



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

## THIRD SECTION

### DECISION

Application no. 4159/15  
Ahmet KAMENICA and others  
against Serbia

The European Court of Human Rights (Third Section), sitting on 4 October 2016 as a Chamber composed of:

Luis López Guerra, *President*,  
Helena Jäderblom,  
Helen Keller,  
Dmitry Dedov,  
Branko Lubarda,  
Pere Pastor Vilanova,  
Alena Poláčková, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having regard to the above application lodged on 24 December 2014,

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

Having regard to the comments submitted by the Government of Bosnia and Herzegovina,

Having deliberated, decides as follows:

### THE FACTS

1. A list of the applicants is set out in the appendix. All the applicants are nationals of Bosnia and Herzegovina and are represented by Ms T. Drobñjak, a lawyer practicing in Belgrade.

2. The Serbian Government (“the Government”) are represented by their Agent, Ms N. Plavšić.

### A. Relevant background

3. Following its declaration of independence from the former Socialist Federal Republic of Yugoslavia (SFRY) in March 1992, a brutal war broke out in Bosnia and Herzegovina. More than 100,000 people were killed and more than 2,000,000 others were displaced as a result of “ethnic cleansing” or generalised violence. The following local forces were the main parties to the conflict: the ARBH<sup>1</sup> (mostly made up of Bosniacs<sup>2</sup> and loyal to the central authorities in Sarajevo), the HVO<sup>3</sup> (mostly made up of Croats<sup>4</sup>) and the VRS<sup>5</sup> (mostly made up of Serbs<sup>6</sup>). The conflict ended in December 1995 when the General Framework Agreement for Peace (“the Dayton Agreement”) entered into force between Bosnia and Herzegovina, Croatia and the Federal Republic of Yugoslavia (succeeded by Serbia in 2006).

4. Žepa, a town in eastern Bosnia and Herzegovina, is situated some twelve kilometres from the border with Serbia. Before the war it had a population of less than 3,000, of whom the majority were Bosniacs. During the war, Žepa was one of three Bosniac enclaves in eastern Bosnia surrounded by the VRS<sup>7</sup>. In 1993 it was declared a “safe area” by the United Nations Security Council<sup>8</sup>.

5. In 1995, there were between 6,500 and 8,000 people living in Žepa, of whom some two-thirds were displaced persons from other parts of Bosnia and Herzegovina<sup>9</sup>.

6. On 12 July 1995 the VRS attacked the Žepa “safe area”, capturing it on 25 July. In the days that followed, several hundred Bosniacs –

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<sup>1</sup> *Armija Republike Bosne i Hercegovine* (the Army of the Republic of Bosnia and Herzegovina).

<sup>2</sup> Bosniacs were known as Muslims until the 1992-95 war. The term “Bosniacs” (*Bošnjaci*) should not be confused with the term “Bosnians” (*Bosanci*) which is used to denote citizens of Bosnia and Herzegovina, irrespective of their ethnic origin.

<sup>3</sup> *Hrvatsko vijeće obrane* (the Croatian Defence Council).

<sup>4</sup> Croats are an ethnic group whose members may be natives of Croatia or of other former component republics of the SFRY including Bosnia and Herzegovina. The term “Croat” is normally used to refer to members of the ethnic group, regardless of their nationality; it is not to be confused with the term “Croatian”, which normally refers to nationals of Croatia.

<sup>5</sup> *Vojska Republike Srpske* (the Army of the Republika Srpska).

<sup>6</sup> Serbs are an ethnic group whose members may be natives of Serbia or of other former component republics of the SFRY including Bosnia and Herzegovina. The term “Serb” is normally used to refer to members of the ethnic group, regardless of their nationality; it is not to be confused with the term “Serbian”, which normally refers to nationals of Serbia.

<sup>7</sup> Srebrenica and Goražde being the other two.

<sup>8</sup> In 1993 the United Nations Security Council, acting under Chapter VII of the Charter, demanded that all the parties concerned treat Srebrenica, Sarajevo, Tuzla, Žepa, Goražde and Bihać, as well as their surroundings, as “safe areas” which should be free from armed attacks and any other hostile act (resolutions 819 of 16 April 1993 and 824 of 6 May 1993).

<sup>9</sup> See ICTY (International Criminal Tribunal for the Former Yugoslavia) judgment *Popović et al.*, IT-05-88, §§ 667-670, 10 June 2010.

predominantly able-bodied men who had refused to surrender to VRS forces – managed to cross the border and flee into Serbia<sup>1</sup>. The present applicants were among them.

## **B. The circumstances of the case**

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

8. When Žepa was captured by the VRS, the applicants crossed into Serbia from Bosnia and Herzegovina, hoping that they would be able to find refuge in a third country. They were discovered by the border guard of the VJ<sup>2</sup> and taken to two detention camps. The applicants claim that they received notification that they had prisoner-of-war status; it would appear that some of them were indeed members of ARBH but some were civilians. The first camp, Šljivovica, was situated in the municipality of Čajetina and the second, Mitrovo Polje, in the municipality of Aleksandrovac, both in Serbia. The Šljivovica detention camp was located in an abandoned workers' barracks and the Mitrovo Polje camp in a former children's recreational facility.

9. During their existence the camps were visited by representatives of the International Committee of the Red Cross and the State Commission for Missing Persons of Bosnia and Herzegovina. The latter compiled a report in which it found that the conditions of detention were disturbing.

10. Between January and April 1996 the UNHCR facilitated the transfer of the camps' detainees to third countries and the camps were closed in April 1996.

11. On 6 September 2011 the Humanitarian Law Centre (*Fond za humanitarno pravo*), a Belgrade-based NGO, lodged a criminal complaint on behalf of the applicants with the Office of the War Crimes Prosecutor of Serbia against more than 50 individuals for alleged war crimes. In the criminal complaint it was alleged that, when the applicants were discovered at the Serbian border, the army and the police had used force against them and transported them to the aforementioned camps. Both camps had been guarded by officers of the Serbian police force and none of the applicants had been allowed to leave them. According to the applicants, during the time they spent in the camps they had been regularly verbally abused, taken to mock executions, kicked and punched, and beaten with fists, batons, cables, shovels and metal rods. Some of the applicants had had burning cigarettes held against their skin, had been forced to drink water mixed with motor oil and some had also been sexually abused (in particular, some of the applicants had been forced to perform sexual acts on each other).

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<sup>1</sup> *Popović et al.*, cited above, §§ 731-738.

<sup>2</sup> *Vojska Jugoslavije* (The army of the Federal Republic of Yugoslavia).

The applicants who had been suspected of being members of the ARBH had suffered particularly harsh treatment and had been forced to engage in mutual fights, look directly into the sun, move heavy rocks and had been denied medical assistance.

12. In its criminal complaint the Humanitarian Law Centre submitted statements by the camps' detainees, medical documentation, documentation from the International Committee of the Red Cross and the State Commission for Missing Persons of Bosnia and Herzegovina, and other evidence. Amongst those who were alleged to have taken part in torture, the Centre identified members of the State Security Agency of Serbia, police officers, and military servicemen of various ranks.

13. On 23 September 2011 the Office of the War Crimes Prosecutor undertook preliminary verification of the information submitted by the applicants and requested that the Ministry of Interior and the Ministry of Defence submit information regarding the criminal complaint.

14. On 17 November 2011 and 2 December 2011 the Ministry of Interior submitted two reports to the Office. In their reports it was stated that the situation in the camps had been generally good, that the camps had not been enclosed behind a fence, and that residents who were given refugee status had had access to health services, a canteen, a post office, a phone, a bank, and both private visits and visits by officials from international organisations. While one of the reports describes the conditions in Šljivovica camp as unsatisfactory, the conditions in Mitrovo Polje were described as lodgings with the quality of "hotel accommodation".

15. On 1 March 2013 the Office of the War Crimes Prosecutor notified the Humanitarian Law Centre that it did not find any grounds for initiating criminal investigation since the alleged acts could not be classified as war crimes or any other crime under the jurisdiction of the Office of the War Crimes Prosecutor. On 8 April 2013 the applicants lodged a constitutional appeal before the Constitutional Court of Serbia claiming violations of Articles 2, 3 and 6 of the Convention. On 4 February 2014 the Constitutional Court rejected the applicants' constitutional appeal as incompatible *ratione materiae* with the provisions of the Constitution, finding that the notification in question was not an act which was decisive with respect to the applicants' human rights.

16. On 13 June 2014 Belgrade Court of Appeal, acting upon a civil action for damages brought by two of the applicants, Enes Bogilović and Mušan Džebo, delivered a final judgment in civil proceedings in which it found that the applicants in question had suffered "intensive torture and inhumane treatment" and that the "applicants survived what was without a doubt the harshest suffering an individual [could] experience". The court further described the actions of the guards towards the two applicants and other detainees as "conduct ... hardly worthy of a human being".

Each plaintiff was awarded 300,000 Serbian dinars (RSD) in non-pecuniary damage.

17. The decision of the Constitutional Court was delivered to the applicants' representative on 2 July 2014.

### **C. Relevant domestic law and practice**

#### *1. Provisions concerning the statutory limitation of criminal liability*

##### **(a) Criminal Code of the Federal Republic of Yugoslavia**

18. The Criminal Code of the Socialist Federal Republic of Yugoslavia 1976 (Official Gazette of the Socialist Federal Republic of Yugoslavia – OG SFRY – nos. 44/76, 36/77, 34/84, 37/84, 74/87, 57/89, 3/90, 38/90, 45/90 and 54/90, in the Official Gazette of the Federal Republic of Yugoslavia nos. 35/92, 16/93, 31/93, 37/93, 24/94 and 61/01, and in OG RS no. 39/03) was in force until 1 January 2006. The relevant provisions thereof are set out hereunder.

19. Article 95 governs the statutory limitation periods in respect of criminal liability. The relevant parts are worded as follows:

“(1) If not prescribed differently by this Code, criminal liability shall be statute-barred:

1) twenty-five years from the date on which the offence was committed in instances where the law provides for the death penalty or twenty years' imprisonment;

2) fifteen years from the date on which the criminal act was committed where the law provides for a maximum sentence exceeding ten years;

3) ten years from the date on which the criminal act was committed where the law provides for a maximum sentence exceeding five years;

4) five years from the date on which the criminal act was committed where the law provides for a maximum sentence exceeding three years;

5) three years from the date on which the criminal act was committed where the law provides for a maximum sentence exceeding one year;

...”

20. Article 100 of the same Code is worded as follows:

“The statutory limitation of criminal liability does not apply to the crimes covered by Articles 141-145 of this Code [genocide and war crimes] or to crimes for which statutory limitation is proscribed by international treaties.”

##### **(b) Criminal Code of the Republic of Serbia**

21. The Criminal code of the Republic of Serbia (Official Gazette of the Republic of Serbia, nos. 85/2005, 88/2005, 107/2005, 72/2009, 111/2009, 121/2012 and 104/2013) entered into force on 1 January 2006.

Article 103 governs the statutory limitation periods in respect of criminal liability. The relevant parts are worded as follows:

“(1) If not prescribed differently by this Code, criminal liability shall be statute-barred:

1) twenty-five years from the date on which the offence was committed where the law provides for thirty to forty years’ imprisonment;

2) twenty years from the date on which the criminal act was committed where the law provides for a maximum sentence exceeding fifteen years;

3) fifteen years from the date on which the criminal act was committed where the law provides for a maximum sentence exceeding ten years;

4) ten years from the date on which the criminal act was committed where the law provides for a maximum sentence exceeding five years;

5) five years from the date on which the criminal act was committed where the law provides for a maximum sentence exceeding three years;

6) three years from the date on which the criminal act was committed where the law provides for a maximum sentence exceeding one year;

...”

22. Article 100 of the same Code is worded as follows:

“The statutory limitation of criminal liability does not apply to crimes covered by Articles 370-375 of this Code [genocide and war crimes] or to crimes for which statutory limitation is proscribed by ratified international treaties.”

2. *Provisions concerning war crimes, crimes against humanity and torture*

**(a) Criminal Code of the Federal Republic of Yugoslavia (in force until 1 January 2006)**

23. Article 142 - War crime against the civilian population

“Whoever, acting in violation of the rules of international law applicable in time of war, armed conflict or occupation, orders that a civilian population be subject to killing, torture, inhumane treatment, biological experiments, immense suffering or violation of their bodily integrity or health; dislocation or displacement or forcible conversion to another nationality or religion; forcible prostitution or rape; application of measures of intimidation and terror, hostage-taking, imposition of collective punishment, unlawful transfer to concentration camps or other illegal arrests and detention, deprivation of rights to fair and impartial trial; forcible service in the armed forces of the enemy’s army or in its intelligence service or administration; forced labour, starvation of the population, property confiscation, pillaging, illegal and intentional destruction or large-scale stealing of property that is not justified by military needs, taking an illegal and disproportionate contribution or requisition, devaluation of domestic currency or the unlawful issuance of currency; or personally commits one of the aforementioned actions, shall be punished by not less than five years’ imprisonment or the death penalty.”

#### 24. Article 144 - War crime against prisoners of war

“Whoever, acting in violation of the rules of international law, orders the murder, torture or inhumane treatment of prisoners of war, including biological experiments, extreme suffering or serious injury to their bodily integrity or health, compulsory enlistment in the armed forces of an enemy power, or deprivation of the right to a fair and impartial trial, or personally commits any of the aforementioned acts, shall be punished by not less than five years’ imprisonment or by the death penalty.”

##### **(b) Criminal Code of the Socialist Republic of Serbia**

25. The Criminal Code of the Socialist Republic of Serbia (Official Gazette of the Socialist Republic of Serbia nos. 26/77, 28/77, 43/77 and 20/79) was in force in until 1 January 2006. Its relevant provisions read as follows:

#### 26. Article 53 – Serious bodily harm

“(1) Whoever causes serious injury to another, or serious impairment of another’s health, shall be punished by imprisonment for six months to five years.

(2) Whoever causes serious injury to another or impairment of another’s health resulting in the endangering of the life of that person or the destruction or permanent significant damage to or weakening of a vital function of his body or an organ thereof, or permanent serious health impairment or disfigurement, shall be punished by one to ten years’ imprisonment.”

##### **(c) Criminal Code of the Republic of Serbia (in force as of 1 January 2006)**

#### 27. Article 121 – Serious bodily harm

“(1) Whoever causes serious injury to another, or serious impairment of another’s health, shall be punished by imprisonment for six months to five years.

(2) Whoever causes serious injury to another or impairment of another’s health resulting in the endangering of the life of that person or the destruction or permanent significant damage to or weakening of a vital function of his body or an organ thereof, or permanent serious health impairment or disfigurement, shall be punished by imprisonment of one to eight years’ imprisonment.

(3) If the actions specified in paragraphs 1 and 2 of this Article result in the death of the injured party, the offender shall be punished by imprisonment of two to twelve years.

...”

#### 28. Article 137 – Ill-treatment and Torture

“(1) Whoever ill-treats another or treats a party in a humiliating and degrading manner shall be punished by a fine or imprisonment for up to one year.

(2) Whoever causes anguish to another with the aim of obtaining information or a confession from him or another person or of intimidating him or a third party or of exerting pressure on such persons, or does so for motives based on any form of discrimination, shall be punished by imprisonment from six months to five years.

(3) If the offence specified in paragraphs 1 and 2 of this Article is committed by an official whilst discharging his duty, that person shall be punished for the offence in

described in paragraph 1 by imprisonment from three months to three years, and for the offence described in paragraph 2 by one to eight years' imprisonment."

#### 29. Article 371 – Crime against humanity

"Whoever, acting in violation of the rules of international law, orders as part of a wider and systematic attack against a civilian population: murder; placement of the group in living conditions calculated to bring about its complete or partial extermination, enslavement, deportation, torture, or rape; enforced prostitution; forcible pregnancy or sterilisation aimed at changing the ethnic balance of the population; persecution on political, racial, national, ethnic, sexual or other grounds, detention or abduction of persons without disclosing information about such acts in order to deny such person legal protection; oppression of a racial group or establishing domination of one such group over another; or other similar inhumane acts that intentionally cause serious suffering or serious impairment of health, or personally commits any of the aforementioned offences, shall be punished by imprisonment of at least five years or imprisonment of between thirty and forty years."

#### 30. Article 372 – War crime against civilian population

(1) Whoever, acting in violation of international law in time of war, armed conflict or occupation orders: an attack on the civilian population, a settlement, particular civilians, persons incapable of combat or members or facilities of humanitarian organisations or peacekeeping missions; wanton attack without target selection that harms the civilian population or civilian buildings under the special protection of international law; an attack against military targets knowing that such an attack would cause collateral damage among civilians or damage to civilian buildings that is evidently disproportionate to the military effect; the infliction on the civilian population of bodily injury, torture, inhumane treatment, biological, medical or other research experiments, or the taking of tissue or organs for transplantation or the performing of other acts that impair health or inflict great suffering or the deportation or relocation or forced change of nationality or religion; forcible prostitution or rape; applying intimidation and terror measures, taking hostages, collective punishment, unlawful deprivation of freedom and detention; deprivation of the rights to a fair and impartial trial; declaration of the prohibition, suspension or non-admissibility in court proceedings of the rights and acts of enemy nationals; the coercion into service of a hostile power or its intelligence or administration services; the coercion into military service of persons under seventeen years of age; forced labour; starvation of the population; unlawful seizure, appropriation or destruction of property not justified by military needs; taking unlawful and disproportionate contributions and requisitions; devaluation of local currency or unlawful issuing of currency, or personally commits any of the above offences, shall be punished by at least five years' imprisonment.

..."

#### 31. Article 374 – War crimes against prisoners of war

"(1) Whoever, acting in violation of international law, orders the injury, torture, or inhumane treatment of prisoners of war, or biological, medical or other research experiments on them, or the taking of their tissues or body organs for transplantation or the commission of other acts harmful to health and causing them serious suffering, or compels prisoners of war to serve in the forces of a hostile power or deprives them of the rights to fair and regular trial; or personally commits any such offences, shall be punished by at least five years' imprisonment.



(2) Whoever orders the murder of prisoners of war or personally commits such an offence, shall be punished by at least ten years' imprisonment or imprisonment of between thirty and forty years.”

### 3. *The War Crimes Act 2003*

32. This Act (published in Official Gazette of the Republic of Serbia no. 67/03, amendments published in Official Gazette nos. 135/04, 61/05, 101/07 and 104/09) entered into force on 9 July 2003. The War Crimes Prosecutor, the War Crimes Police Unit and the War Crimes Sections within the Belgrade Higher Court and the Belgrade Court of Appeal were set up pursuant to this Act. They have jurisdiction over serious violations of international humanitarian law committed anywhere in the former Yugoslavia (see section 3 of this Act).

### 4. *Practice of the Office of the War Crimes Prosecutor*

33. In a number of previous cases concerning war crimes, this Office has treated the war in Bosnia and Herzegovina between 1992 and 1995 as an internal armed conflict (see judgments in cases *Škorpioni*, *Zvornik I*, *Bijeljina*, *Prijedor*, *Zvornik II* and *Stari Majdan*). The majority of the indictments in these cases came into force by 2006. The final judgments in the majority of these cases were adopted by the domestic courts by 2010.

### 5. *The Obligations Act*

34. Articles 199 and 200 of the Obligations Act (*Zakon o obligacionim odnosima*; published in the OG SFRY nos. 29/78, 39/85, 45/89, 57/89 and 31/93) provide, *inter alia*, that anyone who has suffered fear, physical pain or mental anguish as a consequence of a breach of his or her personal rights (*prava ličnosti*) is entitled, depending on the duration and intensity of the breach, to sue for financial compensation in the civil courts and, in addition, to request other forms of redress capable of affording adequate non-pecuniary satisfaction.

## COMPLAINTS

35. The applicants complain under Articles 3, 6 and 13 of the Convention about the lack of effective investigation into their alleged torture.

## THE LAW

36. The applicants complained that the respondent State had failed in its obligations under the procedural aspect of Article 3, and Articles 6 and 13 of the Convention. They argued that these provisions required the State to conduct an effective, impartial and thorough investigation capable of leading to the identification and punishment of those responsible for their ill-treatment. The Court considers that all the complaints fall to be examined under Article 3 of the Convention, the relevant part of which reads as follows:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

### A. The parties' submissions

37. The Government disputed the admissibility of the complaints on several grounds.

38. The Government firstly submitted that the applicant's complaint was incompatible *ratione temporis* with the provisions of the Convention since the alleged torture had taken place prior to 3 March 2004, the date on which the Convention had come into force in respect of the respondent State.

39. The Government also argued that the applicants had not exhausted all effective domestic remedies as required by Article 35 § 1 of the Convention. In particular, the applicants had failed to appeal against the notification from the War Crimes Prosecutor informing them that it had not found any grounds for criminal prosecution before the higher prosecutor.

40. Lastly, the Government submitted that at the time when the applicants lodged their criminal complaint, prosecution of the alleged crimes had become statute-barred. Namely, as Serbia was not a party to an armed conflict, Articles 142 and 144 of the Criminal Code which are triggered in the time of armed conflict did not apply to them (see paragraphs 23-24 above). As a result, the Office of the War Crimes Prosecutor did not have grounds to initiate criminal proceedings for war crimes while the statute of limitation prevented the prosecution of crimes such as torture or grievous bodily harm (see relevant domestic law). Therefore, the application was submitted outside of the six-month time limit as at the time when they submitted their application before the Court, the applicants ought to have become aware for more than six months that no steps would be taken with regard to investigating their allegations.

41. In the alternative, the Government submitted that the application was manifestly ill-founded.

42. The applicants disagreed with the Government's objections. They stressed that their application referred to a continuing situation and a continuing violation of the Convention. In their view, given that their

complaint indicated the commission of a war crime, that is to say, the most severe violation of human rights that undermines the very foundations and underlying values of the Convention, their complaint satisfied the “convention values” test from the Court’s case law (see *Janowiec and Others v. Russia* [GC], nos. 55508/07 and 29520/09, §§ 128-151, 21 October 2013).

43. As regards the objection of non-exhaustion of domestic remedies, the applicants submitted that this remedy had not been available to them at the relevant time, since it had been introduced into the Serbian legal system only at a later stage, and could not in any event have been considered an effective legal remedy.

44. The applicants submitted that their criminal complaint was based on credible new evidence capable of triggering new investigative measures and that certain investigative measures had indeed taken place after the entry into force of the Convention. The applicants further submitted that, given the scale of the human rights violations they complained of, it would be unreasonable to have expected the victims to react promptly and initiate investigative measures in the immediate aftermath of the events in question. In this connection, the applicants argued that before 2003, the Serbian authorities had largely failed to investigate crimes that had taken place during the conflict in the former Yugoslavia. The Office of the War Crimes Prosecutor of Serbia had been established in 2003 and since then some significant progress had been made in the prosecution of war crimes, albeit at a slow pace. Finally, the applicants argued that the crimes complained of constituted war crimes under domestic and international law and were therefore not subject to the statute of limitations.

45. In their third-party submissions the Government of Bosnia and Herzegovina agreed with the applicants’ submissions and argued in particular that – due to Serbia’s involvement in the conflict in Bosnia and Herzegovina – the applicants had the status of either war prisoners or civilians protected under international humanitarian law.

## **B. The Court’s assessment**

46. The Court does not have to address all the issues raised by the parties since this complaint is in any event inadmissible on the following grounds.

47. The Court reiterates that the purpose of the six-month rule is to promote security of the law and to protect the authorities and other persons concerned from being under any uncertainty for a prolonged period of time (see *P.M. v. the United Kingdom* (dec.), no. 6638/03, 24 August 2004). It should also ensure that it is possible to ascertain the facts of a case before that possibility fades away, making a fair examination of the question in

issue next to impossible (see *Pavlenko v. Russia*, no. 42371/02, § 69, 1 April 2010).

48. The six-month period runs from the date of the final decision in the process of exhaustion of domestic remedies.

49. The Court has held – in cases concerning the obligation to investigate under Article 2 of the Convention – that where a death has occurred, relatives of the deceased are expected to keep track of the progress of the investigation into the circumstances and to lodge their applications with due expedition once they have become, or should have become, aware of the lack of any effective investigation (see *Bulut and Yavuz v. Turkey* (dec.), no. 73065/01, 28 May 2002; *Bayram and Yıldırım v. Turkey* (dec.), no. 38587/97, ECHR 2002 III; and *Varnava and Others v. Turkey* [GC], nos. 16064/90 et al., § 158, ECHR 2009). The Court considers that the same principle applies, by analogy, to cases concerning the obligation to investigate under Article 3 of the Convention (see *Petrović and Gajić v. Serbia* (dec.), no. 36470/06, 17 March 2015).

50. Turning to the present case, the Court observes that the applicants complained about ill-treatment that took place between July 1995 and April 1996. The Court further observes that the applicants lodged their criminal complaint with the Office of the War Crimes Prosecutor on 6 September 2011, more than sixteen years after the impugned events. The Court notes that, in view of the date when the criminal complaint was submitted, the statute of limitations prevented the prosecution of any of the offences with the exception of the war crimes.

51. Leaving aside the question of whether or not its interpretation of international law is correct (see *Đokić v. Bosnia and Herzegovina*, no. 6518/04, § 16-17, 27 May 2010 and the authorities cited therein), it is apparent that the Office of the War Crimes Prosecutor consistently refuses to classify the crimes which are alleged to have taken place on Serbian territory during the war in Bosnia and Herzegovina as war crimes. This is demonstrated by the fact that in not a single case has there been an indictment for war crimes by the Office of the War Crimes Prosecutor arising from similar circumstances. The consistent practice of this Office is to treat the war in Bosnia and Herzegovina as an internal armed conflict to which Serbia was not a party (see paragraph 33 above). This practice became apparent already in 2006 when the majority of indictments related to the war crimes committed in the context of the conflict in Bosnia and Herzegovina came into force, or at the very latest by 2010 when the domestic courts delivered first final judgments in these cases, thus accepting such practice as legally valid (see paragraph 33 above). The Court therefore concludes that in 2011, at the time when they submitted their criminal complaint, the applicants ought to have known that it would not result in a criminal prosecution. Consequently, their application was lodged outside the six-month time limit.

52. In view of the above, the Court finds that this complaint has been lodged out of time and that it is inadmissible pursuant to Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court, by a majority,

*Declares* the application inadmissible.

Done in English and notified in writing on 27 October 2016.

Fatoş Aracı  
Deputy Registrar

Luis López Guerra  
President

**APPENDIX**

1. Ahmet KAMENICA was born on 25/11/1952 and lives in Sarajevo
2. Emin AGIĆ was born on 05/06/1945 and lives in Vogošća
3. Emir AGIĆ was born on 13/07/1950 and lives in Vogošća
4. Safet ALISPAHIĆ was born on 17/09/1956 and lives in Sarajevo
5. Eniz AVDAGIĆ was born on 21/01/1969 and lives in Ilijaš
6. Esad AVDAGIĆ was born on 04/05/1956 and lives in Ilijaš
7. Rasim BIČIĆ was born on 20/05/1974 and lives in Vogošća
8. Enes BOGILOVIĆ was born on 21/06/1941 and lives in Sarajevo
9. Hasib BOGILOVIĆ was born on 22/04/1973 and lives in Sarajevo
10. Huso BRĐANIN was born on 20/12/1948 and lives in Sarajevo
11. Senad BRĐANIN was born on 16/09/1972 and lives in Sarajevo
12. Fadil ČARDAKOVIĆ was born on 18/05/1954 and lives in Sarajevo
13. Amir ČAVČIĆ was born on 06/12/1970 and lives in Sarajevo
14. Husein ČAVČIĆ was born on 26/04/1958 and lives in Sarajevo
15. Omer ČAVČIĆ was born on 30/03/1961 and lives in Rogatica
16. Sabrija ČESKO was born on 16/10/1968 and lives in Sarajevo
17. Hasan COCALIĆ was born on 10/11/1965 and lives in Sarajevo
18. Mehmedalija CURIĆ was born on 20/03/1966 and lives in Sarajevo
19. Rasim CURIĆ was born on 09/05/1957 and lives in Sarajevo
20. Fehim DUDEVIĆ was born on 20/06/1954 and lives in Sarajevo
21. Rifet DURAKOVIĆ was born on 01/03/1947 and lives in Ilijaš
22. Ćamil DURMIŠEVIĆ was born on 16/06/1965 and lives in Sarajevo
23. Halil DURMIŠEVIĆ was born on 03/03/1944 and lives in Sarajevo
24. Husein DURMIŠEVIĆ was born on 18/07/1972 and lives in Rogatica
25. Mušan DŽEBO was born on 16/04/1945 and lives in Ilidža
26. Ramiz GAKOVIĆ was born on 10/01/1964 and lives in Sarajevo
27. Jusuf HABIBOVIĆ was born on 05/08/1943 and lives in Vogošća
28. Hasan HAKIĆ was born on 20/03/1957 and lives in Sarajevo
29. Aziz HARBAŠ was born on 20/01/1951 and lives in Sarajevo
30. Šećan HODŽIĆ was born on 17/11/1962 and lives in Sarajevo
31. Dževad HRVAČIĆ was born on 21/05/1970 and lives in Tuzla
32. Sabrija IMAMOVIĆ was born on 08/08/1957 and lives in Sarajevo
33. Zajko IMAMOVIĆ was born on 23/07/1952 and lives in Fojnica
34. Ramiz JUSUFBEGOVIĆ was born on 23/04/1954 and lives in Sarajevo
35. Senad JUSUFBEGOVIĆ was born on 01/01/1978 and lives in Sarajevo
36. Amir KARGA was born on 01/01/1978 and lives in Rogatica
37. Emsud KARIĆ was born on 16/10/1968 and lives in Sarajevo
38. Ibrahim KARTAL was born on 28/08/1965 and lives in Sarajevo
39. Šećan KULOVAC was born on 13/09/1974 and lives in Sarajevo
40. Alija KUSTURA was born on 18/11/1959 and lives in Sarajevo
41. Ismet LILIĆ was born on 26/08/1975 and lives in Hamburg
42. Nasko LILIĆ was born on 16/01/1952 and lives in Sarajevo

43. Amir MEDNOLUČANIN was born on 05/05/1963 and lives in Ilijaš
44. Mirsad MEDNOLUČANIN was born on 26/08/1968 and lives in Ilidža
45. Ekrem MUHIĆ was born on 10/03/1975 and lives in Tuzla
46. Selim NUHANOVIĆ was born on 17/07/1970 and lives in Sarajevo
47. Munib OMANOVIĆ was born on 27/11/1949 and lives in Rogatica
48. Nusret OMANOVIĆ was born on 03/08/1950 and lives in Rogatica
49. Rasim OMANOVIĆ was born on 15/07/1959 and lives in Ilijaš
50. Amir OMERSPAHIĆ was born on 20/08/1974 and lives in Sarajevo
51. Amir OTAJAGIĆ was born on 06/10/1954 and lives in Sarajevo
52. Edhem PODŽIĆ was born on 19/10/1959 and lives in Sarajevo
53. Enver PODŽIĆ was born on 30/08/1962 and lives in Sarajevo
54. Mirsad RAMIĆ was born on 06/08/1974 and lives in Sarajevo
55. Šemso RAMIĆ was born on 17/01/1951 and lives in Sarajevo
56. Sakib RIZVIĆ was born on 06/05/1954 and lives in Tuzla
57. Ahmo RUČIĆ was born on 24/08/1955 and lives in Vogošća
58. Asim SALIĆ was born on 28/04/1954 and lives in Sarajevo
59. Suljo SALIĆ was born on 19/04/1946 and lives in Ilijaš
60. Idriz SALKUNIĆ was born on 05/10/1950 and lives in Rogatica
61. Suljo SULEJMANOVIĆ was born on 02/07/1951 and lives in Fojnica
62. Nesib TABAKOVIĆ was born on 30/07/1978 and lives in Sarajevo
63. Galib VATREŠ was born on 06/01/1946 and lives in Sarajevo
64. Aziz VILIĆ was born on 03/12/1967 and lives in Ilijaš
65. Avdija ZIMIĆ was born on 05/03/1975 and lives in Ilidža
66. Meho ZIMIĆ was born on 07/05/1971 and lives in Sarajevo
67. Osmo ZIMIĆ was born on 13/11/1958 and lives in Sarajevo