

An aerial, top-down view of a large group of diverse people walking on a light-colored surface. The people are scattered across the frame, with their shadows cast to the right, suggesting a light source from the upper left. The individuals are wearing various clothing, including jackets, sweaters, and hats, in a variety of colors like blue, black, brown, and red. The overall scene conveys a sense of a busy, public gathering.

Material Reparations for Human Rights Violations Committed in the Past:

Court Practice in the Republic of Serbia



Humanitarian Law Center



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I Introduction

Reparations are measures applied by post-conflict societies designed to correct different types of damages suffered by victims¹ as a result of certain criminal offenses committed by previous governments and their institutions. The goal of reparations is justice for victims. For most victims, reparations are the most tangible manifestation of a society's efforts to remedy the injuries they have suffered. Reparations are divided into material and symbolic, and can be individual or collective. They are realized directly through the application of a law (administratively) or through the courts.

By reviewing the legislative regulations and court procedures in the lawsuits filed by the Humanitarian Law Center (HLC), this Report will discuss the realization of material reparations through the courts.

II Reparations on the basis of court decisions

In Serbia, the only mechanism that provides the right to financial support to victims of past human rights violations (hereinafter, "the victims") is the Law on War Invalids.² This law, however, applies only to victims who are citizens of Serbia, against whom violence was committed by members of a hostile party in an armed conflict. It therefore exempts the victims of crimes committed by members of the Serbian Ministry of the Interior (MUP, i.e. police forces), the Yugoslav National Army (JNA) and the Yugoslav Army (military), regardless of whether they are citizens of Serbia or not.³

In the absence of a reparation program, victims often attempt to realize their right to material compensation in court proceedings against the Republic of

¹ The term „victim“ indicates a person who, individually or collectively, has suffered harm, including physical or mental injury, emotional suffering, financial loss or substantial impairment of fundamental rights, through actions or omissions that constitute gross violations of international criminal law or serious violations of international humanitarian law. The term “victim“ includes, where applicable, immediate family or dependent family members of direct victims and persons who have suffered injuries in an effort to assist victims in distress or to prevent victimization (Basic Principles and Guidelines on the right to legal remedy and reparation for victims of gross violations of international human rights and serious violations of international humanitarian law, adopted by the General Assembly of the United Nations in 2005. Resolution No. 60/147 of December 16, 2005, provision 8).

² “Službeni glasnik RS” (“Official Gazette of RS”) No. 52/96.

³ For more on administrative reparations in Serbia, see: *Vodič kroz reparacije (A Guide through Reparations)*, HLC: 2010.

Serbia, invoking on those occasions the responsibility of the state for the actions of its armed forces. As a rule, human rights organizations initiate the proceedings by filing a lawsuit on behalf of the victims. The victims themselves rarely file on their own, be it out of fear or mistrust of the courts, or because legal services are costly.

I. The legal basis for the right to reparation through the courts⁴

The Constitution and the laws of the Republic of Serbia prescribe the responsibility of the state for the “damage” inflicted by its authorities while performing their duty. Damage includes material damage to property, but also non-material damage, which the law defines as “the infliction of physical or mental pain or fear on another person”⁵

The Constitution of the Republic of Serbia⁶

6 Article 35: *A person unlawfully or without grounds deprived of freedom, detained or convicted of a criminal offense, has the right to rehabilitation and compensation from the Republic of Serbia and other rights established by the law. Everyone is entitled to compensation for material or non material damage caused by illegal or improper actions of a state body, of entities exercising public powers, of bodies of autonomous provinces or of local self-government. The law stipulates the conditions under which the injured party may claim damages directly from the person who inflicted the damage.*

Article 22: *Everyone is entitled to judicial protection when injured or deprived of their human or minority rights as guaranteed by the Constitution, and has the right to remove the consequences arising from the violation.*

The Law of Contract and Torts (Zakon o obligacionim odnosima - ZOO)⁷

Article 172: *A legal person (corporate body) shall be liable for damage caused by its members or branches to a third person in performing or in connection to performing its functions.*

4 For more on legal acts relevant to the right to reparations through trials, see: *Vodič kroz reparacije (A Guide through Reparations)*, HLC, 2010.

5 For more on types of damages, see: *Vodič kroz reparacije (A Guide through Reparations)*, HLC, 2010.

6 “Službeni glasnik RS” (“Official Gazette of RS”), No. 98: November 10, 2006.

7 “Sl. list SFRJ” (“Official Gazette of SFRY”) No. 29/78, 39/85, 57/89 and 31/93.

Article 180: *A State whose agencies, in conformity to existing regulations, were bound to prevent injury or loss, shall be liable for loss due to death, bodily injury or damaging or destroying property of an individual due to acts of violence or terror, as well as in the course of street demonstrations and public events.*

The obligation of states to provide fair financial compensation to the victims is also regulated by international conventions, which have been integrated into domestic legal systems: the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of all Forms of Racial Discrimination, and the European Convention on Human Rights and Fundamental Freedoms.⁸

2. Characteristics of court proceedings for the realization of material reparations

Before the courts in Serbia, the HLC has represented over 1,000 victims of past human rights violations in cases against the Republic of Serbia for its responsibility for war crimes, torture, unlawful arrest and illegal detention committed by members of the Serbian Ministry of the Interior, the Yugoslav National Army (JNA) and the Yugoslav Army (VJ).

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Until 2010, all court procedures for material reparations took place before the First Municipal Court in Belgrade. After the set of judicial laws came into effect in early 2010, the proceedings were transferred to the First Basic Court, or the High Court in Belgrade. In all cases in which it filed lawsuits on behalf of the victims for damages, the HLC, through its lawyers, represented the victims.

2.1. The burden of proof

To prove that they were exposed to violence by members of the Ministry of the Interior, the JNA or the VJ, and that the Serbian state is to bear the responsibility for these misdeeds, the courts often require the victim to submit a criminal conviction, which has determined the responsibility of the accused law enforcement officers, members of the JNA or the VJ. In addition, the courts require victims to submit medical certificates from the time when they survived the act of violence, or other evidence which would confirm their alleged injuries in some direct manner.

⁸ For more about international documents on obligations for reparation, see *Vodič kroz reparacije (A Guide through Reparations)*, HLC, 2010.

Except in rare cases, courts refuse to recognize the nature and the extent of human rights violations during the 1990s, which is why they refuse to accept that it was impossible in these circumstances for victims to gather evidence of the injuries they had suffered. In addition, the courts do not recognize the well-known fact that very few persons from the Serbian Ministry of the Interior, the JNA or the VJ have been accused for war crimes and serious violations of human rights in Serbia, which is the reason why final criminal convictions have been very rare.

For example, in the 1990s, the courts in the Sanjak area required that victims of human rights violations submit medical documentation listing the injuries caused by torture, although the victims and their family members have testified that doctors at the time, fearing the police, refused to state that the injuries had been inflicted by beating (see the case of Fehrat Suljic below). In some cases, the courts required the submission of final criminal judgments against police officers, even though it is widely known that, for hundreds of human rights violations in Sanjak, only four members of the Serbian Ministry of the Interior have been prosecuted so far, two of whom were released immediately after a guilty verdict had been passed, and who continue to serve in the police.⁹

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2.2 Interpretation of the statute of limitations at the expense of victims

Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by the UN General Assembly of the United Nations:¹⁰

Where so provided for in an applicable treaty or contained in other international legal obligations, statutes of limitations shall not apply to gross violations of international human rights law and serious violations of international humanitarian law which constitute crimes under international law.

Limitation deadlines for obtaining material reparations through the courts are regulated by provisions 376 and 377 of the ZOO:

⁹ See the press release of the Sanjak Council for Human Rights and Freedoms, February 11, 2009: *Opštinski sud u Novom Pazaru oslobodio policajce koji su brutalno zlostavljali Sulju Muratovića i Mustafu Džigala 1994. godine u Novom Pazaru* (District Court in Novi Pazar released police officers who brutally abused Suljo Muratovic and Mustafa Dzical in 1994 in Novi Pazar), and the HLC's press release of July 18, 2007: *Financial compensation for torture in OUP Prijepolje in 1994.*

¹⁰ Resolution No. 60/147 of December 16, 2005.

*Article 376: A claim for damages for loss caused shall expire three years after the party sustaining injury or loss became aware of the injury and loss and of the tort-feasor.
In any event, such claim shall expire five years after the occurrence of injury or loss.*

*Article 377: Should loss be caused by a criminal offence, and a longer unenforceability time limit be prescribed for the criminal prosecution, the claim for compensation against the person liable shall expire upon the expiration of the limitation period set forth in the statute of limitations of the criminal prosecution.
A discontinuance of unenforceability of criminal prosecution due to the statute of limitations shall also involve the discontinuance of the limitation period relating to the claim for damages.*

However, in practice the courts (first instance or trial court, appellate and Supreme) often invoke the legal opinion of the Supreme Court of Serbia (VSS),¹¹ according to which the claim of compensation from the state is limited to a period of three or five years (Article 376 ZOO), despite the fact that the law provides that in cases where the damage was the result of a criminal offense (which includes all cases of gross violations of human rights), claims for damages against the responsible person may be requested until criminal prosecution is barred (Article 377 ZOO).

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Such an interpretation of the provisions of the statute of limitations is contrary to the Constitution and the law, as well as to international human rights standards:

i. A simple linguistic interpretation of the provisions in question (Article 376 and ZOO 377) leaves no room for doubt that the law rightly uses the term “liable person,” which is, legally speaking, broader than the term “criminal offender”.

ii. In July 2011, the Constitutional Court of Serbia established that, in cases where there is valid conviction, by which the perpetrator is held responsible for a crime, “the request for damages against any responsible person, not just the offender, is barred once the time allowed for the prosecution is up.”¹²

¹¹ Legal opinion of the Civic Department of the Supreme Court of Serbia, established at the session of February 10, 2004. In November 2004, the International Assistance Network (IAN), the Belgrade Center for Human Rights and the Humanitarian Law Center jointly filed with the Supreme Court an initiative for amendment of the contested legal opinion. The initiative has not been considered yet.

¹² Su No: I-400/1/3-11.

iii. In an earlier legal opinion, adopted during the consideration of the limitation for compensation of a former member of the Yugoslav National Army (JNA), the Supreme Court of Serbia took the opposite stance, despite the legal situations being identical.¹³

iv. In some of its verdicts the Supreme Court of Serbia has accepted that terms from Article 377 be applied to some legal entities as well (for example, to insurance companies); hence, in no way is the term “liable person” applicable only to a criminal offender.

Particularly flagrant violation of the rights of victims to reparation due to alleged limitation is found in cases of war crimes, for which members of the armed forces of the Republic of Serbia have been convicted by final verdicts (cases *Podujevo I* and *Podujevo II*).

Despite the rigid interpretation of the limitation provisions, courts have rarely requested the state to pay monetary compensation to victims who have suffered at the hands of members of the Serbian army and police, and who were diagnosed with post-traumatic stress disorder (PTSD).¹⁴ Often, this has been done only on condition that the victim has filed a complaint within three years of learning that they were suffering from this serious disease.¹⁵

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Since the democratic changes in 2000, courts in Serbia, invoking the statute of limitations, have rejected dozens of lawsuit requests filed by the HLC against the state on behalf of victims whose family members have died as victims of war crimes, and on behalf of victims of torture, illegal detention and other serious violations of human rights.

¹³ The Civic Department of the Supreme Court of Serbia adopted on December 27, 1999 the opinion that the „damage“ suffered by members of the former JNA in armed conflicts with „paramilitary formations“ of the former republics of the Socialist Federative Republic of Yugoslavia was caused by a criminal act of mutiny, the statute of limitation for which is 15 years, the same as the statute of limitation for the criminal prosecution for armed rebellion.

¹⁴ Post-traumatic stress disorder (F.43) is “a state of severe anxiety that occurs after exposure to any event that leads to psychological trauma. This event may involve the threat of death to self or to a certain person close to self, threats to their own or another’s physical, sexual or psychological integrity, which that person experiences as traumatic.” (American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders*, 1994.)

¹⁵ The moment when the victim has learned that he is suffering from this devastating disorder is the moment, for the Court, when the victim has learned about the “damage.” From that day begins a period of three years for filing a lawsuit (as prescribed in Article 376).

2.3. The attitude of state bodies towards victims

During the court proceedings, victims are often confronted with inappropriate questions, subjected to insults and abuse by certain judges and representatives of the State Attorney's Office.¹⁶

2.3.1. Wrongful conduct of judges

In the proceedings before the First Municipal Court, where the HLC has been representing Isuf Isufi and four other victims of torture and illegal detention, during the examination the judge asked the victim Isufi whether he was a "terrorist." In the trials where the HLC's attorneys represented the former inmates Sljivovica and Mitrovo Polje, some judges openly expressed their personal opinions, stating that the inmates were not speaking the truth, that the times were difficult then and that "the situation in Serbia was very bad."

The judges often express impatience towards poorly educated victims from rural areas during their testimony, and rush them to finish their testimony. In situations where victims do not understand the questions, the judges often raise their voices. During the examination of Fehrat Suljic (p. 32), the judge responded with ridicule to his explanation that he had treated his torture injuries the way injuries are often treated in his area – by applying sheep skin to them.

Judges and court reporters often mispronounce the names and surnames of Albanian and Bosniak victims. Judges sometimes ask a victim to utter several times his or her father's name and other personal information, which makes the victim feel uncomfortable. When entering the testimonies of victims and witnesses in the record, the judge often shorten their statements or dictate them in significantly altered forms, leaving out key parts, which are then entered only at the insistence of the HLC lawyers.

In the *Podujevo II* case (p. 42), the victims were subjected to ruthless demands by the judges. In this specific instance, the three girls who survived the execution of their mothers, sisters and brothers, were heard before the First Municipal Court before the case went to the jurisdiction of the High Court in Belgrade

¹⁶ Attorney-General of the Republic of Serbia is the legal representative in all proceedings before the courts and other bodies that concern legal protection of the property rights and interests of the Republic of Serbia, its agencies and organizations (Article 9 of the Law on the Attorney-General).

in May 2010. Judge Vesna Opacic, who presided over the trial chamber of the High Court, ordered a new examination of the girls, despite the fact that the HLC attorney had pointed out that, according to the Code of Civil Procedure, a new examination of witnesses in this case was not required, that the victims had given detailed statements before the previous chamber, that sufficient other evidence was enclosed in the complaint (criminal convictions of law enforcement officers, extensive medical and photo-documentation about the types and severity of injuries and about the medical treatment). Judge Opacic remained firm in her decision to examine the victims again, explaining that she wanted to ask them “a few more questions.”

2.3.2. Non-recognition of victims by the Attorney-General

To the charges pressed by the families of fourteen killed Albanian women and children, in the *Podujevo I* case (p. 42), the Office of the Attorney-General of the Republic of Serbia (hereinafter: Attorney-General) responded that the claim was “too high.” In a reply to the lawsuit brought against the state of Serbia by the children who suffered as a result of the crime lasting physical injuries and trauma, the Attorney-General said the crime was not directed against the constitutional order of the state and therefore the state did not owe compensation to the victims.

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In the reply to the procedures where the HLC represents Serbian refugees from Croatia, whom the Serbian Ministry of the Interior conscripted in 1995 and handed over to Zeljko Raznatovic Arkan’s Serbian Volunteer Guard (Srpska dobrovoljacka garda or SDG) (p. 53), the Attorney-General expressed doubt that anything bad could happen to forcibly mobilized refugees when they were taken to the territory of the Republic of Srpska Kajina and handed over to the Serbian authorities there.

In the majority of cases, before filing a complaint, the HLC has addressed the Attorney-General on behalf of the victims of human rights violations with a request for an amicable settlement. Only rarely would the Attorney-General respond to the HLC’s request within the statutory period of three months, and always negatively. In most cases, however, the Attorney-General did not even respond to the victims and the HLC.

2.4. The amount of compensation

Where the final verdict binds the state to pay compensation to victims, the amount of compensation is generally inappropriately low, so much so that it

represents an insult rather than a just satisfaction for the injury and suffering that the victims have undergone.

Also notable is the disparity between the compensation given to victims of torture and war crimes, and that given to some former political and military officials of the Republic of Serbia.¹⁷

2.5. The long duration of court proceedings

Reparations trials take an average of five years to complete, although there are examples of proceedings lasting more than 13 years. In some cases it takes more than a year for a trial to commence, while in others, two or more years can pass between two hearings owing to the judge's "inability" to be present at the trial. In some cases, victims have died before the end of the trial.¹⁸

Because of the judicial reforms, in some cases the judges and members of the chamber were changed, and the trial had to begin anew. Furthermore, from the end of 2009 until 2010, the judicial system in Serbia was almost entirely blocked by the reform of the judiciary, during which time all trials (except those of emergency in the criminal area) had been put on hold.

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2.6. Fear of filing law suits

The victims of criminal offenses committed by members of the Serbian Ministry of the Interior, the JNA and the VJ are afraid to press charges for the realization of material reparations because many of the perpetrators are still in active police or military service. In Sanjak, victims still see in public the police officers who had beaten them during house search operations in the 1990s.

¹⁷ To the former Chief of Military Security, Aca Tomic, the court awarded compensation of 6,000,000 RSD for the 100 days he spent in custody during the state of emergency and "Sabre" police operation in 2003. The Albanians, on the other hand, who had spent from five to fifteen months in illegal detention, under inhumane conditions and suffering physical abuse, were awarded damages to amounts between 40,000 and 600,000 RSD.

¹⁸ During the trial, Hazbija Smajovic from Tutin and Sabit Bibic from Sjenica, victims of police torture, died.

III Cases where the HLC represented victims

I. Case: the Slijivica and Mitrovo Polje¹⁹ Camps

Following the massacre in Srebrenica (July 11-15, 1995), the Army of Republika Srpska (VRS) attacked Zepa, another UN safe haven in eastern Bosnia and Herzegovina (BiH).²⁰ When, on July 25, 1995, the VRS entered the protected area the residents panicked, because they had already heard about the fate of men from Srebrenica after the town had been handed over to the VRS. A convoy with women, children and old people managed to enter the territory under the control of the Army of BiH, while the men from Zepa, among whom were refugees from Srebrenica, Rogatica, Han Pijesak and Zvornik, went in several different directions.

About 1,500 men, both civilians and soldiers, set off towards Serbia, calculating that it would be easier to reach a third country from there. In the period between July 29 and August 4, 1995, passing through the forests of eastern BiH, they reached the banks of the River Drina. Those who had weapons left them on the shore, and brought with them only food, money, valuables, photographs and the like. In groups of two to ninety people, they crossed the Drina on rafts, logs or boats, or by swimming across.

I.1 The arrest of refugees and deportation to camps

Having crossed into the territory of Serbia, some groups camped along the River Drina, while others immediately climbed the cliffs of Zvezda mountain. Before long, they were found by a VJ border patrol, who captured them and said they would be treated as prisoners of war. The captives were searched, and money and medicine were taken away from them. Then they were gathered all in one place and ordered to sit with their heads lowered. Some groups were guarded by members of the military police who acted violently. In the group gathered on Mount Zvezda, the soldiers first tortured and then killed Mujo Hodzic, a young man from Zepa.

¹⁹ On September 26, 2011, the HLC filed with the War Crimes Prosecution criminal charges against more than 50 members of the Ministry of the Interior, the Serbian State Security (DB) and the Yugoslav Army for war crimes committed between the end of July 1995 and April 1996 against 850 Muslims from Zepa and surrounding villages in Bosnia and Herzegovina, and in the Slijivica and Mitrovo Polje Serbian detention camps.

²⁰ On May 6, 1992, UN Resolution No. 824 proclaimed Srebrenica and Zepa safe havens under the protection of the UN.

The VJ took the captured Bosniaks to the village of Jagostica, in the municipality of Bajina Basta. With some groups, prisoners were forced to run several kilometers, from the place where they were arrested to Jagostica. On the way to the village, soldiers would order groups to stop and lie on the ground. The soldiers would then beat and abuse the prisoners, so much so that the captives feared they would be shot.

The soldiers took the captured Bosniaks to the playground of the elementary school in Jagostica. The area was guarded by VJ soldiers, among whom were a number of military police officers, although the prisoners also saw some civilian police officers. The prisoners were searched, and their money and valuables taken away. Then they were ordered to sit or kneel and put their hands behind their heads. Many had to spend the whole night in this position. While the prisoners were sitting, the soldiers beat them with batons, sticks, rifle butts and pipes. They insulted and threatened them. There were many civilians surrounding them too, who freely beat, threatened and insulted the captured Bosniaks.

From Jagostica, the captured Bosniaks were transported in groups to the camps of Sljivovica (Cajetina municipality) and Mitrovo Polje (Aleksandrovac municipality). The prisoners were beaten as they were entering the trucks. The soldiers pushed about fifty men into every truck, each of which had room for not more than fifteen people. In the trucks, the men had to stand side by side. Many fainted due to the heat and lack of air (the trucks were covered with tarpaulin). Some tried to make holes in the tarpaulin, but as soon as the police officers noticed it, they stopped the truck and beat with shovels and sticks on the tarpaulin. Edem Torlak from Zepa suffocated in the truck.

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1.2 Treatment of prisoners in the camps

Both camps were guarded by members of the Serbian Ministry of the Interior (MUP). On entering the camp, prisoners would pass through a gauntlet of police officers, who hit them with batons, feet, fists and sticks. After the search and seizure of personal belongings, the police would register and photograph the prisoners, after which they would be escorted to the rooms, which were overcrowded. The food was insufficient and irregular, the inmates being given one meal a day which they had to eat in three minutes. Those who finished last got beaten. The inmates were allowed their first bath one month after arrival. Most got scabies and lice. Because of their long beards and hair, the police mocked the inmates, calling them “artists”; prisoners were forced to cross themselves and to sing Chetnik songs in order to be allowed to use the toilet.

Police officers would enter the prisoners' rooms at any time of the day or night, randomly taking one or several them out and beating them in the most severe way – with sticks, fists, feet, electric cables, iron bars and tree branches. Some police officers stubbed out cigarettes on inmates' bodies, forced them to drink water into which they had previously poured motor oil, inserted a water hose in an inmate's anus and then ran water through the hose. Several inmates were sexually abused. Four inmates died of torture in these two camps.



Detained Muslims in Slijivica Camp

Photo: Miloš Cvetković

Prisoners were interrogated by police officers in uniform or by inspectors in civilian clothes. They were questioned about the war in Zepa and the Army of BiH; beatings were often used to extort admissions of the prisoners' alleged involvement in crimes against Serbs. In the camp at Slijivica, the inmates were interrogated in room No. 4; and in Mitrovo Polje, interrogations took place in a house near the barracks, which the police officers called "Kota 805." The inmates were beaten even while they were being taken to the interrogation rooms. Some were interrogated more than twenty times. Some police officers who beat the prisoners during interrogation would turn on the radio so that their screams were not heard outside.

In both camps, one group of prisoners was separated from others. These were people whom the police claimed had held high-ranking positions in the Army of Bosnia and Herzegovina or in the administration of Zepa.

In addition to torture, the Bosniaks were subjected to daily humiliation and inhumane treatment. Some police officers ordered the inmates to beat each other, to move large stones from one place to another, to spend all night running around the camp, to do push-ups, to stand in the yard and look at the sun until they lost consciousness. The officers played the game of “zuce” (a humiliating game designed to hurt one of the players) with inmates, beating them with nightsticks. Some inmates were denied food and water for two days, only to be forced to eat a whole jar of hot peppers.

ICRC representatives entered the camp in Mirovo Polje first, where they registered most of the prisoners. A few days later, on receiving permission from the Serbian MUP, they entered the camp in Sljivovica. On the basis of the information they had received from other inmates, the ICRC representatives insisted on being given access to inmates in isolation. They obtained permission two months later. ICRC representatives numbered the inmates and gave them ID cards. Every seven to ten days, they brought food, personal hygiene supplies, blankets, mattresses and cigarettes to the camps. Through them, the inmates sent messages to their relatives, and received messages from them. In the first months, the police officers would take away the food provided by the ICRC.

In early December 1995, representatives of the United Nations High Commissioner for Refugees (UNHCR) entered the camps and offered the inmates immigration to a third country.

In 2007 and 2008, the HLC, on behalf of twenty former prisoners, initiated five lawsuits against the Republic of Serbia for its responsibility for torture and inhumane treatment suffered by the inmates in the Serbian concentration camps.

On the basis of the consequences of torture, in the lawsuit the HLC demanded that compensation be paid for the following:

- i. Physical pain
- ii. Fear
- iii. Emotional pain caused by violation of freedom and personal rights
- iv. Emotional pain caused by impairment of vital activities.

2.1.1. The Case of Enes Bogilovic and Musan Dzebo

Facts²¹

Enes Bogilovic, born 1941, fled with his family from his native village near Rogatica to Zepa in April 1992. He was there until the fall of Zepa in July 1995. He was not a member of the armed forces of BiH. Musan Dzebo, born 1945, from the vicinity of Han Pijesak, was a member of the Army of BiH, serving as a phone operator. When Zepa fell, he was at his post nearby.

Enes Bogilovic and Musan Dzebo fled to Serbia on August 2, 1995, in a group with a dozen other men. On the Serbian side of the River Drina, the group was intercepted by the border guards of the VJ and taken to Jagostica, where they were subjected to the same treatment as other detained Bosniaks: they were searched by the police, stripped to the waist and then beaten with batons and rifle butts, and constantly insulted. The next day they were taken to the camp in Sljivovica. On entering the truck, a police officer hit Enes with a baton on the neck, and he lost consciousness.

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In Sljivovica, Enes and Musan were placed in a room with over 100 other inmates. During their stay in the camp, Enes and Musan were repeatedly beaten by police officers, in the room they slept in or in some other building. On one occasion, while beating Enes, police officers put out cigarettes on his body. As a consequence of the beatings, Musan urinated blood. Like other Muslim detainees in the camp, both Enes and Musan suffered various humiliations: the policemen forced them to cross themselves and sing Chetnik songs if they wanted to use the toilet. Both were forced, under threat of beatings, to call themselves by a Serbian name.

Musan and Enes were freed from the camps through UNHCR mediation. Musan was released on December 6, 1995 and went to Ireland. On January 29, 1996 Enes went to France.

The consequences of imprisonment

The torture and fear that the two men suffered in the camp have had a serious and lasting impact on Enes's and Musan's health. They both began treatment immediately after leaving the camp. Owing to impaired mental and physical health, their lives were changed forever. In 2006, a general examination established that both men suffer from PTSD, because of which they were subjected to serious and long-lasting treatment. Both underwent several surgeries to treat the physical consequences of the beatings. In addition to this, Musan was diagnosed with diabetes.

²¹ Statements by E. Bogilovic and M. Dzebo given to the HLC in June 2007.

Court proceedings

On July 31, 2007, the HLC filed with the Attorney-General a settlement request,²² according to which the state of Serbia was to pay Enes and Musan the damages for torture and inhumane and degrading treatment by the VJ and the Serbian Ministry of the Interior during their arrest and detention in the Sljivovica camp. The Office of the Attorney-General failed to declare its position on the HLC's request.

On November 23, 2007, on behalf of Enes Bogilovic and Musan Dzebao, the HLC filed with the First Municipal Court a lawsuit for damages against the Ministry of Defense and the Ministry of the Interior of the Republic of Serbia. The action requested that the court oblige the Serbian state institutions to pay to Enes and Musan 2,600,000 RSD, for the physical and emotional pain, fear, violation of personal rights and impairment of vital activities suffered.

In response to the lawsuit, the Attorney-General, among other things, denied that Dzebo and Bogilovic suffered any physical and mental torture. The Office of the Attorney-General declared that the two men were treated the same as the other Bosniaks, in accordance with international standards. Furthermore, the Attorney-General questioned the claim that Sljivovica and Mitrovo Polje actually were concentration camps, calling the buildings where the Bosniaks were detained „reception centers.“ The Attorney-General also contested the credibility of the medical records stating Enes Bogilovic's and Musan Dzebo's respective health conditions, on the grounds that the documents had been „issued in Sarajevo in 2006, at which time the accusers, according to their own statements, lived in France and Ireland respectively.“

The trial²³

Not a single hearing was held for one whole year from the time the lawsuit was filed.²⁴ Following the legal intervention of the HLC attorneys, the President of the First District Court assigned the case to a different judge. The preliminary hearing took place 15 months after the filing of the lawsuit.

22 The Law on the Yugoslav Army (Article 194) stipulates that the plaintiffs shall, prior to filing a claim for damages against the Ministry of Defense, contact the Military Attorney with a request for out-of-court compensation. The Serbian Attorney-General has, pursuant to the Transfer of the Competences of the Military Courts, Prosecution and Attorney of the Republic of Serbia, taken over the duties and responsibilities of the Military Attorney. The deadline to file a response to the Attorney-General to request out-of-court compensation is three months.

23 See the report from the trial at: www.hlc-rdc.org/reparacije

24 One hearing was cancelled because of a false alarm about a bomb having been planted in the building, while two other hearings were cancelled on account of judge Momcilo Mihajlovic's „inability to attend“ them.

During the main hearing, Enes Bogilovic and Musan Dzebo testified about the inhumane police treatment, and about the consequences of the torture and trauma they had suffered. In early 2010, due to personnel changes within the trial chamber,²⁵ Musan Dzebo and Enes Bogilovic appeared again in court to repeat their statements before the new trial chamber.

The Court heard four defense witnesses. All denied that the police abused the detained Bosniaks.

Witness Zoran Vucinic, who was at that time working in the state Department of Health, visited the camp in Sljivovica with a team of epidemiologists several times. He denied that the Bosniaks were tortured, claiming they had a regular diet and better accommodation than the guards in the „reception center,“ as he called the Sljivovica camp.

Witness Radomir Dogandzic, the then Inspector of Border Affairs and Immigration in the Police Department of Uzice, stated that representatives of international organizations and embassies had open access to the Bosniaks, which, in his opinion, proved that the Bosniaks had not been tortured.

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Witness Jovo Savic, former head of the Emergency Room in Uzice, said that he had never visited Sljivovica, but that members of his team regularly submitted reports to him on their visits to the camp, and that nobody had reported instances of torture. He said that allegations of torture were „insinuations and lies.“

Witness Radisav Ojdanic was the Head of the Directorate for Immigration in the Border Police Department of Uzice in 1995. At the beginning, he visited the detained Bosniaks daily, and later was accompanied by foreign delegations. He claimed that there was no torture in the camp and that not a single „person,“ as he referred to the captured Bosniaks, had complained about the abuse, nor did he hear about abuses from anyone else. Ojdanic said that the police had in fact „protected the Bosniaks.“

The Court accepted the minutes taken during the testimony of Vesna Kilibarda, a nurse at the Uzice Health Center, and Zoran Prljevic, member of the Municipal Headquarters for the admission of refugees from Croatia after the Croatian military-police operation by name of *Storm*, both of whom had

²⁵ The change of Court Chamber members took place after the re-appointment of judges, as a result of which the theretofore President of the Chamber was appointed judge of the High Court in Belgrade.

testified in the proceedings the HLC initiated against the state of Serbia on behalf of former inmates Sakib Rozvic and Nusret Kulovac. Their testimonies were inconsistent with the testimonies of Vucinic, Savic, Dogandzic and Ojdanic.

The Court rejected the HLC attorney's proposal to hear two former inmates about the housing conditions, nutrition, and treatment by the police in the camps. The Court also rejected independent expertise which would have established Enes Bogilovic's and Musan Dzebo's respective health conditions, on the grounds that the proposal was „excessive.“ Further, the judge refused to hear Amor Masovic, president of the State Commission for Missing Persons of BiH.

On November 17, 2010, the Court passed a verdict by which the HLC's lawsuit on behalf of Musan Dzebo and Enes Bogilovic was rejected in its entirety. The HLC attorney on December 13, 2010 filed an appeal to the Appellate Court in Belgrade.

Analysis of the verdict

i. The Court ruled that the testimonies of Enes Bogilovic and Musan Dzebo were untrue. The Court described the testimonies of the Attorney-General's witnesses (Vucinic, Savic, Dogandzic, Ojdanic, Kilibarda and Prljevic) as „clear, convincing, logical, and consistent with all the other evidence presented that the Court has found trustworthy.“

The Court sided with the witnesses who had no direct knowledge of what was happening to Enes Bogilovic and Musan Dzebo and other prisoners, or of what was taking place in the camps at night or during the interrogations. Witnesses Ojdanic, Prljevic, Savic and Dogandzic founded their assessments of the situation on their occasional visits to the camp and on facts irrelevant to assessing whether the inmates were subjected to torture and inhumane treatment (number and quality of meals, visits of international organizations, etc.). Moreover, the court reposed trust in the witness Jovo Savic, who, as he himself said, had never visited the camp, but was convinced that the allegations of torture were „well-staged fiction.“

ii. The Court refused to examine the witnesses who had spent months with Bogilovic and Dzebo in Sljivovica, and who had direct knowledge of abuse and other forms of inhumane treatment of inmates. Instead, the Court accepted, as „true and convincing,“ the personal assessments or indirect knowledge of witnesses proposed by the Attorney-General. For example, it accepted the testimony of Vesna Kilibarda, who based her denial of abuse on her personal

belief that the prisoners would certainly have told her had they been abused, just as „they told her they had this or that health problem.“ Furthermore, the Court accepted as reliable the testimony of Jovo Savic, who claimed that none of his doctors who had visited the camp had ever reported „torture or beating, bruises on the body and the like.“

iii. The Court refused to hear Amor Masovic, President of the State Commission for Missing Persons of BiH, who compiled a report on the basis of his visits to Mitrovo Polje and Sljivovica in the spring of 1996. Among other things, the report, which the HLC attorney introduced as evidence, qualifies the two prisons as camps in which confined persons were exposed to inhumane conditions. The Court cited only parts of the content of this report in its explanation, omitting the aforementioned conclusions, and citing irrelevant sections about the “inmates being housed in wooden barracks with concrete floors, with several rooms, while the dining room and the toilets were in separate buildings.”

iv. The Court analyzed and assessed the medical records on Bogilovic’s and Dzebo’s health condition without the opinion of expert witnesses. The verdict, namely, states that the plaintiffs’ health problems “certainly do not arise out of psychological and physical torture they had allegedly suffered.” Instead of independent expertise, which would determine whether or not the existing health condition was a result of torture, and whether and when the condition had assumed its final form (which is relevant for assessing the problem of limitation), the Court, contrary to the law, engaged in the interpretation of medical documentation.

v. The Court’s unconditional acceptance of the testimonies given by the persons representing the institutions that had established the camps and were responsible for the mistreatment of detainees, and its simultaneous refusal to hear the evidence of human rights violations in the camps, was based on unacceptable prejudices, according to which the objectivity and innocence of the Serbian police are unquestioned, while the prisoners’ statements are *a priori* considered malicious lies. This is corroborated by the fact that the Court in its verdict does not explain why the testimonies of Bogilovic and Dzebo concerning how and when they had been abused, have not been accepted. The explanation merely states that the Court „did not trust them.“

2.1.2. Other cases where the HLC represents former inmates of Sljivovica and Mitrovo Polje

All other cases in which the HLC has represented former inmates of Sljivovica and Mitrovo Polje are still in progress.

2.1.2.1. In two cases in which the HLC represents four inmates²⁶ from Sljivovica and Mitrovo Polje, the courts have refused the claims on the basis of the statute limitation, refusing to order the testimony of an independent expert on the health condition of the former inmates, even though whether the statute of limitation is to be applied in these particular cases depends precisely on the expert findings and evaluations of health experts. The HLC lawyers have filed an appeal to the Appellate Court in Belgrade.

2.1.2.2. In July 2011, the Appellate Court in Belgrade overturned the first instance verdict in the case where the HLC represented Mujo Vatres, Halil Durmisevic and Senad Jusufbegovic. The court rejected the section pertaining to the right to compensation for impairment of vital activities, and ordered a retrial.

At the same time, the Appellate Court upheld the verdict which does not recognize the right to reparation for physical pain, fear and emotional pain due to violation of freedom and personal rights.

2.1.2.3. In a case where the HLC represents Omer Cavcic and eight other former prisoners, the main hearing is still ongoing. Having heard the former prisoners and witnesses proposed by the representative of the state, the judge has ordered an independent assessment by expert psychiatrists.

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2.2. Illegal detention and torture of Kosovo Albanians

During the armed conflict in Kosovo and NATO bombing, members of the Serbian Ministry of the Interior, violating the local and international norms and standards of basic human rights, conducted mass arrests of Albanian men, among them minors, accusing them of „terrorism“. The police arrested Albanian men in the streets and in their homes, in the woods where they hid, and in refugee columns which, at the orders of the police and the army, were moving towards Albania, Macedonia or Montenegro.

Shortly after the arrests, members of the Serbian police transported ethnic Albanian males to police stations, where all, without exception, were abused. During the interrogations, the officers beat them with batons, metal rods and other objects. At least ten men did not survive the torture carried out immediately after the arrest. Only a few were detained and kept in custody in keeping with legal procedures. Police officers transported the Albanians from the police stations to the jail in Lipljan/Lipjan, where they were abused

²⁶ Sakib Rizvic, Ahmet Kamenica, Selim Nuhanovic and Nusret Kulovac.

day and night. They were held in this prison until June 9, 1999, when about 2,000 Albanian prisoners were transported by buses to prisons in Serbia (in Pozarevac, Nis and Sremska Mitrovica). These Albanian prisoners spent five to fifteen months in Serbian prisons. No criminal or any other proceedings have ever been initiated against majority of these Albanian prisoners.

In the period between June 1999 and October 2000, the Serbian authorities freed about 1,500 Albanian prisoners. Approximately 400 Albanian prisoners were granted freedom under an amnesty law, which the National Assembly of Serbia adopted in February 2001.

From 2007 until 2010, the HLC initiated 31 lawsuits on behalf of 70 Kosovo Albanians against the Republic of Serbia, holding it responsible for the illegal detention and torture that the men suffered in Serbian prisons in 1999 and 2000.

On the basis of the consequences of torture, in the lawsuit the HLC demanded that compensation be paid for the following:

- i. Fear
- ii. Violation of freedom and personal rights
- iii. Impairment of vital activities.

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2.2.1. The case of Ekrem Nebihu and Sylejman Bajgora

Facts

Ekrem Nebihu, born in 1983, left Glogovac/Gllogoc with his family at the beginning of the war in Kosovo in 1998, and went to his uncle who was living in the village of Domanek/Damanek. After a while, with his father and cousin Albert Xhafer, he sought shelter in the woods near the village. He was arrested on May 28, 1999 in the nearby village of Strubulovo/Shtrubullove, where, on the orders of the police, all refugees had assembled. That day, police arrested all the men who happened to be in the village. The police arrested Ekrem, his father and their relatives at the house where they lived, and transported them to Glogovac/Gllogoc, to a warehouse.

Ekrem, who was 16 years old at the time, was separated from his father and relatives. When leaving the truck, the officer hit him on the head with a metal rod and Ekrem fell down unconscious. When he had regained consciousness, they ordered him to kneel, hands behind his head. Then he noticed that blood was flowing from his head injury. The officer ordered him to get up, but Ekrem could not stand. The officer began to beat him all over the body, and then

dragged him to a local restaurant, where a police detective recorded his personal information. During that time, the officers repeatedly beat Ekrem and other detained Albanians.

The next day, Ekrem was taken to a prison in Lipljan/Lipjan. Immediately upon arrival, he was searched and forced to remove his clothes. Three police officers began beating him with nightsticks. Having recorded his name and other personal information, they ordered him to stand up against a wall, where he would be executed, they said. Then they took him to a room with more than 350 Albanian men, where he spent the next few days. The inmates did not receive any food, and were given water only occasionally. They were allowed to use the toilet only twice a day, during which time the guards repeatedly hit them. After a few days, Ekrem was transported to the prison in Pozarevac, where conditions were difficult, but he was no longer beaten.

After five months and 16 days in the prison, Ekrem was released on November 20, 1999 through the mediation of the ICRC. In the six months he spent in prison, Ekrem was never given any decision on retention or detention; he was never indicted; and no charges, criminal or misdemeanor, had been pressed against him.

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At the beginning of the NATO intervention, Sylejman Bajgora, born in 1957, left the village of Hrtica/Hertice (municipality of Podujevo/Podujevë) with his family and fled to the city of Podujevo/Podujevë. On June 1, 1999, in the Civil Defense Headquarters in Podujevo/Podujevë, Sylejman received permission to move out of the city and went to Prishtina/Prishtinë to procure medicines for his sick mother. He spent the night at his uncle's and in the morning continued on to buy the medicines. In the residential area of Ulpijana, he encountered a friend and his wife. The three of them were approached by two police officers who asked to see their ID's. Sylejman gave them his identity documents and travel permission document, but one policeman began to curse him, tore his travel document and kept the ID card.

The officers put Sylejman into a police vehicle and drove him to the police station in the Bolnicko naselje. On arrival, they began hitting him. One officer put his knife under Sylejman's neck, and another stuck a gun in his ear. They threatened to kill him. The abuse lasted for two hours, after which he was handcuffed to a radiator. An hour later, they led him into the car and took him to a police station in the village of Muhadžer mahala. There, the police officers composed a statement that Sylejman was ordered to sign, which he refused to do.

In the morning, around 8:00, they took him to the jail in Prishtina/Prishtinë, where all his belongings were taken away from him. During the seven days in the Prishtina jail, police officers physically abused him despite his already poor health condition.

On June 10, Sylejman and 25 other ethnic Albanian men, were transferred to a prison in Sremska Mitrovica. On entering the prison, inmates passed through a police officers' gauntlet. The conditions in the prison were very bad and food was insufficient. In early August, Sylejman spent five days in solitary confinement.

Bajgora was released on April 10, 1999, through the mediation of the ICRC. When he was released, the police confiscated the retention document, the only document he had been given.²⁷

Consequences of imprisonment

Ekrem Nebihu and Sylejman Bajgora have never recovered from the trauma and torture they suffered in Serbian prisons. Doctors in Kosovo diagnosed both men with PTSD – Nebihu was diagnosed in 2005, Bajgora in 2006.

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Court proceedings

On March 27, 2007, on behalf of Ekrem Nebihu and Sylejman Bajgora, the HLC submitted to the Serbian Ministry of Justice a request for out-of-court settlement. As the Ministry of Justice failed to respond within the statutory period of three months, the HLC on June 25, 2007 filed with the First Municipal Court in Belgrade a claim for damages against the Republic of Serbia. The action demanded that Serbia pay to Nebihu and Bajgora financial compensation totaling 2.2 million RSD.

With the lawsuit, the HLC attorney submitted a certificate from the Center for Rehabilitation of Torture Victims in Kosovo, which confirmed that Nebihu and Bajgora were suffering from PTSD. Furthermore, the HLC attorney requested that the court ex officio obtain from the relevant institutions official information about Bajgora's and Nebih's prison time in Serbia.

Challenge

In response to the lawsuit, the Attorney-General denied Bajgora's and Nebihu's allegations of illegal detention and torture, arguing that on the basis of the

²⁷ According to the Code of Criminal Procedure, on the basis of a retention decision, a person can be detained not more than 48 hours.

provided and proposed evidence, the accuracy of such allegations could not be determined. In addition to this, the Attorney-General emphasized the statute of limitations for this damages claim.

The trial

The trial began in October 2010. At the first hearing, the Attorney-General confirmed the verification findings, namely that Nebihu and Bajgora had been in custody for the period stated in the complaint, but that in 1999 Bajgora was sentenced by the Prishtina District Court for the crime of terrorism. However, by the end of the trial, despite the insistence of HLC lawyers and court orders, the Attorney-General failed to submit to the court any alleged verdict against Bajgora, or any evidence that Bajgora had been brought before a court during his detention.

During the main hearing, Nebihu and Bajgora testified about their unlawful arrest and abuse by Serbian police, and about the long-term health problems they had been struggling with for years. Bajgora expressly denied that he had been brought before a court during the period of detention or that legal action had been taken against him.

At the hearing, official documents from the Sremska Mitrovica Prison and the Pozarevac Prison were read out, confirming that Bajgora and Nebihu had been detained in these facilities. A document from the parallel District Court in Pristina, based in Nis, was also read out, in which the Court was informed that, following the „forced displacement“ in 1999, the District Court archive was unavailable.

During the main hearing, a forensic psychiatrist found that Bajgora suffered from PTSD; Nebihu's mental disorder, on the other hand, though said to have been caused by his experience of Serbian prisons, was only a temporary reaction, not a PTSD. The forensic psychiatrist corroborated this conclusion with the fact that Nebihu did not seek a doctor's help. The HLC lawyer stated a series of objections to the findings of the expert psychiatrist concerning Nebihu, both in his written report and oral examination, but the expert remained firm in his findings and opinion.

The verdict

First trial

i. On November 24, 2009, the trial court (court of first instance) issued a verdict which fully rejected the right to compensation.

According to the court's opinion, Sylejman Bajgora's request for reparation was outdated because his PTSD reached its identifiable (i.e. diagnosable) stage before the plaintiff's release from prison, from which moment the five-year statute of limitations began running. Further, the court established that it was not until 2006, after being examined and diagnosed by a doctor, that Bajgora learned that he suffered from PTSD and that the consequences of this persistent illness were serious. However, this particular fact bears no weight in the evaluation of the statute of limitations, because from 1999, when, according to the court, the illness reached its identifiable stage, to the moment when Bajgora was diagnosed with PTSD, the five-year statute of limitations had already expired.

ii. Ekrem Nebihu's request for compensation on the grounds of impediment of vital activities the court ruled inadmissible, because according to the expert opinion, Nebihu does not suffer from an illness that leads to a diminishment of life activities.

Analysis of the first-instance verdict

The court based its decision concerning the inadmissibility of Nebihu's compensation claim on the findings and expert opinion, which do not correspond with other evidence and facts. Specifically, the forensic psychiatrist did not take into account the fact that psychiatric examinations in 2005 and 2007 in Kosovo did establish Nebihu's PTSD. The psychiatrist in Kosovo reached this diagnosis following the medical practice and diagnostic methods used in Serbia. Moreover, in no follow-up submissions with regard to the objections put forth by the HLC lawyers and oral submissions before the court did the expert explain why he found the diagnosis of his counterpart from Prishtina/Prishtinë unacceptable, and why in his final assessment that Nebihu did not suffer from PTSD or other serious mental illness, he took as decisive the fact that Nebihu had never consulted a doctor.

The Appeals Court Decision

Based on the HLC attorney's appeal, the Court of Appeal overturned in March 2010 the trial court's ruling and ordered a retrial.

The second trial

During the retrial, on February 21, 2011, only one item of evidence was presented: Cvetin Urosevic, a forensic psychiatrist, testified again under the direction of the Court of Appeal, in order to provide further explanations on the psychological states of Nebihu and Bajgora.

On April 5, 2011, the Court of Appeal reached a verdict, according to which the state was to pay compensation to Bajgora to the amount of 150,000 RSD, for emotional distress suffered on account of diminished life activities. Nebihu's claim was rejected. The HLC lawyer appealed against this verdict.

Analysis of the verdict

i. The court rejected Ekrem Nebihu's request with the same reasoning as in the first-instance verdict, referring to expert opinion, according to which Nebihu does not suffer from PTSD, although doctors in Kosovo diagnosed him with PTSD initially in 2005, only to confirm the diagnosis two years later, in 2007. The reason why the court accepted the expert opinion which disputes the PTSD diagnosis, established by a Kosovar doctor in 2007, is that it allegedly contains the code F43.0 (Acute Stress Disorder) rather than F43.1 (Post-Traumatic Stress Disorder). The expert's claim does not correspond to the data in the said diagnosis, which can be verified by simply examining the disputed documents. Specifically, the findings from 2005 record F43.1 as the diagnosis, while the findings from 2007 use the above code F.43 with the name of the disease – PTSD (Post-Traumatic Stress Disorder).

ii. The expert finding is controversial in the context of the facts established by the court. Specifically, the court has accepted Nebihu's testimony about the circumstances of the arrest, torture and inhuman treatment which he suffered as a sixteen year-old in illegal detention. The court had to appreciate that a boy of sixteen could not overcome severe trauma without serious psychological consequences, and to accept the findings of the experts from Kosovo who claim Nebihu suffers from PTSD.

iii. In the retrial, the court correctly concluded that the period of limitation for claiming compensation for mental pain due to permanent impairment of vital activities started running from the moment the plaintiff Bajgora learned he was suffering from PTSD. Only from that moment did Bajgora become aware of the detrimental impact of the illness on his future life.

iv. The amount of compensation awarded to Bajgora (150,000 RSD) hardly represents fair compensation for the injuries inflicted upon him. In this, as in many other cases in which the responsibility of the state of Serbia for human rights violations during the armed conflict in former Yugoslavia has been clearly proven, the court ordered the state to pay a very low compensation amount, thus humiliating the victim and ensuring that the claim caused a minimum strain on the budget of the Republic of Serbia.

2.2.2. Other cases where the HLC represents Kosovar Albanians as victims of illegal detention and torture in Serbian prisons

2.2.2.1. In the case where the HLC represents Ekrem, Agron and Fahri Ejupi, the trial court passed a verdict on December 3, 2010 which partially accepts Ekrem Ejupi's request and obliges the state to pay to him the amount of 250,000 RSD for the emotional distress he suffered due to the impairment of vital activities.

By the same verdict, the claims of Fahri and Agron Ejupi, who during their unlawful detention suffered injuries similar to those of Ekrem Ejupi, were rejected, because the court invoked a forensic opinion according to which the two did not suffer from mental disorders, although they had previously been diagnosed with PTSD by the experts of the Center for Rehabilitation of Torture Victims in Kosovo.

The HLC lawyer appealed the court decision which rejected the demands of Fahri and Agron Ejupi, and a decision on the amount of compensation awarded to Ekrem Ejupi.

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2.2.2.2. In the case where the HLC represented Zenun Behrami, the court dismissed the claim on March 7, 2011, because the court experts of Serbia, even after a repeated evaluation, did not find that Behrami suffered from mental illness inflicted by torture and inhumane treatment in illegal detention. The court did not accept the findings of doctors from Kosovo who diagnosed Behrami with PTSD. The HLC lawyer appealed this verdict.

2.2.2.3. In cases where the HLC represents seven victims (Albert Nebihu, Skender Isufi, Isuf Isufi, Basri Zhitia, Sokol Demaku, Xhemal Kastrati and Sadri Terrdevci), the first-instance court recognized the right to compensation for victims of torture and unlawful detention, and obliged the state to pay compensations to them ranging from 180,000 to 600,000 USD. Because the compensation amount for the victims was too low (except in the case of Basri Zhitia), the HLC lawyers appealed the court decision. The Attorney-General also filed a complaint against these verdicts, invoking the statute of limitations regarding these compensation claims.

On May 18, 2011, the Court of Appeals in Belgrade rejected the HLC's and Attorney-General's respective appeals in the cases of Albert Nebihu and Skender Isufi, and confirmed the first-instance verdict that obliges the state

to pay to Nebihu and Isufi the compensation to the amount of 180,000 RSD each.

2.2.2.4. In a case where the HLC represents Refik Hasani, Sokol Jakupi, Agim Ibrahim and Zijadin Blakqorri, the commencement of the trial was postponed for 21 months because Judge Maja Coguric was unable to perform her professional duties. After the HLC lawyers intervened, the case was handed to the President of the First Municipal Court in Belgrade, who assigned the case to another judge.

At the first hearing held on June 6, 2011, the judge rejected the HLC attorney's motion to allow Refik Hasani and others to undergo medical expertise. The judge concluded the main hearing thus. A negative verdict is expected to be passed.

2.2.2.5. In a case where the HLC represents Agim, and Rahim and Sadik Limani, the court passed a resolution on June 17, 2010 that rejects the claim for negligence because „the lawsuit does not provide the addresses of the three victims, and because they failed to submit medical documentation dating from the time when the damage caused to the victims occurred.“ The HLC lawyer appealed this decision, which indicates that the addresses listed in the complaint were as correct and as precise as possible.²⁸ Furthermore, the appeal states that the question regarding the moment when the damage occurred must be taken into consideration in the final decision which assesses the sufficiency of the complaint, rather than when its formal correctness is being determined. The decision on the appeal has not yet been reached.

2.2.2.6. In two cases in which the HLC represented 10 victims,²⁹ the trial court refused the victims' claims, accepting the objection of limitation as suggested by the Attorney-General. The HLC lawyers appealed the verdict to the Court of Appeals in Belgrade.

2.2.2.7. In 12 cases where the HLC represents 45 victims, the main hearing is still underway.

²⁸ The lawsuit cites the correct addresses of Agim, Rahim and Sadik Limani. They lived in villages with no street names, which is why it was impossible to provide a more precise residence location.

²⁹ Burim Morina, Xhevat Podvorica, Arsim Hasani, Sabri Krasniqi, Haziz Hamzaj, Ahmet Kukaj, Sabri Bekoli, Beqir Gashi, Qamil Kastrati and Beqir Istogu.

2.3. Torture against Sanjak Bosniaks: 1992-1996³⁰

During the armed conflicts in BiH, members of the Serbian Ministry of the Interior on the territory of Sanjak (municipalities of Novi Pazar, Sjenica, Tutin and Prijepolje) randomly searched the houses of Bosniaks on suspicion of illegal possession of weapons. After the searches, even though no weapons might be found, the police officers would detain the Bosniaks. Most of those arrested were subjected to physical and mental torture designed to extort confession of weapon possession or of participation in “ activities against the state.” Although these cases were regularly reported to the competent authorities, none were seriously investigated, and no disciplinary action was taken regarding any of them. According to the HLC’s data, the majority of police officers who participated in the beatings of Sanjak Bosniaks are still active within the Serbian Ministry of the Interior.

On behalf of eight victims of police torture, the HLC launched eight lawsuits against the Republic of Serbia for the state’s responsibility for the torture that the Bosniaks from Sanjak suffered at the hands of members of the police in the period 1992-1996.

32 On the basis of the misdeeds of members of the Serbian Ministry of the Interior, the HLC has demanded that compensation be paid for the following:

- i. Physical pain
- ii. Fear
- iii. Emotional pain inflicted by the violation of freedom and personal rights
- iv. Emotional pain inflicted by the impairment of vital activities.

2.3.1. The case of Fehrat Suljic

Facts

Fehrat Suljic lives with his wife Hajrija and four children in the village of Vele Polje, near Tutin. In the period from February to April 1996, Fehrat was brought six times to the police station in Tutin for questioning about possession of weapons. Every time, Suljic told the police that he had never owned a weapon. In March 1996, Suljic went to Tutin to buy groceries. Police officers Sulejman Hodzic and Zvonko Milunovic stopped him on the street and brought him to the police station in Tutin.

30 For more about police repression and human rights violations in Sanjak, see: *Ljudska prava u Srbiji 1991-1995 (Human Rights in Serbia 1991-1995)*, HLC: 1996.

At the beginning of the interrogation, police officer Kikovic entered the room and began hitting Suljic, first with his fist in the chest, and then in the back. Fehrat's head hit against a closet, which broke his arcade. Once he was on the floor, the other officers continued by kicking him on the back and spine with the heels of their boots. After that, they handcuffed him to a radiator in the office. Fehrat then fainted, and did not know whether he was still being beaten. When he regained consciousness, several police officers stood beside him. They told him to figure out a way to give them his weapons, and left him for five minutes alone. When they returned, they continued to beat him while he was handcuffed to the radiator.

Later that day, the police officers allowed Ferhat to leave the station. His condition was very serious. He went to see a doctor at the Health Center in Tutin, but the doctor refused to examine him. Fehrat then returned to his village. For the next month, he treated his injuries by wrapping them in sheep skin.

The police officers who abused Fehrat Suljic are still employed in the Tutin police station. Whenever they run into him, which is frequently, they provoke him by asking "whether his teeth are still numb", thus reminding him of what he experienced in March 1996.

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Consequences

After a month, due to severe back pain, Suljic went to see a doctor in Novi Pazar. The doctor noted damage to three spinal vertebrae and injury to the left kidney (which had shifted). Suljic is still undergoing treatment for the severe damage to his spine: he receives 40 injections annually, and is forbidden to lift heavy weights. He has frequent nightmares, panic and anxiety attacks, especially when he sees the police officers who beat him.

On account of his serious health condition, Suljic is unable to support his family.

Lawsuit

On June 27, 2007, on behalf of Fehrat Suljic, the HLC filed with the First Municipal Court in Belgrade a lawsuit for damages against the Republic of Serbia and the Serbian Ministry of the Interior, holding them accountable for the torture to which Fehrat was subjected. The HLC demanded that 1.1 million RSD be paid to Ferhat.

Challenge

The Attorney-General challenged the validity of the medical documentation submitted by the HLC, and cited the objection of statutory limitation.

Furthermore, the Attorney-General denied the motion to hear Hajrija Suljic, Fehrat's wife, because "she was not present at the event," and because "she cannot be impartial", owing to kinship.

Trial³¹

The trial began in December 2007.

At the main hearing, the court heard Fehrat Suljic, his wife Hajrija, and police officers Zvonko Milunovic and Sulejman Hadzic.

Fehrat Suljic testified about the circumstances of his arrest in March 1996, the abuse at the police station and the consequences of the torture for his health. Hajrija Suljic said that her husband had been taken to the police station several times on charges of weapon possession. On the day of his last arrest, he had gone to the city to buy groceries, and returned the next day with severe injuries („from the waist up he was completely black“). She also said that the doctor in Tutin refused to examine him when he heard that the police had beaten him, and that he had to see a private doctor in Novi Pazar.

Police officer Zvonko Milunovic said he was not sure whether he knew Suljic and at that time did not work „in this field,“ but that he was sure that Suljic's statement was „pure fabrication“.

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Police officer Sulejman Hadzic said he remembered Suljic but that he had never arrested him; he had only, as he put it, „invited him for questionings“ on suspicion of illegal weapons possession. He denied that Suljic was abused and recalled that Suljic „had toothache,“ which is why he was allowed to return home.

At the hearing, the court confronted Suljic with police officer witness Milunovic. During the trial, Suljic confirmed that he had been arrested by Milunovic, who was accompanied by Sulejman Hadzic, and that, on his arrival at the station, Milunovic stayed at the door. Witness Milunovic denied Suljic's claims.

Court-appointed experts, an orthopedic surgeon and psychiatrist, who examined Suljic at the request of the court, confirmed that Suljic had suffered physical and psychological injuries during detention and interrogation at the police station, that he suffered from PTSD, and that this illness significantly impaired Suljic's vital activities.

31 See reports from the trial at: www.hlc-rdc.org/reparacije

During the trial, the Attorney-General filed a court letter from the police headquarters in Novi Pazar, which disputed Fehrat Suljic's claim, saying it „fails to provide any written evidence of actions by authorized officials against Fehrat Suljic, nor has the plaintiff submitted a written or oral application about the treatment he received from the officials.“The letter also notes that „no employee of the Tutin Police Station has been subjected to criminal proceedings concerning the treatment of the plaintiff.“

The HLC lawyer submitted the Conclusion written by the Sjenica Municipal Assembly on February 14, 2002, which was attended by the Chief of Police of Novi Pazar, in which it is stated that on the territory of the Sjenica Municipality³², „police repression was carried out against the citizens of Bosniak nationality under the pretext of illegal weapon possession, by beatings, infliction of serious bodily injury, harassment, and other psychophysical methods and inflictions of suffering.“

The verdict

The first trial

On October 22, the court passed a verdict which found that, during detention by law enforcement officers, Fehrat Suljic was subjected to „physical and mental torture [...] in order to determine whether he possessed weapons.“ The court ruled that the state is responsible for the acts of law enforcement officers and ordered it to pay compensation to Suljic. Being responsible for the torture carried out by the police officers from Tutin, the state of Serbia, according to the ruling, is obliged to pay to Suljic 700,000 RSD (200,000 RSD for the emotional distress suffered because of the violation of personal rights; 200,000 RSD for fear; and 300,000 RSD for impairment of vital activities).The court rejected the claim for damages for physical pain.

Explaining why it rejected the testimony of the police officers who denied that Suljic had been subjected to torture, the court stated that the testimonies of the police officers were „illogical, unconvincing, calculated to avoid responsibility“ and contrary to all the other evidence.

The Court of Appeals' decision

On January 19, 2011, the Court of Appeals overturned the trial court decision and ordered retrial on the grounds that the evidence adduced during the trial did not prove that Suljic had been abused; that “it cannot be inferred only on

32 Novi Pazar and Sjenica are neighboring municipalities.

the basis of the claims by the plaintiff and his wife that the plaintiff had been injured physically or psychologically by law enforcement officers”; that, finally, police officer Sulejman Hodzic “disputed” that physical injury had been caused, and that police officer Milunovic claimed to have „never officially or privately had any conversation with the plaintiff.” The Court of Appeal’s decision further stated that “with no valid medical documentation from the period of injury, from which it could be determined the kind of injury the plaintiff suffered” it cannot be inferred that Suljic suffered torture.

Analysis of the Court of Appeals’ Decision

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i. The decision of the Court of Appeals to evaluate and adjudicate on the evidence presented at the main hearing is very unusual, especially when it comes to evaluating the testimony of witnesses. Although the Court of Appeals was legally permitted to hear the witnesses itself during the trial, its evaluation of the credibility of witnesses was given on the basis of the transcript of the main hearing, which cannot provide the correct insight into the quality of witness testimony, nor present their behavior during the examination and testimony. The trial court concluded, but only after direct questioning and after Milunovic and Suljic had been confronted with each other, that the statements of the police officers were unconvincing and calculated to avoid their own responsibility.

ii. The conclusion of the Court of Appeals that allegations of torture „are supported only by Suljic and his wife’s claims“ is incorrect, because other evidence directly supporting the statements by Fehrat and Hajrija Suljic were also presented to the court. These include: 1) a document of the Municipality of Sjenica about police repression at the time of the event in question; 2) the common finding of two permanent court experts on Suljic’s health condition, who estimated that Suljic’s health was seriously and permanently impaired due to the events he he had suffered in March 1996.

iii. Even if the torture allegations were supported only by Suljic and his wife, the conclusion given by the Court of Appeals that such claims were insufficient to establish that Suljic was indeed a victim of torture is contrary to the practices of the European Court of Human Rights and the UN Committee against Torture, both of which have established through a number of decisions that if a person was in good health prior to arrest and prior to having been taken to police station, but had visible injuries upon release, there is reason to infer that the person had been subjected to torture or inhuman treatment by the

authorities, and therefore the burden of proof that the person was not a victim of torture is transferred to the state.³³

iv. The Court has fully accepted the opinion of the Attorney-General, which already in its response to the lawsuit “predicted” that the testimony of Hajrija Suljic would be not only biased, because she was Fehrat Suljic’s wife,³⁴ but also irrelevant, because she had not been present when the Suljic was beaten. The court, however, failed to provide any explanation as to why Hajrija Suljic’s testimony was not convincing or credible enough to confirm the allegations of the victim, in this case her husband.

v. At the main hearing, Fehrat and Hajrija Suljic gave convincing and consistent explanations of why Suljic could not procure any medical proof about his health condition at the time. The Court of Appeals failed to explain why it did not accept this part of their testimony, and why it held that without such medical records it was unable to confirm the verdict, which accused the members of the Serbian Ministry of the Interior of having tortured Suljic.

2.3.2. Other cases in which the HLC represented Bosniak victims of torture from Sanjak

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2.3.2.1. Apart from Fehrat Suljic, the HLC is representing seven other victims of torture from Sanjak. In all cases, the courts denied the victims’ requests for compensation for the physical pain, fear and emotional pain due to violation of freedom and personal rights. In some cases, the courts have recognized the victims’ rights to compensation for impairment of vital activities.

2.3.2.2. In four cases where the HLC represents, Sead Rovcanin, Sefcet Mehmedovic, Munir Sabotic and Sefket Hukic, the trial courts have accepted the lawsuit claims and awarded damages for the impairment of vital activities due to torture. Damages awarded range from 150,000 to 600,000 RSD.

HLC lawyers have filed appeals against all rulings (except in the case of Sefket Hukic) for the low amount of compensation. On the other hand, the Attorney-General has filed complaints against all the judgments, noting that the request

³³ See the cases before the European Court for Human Rights: *Tomasi v. France*, *Ribitsch v. Austria*, *Selmouni v. France*. See also the case before the UN Committee against Torture: *Dragan Dimitrijevic (CAT/C/33/D/207/2002)*.

³⁴ Plaintiff’s kinship should not be an impediment to the hearing process; the provisions of the Criminal Penal Code stipulate that the persons examined as witnesses should be “able to give information about the facts being proved in the trial.”

for compensation had legally expired three years after the events in question; and that the victims' claims about torture were unfounded and could not be trusted, because the officers who testified before the court denied their involvement in torture.

In these cases, the courts rejected the victims' demands for compensation for the physical pain, fear and violation of freedom and personal rights, arguing that such requirements are subject to the statute of limitation.

2.3.2.3. In the case of Sefko Bibic,³⁵ the court rejected the lawsuit, citing the findings and opinion of a court expert, according to which Bibic does not suffer from PTSD. The HLC has appealed to the Court of Appeals in Belgrade.

2.3.2.4. The trial in the Elmaz Hukic case³⁶ was legally concluded on April 13, 2010. While invoking the statute of limitations, both the trial court and the Court of Appeals rejected the lawsuit claim without the presentation of evidence. The sentence was upheld by the Supreme Court of Cassation.

2.3.2.5. In the case of Murat Pepic,³⁷ the trial court dismissed the lawsuit claim, invoking the statute of limitations. In September 2011, the Court of Appeals in Belgrade accepted the appeal submitted by the HLC lawyers, overturned the first-instance verdict and referred the case for retrial.

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2.4. Crimes against Bosniaks in the village of Kukurovici (Municipality of Priboj)³⁸

The village of Kukurovici is located in the municipality of Priboj, on the border between Serbia, BiH, and Montenegro. Until 1992, it was inhabited by Muslims, mostly elderly; the village consisted of about 40 households.

At the beginning of the armed conflict in BiH, a large number of members of the Uzice Corps of the VJ came to Priboj. The first unit arrived on May 8, 1992. Immediately on arrival, the soldiers entered the villages and began

35 See HLC's press release: *Lawsuit for Human Rights Violation in Sanjak in 1993*, September 12, 2008.

36 See HLC's press release: *Lawsuit for Damages Claim: the Case of Elmaz Hukic*, April 8, 2008.

37 See HLC's press release: *Lawsuit for Torture in Sanjak*, May 28, 2007.

38 For more about the crime in the village Kukurovici, see *Human Rights in Serbia 1991-1995*, HLC: 1996.

harassing Bosniak residents. They searched the houses, shot around the village and houses, and beat people.

The Yugoslav Army was stationed at three locations near Kukurovici. Early in the evening on February 18, 1993, the Army fired from all three positions on the houses in the village, with small arms and mortars. Most of the residents fled in panic towards Priboj and Pljevlja.

Two days later, several people returned to the village. They found it in ruins. In the house of Musan Husovic, they found his corpse and the corpse of his partner Fatima Sarac. The body of Uzeir Bulutovic was found in his house. The returnees left the village and never came back. Two months later, on April 11, 1993, eight more Bosniak houses with ancillary facilities were torched. The investigating judge in the District Court of Uzice conducted a on-site investigation after the events of February 18, and another one after the eight houses had been burned.³⁹

In October 2006, the HLC filed with the District Prosecutor's Office in Uzice criminal charges for the murder committed from base motives, and for inciting national, racial and religious hatred, strife and intolerance against several unidentified perpetrators, by reserve soldiers of the VJ.⁴⁰ In 2006 and 2007, the HLC filed two claims for financial compensation against the Republic of Serbia on behalf of family members of the killed residents of Kukurovici, and one lawsuit on behalf of 14 residents whose property was destroyed in the attacks of the Yugoslav Army. In relation to the consequences of the Army's acts, the HLC requested that damages be paid for emotional pain over the death of a close person or for property damage.

2.4.1. The case of Musan Husovic

Lawsuit

In January 2007, the HLC sent a request to the Ministry of Defense for an out-of court settlement on behalf of the seven children of Musan Husovic, demanding that the state pay compensation for the murder of their father.

On April 24, 2007, when the Attorney-General failed to send his response to the HLC's request within the statutory deadline, the HLC attorney, on behalf of the six daughters and son of the late Musan Husovic, filed a claim

³⁹ District Court in Uzice, Kri.9/93 and Kri.32/93.

⁴⁰ District Prosecution in Uzice transferred the case to the War Crimes Prosecution of the Republic of Serbia.

for damages against the Republic of Serbia. The action required the court to determine the responsibility of the Serbian state for the murder of Musan Husovic, committed by the members of the VJ, and to pay to Husovic's children the financial compensation of 7,000,000 RSD.

Response to the lawsuit

In response to the complaint, the Ministry of Defense noted that it contained no evidence that the VJ is responsible for the crime. In support of this assertion, it stated that not a single "report about the unit" (sic) had been filed. Further, the Ministry stated that on the territory of the FRY "there was no armed action; instead, military action took place in the territory of the Republika Srpska, which is [...] at a distance of only 300 meters."

In addition, the Ministry of Defense invoked the statute of limitation.

The trial⁴¹

The trial began in December of 2007 and lasted nearly four years, with a total of up to 18 scheduled hearings, nine of which were delayed due to failure to fulfil procedural requirements. The hearings were postponed several times because the Attorney-General did not receive a summons, and on other occasions either because of false allegations that a bomb had been planted in the court, or a strike, or problems with court administration, or judges being prevented from coming to the trial - and once, because of the death of Patriarch Pavle.

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At the main hearing, all the children of the late Husovic and witness Dzafer Kaltak were heard. The Attorney-General did not present any evidence. Written material was presented: records of the investigation, a letter from the District Court in Uzice, and a letter from the War Crimes Prosecution recording that the proceedings against unknown perpetrators of the murder in Musan Husovic were in the pre-trial stage. Kaltak testified about the attack on the village carried out by the Yugoslav Army, about how he escaped with his family, and about his return to the village where he found the bodies of Musan Husovic and his wife.

The verdict

The first instance verdict from May 16, 2011 dismissed the lawsuit of the children of Musan Husovic, on the grounds of the statute of limitations because "...the limitation periods specified in Article 377 ZOO, apply only to the perpetrator of the crime which caused the damage and not to the legal

41 See the report from the trial at: www.hlc-rdc.org/reparacije

entity, which applies to the state responsible for damages under the provisions of Article 172 ZOO, in a particular case.”

Analysis of the verdict

i. The provision of 377 ZOO: “Should loss be caused by a criminal offence, and a longer unenforceability time limit be prescribed for the criminal prosecution, the claim for compensation against the person liable shall expire upon the expiration of the limitation period set forth in the statute of limitations of the criminal prosecution.” The law uses the term “liable person”, which is much broader than the term “criminal offender.” In fact, the person responsible for damages may be a natural or a legal person.⁴²

ii. The verdict does not contain any factual findings on the circumstances of Musan Husovic’s death. Evidence presented during the trial all confirm that Musan Husovic was killed in the attack on the village of Kukurovici carried out by the Yugoslav Army. During the main hearing, not a single piece of evidence was brought that contradicted this evidence. Had it found that the eyewitness testimonies of Dzafer Kaltak and other witnesses were unclear or contradicting other evidence, the court ought to have given reasons for this finding in the verdict.

However, by referring to provision 172 ZOO,⁴³ the court indirectly found that the VJ or Serbian state are to be held responsible for the murder of Husovic. Namely, in claiming that the Husovic children’s right to compensation is subject to the statute of limitation, the court explained that “the limitation periods specified in Article 377 ZOO, apply only to the perpetrator of the crime which caused the damage and not to the legal entity, which applies to the state responsible for damages under the provisions of Article 172 ZOO, in this particular case.”

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2.4.2. Other cases in which the HLC represents victims of the crime in the village Kukurovici

2.4.1.1. In the case where the HLC represented three children of Uzeir Bulutovic, who was killed during the VJ’s attack on the village of Kukurovici on February 18, 1993, the court rejected the claim, invoking the statute of

42 For a more detailed interpretation of Article 377 ZOO about how to realize the right to reparation see page 8.

43 Article 172 ZOO, provision 1: „A legal person (corporate body) shall be liable for damage caused by its members or branches to a third person in performing or in connection to performing its functions.“

limitation. The ruling was upheld by the Supreme Court of Cassation in March 2010.

2.4.1.2. In the case before the High Court in Belgrade, the HLC represents 14 residents of Kukurovici, whose property was destroyed in its entirety during the VJ attacks on the village. The suit was filed in July 2007.⁴⁴ Seven victims and three witnesses were heard, and documentary evidence was presented.⁴⁵ In September 2011, the HLC lawyer requested an interim decision, which will decide whether the lawsuit was founded or not.

2.5. The case of a war crime against Albanian civilians in Podujevo/Podujevë

On March 28, 1999, the families of the brothers Safet and Selatin Bogujevci were in their houses in Podujevo/Podujevë. With them was the family of Enver Duriqi, Selatin's work colleague. There were twenty people in the house, including twelve children between 2 and 14 years of age, five women and three elderly men.

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At around 6 a.m., members of the Special Police Units (PJP), the Special Anti-Terrorist Unit (SAJ) and the reserve unit of the SAJ (the „Scorpions“ unit) entered the town and began shooting, looting, breaking into houses and ordering people to leave their homes and the town. Safet, Selatin and Enver managed to leave the house and escape to the nearby forest.

Later the same morning, officers in camouflage uniforms entered the Bogujevci family house. They searched every person in the house, and then took them to the backyard. There they ordered the women and children to raise their hands. The women were ordered to take off their headscarves and everyone was searched again. After some time, the women, children and elderly were taken to a nearby police station. On the way to the station, the police officers shouted at them, cursed them, and broke store windows. Some had rods and axe-handles. Along the way, they separated from the group the elderly Hamdi Duriqi and Selman Gashi, took them to a nearby inn and killed them.

44 The first hearing was held 16 months after the filing. Meanwhile, a HLC lawyer filed five so-called „urgings“ to the court to schedule the hearings.

45 Minutes of the investigation, letters of the District Court in Uzice and War Crimes Prosecution about the procedures in this case, evidence of ownership of destroyed property, etc.

Immediately afterwards, the women and children were ordered to return to the backyard they were taken from. There, a group of policemen were waiting for them, and immediately began to shout and swear at them. They attacked Fezrije Llugaliu with a knife, because she did not speak Serbian, hitting her with the knife handle on the head. One policeman grabbed Shefkate Bogujevci by her neck dragged her toward the center of the backyard. Then he shot her in the back. Shefkate fell to the ground and the officer fired another bullet into her body. The children started crying for their mother, and the police officer who had shot Shefka, started shooting at the children. The other officers then began firing at the women and children, pausing several times to re-charge their guns. If they noticed that someone was still moving, they would shoot at him or her again.

In this crime, the Serbian police officers killed the following persons: Esmā Duriqi (69), Shehide Bogujevci (67), Nefise Llugaliu (55), Shefkate Bogujevci (42), Sala Bogujevci (39), Fezrije Llugaliu (21), Fitnete Duriqi (36), Nora Bogujevci (14), Shpend Bogujevci (13), Shpetim Bogujevci (10), Dafina Duriqi (9), Arber Duriqi (7), Mimosa Duriqi (4 years) and Albion Duriqi (2).

Five children were seriously wounded but survived the shooting: Saranda Bogujevci (14), Fatos Bogujevci (13), Jehona Bogujevci (11), Lirie Bogujevci (9) and Genc Bogujevci (6).

For the crime against women and children from the Duriqi, Bogujevci and Llugaliu families, six members of the „Scorpions“ police unit have been convicted.

The Case of Podujevo I:

Lawsuit

On behalf of the families of murdered women and children, on January 24, 2007 the HLC filed with the First Municipal Court a lawsuit for damages against the Republic of Serbia for its responsibility for the crimes committed by its police. The lawsuit requested that the state of Serbia indemnify the 24 family members to the amount of 52 million RSD.

For the consequences that arose from the acts of police officers, the HLC requested that compensation be paid for “emotional pain over the death of a close person.”

Along with the lawsuit, the HLC submitted the conviction of law enforcement officer Sasa Cvjetan and evidence of kinship between the persons killed in this crime and the members of the families suing the state.

The Case of *Podujevo II*:

Lawsuit

On August 28, 2008, the HLC filed a claim with the First Municipal Court in Belgrade for pecuniary damages against the Republic of Serbia, on behalf of Saranda, Jehona and Lirie Bogujevci. The action required the court to oblige the state of Serbia to pay to Saranda, Lirie and Jehona Bogujevci 10.5 million RSD on the basis of the state's responsibility for the actions of its law enforcement officers.

On the basis of the misdeeds of members of the Serbian Ministry of the Interior, the HLC demanded that compensation be paid for the following:

- i. Physical pain
- ii. Fear
- iii. Violation of personal rights
- iv. Emotional pain inflicted by the impairment of vital activities and permanent consequences of injuries.

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With the lawsuit, the HLC submitted the conviction of law enforcement officer Sasa Cvjetan, along with medical and photo records of the injuries suffered by Saranda, Jehona and Lirie, as well as documentation of the many years of their treatment.

Response to the lawsuits

In its response to the two lawsuits, the Attorney-General's Office emphasized four points:

- i. Objection of limitation (*Podujevo I* and *Podujevo II*)
- ii. According to Article 180 ZOO⁴⁶, the state is not responsible, because "the action that caused damage to the plaintiffs was not directed against the civil

⁴⁶ For damage caused by death or bodily injury, or damage or destruction of property by acts of violence or terror, as well as during public demonstrations and events, the responsible party is the state whose authority under the applicable regulations was required to prevent such damage.

and political organization of the Republic of Serbia. Instead, the event of March 28, 1999 was an act of an individual ...“ (*Podujevo II*)

iii. The damages claim is „too high“ (*Podujevo I* and *Podujevo II*)

iv. Victims „did not submit proof that the damage was caused by the incorrect and illegal activity of the state“ (*Podujevo I*)

Podujevo I:

The trial

The trial began in May 2007. During the main hearing, nine hearings were scheduled, five of which were delayed.⁴⁷ At the hearings held, only one proof was presented: the criminal conviction which sentenced Sasa Cvjetan for crimes against civilians in Podujevo/Podujevë.

Analysis of the verdicts

i. The verdicts of the trial court (March 20, 2009) and the Court of Appeals (March 10, 2009), as well as the Supreme Court (April 13, 2011) contain identical legal reasoning: the lawsuit is subject to the statute of limitation, because it was filed five years after the commission of the crime (i.e. after the so-called objective limitation period).

None of the three courts presented legal conclusions concerning the responsibility of the state of Serbia, or whether the right of the victims' families to claim damages from the Serbian state for the actions of its law enforcement officers was founded or not.

In June 2011, the Supreme Court of Cassation dismissed the HLC's request for revision, which was filed on May 7, 2009. In August 2011, the HLC attorney, on behalf of 21 of the victims, filed a constitutional complaint.

ii. Given the previously cited position of the Constitutional Court of Serbia (July 14, 2011), the dismissal of the claims of the families was unlawful and unconstitutional. Namely, the position of the Constitutional Court of Serbia is that when damage results from a criminal offense, longer periods of limitation shall apply „to all responsible parties, not just the offender.“

⁴⁷ Four hearings were postponed because there was no evidence that the Office of the Attorney-General had received an invitation in the manner due, while one hearing was postponed because not all members of the Chamber were present.

iii. By rejecting the lawsuit on the grounds of the statute of limitations, the courts have implicitly taken the view that the victims should file a complaint within five years from the time the crime was committed, rather than after the verdict against the perpetrators. The courts have ignored the fact that only after the verdict against Sasa Cvjetan had been passed did the victims learn that the unit which committed the crimes against their loved ones was part of the Ministry of the Interior of the Republic of Serbia. But even if the victims had assumed that the armed men who committed the crime belonged to the regular forces of the Serbian state, and even if they had filed a lawsuit against the state of Serbia within three or five years of the commission of the crime, it is unlikely, given case law in Serbia and the difficult requirements for proving the responsibility of the state (see for example the case of the camps in Sljivovica and Mitrovo Polje), that a court in Serbia would have accepted the claim by these families that the state of Serbia was accountable for a crime committed by heretofore unidentified persons.

iv. In this case, the verdict of the civil court is inconsistent with the verdict of the criminal court. In fact, in the Sasa Cvjetan trial, the plaintiffs (survivors and families of those killed) were advised to seek redress in civil litigation, but the civil court's opinion has made that impossible.

v. In the light of the above, it is to be concluded that the families of the killed Albanian civilians in Podujevo, as well as other victims of crimes committed by Serbian forces, have no legal instrument or remedy available in Serbia to allow them to exercise their right to fair financial compensation.

Podujevo II

The trial

The trial began in October 2008. In December 2008, Saranda, Jehona and Lirie testified before the First Municipal Court about the crime they had survived, as well as about the numerous surgeries and long-term medical treatment thereafter.

Following the reform of the judiciary in 2010, the case was transferred to the jurisdiction of the High Court in Belgrade. The case was assigned to a chamber presided over by Judge Andjelka Opacic, who insisted that Saranda, Jehona and Lirie Bogujevci be heard again in court, because she wanted to ask them "a few more questions." Judge Opacic dismissed the arguments of the HLC attorney, who pointed out that the earlier testimonies of the victims

were sufficiently detailed, that there is ample evidence in this case, that a new hearing is unnecessary, and that a new examination will result in a fresh trauma for the victims.

2.6 The case of Sjeverin

Mehmed Sebo, Zafer Hadzic, Medo Hadzic, Medredin Hodzic, Ramiz Begovic, Dervis Softic, Mithat Softic, Mujo Alihodzic, Alija Mandal, Sead Pecikoza, Mustafa Bajramovic, Hajrudin Sajtarevic, Esad Dzihic, Ramahudin Catovic, Idriz Gibovic and Melvida Koldzic lived with their families in the village of Sjeverin in Priboj. On October 22, 1992, at a bus stop in Sjeverin, they boarded a bus that regularly runs between Rudo and Priboj. Most of them were on their way to work. In one of its sections, the road that leads to Priboj passes through the village of Mioce, which is located on the territory of Bosnia and Herzegovina's Republika Srpska. In Mioce, a group of soldiers of the Army of Republika Srpska (VRS), led by Milan Lukic, stopped the bus. They entered the bus and demanded that passengers show their IDs. Having seen the IDs, they ordered down from the bus only Bosniaks. The passengers of Serbian nationality remained on the bus and were allowed to move on.

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Milan Lukic and his men loaded the Bosniaks onto a truck and transported them to Visegrad, to the *Vilina Vlas* Hotel, where they were beaten and tortured for hours. They were then taken to the banks of the River Drina, and executed. Their bodies have never been found.

For this crime, the District Court in Belgrade sentenced Milan Lukic, Oliver Krsmanovic and Dragutin Dragicevic to 20 years in prison, and Djordje Sevic to 15 years.

The Belgrade District Court's verdict, which was upheld by the Supreme Court of Serbia, designated the convicted men as members of a paramilitary group, „The Avengers,“ although a number of items of evidence and statements clearly indicate that these persons were members of the official VRS.⁴⁸

48 At the first trial of Milan Lukic *et al.* before the District Court in Belgrade in 2004, the verdict of the trial court found that Lukic and others were part of the Visegrad Brigade of Republika Srpska. However, after repeated trials, that conclusion was changed and the “Avengers” were declared a paramilitary unit.

The Lawsuit

On June 27, 2007, on behalf of 25 family members of those killed in Sjeverin, the HLC filed with the First Municipal Court in Belgrade a lawsuit against the Republic of Serbia. The lawsuit requested that the state of Serbia (Ministry of the Interior and Ministry of Defence) indemnify members of the victims' families to the amount of 37,250,000 RSD for the state's

- i. failure to provide protection for the Bosniaks from Sjeverin, despite its knowledge that the passage through the territory of Bosnia and Herzegovina and the Republika Srpska may put people at risk;
- ii. failure to secure the state border, which allowed free movement of armed groups in the border zone;
- iii. military and financial support to the VRS, which controlled the unit of Milan Lukic;
- iv. organizing and providing weapons to paramilitary units that participated in the war in Bosnia.

48 With the lawsuit, the HLC submitted the verdict against Lukic *et al*, along with substantial evidence previously presented before the Hague Tribunal of how the VRS and the paramilitary forces had been financed and armed. In addition, the HLC submitted evidence of association of the „Avengers“ unit with the VRS.

Challenge

The Attorney-General stated that the institutions of the Republic of Serbia are obliged to ensure the safety and security of citizens only on the territory of Serbia, and that the „potential danger“ when crossing into the territory affected by the war was a „well-known fact“ and that „every citizen, in crossing the border, took the risk of possible adverse consequences.“ The Attorney-General further stated that the state was required to ensure the flow of people and goods in the area.

In terms of responsibility for Serbia's assisting the VRS, the Attorney-General denied any connection between the „Avengers“ and the VRS, citing as support the criminal conviction of Lukic and others. The Attorney-General also denied any connection between the VRS and the VJ, failing to cite any evidence that would challenge the evidence proposed by the HLC regarding continuous military and financial support.

The trial

The trial began 13 months after the lawsuit had been filed.⁴⁹ During the trial, four hearings were held, where five family members and one witness testified about their relationship with the victims.

On February 6, 2009, the court rejected the claim for compensation of the families of the 16 killed Bosniaks from Sjeverin. The HLC lawyer appealed to the Court of Appeals in Belgrade.

The verdict

In its explanation of the ruling, the court stated that the state of Serbia bears no responsibility for the abduction of the Serbian Bosniaks from Sjeverin, concluding that each of the HLC allegations was unfounded.

i. Abduction occurred in another state, and consequently the „forces of the Serbian Ministry of the Interior were not required to secure the vehicle in question“, as „such an obligation of the Ministry of the Interior is not stipulated by any legislation, while in this particular case there was no other decision or by-law of the Republic of Serbia establishing the obligation of the Serbian Ministry of the Interior in some particular case.“

ii. On the basis of the final verdict, Milan Lukic and others committed the crime „as individuals and as a group with an autonomous will,“ independently of the VRS; furthermore, „the plaintiffs‘ allegations that the Republic of Serbia, through the Ministry of Defense, assisted the VRS is not legally relevant“.

iii. The evidence that the HLC suggested be presented regarding the alleged assistance the Ministry of Defense and the Ministry of the Interior provided to the VRS was not presented directly before the court, because „the defendant did not give consent that evidence presented in other cases and other courts be used in this procedure.“ Therefore, the court had neither accepted nor evaluated this material.

iv. There is evidence that the state is organized, planned and coordinated by a group that has committed a crime or to commit organized crime. The Court does not accept the transcript of evidence Dobrila Gajic-Gliscic, former official of the Ministry of Defense, given before the ICTY in the case against Slobodan Milosevic, who testified about the arming of paramilitary groups in Bosnia and

⁴⁹ At the HLC attorney’s urging, the president of the court replied that the trial judge was on a longer leave and assigned the case to another judge.

Croatia, as „the respondent did not give consent to the court’s using evidence from witnesses who have given their testimony before the Hague Tribunal as evidence in this proceeding. „

v. No evidence proves that the state organized, planned and coordinated the group that committed the crime, nor that it provided organizational support to the crime itself. The court does not accept the transcript of the statement by Dobrila Gajic-Glisic, former official of the Ministry of Defense, given before the ICTY in the case against Slobodan Milosevic, which testifies how the paramilitary groups in Bosnia and Croatia were armed, because „the defendant did not give consent to the court’s using the statements given by the witnesses who had testified before the Hague Tribunal as evidence in this proceeding.“

vi. The allegations that the failure of the VJ and the Ministry of the Interior to secure the border and border zones allowed the movement of armed groups in the border zone is unfounded, because according to the regulations at the time, neither the Ministry nor the Army were obliged to „exercise authority“ in the territory of BiH.

vii. The allegations that the Serbian government violated international agreements about the protection of human rights are unfounded, because the state of Serbia is obliged to „ensure the application of these acts only on the territory of the Republic of Serbia.“

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Analysis of the verdict

i. The mere fact that an event took place outside the territory of the Republic of Serbia is not in itself sufficient to conclude that the Serbian state institutions are not responsible for it. On the contrary, if a causal link is established between the acts or omissions of state bodies and certain events, the state may be liable for damages arising from that event, regardless of what happened in the territory of another state. This principle has been affirmed by a legal position of the Serbian Supreme Court.⁵⁰

The Ministry of the Interior, according to the then Law on Internal Affairs, had the opportunity to prohibit the movement of people in certain areas, in order to protect the lives of people from gross violations and other criminal acts.⁵¹ The Court has, intentionally or by accident, inferred only that there was

⁵⁰ Legal opinion of the Civic Department of the Supreme Court of Serbia of June 25, 2001.

⁵¹ Article 13 of the Law on Internal Affairs: “To protect the lives of the people exposed to mass criminal acts, or if reasons of defence of the Republic demand it, the Minister may,

no responsibility of the state to “protect the vehicle”, but it did not take into account whether the authorities failed to take appropriate action to protect the citizens, which could reasonably be expected given the circumstances of war and ethnic conflict in BiH. In its response to the lawsuit, representatives of the government themselves confirmed that the “potential danger” when crossing the border was a “well-known fact.” In addition, the Attorney-General in response to the lawsuit stated that the state was required to ensure the flow of people and goods “in such circumstances” - which is to say, with the awareness that some of its citizens are in danger.

In the light of this, it is to be concluded that, in the opinion of the institutions of the Republic of Serbia, the flow of people and goods is an obligation of greater importance than the constitutional and legal obligation to protect the lives of its citizens.

ii. The HLC submitted a number of items of evidence that directly point to the fact that Lukic and others were part of the Visegrad Brigade of the VRS (certificates of registered military weapon possession, Milan Lukic’s testimony before the court in Bijelo Polje, etc.).

iii. The court’s reasoning that the HLC’s evidence about the former Federal Republic of Yugoslavia (SRJ)’s aid to the VRS could not have been presented in court because the Attorney-General had not given consent to the presentation of such evidence during the proceedings (evidence presented in the trial of Slobodan Milosevic at the ICTY), does not correspond with the facts and minutes of the trial. More specifically, the court never asked the Attorney-General to state whether he agrees that the proposed HLC evidence from the trial before the Hague Tribunal be used as evidence in this trial. Moreover, the Attorney-General failed to expressed his opposition to this either in his response to the lawsuit or during the trial itself. In addition, the court allowed that the evidence in question be presented at the last hearing on February 6, 2009, as noted in the minutes of the trial.

iv. The general exercise of state control over the forces of another state, reflected in the act of providing arms and other assistance to another state, is sufficient to prove the existence of a legally relevant connection between one state and the armed forces of another state. This has been confirmed in several

temporarily, restrict or prohibit the movement of persons in public places or in certain areas and order individual persons to remain in the place of residence or reside there with the obligation to report.”

judgments of international courts, especially in the cases which considered the connection between the former Federal Republic of Yugoslavia and the VRS.⁵² The court did not take into account the evidence supporting the claim that Serbia supported the paramilitaries in Bosnia and Herzegovina (testimony of Dobrila Gajic-Glisic in the case against Slobodan Milosevic before the ICTY), on the grounds that such evidence was not brought directly before the court because the defendant had not agreed to the use of that evidence in this case. However, as noted earlier, the court did not seek the Attorney-General's consent during the trial, nor did the Attorney-General express his opposition to the presentation of this evidence.

v. In the lawsuit, the HLC claimed that the Ministry of the Interior ought to know what is happening in the border zone, and ought to prevent activities that may threaten the safety of the citizens of Serbia. As proof of the assertion that the Ministry knew but failed to take the measures it is legally obliged to take, the HLC presented the facts established in the criminal verdict against Milan Lukic and others, that the Bosnian Serb armed formations moved freely both within the territory of Serbia and its border zone.⁵³

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The entry of these formations into the territory of Serbia was the result either of an intention on the part of the Ministry of the Interior and the Yugoslav Army to allow these units to enter Serbia, or of gross omissions in their work.

vi. A state's adherence to international human rights agreements is reflected first in the action or omission of state institutions, in functioning in the interest of the citizens, or those under their authority. In this respect, the UN General Assembly Resolution on the rights of victims to reparation defines the state's obligation to provide reparations to victims „...for conduct consisting of an action or omission **attributable to the state**,“ without limiting these the actions or omissions to those that occurred in the territory of that state.

52 The ruling of the Appeals Chamber of the Hague Tribunal in the Tadic case (IT-94-I) and the verdict of the International Court of Justice in the case Bosnia and Herzegovina vs. Serbia and Montenegro, of February 26, 2007.

53 K.br.1419/04, p. 67: “The presence of such armed persons in Serbia who were simply moving in the border zone, indicates that they entered the territory of Serbia and that their presence spread fear among the citizens in the border zone, especially citizens of Muslim nationality, which is what witnesses who were examined during the proceedings emphasized, while describing their feelings when they traveled and passed through this border territory in the war zone.”

2.7. Forced mobilization of refugees from Croatia and Bosnia and Herzegovina

In early August 1995, the military-police forces of the Republic of Croatia launched Operation *Storm*, by which the territory of the self-proclaimed Republic of Srpska Krajina (RSK) was placed under the control of the Republic of Croatia. The operation expelled over 150,000 Serbs, who fled to BiH and Serbia.

At the border with Serbia, Serbian police forces directed the refugees to the towns or cities in the countryside and in Kosovo. The refugees were housed with relatives, friends or in shelters. The Red Cross and the Commissariat for Refugees of the Republic of Serbia compiled the list of refugees.

In the ensuing weeks, members of the police conducted a forced mobilization of able-bodied male refugees from Croatia. Using the lists made by the Red Cross and the Commissariat for Refugees, the police would appear at the address where the refugees were located and detain them, allegedly „for recording purposes“. However, after a short detention in police stations, the men would be taken to Erdut, Croatia (at that time under Serbian control), to the camp of Zeljko Raznatovic Arkan's Serbian Volunteer Guard (SDG).

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In the camp, members of the SDG would beat and humiliate the mobilized men, accusing them of „treason.“ All the men would have their heads shaved upon arrival. Some were tied toposts „for punishment“ and beaten, or were held in kennels and made to bark and howl. Because of the degrading treatment in the camp, an older man committed suicide. During their stay in the camp, the forcibly conscripted men would go through a short „military training“ and would then be sent to the frontlines and battlefields in Croatia and BiH. Many were killed, and the bodies of some have never been found. Those who survived still suffer the physical and psychological effects of torture and forced mobilization.

By illegal arrests, forced mobilization, and removal of refugees to the territory from which they had fled, members of the Ministry of the Interior violated the Convention on the Status of Refugees,⁵⁴ the Law on Refugees⁵⁵ and national legislation and a number of international conventions for the protection of human rights.

54 Službeni list (Official Gazette), No. 7/60.

55 Službeni glasnik (Official Gazette), No. 18/92.

According to some estimates, in the summer of 1995, some 10,000 refugees from Croatia and Bosnia shared this fate.

On behalf of 721 victims of forced mobilization, the HLC initiated 121 legal proceedings against the Republic of Serbia for its responsibility in the violation of basic human rights.

On the basis of the misdeeds of members of the Serbian Ministry of the Interior, the HLC demanded that compensation be paid for the following:

- i. Fear
- ii. Emotional pain inflicted by the violation of freedom and personal rights
- iii. Emotional pain inflicted by the impairment of vital activities.

2.7.1. The case of Dusan Stanic et al

Facts

Dusan Stanic, born in 1966, fled to Serbia with his family from Svrackovo selo (municipality of Korenica, Croatia) in August 1995, after *Operation Storm*. The family settled at a reception center in Belusic (municipality of Rekovac). Several days later, the police began coming to the reception center at night and in the early morning. The men, as previously recorded by the Red Cross, were called out and taken away. Dusan Stanic managed to escape arrest twice. He was arrested on September 15, 1995, while preparing lunch in the center where he served as a chef. He was detained and taken to a police station in Jagodina. From there, he was transported the same day with a group of other detainees to the SDG camp in Erdut. He spent five days in the camp, where members of the SDG shaved his head, and called him „Ustasha.“ He was forced to carry a 40-pound rock around the camp, and slept in a tent with one hundred other men. After the training was completed, he was sent to the frontline in the so-called RSK, where he remained until December 19, 1995.

Nikola Vidic, born in 1958, fled from his native village of Vojnic, Croatia, in August 1995, during *Operation Storm*. In Serbia, he and his family were housed in the reception center in Leskovac, located in the Agricultural Boarding School. Ten days after his arrival in Leskovac, on September 13, 1995 at around 7 a.m., police officers visited the center and arrested six men, among them Nikola. The men were taken to the SDG camp in Erdut. Two days later, Nikola was sent to defend RSK. He was released and demobilized three-and-a-half months later.

Nikola Mirkovic, born in 1961, was a member of the Army of Republika Srpska Krajina (VRSK). He lived in Knin with his family. During Operation Storm, in mid-August 1995, he and the family fled to Kucevo. They settled in a refugee center, located in the military barracks. Early in the morning, at around 5 a.m. on August 24, 1995, two law enforcement officers arrested him at the refugee center. With ten other arrested men, he was transported to Pozarevac, and from there to the SDG camp in Erdut. There he spent three days, during which time he was forced to perform certain tasks within the camp, constantly being exposed to insults and inhumane treatment. Three days later, he was sent to the frontline in Mirkovci (Croatia), where he remained until December 15, 1995.

Svemir Crnobrnja, born in 1966, was a member of the VRSK Krajina. After Operation Storm, he fled first to Banja Luka, where he reunited with his family, who had previously escaped from Stabanj (Benkovac). From there, they fled together to Serbia, and settled in the Agricultural Boarding School in Leskovac. Fifteen days after his arrival, Svemir was arrested by members of the Serbian Ministry of the Interior and sent to the SDG camp in Erdut. In the camp, Crnobrnja suffered a fate similar to that of other forcibly recruited men: he was beaten, slapped and insulted on getting off the bus, and in the camp, his head was shaved. He went through a two-day „training“ and was then sent to the frontline in Nemci, near Vukovar, where he remained until January 13, 1996.

Gojko Banjanac, born in 1961, fled to Serbia with his family after Operation Storm. He was a member of the VRSK. Gojko and his family settled in a refugee center in Kucevo. Ten days after his arrival, on August 25, 1995, he was arrested by Serbian law enforcement officers. During the night, while he was sleeping, two officers pointed a flash-light in his face, and ordered him to get up and go with them to the police station, from where he was transported to Erdut the same day. Upon his arrival at the camp, he fell seriously ill. He nevertheless remained in camp the next four and a half months. He was forced to perform manual labor: he operated the water tank, performed construction work, carried sacks of sand, unloaded ammunition. The entire time he slept in a tent, on a straw bed. He was released on January 14, 1996.

Mile Cikara, born in 1966, was a member of the VRSK. With his family he lived in Licka Jasenica (municipality of Ogulin, Croatia), which they fled during Operation Storm, reaching Serbia on August 18, 1995. They settled in the sports center „Health“ in Leskovac. On September 7, 1995, the police came into the hall and started calling out the male names from a list. All twelve of those

called out, among them Mile Cikara, were transported directly to the SDG camp in Erdut, where Mile spent ten days, before being sent to the frontline near Banja Luka (BiH). During his stay in the camp, he was forced to perform manual labor, and constantly exposed to insults and humiliation. After 35 days on the battlefield, he was sent back to Erdut, only to be sent to Vera, Croatia ten days later. He was demobilized on January 18, 1996.

Djordje Knezevic, born in 1973, was a member of the VRSK. During Operation Storm, he fled with his family from the village of Korlat (in the vicinity of Benkovac) to Vladicin Han, to stay with his sister. The local Red Cross recorded their presence. Two days later, on August 25, 1995, at around 10 a.m., two policemen came to the house of Djordje's sister and asked for him. They took him to the police station, where he and a large group of men, refugees from Croatia, all arrested in Vranje, were transported to Erdut. Djordje was assigned to the working squad, where he was ordered to perform physical labor. Like other forcibly recruited men in the camp, he was exposed to constant insults and derision by members of the SDG. Four days after his arrival, he was sent to the frontline in Mece near Darda, Croatia. He was demobilized on December 15, 1995.

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Dragan Tepsic, born in 1972, was a member of the VRSK. During Operation Storm, he fled to Serbia with his mother. They settled in the Sonta near Apatin, in the house provided for them by the local Red Cross. On September 12, 1995, on the way home from shopping for groceries, he was stopped by a police patrol. As he had no documents on him, he was driven to the house. When he showed his ID, the officers immediately brought him to the local police station. From there, he and another man, a refugee from Croatia, were transported to Erdut. Immediately upon arrival, his head was shaved. After six days, his unit was sent to the frontline in BiH. After 30 days, he returned to the camp in Erdut, where on November 20, 1992 he was sent to the frontline in Klis, Croatia. He remained there two months and then returned to the camp, where he spent two more months. He was released on March 13, 1996.

Consequences

The torture, fear for their lives, humiliation and inhumane treatment that forcibly conscripted men suffered both in the SDG camp in Erdut and on the frontline in Croatia and BiH, left a serious and lasting impact on their health. All were diagnosed with PTSD, which irrevocably undermined their mental health and for which all will have to be in treatment for the rest of their lives.

The lawsuit

On December 15, 1998, on behalf of Stanic, Tepsic, Crnobrnja, Banjanac, Knezevic, Cikara, Mirkovic and Vidic, the HLC filed with the First Municipal Court in Belgrade a claim for damages against the Republic of Serbia, demanding financial and non-pecuniary compensation on the grounds of the state's responsibility for their forcible conscription, torture and inhumane and degrading treatment in the SDG camp in Erdut and on the battlefield. The lawsuit requested that the Republic of Serbia pay 2.4 million RSD to the plaintiffs.⁵⁶

Challenge

In response to the lawsuit, the Attorney-General claimed the allegations to be unfounded because the Ministry of the Interior „has no jurisdiction and cannot perform mobilization and other defense tasks.“ This, instead, was the responsibility of the federal authorities of the Federal Republic of Yugoslavia. In addition, the Attorney-General stated that Serbia cannot be held responsible for damage incurred after the plaintiffs' transmission to the authority of the RSK.

The Attorney-General requested that it be determined during the trial whether the forcibly mobilized refugees had refugee status at all at the period in question, as well as „of what significance is the fact that the plaintiffs had been surrendered to the Army of the RSK rather than to the Army of the Republic of Croatia“, from which they had fled. Specifically, „it is difficult to assume“, the Attorney-General goes on to explain in his response, „that in the territory of the Republika Srpska Krajina the plaintiffs, all of Serb nationality, would be threatened on account of their race, religion, nationality, membership in a particular social group or allegiance to a political opinion, as stipulated in Article 33 of the Convention on the Status of Refugees,⁵⁷ as this would make doubtful their protection under the Convention.“

The trial

The trial commenced on December 22, 1999. A total of seven hearings were held, where Stanic, Vidic, Mirkovic, Crnobrnja, Cikara, Knezevic and Tepsic, as

⁵⁶ Due to the passage of time and inflation, in September 2001 the HLC attorney reformulated the claim and set it at 3.2 million dinars.

⁵⁷ Article 33, provision 1 of the UN Convention Relating to the Status of Refugees: „No Contracting State shall expel or return a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.“

well as 16 plaintiff witnesses (family members and other forcibly conscripted men) were cross-examined.

Dusan Stanic and other forcibly conscripted men testified how police officers arrested them, how they were transported to the SDG camp in Erdut, how they were exposed to inhumane and degrading treatment in the camp, about their time on the battlefield, and about the consequences of forced conscription and inhumane treatment on their health.

Witnesses' family members described how the men were arrested and how they were taken to the reception and refugee centers and other places where they settled. Other witnesses testified about their personal experience, the arrest and detention in the camp, and about the torture, inhumane and degrading treatment that they suffered in the camp.

During the trial, Stanic, Vidic, Crnobrnja, Knezevic and Tepsic⁵⁸ were subjected to medical examination by a court expert, who found that due to the trauma experienced in the camp and on the battlefield, their general vital activity had been substantially reduced.

58 The trial in this case has lasted nearly 13 years. In the meantime, four Court Chambers have changed in the trial court. So far, three first- and two second-instance verdicts have been passed.

On September 21, 2009, the District Court in Belgrade ruled that the state of Serbia pay to Stanic and the others financial compensation totaling 2.7 million RSD for violations of freedom and personal rights, and for impairment of vital activities.

The case is still pending. It is currently before the Court of Appeals, following the Attorney-General's appealing the first-instance verdict passed on March 30, 2011, according to which the state is required to pay Stanic and each of the others, material compensation of 150,000 RSD on account of emotional pain caused by fear.

Analysis of the verdict

i. The court has recognized the right to reparation of forcibly mobilized refugees, on account of the established fact that members of the Serbian

⁵⁸ Nikola Mirkovic and Mile Cikara were not subjected to medical expertise because they had moved abroad; Gojko Banjanac refused to be subjected to medical examination.

Ministry of the Interior violated the Constitution of the former Yugoslavia, the Law on Internal Affairs, the Law on Refugees, and the Convention on the Status of Refugees.

ii. The state is responsible for all consequences arising from unlawful arrest, despite the fact that they occurred outside the territory of Serbia, “because had there been no unlawful treatment – arrest, detention and surrender to another entity – the adverse consequences would not have occurred.”

iii. The court rejected the Attorney-General’s objection that the statute of limitations applies to material compensation for the violation of personal rights and freedom, because the suit was filed within five years from the time the forcibly conscripted had returned from the battlefield. The Court rejected the Attorney-General’s objection of statutory limitation in relation to the claim for compensation for impaired vital activities as well. Specifically, the court concluded that the statutory requirement for the commencement of the period of limitation for the compensation claim for impairment of life activities was met only when the forcibly conscripted men were diagnosed with PTSD.

IV Conclusions

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The right to material reparations in Serbia is accompanied by serious flaws and limitations. The Ministry of Justice of the Republic of Serbia should, in the out-of-court settlement process, demonstrate the willingness of the state to secure, through financial compensation, fair compensation of victims for the injuries they have suffered. Instead, the victims are forced to initiate long litigations, in which they are subjected to humiliation, insults and a traumatic revisiting of the past.

The most difficult is the position of Albanian and Bosniak victims. Their requests for material reparations are perceived by the courts and the Attorney-General as hostile gestures against the state of Serbia.

Practice has shown that the courts interpret unilaterally the provisions on statutory limitation of damage claims, in order to deny to Bosniak and Albanian victims of the Serbian armed forces the right to material reparations. As a rule, the courts trust Serbian expert witnesses who dispute the findings of PTSD made by doctors from Kosovo. Also more trusted are police officers and government officials who claim that the victims did not speak the truth, that members of the Serbian Ministry of the Interior took care and ensured that

„persons in Slijivovica and Mitrovo Polje“ were safe, and that these were only assembly centers rather than the camps the victims claim them to have been. Unlike the victims of human rights violations who are of Serbian nationality, to whom the courts have awarded fairly decent material reparations, Bosniak, and especially Albanian, victims receive compensations to an amount that further humiliates the victim.

International institutions monitoring, protecting and promoting human rights (the UN Committee against Torture, the UN Human Rights Commissioner and the Human Rights Council) repeatedly voice serious criticism of Serbia because it lacks adequate mechanisms to provide reparations to victims of human rights violations committed by the Serbian army and police in the 1990s.⁵⁹ The HLC is forced to turn to the European Court of Human Rights on behalf of non-Serbian victims who are discriminated against.

⁵⁹ See Annex I, II and III.

Annex I



COMMISSIONER FOR HUMAN RIGHTS
COMMISSAIRE AUX DROITS DE L'HOMME



Strasbourg, 22 September 2011

CommDH(2011)29
English only

REPORT

**By Thomas Hammarberg Commissioner
for Human Rights of the Council of Europe**

Following his visit to Serbia on
12-15 June 2011

Summary

Commissioner Thomas Hammarberg and his delegation visited Serbia from 12 to 15 June 2011. In the course of this visit the Commissioner held discussions with representatives of the Serbian authorities and intergovernmental organisations, as well as with members of civil society. The present Report focuses on the following major issues: post-war justice and reconciliation (section I); fight against discrimination (section II); and freedom of the media, access to public information and personal data protection (section III). Each section is accompanied by the Commissioner's conclusions and recommendations.

I. Post-war justice and reconciliation

62 Serbia has a key role in the process of post-war justice and reconciliation in the region of the former Yugoslavia. The Commissioner calls on the authorities to strengthen their efforts aimed at effectively investigating and prosecuting war-related crimes, in accordance with the international legal principles of accountability, justice and the rule of law. The Commissioner hopes that the Serbian authorities will pursue their efforts to remove the remaining obstacles to effective inter-state co-operation. Access to justice for all victims should be ensured and effective domestic remedies should be provided. The Commissioner urges Serbia to improve the witness protection system and to promptly investigate and prosecute all reported cases of threats and intimidation of witnesses. He welcomes the commitment shown by the authorities during his visit to improving the witness protection system by transferring the relevant competence to the Ministry of Justice.

Whilst welcoming the ratification in May 2011 by Serbia of the 2006 International Convention for the Protection of All Persons from Enforced Disappearance, the Commissioner invites the authorities to continue with determination their efforts, at national and regional level, aimed at resolving the approximately 14 000 cases of persons missing due to the wars in the region.

The Commissioner welcomes the efforts made to resolve the remaining problems of those forcibly displaced during the war, and urges the authorities to complete this urgent work. The most vulnerable remain the approximately four thousand persons living in collective centres. Further co-operation between Serbia, Bosnia and Herzegovina, Croatia and Montenegro is needed in order to effectively address the pending issues arising from forced displacement in the region.

Establishing the truth about the gross human rights violations is one of the most important components of the transitional justice process. It is urgent

that the countries of the former Yugoslavia overcome and eliminate ethnic polarisation and come to terms with the past. A serious truth and reconciliation process is of utmost importance in order to give justice to victims and establish standards for the future.

II. Fight against discrimination

The Serbian legal and institutional framework against discrimination and racism has been strengthened. The Commissioner welcomes the adoption in 2009 of the Law on the Prohibition of Discrimination and the establishment of the Office of the Commissioner for the Protection of Equality. This law provides for protection against discrimination on the grounds of gender, racial or ethnic origin, religion or belief, disability, age and sexual orientation. The Ombudsman of Serbia continues to play an important role in the protection and promotion of human rights and fundamental freedoms. The Commissioner calls on the authorities to ensure that the Ombudsman has sufficient human and financial resources to continue carrying out his tasks.

As regards the protection of national minorities, the Commissioner welcomes the adoption in 2009 of the Law on Minority National Councils. He remains concerned that the members of the national minority council of Bosniaks have not yet been elected and hopes that there should be no further delays in the election process.

The Commissioner welcomes the action taken by the Serbian authorities in recent years to counter hate crimes, notably those committed by extremist groups. He welcomes the decision of the Constitutional Court of Serbia in June 2011 to ban the extreme right-wing organisation *Nacionalni stroj*, and calls on the authorities to consider banning other organisations promoting racist hate speech.

While he welcomes the progress made with regard to the protection of the human rights of Roma, the Commissioner urges the authorities to increase and systematise their efforts in order to enhance protection, in particular in the sectors of employment, education, housing and healthcare, drawing upon the Council of Europe Committee of Ministers' Recommendation (2008)5 on *Policies for Roma and/or Travellers in Europe*. The Commissioner remains deeply concerned by the situation of the displaced Roma from Kosovo⁵⁹ who face the

⁵⁹ Throughout this text, all reference to Kosovo, whether to the territory, institutions or population shall be understood in full compliance with United Nations Security Council Resolution 1244 (1999) and without prejudice to the status of Kosovo.

harshest living conditions. The Commissioner is particularly concerned by the non-registration of Roma children upon their birth and the lack of personal identity documents of approximately 5% of Roma in Serbia. He urges the authorities to facilitate access to personal identity documents for Roma.

Whilst welcoming the authorities' support for the work and activities of LGBT activists and organisations, the Commissioner remains concerned about widely-present homophobia. He calls on the authorities to increase their efforts aimed at fighting violence and discrimination against LGBT persons, including a more vigorous implementation by courts of the criminal provisions concerning hate crimes.

The Commissioner commends the adoption of legislation aimed at the protection and promotion of the rights of persons with disabilities. The implementation of this legislation has facilitated the process of deinstitutionalisation of children with disabilities and has increased the employment of persons with disabilities. However, the Commissioner remains concerned at the fact that a number of elderly and adult persons with mental disabilities are placed in institutional care without their consent. He is also worried by the reported abuse of the legal capacity proceedings, often by close family members.

The Commissioner calls on the authorities to amend the legal provisions concerning the removal of legal capacity, taking into account the concerns expressed by the Serbian Commissioner for the Protection of Equality and the standards contained in the UN Convention on the Rights of Persons with Disabilities.

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III. Freedom of the media, access to public information and personal data protection

The Commissioner underlines the importance of encouraging media's potentially crucial role in the development of pluralism and broadmindedness in society. He stresses that defamation should be decriminalised and that unreasonably high fines in civil cases relating to media should be avoided. He suggests that the position of the Constitutional Court against excessive fines in defamation cases should be clearly reflected in the forthcoming media legislation. At the same time, the media community should be encouraged to promote and apply ethical professional standards and to develop a system of effective self-regulation.

The Commissioner commends the authorities' prompt reactions to recent attacks on journalists, but remains seriously concerned by the failure of the authorities to resolve past cases of killings of journalists. He urges the author-

ities to conduct effective investigations into all these violent incidents, in full compliance with the case-law of the European Court of Human Rights and the 2011 Guidelines of the Council of Europe Committee of Ministers *on eradicating impunity for serious human rights violations*.

The Commissioner also calls on the authorities to improve and strengthen the personal data protection system. He urges them to adopt and implement an action plan for putting into effect the Strategy on Personal Data Protection which was adopted by the government in 2010.

Lastly, the Commissioner reiterates that media could play an important role in countering prejudices and should not perpetuate stereotypes on ethnic or religious minorities, in particular Roma. The authorities are urged to promote systematic dialogue with media professionals and relevant civil society groups in order to ensure the elimination of manifestations of anti-Gypsyism and the promotion by media of tolerance and social cohesion.

The authorities' comments are appended to this Report.

Introduction

1. The present report follows a visit to Serbia by the Council of Europe Commissioner for Human Rights (the Commissioner) from 12 to 15 June 2011.⁶⁰
2. The Commissioner wishes to thank the Serbian authorities in Strasbourg and in Belgrade for their assistance in organising the visit and facilitating its independent and smooth execution. He wishes to thank all his interlocutors, both national authorities and civil society, for their willingness to share their knowledge and insights with him.
3. During the visit the Commissioner held discussions with national authorities, including the Minister of Human and Minority Rights, Public Administration and Local Self-Government, Mr Milan Marković, the Minister of Labour and Social Policy, Mr Rasim Ljajić, the Minister of Culture, Media and Information Society, Mr Predrag Marković, and the Special Prosecutor for War Crimes, Mr Vladimir Vukčević. He also met with the Commissioner for the Protection of Equality, Ms Nevena Petrušić, the Commissioner for Refugees, Mr Vladimir Cucić, the Ombudsman of Serbia, Mr Saša Janković,

⁶⁰ During the visit, the Commissioner was accompanied by the Deputy to the Director of his Office, Mr Nikolaos Sitaropoulos, and his Adviser, Ms Erliha Bičakčić.

and the Commissioner for Information of Public Importance and Personal Data Protection, Mr Rodoljub Šabić.

4. In addition, the Commissioner met and held discussions in Belgrade with intergovernmental and non-governmental organisations, and visited the collective centre for displaced persons in Kaludjerica, Belgrade, and the irregular Roma settlement in Marija Bursać, Blok 61, Belgrade.
5. Serbia acceded to the Council of Europe on 24 April 2002 and has signed and ratified most of the major Council of Europe and core United Nations human rights treaties. Serbia has not as yet acceded to the European Convention on Nationality, and the Council of Europe Convention on the Avoidance of Statelessness in relation to State Succession.
6. Serbia is going through a post-war period, striving to overcome the legacy of the violent past, and to work towards ethnic depolarisation and social cohesion. Notwithstanding considerable progress made since his last visit in 2008, the Commissioner believes that more sustained and concerted efforts are needed to redress the gross human rights violations of the armed conflicts of the 1990s, to vigorously fight against and eliminate discrimination and to effectively protect and strengthen media freedom.
7. The present Report focuses on the following major issues: post-war justice and reconciliation (section I); fight against discrimination (section II); and freedom of the media, access to public information and personal data protection (section III). Each section is accompanied by the Commissioner's conclusions and recommendations.

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I. Post-war justice and reconciliation

8. The legacy of the violent past still affects the enjoyment of human rights, democracy and the rule of law in Serbia. The lack of a systematic approach in the region in coping with and redressing the past gross human rights violations has resulted in the impunity of war criminals as well as in an individual pursuit of the truth and reparation by victims. Information and education of the population in order to overcome pre-war and current prejudices due to ethnic polarisation are sporadic or non-existent. The Commissioner would like to underline that the complex but necessary process of post-war justice in the region cannot be successfully achieved without close and constructive co-operation among the respective countries. The Serbian government has taken important initiatives in this regard which should be followed through.

1. International and regional co-operation

9. Co-operation between Serbia and the International Criminal Tribunal for the former Yugoslavia (ICTY) improved considerably with the arrests of the ICTY fugitives Ratko Mladić and Goran Hadžić in May and July 2011 respectively.
10. Regional co-operation, an important factor for the effective prosecution and punishment of war-related crimes, has improved in recent years. The improvement of the co-operation between national prosecutors, including agreements on bilateral extradition and recognition of foreign judgments, has contributed to the fight against impunity in the region. The Commissioner welcomes the signature in February 2010 of the bilateral agreements between the Ministers of Justice of Bosnia and Herzegovina, Croatia and Serbia, to prevent the abuse of dual citizenship in extradition procedures.⁶¹ However he remains concerned about reports indicating that Bosnia and Herzegovina and Serbia have barred extraditions of their own nationals.
11. The Commissioner has noted with concern that Serbia and Bosnia and Herzegovina have not yet signed an agreement on the exchange of evidence in war-related criminal proceedings. The signing of this agreement, expected for July 2011, did not take place. The draft agreement aims to solve the problem of parallel investigations⁶² for war-related crimes in Bosnia and Herzegovina and Serbia. Serbia signed a similar agreement with Croatia in 2006. The Commissioner underlines the importance of such an agreement and calls on Serbia and Bosnia and Herzegovina to overcome their differences and make access to justice a reality.
12. The adoption by the Serbian Parliament of a resolution in March 2010 which condemned the crimes committed in 1995 in Srebrenica was a positive step. Nonetheless the Commissioner is worried by statements of certain Serbian politicians who have denied the facts of these atrocities. The Commissioner reiterates that such statements seriously affect the process of reconciliation.
13. The Commissioner has noted with satisfaction the attendance by the Serbian President Tadić of the Srebrenica commemoration in July 2010 and the 2010 meetings between the Presidents of Serbia and Croatia that have enhanced bilateral relations and the much-needed spirit of regional inter-

⁶¹ The agreements will allow the arrest and extradition of convicted criminals who have evaded justice as a result of holding dual citizenship.

⁶² See Commissioner's Report following his visit to Bosnia and Herzegovina, 29 March 2011, paragraph 130.

state co-operation and reconciliation. In November 2010, for the first time, Presidents Josipović and Tadić visited together the Ovčara memorial for the Croatian war victims in Vukovar. There they shared words of apology for the war-related crimes and underlined their determination and commitment to concluding the process of inter-state and ethnic reconciliation.

14. The Commissioner welcomes the dialogue between authorities in Belgrade and Priština, provided for by the UN General Assembly Resolution 64/298 and which began in March 2011 in Brussels. The meetings held so far have focused on, among other things, the issue of civil registry and freedom of movement. Forthcoming meetings will follow up on the important issues of missing persons and mutual recognition of school and university diplomas. The Commissioner welcomes these developments and stresses the need for the dialogue to focus on all issues that have concrete, serious implications for the lives and human rights of a large number of persons, in particular those who have been forcibly displaced from Kosovo.

2. Domestic proceedings concerning war-related crimes

15. In 2003 Serbia established by law the War Crimes Chamber of the District Court in Belgrade (WCC) and the Office of the War Crimes Prosecutor of the Republic of Serbia. Their competence extends to the prosecution and trial of perpetrators of war crimes, genocide, and crimes against humanity committed on the territory of the former Yugoslavia since 1 January 1991.
16. The Commissioner has noted reports indicating slow progress in war-related criminal proceedings. According to the War Crimes Prosecutor's Office,⁶³ 383 persons have been prosecuted for war-related crimes as of June 2011. 22 final judgments were delivered involving 53 convicted persons, while in three cases involving 15 accused the appeal proceedings are pending.
17. The Commissioner is concerned by reports showing that the War Crimes Prosecutor and his deputies are operating in an atmosphere of threats and intimidation from some members of the public. Reportedly this situation is aggravated by limited political support and even obstruction by some political parties. During his visit the Commissioner noted comments made by civil society representatives, according to whom proceedings initiated so far have targeted mainly low-level alleged perpetrators, due to concerns

63 War Crimes Prosecutor of the Republic of Serbia, general statistics, http://www.tuzilastvorz.org.rs/html_trz/pocetna_eng.htm.

that such investigations could disclose evidence concerning involvement in criminal activities of officials still in positions of authority.

2.a. Protection of witnesses in war-related criminal proceedings

18. The Parliamentary Assembly of the Council of Europe, in Resolution 1784 (2011) on *the protection of witnesses as a cornerstone for justice and reconciliation in the Balkans*, called on the Serbian authorities to ensure the functioning of the witness protection system according to professional standards by allocating qualified and trained staff, and adequate resources. The authorities were also called upon to consider the transfer of responsibility for the Witness Protection Unit (established in June 2006) from the Ministry of Interior to the Ministry of Justice in order to avoid any conflict of interest between the members of this unit and the witnesses they are mandated to protect. The Commissioner fully supports this recommendation.
19. Amendments to the 2001 Criminal Procedure Code concerned witness protection. Measures provided for by this law concern notably in-court protection, assignment of pseudonyms, and provision of testimony behind a screen. Special measures such as witness relocation or change of identity are contained in the 2005 Law on the Protection Programme for Participants in Criminal Proceedings.
20. The Commissioner has noted that the capacity of the witness protection system in Serbia remains limited and that the system suffers from a reported lack of trust on the part of witnesses. Insufficient human and financial resources have also been reported, as well as the lack of adequate equipment. Lack of co-ordination and co-operation between the Witness Protection Unit, the War Crimes Prosecutor's office and the War Crimes Chamber has also been noted.⁶⁴
21. The Commissioner is seriously concerned by reports indicating that several members of the Witness Protection Unit are former members of the 'red berets',⁶⁵ a unit whose members had allegedly committed war-related crimes

⁶⁴ Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe, Report on the protection of witnesses as a cornerstone for justice and reconciliation in the Balkans, 12 January 2011, paragraphs 116 and 124.

⁶⁵ The 'red berets' was a special unit of the State Security Service of the Ministry of Interior of Serbia. Jovica Stanišić, head of this service, is facing trial at the ICTY for his role in the wars on the territory of the former Yugoslavia in connection with the operations of several paramilitary units, including the 'red berets'. The 'red berets' were disbanded by Serbia in 2003 after the assassination of the former Prime Minister Zoran Djindjic by a member of this unit.

in Croatia, Bosnia and Herzegovina and Kosovo. In this context it is noted that there has not been a satisfactory vetting of police staff members in Serbia. In 2003 Serbia adopted the Law on Accountability for Violations of Human Rights but no steps have been taken so far for its implementation. The law provides for the establishment of a commission to take decisions concerning violations of human rights since 1976. This commission has not yet been established.⁶⁶

22. During his visit the Commissioner was informed of incidents concerning inappropriate behaviour by some members of the Witness Protection Unit towards witnesses, which has occasionally resulted in witnesses changing their testimonies or simply deciding not to testify at all. Threats and intimidations targeting witnesses' family members have also been reported.
23. Against this background, the Commissioner welcomes the Serbian authorities' determination, shown during his visit, to improve the witness protection system by transferring the relevant competence to the Ministry of Justice. The Commissioner was informed that the full transfer of this competence is planned to be completed in two years since it requires the enhancement of national expertise and the allocation of significant financial resources. The Commissioner calls on the authorities to take all necessary measures to make sure that adequate witness protection is provided during the transitional period.

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2.b. Adequate and effective reparation for victims

24. Adequate, effective and prompt reparation to the victims of gross violations of international human rights law and serious violations of international humanitarian law is a constituent element of post-conflict justice. The 2005 UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law⁶⁷ highlight various forms of remedies to be introduced at national level in order to provide redress to victims. It is underlined that reparation should be proportional to the gravity of the violations and the harm suffered.
25. The Commissioner is worried by the lack of a reparation mechanism for all victims of war-related crimes in Serbia. The laws in force⁶⁸ provide for

66 International Center for Transitional Justice, Submission on Serbia to the Universal Period Review (UPR) of the UN Human Rights Council, 17 July 2008, page 3, <http://ictj.org/sites/default/files/ICTJ-FormerYugoslavia-SerbiaReview-2008-English.pdf>.

67 Available at: <http://www2.ohchr.org/english/law/remedy.htm>.

68 Administrative compensation is regulated by the following laws: the 1996 Law on the Rights

administrative compensation for a limited group of war victims, excluding victims whose injuries or loss of life resulted from actions of Serbian state agencies. Those entitled to administrative compensation are war-related disabled persons and families of persons killed in an armed conflict or deceased as a result of injuries suffered in connection with the conflict. Former camp detainees, victims of sexual violence, and victims of torture may not benefit from administrative compensation unless the abuses against them resulted in bodily infirmity above a certain threshold.⁶⁹

26. Victims from the excluded categories can seek compensation for pecuniary and non-pecuniary damages before the courts. The legal basis for these compensation proceedings is found in the Constitution of Serbia, the Law of Obligations, the Criminal Code and the Civil Code.
27. During his visit the Commissioner was informed that in practice a high standard of proof applied by domestic courts and the statutes of limitations have prevented victims from obtaining compensation for physical or psychological harm in many cases. In 2004 the Serbian Supreme Court took the position that claims against the state must be brought within five years of the event that caused the alleged harm. The Commissioner has noted with concern that the five-year deadline has already expired for victims of the gross human rights violations which were committed in the 1990s.

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3. Missing persons

28. There is a need to resolve the pending cases of missing persons from the 1991-1999 wars on the territory of the former Yugoslavia and thus bring an end to the suffering of their families. This is a prerequisite for a true process of reconciliation in the region. In this context, the Commissioner welcomes the ratification in May 2011 by Serbia of the 2006 International Convention for the Protection of All Persons from Enforced Disappearance.
29. There are approximately 14 000 persons still missing in the region. The Commissioner underlines that regional co-operation is crucial for the successful completion of the process of clarifying the fate of missing persons. In order to effectively address this issue commissions on missing persons have been established in the region. The Commission on Missing Persons of the

of Civilian Victims of War, the 1998 Law on the Basic Rights of Former Soldiers, Military Disabled Persons and Families of Killed Soldiers and the 1989 Law on the Rights of Soldiers, Military Disabled Persons and Members of their Families.

⁶⁹ International Center for Transitional Justice, Submission to the UPR, cited above, page 3.

government of Serbia established in 2006 is a successor to the mechanisms that existed since 1994 in previous constitutional and legal contexts.⁷⁰

30. The International Commission on Missing Persons (ICMP) and the International Committee of the Red Cross (ICRC) have played an important role in the process of facilitating co-operation between countries in the region. A number of meetings on joint co-operation between Serbia, Bosnia and Herzegovina and Croatia have been held under the auspices of the ICMP and ICRC.
31. The Commissioner has noted progress in the co-operation between the authorities in Belgrade and Priština with regard to the issue of missing persons. In 2010 the exchange of information on gravesites in the meetings of the Working Group of Missing Persons, chaired by ICRC, has resulted in the recovery of 47 human remains that were handed over to the families in Serbia and Kosovo.⁷¹
32. The opening of military and police archives appears to be one of the most sensitive issues in this context. The Commissioner has noted with satisfaction that in 2010, for the first time, the Serbian Defence Ministry submitted information from military archives to the Serbian Missing Persons Commission.⁷²
33. According to ICRC, co-operation in 2010 between the commissions on missing persons of Serbia and Bosnia and Herzegovina at the site of Lake Perućac resulted in the recovery of the remains of about 97 missing persons on both the Bosnian and Serbian sides of the lake.
34. The issue of missing persons was high on the agendas of the meetings in 2010 between the Presidents of Serbia and Croatia. In November 2011, during his visit to Croatia, President Tadić brought with him important documents concerning persons who have been missing since the siege of the Croatian town of Vukovar in 1991. The Commissioner hopes that these documents will help in the search for the persons missing from the Vukovar region. Another step towards accelerating this process is the publication in November 2010 of a joint list of missing persons of the two countries.

70 In 1994 the Federal Republic of Yugoslavia established the Commission of the Federal Government for Humanitarian Issues and Missing Persons. In 2003, after the establishment of the Union of Serbia and Montenegro, the Commission of the Council of Ministers for Missing Persons was established. For more information see <http://www.impunitywatch.org/upload/UserFiles/file/IW%20Serbia%20BCR,%20Serbian.pdf>.

71 ICRC, Annual Report 2010, page 345, <http://www.icrc.org/eng/assets/files/annual-report/current/icrc-annualreport-2010-western-balkans.pdf>.

72 Idem.

35. The Commissioner welcomes these developments. He stresses that it is necessary to sustain and reinforce the efforts undertaken. There is a need for extensive searches for gravesites and information on the fate of missing persons in all state archives, while the identification of exhumed bodies should be speeded up. Unconditional exchanges between all states concerned of information on the fate of the missing persons are crucial in this context.

4. Access to the truth concerning gross human rights violations

36. Victims of gross human rights violations, and their representatives, are entitled to seek and obtain information notably on the true causes and conditions concerning the violations they have suffered.⁷³

37. The Commissioner is seriously concerned by the prevalence of ignorance and occasional denial of the gross human rights violations during the wars in the former Yugoslavia, expressed in public and political discourse in Serbia. This seriously undermines the efforts made so far towards ethnic depolarisation and reconciliation. The Commissioner believes that it is necessary to establish a mechanism that will make effective investigations possible and give victims access to the truth. Indeed it is only when the truth is uncovered that justice and social cohesion can be attained.

38. The Council of Europe Parliamentary Assembly, in Resolution 1786 (2011) *on the reconciliation and political dialogue between the countries of the former Yugoslavia*, has supported the establishment of a regional truth and reconciliation commission, with the participation of all countries involved in the conflicts, with a view to reaching a mutual understanding of past events and to honoring and acknowledging all the victims.

39. There have been several attempts in the former Yugoslavia to establish a truth commission. One such commission was established in 2001 by the Serbian authorities but it was finally dissolved in 2003 without achieving any significant results.

40. In 2008 a regional coalition of non-governmental organisations (Coalition) launched an initiative aimed at establishing a regional truth commission (RECOM). To date the Coalition consists of a network of about 1 500 non-governmental organisations, associations, and individuals. The initia-

73 UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (2005), section X.

tive was created by civil society representatives from Serbia, Bosnia and Herzegovina and Croatia with extensive experience in post-war justice.

41. On 26 March 2011 the Coalition adopted a draft Statute⁷⁴ for an international agreement which the former Yugoslav states are asked to ratify in order to make the Statute part of the national legal systems. The Statute also provides that an official, independent commission shall be established to proactively investigate all alleged war crimes and human rights abuses committed during the wars of the 1990s. At the end of its three-year mandate, the commission would issue a report, containing the facts established, and issuing recommendations in terms of reparations, non-recurrence and further steps to be taken. It would also create an archive, open to the public.
42. The Commissioner has carefully followed the work of the Coalition. During his visit, he met with representatives of an NGO which is one of the Coalition's founders. The Commissioner was informed about the aim of collecting one million signatures from citizens in the region in support of establishing the above commission. The aim was to hand the signatures over to the respective authorities in the region by the end of June 2011.
43. Following his visit the Commissioner has noted that the Coalition collected about half a million signatures which were handed over to the President of Croatia, the Presidency of Bosnia and Herzegovina and a State Secretary of the Slovenian government. However, the Coalition, at the time of preparing this Report, had not managed to hand over the signatures to the political leaders in Belgrade, Priština and Skopje.
44. As of February 2011 support for the Coalition had been expressed by the Parliament of Montenegro, the Presidents of Serbia and Croatia, the European Commission, the Subcommittee for Human Rights of the European Parliament and the Serbian Parliamentary Committee for European Integration. In April 2011 a number of political parties represented in the Parliament of Serbia expressed their support for the establishment of RECOM. In May 2011 the Slovenian President, Danilo Türk, and the Parliament Speaker, Pavel Gantar, also expressed their support for the initiative. However, the Commissioner has also noted reports indicating that there are other leading politicians in the region who oppose this initiative.

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⁷⁴The RECOM Statute is available at the web-site of the Coalition for RECOM: <http://www.zarekom.org>.

45. The RECOM initiative is the only regional initiative that has gathered such wide support from a significant number of representatives of civil society, victims' associations and individuals from all countries in the Western Balkans. A number of awareness-raising campaigns in the region have been organised by the initiators. The campaigns have been intensified during the collection of signatures for the RECOM Statute and have no doubt contributed to the understanding by the region's peoples of the importance of the reconciliation process. This in itself is a most welcome and needed contribution.

5. The protection of the human rights of persons displaced by the wars

46. Serbia hosts one of the largest forcibly displaced populations in Europe, including persons displaced from Kosovo as well as persons who are still registered as refugees, mainly from Croatia. There are 74 000 refugees in Serbia still in need of durable solutions. The Commissioner welcomes the efforts by the authorities to find durable solutions for this population by developing mechanisms for their integration in Serbian society. The 2002 National Strategy for Resolving the Problems of Refugees and Internally Displaced Persons (IDPs) was revised in 2011 to provide comprehensive measures for integration and return.

47. The Commissioner has been informed that integration mechanisms for refugees and IDPs have been developed at national and local levels. During his visit, Commissioner Hammarberg met with Mr Vladimir Cucić, the Commissioner for Refugees, who informed him that 114 municipalities (out of 150 municipalities in Serbia) have adopted local action plans to provide solutions to forcibly displaced persons under their jurisdiction, and that 80% of these municipalities have allocated funds for the implementation of the action plans.

48. Whilst welcoming the closure in 2010 of seven collective centres for displaced persons, the Commissioner is seriously concerned by the fact that about 4 100 persons still live in 42 collective centres in Serbia. The largest collective centre, which is situated in Smederevo, accommodates 500 persons.

49. According to UNHCR, collective centres host 800 refugees from Croatia and Bosnia and Herzegovina, and 3 200 displaced persons from Kosovo. The Commissioner witnessed that the living conditions of the families in the collective centre in Kaludjerica, Belgrade, which he visited on 14 June 2011, are difficult. There he met a six-member family from Kosovo accommodated in a small hut since June 1999. The two eldest family members suffer from chronic illnesses and the family's only income is social care assistance.

50. The Commissioner was informed by UNHCR that the Belgrade authorities will soon begin the construction of three social apartment buildings for the displaced populations accommodated in collective centres. Financial resources were made available for this project in March 2011. Apartments are planned to be allocated in accordance with personal vulnerability criteria, according to which persons with disabilities, the elderly and single parents would be given priority.
51. The issue of access by refugees from Croatia, currently residing in Serbia, to their property and other economic and social rights in Croatia was raised in the discussions the Commissioner had with the Serbian authorities and civil society representatives. Representatives of an expert NGO informed the Commissioner that there has been progress by Croatia in the implementation of the Housing Care Programme.⁷⁵ According to UNHCR, so far more than 13 700 family applications for this programme were filed, of which 8 871 received a positive decision and 7 092 have received housing care. 63% of the applications come from Serb refugees, IDPs and returnees, out of which more than 5 400 have received positive decisions.⁷⁶
52. The Commissioner welcomes the commitments made in 2011 by Serbia, Bosnia and Herzegovina, Croatia and Montenegro, under the initiative of the United Nations High Commissioner for Refugees' Special Envoy for Protracted Displacement in the Western Balkans. The initiative aims at organising a donor conference in 2011 to finally close the displacement chapter in the region. In addition to the Regional Project developed under the auspices of the Sarajevo Declaration Process,⁷⁷ which is focused largely on the needs of the most vulnerable persons, the above initiative aims to adopt a comprehensive approach with a multi-year strategy.
53. Under the aforementioned initiative the governments of the above four countries will be called upon to sign a Joint Declaration under which a comprehensive strategy will become operational and the displacement chapter will finally be closed. Fund-raising will be organised for a multi-year implementation of this strategy.

75 This programme was introduced in 2003 to offer alternative housing for rent or purchase to former occupancy rights holders who exercise their right to return.

76 UNHCR, Submission for the UPR on Croatia, March 2010, page 3.

77 Under the Sarajevo Declaration Process which was initiated in January 2005, Bosnia and Herzegovina, Croatia, Montenegro and Serbia committed themselves to working towards finding durable solutions for refugees and IDPs.

Conclusions and recommendations

54. The Commissioner remains concerned at the limited progress made so far in domestic war-related criminal proceedings, which appears to be related to, among other things, the lack of broad, clear and unconditional political support. The Commissioner recalls the 2005 UN 'Basic Principles and Guidelines'⁷⁸ and the 2011 Guidelines of the Council of Europe Committee of Ministers on eradicating impunity for serious human rights violations, which make clear the states' obligation to effectively investigate and take action against all persons responsible for serious human rights law violations and violations of international humanitarian law.⁷⁹
55. The Commissioner remains concerned about persisting obstacles posed to the prosecution of war-related crimes. Bosnia and Herzegovina and Serbia have barred extraditions of their nationals and have not yet signed the bilateral agreement on the exchange of evidence in war-related criminal proceedings. The authorities of Serbia and Bosnia and Herzegovina are urged to step up their efforts in removing the remaining obstacles to the effective prosecution of all war-related crimes.
56. Having noted with satisfaction the adoption in March 2010 by the Serbian Parliament of a resolution condemning the atrocities committed in Srebrenica, the Commissioner has also observed with concern statements by political figures denying these events.
57. The Commissioner reiterates the importance of effective protection and support to witnesses in the context of war-related proceedings. He is concerned about reports indicating that there are serious flaws in the witness protection system in Serbia, and that there have been threats and intimidation of witnesses notably by certain members of the Witness Protection Unit. The Commissioner welcomes the commitment demonstrated by the competent Serbian authorities to improving the witness protection system by transferring the relevant competence from the Ministry of Interior to the Ministry of Justice.

⁷⁸ Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law UN GA Resolution 60/147, 16 December 2005.

⁷⁹ See also Council of Europe Parliamentary Assembly, Resolution 1785 (2011) on the obligation of member and observer states of the Council of Europe to co-operate in the prosecution of war crimes.

58. The authorities are urged to investigate promptly all reported cases of threats and intimidation of witnesses, initiate criminal proceedings in such cases, and fully protect the security of the witnesses concerned.
59. The authorities should also undertake a comprehensive vetting procedure of members of the police forces. The 2003 Law on Accountability for Violations of Human Rights provides the legal framework for this undertaking.
60. All war victims should be provided with adequate, effective and proportionate reparation for the harm they have suffered. The Commissioner urges the Serbian authorities to take all necessary measures to ensure reparation to victims of war-related crimes and to their families, in line with the established principles of international law as reiterated in the 2005 UN 'Basic Principles and Guidelines'.
61. As regards the issue of missing persons, the Commissioner recalls the authorities' obligations arising from the International Convention for the Protection of All Persons from Enforced Disappearance, recently ratified by Serbia, as well as from Article 2 and 3 of the European Convention on Human Rights⁸⁰ and invites them to continue with determination their efforts, at national and regional level, aimed at resolving the approximately 14 000 cases of persons missing due to the wars in the region.
62. The prompt and just resolution of the pending issues arising out of forced displacement due to the 1991-1999 wars is crucial for the development of social cohesion and human rights in Serbia. The Commissioner commends the efforts made by Serbia in the field of forced displacement, and urges the authorities to continue their work at national and regional level in a determined and principled manner in accordance with UN and Council of Europe standards.⁸¹
63. The Commissioner considers positive the discussions held on 25 March 2010 in Belgrade in the context of the International Conference on Durable Solutions for Refugees and IDPs. He also considers positive the commitments made in 2011 by Serbia, Bosnia and Herzegovina, Croatia and Montenegro, under the initiative of the United Nations High Commissioner

80 See, *inter alia*, European Court of Human Rights, Grand Chamber, *Cyprus v. Turkey*, judgment of 10 May 2001.

81 See the 2005 UN Principles on Housing and Property Restitution for Refugees and Displaced Persons, the 1998 UN Guiding Principles on Internal Displacement; see also Council of Europe Committee of Ministers Recommendation (2006)6 on internally displaced persons and Commissioner's Viewpoint, 'Persons displaced during conflicts have the right to return', 15 September 2008.

for Refugees' Special Envoy for Protracted Displacement in the Western Balkans, to finally close all relevant pending issues between the four states.

64. The Commissioner remains concerned by the lack of a comprehensive mechanism in the region capable of safeguarding access to the truth concerning the gross human rights violations perpetrated by all sides during the wars. This situation seriously undermines the reconciliation efforts made so far. The full and effective respect of the human rights of all war victims and their representatives dictates the need for the political leaderships in the region to reflect on and further support the truth and reconciliation process by enhancing inter-state dialogue and coming to an agreement on a truth and reconciliation policy which would unite all countries and peoples concerned.

II. Fight against discrimination

1. Anti-discrimination law and policy

65. Serbia is vested with an adequate legal and institutional framework for the protection against discrimination. A prohibition of discrimination is enshrined in Article 21 of the Constitution of Serbia. In April 2009 Serbia adopted the Law on the Prohibition of Discrimination (Antidiscrimination Law).
66. The Anti-discrimination Law prohibits discrimination on the grounds of, among other things, racial or ethnic origin, citizenship, national affiliation, language and religious beliefs in all fields. The law prohibits direct and indirect discrimination as well as victimisation, the work of racist organisations, hate speech, harassment and humiliating treatment.
67. In 2011 the Ministry of Human Rights and National Minorities and the Ministry of Public Administration and Local Self-Governance were merged. A Directorate of Human Rights and Minority Rights was established within the new Ministry. The Ministry is in charge of monitoring the implementation of the Anti-discrimination Law.
68. The Anti-discrimination Law designates the Commissioner for the Protection of Equality ('the Equality Commissioner') as Serbia's 'equality body'. The Equality Commissioner's powers include taking action in cases of discrimination against individuals or groups of individuals. The Equality Commissioner can also bring discrimination cases to civil courts. In May 2010, Ms Nevena Petrušić was elected by the Parliament of Serbia as the first Equality Commissioner.

69. A lack of adequate conditions for the work of the Equality Commissioner was mentioned in several reports, including the 2011 European Commission against Racism and Intolerance (ECRI) report on Serbia.⁸² During his visit, the Commissioner met with the Equality Commissioner who informed him that her office was finally provided with improved conditions in order to be operational. The meeting took place in the Equality Commissioner's new premises situated in a building accessible also to persons with disabilities.
70. Ms Petrušić highlighted that she has started activities in order to increase the visibility and accessibility of her Office to all citizens. She had already visited six towns in Serbia in order to identify the optimal model for the Office's field work. The Commissioner highly encourages the Equality Commissioner's efforts to increase her Office's accessibility to all citizens, and calls on the authorities to provide all necessary aid to the Equality Commissioner.
71. During his visit the Commissioner also met with the Ombusman, Mr Saša Janković. His work focuses on the protection of national minorities, children's rights, the rights of persons with disabilities, the rights of persons deprived of liberty and gender equality. The Commissioner believes it is important that the state level Ombudsman has sufficient resources to carry out his work. He noted with satisfaction that the Ombudsman is proactive and has gained support for his work from citizens and the media. He has also managed to develop good co-operation with the authorities on some important projects (see below, sub-section on the lack of birth registration and personal identification documents among Roma).
72. As for the protection of national minorities, the Commissioner has noted with satisfaction that in August 2009, the Law on Minority National Councils was enacted. This Law regulates the competencies and the election of national minority councils. According to the law the councils will be able to independently decide on issues regarding the use of minority languages, education, culture and public information. The first elections for the councils were held in June 2010 when representatives of 19 councils were elected. During his visit the Commissioner noted with concern that the national minority council of Bosniaks had not yet been constituted due to alleged procedural shortcomings in the election process. New elections announced for March 2011 have been postponed. The Commissioner hopes that the elections will be organised by the end of 2011 as announced by the authorities.

⁸² ECRI Report on Serbia, 31 May 2011, page 9.24 Ibid. paragraph 77.

2. Racist violence and hate speech

73. In recent years, extreme right and nationalist groups have been on the rise, as²⁴ noted by a number of human rights monitoring bodies, including ECRI. They include the Serbian section of Stormfront (*Nacionalni stroj*), Blood and Honour (*Krv i cast*), Honour (*Obraz*), skinheads and a group of football hooligans known as 'Red United Force'. The government has acknowledged the existence of such groups, whose members are suspected of attacks on human rights defenders, LGBT persons and national minorities, including Albanians and Roma.
74. Members of the above-mentioned extremist groups are suspected of being involved in a number of incidents and attacks in recent years. One such attack occurred in September 2009 when a young French football fan was brutally murdered in the centre of Belgrade. The police established that the main suspects were members of an extreme-right group. In January 2011 the four main defendants were sentenced to imprisonment. Two of the convicted attackers which were sentenced in absentia are still at large at the time of preparing this Report.
75. The Serbian authorities have adopted several measures in order to fight hate crime. The Criminal Code of Serbia was amended in 2009 to introduce the criminal offence of racist discrimination. Moreover, under the Criminal Code the publication and dissemination of texts inciting racial hatred were made punishable by imprisonment for three to five years. In June 2011 the Constitutional Court of Serbia banned the registration of the extreme right-wing organisation *Nacionalni stroj* and proscribed the presentation and distribution of its programmatic goals and ideas. The Court concluded that the work of this organisation was unconstitutional as it was aimed at inciting racial and ethnic hatred, and the violation of human rights, including those of minorities.
76. The current criminal legislation does not include a specific provision on hate speech. It includes the criminal offence of 'incitement to national, racial or religious intolerance' which however does not include all forms of hate speech provided for by the Council of Europe Committee of Ministers' Recommendation No. R (97)20 on 'hate speech'.⁸³

⁸³ According to this Recommendation the term hate speech 'shall be understood as covering all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of migrant origin.'

77. The Law on Public Information and the Law on Prohibition of Discrimination contain provisions on hate speech. ECRI expressed concerns in 2011 that the implementation of the relevant provisions appears to be rather slow as few proceedings have been initiated so far compared to the alleged frequent occurrence of hate speech, including in the media. The Commissioner has noted concerns by civil society representatives that in some criminal cases where Roma were victims the charges against the suspects were only for physical assaults, and did not reflect their racist motivation. It was also stressed that the sentences imposed in most of the cases of violence against Roma have been suspended ones. Concerns have also been expressed by NGOs about the lack of systematic monitoring by the authorities of hate and racist crimes.
78. Attacks against LGBT persons by members of extremist groups culminated in 2010 during the Belgrade Pride Parade when more than 6 000 hooligans gathered in the centre of Belgrade to protest against the Parade. The protests led to violent clashes with the police whose intervention was necessary to prevent the mob from reaching the participants of the Parade (see also below, sub-section on discrimination against LGBT persons).
79. During his visit the Commissioner was informed by representatives of an expert NGO that the sentences which are being imposed by courts in cases of hate and racist crimes are in general lenient. They expressed concern that such sentences do not have an individual or general preventive effect. In 2011 ECRI also reported that there are few prosecutions of racist crimes and that the sentences are usually mild, consisting mainly of fines amounting to very small sums. ECRI has also noted a lack of investigation by the police into acts of vandalism against religious minorities.⁸⁴
80. The Commissioner has noted with interest that a judgment in a hate speech case against LGBT persons was delivered in June 2011 by the Belgrade Appeal Court. The court ruled in favour of the LGBT organisation, Gay Strait Alliance (GSA), in civil proceedings against a local newspaper that had published online anti-LGBT comments by readers, which were considered by the court to constitute hate speech. This is the first judgment on hate speech targeting LGBT persons based on the aforementioned Anti-discrimination Law. GSA has initiated another 16 anti-discrimination proceedings before domestic courts.

⁸⁴ Ibid paragraph 15.

81. Finally, following the intensified investigation by police and the prosecutor's office into violent attacks, including the attacks during the 2010 Pride Parade and the aforementioned killing of a French national in 2009, some of the heads of extreme right-wing groups are currently standing trial. The Commissioner welcomes these developments. He emphasises however that the authorities need to sustain their efforts and that a more vigorous implementation of the criminal provisions against racist and hate crimes should be undertaken.

3. Human rights of Roma

82. In the 2002 census 108 193 persons, approximately 1.44% of the total population, identified themselves as Roma. The actual number is deemed to be much higher. According to the Serbian government's estimates the actual number of Roma ranges from 250 000 to 500 000.⁸⁵

83. The Commissioner has noted that in 2009 and 2010 a strategic, institutional framework for the improvement of the human rights of Roma was set up. In 2009 the government adopted the Strategy for Improvement of the Status of Roma and tasked the Group for the Improvement of the Status of Roma within the Ministry for Human and Minority Rights, Public Administration and Local Self-Government to work, among other things, on the implementation of the Strategy. An action plan to implement the strategy was adopted in July 2009.

84. The National Council of the Roma National Minority was elected in 2010 to work on the improvement of the use of the Romani language, as well as on the improvement of education, culture and public information on Roma. The government currently provides €5 million annually for enhancing Roma social inclusion, while the European Union Instrument for Pre-Accession (IPA) included projects targeting or mainstreaming Roma with a total budget of more than € 40 million⁸⁶ for the period 2007-2010.

85. Notwithstanding the government's efforts to improve the human rights of Roma, the problems facing Roma remain some of the most serious human rights challenges. The Commissioner underlines that the Roma-related projects must be accompanied by resolute efforts to combat prejudice and deep-seated stereotypes against Roma. Efforts are necessary to

85 See government's Strategy for Improvement of the Status of Roma in the Republic of Serbia, 2010, http://www.inkluzija.gov.rs/wp-content/uploads/2010/03/Strategija-EN-webFINAL.pdf?utm_source=twitterfeed&utm_medium=twitter .

86 Information provided by the Office of the Council of Europe Special Representative of the Secretary General for Roma Issues in June 2011 .

raise awareness among the Roma population on available mechanisms to combat discrimination. In this context, the Commissioner welcomes the Equality Commissioner's activities organised in Roma settlements which aim to raise their awareness about the work of her office.

86. Many Roma are in need of counselling and assistance to be able to fully enjoy their human rights. This has been highlighted by almost all of the non-governmental organisations that the Commissioner met, and by the Equality Commissioner. An effective system of free legal aid is of crucial importance for Roma and other vulnerable social groups.
87. In July 2009 the UN Committee against Torture found that Serbia had violated the Convention against Torture in the case of *Besim Osmani*, concerning a Roma man who had been beaten by the police together with his four-year-old son in June 2000 during a forced eviction and demolition operation in an informal settlement in Belgrade.⁸⁷ The Commissioner has noted with concern that, following his visit, a video-clip was released on YouTube showing a brutal beating of a minor Roma boy by a police officer in the Vršac police station. The Serbian Minister of Interior announced that the two police officers involved in this incident were suspended, and that criminal proceedings would be initiated against them. The Commissioner welcomes this development, and calls on the authorities to step up their efforts aimed at preventing and eliminating human rights violations by members of the police force.

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3.a. Access of Roma to health care

88. The Commissioner has noted with interest the reported positive results of the work of health mediators who have been appointed as an interface between Roma and the Ministry of Health. They are located in local hospitals but they carry out visits to Roma families. The health mediators engage in obtaining health cards for Roma and facilitate their medical checkups. In 2008 when this project started, 15 mediators were appointed. There are currently 75 health mediators employed in 59 municipalities in Serbia.⁸⁸ NGOs with which the Commissioner met during his visit stressed that this project is successful because of the adequate training that the mediators received, and the gradual increase in the number of mediators.

⁸⁷ UN Committee against Torture, decision on communication No 261/2005, Doc. CAT/C/42/D/261/2005.

⁸⁸ Information provided by the Office of the Council of Europe Special Representative of the Secretary General for Roma Issues in June 2011.

89. Despite the progress made in the area of health care, Roma still face barriers due to lack of information, lack of personal identity documents and poverty. The 2005 Law on Health Insurance aims to enhance access of Roma to health care, as well as to improve their living conditions. This law provides for the right to health care for members of vulnerable groups, including Roma.
90. In 2011 ECRI noted with concern that in many respects, the hygienic and sanitary conditions in many Roma settlements have not improved since ECRI's first report in 2008. The health situation of Roma, in particular Roma women, children and elderly persons is particularly alarming due to the absence of necessary medical registration. According to UNICEF, although the official estimates show a decrease in Roma child mortality rates since 2005, this rate is still at least four times higher than the national average.⁸⁹

3.b. Access of Roma to quality education

91. The Commissioner has noted that since his last visit to Serbia progress has been achieved in the area of Roma children's education. In September 2009 a new Law on Education was enacted that provides for inclusive education for all children. It also provides for the engagement of teaching assistants in schools. According to this law a birth certificate and the parents' registered residence are no longer required in order to enrol a child in school.
92. The 2009 Law on Education also provides the framework for better protection of children's rights, including protection against discrimination, harassment, bullying and violence. As a result of the implementation of this law, and a number of various governmental and nongovernmental initiatives, the number of Roma children enrolled in primary schools in Serbia has increased. According to the Serbian government the number of Roma children enrolled in primary schools in 2010/2011 rose by 9.87%.⁹⁰
93. A number of measures have been implemented within the framework of the Action Plan for Roma Education, including the project of registering Roma children in birth registration books. This project was implemented in 19 municipalities where 500 Roma children without birth certificates were identified. After registration the children were enrolled in local schools. About 180 Roma teaching assistants have been recruited and trained to provide assistance to Roma children.

⁸⁹ http://www.unicef.org/serbia/activities_927.html.

⁹⁰ Draft First National Report on Social Inclusion and Poverty reduction in the Republic of Serbia, 2010.

94. However, it is estimated that the number of Roma children attending pre-school education is between 4% and 7%, while 66% of Roma children (as opposed to 94% of the total population) enrol in primary school.⁹¹ According to the Ministry of Education only 16% of Roma enrol in secondary schools, and less than 1% of young Roma attend college or university.
95. The marginalisation of the education of adults in Serbia has left many Roma without real possibilities in the job market. In this regard the Commissioner welcomes the measures taken since 2006 in the framework of the Adult Education Strategy in Serbia. The Strategy provides for formal and informal education formats for persons over 18 years of age.
96. The Commissioner is seriously concerned by the fact that the number of Roma children enrolled in schools for children with mild mental disabilities increased from 26.7% in 2002/2003 to 31% in 2008/2009.⁹²
97. In 2011 ECRI expressed concerns that Roma children still face hidden and overt forms of discrimination by school authorities, school staff, teachers, other children and non-Roma parents. Reportedly, as teachers have lower expectations of Roma pupils, there is a tendency to use lower criteria when assessing their performance. The Commissioner is concerned by reports indicating that due to the increase in Roma children attending schools, there is a tendency among non-Roma parents to transfer their children to other schools with fewer Roma children.
98. Against this background, the Commissioner welcomes the initiatives undertaken by the Ministry of Education to fight discrimination against Roma children. In 2007 the authorities developed a special programme for safeguarding children from violence, abuse and neglect in educational institutions in co-operation with civil society. In 2009 the Ministry of Education, in co-operation with civil society, developed a manual to support the development of an anti-discriminatory culture in education. Additionally, an official instruction was issued to all primary and secondary schools to draft programmes aiming to protect children from violence and to set up teams to protect children from violence.

91 Open Society Fund, 'Roma children in "special education" in Serbia: overrepresentation, underachievement, and impact on life', 2010, page 29, <http://www.romadecade.org/files/downloads/Education%20Resources/Roma%20Children%20in%20Special%20Schools%20in%20Serbia.pdf>.

92 Idem.

3.c. Access of Roma to employment

99. ECRI reported in 2011 that Roma in Serbia continue to suffer from a high unemployment rate, low economic activity and almost total exclusion from the public sector. There are almost no Roma in public and state-owned companies, indicating a pattern of discrimination. There are cases where Roma who present themselves for job interviews are informed that the position has been filled, and a few cases of discriminatory job advertising. The majority of Roma are outside the employment system, employed illegally and mostly registered as unemployed.⁹³

3.d. Access by Roma to adequate housing

100. The majority of Roma in Serbia live in very poor housing conditions. The problems that Roma face in this field are related to the overpopulation of settlements due to the small number of available housing units, unresolved property issues and illegal constructions, and lack of access to public infrastructures.⁹⁴ Some studies have indicated that out of the 593 existing Roma settlements in Serbia, 72% have not been legalised,⁹⁵ while in Belgrade alone there are 137 informal settlements.⁹⁶

101. In 2007 the Ministry of Environment and Spatial Planning adopted the Guidelines for the Upgrading and the Legalisation of Roma Settlements aimed at addressing problems related to the housing situation of Roma.⁹⁷ Eight municipalities were targeted and funds were provided for the legalisation of informal Roma settlements. Although certain settlements have been regularised, progress has been slow with only two out of eight municipalities completing this process by 2010.⁹⁸

102. The Commissioner has noted with concern reports on the increased number of forced evictions of Roma from informal settlements in Belgrade. He is particularly concerned by the reported failure by the authorities to comply with legal safeguards during evictions. Physical attacks by

93 ECRI Report on Serbia, cited above, page 18.

94 Strategy for Improvement of the Status of Roma in the Republic of Serbia, 2010, cited above, page 16.

95 See, 2007 Country Report, Serbia in *First Decade Watch Report, Roma activists assess the Progress of the Decade of Roma Inclusion*, June 2007, see <http://www.romadecade.org/>.

96 Strategy for Improvement of the Status of Roma in the Republic of Serbia, cited above, page 17.

97 Advisory Committee on the Framework Convention on the Protection of National Minorities, Second Opinion on Serbia adopted on 19 March 2009, ACFC/OP/II(2009)001.

98 Amnesty International, 'Home is more than a roof over your head-Roma denied adequate housing Serbia', 2011, page 7.

state officials during evictions and destruction of personal property without compensation have also been reported in various cases such as the one concerning the evictions in the informal Roma settlement Gazela, Belgrade, on 31 August 2009.⁹⁹ Following these evictions 114 Roma families were provided with accommodation in metal containers in settlements scattered around the outskirts of Belgrade.

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103. The Commissioner has noted concerns that the housing provided in such cases, including that of the Gazela evictions, does not meet international human rights standards, including those of the European Social Charter. A lack of effective access to legal remedies to challenge decisions on evictions has also been reported.¹⁰⁰
 104. There appears to exist a negative public opinion against relocations of Roma. One specific problem is that when the Serbian authorities propose that Roma be relocated to appropriate housing, local populations protest and refuse to agree to a Roma population moving into their neighbourhoods. It thus appears that measures are still necessary to combat and eliminate intolerance and racism faced by Roma in the housing sector.
 105. One certainly understands that local development plans sometimes require that Roma be moved from their current settlements. Nonetheless, the Commissioner emphasises that such measures need to be planned and implemented in accordance with agreed human rights standards. Evictions can only be carried out when alternative, adequate accommodation is available and the people affected have been properly informed and consulted. Everyone affected must be able to challenge the legality of an eviction before a competent body before the eviction takes place. Compensation for damage or loss of property must also be available when forced evictions prove inevitable.¹⁰¹
 106. The Commissioner is particularly concerned by the housing situation of the Roma displaced from Kosovo, and Roma who are being forcibly returned from Western European countries. Reportedly they make up around 17% of the Roma populations in informal settlements. They face the harshest living conditions. Their difficult situation is aggravated by the lack of personal identity documents (see also below, sub-section on lack of birth registration and personal identification documents among Roma). Prospects for their local integration are generally bleak.

⁹⁹ Ibid, page 38.

¹⁰⁰ Amnesty International, cited above, page 40.

¹⁰¹ See also Commissioner's Viewpoint, 'Forced eviction of Roma families must stop', 4 September 2006.

107. The Commissioner noted that the living conditions in the informal Roma settlement in Marija Bursać, Blok 61, Belgrade, which he visited on 14 June, are clearly sub-standard and may be qualified as degrading. The settlement hosts approximately forty Roma families and consists of wooden barracks, some of which have been severely damaged due to bad weather. The settlement is not connected to the public utilities system and there are no electricity, water and sanitary facilities. Parents told the Commissioner that because of these living conditions sending children to school is a very difficult task. The Commissioner saw children from the settlement washing their faces with dirty water from a nearby polluted stream. The presence of rats was also reported by inhabitants. On the positive side, the Commissioner has noted that almost all of the inhabitants had obtained personal identity documents through the UNHCR's EU-funded Roma Inclusion Project.

3.e. Lack of birth registration and personal identification documents among Roma

108. Serbia has not yet acceded to the 1997 European Convention on Nationality and the 2006 Convention on Avoidance of Statelessness in Relation to State Succession. During his visit the Commissioner received assurances from the Assistant Minister for Multilateral Affairs, within the Ministry of Foreign Affairs, Mr Vuk Žugić, that Serbia is considering accession to these Council of Europe treaties. The Commissioner looks forward to receiving more information on this issue.

109. According to the 2011 UNHCR survey on persons at risk of statelessness in Serbia, 1.5% of Roma are not registered in birth registry books, 5.4% have no identity cards and 2.3% are not registered in citizens' registries. According to UNHCR 6.8% of Roma have been identified as being at risk of statelessness. This concerns local Roma and displaced Roma, and Ashkali and Egyptians from Kosovo, who find themselves without the basic documentation necessary for accessing a number of social and economic rights many years after having been displaced.

110. The Commissioner has noted that the problem of lack of personal identity documents is complicated by the lack of identity documents of Roma parents who cannot therefore register their own children. This vicious circle has created a generation of so-called 'legally invisible' Roma, perpetuating their exclusion from society at large. Without registration and personal identity documents Roma cannot register their residence which is necessary for exercising a number of social and economic rights. According to the Ombudsman, this problem also affects some non-Roma citizens. The Commissioner has noted with concern that following his visit, a man who lost his residence and his identity card decided to go on a hunger strike in order to draw the authorities' attention to this problem.

111. As an initial step towards remedying the aforementioned situation the authorities have amended, in May 2011, the Law on Identity Card in order to provide the possibility of issuing temporary identity cards. However, this amendment does not resolve the problem of lack of personal documents, as a temporary ID card can only be issued once a person has registered residence. During the Commissioner's visit, the Minister of Human and Minority Rights, Public Administration and Local Self-Government, Mr Milan Marković and the Ombudsman informed the Commissioner that they proposed an amendment to the Law on Residence aimed at fully remedying this problem, whereby persons who do not have registered residence will get temporary documents with the address of the nearest social care centre. According to the Ombudsman, if enacted, this amendment would solve the problem of lack of personal identity documents. Following his visit, the Commissioner has been informed that the aforementioned amendment to the Law on Residence has not yet been adopted.
112. During the Commissioner's visit, the Minister of Human and Minority Rights, Public Administration and Local Self-Government, Mr Milan Marković, informed the Commissioner that his ministry, in co-operation with the Ombudsman, has prepared a set of amendments to existing regulations aimed at facilitating the registration of Roma at birth. In this context the above ministry has been in contact with the National Roma Council and plans to register and provide legal aid to all Roma in settlements within a timeframe of two years starting from September 2011.

4. Discrimination against LGBT persons

113. The 2009 Anti-discrimination Law, the Criminal Code, the Labour Law, the Law on Public Information and several other pieces of legislation provide for protection against discrimination on grounds of sexual orientation.
114. The Commissioner has noted with satisfaction that in 2010 and 2011 there has been increased understanding of the work and activities of LGBT organisations by Serbian politicians. This was particularly evident before and during the 2010 Belgrade Pride Parade when eminent persons and politicians supported the organisers, not least by joining the participants during the Parade.
115. Unlike the 2009 Belgrade Pride Parade, in 2010 the authorities made major efforts to ensure the success of the Pride Parade. The police played a key role in protecting the participants from hooligans and extremists who wanted to prevent the gathering. More than 6 000 hooligans provoked riots that left 124 policemen and 17 rioters injured and caused

major material damage. The police apprehended more than 200 rioters and arrested the leader of an extremist group.¹⁰²

116. As regards transgender persons, the Commissioner has noted that there is no legislation in Serbia regulating the issue of gender reassignment. This legal gap has created a number of serious problems for transgender persons and their partners. Transgender persons can change their personal identity documents only if they are not married. The Commissioner was informed by an expert NGO that due to a legal lacuna in this regard, the change of personal identity documents often depends on the will of municipal civil servants.
117. Notwithstanding the progress made in the fight against discrimination, homophobia remains a serious problem in Serbian society. According to the Equality Commissioner,⁴⁵ discrimination on the ground of sexual orientation is widely present as a result of prejudices against LGBT persons in the public. LGBT persons and many of those who speak up for the human rights of LGBT persons are still victimised. The majority of LGBT persons are still hesitant to use available legal remedies. Bullying of LGBT persons in schools has also been noted. Additional measures are therefore needed to fight violence and discrimination against LGBT persons, including vigorous implementation by courts of the criminal provisions concerning hate crimes.
118. The Commissioner encourages the authorities to continue taking strong public positions against violations of the human rights of LGBT persons and to promote understanding and respect, notably through human rights education and awareness-raising campaigns. The Equality Commissioner may play catalytic roles in this context.

5. Human rights of persons with disabilities

119. According to the Ministry of Labour and Social Policy, there are between 500 000 and 800 000 people with varying levels of disabilities living in Serbia.
120. The Commissioner welcomes the ratification by Serbia in May 2009 of the UN Convention on the Rights of Persons with Disabilities and the Optional Protocol. He encourages the authorities to give full effect to

¹⁰² The Belgrade Centre for Human Rights, Human Rights in Serbia 2010, Report of 2011, page 317, <http://english.bgcentar.org.rs/index.php>. ⁴⁵ 2010 Annual report of the Commissioner for the Protection of Equality, <http://www.ravnopravnost.gov.rs>.

the provisions of this Convention, as well as to the Council of Europe Disability Action Plan 2006-2015.

121. The Commissioner has noted that the legal framework for the protection and promotion of the human rights of persons with disabilities has been developed in recent years. With the adoption in 2006 of the Law on the Prevention of Discrimination against Persons with Disabilities and in 2009 of the Anti-discrimination Law, Serbia equipped itself with a comprehensive body of law against discrimination of persons with disabilities.
 122. In 2007 the government adopted a strategy for improving the situation of persons with disabilities for the period 2007-2015, providing for increased community housing and other related services. In 2009 the Law on professional rehabilitation and employment of persons with disabilities entered into force. The law provides for measures aimed at improving the employment of persons with disabilities, including state subsidies for companies that employ persons with disabilities. According to the law fines can be imposed on employers who refuse to employ persons with disabilities. The Commissioner was informed that since the enactment of this law about 5 500 persons with disabilities have been employed.
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123. During the meeting with the Commissioner, the Minister for Social and Labour Rights, Mr Rasim Ljajić, noted that although there has been progress in this field a lot remains to be done. He informed the Commissioner that only 13% of the persons with disabilities who are capable of working are actually employed. Minister Ljajić noted that € 8 million have been allocated to employment projects that should include 8 000 persons with disabilities..
 124. The process of deinstitutionalisation of children with disabilities is progressing. The Commissioner was informed by the authorities that there are currently 700 children with disabilities in institutions. Two years ago there were 2 000 such children in institutions.
 125. The Commissioner has noted with satisfaction the adoption by the Parliament in April 2011 of a new law on social protection which should facilitate, among other things, the process of deinstitutionalisation of children. This law was adopted in the context of the authorities' broad reform of the social protection system. It provides for better protection for families with children with disabilities, measures of deinstitutionalisation and foster parenting.

126. The Commissioner was informed by Minister Ljajić about the government's plan to open three regional centres in Serbia to provide training for persons who would like to become foster parents to children with disabilities. These centres will also carry out the control of the foster families. The Commissioner hopes that these measures combined with the measures of inclusive education will facilitate the inclusion of children with disabilities in society.
127. The Commissioner welcomes these developments but remains seriously concerned by the situation of adult persons with disabilities, especially those with intellectual and mental disabilities. In January 2007 the government adopted a Strategy for Mental Health and a National Plan for its implementation. The adoption of a draft law on mental health is still pending.
128. The Equality Commissioner expressed concerns in 2010 about generally poor living conditions in institutions accommodating elderly and adult persons with disabilities. She reported the problem of overcrowding in 41 public nursing homes. The capacity of public nursing homes is 7 000, while there are currently 8 100 persons accommodated in these institutions. The Equality Commissioner has expressed concerns that because of the lack of available public accommodation a number of illegal, unregistered homes have been opened in recent years. These institutions operate without a license, and are usually registered as bed and breakfast accommodation, retail shops or various service providing agencies. The Ministry of Labour and Social Policy has no inspection competence over these institutions.¹⁰³
129. The Commissioner has noted the Equality Commissioner's concern that the current legal provisions for the removal of legal capacity are at variance with the UN Convention on the Rights of Persons with Disabilities. The Commissioner recalls that under this treaty there should be appropriate and effective safeguards in order to prevent the abuse of power. The human rights of the person concerned should be respected and care should be taken to ensure that there is no conflict of interest involved or undue influence being exercised.¹⁰⁴
130. According to the Equality Commissioner the movement of persons with disabilities and their physical access to institutions (such as health care institutions, schools, administrative and other institutions) is considerably

¹⁰³ The Commissioner for the Protection of Equality, 2010 Annual Report, pages 95-99, <http://www.ravnopravnost.gov.rs/lat/izvestaji.php?idKat=16>.

¹⁰⁴ See also Commissioner's Viewpoint, 'Persons with mental disabilities should be assisted but not deprived of their individual human rights', 21 September 2009.

limited. She reported that only 5% of dentists' offices are accessible and equipped to provide services to persons with disabilities. Incidents of refusal to provide health care services, harassment and insults by employees of health care institutions to persons with disabilities have reportedly been registered. During his visit the Commissioner was informed and concerned that disabled university students in Belgrade are segregated from their colleagues in a separate dormitory as the dormitory for non-disabled students cannot accommodate their needs.

Conclusions and recommendations

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131. The Commissioner welcomes the enactment of the Anti-discrimination Law in 2009 and the establishment of the Office of the Commissioner for the Protection of Equality. He believes that these important developments have enhanced the combat against discrimination in Serbia. He encourages the authorities to keep legislation and practice under close scrutiny, and, to this end, to make full use of his Opinion on National Structures for Promoting Equality as well as ECRI's General Policy Recommendation No 7 on National Legislation to Combat Racism and Racial Discrimination.¹⁰⁵
 132. The enactment of the Law on Minority National Councils in 2009 and the election in 2010 of the members of these councils are positive steps. However, the Commissioner remains concerned that the members of the Bosniak national minority council have not yet been elected.
 133. The Commissioner welcomes the action taken by the authorities in recent years to counter hate crimes, notably those committed by extremist groups. He welcomes the decision of the Constitutional Court of Serbia in June 2011 to ban the extreme right-wing organisation Nacionalni stroj, and calls on the authorities to consider banning other organizations promoting racist hate speech.
 134. The Commissioner urges the authorities to give priority to the prosecution of hate crimes and to undertake a comprehensive review of the sentencing policy in cases of hate crimes. Systematic training would be beneficial for all those involved in the criminal justice system,
 144. The Commissioner is particularly worried by the fact that a number of elderly and adult persons with mental disabilities are placed in institutional care with-

¹⁰⁵ Commissioner's Opinion on National Structures for Promoting Equality, CommDH(2011)2, and ECRI General Policy Recommendation No. 7 on National Legislation to Combat Racism and Racial Discrimination, CRI(2003)8.

out their consent. The reported abuse of legal capacity proceedings, often by close family members, is also of major concern. The Commissioner calls on the authorities to amend the law related to the removal of legal capacity, taking into account the Equality Commissioner's concern at this law's incompatibility with the UN Convention on the Rights of Persons with Disabilities.

III. Freedom of the media, access to public information and personal data protection

I. Freedom of the media

145. Free, independent and pluralistic media based on freedom of information and expression is a core element of any functioning democracy. Freedom of the media is in fact essential for the protection of all other human rights. The Constitution of Serbia guarantees this freedom. However, various forms of control and pressure over the diversity and content of the media hamper their independence and pluralism. Some investigative journalists who pursue investigations into sensitive issues such as corruption, war-related crimes, and failures in privatisations of state-owned companies have been subjected to violent attacks or threats (see below, sub-section on attacks on journalists).
146. It has been brought to the Commissioner's attention that a 'draft media strategy until 2016' was promoted by the Ministry of Culture, Media and Information Society and finalised in 2011 by a working group which consisted of representatives of different media associations in Serbia. The strategy covers the issues of transparency of the media, the right to public information and the transition from analogical to digital media. An action plan on the implementation of the strategy has also been prepared. The Commissioner has noted concerns that if the strategy is not adopted before the general elections in 2012 there will be further delays in its adoption.
147. Post-war justice issues, notably war-related crimes, remain a taboo in some Serbian media. There is a lack of serious public debate and most of the media have so far failed to fulfill their important role in this domain. Some media use only sensational reporting thereby undermining the prospects for open and serious discussions about these important issues in Serbia and in the region.
148. During his visit, the Commissioner met with Mr Vladimir Vukčević, Special Prosecutor for War Crimes, who informed him that his office is looking into the role of media and journalists in the wars in the 1990s, with a view to the potential prosecution of those responsible for incitement to ethnic hatred and other related criminal offences.

149. In 2011 ECRI¹⁰⁶ raised concerns regarding Serbian media manifestations of intolerance towards minority religious groups and ethnic minorities. ECRI noted that some newspapers recurrently use derogatory terms for the Albanian and Bosniak minorities, and that there is a general climate of intolerance against Roma. ECRI also noted with concern that the ethnic identity of crime suspects is often disclosed when they are of Roma origin. In this context the Commissioner would like to emphasise that media have an important role to play in countering prejudices and that they should contribute to the elimination of stereotypes by avoiding repeating them and condemning their expression.¹⁰⁷
150. Media self-regulation is important in this context and it appears that the flaws in the self-regulatory system reported to the Commissioner during his 2008 visit still exist.¹⁰⁸ The Commissioner has noted that the OSCE together with the Council of Europe and the EU are implementing a number of projects aimed at strengthening freedom of the media and access to public information. The projects include support for the work of the Press Council as the first regulatory body for printed media in Serbia.¹⁰⁹
151. In July 2009 the Parliament of Serbia adopted amendments to the Law on Public Information prompting widespread criticism by Serbian media and international organisations, mainly due to provisions that were regarded as seriously threatening media freedom. Against this background, the Commissioner welcomes the decision of the Constitutional Court in July 2010, in proceedings initiated by the Ombudsman, to strike down most of the provisions of the new Law on Public Information, primarily those allowing excessive fines for defamation.
152. The Commissioner has noted that although the sentence of imprisonment for defamation has been abolished in Serbia, defamation remains a criminal offence. The Commissioner believes that the mere existence of criminal defamation provisions intimidates journalists and causes unfortunate censorship.
153. In June 2009 the European Court of Human Rights delivered judgments in two cases¹¹⁰ concerning violations by Serbia of Article 10 of the Con-

¹⁰⁶ ECRI report on Serbia, cited above, pages 23 and 24.

¹⁰⁷ See also the Commissioner's Human Rights Comment, 'European media contribute to xenophobia and anti-Gypsy stereotypes', 7 July 2011.

¹⁰⁸ See the Commissioner's report on the visit to Serbia, 2009, paragraph 210.

¹⁰⁹ See OSCE Mission to Serbia, <http://www.osce.org/serbia/43351>.

¹¹⁰ See the judgments of the European Court for Human Rights in the cases of *Bodrozic v. Serbia*, 23 June 2009 and *Bodrožić and Vujin v. Serbia*, 23 June 2009.

vention (freedom of expression). The applicants were journalists convicted of defamation. In these judgments the Court pointed out that the prosecution of journalists for defamation when they are raising issues of public debate, as in the present cases, should be considered proportionate only in very exceptional circumstances. The Court concluded that the interference with the applicants' rights to freedom of expression was wholly disproportionate. The Court had particular regard to the fact that the fine imposed by the courts on one applicant, involved in both cases, could be replaced by 60 or 75 days' imprisonment in case of default.

2. Access to public information and data protection

154. The Commissioner has noted with satisfaction that access to public information in Serbia has been enhanced. The work of the Commissioner for Access to Information of Public Importance and Personal Data Protection has been crucial in this field.
155. During the visit the Commissioner for Access to Information of Public Importance and Personal Data Protection, Mr Rodoljub Šabić, informed Commissioner Hammarberg that his institution receives yearly approximately 10 000 complaints regarding access to public information. These complaints mostly relate to refusals of access to public information by state bodies or state-owned companies. It was emphasised that in 90% of the cases the Commissioner's intervention facilitated access to information, and that almost two thirds of the requests were resolved without formal proceedings being initiated by the Commissioner.
156. Although the decisions of the Commissioner for Access to Information of Public Importance and Personal Data Protection are binding, there appear to be cases of non-execution of these decisions. The amendment to the Law on Free Access to Information in May 2010 introduced a mechanism for the enforcement of the decisions of the Commissioner for Access to Information. According to the amendments, he may impose fines on persons responsible for the non-implementation of the decisions.
157. In this context, the Commissioner Hammarberg considers very important the issue of the opening of archives in order to shed light on and give access to the truth relating to the 1991–1999 wars on the territory of the former Yugoslavia. He has noted that some discussions about the transfer of the ICTY archives have already been initiated but it appears that there has been no discussion about this issue at regional level.

158. As regards the field of personal data protection, it remains problematic according to the Commissioner for Access to Information of Public Importance and Personal Data Protection. In 2010 the government adopted a strategy on personal data protection but an action plan to implement the strategy has not yet been adopted. It is essential that the authorities promptly adopt all measures in order to fill the existing lacunae and fully safeguard personal data protection.

3. Attacks on journalists

159. Media plays a crucial role in the defence of human rights – as a watchdog on human rights violations as well as a forum for democratic debate. Unfortunately, media freedom has been threatened in Serbia through attacks against, and in some cases even murders of journalists by extremists. It is of the utmost importance that these crimes be effectively investigated and those guilty be promptly brought to justice.

160. National and international media reported the physical attack in public, in July 2010, on Teofil Pančić, a political columnist for the weekly *Vreme*. As a result of the attack he suffered concussion and arm injuries. The journalist was known for his critical coverage of Serbian nationalists and sports hooligans. The suspects, members of an ultra-nationalist group, were arrested and convicted on assault charges. The Commissioner has noted concerns expressed by members of civil society that the sentences of three months' imprisonment imposed on the suspects were too lenient. However, the first instance judgment was overruled by the appeal court and the appeal proceedings are still pending.

161. The Criminal Code was amended in 2009 to introduce the 'endangering of the safety of a journalist' as a crime punishable by imprisonment ranging from one to eight years. This provision was applied for the first time in 2010 when three persons were convicted for threatening Brankica Stanković, a journalist of the Belgrade-based television station B92. The threats stemmed from her 2009 documentary revealing that members of a nationalist sports club had escaped prosecution on drug trafficking and murder charges. The three suspects, identified as members of the club, were sentenced to imprisonment ranging from three to 16 months in connection with the threats. It has been reported that the police provided Stanković with guards throughout the year due to ongoing concerns for her security.¹¹¹ During his visit, the Commissioner was informed that this journalist was still under 24-hour protection by the police.

¹¹¹ Committee to Protect Journalists, *Attacks on the Press 2010 – Serbia*, 15 February 2011, <http://www.cpj.org/2011/02/attacks-on-the-press-2010-serbia.php>.

162. The Commissioner has noted reports that in some cases journalists faced risks from the authorities themselves. It has been reported that in May 2010 Belgrade District Court officers repeatedly punched a journalist of a local newspaper after he took photos of a nationalist club leader being brought into the court building. Reportedly, at the direction of a judge, court officers then erased the journalist's photographs although he had an accreditation and permission to take photographs in the court building.
163. In February 2011 the OSCE Representative on Freedom of Media condemned the intimidation campaign against the independent Serbian broadcasting company B92 and its editors. The campaign was related to B92's reporting about alleged corruption cases at a state-owned company. Numerous poster-size notices announcing the 'death' of B92 were put up in Lazarevac. The Serbian Minister of Interior pledged to protect the B92 journalists while investigations were launched into the case. During his visit, the Commissioner met Veran Matić, editor-in-chief of B92, who was under 24-hour police protection and was accompanied to the meeting by a police guard.
164. The Commissioner has noted with serious concern that there have been several unresolved cases of killings of journalists in previous years, such as those of Slavko Ćuruvija, owner and editor of the Dnevni Telegraph (April 1999), and of Milan Pantić, correspondent of the Vecernje Novosti (June 2001). The Commissioner has also noted reports that the case of the attack with hand grenades in 2007 against the apartment of Dejan Anastasijević, a journalist of Vreme weekly, has not been resolved.

Conclusions and recommendations

165. The Commissioner underlines that freedom of expression and media freedom have a crucial role to play in the development and progress of European democratic societies. He recalls the European Court of Human Rights' case-law according to which freedom of expression, in the context of Article 10 ECHR, is applicable not only to information or ideas that are favourably received or regarded as inoffensive but also to those that 'offend, shock or disturb the State or any sector of the population'.
166. The Commissioner stresses that defamation should be decriminalised and unreasonably high fines in civil cases relating to media should be avoided. The Commissioner welcomes in this context the decision of the Serbian Constitutional Court in July 2010 to strike down most of the provisions of a new Law on Public Information, primarily those imposing excessive fines for defamation. At the same time, the media community should be encour-

aged to promote and apply ethical and professional standards in journalism and to develop a system of effective self-regulation.¹¹²

167. The Commissioner calls on the Serbian authorities to improve the personal data protection system by implementing the relevant legislation and the action plan concerning the Strategy on Personal Data Protection which was adopted by the government in 2010. 168. The authorities' prompt reaction nowadays to attacks on journalists are commendable but the Commissioner remains seriously concerned by the competent authorities' failure to resolve past cases of violent attacks against journalists, including the aforementioned murders that took place in 1999 and 2001. The effective investigation of incidences of violence, including murders, against journalists is of key importance. To fail to do so can only encourage impunity for human rights violations.

168. The Commissioner urges the Serbian authorities to conduct effective investigations into all of these incidents, in accordance with the established case-law of the European Court of Human Rights and the 2011 Guidelines of the Council of Europe Committee of Ministers on eradicating impunity for serious human rights violations.

100 169. Lastly, the Commissioner points out that media plays an important role in countering prejudices and should not perpetuate stereotypes through negative reporting concerning ethnic or religious minorities, in particular Roma. The Commissioner invites the Serbian authorities to promote systematic dialogue with media professionals and relevant civil society groups in order to ensure the elimination of manifestations of anti-Gypsyism and the promotion by media of tolerance and social cohesion.

112 See Issue Paper on Ethical Journalism and Human Rights, 1 March 2011, CommDH/IssuePaper(2011)1, and the Commissioner's thematic web page on media freedom at: http://www.coe.int/t/commissioner/activities/themes/MediaFreedom/Default_en.asp.

Annex II



International Covenant on Civil and Political Rights

Human Rights Committee

101st session

New York, 14 March–1 April 2011

Consideration of reports submitted by States parties under article 40 of the Covenant

Concluding observations of the Human Rights Committee

Serbia

1. The Committee considered the second periodic report submitted by the Republic of Serbia (CCPR/C/SRB/2) at its 2780th and 2781st meetings (CCPR/C/SR.2780 and 2781), held on 17 and 18 March 2011. At its 2796th meeting (CCPR/C/SR.2796), held on 29 March 2011, it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the second periodic report of the Republic of Serbia, and expresses appreciation for the constructive dialogue with the delegation of the State party, and the oral and written responses provided. It also appreciates the written replies (CCPR/SRB/Q/2/Add.1) that were submitted in response to the list of issues.

3. The Committee recalls its previous consideration of the human rights situation in Kosovo (see CCPR/C/UNK/CO/1, adopted on 27 July 2006). The Committee notes that, as the State party continues to accept that it does not exercise effective control over Kosovo, and in accordance with Security Council resolution 1244 (1999), civil authority continues to be exercised by the United Nations Interim Administration Mission in Kosovo (UNMIK). The Committee considers that the Covenant continues to apply in Kosovo, and it therefore encourages UNMIK to provide it, in cooperation with the institutions of Kosovo, and without prejudice to the final legal status of Kosovo, with a report on the human rights situation in Kosovo since July 2006.

B. Positive aspects

4. The Committee welcomes the following positive developments in the State party, in particular in light of the reforms engaged as a result of the State party's candidacy to the European Union:

- (a) Adoption of a new Constitution in 2006, which allows the Constitutional Court to examine individual complaints on human rights violations (article 170 of the Constitution);
- (b) Adoption, in March 2009, of the Law on the Prohibition of Discrimination, and the appointment by the National Assembly, in May 2010, of the Commissioner for the Protection of Equality, empowered to examine complaints about discrimination, and make recommendations thereon;
- (c) Adoption of the Law on the Ombudsman (NHRI), and the appointment by the National Assembly, in July 2007, of an Ombudsman with broad competence in the field of human rights, in accordance with the Paris Principles (General Assembly resolution 48/134);
- (d) Ratification, in 2006, of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- (e) Ratification of the Convention on the Rights of Persons with Disabilities and its Optional Protocol, in 2009.

C. Principal matters of concern and recommendations

5. The Committee takes note of the information that the provisions of international human rights treaties, including those under the Covenant, are part of the State party's laws and can be invoked directly in court. The Committee notes, however, that there are only limited examples where the provisions of the Covenant have been invoked in particular cases. While welcoming the delegation's contention

that the provisions of the Covenant will be part of the curricula of the Judicial Academy, the Committee expresses concern about the insufficient awareness of the provisions of the Covenant among the judiciary and the wider legal community, and the practical application of the Covenant in the domestic legal system (art. 2).

The State party should ensure that its authorities, including judges, prosecutors, and lawyers, are adequately trained and fully aware of the provisions of the Covenant, and of their applicability in the State party. The State party should also take effective measures to widely disseminate the Covenant within the State party.

6. The Committee is concerned that, as admitted by the delegation, the authorities of the State party do not have a coordinated approach nor a specific mechanism to examine and give effect to the Committee's conclusions of violation in cases decided under the individual complaints mechanism of the Optional Protocol to the Covenant (art. 2).

The State party should establish a mechanism to study the Committee's conclusions to individual communications, and propose measures to be taken by the State party to give effect to the Committee's views under the Optional Protocol, and provide victims with an effective remedy for any violation of their rights.

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7. While welcoming the establishment, in 2007, of the National Human Rights Institution (Ombudsman) and its work conducted to date, and noting with interest the information provided by the delegation to the effect that the Ombudsman is to be officially empowered to act as a National Preventive Mechanism for the purposes of the Optional Protocol to the Convention Against Torture, the Committee is concerned that, if no adequate resources are allocated, the effective functioning of the institution may be affected (art. 2).

The State party should consider providing the Office of the Ombudsman with the necessary additional financial and human resources, given its new role as National Preventive Mechanism, so as to ensure fulfilment of its current activities and to enable it to carry out its new functions effectively.

8. While welcoming the efforts made by the State party during the reporting period to address the discriminatory situation of women in various areas of life, including the adoption of the Law on Gender Equality, in 2009, and other

initiatives, the Committee is concerned about the limited results obtained in practice. It is concerned about the subsisting gap between women and men in violation of the principle of equal pay for equal work, as well as about the low number of women in high-level and decision-making positions, and the fact that stereotypes subsist with respect to the position of women in society, including with regard to Roma women. (arts. 2, 3 and 26).

The State party should continue its efforts to improve the representation of women, including in high-level, decision-making positions within the State and local administration. It should ensure that men and women are treated equally, including with respect to their salaries for similar positions. In general, the State party should take the necessary practical steps to eradicate stereotypes regarding the position of women in society in general, and with regard to Roma women in particular.

9. With reference to its previous concluding observations (para. 17), the Committee remains concerned that domestic violence prevails, and that few cases regarding domestic violence reach the courts. The Committee is also concerned that, in spite of the progress made, including the establishment of hotlines for victims, and the adoption, in 2009, of the National Strategy for Improving the Position of Women and the Advancement of Gender Equality, non-governmental organizations remain the main providers of assistance to victims of domestic violence, including with respect to the running of shelters (arts. 2, 3 and 26).

The State party should continue its efforts to combat domestic violence and establish support centres for victims with adequate medical, psychological and legal support, and shelters for victims of violence, including for children. In order to raise public awareness, it should disseminate information on this issue through the media. The State party should ensure that cases of domestic violence are thoroughly investigated and that the perpetrators are prosecuted and punished with appropriate sanctions, if convicted. It should also ensure that the victims are adequately compensated. For these purposes, the State party should ensure that the police, local authorities, medical and social workers are adequately trained and sensitized on the issue.

10. With reference to its previous concluding observations (para. 9), the Committee remains concerned at the persistence of impunity for serious human rights violations, committed both before and after 2000. While it notes that the authorities of the State party have conducted investigations into such crimes, it regrets that few investigations have led to prosecutions, and that relatively light sentences have been handed down, which are not commensurate with the gravity of the crimes committed. The Committee is also concerned at the difficulties faced by individuals trying to obtain compensation from the State for human rights violations, in particular regarding war crimes, as well as the existing statutory limitation period of five years (arts. 2, 6 and 7).

The Committee recalls its previous recommendation that the State party has an obligation to fully investigate all cases of alleged violations of human rights, in particular violations of articles 6 and 7 of the Covenant, during the 1990s, and to bring those responsible for such violations to trial so as to avoid impunity. The State party should also ensure that all victims and their families receive adequate compensation for such violations.

11. The Committee is concerned that torture and ill-treatment are only punishable by a sentence of up to a maximum of eight years' imprisonment, and that the statutory limitation period is ten years (art. 7).

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The State party should amend its legislation and practice, both with respect to the length of the maximum prison term for torture and related crimes, and extend the statutory limitation period, bearing in mind the gravity of such crimes.

12. With reference to its previous concluding observations (para. 10), the Committee remains concerned that no significant progress has been made to investigate, prosecute, and punish those responsible for the killing of more than eight hundred persons whose bodies were found in mass graves in and near Batajnica, and to compensate the relatives of the victims (arts. 2 and 6).

The State party should urgently take action to establish the exact circumstances that led to the burial of hundreds of people in Batajnica region, and to ensure that all individuals responsible are prosecuted and adequately sanctioned under the criminal law. The State party should also ensure that relatives of the victims are provided with adequate compensation.

13. While noting the ongoing cooperation of the authorities of the State party with the International Criminal Tribunal for the former Yugoslavia (ICTY), the Committee remains concerned at reports that alleged war criminals remain within the territory of the State party territory, but have neither been arrested nor brought to justice (arts. 6 and 7).

The State party should ensure that it continues to cooperate fully and effectively with the ICTY, and ensure that all remaining individuals, including Ratko Mladic, suspected of war crimes and violation of international humanitarian law, who are under its jurisdiction, are transferred to the ICTY.

14. With reference to its previous concluding observations (para. 15), the Committee remains concerned that no organization for independent, effective and systematic monitoring of police detention premises exists in the State party. The Committee is also concerned about the poor and inadequate conditions of detention in police detention premises, as well as the fact that accused and suspects have been held together, and that minors have been detained together with adults (arts. 7 and 10).

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The State party should ensure that an appropriate system for monitoring police detention exists, in particular in light of the State party's obligations resulting from its ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It should also ensure that all police detention facilities are in line with its obligations under the Covenant.

15. While noting that the State party has started building new prison facilities and renovating others, the Committee remains concerned about the continuing overcrowding in prisons (arts. 7 and 10).

The State party should take further steps to improve the treatment of prisoners and the prison conditions, in line with its obligations under the Covenant and the Standard Minimum Rules for the Treatment of Prisoners. In this regard, the Committee invites the State party to consider not only the construction of new prison facilities, but also the wider application of alternative non-custodial sentences.

16. While taking note of the progress made with regard to combating trafficking in persons, the Committee is concerned at information indicating that more than half of the victims of trafficking and sexual exploitation are minors. It is also concerned about the uncertain situation of witnesses who are foreign nationals in trafficking trials, and the fact that they are only granted temporary residence permits for the duration of the trial (art. 8).

The State party should continue its efforts to raise awareness and to combat trafficking in persons, including at the regional level and in cooperation with neighbouring countries. It should ensure that all individuals responsible for trafficking in persons are prosecuted and punished commensurate with the crimes committed, and that victims of trafficking are rehabilitated. The State party should vigorously pursue its public policy to combat trafficking, in particular in minors for sexual exploitation, through the adoption of specific targeted measures and action plans on the issue, bearing in mind that the best interests of the child must be a primary consideration in all such actions. Child victims of trafficking should be provided with appropriate assistance and protection, and full account should be taken of their special vulnerabilities, rights and needs. The State party should also ensure that the situation of foreign nationals acting as official witnesses in trafficking trials is reviewed individually at the end of such trials, with the aim of assessing whether they would be at risk if they returned to their country of origin.

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17. While noting the efforts made by the State party to reinforce its judiciary and secure its independence, such as the enactment of the new Law on Judges, the Committee is concerned about issues arising from the overall inadequate functioning of the courts in the administration of justice, resulting in unreasonable delays and other shortcomings in the procedures. In addition, with respect to cases of judges dismissed in the 2009 re-election process, the Committee is concerned that the re-election process, which was aimed at reinforcing the judiciary and which resulted in the reduction in the number of judges, lacked transparency and clear criteria for re-election, and did not provide for a proper review of the cases dismissed (art. 14).

The State party should ensure strict observance of the independence of the judiciary. It should also ensure that judges who were not re-elected in the 2009 process are given access to a full legal review of the process. The State Party should also consider undertaking

comprehensive legal and other reforms to make the functioning of its courts and general administration of justice more efficient.

18. While noting the information provided by the State party that the Law on Criminal Procedure allows for free legal aid to be granted in certain criminal cases, the Committee is concerned that no comprehensive system on the granting of legal aid exists in the State party, and that neither legislation nor practice provides for free legal aid in civil cases (arts. 9 and 14).

The State party should review its free legal aid scheme to provide for free legal assistance in any case where the interests of justice so requires.

19. Despite the action taken so far by the State party to address the problem of individuals without identification documents, including displaced persons, as a result of the past conflicts, a large number of persons under the State party's jurisdiction, mainly Roma, live without any identification documents, and their births were never registered with the authorities. The Committee considers that this situation creates an impediment for members of the State party's most vulnerable group, namely the Roma, to enjoy a range of human rights, including those under the Covenant, and prevents them from benefiting, inter alia, from social services, social benefits and adequate housing, as well as limits their access to employment (arts. 12, 24 and 26).

The State party should continue its efforts to provide all persons under its jurisdiction with identification documents, in particular those who were never registered or issued such documents. The State party should increase its efforts to ensure effective access to adequate housing, social benefits and services for all victims of past conflicts under its jurisdiction, including the Roma.

20. Despite article 44 of the State party's Constitution, which states that all churches and religious communities are equal, the Committee is concerned at the differentiation made in the Act on Churches and Religious Communities, regarding "traditional" and other religions, in particular when it comes to the official registration of a Church or religious community and the acquisition of legal personality (arts. 18 and 26).

The State party should review its legislation and practice to ensure that the principle of equal treatment, as proclaimed under article

44 of its Constitution, is fully respected, and in compliance with the requirements of articles 18 and 26 of the Covenant.

21. With regard to its previous concluding observations (para. 22), the Committee remains concerned that journalists, human rights defenders, and media workers continue to be attacked, threatened, and murdered. It is also concerned that defamation remains a crime under national law, in particular taking into account that defamation complaints are being widely used against journalists and human rights defenders by Government and public officials (arts. 6, 7 and 19).

The Committee urges the State party to take the necessary measures to ensure that the restrictions imposed on freedom of opinion and expression are in line with the provisions of the Covenant. The State party should take vigorous measures to ensure the protection of journalists, independent civil society actors, including non-governmental organizations and media representatives. The State party should make sure that those responsible for crimes against media or civil society workers are identified, prosecuted, and, if convicted, punished accordingly. The State party should also consider decriminalizing defamation.

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22. While noting the State party's efforts to improve the situation of the Roma, including the adoption of the Strategy for Improving the Status of Roma (2009) and its accompanying Action Plan, as well as the establishment of the Governmental Council for Improving the Status of Roma and the Implementation of the Decade of Roma Inclusion (2005-2015), the Committee remains concerned at widespread discrimination and exclusion of the Roma in various areas of life, such as education, housing, adequate health care, and political participation (arts. 2, 26 and 27).

The State party should strengthen its efforts to eradicate stereotypes and widespread abuse against Roma by, among others, conducting more awareness-raising campaigns to promote tolerance and respect for diversity. The State party should also adopt measures to promote access by Roma to various opportunities and services at all levels, including, if necessary, through appropriate temporary special measures.

23. While recognizing the efforts undertaken by the State party to ensure better protection to representatives of national minorities, including the adoption of the Law on National Minority Councils (2009), the Committee remains concerned at the low level of representation of minorities in State organs or local authorities. The Committee is also concerned about the lack of disaggregated statistics collected at the national level, which would enable a better assessment of the actual situation of all minorities (arts. 25, 26 and 27).

The State party should continue its efforts aimed at ensuring full protection and equal treatment of members of national minorities under its jurisdiction. It should take measures, including, if necessary, through appropriate temporary special measures, to ensure enhanced representation of members of national minorities in national and local organs. The State party should also collect statistical data reflecting the posts occupied in the central and local organs, disaggregated by ethnic group. Such information should be made available to the Committee in the State party's next periodic report.

24. The State party should widely disseminate the Covenant and its two Optional Protocols, as well as the text of the second periodic report, the written replies to the list of issues drawn up by the Committee, and the present concluding observations, so as to increase awareness among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the country, as well as the general public. The Committee also requests the State party to broadly consult with civil society and non-governmental organizations when preparing its third periodic report. The State party should ensure that the present concluding observations are translated into the minority languages of the State party (art. 2).
25. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party should provide, within one year, relevant information on the implementation of the recommendations made by the Committee in paragraphs 12, 17 and 22 herein.
26. The Committee requests the State party to provide, in its third periodic report due for submission by 1 April 2015, specific, up-to-date information on the implementation of all its recommendations and on the Covenant as a whole.

Annex III



Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment

COMMITTEE AGAINST TORTURE

Forty-first session

3-21 November 2008

**CONSIDERATION OF REPORTS SUBMITTED BY STATES
PARTIES UNDER ARTICLE 19 OF THE CONVENTION
Concluding observations of the Committee against Torture**

SERBIA

1. The Committee against Torture considered the initial report of Serbia (CAT/C/SRB/1) at its 840th and 843rd meetings (CAT/C/SR.840 and 843), held on 5 and 6 November 2008, and adopted, at its 857th and 859th meetings (CAT/C/SR.857 and 859), held on 17 and 18 November 2008, the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the initial report of Serbia which covers the period from 1992 to 2003 as well as the replies to the list of issues (CAT/C/SRB/Q/1/Add.1) which provided additional information on the legislative, administrative, judicial and other measures taken by the State party to implement the Convention. The Committee also notes with satisfaction the constructive dialogue held with a high-level delegation.

B. Positive aspects

3. The Committee welcomes the many legislative changes, including the adoption of:
- (a) A new Constitution which provides that no one may be subjected to torture that entered into force in 2006;
 - (b) The law that establishes the War Crimes Chamber, adopted in 2003;
 - (c) The Criminal Code which defines and criminalizes torture, adopted in 2005;
 - (d) The Law on the Protector of Citizens, which establishes the Protector of Citizens (Ombudsman), adopted in 2005;
 - (e) A Law on Criminal Procedure which was adopted in 2006 and entered into force in 2009; and
 - (f) The Law on Asylum, which establishes the principle of prohibition of non-refoulement, which was adopted in 2007 and entered into force in 2008.
4. The Committee welcomes the ratification, in 2006, of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It also welcomes the ratification, in 2002 and 2003, respectively, of the Optional Protocols to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and on the involvement of children in armed conflict, as well as the ratification, in 2003, of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.

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C. Main issues of concerns and recommendations

Definition of torture

5. While noting the criminalization of torture by several normative acts, the Committee is concerned that legislation is not yet fully harmonized with the Convention as, according to article 137 of the Serbian Criminal Code, the penalties established are not proportionate to the gravity of the crime. The Committee regrets the Supreme Court ruling of 2005 where it applied a statute of limitation in respect of the crime of torture. However, the Committee takes note of the State party's statement that a new law will remedy the incompatibility between Serbia's law and the Convention with regard to the statute of limitation by the end of 2009 (art. 1).

The State party should continue to make efforts to bring its definition of torture into line with article 1 of the Convention. In this respect, the State party should ensure that the penalties of the Criminal Code be brought in line with the proportional gravity of the crime

of torture. The Committee urges the speedy completion of judicial reforms so that no statute of limitations will apply to torture.

Fundamental safeguards

6. The Committee notes that the Law on the Execution of Penal Sanctions provides for internal control by respective departments of the Ministry of Justice, that the Police Act passed in 2005 foresees the establishment of the Internal Control Sector and that internal control units have been established in all regional police centres. However, the Committee remains concerned at the lack of an independent and external oversight mechanism for alleged unlawful acts committed by the police. The Committee is also concerned that, in practice, the police do not respect the right of a detainee to access a lawyer of his or her own choice and to access an examination by an independent doctor within 24 hours of detention and the right to contact his or her family. The Committee is also concerned at the absence of adequate protocols for the medical profession on how to report on findings of torture and other cruel and inhuman or degrading treatment or punishment in a systematic and independent manner (art. 2).

The State party should ensure that an independent oversight mechanism for alleged unlawful acts committed by all agents of the State is set up. The State party should ensure that the right to access a lawyer of one's own choice and to contact a family member is respected in practice and that all detainees undergo a medical examination within 24 hours of detention, as previously recommended by the Committee in its inquiry procedure under article 20. The State party should also establish adequate protocols for its medical professionals to systematically report on findings of torture and other cruel and inhuman or degrading treatment or punishment.

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Protector of Citizens (Ombudsman)

7. The Committee welcomes the establishment of the Ombudsman and the appointment of a deputy Ombudsman to improve the situation of persons deprived of liberty in institutions and prisons, including persons with mental, intellectual or physical disability and learning difficulties. However, the Committee remains concerned that the structures of the Ombudsman's office are not yet fully consolidated, that its independence is not fully ensured, that it has not been allocated adequate resources to fulfil its functions effectively and that, despite a large number of complaints (700), it does not have the capacity to analyse them. The Committee is also concerned that there is no specific mandate to monitor children's rights to be free from violence (art. 2).

The State party should:

- (a) Intensify its efforts to ensure that the Ombudsman is able to independently and impartially monitor and investigate alleged police misconduct, including by strengthening the role and function of the deputy to the Ombudsperson on the protection of rights of persons deprived of liberty so as to include in his mandate the capacity to investigate acts committed by police officers;**
- (b) Ensure all relevant authorities follow up on the recommendations issued by the Ombudsman;**
- (c) Encourage the Ombudsman to seek accreditation with the International Coordinating Committee for National Institutions for the Promotion and Protection of Human Rights to ensure that it complies with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), annexed to General Assembly resolution 48/134; and**
- (d) Consider taking the necessary measures to ensure that the Ombudsman promote and protect children from violence and in particular consider the adoption of a Law for the Ombudsman for the Rights of the Child.**

114 Independence of the judiciary

8. The Committee remains concerned about new constitutional provisions providing for the election of judges of all levels by the National Assembly. The Committee is also concerned with respect to the definition of rules of procedures of courts and at the absence of legislation in respect of disciplinary measures against judges (arts. 2 and 12).

The State party should guarantee the full independence and impartiality of the judiciary, by ensuring, inter alia, that judicial appointments be made according to objective criteria such as qualifications, integrity, ability and efficiency. The State party should also define the rules of procedures of courts and establish an independent disciplinary body in this regard.

Refugees

9. The Committee notes the new Law on Asylum (2008), which establishes the principle of prohibition of non-refoulement, but remains concerned at the rules that interpret the application of the law with respect to the treatment of asylum-seekers (art. 3).

The State party should urgently adopt the necessary measures, especially of a legal nature, to put in practice the new Law on Asylum to protect the rights of asylum-seekers and persons seeking refugee status. The State party should also put in place measures to protect asylum-seekers and other foreigners in need of humanitarian protection.

Complaints, investigations and convictions

10. While acknowledging the reform process of the judiciary, including the new law on judges and the new Penal Code that is due to come into effect in 2009, the Committee expresses concern over the slowness of investigations and that officials are not suspended during the investigations into allegations of torture or ill-treatment (arts. 4, 12, 13 and 16).

The State party should:

- (a) Ensure that investigations into allegations of torture and other prohibited cruel, inhuman or degrading treatment or punishment are undertaken thoroughly, effectively and impartially, including complaints made under the previous public administration, as previously recommended by the Committee in its article 20 report;**
- (b) Suspend persons who have allegedly committed acts of torture during the investigation of such allegations, as previously recommended by the Committee in its article 20 report; and**
- (c) Comply with the Committee's Views under article 22 where it requests for further investigations in respect of individual communications and provide information to this effect in its next periodic report.**

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Cooperation with the ICTY

11. The Committee welcomes the steps taken to enhance cooperation and progress made with regard to the International Criminal Tribunal for the Former Yugoslavia (ICTY) as well as the establishment of witness protection programmes but it expresses concern over the uncertain future of the cases after the scheduled closure of the ICTY as well as for the safety of those who have or are in the process of providing evidence (art. 12).

The State party should ensure that:

- (a) Full cooperation is extended to ICTY, including through apprehending and transferring those persons who have been indicted**

- and remain at large, as well as granting the Tribunal full access to requested documents and potential witnesses;
- (b) All persons, including senior police officials, military personnel, and political officials, suspected of complicity in and perpetrators of war crimes and crimes against humanity, are brought to justice in adequate penal proceedings, including after the scheduled closure of the ICTY tribunal; and
 - (c) Witnesses are effectively protected throughout all stages of the proceedings and afterwards.

Other war crimes investigations

12. The Committee regrets the lack of explanation by the State party about the outcomes of the investigations into the “Ovcara case” (November 1991), and particularly the role of the Supreme Court in 2006 in quashing the first court’s decision, and is concerned at the lack of information provided about the reasons for ordering a re-trial (art. 12).

The State party should provide the Committee with information about the outcomes of the investigation into the “Ovcara case” (November 1991) and the reasons for ordering a retrial in 2006.

Human rights defenders

13. The Committee expresses concern about the hostile environment for human rights defenders, particularly those working on transitional justice and minority rights and the lack of fair trials on cases filed against human rights defenders for alleged political reasons (art. 16).

The State party should take concrete steps to give legitimate recognition to human rights defenders and their work, and ensure that when cases are brought against them, such cases are conducted in conformity with international standards relating to fair trial.

Training

14. The Committee notes the State party’s efforts with respect to training of prison staff by the Training Centre for the employees of the Directorate as of September 2004. However, it is concerned that the training is not targeted at education and information regarding the prohibition of torture and that training programmes for medical personnel for the identification and documentation of cases of torture in accordance with the Istanbul Protocol, is insufficient, as is the rehabilitation of victims. In addition, training to develop a more gender sensitive approach both in police legal and medical institutions are inadequate (art. 10).

The State party should:

- (a) Ensure that education and training of all law enforcement personnel is conducted on a regular basis;**
- (b) Include in the training modules on rules, instructions and methods of interrogation, the absolute prohibition of torture, and specific training for medical personnel on how to identify signs of torture, and cruel, inhuman or degrading treatment, in accordance with the Istanbul Protocol;**
- (c) Regularly evaluate the training provided to its law-enforcement officials as well as ensure regular and independent monitoring of their conduct; and**
- (d) Strengthen its efforts to implement a gender-sensitive approach for the training of those involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.**

Conditions of detention

15. While noting that reforms of the prison system since 2004 include the construction of new facilities and reconstruction of existing facilities, the Committee is concerned about the current material conditions of detention, the problem of overcrowding in places of deprivation of liberty and the lack of independence of medical personnel in prisons. The Committee notes the statement by the delegation that no request by non-governmental organizations to monitor the institutions for the enforcement of prison sanctions was rejected, but is concerned that prior notice seems to be required to visit prisons. The Committee is also concerned that a system of inspection of the conditions of imprisonment by independent experts does not exist (art. 11).

The State party should:

- (a) Ensure the speedy implementation of the prison system reform and, if necessary, seek technical assistance with the United Nations and other relevant organizations;**
- (b) Improve the material conditions of detention in places of deprivation of liberty, in particular with respect to hygienic conditions and medical care, including giving access to independent medical personnel on a systematic basis. In this regard, it is important that the State party ensure that the Ministry of Health monitor the exercise of professional duties of medical staff in prisons; and**
- (c) Set up a system of inspection of the conditions of imprisonment by independent experts, as previously reiterated by the Committee in its recommendation under its article 20 report.**

Torture and disability

16. The Committee notes the State party's acknowledgement that poor and inadequate treatment takes place in some institutions and remains concerned at the reports of treatment of children and adults with mental or physical disability, especially at the forceful internment and long-term restraint used in institutions that amount to torture or cruel, inhuman and degrading treatment or punishment in social-protection institutions for persons with mental disability and psychiatric hospitals. The Committee is concerned that no investigation seems to have been initiated with respect to treatment of persons with disability in institutions amounting to torture or inhuman or degrading treatment (arts. 2, 12, 13 and 16).

The State party should:

- (a) Initiate social reforms and alternative community-based support systems in parallel with the ongoing process of de-institutionalization of persons with disability, and strengthen professional training in both social-protection institutions for persons with mental disability and in psychiatric hospitals; and**
- (b) Investigate reports of torture or cruel, inhuman or degrading treatment or punishment of persons with disability in institutions.**

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Ethnic minorities, especially Roma

17. The Committee, while noting the measures undertaken by the State party, including bringing criminal charges against persons on charges of ethnically motivated violence towards ethnic minorities and the Action Plan for Roma Education Improvement (2005), expresses concern at the failure to protect minorities, especially when political events indicate that they may be at heightened risk of violence (arts. 10, 12 and 16).

The State party should take all appropriate preventive measures to protect individuals belonging to minority communities from attacks especially when political events indicate that they may be at heightened risk of violence and ensure that the relevant existing legal and administrative measures are strictly observed. The State party should also ensure greater ethnic diversity in the police force to facilitate communication and contacts with all communities in

Serbia and ensure that training curricula and information campaigns constantly communicate the message that violence will not be tolerated and will be sanctioned accordingly.

Compensation, rehabilitation and reparations

18. The Committee notes information provided on compensation provided to certain war victims in the proceedings before the War Crime Chamber resulting from the Code of Criminal Procedure that also includes pecuniary compensation as well as the public apologies by the State party provided in 2003, 2004 and 2007. However, the Committee regrets the lack of a specific programme to implement the rights of victims of torture and ill-treatment to redress and compensation. The Committee also regrets the lack of available information regarding the number of victims of torture and ill-treatment who may have received compensation and the amounts awarded in such cases, as well as the lack of information about other forms of assistance, including medical or psycho-social rehabilitation, provided to these victims. The Committee notes with concern the State party's statement that there are no services available in the State party to deal specifically with the treatment of trauma and other forms of rehabilitation for torture victims. Furthermore, the Committee is concerned at the lack of information about compensation, redress and rehabilitation for persons with disabilities (art. 14).

The State party should:

- (a) Strengthen its efforts in respect of compensation, redress and rehabilitation in order to provide victims of torture and other cruel, inhuman or degrading treatment or punishment with redress and fair and adequate compensation, including the means for as full rehabilitation as possible;**
- (b) Develop a specific programme of assistance in respect of victims of torture and ill-treatment;**
- (c) Provide in its next periodic report information about any reparation programmes, including treatment of trauma and other forms of rehabilitation provided to victims of torture and ill-treatment, as well as the allocation of adequate resources to ensure the effective functioning of such programmes; and**
- (d) Strengthen its efforts in respect of compensation, redress and rehabilitation for persons with disabilities and provide in its next periodic report information about steps taken in this regard.**

Domestic violence and sexual abuse of women and girls

19. The Committee notes that domestic violence was defined as a misdemeanour in the adoption of the Misdemeanours Act (2007), but expresses concern over the prolonged proceedings, prompting many victims to abandon them. The Committee is concerned about reports that sexual abuse of girls has been on the rise in the past few years and at the low pen-

alties that are pronounced against the perpetrators of domestic violence, the slowness of the proceedings, the lack of protection measures and the lack of adequate prevention measures in place (art. 16).

The State party should:

- (a) Increase its efforts to ensure that urgent and efficient protection measures are put in place and to prevent, combat and punish perpetrators of violence against women and children, including domestic violence;**
- (b) Ensure adequate implementation of the national strategy to prevent domestic violence;**
- (c) Conduct broader awareness-raising campaigns and training on domestic violence for officials (judges, lawyers, law enforcement agencies, and social workers) who are in direct contact with the victims as well as for the public at large; and**
- (d) Take necessary measures to increase cooperation with NGOs working to protect victims from domestic violence.**

Corporal punishment

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20. The Committee notes that corporal punishment of children is not explicitly prohibited in all settings and that it is a common and accepted means of childrearing (art. 16).

The State party, taking into account the recommendation in the United Nations Secretary General's Study on Violence Against Children, should adopt and implement legislation prohibiting corporal punishment in all settings, including the family, supported by the necessary awareness-raising and public education measures.

Trafficking in persons

21. The Committee takes note of the inclusion of trafficking in the new Criminal Code (art. 389), which defines human trafficking and includes it as a criminal offence. However, the Committee is concerned about the reports of cross-border trafficking in women for sexual and other exploitative purposes and it regrets the low number of prosecutions in this respect. The Committee also regrets that the State party does not have an effective system in place to monitor and assess the extent and impact to address this phenomenon effectively. The Committee is concerned at the decrease in the minimum penalties from five to three years of imprisonment and that redress and reintegration services are insufficient for victims of trafficking (art. 16).

The State party should:

- (a) Continue to prosecute and punish perpetrators of trafficking in persons, especially women and children;**
- (b) Intensify its efforts to provide redress and reintegration services to victims;**
- (c) Conduct nationwide awareness-raising campaigns and conduct training for law-enforcement officials, migration officials and border police on the causes, consequences and incidences of trafficking and other forms of exploitation;**
- (d) Adopt a National Action Plan for combating human trafficking and ensure that programs and measures are put in place for treating children victims of trafficking; and**
- (e) Increase cooperation by the police and the Agency for Coordination of Protection of Human Trafficking Victims with NGOs working against human trafficking.**

Kosovo

22. In considering Serbia's initial report, the Committee takes note of the State party's explanation of its inability to report on the discharge of its implementation with regard to the Convention in Kosovo, owing to the fact that civil authority is exercised in Kosovo by the United Nations Interim Administration Mission in Kosovo (UNMIK).

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Data collection

23. The Committee requests the State party to provide in its next periodic report detailed statistical data, disaggregated by crime, ethnicity, age and sex, on complaints relating to torture and ill-treatment allegedly committed by law enforcement officials; on the related investigations, prosecutions, and penal or disciplinary sanctions; and on pre-trial detainees and convicted prisoners. The Committee further requests information on compensation and rehabilitation provided to the victims.
24. The Committee invites the State party to become a party to the core United Nations human rights treaties to which it is not yet a party, namely: the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Convention on the Rights of Persons with Disabilities. The Committee invites the State party to ratify the International Convention for the Protection of All Persons from Enforced Disappearance.

25. The Committee stresses that its recommendations derived from its review of Serbia and Montenegro under its inquiry procedure pursuant to article 20 are subject to follow-up. In this sense, the Committee reiterates its recommendations (A/59/44, paras. 213 (a) to (t)) and requests the State party to update the Committee with relevant information regarding steps taken to comply with its recommendations in its next periodic report.
26. The Committee is encouraged by the oral information provided during the consideration of the State party's report with respect to outstanding follow-up information on individual communications, under article 22 of the Convention. The Committee notes that a new law provides for the reconsideration of a case on the basis of a decision of an international body established by an international treaty and welcomes a written response to the requests for specific follow-up to the Committee's views and compliance with the recommendations.
27. Further to the ratification by the State party of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 26 September 2006, the Committee reminds the State party of its exigency to promptly designate or establish an independent national preventive mechanism for the prevention of torture, in line with articles 17 to 23 of the Optional Protocol.
28. The Committee requests the State party to provide, within one year, information in response to the Committee's recommendations contained in paragraphs 6, 9, 11, 12, 13 and 16 (b) above.
29. The State party is encouraged to disseminate widely the reports submitted to the Committee and the concluding observations and summary records of the Committee through official websites, to the media and non-governmental organizations.
30. The Committee invites the State party to submit its core document in accordance with the requirements of the Common Core Document in the Harmonized Guidelines on Reporting, as approved by the international human rights treaty bodies and contained in document HRI/GEN/2/Rev.5.
31. The State party is invited to submit its next periodic report, which will be considered as the second periodic report, by 21 November 2012 at the latest.

Annex IV

European Treaty Series - No. 116

**EUROPEAN CONVENTION
ON THE COMPENSATION
OF VICTIMS OF VIOLENT CRIMES**

Strasbourg, 24.XI.1983

The member States of the Council of Europe, signatory hereto,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members;

Considering that for reasons of equity and social solidarity it is necessary to deal with the situation of victims of intentional crimes of violence who have suffered bodily injury or impairment of health and of dependants of persons who have died as a result of such crimes;

Considering that it is necessary to introduce or develop schemes for the compensation of these victims by the State in whose territory such crimes were committed, in particular when the offender has not been identified or is without resources;

Considering that it is necessary to establish minimum provisions in this field;

Having regard to Resolution (77) 27 of the Committee of Ministers of the Council of Europe on the compensation of victims of crime,

Have agreed as follows:

Part I – Basic principles

Article 1

The Parties undertake to take the necessary steps to give effect to the principles set out in Part I of this Convention.

Article 2

1 When compensation is not fully available from other sources the State shall contribute to compensate:

- a those who have sustained serious bodily injury or impairment of health directly attributable to an intentional crime of violence;
- b the dependants of persons who have died as a result of such crime.

2 Compensation shall be awarded in the above cases even if the offender cannot be prosecuted or punished.

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Article 3

Compensation shall be paid by the State on whose territory the crime was committed:

- a to nationals of the States party to this Convention;
- b to nationals of all member States of the Council of Europe who are permanent residents in the State on whose territory the crime was committed.

Article 4

Compensation shall cover, according to the case under consideration, at least the following items: loss of earnings, medical and hospitalisation expenses and funeral expenses, and, as regards dependants, loss of maintenance.

Article 5

The compensation scheme may, if necessary, set for any or all elements of compensation an upper limit above which and a minimum threshold below which such compensation shall not be granted.

Article 6

The compensation scheme may specify a period within which any application for compensation must be made.

Article 7

Compensation may be reduced or refused on account of the applicant's financial situation.

Article 8

- 1 Compensation may be reduced or refused on account of the victim's or the applicant's conduct before, during or after the crime, or in relation to the injury or death.
- 2 Compensation may also be reduced or refused on account of the victim's or the applicant's involvement in organised crime or his membership of an organisation which engages in crimes of violence.
- 3 Compensation may also be reduced or refused if an award or a full award would be contrary to a sense of justice or to public policy (*ordre public*).

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Article 9

With a view to avoiding double compensation, the State or the competent authority may deduct from the compensation awarded or reclaim from the person compensated any amount of money received, in consequence of the injury or death, from the offender, social security or insurance, or coming from any other source.

Article 10

The State or the competent authority may be subrogated to the rights of the person compensated for the amount of the compensation paid.

Article 11

Each Party shall take appropriate steps to ensure that information about the scheme is available to potential applicants.

Part II – International co-operation

Article 12

Subject to the application of bilateral or multilateral agreements on mutual assistance concluded between Contracting States, the competent authorities of each Party shall, at the request of the appropriate authorities of any other Party, give the maximum possible assistance in connection with the matters covered by this Convention. To this end, each Contracting State shall designate a central authority to receive, and to take action on, requests for such assistance, and shall inform thereof the Secretary General of the Council of Europe when depositing its instrument of ratification, acceptance, approval or accession.

Article 13

- 1 The European Committee on Crime Problems (CDPC) of the Council of Europe shall be kept informed regarding the application of the Convention.
- 2 To this end, each Party shall transmit to the Secretary General of the Council of Europe any relevant information about its legislative or regulatory provisions concerning the matters covered by the Convention.

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Part III – Final clauses

Article 14

This Convention shall be open for signature by the member States of the Council of Europe. It is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

Article 15

- 1 This Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which three member States of the Council of Europe have expressed their consent to be bound by the Convention in accordance with the provisions of Article 14.
- 2 In respect of any member State which subsequently expresses its consent to be bound by it, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval.

Article 16

1 After the entry into force of this Convention, the Committee of Ministers of the Council of Europe may invite any State not a member of the Council of Europe to accede to this Convention by a decision taken by the majority provided for in Article 20.d of the Statute of the Council of Europe and by the unanimous vote of the representatives of the Contracting States entitled to sit on the Committee.

2 In respect of any acceding State, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe.

Article 17

1 Any State may at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Convention shall apply.

2 Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Convention to any other territory specified in the declaration. In respect of such territory the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.

3 Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of such notification by the Secretary General.

Article 18

1 Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare that it avails itself of one or more reservations.

2 Any Contracting State which has made a reservation under the preceding paragraph may wholly or partly withdraw it by means of a notification addressed to the Secretary General of the Council of Europe. The withdrawal

shall take effect on the date of receipt of such notification by the Secretary General.

- 3 A Party which has made a reservation in respect of a provision of this Convention may not claim the application of that provision by any other Party; it may, however, if its reservation is partial or conditional, claim the application of that provision in so far as it has itself accepted it.

Article 19

- 1 Any Party may at any time denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.
- 2 Such a denunciation shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of the notification by the Secretary General.

Article 20

The Secretary General of the Council of Europe shall notify the member States of the Council and any State which has acceded to this Convention, of:

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- a any signature;
- b the deposit of any instrument of ratification, acceptance, approval or accession;
- c any date of entry into force of this Convention in accordance with Articles 15, 16 and 17;
- d any other act, notification or communication relating to this Convention.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at Strasbourg, this 24th day of November 1983, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe and to any State invited to accede to this Convention.

An aerial, top-down view of a diverse group of people scattered across a plain white surface. Each person is casting a long, dark shadow to their right, indicating a light source from the upper left. The people are dressed in various casual clothing, including jackets, hoodies, and t-shirts in colors like blue, black, yellow, and red. The overall scene conveys a sense of a large gathering or a public event.

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