Milan Mandić (represented by counsel, TRIAL: Track Impunity Always)

Alleged victim: Božo Mandić (father of Milan Mandić)

State party: Bosnia and Herzegovina

Date of communication: 15 April 2011 (initial submission)

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

Meeting on 5 November 2015,

Having concluded its consideration of communication No. 2064/2011, submitted to it on behalf of Milan Mandić 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 author of the communication and the State party,

Adopts the following:

Views under article 5 (4) of the Optional Protocol

1. The author is Milan Mandić, a national of Bosnia and Herzegovina, born on 11 September 1954. The communication is submitted in his own name and on behalf of his father, Božo Mandić. The author alleges that Božo Mandić was forcibly disappeared in 1992 and that his fate and whereabouts remain unknown. The author claims that the State party has violated articles 6 and 7, read in conjunction with article 2 (3), of the Covenant with regard to Božo Mandić and articles 7, 17 and 23 (1), read in conjunction with article 2 (3), of the Covenant with regard to himself. The author is represented by counsel. The Optional Protocol entered into force for the State party on 1 June 1995.

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

Two opinions signed by two Committee members are appended to the present Views.

The facts as submitted by the author

2.1 On 4 April 1992, the Serb Territorial Defence Forces set up a barricade outside the author's family home. The house was subjected to crossfire between the Serbian and the Bosnian Territorial Defence Forces for several days. On or around 10 June 1992, Božo Mandić was wounded by a sniper while he was in the courtyard in front of his house. The victim's wife took care of him until around 16 June 1992 when she was captured by members of the Bosnian Territorial Defence Force and taken to a concentration camp. At the beginning of July 1992, she was released in a prisoner exchange and tried to make contact with her husband, with no success. Thereafter, she informed her son, Milan Mandić, that his father was missing.¹

2.2 Between July and August 1992, Milan Mandić reported the disappearance of his father three times to the International Committee of the Red Cross (ICRC) in Pale. The first written certificate attesting that Božo Mandić had been reported missing was issued by ICRC on 7 July 1995.² On 17 March 1995, the author also reported the disappearance of Božo Mandić to the ICRC Central Tracing Agency office in Zagreb, which issued a certificate on 13 May 1996. In 1996, Milan Mandić addressed a request for information to the Serbian Commission for the Exchange of Prisoners of War and Missing Persons, but he did not receive any significant feedback. In 1997, Milan Mandić and other relatives of missing persons of Bosnian Serb origin began to organize an association to establish the fate and whereabouts of their relatives. The association, among others, started investigating potential locations of mass graves in Sarajevo Canton.

2.3 In 2000, Milan Mandić learned from an individual called Blagoje Pešić that his father had been killed. Mr. Pešić also informed him that in June 1992, he had been forced by a member of the Bosnian Territorial Defence Force to bury Božo Mandić's body in a spot between Lukavička Road and the 10th Transversal. Mr. Pešić also said that Božo Mandić had been shot from behind. On 12 June 1992, Mr. Pešić had reported those events to the command of the 1st Ilička Brigade.³ He also repeated his statement to the then Republika Srpska Ministry of the Interior.⁴ Nevertheless, neither of these authorities transmitted this information to the family of Božo Mandić or to the competent judicial authorities.

2.4 The author later discovered that in 1998, the civil defence units under the supervision of inspectors from the water protection area had carried out exhumations in the areas around Lukavička Road. They allegedly exhumed a number of corpses and, according to the author, the characteristics of one of them matched a description of Božo Mandić.⁵ On that occasion, evidence and blood samples were collected by a pathologist who delivered the corpses and the samples to the Institute of Forensic Medicine in Sarajevo. Milan Mandić tried to contact the Institute on many occasions and, on 15 November 2010, he sent a letter requesting information on the measures taken to locate the mortal remains of Božo Mandić. He never received a reply.

2.5 In letters dated 8 March 2005, the Office for Tracing Detained and Missing Persons of the Republika Srpska requesting the Court of Bosnia and Herzegovina, the Cantonal Court of Sarajevo and the Office of the Cantonal Prosecutor to disclose all available

¹ The author does not provide information regarding his whereabouts at the time his father disappeared.

² The author alleges that, due to the chaotic situation in the State party at that time, certificates were not a first priority, either for victims or for the Red Cross.

³ According to a document provided by the author (see note 2), this brigade was part of the Republika Srpska Army, also known during the war as the Bosnian Serb Army.

⁴ The author does not provide further details.

⁵ See paras. 2.5 and 2.6.

information relevant to determining the identity of persons who had gone missing in Sarajevo during the war and whose fate remained unknown. The Office for Tracing Detained and Missing Persons also requested access to the records of the exhumation and the bone samples taken from the bodies in order to match locations with its own data, and asked for DNA analysis. The letters referred to 32 unidentified corpses buried in the cemetery of Visoko in 2003, one of which might have been the mortal remains of Božo Mandić.⁶ In a letter dated 6 September 2006 to the Office of the Cantonal Prosecutor, the Office for Tracing Detained and Missing Persons stated that it had carried out exhumations and searched for mortal remains at a site indicated by a witness, Mr. Pešic, but that no traces of human bones had been found. Consequently, the Office searched further and established that exhumations had previously been carried out at that site, and that on 4 November 1998, six bodies were exhumed and transferred to the Vlakovo cemetery.

2.6 In letters dated 12 February 2007 to the author and the Republika Srpska Office for Tracing Detained and Missing Persons, the Office of the Cantonal Prosecutor confirmed that exhumations had been carried out in Lukavička Road between September and November 1998 and mentioned the similarity between the author's father's case and another case (KTA-28/98 RZ) in which two bodies had been exhumed from the Lukavička Road and transferred to the Visoko cemetery. The Office of the Cantonal Prosecutor also stated that it had forwarded a report on the matter to the Office of the Prosecutor of Bosnia and Herzegovina on 9 March 2006. However, Milan Mandić never received any further communications from either the Office of the Cantonal Prosecutor or from the Office of the Prosecutor of Bosnia and Herzegovina. He instead received a letter dated 6 June 2006 from the Federal Commission on Missing Persons addressed to his mother, who had died in the meantime, asking her to provide detailed information about the disappearance of her husband. On 17 February 2011, he sent a letter to the Office of the Prosecutor of Bosnia and Herzegovina formally requesting to be informed about the outcome of the investigations. He has not received any reply.

2.7 On 5 April 2004, Milan Mandić gave samples of his DNA and filed an ante-mortem questionnaire about Božo Mandić through ICRC. No reply was received to this initiative. Božo Mandić is still registered as a missing person with ICRC, the International Commission on Missing Persons and the Missing Persons Institute of Bosnia and Herzegovina.

2.8 Božo Mandić's wife had applied in December 2003 to the Human Rights Commission within the Constitutional Court of Bosnia and Herzegovina, claiming a violation of article 3 (prohibition of torture) and article 8 (right to respect for private and family life) of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) in connection with article 1 of the General Framework Agreement for Peace in Bosnia and Herzegovina (Dayton Agreement). The Constitutional Court decided to join her claim to other claims submitted by relatives of missing persons and to process them as a collective case. On 15 December 2005, the Constitutional Court adopted a decision on the admissibility and the merits of the case, referring to a previous case of the Constitutional Court in which it had concluded that the applicants were relieved of having to exhaust domestic remedies before ordinary courts as no specialized institution on enforced disappearance in Bosnia and Herzegovina seemed to be operating effectively.⁷ The Court found a violation of articles 3 and 8 of the European Convention in conjunction with article 1 of the Dayton Agreement, owing to the lack of

⁶ This letter indicates that the Office believed that individuals whose names were on its tracing list had been buried in the Visoko cemetery. Božo Mandić was on that list.

⁷ Constitutional Court of Bosnia and Herzegovina, *M.H. and others* (case No. AP-129/04), 27 May 2005, paras. 37-40.

information about the fate of Božo Mandić. The Court ordered the Bosnian authorities concerned to provide “all accessible and available information on members of the applicants’ families who went missing during the war, ... urgently and without further delay and no later than 30 days from the date of the receipt of the decision”. The Court also ordered the authorities to ensure the operational functioning of the institutions established in accordance with the Law on Missing Persons, namely the Missing Persons Institute of Bosnia and Herzegovina, the Fund for Support to the Families of Missing Persons of Bosnia and Herzegovina and the Central Records of Missing Persons in Bosnia and Herzegovina, immediately and without further delay, and no later than 30 days from the date of the court order. The competent authorities were requested to submit information to the Court within six months about the measures taken to implement the decision.

2.9 The Constitutional Court did not address the issue of compensation, considering it to be covered by the provisions of the Law on Missing Persons concerning “financial support” and by the establishment of the Fund. However, the author argues that the section of the law on financial support has not been implemented and that the Fund has not been established.

2.10 Although the deadlines established by the Constitutional Court in the instant case have expired and the relevant authorities have failed to enforce its decision, the Court has not acted in accordance with article 74.6 of its rules of procedure and has not adopted any ruling to establish that the authorities of Bosnia and Herzegovina actually failed to enforce the decision.

2.11 As the author did not receive any meaningful information as to the fate and whereabouts of Božo Mandić, he submitted two additional complaints to the Constitutional Court on 6 February 2006 requesting the Court to establish criminal responsibility for the lack of implementation of its decision.⁸ In a letter dated 9 March 2006 to Milan Mandić, the Court explained that it had no competence to establish criminal responsibility for lack of enforcement of judicial decisions. In a letter dated 22 February 2011, Milan Mandić pointed out that five years had passed since the adoption of the decision concerning his father’s case and called on the Court to adopt a ruling on the lack of enforcement. Nevertheless, as at the date of submission of the communication to the Committee, he had not received any reply and the authorities had taken no action.

2.12 The Constitutional Court ruling of 15 December 2005 is final and binding. The authors therefore have no other effective remedy to exhaust.

2.13 As regards the admissibility *ratione temporis* of the communication, the author submits that even though the events took place before the entry into force of the Optional Protocol for the State party, enforced disappearance is per se a continuing violation of several human rights⁹ that continues until the victim is located. In the author’s case, domestic authorities, including the Constitutional Court, have qualified Božo Mandić as a “missing person”. However, his fate and whereabouts have not been clarified. Further, the authorities have not implemented the decision of the Court of 15 December 2005 and the

⁸ Pursuant to paragraph 105 of the Constitutional Court decision of 15 December 2005, failure to enforce its decision is a criminal offence in accordance with article 239 of the Criminal Code of Bosnia and Herzegovina.

⁹ The author refers to the jurisprudence of international courts and bodies. See, inter alia, European Court of Human Rights, *Varnava and others v. Turkey*, Grand Chamber judgement of 18 September 2009, paras. 136-148 and *Musayev and others v. Russia*, Chamber (First Section) judgement of 26 July 2007, paras. 158-165; Inter-American Court of Human Rights, “*Las Dos Erres*” Massacre v. *Guatemala*, judgement of 24 November 2009, Series C No. 211, paras. 44-49 and *Pueblo Bello Massacre v. Colombia*, judgement of 31 January 2006, Series C No. 140.

Office of the Prosecutor has not undertaken any measure to sanction those responsible for this failure.

2.14 Since 1992, Milan Mandić has undergone deep and severe psychological stress because of the uncertainty concerning the fate and whereabouts of Božo Mandić. The length of time elapsed and the attitude of official indifference to his anxiety have generated deep frustration and debasement for the author. He has not been able to find his father's mortal remains and to mourn and bury him in accordance with his religious beliefs and customs.

The complaint

3.1 The author claims that the State party has violated articles 6 and 7, read in conjunction with article 2 (3), of the Covenant with regard to Božo Mandić and articles 7, 17 and 23 (1), read in conjunction with article 2 (3), with regard to himself.

3.2 As for the alleged violation of article 6, read in conjunction with article 2 (3), of the Covenant with regard to Božo Mandić, the author submits that there is an ongoing failure by the State party to conduct an ex officio, prompt, thorough, impartial, independent and effective investigation into his father's enforced disappearance. He argues that the State party has an obligation to conduct a prompt, impartial, thorough and independent investigation into such gross human rights violations as enforced disappearances, torture or arbitrary killings. In general, 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.¹⁰

3.3 In relation to the alleged violation of article 7, read in conjunction with article 2 (3), with regard to Božo Mandić, the author claims that the arbitrary killing and the subsequent removal, concealment and mistreatment of his mortal remains amount to treatment contrary to article 7 of the Covenant because of the denial of a dignified burial.

3.4 With regard the author himself, as regards the alleged ongoing violation by the State party of article 7, read in conjunction with article 2 (3), of the Covenant, as well as articles 17 and 23 (1), in conjunction with article 2 (3), of the Covenant, he submits that he suffers severe mental distress and anguish caused by the enforced disappearance of his father and the ongoing lack of information about the cause and circumstances of these human rights violations as well as about the progress and results of the investigations carried out by the State party authorities. This lack of information also violates his right to know the truth. Furthermore, there has been no effective remedy and redress, as the author has never received any form of reparation for the harm suffered. The author further alleges that his family life has been disrupted as a consequence of the enforced disappearance of his father, which has prevented the author from burying his father in accordance with his religious customs and beliefs.

3.5 The author requests the Committee to recommend that the State party (a) order an independent investigation as a matter of urgency concerning the fate and whereabouts of his

¹⁰ The author refers 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 as well as Inter-American Court of Human Rights, *Chitay Nech and others v. Guatemala*, judgement of 25 May 2010, Series C No. 212, para. 89 and *Velásquez Rodríguez v. Honduras*, judgement (merits) of 29 July 1988, Series C No. 4, para. 172; European Court of Human Rights, *Demiray v. Turkey*, judgement of 21 November 2000, para. 50, *Tanrikulu v. Turkey*, judgement of 8 July 1999, para. 103 and *Ergi v. Turkey*, judgement of 28 July 1998, para. 82.

father and, in the event that his death is confirmed, to locate, exhume, identify and respect his mortal remains and return them to the family; (b) bring the perpetrators before the competent authorities for prosecution, judgement and punishment and disseminate publicly the results of this measure; (c) ensure that he obtains full reparation and prompt, fair and adequate compensation; and (d) ensure that the measures of reparation cover material and moral damages and measures of restitution, rehabilitation, satisfaction and guarantees of non-repetition. He requests that the State party acknowledge its international responsibility, on the occasion of a public ceremony, in the presence of the authorities and of himself, to whom official apologies shall be issued, and that the State party name a street or build a monument or affix a commemorative plaque in Lukavička Road in memory of all the victims of arbitrary killings and enforced disappearance during the armed conflict. The State party should also provide the author with medical and psychological care immediately and free of charge, through its specialized institutions, and grant him access to free legal aid, where necessary, to ensure that he has available effective and sufficient remedies. As a guarantee of non-repetition, the State party should establish educational programmes on international human rights law and international humanitarian law for all members of the army, the security forces and the judiciary.

State party's observations

4.1 On 10 August 2011, the State party submitted copies of 10 letters from State agencies and entities.¹¹ According to a letter dated 15 July 2011 from the Ministry of Justice, after the ratification of the Dayton Agreement in 1995, the authorities of Bosnia and Herzegovina undertook efforts to find an effective and equitable way to handle thousands of indictments for war crimes. Along with the establishment of the legal framework for the prosecution of war crimes, the Court of Bosnia and Herzegovina and the Office of the Prosecutor were set up, with exclusive jurisdiction over war crimes cases. Any report of war crimes received by other prosecutors or courts was to be submitted to the Office of the Prosecutor for consideration and review in accordance with established criteria. Depending on the seriousness of the case, the Court could decide to transfer the proceedings to another court on whose territory the crime had been committed. Owing to the large number of war crimes, on 29 December 2008, the Council of Ministers adopted the National Strategy for War Crimes Processing. One of the goals of the strategy was to finalize the prosecution of the most complex war crimes cases within 7 years and the prosecution of other war crimes within 15 years. On the basis of a proposal by the Ministry of Justice, the Council of Ministers appointed a supervisory body to monitor the implementation of the strategy. The Ministry asserts that the authorities of Bosnia and Herzegovina are taking significant steps in the prosecution of war crimes and resolving the fate of the missing persons. However, in view of the large number of applicants, this process cannot end quickly.

4.2 According to letters sent by the Office of the Cantonal Prosecutor of Sarajevo to four different authorities,¹² the Special War Crimes Department of the Office of the Prosecutor of Bosnia and Herzegovina sent a letter to the Office of the Cantonal Prosecutor of Sarajevo dated 2 March 2011 (sic)¹³ asking it to send information concerning a request by the author to the Office of the Prosecutor of Bosnia and Herzegovina that criminal charges be filed regarding the disappearance of his father. On 26 June 2006, the Office of

¹¹ The Ministry of Justice, the Office of the Cantonal Prosecutor of Sarajevo, the Office of the Prosecutor of Bosnia and Herzegovina, the Missing Persons Institute and the Mayor of the Municipality of Novi Grad, Sarajevo.

¹² The High Judicial and Prosecutorial Council of Bosnia and Herzegovina, the Chief Cantonal Prosecutor, the Office of the Prosecutor of Bosnia and Herzegovina and the Association of Families of Missing Persons of Sarajevo, Romanija Region.

¹³ The correct date is 2 March 2006.

the Cantonal Prosecutor received a request from the author on the same matter. In a letter dated 9 March 2006 to the Office of the Prosecutor of Bosnia and Herzegovina, the Head of the War Crimes Department of the Office of the Cantonal Prosecutor enclosed a copy of an entire file of an exhumation case (KTA-28/98-RZ), owing to its similarity with the case of Božo Mandić.¹⁴ In the letter Milan Mandić was invited to declare whether this exhumation coincided with the information he had in his possession and to identify in the photographic documentation footwear and clothes that could possibly have belonged to his father. On 26 June 2006, the Office of the Cantonal Prosecutor received a request from the author to carry out investigative actions at the scene of the crime of his father's death which, according to him, had taken place at the crossroads of Lukavička Road and Deseta Transferzala. On 6 September 2006, a commission composed of the cantonal prosecutor, Milan Mandić, a retired judge of the Cantonal Court of Sarajevo and another individual went to the scene. The judge, who had participated in the exhumation of the bodies in the similar case (KTA-28/98-RZ), was shown photographs of the gravesite but indicated that he could not remember if the exhumation had taken place there.¹⁵

4.3 In a letter dated 19 July 2011, the Office of the Prosecutor of Bosnia and Herzegovina informed the Ministry of Human Rights and Refugees that on 10 March 2006 (sic) a case file (KTA-28/98-RZ) regarding the exhumation of two bodies from a lawn located between the Alekса Santić school and Lukavička cesta in the Novi Grad municipality of Sarajevo had been transmitted to the Office of the Prosecutor of Bosnia and Herzegovina.¹⁶ On 29 March 2007, the Office of the Cantonal Prosecutor re-exhumed both bodies to take additional samples for DNA tests. The report of the analysis dated 27 June 2007 indicated that none of the samples matched Božo Mandić's DNA. Following an order issued by the Office of the Prosecutor of Bosnia and Herzegovina to the State Investigation and Protection Agency requesting an investigation into the disappearance of Božo Mandić, the Agency informed the Office on 13 January 2009 that despite having taken a number of actions to identify the perpetrators of the crime, they had been unsuccessful. It was also indicated that in February 2010, the Office of the District Prosecutor of Istočno Sarajevo had transferred to the Office of the Prosecutor of Bosnia and Herzegovina a file on a war crime against civilians committed by J.V., who was suspected of having killed Božo Mandić with a sniper rifle in the territory under the control of the Army of the Republic of Bosnia and Herzegovina. The Office of the Prosecutor of Bosnia and Herzegovina noted that Božo Mandić's case was not considered a high priority and should therefore be concluded within the 15-year time limit.

4.4 In a letter dated 8 July 2011, the Mayor of Novi Grad reported that he could attest that neither he nor the employees of the municipality at the time of the events were familiar with the allegations submitted in the communication. He also stated that he had been in contact with staff members of the civil defence forces that were responsible for exhumations, who informed him that no exhumations had been carried out at the site of Lukavička cesta.

4.5 According to a letter dated 2 August 2011 from the Missing Persons Institute to the Ministry of Human Rights and Refugees of Bosnia and Herzegovina, Milan Mandić gave different accounts of what happened to his father, in particular to the Institute, to *Patriot*

¹⁴ The exhumation was performed on 15 September 1998 by the Cantonal Court of Sarajevo and attended by a group of experts who performed an autopsy and drew up a report, took samples of bones in order to conduct DNA analysis in the future and documented the operation with photos. After the examination, the bodies were buried in plots designated for unknown persons in Visoko.

¹⁵ The State party provided a note by the Office of the Cantonal Prosecutor of Sarajevo dated 6 September 2006, in which the Office explained that the commission had gone to the scene because the Office could not determine whether there had been an exhumation at the site and to help the judge to remember whether the exhumation had taken place there.

¹⁶ See para. 4.2.

magazine and to the Committee. It therefore considers that the author has changed the version of the facts depending on the interlocutor, which greatly hampers the investigation. Božo Mandić is still registered as missing and the Institute continues its work of tracing and locating mass and individual graves, as well as those of more than 8,000 missing people, and to identify remains and return them to the families.

Author's comments on the State party's observations

5.1 On 26 September 2011, the author provided his comments on the State party's observations. The author welcomes the fact that the State party does not object to the admissibility of the communication and its acknowledgement that Božo Mandić remains registered as a missing person. He recalls that the Bosnian authorities are under an ongoing obligation to establish the fate and whereabouts of Božo Mandić; to search for, locate, respect and return his remains; to disclose the truth regarding his enforced disappearance; and to guarantee the author redress for the ongoing violations.

5.2 The author expresses surprise at the Institute's assertion that he changed the version of the facts depending on the interlocutor. He was not present when the enforced disappearance of his father took place and he has been trying to reconstruct what happened on 24 June 1992 and afterwards for 19 years, even though this is not his, but the Bosnian authorities', obligation. He is not a professional investigator, and he has found fragmentary and often contradictory information. Some of these contradictions have been reflected in the press. He states that on 12 September 2011, he wrote to the Institute asking about the actions taken to locate the remains of his father and that he received only a response questioning his credibility.

5.3 The author further argues that the large number of war crimes that still require investigation does not relieve the State party from its responsibility to conduct a prompt, impartial, independent and thorough investigation into cases of gross human rights violations, or from regularly informing relatives of the victims on the progress and results of those investigations. He also states that he informed the Office of the Prosecutor of the events related to the enforced disappearance of his father in due time and that he has taken several actions in order to be kept informed about the results of the investigation. Following the State party's submission to the Committee on 10 August 2011, he wrote to the Bosnian authorities on 14 and 15 September 2011, requesting additional information about the investigation. He did not receive a satisfactory response. Regarding the State party's submission regarding the actions taken by the State Investigation and Protection Agency,¹⁷ the author asserts that he has never been informed about them. The author reiterates that relatives of victims should be informed regularly on developments in the investigations and their results. He quotes general comment No. 10 (2010) on the right to truth in relation to enforced disappearances of the Working Group on Enforced or Involuntary Disappearances, according to which the refusal to provide information is a limitation to the right to the truth and providing only general information on procedural matters amounts to a violation of the same right.

5.4 Further, the author considers that the decision of the Office of the Prosecutor of Bosnia and Herzegovina to classify his father's enforced disappearance as a less complex case which will be disposed of in 15 years violates any criterion of promptness of the investigation and reiterates the violation of his rights. While he appreciates the adoption of the National Strategy for War Crimes Processing, its implementation has been deficient and cannot be used by the State party as a sufficient response. He further argues that the adoption of a transitional justice strategy cannot replace access to justice and redress for the victims of gross human rights violations and their relatives.

¹⁷ See para. 4.3.

Additional submissions by the parties

6.1 On 16 and 20 December 2011, the State party transmitted letters from different institutions reiterating the information provided in the previous submission.¹⁸ It further indicates that the Ministry of the Interior of the Republika Srpska informed the Missing Persons Institute on 13 October 2011 that it has found that the body of Božo Mandić had been buried by Blagoje Pešić, who was residing in Montenegro. The State party provided a document from the Ministry of the Interior dated 13 October 2011 indicating that Mr. Pešić had provided a statement to the International Criminal Police Organization (INTERPOL) in Montenegro stating that after Božo Mandić and his wife had been taken from their house by the “Muslim army”; Božo Mandić was taken to Nedžarići, where he was released and was supposed to cross into Serbian territory, but instead he was killed by the “Muslim army”. Mr. Pešić found his body the next day and buried it immediately. Mr. Pešić was not able to provide the exact location of the burial but indicated that it was in the main road from Sarajevo to Dobrinja and that he was willing to assist in the location of Božo Mandić’s remains.

6.2 On 17 February 2012, the author provided comments to the State party’s observations. He states that on 16 January 2012, Mr. Pešić was brought to the location he indicated as being the place where he had buried Božo Mandić. He was accompanied by the author, representatives of the State Investigation and Protection Agency, the Missing Persons Institute, the International Commission on Missing Persons and TRIAL. He indicated a location and then made a statement which was forwarded to the Office of the Prosecutor of Bosnia and Herzegovina. On 23 January 2012, the Office issued an order for an exhumation.¹⁹ The author welcomed Mr. Pešić’s declarations and requested the State party to organize the necessary actions to explore the location and excavate the spot. He recalled that, as he had already indicated to the authorities, there was a possibility that the mortal remains of his father had already been exhumed and might be buried as N.N. in the Visoko cemetery.²⁰ The author expressed concern that no action had been taken in this regard.

6.3 The author further expresses dissatisfaction regarding the Bosnian authorities’ handling of his case as, on 13 December 2011, he received a letter from the State Investigation and Protection Agency stating that the Cantonal Prosecutor of Sarajevo had re-exhumed two bodies in Visoko on 29 March 2007 and that the DNA of one of them matched his father’s. The author claims that this caused him great distress.. On 17 December 2011, he sent letters to the International Commission and to the Missing Persons Institute asking for clarifications. On 19 December 2011, he requested to speak with someone in the Agency, with no success. He then issued a press release, following which he was received by two officials who informed him that unfortunately, the letter had been a mistake because the DNA results had not been positive, but negative. They presented their excuses to the author. The author was in a state of shock as he felt that the authorities had not taken his queries and the investigation of his father’s case seriously. On 21 and 26 December 2011, he received replies from the International Commission and the Institute respectively, indicating that they had never issued a report on a match of his father’s DNA.

6.4 The author further submits that on 16 November 2011, he received a letter from the Constitutional Court in response to his letter of 25 October 2011, stating that its decision in

¹⁸ Letter dated 29 December 2011 from the Office of the Cantonal Prosecutor of Sarajevo to the Ministry of Human Rights and Refugees; letter dated 1 December 2011 from the Ministry of Human Rights and Refugees to the Ministry of Justice; letter dated 1 December 2011 from the Missing Persons Institute to the Ministry of Human Rights and Refugees; two letters dated 13 October 2011 from the Ministry of the Interior of the Republika Srpska to the Institute.

¹⁹ See para. 6.7.

²⁰ See paras. 2.3-2.6 and note 6.

relation to his father's case dated 15 December 2005 had not been implemented and that the ruling had been forwarded to the Office of the Prosecutor of Bosnia and Herzegovina as the authority competent to prosecute those who failed to implement it.

6.5 On 29 May 2012, the State party submitted letters from six entities.²¹ The State Investigation and Protection Agency informed the author that it had conducted an investigation into the letter concerning the erroneous DNA report and that the officer who had provided the false information had been disciplined. The Missing Persons Institute, in a letter dated 17 May 2012, stated that it had provided the author with documentation regarding the actions taken to trace his missing father as well as a schedule of planned activities. It also indicated that it had sent a request to the Office of the Prosecutor of Bosnia and Herzegovina requesting authorization for exploratory excavation of the location indicated by Mr. Pešić.

6.6 In a letter dated 8 May 2012, the Office of the Prosecutor of Bosnia and Herzegovina states that on 23 January 2012, it issued the approval for digging in Lukavička cesta and in the yard of the Mandić's house. The Office states that the Institute has the obligation to notify it about the findings of the dig and to submit an exhumation request should a grave be found. The Institute has not done so. The Office also states that in March 2012, the case of the author's father was divided into two files: one to trace and identify the mortal remains (under the responsibility of the Office) and the other in relation to the establishment of the criminal responsibility of the alleged perpetrators of the crime (under the jurisdiction of the Office of the Cantonal Prosecutor). The Office further states that the author is being regularly informed about the actions taken. It also states that on 18 November 2011, it received a letter from the Constitutional Court regarding the failure to implement the ruling of 15 December 2005. The Office opened a case and assigned a prosecutor who, on 6 March 2012, requested the Council of Ministers to submit a report indicating the steps taken to implement the ruling. The Office had not received a response from the Council as of 8 May 2012, when the letter was submitted.

6.7 On 9 July 2012, the author submitted his comments on the State's additional submissions. The author states that on 28 May 2012, an exploratory excavation was carried out in the yard of the Mandić's house, in his presence and with the participation of a representative of the Institute. The excavations did not have any meaningful result. The author indicates that he still hopes that his father's remains are buried in the Visoko cemetery as N.N.²² and that, despite his efforts, the authorities did not conduct any investigation in this direction. On 5 July 2012, the author wrote to the Office of the Prosecutor of Bosnia and Herzegovina and to the Institute requesting them to investigate this possibility.

6.8 The author submits that there is a lack of coordination between the authorities of Bosnia and Herzegovina, which hampers the effectiveness of the investigation. While the Office of the Prosecutor of Bosnia and Herzegovina stated in its letter dated 8 May 2012 that on 23 January 2012 it had issued an authorization for the exploratory excavation, the Institute states that a request for the exploratory excavation was submitted to the Office and that a response would "be received soon". The author also states that he was not notified of the decision to separate his father's investigation file into two cases²³ and that he learned of it through the letter dated 8 May 2012 sent by the Office to the Committee.

6.9 On 22 October 2012, the State party submitted 11 letters from various authorities. The Constitutional Court, the Ministry of Justice, the State Investigation and Protection

²¹ The State Investigation and Protection Agency, the Missing Persons Institute, the Mayor of Novi Grad, the Office of the District Prosecutor of Istočno Sarajevo, the Office of the Prosecutor of Bosnia and Herzegovina and the Ministry of Justice.

²² See paras. 2.3-2.6 and 6.2.

²³ See para. 6.6.

Agency, the Office of the District Prosecutor of Istočno Sarajevo and the Municipality of Novi Grad reiterated their positions with regard to the case and indicated that they did not have new information to report. In a letter dated 3 September 2012, the Office of the Prosecutor of Bosnia and Herzegovina indicated that as of the time of writing of the letter, it had not received any notification from the Institute regarding the exploratory excavation ordered on 23 January 2012 and that it was not known whether the excavation had taken place and what evidence had been found. The Office of the Cantonal Prosecutor stated that following the transfer of the case regarding the criminal responsibility related to the disappearance of Božo Mandić by the Office of the Prosecutor of Bosnia and Herzegovina, the cantonal prosecutor in charge of the case took several investigative steps in relation to the suspect, Većerak Josip. On 31 August 2012, the prosecutor decided to suspend the investigation due to lack of evidence.²⁴ The author was informed of his right to appeal this decision but did not exercise it.

6.10 In a letter dated 4 September 2012, the Institute reports that it sent a request for the targeted identification of the mortal remains of unidentified persons buried at the cemetery of Visoko. It also indicates that it requested the relevant institutions in Sarajevo Canton involved in the process of cleaning and exhuming bodies during the war to provide relevant information. According to the cantonal minister of the interior, exhumations were indeed conducted in the Novi Grad in the period between 1992 and 2008. The Municipal Civil Defence Protection Headquarters of Novi Grad was in charge of the exhumations and subsequent removal of bodies. However, the name of Božo Mandić did not appear in the records.²⁵

6.11 On 24 December 2012, the author provided comments on the State party's additional observations. He reiterates his concerns regarding the actions of the Office of the Prosecutor of Bosnia and Herzegovina and that he was only informed about some of the decisions taken by national authorities in the context of the present complaint to the Committee. The author also regrets the lack of coordination between Bosnian authorities, which affects the investigation. Furthermore, the author claims that he did not appeal the decision to close the investigation regarding Većerak Josip because it was not clear whether he had to present the appeal before the Office of the Prosecutor of Bosnia and Herzegovina or the cantonal prosecutor.

6.12 On 10 January 2013, the State party provided additional observations. It submitted letters from the State Investigation and Protection Agency, the Office of the Prosecutor of Bosnia and Herzegovina, the Missing Persons Institute and the Office of the Cantonal Prosecutor. All of them reported that they had no new information or developments to report.

6.13 On 5 February 2013, the author expressed his concern regarding the way in which the Bosnian authorities were submitting their observations to the Committee, with delays and without taking his comments into account. In addition, Bosnian authorities had limited themselves to reiterating that they did not have further information to add to past submissions.

6.14 On 14 March 2013, the State party submitted a letter from the Ministry of Human Rights and Refugees summarizing the replies of several institutions regarding the investigation of Božo Mandić's case. The Office of the Prosecutor of Bosnia and Herzegovina indicated that on 6 February 2013, it had submitted a request to the Missing Persons Institute to submit the official report concerning the exploratory excavation authorized in January 2012. In the meantime, the Institute stated that on 6 August 2012, it

²⁴ Letter dated 4 September 2012.

²⁵ The State party provided a letter dated 12 September 2012 from the Municipality of Novi Grad indicating that the civil defense forces were the only authority in the municipality that could have relevant information on Božo Mandić's case; however, they did not have any information.

had sent a letter to the Office of the Prosecutor reporting that it had taken several actions on the case, including an exploratory excavation in Lukavička cesta and in the yard of the Mandić's house, DNA tests in the mass grave located in the "Lav" cemetery and hearings with witnesses. The Institute further indicated that despite all the activities undertaken, the case of Božo Mandić had not yet been resolved, but that it would continue to take all the necessary measures to solve it. The Office of the Cantonal Prosecutor challenged the author's submission that it had not been clear to which authority he had to submit an appeal against the closure of the investigation regarding Većerak Josip.²⁶ The author had provided statements in relation to this investigation to the Office of the Cantonal Prosecutor on two occasions and had therefore been aware that it was in charge of the investigation.

Issues and proceedings before the Committee

Consideration of admissibility

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

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

7.3 The Committee notes that the State party has not challenged the admissibility of the communication. The Committee also notes the author's allegations that the Constitutional Court itself held that there was no effective remedy to protect the rights of the relatives of missing persons; that he had informed the authorities about the alleged events concerning Božo Mandić beginning in 1992; that on 15 December 2005, the Court had found that the rights of Božo Mandić's wife had been violated because of the failure to inform her concerning the whereabouts of her husband; and that the Court's judgement had not been implemented by the competent authorities. The Committee observes that more than 22 years after the alleged events concerning Božo Mandić, the State party has failed to provide convincing arguments to justify the delay in completing the corresponding investigation. Accordingly, the Committee considers that the domestic remedies have been unreasonably prolonged and that it is not precluded from examining the communication under article 5 (2) (b) of the Optional Protocol.

7.4 All admissibility criteria having been met, the Committee declares the authors' claims under articles 6 and 7, read in conjunction with article 2 (3), in relation to Božo Mandić, and under articles 7, 17 and 23 (1), read in conjunction with article 2 (3), in relation to Milan Mandić admissible and proceeds to its examination of the merits.

Consideration of the merits

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

8.2 The Committee takes note of the author's claims that on 4 April 1992, the Serbian Territorial Defence Force set up a barricade right below the Mandić's house and that from then on, the house was subjected to crossfire from the Serbian and the Bosnian Territorial Defence armies. The Committee also notes the author's claim that on or around 10 June 1992, Božo Mandić was wounded by a sniper while he was in the courtyard in front of his house and that his wife took care of him until she was captured by members of the Bosnian

²⁶ See para. 6.11.

Territorial Defence Army around 16 June 1992. Since then, Božo Mandić's family has been looking for him, in vain. The Committee further notes the author's claim that according to an eyewitness, Božo Mandić was arbitrarily killed on or around 24 June 1992 and that an official of the Bosnian Territorial Defence Army ordered the witness to bury Božo Mandić's remains.²⁷ The Committee notes the author's claim that the facts occurred within the context of a widespread and systematic attack directed against the civilian population and that it is therefore reasonable to presume that his father became a victim of an extrajudicial execution by the Bosnian Territorial Defence Army in June 1992, subject to further investigation. No *ex officio* prompt, impartial, thorough and independent investigation has been carried out by the State party to clarify his fate and whereabouts and to bring the perpetrators to justice. The Committee recalls its general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, according to which a failure by a State party to investigate allegations of violations 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 in and of itself give rise to a separate breach of the Covenant.

8.3 Although the acts of the Bosnian Territorial Defense Army are not directly attributable to the State party, the Committee notes the authors' claim that these acts were committed in the State party's territory by the Bosnian Defense Territorial Army and that the State party remains under an ongoing obligation to locate, exhume, identify and return the victim's mortal remains to the family as well as to identify, prosecute and sanction those responsible for the crimes. In this 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 author because the location of the remains of his missing father has not yet been clarified and the culprits have not yet been brought to justice, that in itself is not sufficient to find a breach of article 2 (3) of the Covenant in the circumstances of the present communication.

8.4 However, the author claims that more than 19 years after the alleged events concerning Božo Mandić, and more than 5 years after the judgement of the Constitutional Court of 15 December 2005, the investigative authorities have not provided him with relevant information regarding the fate and whereabouts of his father. The Committee notes that the first time the author was contacted by the authorities regarding his father's case was in February 2007, almost 15 years after the relevant events when, following a request made by the Office for Tracing Detained and Missing Persons of the Republika Srpska in March 2005,²⁸ the Office of the Cantonal Prosecutor sent the author a letter stating that exhumations had been carried out in Lukavička Road between September and November 1998 and noting the similarity between his father's case and another case. The author claims that after this letter, he did not receive additional information from the Cantonal Prosecutor's Office or the Bosnia and Herzegovina Prosecutor's Office on the progress of the investigation, despite having requested updated information on several occasions.²⁹ On 6 February 2006, the author applied to the Constitutional Court and requested it to adopt a ruling establishing that the authorities had failed to enforce its decision of 15 December

²⁷ The information provided by the author (see para. 2.3) differs from the declaration provided by the alleged witness, Mr. Pešić, on 13 October 2011 to INTERPOL in Montenegro and submitted by the State party (see para. 6.1), according to which Božo Mandić was killed in June 1992 by the Bosnian Territorial Defence Army and buried by Mr. Pešić the day after.

²⁸ See paras. 2.5 and 2.6.

²⁹ See paras. 2.6 and 5.3.

2005. However, the Court has taken no decision and no effective action has been carried out by the authorities to bring perpetrators to justice or to compensate the author. The Committee also notes that there was a lack of coordination among the State party's authorities in carrying out the investigation into the case of Božo Mandić. For example, the author submits that the Office of the Prosecutor of Bosnia and Herzegovina and the Missing Persons Institute made contradictory statements regarding the exploratory excavation carried out at the location indicated as the burial place of Božo Mandić, which had a negative impact on the effectiveness of the investigation.³⁰ Despite the State party's efforts to clarify the fate and whereabouts of Božo Mandić³¹ and the testimony alleging his death, it has failed to provide the author or the Committee with specific and sufficient explanations for the delays and the shortcomings in its conduct. Nor has the State provided the author and the Committee with relevant and specific information regarding the prosecution of the perpetrators. 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. The Committee further considers that authorities investigating such violations must give the families a timely opportunity to contribute their knowledge to the investigation and that information regarding the progress of the investigation must be made promptly accessible to the families. It also notes the anguish and distress caused to the author by the continuing uncertainty resulting from not knowing where his father's remains may be and the impossibility, if he is deceased, of burying him in accordance with his faith. Accordingly, 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 Božo Mandić.

8.5 The Committee further notes the author's claim that he has been revictimized throughout the years of his fight. In this connection, the Committee notes various examples of lack of care or seriousness on the part of State authorities: (a) on 13 December 2011, the author received a letter from the State Investigative and Protection Agency stating that the DNA of a body exhumed by the Office of the Cantonal Prosecutor matched his father's. However, Agency officials later apologized, indicating that the earlier statement had been a mistake and that there was no DNA match (see para. 6.3); (b) the lack of coordination between Bosnia and Herzegovina authorities, which led to delays and confusion (see paras. 6.8, 6.14 and 8.4); (c) the lack of an adequate follow-up to the information provided by the author in relation to the possibility that the body of Božo Mandić was buried as N.N. in the Visoko cemetery (see paras. 6.7 and 6.10). The Committee considers that these revictimizing circumstances, together with the lack of information as to the fate and whereabouts of Božo Mandić, amount to inhuman and degrading treatment in violation of article 7, read alone and in conjunction with article 2 (3), of the Covenant with respect to the author.

8.6 In the light of the above findings, the Committee will not examine separately the author's allegations under articles 17 and 23 (1), read in conjunction with article 2(3), of the Covenant.³²

9. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation by the State party of article 6, read in conjunction

³⁰ For instance, the Office of the Prosecutor stated in a letter dated 6 February 2013 that it had requested the Institute to deliver the report regarding the exploratory excavation authorized by the Office on 23 January 2012, while the Institute indicated on 6 August 2012 that it had communicated the results of the exploratory excavation to the Office. See paras. 6.14. and 6.8.

³¹ See paras. 6.5-6.7.

³² See communication 1997/2010, *Rizvanović v. Bosnia Herzegovina*, Views adopted on 21 March 2014, para. 9.7.

with article 2 (3), of the Covenant, with regard to Božo Mandić and article 7, read alone and in conjunction with article 2(3), with regard to the author.

10. In accordance with article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author 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 Božo Mandić, as required by the Law on Missing Persons of 2004, and have its investigators contact the author as soon as possible to obtain the information that he can contribute to the investigation; (b) strengthen its efforts to bring to justice those responsible for his death, without unnecessary delay, as required by the National Strategy for War Crimes Processing; (c) ensure that any necessary psychological rehabilitation and medical care is provided to the author for the psychological harm he has suffered (see para. 3.4); and (d) provide the author with 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 extrajudicial killings and adequate measures of reparation are accessible to the families of missing persons.

11. 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.

Appendix I

[Original: Spanish]

Individual opinion of Committee member Víctor Manuel Rodríguez-Rescia (partly dissenting)

1. The present opinion concerns the decision of the Human Rights Committee on communication No. 2064/2011 in relation to the facts described which demonstrate the infringement by the State party of article 6, read in conjunction with article 2 (3), of the Covenant, with respect to Bozo Mandić and of article 7, read separately and in conjunction with article 2 (3), with respect to the author. What I do not agree with in these Views is that the case has been treated as an execution and not as a forced disappearance of the victim; that would also have given rise to a violation of articles 7 and 16 of the Covenant, read in conjunction with article 2 (3), with respect to the victim and other rights relating to the author (arts. 17 and 23, read in conjunction with art. 2 (3)). In addition, there would have been an increase in the redress to be determined, apart from the question of locating the remains of the disappeared person to undertake his exhumation and return so that his relatives could organize a dignified burial.

2. In my opinion, the facts of this communication constitute a forced disappearance and not an execution, even though the facts described by the author (the son of the victim) do not mean that the Committee should automatically regard them as accurate. From the outset the case set out in the communication has been described as the forced disappearance of Bozo Mandić in 1992; since that date his fate and whereabouts have been unknown and it has not been possible to give him a dignified burial. Consequently, the continuing effects of the forced disappearance still exist. Other facts which demonstrate that the communication should have been treated as forced disappearance are the following, as indicated in paragraphs 8.2, 8.3 and 8.4 of the communication:

(a) On or about 10 June 1992, Bozo Mandić was wounded by a sniper while he was in the courtyard in front of his house. His wife looked after him until she was captured by members of the Bosnian Territorial Defence Army on about 16 June 1992 and taken to a concentration camp. In early July 1992, she was released in an exchange of prisoners and tried to contact her husband, but in vain. For this reason she told her son, Milan Mandić, that Bozo Mandić had disappeared;

(b) The author, from the time he first decided to report the events, did so as a case involving the forced disappearance of his father, as indicated in paragraph 2.2 of the communication: (i) in July or August 1992 Milan Mandić reported the disappearance of his father three times to the International Committee of the Red Cross (ICRC) in Pale; (ii) the first written certification that the disappearance of Bozo Mandić had been reported was issued by ICRC on 7 July 1995; (iii) on 17 March 1995 the author also reported the disappearance of Bozo Mandić to the ICRC Central Tracing Agency in Zagreb, which sent him a certificate on 13 May 1996;

(c) The victim's son, Milan Mandić, and other relatives of disappeared persons of Bosnian Serb origin began to organize an association to ascertain the fate and whereabouts of these disappeared persons. Among other activities, the association began to investigate the possible sites of common graves in the Canton of Sarajevo.

3. In contrast to these events in which the case is referred to as forced disappearance, the first time the victims' relatives were informed that Bozo Mandić might have been

executed was eight years after the start of the forced disappearance, when, in the year 2000, Milan Mandić learned, through an alleged witness, a certain Blagoje Pesic,^a that his father had been executed. This sole witness in fact contradicted himself and was imprecise.

4. As is apparent from the account of all the facts, the author's family has always treated the case as a forced disappearance of the victim; they never saw or were able to verify that the victim had been executed and his remains have still not come to light, so they have been unable to give him a dignified burial. In the meantime, the victim's family have continued to take steps to find his remains, but without success. Bozo Mandić continues to be registered as disappeared with ICRC, the International Commission on Missing Persons and the Missing Persons Institute. The Constitutional Court has also listed Bozo Mandić as "disappeared".

5. Even though most of the rights declared violated in this communication on the basis of an extrajudicial execution might be similar if it had been recognized that the violations occurred as a result of a forced disappearance, there are differences of substance, and also with regard to the redress which should be determined. The forced disappearance exists and is a continuing crime owing to the fact that the victim's remains have not been found. This has been clearly stated by the norms and the specialized jurisprudence on the subject, which indicates that a forced disappearance shall be considered as continuing and permanent until such time as the fate or whereabouts of the victim have been established; consequently, until the whereabouts of missing persons have been determined or their remains duly located and identified, the appropriate legal treatment for this situation is that of a forced disappearance of persons.^b

6. I consider that, since this is a case of forced disappearance — and not solely one of extrajudicial execution — the Committee should have concluded that, in addition to the violations already indicated in the communication, there has been a violation of articles 7 and 16, read in conjunction with article 2 (3), of the Covenant to the detriment of the victim (article 16 on the basis of the principle *iura novit curiae*) and articles 17 and 23, read in conjunction with article 2 (3), of the Covenant to the detriment of the author.

^a According to a document of the Army of the Republika Srpska dated 12 June 1994, contributed by the author, Mr. Pešić had not participated in military actions during the war and, at the time of the events described, he was working in the Civil Protection Corps, mainly digging trenches.

^b See Inter-American Convention on the Forced Disappearance of Persons, art. III and Inter-American Court of Human Rights, *La Cantuta v. Peru*, judgement of 29 November 2006, Series C No. 162, para. 114.

Appendix II

[Original: Spanish]

Individual opinion of Committee member Fabián Salvioli (partly dissenting)

1. In relation to communication No. 2064/2011, *Mandić v. Bosnia and Herzegovina*, while I agree with the determination of the international responsibility of the State for violation of the International Covenant on Civil and Political Rights, I am of the view that the reasoning of the Committee should have been based on different considerations, both in the categorization of the facts and in the identification of the violations of the Covenant.
2. Firstly, the facts involve enforced disappearance and not extrajudicial execution. The enforced disappearance continues even at the present time, since it constitutes a complex and continuing crime which only ends with the appearance of the victim alive or the identification of his remains if he has died. Neither of these two eventualities can be proved in the case under consideration by the Committee. This should have led to an overall analysis by the Committee under articles 6, 7, 9 and 16 of the Covenant.
3. Secondly, I consider that the direct violations of these articles cannot be attributed to the State of Bosnia and Herzegovina through the particular circumstances of the case, but that the State is responsible for the violation of article 2 (3), read in conjunction with articles 6, 7, 9 and 16, since it has not provided an effective remedy in the face of the violations that occurred.
4. I also consider that the Committee should have found — by reason of the facts demonstrated — the violation of article 2 (3), read in conjunction with article 7, in respect of Bozo Mandić (the Committee has inverted the order of the articles in its decision).
5. Lastly, I concur with the Committee's view determining the responsibility of the State party for the direct violation of article 7 to the detriment of Bozo Mandić.