

# SERVING JUSTICE OR TRIVIALIZING CRIMES?

Fulfilling the  
Right for Victims  
of Human Rights  
Abuses to seek  
Reparation  
before the  
Serbian Courts  
**2012 Report**



Humanitarian Law Center





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## Introduction

The obligation of the State to provide adequate financial redress to victims of human rights abuses<sup>1</sup> is defined in numerous international conventions on human rights and is derived from the fundamental legal principle of accepting responsibility for harm done. In most societies that have gone through periods of massive human rights violations, the issue of financial reparations for victims is one of the most important elements of establishing the rule of law and providing justice for crimes committed in the past. Identification of victims, creation of programs suitable for the needs of victims, and ways in which those programs are financed are just a few of the important issues considered by post-conflict societies in their overall effort to provide reparations to victims of human rights violations.<sup>2</sup>

After the toppling of the regime of Slobodan Milošević, the issue of reparations for victims of human rights abuses committed by Serbian forces<sup>3</sup> in the 1990s was not considered very important by institutions in Serbia, except in two high profile cases of crimes committed against Milošević's political opponents, which outraged everyone in Serbia.<sup>4</sup> Although this aspect of establishing transitional justice is also less than satisfactory in other post-Yugoslav states<sup>5</sup>, the lack of interest in these issues in Serbia is unparalleled in the region. Ethnic or other discrimination against the victims of human rights abuses committed by Serbian forces, in court proceedings which were initiated to grant them the status of civil victims of war is prevalent. Court practice makes it almost

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- 1 "Victim" is an individual upon whom damage was inflicted, including physical injury, psychological harm, emotional suffering, financial loss or a significant reduction in fundamental rights, either by acts or failure to prevent such acts, both of which represent serious violations of international criminal law or international humanitarian law. The term "victims" also includes immediate family members or dependent family members of the direct victim". (*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*, Resolution of the General Assembly of the United Nations adopted No. 60/147, adopted on December 16, 2005).
  - 2 More information on the experiences of other post-conflict societies in the creation of victim reparation programs can be found in: Pablo De Greiff, ed., *The Handbook of Reparations* (Belgrade: Humanitarian Law Center, 2011).
  - 3 "Serbian security forces" includes the Yugoslav National Army (JNA), Yugoslav Army (VJ), and Ministry of the Interior (MUP) forces of the Republic of Serbia.
  - 4 The RS paid €250,000 each to the families of four victims killed in an attempted assassination of Vuk Drašković and €250,000 to the family of assassinated former president of the Presidency of the Socialist Republic of Serbia, Ivan Stambolić.
  - 5 See: *Transitional Justice in Post-Yugoslav Countries: Report for 2010-2011*, (Belgrade: Humanitarian Law Center, 2013), pages 107-125.

impossible for them to exercise their right to reparations, creating an even stronger impression that a new systematic wave of human rights abuse is underway in Serbia.

Due to the fact that Serbian-controlled armed forces committed crimes on the territory of almost the entire former Yugoslavia (Croatia, BiH, Kosovo, and Serbia), there is a huge number of victims who should receive reparations from the Republic of Serbia. A vast majority of them are victims who were citizens of other states at the time the crimes against them were committed (Croatia, BiH), or became citizens of other countries after the end of an armed conflict (Kosovo). The other group of victims encompasses citizens of Serbia or those who became citizens after the fact.<sup>6</sup>

In order to exercise their rights, victims from other post-Yugoslav countries and citizens of Serbia have filed several hundred compensation lawsuits against the Republic of Serbia privately or by proxy through the Humanitarian Law Center (HLC)<sup>7</sup>. In addition to court proceedings, several citizens of Serbia have initiated administrative proceedings against the Republic of Serbia in order to be granted the status of civil victims of war as stipulated in the Law on the Rights of Civil Invalids of War.<sup>8</sup>

Compensation lawsuits are based on several international conventions and human rights protection standards<sup>9</sup> and on the Law of Contracts and Torts (ZOO):

Article 172: (1) A legal subject is responsible for damages caused to a third party by its organs during the fulfillment of their duties or with respect to the commission of their duties.

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6 These are mostly residents of the Republic of Croatia who have fled to Serbia following Operation “Storm/Oluja” and then pressed into service by the RS.

7 From 2000 to the present day, in compensation lawsuits filed against the State (Serbia, Montenegro, and Kosovo) the HLC has represented over 1,000 victims of war crimes, torture, illegal detention, forced mobilization, and other serious human rights violations committed by Serbian forces in BiH, Croatia, and Kosovo.

8 More on the Law on the Rights of Civil Invalids of War: *A Guide Through Reparations* (Belgrade: Humanitarian Law Center, 2010).

9 The Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment (1984); The International Covenant on Civil and Political Rights (1976); UN Resolution *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), etc.

Article 180: (1) For damages caused to a physical person by death, bodily injury or damage, i.e. the destruction of property by acts of violence or terror, or during public rallies and manifestations, the State, whose organs where bound by current laws to prevent such damages and injuries, will be held responsible for all such damages and/or injuries.

Before the completion of justice system reform in Serbia, first-instance proceedings in all compensation lawsuit cases initiated by the HLC were conducted before the First Municipal Court in Belgrade.<sup>10</sup> Following the reform, all cases were transferred to the First Basic Court i.e. the High Court in Belgrade. In all of these cases, the State is represented by The Public Attorney's Office of the Republic of Serbia (RJP) or the Department of Legal and Ownership Affairs of the Ministry of Justice. Proceedings are conducted in accordance with the provisions of the Civil Procedure Law of RS (ZPP).

This Report offers a review of 15 cases in which HLC represented victims and which resulted in court decisions in 2012. There were a total of 18 judgments, 12 of which were negative and six positive, which awarded a total of RSD 1.76 million to victims of human rights abuses com.

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## **I Compensation Lawsuits in Serbia: Main Characteristics**

The courts in Serbia have not made any changes to their their practices with regard to compensation lawsuits filed by victims of human rights abuses committed in the 1990s. The courts still routinely reject compensation lawsuits, either on the grounds of the statute of limitations or due to the inadmissibility of evidence presented by the victims. Proceedings take a very long time and justices assigned to the cases often treat the victims and their witnesses with disrespect, openly taking the side of the State. There are very few judgments awarding compensation to the plaintiffs, and those cases only reflect personal professionalism of some judges.

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<sup>10</sup> In accordance with Article 40 of the new Civil Procedure Code (the Official Gazette of the Republic of Serbia, No. 72/2011, or in accordance with Article 41 of the old Civil Procedure Code (the Official Gazette of the Republic of Serbia, No. 125/2004 and 111/2009), lawsuits against the Republic of Serbia are initiated before a court on whose territory is the main office of the assembly.

More and more victims decide to terminate court proceedings, quoting a range of reasons such as lengthy proceedings, the repetition of procedural actions, and the loss of confidence that they will receive legal satisfaction through those proceedings. In 2012 four victims decided to drop their compensation lawsuits.

## **I. Victim-Unfriendly Interpretation of the Provisions of the Statute of Limitations in Reparation Cases**

Most compensation lawsuits filed with the Serbian courts are rejected on the grounds of the statute of limitations. In 2012 the courts rejected the compensation claims of 23 victims. Such court practice is in contradiction with domestic laws and international human rights protection standards.

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Violations of fundamental human rights that are the subject matter of compensation lawsuits presented in this Report are by nature the most serious criminal acts committed by members of the Serbian police and/or military. They are cases of war crimes committed against civilians and prisoners of war, torture, inhumane treatment, months-long illegal detention, etc. Bearing in mind this fact, the compensation lawsuits are based on the provisions of ZOO explicitly stipulating the responsibility of the State for illegal conduct of State employees (see the text above). In accordance with this, and in terms of the statute of limitations on the right of victims to claim reparations, the lawsuits are based on one of the provisions of ZOO stipulating longer statute of limitation periods in case of criminal acts:

Article 377: (1) When damage is caused by a criminal act with a longer statute of limitations period, the statute of limitations on the compensation lawsuit against the responsible party only expires at the time when the statute of limitations for prosecuting that criminal act expired.

In their explanation of decisions rejecting compensation claims, the courts most often invoke a legal interpretation of the Supreme Court of Serbia (VSS) from 2004 that explicitly interprets this provision in a manner unfavorable for the victims, thus providing permanent immunity for the State, for the crimes committed in the past by State employees in their official capacity. According to this interpretation, a longer statute of limitations from Article 377 of ZOO can only be applied if compensation is claimed directly from the perpetrator of the criminal act and not from the State as the legal subject, i.e. with the State being responsible for the criminal acts committed by its employees in

their official capacity (Articles 172 and 180 of ZOO, see page I of this Report). Speaking in practical terms, this interpretation instructs victims seeking compensation to undertake actions to identify, on their own, persons who fired their weapon at them, for example, from a firing squad, during an armed conflict, because in the vast majority of cases the state authorities have not identified perpetrators of war crimes or human rights violations.<sup>11</sup> In the opinion of the HLC even if the identity of the perpetrators is revealed, it should not release the State from the responsibility for human rights violations conducted systematically, on a large scale, and with impunity.

According to the above-mentioned interpretation of the law by VSS, the standard statute of limitations is applied in cases when plaintiffs seek compensation from the State – three years from the moment the plaintiff learned about damages (the subjective cut-off date), while the ultimate expiry of the statute of limitations is determined to be five years from the moment damage occurred (the objective cut-off date). That means that the victims of war crimes and other human rights violations committed during the wars in Croatia and BiH were eligible to file their compensation claims up until the year 2000, and for those crimes committed in Kosovo, no later than 2004. It should be emphasized that in both cases, the time frame is marked with a complete lack of confidence in state institutions that would have conducted those proceedings, because it was the time during or immediately after the toppling of the regime responsible for those crimes.

Further confirmation of the VSS 's rigid interpretation of Article 377 of the ZOO which makes it impossible for victims of crimes committed by Serbian forces to receive compensation from the Republic of Serbia can be found in the completely opposing interpretations of two analogous legal situations by the VSS and the Constitutional Court of Serbia.<sup>12</sup>

The issue of the statute of limitations on the right to seek reparations was also debated by international organizations monitoring the human rights situation in Serbia. The Council of Europe Commissioner for Human Rights<sup>13</sup> and

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11 11 members of the MUP of the RS, VJ and JNA have been sentenced so far in proceedings conducted by the courts in Serbia.

12 More information can be found in: *Material Reparations for Human Rights Violations Committed in the Past: Court Practice in the Republic of Serbia*, (Belgrade: Humanitarian Law Center, 2011), 7.

13 Report by Thomas Hammarberg, The Council of Europe Commissioner for Human Rights following his visit to Serbia between June 12-15, 2011, point 2.b. paragraph 27.

the United Nations Human Rights Committee<sup>14</sup> have both expressed concern over the fact that victims are unable to obtain financial reparations beyond a five-year deadline.

## 2. Courts Minimize the Responsibility of the State

The only way for victims to obtain even partial compensation for the injustice they have endured is to prove during proceedings that torture, illegal detention, or other forms of abuse they suffered, caused consequences that can be described as:

- a) Consequences are permanent (for example a chronic form of post-traumatic stress disorder (PTSD));
- b) Consequences were diagnosed as final but no longer than five years ago (within the standard statute of limitations period);
- c) Resulting in a reduction of overall quality of life.

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The HLC always demands that the court appoint a medical expert in order to establish the above listed circumstances. If these circumstances are confirmed by a medical expert, victims are granted the right to seek compensation based on the reduction of overall quality of life. Other damages, such as the death of a loved one, violation of one's personal rights and freedoms, physical pain and fear, are rejected based on the statute of limitations.

Although in this way the victims are able to receive at least some satisfaction, it is clear that the responsibility of the State for the human rights violations committed in the past is significantly minimized. In other words, the courts only recognize the responsibility of the State for the consequences, while completely ignoring the cause and the context in which they occurred (a period of massive and systematic human rights violations). The result is that this allows the courts to use the same criteria when determining the amount of financial reparation for the reduction in overall quality of life caused by serious human rights abuses committed by persons acting on behalf the State as

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14 Final remarks of the United Nations Human Rights Committee on the occasion of the submission of the Second Periodic Report of the Republic of Serbia on the Implementation of the International Covenant on Civil and Political Rights, March 14 – April 1, 2011, point 10.

they would do when assessing the reduction in overall quality of life caused in situations not related with illegal actions of the State, police or military (car accidents, for example).

### 3. Impunity for Crimes Committed in the 1990s Thwarts Reparation Processes

Given the scope of human rights violations committed by Serbian forces in the 1990s, very few members of the police and military have been criminally prosecuted so far.<sup>15</sup> This is particularly true for human rights abuses committed on the territory of Serbia in the 1990s. While many perpetrators have been tried before the ICTY and before national courts for crimes committed in Croatia, Bosnia and Herzegovina, and Kosovo, only three perpetrators has been sentenced for human rights abuses committed on the territory of Serbia.

The clear lack of rulings against members of the Serbian police and military in criminal cases significantly reduces the opportunity for victims to exercise their right to reparation. Essentially, without a ruling in a criminal case, victims are faced with the need to produce evidence that members of the police and military committed the most heinous crimes against them and the burden of proof lies with the plaintiff. In other words, victims must independently prove the commission of crimes, something that State institutions should have done *ex officio*<sup>16</sup>. Also, without existing criminal rulings, it is not difficult for the courts to reject victims' compensation claims, using an Interpretation of the Constitutional Court of Serbia from 2011.<sup>17</sup> This interpretation stipulates that in the absence of a criminal ruling against members of police and military, the statute of limitations on compensation claims against claims is five years after the damaging event took place.

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15 Most of the perpetrators tried belonged to armed formations described as paramilitary in legally binding decisions.

16 More information on burden of proof problems can be found in finding No. 4 of this Report.

17 More details about the Constitutional Court of Serbia interpretation from 2011 can be found in: *Material Reparations for Human Rights Violations Committed in the Past: Court Practice in the Republic of Serbia*, (Belgrade: Humanitarian Law Center, 2011), 7.

#### **4. Rigorous Standards for Admission of Evidence Ignore the Context of Massive Human Rights Violations**

In each individual compensation lawsuit, victims are required to provide evidence that convinces the Court that members of the Serbian armed forces committed a particular war crime, torture, inhumane treatment, or other serious violation of fundamental human rights. In other words, victims are asked to prove beyond reasonable doubt that a most serious crime was committed against them by members of the Serbian police or military who (in most cases) have never been criminally prosecuted.

Most often, the courts insist on evidence of the crime, from the time of the commission of that crime. Victims are further asked to provide medical documentation generated shortly after the violence even if according to their statements (see the case of Fehrat Suljić), it was impossible to obtain it.

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Often, victims come from very traditional and patriarchal societies where men seek medical help only when absolutely necessary (see the case of Agron, Ekrem, and Fahri Ejupi).

Additionally, the courts show no understanding for the fact that in the 1990s the victims feared for their lives and the lives of their families and they were not in a position to collect *prima facie* evidence of the suffering they endured.

#### **5. Courts Trust Neither the Victims nor the Evidence They Present**

The HLC requests that the victim's testimony is heard in the course of the presentation of evidence because the victim is, in most cases, the only direct witness to what happened. The HLC also suggests other witnesses who may have been eye-witnesses to the incident or who may have indirect knowledge that members of the police or the military took part in illegal actions. There are few compensation lawsuits in which victims can submit a judgment delivered at a criminal trial of the perpetrator. In cases of illegal detention, victims or their proxies can file official documents issued by State authorities or the International Committee of the Red Cross (ICRC) confirming that a person was indeed held in detention. There are some very rare official documents testifying about human rights violations committed by members of MUP (see some of the cases of torture of Bosniaks in Sandžak).

Evidence submitted by the victims is often questioned, doubted, and its validity and authenticity denied by the courts. On the other hand, witnesses and evidence supplied by the proxies of the State are declared admissible without questioning, even though in some cases they contradict each other (see the case of Fehrat Suljić), or they are obviously of a lesser probative value (as in the cases of Enes Bogilović and Mušan Džebo). Judges accept the statements of police officers that tortured victims, and dismiss the statements of the victims as untruthful despite corroboration by statements of other witnesses or by other evidence (see some of the cases of illegal detention in Šljivovica and Mitrovo Polje).

Despite credible and authentic evidence and testimonies submitted by victims which point to the commission of the most serious human rights violations, courts and court-appointed experts use a range of euphemisms to trivialize these heinous crimes. For example, in the case of Šefćet Mehmedović, in its explanation of its judgment, the Court states “due to the fact that the plaintiff was *brought to the police station* [author’s italics] for questioning ... the plaintiff developed a manifestation of psychopathological behavior”, although the Court accepted in its entirety the testimonies of Šefćet Mehmedović and other witnesses who testified that he was brutally abused by police officers in the police station in Novi Pazar a number of times and the Court itself recognized this fact in the judgment.

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## **6. Unprofessional Treatment of Victims by Judges and the RJP**

During their Court testimonies, victims often experience further trauma. They are asked to remember the details of the most difficult times in their life; they are asked to talk about the fear and uncertainty they felt at the time of the crime; and they are asked to discuss intimate details concerning their health and the physical and psychological consequences of the violence.

Unlike the War Crimes Trial Chamber of the High Court in Belgrade, the courts litigating compensation lawsuits do not offer any kind of psychological or other professional support to victims during the proceedings, which leaves them dependent on the attitudes and empathy of the judges and RJP representatives who question them.

In 2012 in compensation lawsuits at which the HLC represented the victims,

with few exceptions, judges and RJP representatives treated the victims and witnesses in a wholly unprofessional and inappropriate manner. They often demonstrated their intolerance and belittled the victims, asked legally irrelevant questions (the case of Saranda, Jehona, and Lirie Bogujevci) or interrupted testimonies in order to comment on the victims' statements.

An especially illustrative example of unprofessional treatment of victims of serious human rights violations is that of witness Čamil Durmišević (who testified in the lawsuit filed by HLC on behalf of Enes Bogilović and Mušan Džebo, former prisoners of Šljivovica and Mitrovo Polje detention camps). Durmišević was interrupted by the RJP representative Vera Krdžić who loudly remarked "of course the border patrol intercepted them when they entered the country illegally". Later, she asked Durmišević why he had failed to report abuse by the guards to physicians or ICRC representatives who visited the camp.<sup>18</sup> During the same hearing, Justice Vesna Stanković at the High Court in Belgrade, interrupted Durmišević several times, urging him to hurry up with his statement. She later dictated the minutes of the hearing and additionally shortened his testimony, despite the Appellate Court in Belgrade having previously rejected the ruling of this court due to its failure to properly establish all the facts.<sup>19</sup>

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Judges and court clerks often mis-spell the names of the victims in the minutes of the hearing and in the court rulings. The names of the places they mention in their testimonies are also often mis-spelt and all of these mistakes are corrected only after the intervention of the HLC lawyer.

## **7. Victims' Rights to Fair Trial Violated by Lengthy Court Proceedings**

On average, compensation lawsuits in Serbia last for five years which constitutes a violation of a victim's right to a fair trial according to the standards set by the European Court for Human Rights.<sup>20</sup>

The reason behind this is that hearings are scheduled in approximately three-

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18 Main hearing held on May 31, 2012.

19 Ibid.

20 Cvetković vs. Serbia (Communication No. 17271/04), judgment of June 10, 2008, Stvanovic vs. Serbia (Communication No.26642/05), judgment of October 9, 2007, V.A.M. vs. Serbia (Communication No. 39177/05), judgment of March 13, 22007.

month intervals and they are often cancelled. In 2012 a total of nine hearings were cancelled, mainly because the findings of court-appointed experts were delayed.

The justice system reform in Serbia resulted in an interruption of court proceedings between the end of 2009 and mid 2010. Further delays occurred when newly appointed justices insisted on hearing the victims for a second time (see the case of Saranda, Jehona, and Lirie Bogujevci).

The most drastic example of a lengthy trial is the case filed by HLC on behalf of 25 members of a Bosniak family from Sjeverin who were abducted from a bus, on their way to Priboj, on October 22, 1992. After the judgment of the First Municipal Court in Belgrade issued on February 6, 2009<sup>21</sup>, the HLC filed an appeal with the Appellate Court within the 15-day deadline. Despite regular interventions from the HLC lawyer, the Appellate Court in Belgrade has yet to make a ruling with respect to the HLC appeal as of the date of issue of this document, some four years after the case was filed.

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## **8. Compensation Awards Fail to Advance the Culture of Human Rights in Serbia**

In the last ten years, in lawsuits filed by the HLC, the Serbian courts have awarded minimal compensation amounts to victims of violations of fundamental human rights committed by members of Serbian armed forces. On average, Bosniak victims who were abused in police stations or ethnic Albanians who were arrested in 1999 and held in illegal detention in extremely inhumane conditions for many months were awarded compensation amounts of between RSD 200,000 and 300,000.

Standard court practice remained unchanged in 2012. The courts ordered the State to pay a total of RSD 1.76 million in damages to victims of torture and illegal detention (eight victims). The highest compensation amount was awarded to Bosniak Mujo Vatreš (RSD 500,000) in a decision that has yet to become legally binding. The lowest amount (RSD 200,000) was awarded to Kosovo Albanians Smajl Gashi and Rrahman Elshani, an amount comparable

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21 See HLC Press Release "Request for Reparation of Family Members of Kidnapped Persons from Sjeverin Denied", dated April 7, 2009.

to that routinely awarded in libel cases (a much less serious criminal act) at a time when libel was considered a criminal act.<sup>22</sup>

Financial reparations represent an epilogue to court proceedings in which the Court recognizes the right of the victims to be compensated for the hardship they endured. From the aspect of human rights and the establishment of the rule of law, financial reparations are a symbolic equivalent to the injustice inflicted upon the victim and the responsibility of the State for human rights abuses. They should also represent a sign of readiness of society to help victims regain their dignity. The low compensation amounts awarded by the Serbian courts to the victims of crimes committed by members of Serbian forces in the 1990s fail to meet any of the above criteria.

## **II Overview of Cases in Which Victims are Represented by the HLC**

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### **I. Torture of Bosniak Residents in Šljivovica and Mitrovo Polje**

Before the beginning of the war there were approximately 3,000 residents in Žepa, most of whom were Bosniaks. When the war began, that number increased due to an influx of refugees from surrounding places (Han Pijesak, Rogatica, Vlasenica, Višegrad), so that by July of 1995 there were between 6,500 and 10,000 people living in Žepa.<sup>23</sup> Žepa was declared a safe area under UN protection in a Resolution adopted by the Security Council of the UN on May 6, 1992.<sup>24</sup>

After the fall of Srebrenica, on July 11, 1995, the Army of Republika Srpska (VRS) directed its operations towards Žepa. Following unsuccessful negotiations between political and military representatives of Žepa and the VRS, Žepa

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22 "Slander: Pricelist for Lies", internet stranica *Večernje novosti*, December 16, 2012, <http://www.novosti.rs/vesti/naslovna/drustvo/aktuelno.290.html:410787-Klevete-Lazi-placaju-prema-cenovniku>.

23 Judgment rendered by the ICTY, Prosecutor vs. Zdravko Tolimir, Case No. IT-05-88/2-T, dated December 12, 2012, para 599.

24 In the same Resolution Srebrenica was also declared a safe zone under the protection of the UN.

was attacked by VRS forces on July 14, 1995. Military operations lasted for ten days. On July 24, 1995, an agreement was reached, allowing civilians to leave Žepa and requiring members of the Army of BiH and all military-age Bosniak men to surrender to the VRS.<sup>25</sup>

At that time, most members of the Army of BiH were in the mountains surrounding Žepa. They were joined by military-aged men who, having heard rumors about the killings of Bosniak men following the fall of Srebrenica, were unwilling to surrender to the VRS. The civilians were evacuated from Žepa between July 25 and July 27. The men hiding in the mountains around Žepa refused to surrender. Some of them headed to the territory of Kladanj, which was controlled by the Army of BiH, while another group, some 800 men, decided to seek refuge in Serbia. They crossed the River Drina in small groups between July 29 and August 4, 1995 using improvised sailing craft, boats or simply by swimming.

Once they arrived on the Serbian side of the Drina River, they were arrested by border patrols from the VJ. As they were arrested, they were searched and all of their valuables and money were confiscated. Mujo Hodžić, a young man from Žepa, was tortured and later killed by VJ members on Mount Zvezda. VJ members took the captured Bosniaks in groups to the school playground in the village of Jagoštica (in the Bajina Bašta municipality). On the way there, the Bosniak men were forced to run and the VJ soldiers frequently hit them as they ran.

The school playground was secured by members of the Serbian MUP. When the Bosniak men were brought into the playground, they were searched again and all of them were ordered to kneel or lie down and not look up. Some spent 24 hours or longer in that position, during which time the soldiers verbally abused and hit them. Occasionally, they even let civilians into the school playground to beat the captured men.

From Jagoštica, the captured Bosniaks were transported in military trucks to buildings in Šljivovica (in the Čajetina municipality) and Mitrovo Polje (in the Aleksandrovac municipality).<sup>26</sup> The trucks carrying the captured Bosniaks were designed to carry 15 people but they all carried close to 50 people. Due to extreme heat and oxygen deprivation, many prisoners lost consciousness and

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25 Ibid, para. 630-633.

26 In Šljivovica, Bosniak men were locked up in abandoned workers' accommodation at the *Planum* Company and those who were taken to Mitrovo Polje were locked up in a children's resort.

Edem Torlak from Žepa died from suffocation. His body was taken from the truck only upon their arrival to Šljivovica.

Both detention camps were guarded by members of the Serbian MUP. When they arrived at the camp, the captured Bosniaks had to pass between two lines of officers who beat them as they passed and they were once again searched and held in custody. The rooms were overcrowded by any standards. In the beginning there were no beds and everybody slept on the floor. They only received food rations once a day. The last one to finish eating would be beaten by the guards. During the first month of their imprisonment, the prisoners in Šljivovica were not allowed to take a shower and when an improvised shower was finally set up in the backyard, it only supplied cold water.

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During the night police officers would call on some prisoners by name or just pick individuals out and took them outside where they beat them with police batons, sticks, or electrical cable. Some policemen extinguished their cigarettes on the bodies of the Bosniak prisoners and made them drink water to which they had previously added motor oil. There were also several cases of sexual abuse. Police officers beat and tortured prisoners in a variety of ways both physically and mentally every day – they ordered them to run all night in the prison yard, to do push ups, or stare at the Sun until they fainted. Four prisoners died from the consequences of the abuse: Ahmo Krlić, Meho Jahić, Šćan Dizdarević, and Nazif Krlić.

Police inspectors and State Security (DB) inspectors questioned the prisoners about their participation in the war. In the detention camp in Šljivovica, police officers and DB inspectors questioned the prisoners in room No. 4, and in the Mitrovo Polje camp they were interrogated in a building dubbed “Kota 805”, by the policemen, which was not far from the barracks. During the interrogation, prisoners were beaten and forced to confess that they had taken part in crimes committed against Serbs. Those men identified as having belonged to the Army of BiH or those known to have been in the civil administration in Žepa received especially cruel treatment. Representatives of the ICRC entered the Mitrovo Polje detention camp for the first time on August 18, 1995, where they were able to make a list of the majority of prisoners. After the visit of the ICRC, food and hygiene product packages, blankets, mattresses, and cigarettes were sent to the detention camp, but those supplies rarely made their way to the prisoners because they were taken by the police officers. The ICRC enabled the prisoners to send and receive letters from their families. At the beginning of December 1995, representatives of the Office of the High Commissioner for Refugees of

the United Nations (UNHCR) visited the camp and made arrangements for the prisoners to go to third countries.

In 2007 and 2008 the (HLC) initiated five compensation lawsuits against the Republic of Serbia (RS) on behalf of 20 prisoners, based on the responsibility of the State for torture and inhumane treatment of prisoners in Serbian detention camps.

The lawsuits filed by the HLC demanded compensation payments for physical and psychological pain, fear and emotional suffering caused by the violation of their personal rights and freedoms, and for the emotional pain caused by the reduction in their overall quality of life.

In 2012 the HLC represented 15 former prisoners and initiated five compensation lawsuits on their behalf against the Republic of Serbia. Two court judgments were rendered.

### **1.1. Enes Bogilović and Mušan Džebo Case**

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Enes Bogilović fled his native village near Rogatica with his family in April 1992 and went to Žepa where he stayed until its fall in July 1995. He did not belong to the Army of BiH. Mušan Džebo was from a village near Han Pijesak. He was a telephone operator in the Army of BiH. At the time Žepa fell he was stationed at a position near Žepa. Bogilović and Džebo fled to Serbia on August 2, 1995 with a dozen other Bosniak men.

On the Serbian side of the River Drina they were intercepted by a VJ border patrol and taken to Jagoštica where they were treated like all other Bosniak prisoners. The following day they were taken to the Šljivovica detention camp. As he was trying to get on the truck, a police officer hit Enes on the neck with a police baton after which he lost consciousness. In the Šljivovica detention camp Enes and Mušan were locked up in a room with approximately 100 other prisoners. During their time in the detention camp, Enes and Mušan were beaten a number of times. On one occasion Enes was beaten and policemen extinguished cigarettes on his body. Mušan urinated blood from the beatings. Both Enes and Mušan, like other Muslim prisoners, experienced religious and cultural humiliation – they were forced to make the sign of the cross on their chest if they wanted to use the bathroom, to sing Chetnik songs, etc. Both were threatened and forced to give themselves with Serbian names. Mušan and Enes were freed from the camp following the intervention of the UNHCR. Mušan was released on December 6, 1995 and Enes was released on January 29, 1996.

The torture and fear they suffered in the detention camp had numerous serious and permanent consequences on both Enes and Mušan's health. Both men have been diagnosed with the Post-traumatic Stress Disorder (PTSD) and both had to undergo several surgical procedures to reverse the physical consequences of the beatings. Mušan was also diagnosed with diabetes.

### **The Lawsuit**

On behalf of Enes Bogilović and Mušan Džebo, the HLC filed a compensation lawsuit against the Republic of Serbia at the First Municipal Court in Belgrade on November 23, 2007.<sup>27</sup> The lawsuit demanded the institutions of the Republic of Serbia pay a combined total financial compensation of RSD 2.6 million to Bogilović and Džebo for the physical and psychological pain, fear and emotional suffering caused by the violation of their personal rights and freedoms, as well as for the emotional pain caused by a reduction in their overall quality of life. Along with the lawsuit, the HLC enclosed their medical documentation and the IRCC statements confirming that Bogilović and Džebo were held prisoners in the Šljivovica and Mitrovo Polje detention camps.

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### **Response to the Lawsuit**

In their response to the compensation lawsuit, the RJP denied the allegations that Džebo and Bogilović had suffered physical and psychological torture. They also stated that the prisoners had been treated, like all other Bosniak prisoners, in accordance with UNHCR standards. Additionally, the RJP rejected claims that Šljivovica and Mitrovo Polje were detention camps and called those facilities "collection centers" instead. The medical records of Bogilović and Džebo were also rejected because "they date back to 2006 and they were issued in Sarajevo although the plaintiffs stated that their countries of residence were France and Ireland."

### **Course of the Proceedings<sup>28</sup>**

There have been no hearings in the first year following the filing of the lawsuit. Only after the intervention of an HLC lawyer, did the President of the First Municipal Court assign the case to another judge. The preparatory hearing was held 15 months after the lawsuit had been filed. There have been a total

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27 HLC Press Release issued on the occasion of the initiation of the compensation lawsuit on behalf of former prisoners "Žepa Bosniaks sue Serbia over Detention and Torture in Šljivovica and Mitrovo Polje Camps" dated January 15, 2008.

28 Case No.: P-46097/2010; in the retrial of Case No.: P-5238/2012.

of nine hearing days during which the Court heard Bogilović and Džebo and four witnesses called by the RJP.<sup>29</sup>

Bogilović and Džebo testified about inhumane treatment, torture by the police officers, and the trauma they experienced in the detention camps.<sup>30</sup> At the beginning of 2010, due to a reform of the justice system and changes made to the composition of the Trial Chamber, Džebo and Bogilović repeated their testimonies before a new Trial Chamber. The four witnesses called by the RJP were also heard. They all denied allegations that police officers had abused or inhumanely treated the imprisoned Bosniak men.<sup>31</sup>

The Court rejected as “redundant” a motion from the HLC lawyer to hear two witnesses – former prisoners – about the conditions in which the prisoners lived, the availability of food, and the treatment of the prisoners by the police officers. The motion also included a request for a new medical examination to be conducted in order to establish the health of Enes Bogilović and Mušan Džebo. Also, Justice Vesna Stanković refused to hear Amor Mašović, President of the Bosnia and Herzegovina Commission on Missing Persons who visited the two detention camps in April of 1996.

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## **The Judgment**

On November 17, 2010 the First Municipal Court reached a decision rejecting the compensation lawsuit filed by the HLC on behalf of Mušan Džebo and Enes Bogilović in its entirety. On December 13, 2010 the HLC lawyer filed an appeal with the Appellate Court in Belgrade.

## **Judgment of the Appellate Court**

In a ruling handed down on March 2, 2012, the Appellate Court overturned the decision reached by the First Municipal Court and submitted the case for retrial. The Appellate Court established that the first-instance court had not evaluated the facts properly and instructed the lower-instance court to hear the proposed witnesses and order psychiatric investigations in order to establish the facts.

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29 Justice Vesna Stanković.

30 Details from the testimonies of Džebo and Bogilović can be found on the HLC website in the trial report dated April 9, 2009.

31 Details from the testimonies of the four witnesses for the RJP can be found in: *Material Reparations for Human Rights Violations Committed in the Past: Court Practice in the Republic of Serbia*, (Belgrade: Humanitarian Law Center, 2011), 16-18.

## The Retrial

There were two main hearings in the retrial and one witness was heard.

Witness Ćamil Durmušević, a former prisoner, confirmed that he had been detained in Šljivovica at the same time as Džebo and Bogilović. He knew the two men from before their detention. During their stay in the detention camp, he had taken food from the canteen to Bogilović because he was in a really bad shape after being beaten by the police. The only medical care Bogilović received was a sedative brought by the representatives of the ICRC. On one occasion he witnessed a beating of Bogilović when he went out to get some water. The witness spent the last month of his imprisonment in the same barrack room with Bogilović and they left the Šljivovica detention camp on January 29, 1996. Džebo was in slightly better shape, although every prisoner was occasionally beaten and abused.<sup>32</sup>

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During the retrial, the HLC lawyer entered into evidence the report of the BiH Commission on Missing Persons, issued following a visit of their delegation to the detention camps in April 1996.

After the hearing of Ćamil Durmišević, the HLC lawyer submitted a motion calling for an expert psychologist to be heard with the purpose of establishing the level of psychological damage caused by the torture that the two men had been exposed to. This motion was rejected as redundant and the Trial Chamber concluded the main hearing.

## Judgment in the Retrial

On June 1, 2012, the Trial Chamber handed down a decision rejecting the compensation lawsuits of Mušan Džebo and Enes Bogilović as unfounded, further explaining that the first-instance court was guided by a comment made by the Appellate Court that “the fact whether or not torture was present in a specific case does not depend on whether the venue was called a detention camp or a collection center but on the behavior of the representatives of the institutions of RS”. However, the Court did not accept as truthful, the testimonies of Bogilović, Džebo, and Durmišević.

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32 Details from the testimony of Ćamil Durmišević can be found on the HLC website in the trial report dated June 11, 2012.

## Analysis of the Judgment

I In its explanation of the judgment, the court stated that it did not trust the testimonies of Bogilović and Džebo concerning physical and psychological torture “to which they had allegedly been exposed” because “they were not in compliance with the rest of the evidence that the court admitted as trustworthy”. The Court accepted as truthful the testimonies of the witnesses for the RJP, describing them as “clear, convincing, logical, and in compliance with all other evidence the court considered trustworthy.”

Following instructions from the Appellate Court to further clarify the facts surrounding the allegations of poor living conditions in the camp, torture, and inhumane treatment of Bogilović and Džebo by the police officers, the first-instance court heard one witness (Ćamil Durmišević), but found his testimony untrustworthy despite having been an eyewitness to some of the relevant events, including the physical abuse of Bogilović. Despite the corroborating statements of the victims and the eyewitness and other introduced evidence (the report of the BiH Commission on Missing Persons), the Court (once again) based its decision on the statements of the witnesses from the RJP who had no direct knowledge of what was happening to Džebo and Bogilović and who had only briefly visited the camp on a number of occasions. Most concerning is the case of witness Jovo Savić<sup>33</sup> whom the court trusted completely with respect to his evaluation of the treatment of the prisoners, although this witness stated personally that he had never visited the Šljivovica detention camp.

II The court completely dismissed the official report of the BiH Commission on Missing Persons describing the living conditions and the treatment of the male prisoners in Mitrovo Polje and Šljivovica detention camps, which was drafted following their delegation’s visit to those camps in April 1996. More accurately, only one part of the report was quoted in the first-instance decision – a legally irrelevant part describing the living conditions in the camp – while more relevant parts describing poor physical and mental health of the prisoners and their complaints over their treatment by the police were completely ignored by the court.

III During the retrial, members of the Trial Chamber established that the illnesses Džebo and Bogilović suffered from could not have been caused by the torture they had experienced. Despite the Court’s legal obligation to engage

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33 Employee of the Emergency Medical Center in Užice.

court-appointed experts when establishing facts beyond their professional knowledge<sup>34</sup>, the court rejected the motion of the HLC lawyer to call a medical expert for the purpose of establishing the level of the reduction to overall quality of life as a direct consequence of torture they were exposed to. In its decision to overturn the first-instance decision and return the case for a retrial, the Appellate Court pointed out the need to hear additional medical experts saying that torture allegations “must have been checked [...] by conducting a psychiatric examination as suggested by...”

**IV** Another unacceptable conclusion of the decision is the one concerning the “physical abuse of the prisoners”: the court concludes that there was no systematic physical and psychological abuse of the prisoners because “the medical personnel tasked with providing medical care to the prisoners did not see signs of abuse, such as bruises or other injuries on the bodies of the prisoners.” The court claims that due to an obvious absence of visible injuries on the bodies of Bosniak men, it can be concluded that they had not been exposed to psychological abuse. This conclusion is completely unacceptable from the point of view of common sense and elementary logic.

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### **1.2. The Case of Mujo Vatreš, Halil Durmišević, and a minor, Senad Jusufbegović**

Mujo Vatreš is from Žepa. He did not belong to the Army of BiH. After the fall of Žepa he crossed the River Drina with a group of Bosniak men. When he reached the Serbian bank of the River Drina he was arrested by a VJ border patrol and taken to Jagoštica<sup>35</sup> and later to Šljivovica. When he was brought to Šljivovica, he had to pass between two lines of police officers who beat him and other new arrivals with wooden batons. After Mujo was processed, police officers started beating him and they didn't stop even after he fell to the ground. The following day he was transferred to the Mitrovo Polje detention camp where police beat him along with other prisoners with wooden batons as they were getting off the bus. While he was in Mitrovo Polje, he was taken out sometimes as often as 30 times a day and beaten, kicked in the back, and held at gunpoint. Some 20 days later he was transferred to the building known as “Rasina” where 36 prisoners

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34 Article 259 of the Code on the Civil Procedure of the Republic of Serbia (ZPP): “The Court will establish evidence by calling for independent experts when additional professional expertise beyond the domain of the members of the trial panel is needed to establish or clarify case related facts”

35 Pleases refer to page 17 for more information about the treatment of imprisoned Bosniak men.

slept on wooden panels without mattresses. They were forced to work on a dam and carry the mud from the dam in crates, which resulted in permanent spinal injuries. He was released on January 24, 1996.

Halil Durmišević is from Rogatica. He was in the Army of BiH. He fled to Serbia on July 30, 1995 by swimming across the River Drina. He was arrested as soon as he reached the Serbian side of the river. He was taken to Jagoštica and then to Mitrovo Polje. Halil was twice taken to an interrogation room where he was kicked and beaten with police batons. They would tell him that “they would not kill him today, but tomorrow he will be killed for sure”. In February 1996, Halil was taken to Šljivovica. He was released on April 10, 1996.

Senad Jusufbegović is from Rogatica. At the time Žepa fell he was 17 years old. He crossed the River Drina to go to Serbia on July 30, 1995 and was immediately arrested by a VJ border patrol and taken to Jagoštica. Later he was taken to Šljivovica. He was beaten by the police officers every time he went out to use the bathroom. Several days later he was transferred from Šljivovica to Mitrovo Polje where he was beaten and questioned on more than one occasion. As was the case with most prisoners, he was forced to give himself a Serbian name and sing Chetnik songs. He was transferred back to Šljivovica again in February 1996. He was released on April 10, 1996.

Vatreš, Durmišević, and Jusufbegović suffer from serious consequences of the physical and psychological torture and inhumane treatment they were exposed to in the Šljivovica and Mitrovo Polje detention camps. All three were diagnosed with PTSD.

## **The Lawsuit**

A compensation lawsuit was filed on December 20, 2007 at the First Municipal Court in Belgrade on behalf of Vatreš, Durmišević, Jusufbegović, and another two former prisoners.<sup>36</sup> The HLC filed a lawsuit against the Republic of Serbia demanding a compensation payment of non-pecuniary damages totaling RSD 6.5 million. Along with the lawsuit, the HLC submitted ICRC records confirming they had been prisoners in Šljivovica and Mitrovo Polje, along with their medical documentation.<sup>37</sup>

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36 Fehim Dudević and Fadil Čardaković dropped their compensation claims once the lawsuit was submitted.

37 HLC Press Release issued on the occasion of the initiation of the compensation lawsuit on behalf of former prisoners “Žepa Bosniaks sue Serbia over Detention and Torture in Šljivovica and Mitrovo Polje Camps” dated January 15, 2008.

## Response to the Lawsuit

The RJP dismissed all fact-based allegations from the lawsuit, claiming that Šljivovica and Mitrovo Polje were not detention camps but collection centers which were accessed by ICRC representatives and visited by medical teams on a regular basis. The RJP also stressed that there was no obvious evidence that the plaintiffs had been tortured and that there was no proven correlation between their current medical condition and any alleged torture. The RJP also invoked the statute of limitations.

## Course of the Proceedings<sup>38</sup>

The trial began on October 7, 2008.<sup>39</sup> There have been six main hearing days during which Vatreš, Jusufbegović, and Durmišević were heard, along with five witnesses, two called by the RJP and three by the HLC lawyer.

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Senad Jusufbegović, Mujo Vatreš, and Halil Durmišević gave detailed accounts of their experience in the detention camps, torture, and humiliation they were submitted to on a daily basis, as well as the medical treatment they underwent after being released from the camp.

Witnesses Ibrahim Kartal and Hajrudin Čavčić, also former prisoners, testified about the harsh living conditions in Mitrovo Polje. They testified that all prisoners who had belonged to the Army of BiH were questioned by interrogators from the Serbian MUP and physically tortured during interrogation. Some were beaten so badly that they were not able to walk after the interrogation. Medical care was scarce because physicians did not visit them often and even when they did, they did not examine all of the prisoners.

Witness Slavenko Ivezić was one of the police officers guarding the prisoners in Šljivovica. He was assigned to that job on August 4, 1995 and in his opinion the conditions were good until the number of prisoners increased and the camp became overcrowded. He claimed that prisoners were never tortured or abused during interrogation. To corroborate his statement that the Bosniak prisoners had been treated properly, he stated that the police officers ate the same food as the prisoners.

Witness Amor Mašović, the then president of the BiH Commission on Missing

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38 Case No.: P-46161/2010; in the retrial of Case No.: P-č-22279/2011.

39 The case was assigned to Justice Maja Cvetić.

Persons, visited Šljivovica in April 1996. He testified that the camp was fenced with barbed wire and secured by armed guards. The prisoners complained of poor living conditions, scarcity of food, and lack of adequate medical care especially in conditions where some prisoners suffered from jaundice and scabies. All 276 prisoners he found at the camp told him that they were beaten on a daily basis.<sup>40</sup>

Witness Radoslav Ojdanić, former Chief-of-Staff of the Foreign Persons' Department of the Užice Internal Affairs Secretariat (SUP) denied allegations that prisoners were abused in this camp and claimed that prisoners came on their own to talk "when they had complaints" and that the prisoners had a kitchen at their disposal where they were able to prepare meals for themselves.

### **Judgment of the First Basic Court in Belgrade**

On July 2, 2010 the First Basic Court in Belgrade rejected the lawsuit as unfounded, invoking the statute of limitations. The position of the court is that in this case it was necessary to apply the objective statute of limitations (five years), which began when the plaintiffs left the camps, i.e. in 1996, and that their claims expired in 2001.

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### **Judgment of the Appellate Court in Belgrade**

In its judgment delivered on July 29, 2011, the Appellate Court in Belgrade upheld the first-instance decision in terms of the application of the statute of limitations in the part concerning compensation claims for the violation of personal rights and freedom. At the same time, the court overturned the judgment and ordered a retrial with respect to three other claims: the suffering of physical pain while in the camp, fear, and the reduction of overall quality of life.

### **The Retrial**

In accordance with the decision of the Appellate Court, during the retrial Mujo Vatreš, Halil Durmišević, and Senad Jusufbegović underwent medical examination. A court-appointed psychiatric expert Dr. Snežana Kuzmanović established that Mujo Vatreš suffered from PTSD, causing a reduction to his overall quality of life. She did not diagnose Senad Jusufbegović with PTSD be-

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40 More details from the testimony of Amor Mašović can be found in the HLC trial report "Compensation Lawsuit over the detention camps in Šljivovica and Mitrovo Polje – testimony of Amor Mašović and Radislav Ojdanić" dated April 13, 2009 (available only in Serbian).

cause he was “able to work and he was able to start a family”. Dr. Kuzmanović diagnosed Halil Durmišević with PTSD causing a reduction to his overall quality of life, but said it could not be attributed with certainty to his stay in the “collection center.”

### **Judgment in the Retrial**

In a decision handed down on November 22, 2012, the Court rejected in their entirety the claims of Senad Jusufbegović and Halil Durmišević and awarded Mujo Vatreš RSD 500,000 in compensation for the reduction of his overall quality of life. The claim by Mujo Vatreš concerning the suffering of physical pain and fear was rejected on the grounds of the statute of limitations.

In its explanation of the decision, the Court stated that the following findings and opinions of the medical expert were admitted into evidence: Mujo Vatreš – because of PTSD his overall quality of life had been reduced, Senad Jusufbegović – there were no consequences related to his stay in the detention camp, i.e. his overall quality of life was not reduced, Halil Durmišević – the reduction of his overall quality of life could not be specifically associated with his stay in the detention camp.

### **Analysis of the Judgment**

I The judgment in this case is the first to establish the responsibility of the Republic of Serbia for the treatment of prisoners in Šljivovica and Mitrovo Polje detention camps.

II The Court’s opinion that the compensation claim for fear, filed on behalf of Vatreš, Jusufbegović, and Durmišević should be subject to the statute of limitations is based on a legal interpretation of the VSS from 2004 which applied the provisions of the ZOO in a manner unfavorable to victims of human rights abuses committed by members of Serbian security forces.<sup>41</sup>

III The court rejected the compensation claim of Halil Durmišević and Senad Jusufbegović for the reduction of overall quality of life invoking the findings and the opinion of the court-appointed expert, which were not in compliance with medical profession rules. The HLC raised numerous objections to the findings of this expert. In her findings, the expert conveyed in detail what Jusufbegović

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41 More information about legal interpretations of the VSS can be found on page 8.

and Durmišević told her about their experience in Šljivovica and Mitrovo Polje, including allegations of torture, starvation, humiliation, and other forms of inhumane treatment. However, after that, without explanation, the expert declared their statements “contradictory”. Later, she admitted that the stay in the “collection centers” had certainly been a very significant event for them, but she listed the separation from their families and limited mobility as experiences that had a more serious impact on their mental health, whilst completely ignoring the extreme situations in which Durmišević and Jusufbegović had experienced serious violence and felt in fear of their lives.

The expert established that Durmišević suffered from PTSD but said that it was not possible to confirm with certainty to what extent his stay in the Mitrovo Polje detention camp was responsible for the development of PTSD since he had been exposed to “negative influences” both before and after his stay in Mitrovo Polje. In his testimony and under examination by the medical expert, Durmišević gave a detailed account of torture and inhumane treatment in Mitrovo Polje which by far exceeded in cruelty, all other negative experiences in his life. For that reason the opinion of this expert, that other negative situations in his life (life in a collection center after the war) could have also triggered PTSD is in the opinion of the HLC completely arbitrary and unsustainable. By using general terms such as “wartime events are highly frustrating for all people”, the expert further diminished the sufferings of Halil Durmišević. The finding that there were no signs of a reduction of overall quality of life in Senad Jusufbegović because “he is well adapted to his environment, he is able to work, and started a family” is in contradiction with his medical documentation which clearly states that Jusufbegović suffers from a permanent personality change caused by PTSD.<sup>42</sup>

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## **2. Torture of Bosniaks in Sandžak**

During the armed conflict in BiH, Serbian MUP officers often searched the houses of Bosniaks living in the Sandžak region (the Novi Pazar, Sjenica, Tutin, and Prijepolje municipalities) under the pretense of looking for illegally owned weapons. In most of those houses, they did not find any weapons, the MUP officers but often took the Bosniaks to the police station or ordered them to report for questioning. During questioning they applied the most brutal tor-

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42 This medical documentation was issued by the Health Clinic of the Canton of Sarajevo and the University Clinic in Sarajevo.

ture in an attempt to force them to confess to owning weapons and/or taking part in “activities against the state”.

A number of criminal complaints have been filed by the Sandžak Committee for the Protection of Human Rights and Freedoms against the police officers responsible for illegal police detention and torture. To date, only three policemen have been sentenced for the abuse of the Bosniaks from Sandžak.<sup>43</sup> Those sentenced for illegal police detention and abuse of the Bosniaks are still employed by the MUP of the Republic of Serbia.

Between 2005 and 2008, the HLC initiated 11 lawsuits against the Republic of Serbia on behalf of 12 Bosniaks - victims of torture in Sandžak - for the responsibility of the State for torture committed by the members of the Serbian MUP. The lawsuits demanded financial compensation for the victims of torture, for the infliction of physical pain, fear, emotional pain, violation of their personal rights and freedoms, and the reduction in their overall quality of life.

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In 2012, the HLC represented seven victims of police torture and on their behalf, initiated a further seven lawsuits against the Republic of Serbia. So far, five verdicts have been handed down.

### **2.1. The Case of Sead Rovčanin**

Sead Rovčanin is from the village of Gračanica (in the Prijepolje municipality). On November 17, 1993, on his way back from the local market, he stopped for a drink at the “Složna Braća” restaurant near his house. He soon realized that the restaurant was surrounded by police. Shortly after, they entered the restaurant and asked everyone to show their identification. They started searching both the customers and the employees. Sead and a woman who happened to be there, were escorted to a police vehicle and taken to the police station in Prijepolje.

In the police station they asked Sead whether he owned any weapons and he was also forced to sign a false statement. Throughout this time he was beaten. In the meantime, a group of policemen searched his house but they failed to find any weapons. After a while, police officer Mileta Novaković came into the room where Sead Rovčanin was being questioned and addressed him saying that “he was the boss and he could do whatever he liked.” He told Sead that

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43 Sabahet Kurtović, Sabahudin Nurković, and Milijan Luković were sentenced to probation in a decision handed down by the Municipal Court in Tutin, Case No.: 377/02 dated August 31, 2004.

the following day “he would sing to him everything he wanted him to say”. Sead spent the night in that room. In the morning, Mileta Novaković took Sead to another office. There he saw police officers Mileta Bezarović and Duško Maračić. Although Sead Rovčanin continued to maintain that he did not have any weapons, Mileta Novaković continued demanding that Sead admit that he owned a weapon and tell him where it was hidden. During this round of questioning, Novaković hit Sead Rovčanin several times in the stomach with his police baton. Then he ordered him to take off his shoes and socks and to kneel on a chair. When he did as he was told, Duško Maračić took the police baton and started beating him on the soles of his feet. The beating went on for half an hour. After that he was given a washbasin filled with cold water to soak his feet so that he would be able to walk. He was then sent back to the room where he spent the night. In the evening he was taken to the prison in Užice where he spent two months. He was tried before the District Court in Užice and sentenced to three months in prison for illegal acquisition, possession, and production of firearms.<sup>44</sup>

Sead Rovčanin suffers from many health problems caused by the torture in the police station in Prijepolje. He has a hearing problem and psychological trauma for which he continues to be treated.

### **The Lawsuit**

On behalf of Sead Rovčanin, on July 30, 2007, the HLC filed a compensation lawsuit with the First Municipal Court in Belgrade against the Republic of Serbia demanding compensation of RSD 1.1 million for the violation of his personal rights and freedoms and the infliction of physical and psychological pain that caused a reduction in overall life quality of life.<sup>45</sup> The HLC proposed a list of witnesses and enclosed Sead Rovčanin’s medical documentation.

### **Response to the Lawsuit**

The Public Attorney’s Office of the Republic of Serbia rejected the compensation lawsuit in its entirety because the statements of the proposed witnesses would not be sufficient to prove the allegations since the witnesses had a personal interest in a positive outcome of the lawsuit. The RJP also invoked the statute of limitations.

<sup>44</sup> Decision of the District Court of Užice, Kž br. 54/95, dated March 22, 1995.

<sup>45</sup> HLC Press Release issued on the day lawsuit was filed on behalf of Sead Rovčanin: “Lawsuit against persons responsible for human rights abuses in Sandžak in 1993”, dated August 3, 2007.

## Course of the Proceedings<sup>46</sup>

The trial began on January 21, 2008.<sup>47</sup> There were 11 main hearing days during which Sead Rovčanin and four witnesses were heard. Three witnesses were proposed by HLC and one witness was called by the RJP. Sead Rovčanin described in detail how he was taken to the police station in Prijepolje and abused. He said that he was unable to stand for an hour after the beating. After he was released from prison he went to Germany where he spent seven years. During that time police officers continued visiting his father and asking about him.<sup>48</sup>

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Witness Duško Maračić, Deputy Commander of the police station in Prijepolje at the time of the event, confirmed that, like many others from that area, Sead was brought to the police station on October 27, 1993, because the police were searching for illegal weapons in the area. He was not present at the questioning of those brought to the police station, including that of Sead Rovčanin. He said that questioning was conducted by “operational personnel”. He denied allegations of police torture and insisted that all those who were questioned were treated in a manner consistent with a “strict respect for the law and human rights”.<sup>49</sup>

Witness Vehbo Mujazinović, who was brought to the police station on the same day as Sead, said that Mileta Novaković and Duško Maračić beat him, too, because he was President of the local branch of the Party of Democratic Action. Some time later, Vehbo’s son Mujo was also brought to the station and he was beaten in front of him. While they beat his son, they told Vehbo that “he was raising sons to kill the Serbs”. When Vehbo was taken out of the office, he saw Sead Rovčanin in the hallway. Sead was beaten so badly that Vehbo almost did not recognize him.<sup>50</sup>

Witness Slavica Stanišić who worked as a cook in the “Složna Braća” restaurant confirmed that police came to the restaurant on October 27, 1993. They asked all those in the restaurant whether they owned weapons and whether

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46 Case No.: P-17928/11.

47 The case was assigned to Justice Nada Šajić.

48 More details from the testimony of Sead Rovčanin and Emina Rovčanin can be found in the HLC trial report, dated September 29, 2008, available on HLC website.

49 More details from the testimony of Dušan Maričić can be found in the HLC trial report, dated March 12, 2009, available on HLC website.

50 More details from the testimony of Vehbo Mujazinović can be found in the HLC trial report, dated February 4, 2009., available on HLC website.

they knew anyone who owned weapons. She confirmed that Sead Rovčanin was escorted from the restaurant and taken to the police station.<sup>51</sup>

Witness Emina Rovčanin, Sead's wife, stated that on October 27, 1993 police searched the houses in their neighborhood, without a warrant. While they were searching their house they asked her for her husband's whereabouts and when he would be back. Sead did not come home that day. On October 28, 1993 she went to the police station in Prijepolje to ask about her husband but she was told that he would not be released until he admitted where he was hiding his weapons. The following day she learnt that Sead had been taken to prison in Užice.

As motioned by the HLC lawyer, the Court ordered a psychiatric examination of Sead Rovčanin. According to the findings and opinion of Dr. Cvetin Urošević, Sead was suffering from a combination of anxiety and depression caused by the torture he had been exposed to, which ultimately resulted in a reduction in his overall quality of life.

### **Judgment of the First Basic Court**

On May 11, 2010 the First Basic Court handed down a decision that partially accepted the compensation lawsuit claim and ordered the RS to pay financial compensation for non-pecuniary damages in the amount of RSD 160,000 for emotional suffering causing a reduction in overall quality of life. At the same time, on the grounds of the statute of limitations, the court rejected the compensation claim for non-pecuniary damages caused by the physical pain and fear.<sup>52</sup>

### **Judgment of the Appellate Court in Belgrade**

On July 15, 2011, the Appellate Court in Belgrade accepted the appeal filed by an HLC lawyer and handed down a decision overturning the judgment of the First Basic Court and returned the case for retrial to examine the compensation claim for the physical pain and fear suffered by Rovčanin which resulted in the reduction of his overall quality of life.

In its explanation, the Appellate Court assessed that the First Basic Court did

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51 More details from the testimony of Slavica Stanišić can be found in the HLC trial report, dated November 21, 2008., available on HLC website.

52 HLC Press Release concerning the first-instance decision in the compensation lawsuit of Sead Rovčanin: "First Municipal Court's Decision: Republic of Serbia ordered to pay RSD 160,000 for torture of Bosniaks in Prijedor in 1993" dated May 20, 2010.

not establish the facts thoroughly, because it had failed to establish whether or not Sead Rovčanin was subjected to police torture and if so, whether he experienced fear that had permanent consequences for his mental health. The Appellate Court instructed the First Basic Court to order a new psychiatric examination to establish the facts concerning the consequences of torture.

The Appellate Court upheld the decision of the first-instance court in the part concerning the application of the statute of limitations to Sead Rovčanin's claim to be compensated for physical pain and the violation of personal rights and freedom.

### **The Retrial**

There were two main hearing days in the retrial. The court ordered a new expert examination as instructed by the Appellate Court. The court-appointed expert Dr. Cvetin Urošević testified in person and explained his additional expert findings and opinion. Evidence established during the first trial was read in the courtroom.

In his additional evaluation, the court-appointed expert established a correlation between "his stay in pretrial detention" and the psychiatric disorder Sead Rovčanin was diagnosed with during the original examination.

### **Judgment of the First Basic Court in the Retrial**

On August 31, 2012 the First Basic Court handed down a decision ordering the Republic of Serbia to pay RSD 360,000 in compensation to Sead Rovčanin because of the state's responsibility for the fear and the reduction in overall quality of life and for the illegal actions of the members of MUP of the Republic of Serbia.<sup>53</sup>

The HLC lawyer appealed this decision because of the low amount of compensation awarded. The decision was also appealed by the RJP.

### **Analysis of the Judgment**

I The Court admitted into evidence the statements of all witnesses heard during the proceedings and evaluated them as "logical, clear, and decisive". The Court specifically mentioned the testimony of Duško Maračić saying that it

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53 HLC Press Release concerning the decision in the Sead Rovčanin case: "State Responsible for Police Torture in Prijepolje in 1993" dated September 7, 2012.

was not in contradiction with other evidence. This conclusion of the Court is unsustainable both logically and legally because the statements of Rovčanin and Maračić are in contradiction with one another regarding key points and are therefore mutually exclusive. Rovčanin testified that he was illegally taken to the police station, that he did not own a weapon, and that the police officers in the station, including Maračić himself, beat him and forced him to sign a false statement. According to Rovčanin, Maračić beat him on the soles of his feet with a police baton. Maračić denied all of those allegations, and particularly that he was present during the interrogation of Rovčanin.

II The Court properly concluded that the statute of limitations could not be applied as requested by the RJP in terms of the right of Sead Rovčanin to be compensated for the reduction in overall quality of life. The Court's position is that the statute of limitations can only begin to run once the medical treatment is over, which is not the case here because Sead Rovčanin is still being treated.

III The amount awarded to Sead Rovčanin is inadequate and does not represent just compensation for his suffering. In addition, such a low amount further diminishes the illegal conduct of state employees. In other words, police torture committed by members of MUP in a police building constitutes an extreme form of human rights abuse because it is an act of denial of human rights by the very people whose constitutional and legal obligation it is to protect citizens from exactly that kind of behavior.

According to domestic legal norms and international human rights standards, acts of police torture carry heavy sanctions in criminal trials, along with the award of financial compensation to victims. Since those responsible for police torture have never been tried, financial compensation is the only act of justice. By awarding such a low compensation amount, the Court failed to offer even partial satisfaction to Sead Rovčanin for his suffering.

## **2.2. The Case of Fehrat Suljić**

Fehrat Suljić is from Velje Polje (in the Tutin municipality). Between February and April 1996, Fehrat Suljić was taken six times to the police station in Tutin by police officers Sulejman Hadžić and Zvonko Milunović. Each time they tried to force him to admit that he owned illegally acquired weapons that Suljić always claimed he did not have.

During questioning in March 1996, police officer Kiković entered the room

and started hitting Fehrat with a fist first in the chest and then in the back. Fehrat fell under the force of the blows, and hit his head on the surface of a filing cabinet. This resulted in lacerations to his face, above the eye. The police officers continued to hit him on the back, especially on the spine. After that, they tied him to a radiator. He fainted from the pain. When he regained consciousness, he saw five or six police officers standing around him who told him to “think” how he was going to surrender his weapons and they started beating him again. Fehrat lost consciousness once again. When he came to, the police officers asked him again to give them his weapons, but shortly after, they let him go.

When he was released from the police station, Fehrat Suljić contacted a physician in Tutin but he refused to examine him. As he was still in a lot of pain after a month, Fehrat had to go to Novi Pazar to seek medical care, where he was diagnosed with a dislodged left kidney and damage to three spinal disks as a consequence of the beating. Fehrat is still on medication for his spinal injury. He was also diagnosed with PTSD caused by the torture in the police station.

### **The Lawsuit**

On behalf of Fehrat Suljić, on June 27, 2007 HLC filed a compensation lawsuit against the Republic of Serbia with the First Municipal Court in Belgrade, demanding compensation for police torture amounting to RSD 1.1 million.<sup>54</sup> Along with the lawsuit, HLC enclosed Fehrat’s medical documentation.

### **Response to the Lawsuit**

The RJP challenged the relevancy of Fehrat Suljić’s medical documentation, because it was dated after the date he sustained his injuries. Also, they rejected a motion from the HLC lawyer to hear Fehrat Suljić and his wife Hajrija, because they believed their statements would not be objective and unbiased, emphasizing that Hajrija Suljić was not present at the police station during the questioning and that she would therefore not be a credible witness to testify whether her husband had been tortured. The RJP also invoked the statute of limitations.

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54 HLC Press Release on the occasion of the initiation of the lawsuit on behalf of Fehrat Suljić «Compensation lawsuits against Serbia for human rights abuses committed in the past» dated July 2, 2007

## Course of the Proceedings<sup>55</sup>

The trial began on December 20, 2007.<sup>56</sup> During 11 main hearing days, the Court heard the plaintiff Fehrat Suljić, two witnesses proposed by the RJP, one witness proposed by the HLC lawyer, and two court-appointed experts.

In his testimony, Fehrat Suljić gave a detailed account of torture in the police station in Tutin as well as an explanation of his medical treatments.<sup>57</sup>

Witness Hajrija Suljić, Fehrat's wife, confirmed that in 1996 Fehrat was asked to report to the police station a number of times and that on several occasions he was taken to the station by the police. On one occasion they "picked him up" on the street and that night he came home with bruises. When he learnt that Fehrat had been beaten by the police Dr. Šerif Hamzagić was afraid to examine him. Fehrat sought medical care in a private medical practice in Novi Pazar where he was diagnosed with three dislodged spinal disks and a dislodged kidney.<sup>58</sup>

Witness Zvonko Milunović, a police officer with the SUP in Tutin, testified that he did not know Fehrat and that all his claims were "pure fabrications" because in 1996 he did not even work in Tutin.<sup>59</sup>

Witness Sulejman Hadžić, a police officer with the SUP in Tutin, confirmed that he had seen Suljić several times and that Suljić had not been brought into the station but had reported for questioning. They never found any weapons associated with Suljić. The witness could not remember if Zvonko Milunović was present during any of the questioning sessions with Suljić. He denied that anyone tortured Suljić.

During the proceedings, the RJP submitted a letter from the SUP in Tutin stating that there was no written record of "actions by authorized officials against Fehrata Suljić" and that he had never submitted either an oral or written complaint with respect to the way he had been treated there.

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55 Case No.: P-8226/2011.

56 Initially the case was assigned to Justice Maja Pavlović. After the judicial reform, the case was assigned to Justice Snežana Mladenović.

57 More details from the testimony of Fehrat Suljić can be found in the trial report dated June 5, 2008 available on HLC website.

58 More details from the testimony of Hajrija Suljić can be found in the trial report dated February 4, 2009 available on the HLC website.

59 More details from the testimony of Zvonko Milunović and his face-to-face encounter with Fehrat Suljić in the courtroom can be found in the trial report dated November 7, 2008, available on HLC website.

Two court-appointed experts (an orthopedic specialist<sup>60</sup> and a psychiatrist<sup>61</sup>) who examined Fehrat established that due to the injuries he had sustained, he continued to suffer from physical and psychological pain that caused a reduction in his overall quality of life.

In line with the gravity of the physical and psychological consequences of police torture established by the court-appointed experts, the HLC lawyer increased the compensation claim to RSD 1.4 million.

### **First-instance Judgment**

On November 12, 2009 the First Municipal Court handed down a decision establishing that Fehrat Suljić had been taken a number of times to the SUP in Tutin in March and April 1996 and that he had been physically and psychologically tortured by the police officer at the SUP in Tutin in order to secure a confession that he possessed firearms. The court ordered the Republic of Serbia to pay compensation of RSD 700,000 to Fehrat Suljić.

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The court admitted the testimonies of Fehrat and Hajrija Suljić as logical, argumentative, and in compliance with all other entered evidence, while the statements of Zvonko Milunović and Sulejman Hadžić were found illogical, unconvincing, calculated to avoid responsibility, and in contradiction with all other presented evidence. The court was also of the opinion that the statute of limitations began when the damage was final and since Fehrat is still being treated for the injuries he sustained in the police station, the statute of limitations could be applied.

### **Judgment of the Appellate Court**

In a ruling handed down on January 19, 2011, the Appellate Court accepted the appeals of the RJP, overturning the judgment of the First Municipal Court and returned the case for retrial. In the explanation of its judgment, the Appellate Court claimed that without medical documentation generated at the time the injury occurred, it was impossible to conclude that Suljić was tortured during questioning in the police station and ordered any such documents to be produced.<sup>62</sup>

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60 Dr. Milan Petrušić

61 Dr. Zoran Đurić.

62 The analysis of the judgment of the Appellate Court can be found: *Material Reparations for Human Rights Violations Committed in the Past: Court Practice in the Republic of Serbia*, (Belgrade: Humanitarian Law Center, 2011), 32.

## **The Retrial**

At the retrial the Court examined the medical records of Fehrat Suljić from the Medical Center in Tutin and re-examined all the court - appointed experts. Witness Enes Maljevac, the physician who examined Fehrat Suljić after he was tortured, did not appear before the court.

The HLC lawyer submitted the report of the Commission on Investigation of Human Rights Violations and Abuse of Office in SUP in Tutin by members of the force between 1992 and 2000 and from 2000 to 2002 (“The Report on Police Torture in Tutin Municipality”) along with independent reports from two non-governmental organizations.<sup>63</sup>

These reports contain dozens of documented cases of torture of citizens of Tutin and other places in Sandžak and two reports - “The Report on Police Torture in Tutin Municipality” and “Testimonies from Sandžak” - provide a list of names of MUP members who took part in the torture. Among those are the names of police officers identified by Fehrat Suljić as officers who tortured him.

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## **Judgment in the Retrial**

In its decision handed down on September 13, 2012, the First Basic Court rejected the compensation claim of Fehrat Suljić on the grounds of failure to prove that he had been tortured at the police station in Tutin. HLC lawyer appealed this decision.

## **Analysis of the Judgment**

The key conclusion of the Court (that it had not been demonstrated at the retrial that Fehrat Suljić had been tortured at the police station in Tutin) is in contradiction with the evidence presented in the courtroom and with international standards for the protection of victims of torture, and in particular those of the European Court of Human Rights. Moreover, there are numerous illogical and contradictory opinions in both the explanation of the decision and the evaluation of evidence.

Identical evidence was presented at both trials. The only difference is that in

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63 *Human Rights Violations on the Territory of the Former Yugoslavia 1991-1995* (Belgrade: Humanitarian Law Center, 1997) and Semiha Kačar, ed., *Testimonies from Sandžak* (Novi Pazar: Sandžak Committee for the Protection of Human Rights and Freedoms, 2002).

the retrial the HLC lawyer presented new evidence derived from the two reports (“The Report on Police Torture in Tutin Municipality” and “Testimonies from Sandžak”) corroborating Fehrat’s claims that he was victim of police torture in the police station in Tutin. The Court did not hear the witnesses again but chose to read their testimonies instead.

In its evaluation of the same set of evidence the court interpreted it in a completely different manner, without offering an explanation why their position was drastically different. In the first judgment, the Court found the testimonies of Fehrat and Hajrija Suljić logical, well-argued, and in line with other evidence presented, and, following the retrial, their statements were described as subjective, biased, and calculated to result in a favorable judgment. The statements of the police officers were originally characterized as illogical, unconvincing, calculated to avoid responsibility, and in contradiction with other presented evidence, while at the retrial they were described as clear, logical, and convincing.

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**II** At the retrial, the HLC lawyer presented additional evidence pointing to the fact that during the period in question, police in Tutin conducted systematic torture of citizens who were of Bosniak nationality (“The Report on Police Torture in Tutin Municipality”). It is clear from the Report that the police officers who tortured Fehrat Suljić appear in a majority of the cases analyzed, as abusers. Instead of examining this Report thoroughly and understanding its relevancy, the Court chose to ignore it completely in its decision. By contrast, the Court decided to believe the statements of the police officers identified as brutal torturers by both the plaintiff and the Report.

**III** The Court’s assessment of two pieces of evidence describing how Fehrat Suljić was taken for questioning (a communique from the Police Administration in Novi Pazar and the testimony of Sulejman Hadžić) stands out as particularly illogical. Namely, the Court accepted as truthful the above-mentioned communication claiming that there was no written record about “actions by authorized officials against Fehrata Suljić”. At the same time, the Court accepted in its entirety the testimony of SUP Tutin police officer Sulejman Hadžić who stated that Fehrat Suljić was questioned several times on the premises of the Tutin SUP. It remains unclear why the Court accepted these two mutually exclusive pieces of evidence.

**IV** The statements of Fehrat Suljić and his wife Hajrija were rejected as subjective and biased. Such an interpretation of a statement of a victim of torture

and the only witness who had any relevant knowledge about the torture is in contradiction with the standards of the European Court of Human Rights. In other words, when a person claims that he or she was tortured in a location controlled by the government (such as, for example, a prison), according to the standards of the European Court of Human Rights the burden of proof is on the State to find a satisfactory and convincing explanation with respect to the injuries sustained by that person. Also, if the statements of the witnesses for the police are contradictory in terms of the injuries sustained by the torture victim, the standards of the European Court of Human Rights call for the State to provide solid evidence to dispense suspicion that torture took place.<sup>64</sup>

▼ The explanation of the judgment leads to the conclusion that the lack of medical documentation from the period in question was interpreted as a key indicator that there was no torture. This kind of reasoning by the Court is unacceptable because the lack of a document, which is, in reality, indirect evidence, is deemed more important than the existence of a number of other direct pieces of evidence. The fact is that in the course of the proceedings, the Court was presented with evidence that Fehrat Suljić was tortured (the testimonies of Fehrat and Hajrija Suljić), that police torture in Tutin was widespread at the time Fehrat was tortured (“The Report on Police Torture in Tutin Municipality”, HLC Report, and the Report of the Sandžak Committee), and that even today Fehrat still suffers from the physical and psychological consequences of torture (findings and opinions of two court-appointed experts). The Court ignored all of the above listed evidence, attributing key significance to the lack of a medical document from the period in question, although Suljić and his wife offered a reasonable explanation why Suljić was not able to obtain that document.

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### 2.3. The Case of Šećet Mehmedović

Šećet Mehmedović is from the village of Murovce, near Novi Pazar where he lives with his family. In mid January 1994, he was ordered by the SUP in Novi Pazar to report to the police station the following day for questioning. Mehmedović went to the police station and he was taken into an office. A police inspector he did not know asked him whether he owned any weapons and asked about the activities of the “Party of the Democratic Action” that Mehmedović belonged to. The inspector gave him a piece of paper to write a statement about it. After a while, inspector Nino entered the room, read

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64 *Salman vs. Turkey* (Application No.: 21986/93), judgment dated June 27, 2000; *Berkatay vs. Turkey* (Application No.:22493/93), judgment dated March 1, 2001.

the statement and tore it apart accusing Mehmedović of lying. He started to hit Šefćet on the face with his closed fists. Other police officers, including inspector Bratislav Gerić, joined in the beating of Šefćet Mehmedović. They hit him on the soles of his feet and on the hands with their police batons. They would beat him for half an hour, then they would pause for a half an hour, and they would continue beating him again. This went on until 9:30 p.m.

Under the pressure of the abuse, Mehmedović signed a statement prepared for him by the police officers. They ordered him to report to the police station every 3-4 days. He was called 11 more times to report to the station and each time he was forced to admit that he took part in the activities directed against the State. When he was invited to report to the police station in May 1994, Šefćet tried to commit suicide.

The Police torture he was exposed to left serious psychological trauma for which Mehmedović is receiving continuous treatment.

## **42 The Lawsuit**

On December 24, 2006, the HLC filed a compensation lawsuit on behalf of Šefćet Mehmedović at the First Municipal Court in Belgrade against the Republic of Serbia demanding the State pay a compensation amount of RSD 1.1 million for the violation of his personal rights and freedoms, fear, infliction of physical pain, and the reduction of overall quality of life.<sup>65</sup> The HLC also enclosed medical documentation describing the subsequent treatment of Mehmedović and a proposed list of witnesses to be heard.

### **Response of the Lawsuit**

The RJP rejected the claims in the lawsuit insisting that HLC had failed to present evidence of the torture of Šefćet Mehmedović and they also invoked the statute of limitations.

### **Course of the Proceedings<sup>66</sup>**

The trial began on April 5, 2007.<sup>67</sup> There were a total of 12 hearing days. The Court heard Šefćet Mehmedović, his wife Medina, and two witnesses pro-

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65 HLC Press Release on the occasion of the initiation of the lawsuit on behalf of Šefćet Mehmedović "Compensation Lawsuit Against the Republic of Serbia for Torture in Sandžak in 1994" dated December 13, 2006.

66 Case: P-17652/2012.

67 The case was assigned to Justice Dubravka Milošević.

posed by the HLC. Several pieces of written evidence were entered (medical documentation, written statement of the SUP in Novi Pazar confirming that there were no records of Mehmedović being brought to the police station for questioning).

In his testimony Šefćet Mehmedović described how he was taken to the police station in Novi Pazar for questioning and how he was tortured there.

Witness Medina Mehmedović, Šefćet's wife, testified that on January 15 or 16, 1994 police officers came to their family home in the village of Murovce and handed him a letter ordering him to report to the police station. Šefćet did as ordered but he did not return home that day. The following morning Medina went to look for him and saw him leaving the police station. He was barely able to walk. When they got home, she saw that the soles of his feet were bruised and swollen. After that incident, he had to report to SUP Novi Pazar a dozen further times. In Mid May 1994, police officers ordered Šefćet to report to the station again and through his wife Medina ordered him to bring his gun. After learning that he had to report to the police station again, Šefćet tried to commit suicide in his house. Medina found him and seeing that he was hurt, put him on a bus to take him to a doctor's office in Novi Pazar. Šefćet is unable to work and he suffers from serious health problems resulting from the injuries and psychological trauma he experienced.

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Witness Šefkija Muljković, Šefćet's distant relative, testified that Šefćet had been taken to the SUP in Novi Pazar for questioning on January 15 or 16, 1994. He was also ordered to report to the police station that day. As soon as he arrived at the police station he saw Šefćet there. Šefćet was scared and he refused to talk to Šefkija. That same day both of them were beaten in the police station. The next day Šefkija visited Šefćet at home and saw that the soles of his feet were swollen from the beating. Šefkija Muljković also testified that to the best of his knowledge, Šefćet had a hard time coping with the brutality of the treatment he received at the police station, that he had a "nervous breakdown", and that he was treated in Belgrade.<sup>68</sup>

Witness Sabit Emrović, an acquaintance of Šefćet's, testified that he saw Šefćet and his wife some time in mid-May 1994 boarding a bus in Murovce. Sabit said that all the passengers noticed that something was wrong with Šefćet and that people on the bus had helped him board the bus. Once they arrived in Novi

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68 More details from the testimony of Šefkija Muljković can be found in the HLC trial report dated June 23, 2008 available on the HLC website.

Pazar, the bus driver decided to change the scheduled route and drive directly to the hospital. Sabit personally carried Šefćet off the bus and into the hospital.

In his findings and opinion, court-appointed expert Dr. Cvetin Urošević diagnosed Šefćet Mehmedović with long-lasting depression that resulted in the reduction of overall quality of life.

### **Judgment of the First Municipal Court**

On December 25, 2009, the First Municipal Court handed down a decision ordering the Republic of Serbia to pay RSD 200,000 in damages for the responsibility of the State for the torture committed by the MUP officers that resulted in the reduction of Šefćet's overall quality of life. The court refused to award compensation for the violation of his personal rights and freedoms, physical pain, and fear on the grounds of the statute of limitations.

Both the RJP and the HLC appealed the decision.

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### **Judgment of the Appellate Court**

In a decision handed down on July 27, 2012 the Appellate Court upheld the part of the ruling of the First Basic Court rejecting compensation claims for the violation of personal rights and freedoms, physical pain, and fear. In the same decision, the Appellate Court overturned the decision of the lower court to award financial compensation to Šefćet Mehmedović because the first-instance court had not established a connection between the acts of the MUP members and the damage the plaintiff had sustained (reduction of overall quality of life). Also, the Court believed that the first-instance court had failed to establish the time frame when the psychological illness caused by torture had acquired its final form, which is important for determining the applicability of the statute of limitations.

### **Retrial**

The court-appointed expert was heard again at the retrial and the rest of evidence presented in the first-instance trial was read.

Dr. Cvetin Urošević testified that there was a connection between torture and the diagnosed psychological illness and that he was able to establish that connection by examining Šefćet Mehmedović's medical documentation and by personally examining Mehmedović.

## Judgment of the First Basic Court in the Retrial

In its decision handed down on December 11, 2012, the First Basic Court rejected the compensation claim of Šefćet Mehmedović on the grounds of the statute of limitations. The reason for its decision was that the Court established that Mehmedović had learned from his psychiatrist that his illness had acquired a chronic form on April 9, 2002 and that that date should be used when considering if the statute of limitations applied.

### Analysis of the Judgment

I The Court properly established the facts. Based on the testimony of Šefćet Mehmedović and other witnesses, it was determined that in 1994 Šefćet Mehmedović was brought in for questioning by police officers from the SUP in Novi Pazar on a number of occasions and that “he was exposed to physical and psychological abuse”.

II The Court believed that with respect to the financial compensation claims, the date Mehmedović learnt from his psychiatrist that his illness had turned into a chronic condition should be used to consider if the statute of limitations applied. This opinion contradicts the standard court practice that the statute of limitations for the reduction of overall quality of life begins to run the moment the victim learns about the reduction of overall life expectancy and not when he or she learns about the illness that caused the reduction of overall quality of life.<sup>69</sup>

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### 2.4. The Case of Šefko Bibić

During the night of December 6, 1993, several police officers from the SUP in Sjenica arrived at Šefko Bibić’s house in Ugao (a village in the Sjenica municipality). They did not find Šefko at home, but they told his family that he should report to the Local Community Office in Karajukići. The following day Šefko did as ordered. The police officers asked him if he had a weapon and where he was hiding it. One of the police officers present was Milan Nedić. He struck Šefko and forced him to sign a false statement admitting that he owned a weapon. Šefko lost consciousness from the beating but they continued beating him nonetheless, cursing his “Turkish mother” all along. After a while, Milan Nedić told Šefko that he was free to go but that he should come back after

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69 The Supreme Court of Serbia, Rev. 1427/05, dated May 26, 2005 and Rev. 927/06 dated February 8, 2007.

he had rested. Following this episode the police did return to take him in for questioning.

The police brutality had serious consequences on Šefko Bibić's psychological health. He was diagnosed with PTSD.

### **The Lawsuit**

On September 6, 2007, on behalf of Šefko Bibić, the HLC filed a compensation lawsuit against the Republic of Serbia with the First Municipal Court in Belgrade. The HLC claimed that the State bore responsibility for the illegal conduct of members of the MUP of the Republic of Serbia and demanded compensation amounting to RSD 1.1 million for the reduction of overall general quality of life, violation of human rights and freedoms, and for the infliction of physical pain.<sup>70</sup> Along with the lawsuit, the HLC enclosed Šefko Bibić's medical documentation and a criminal complaint against Sjenica SUP officers, filed by the Sandžak Committee for Protection of Human Rights and Freedoms.

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### **Response to the Lawsuit**

The RJP responded to the lawsuit saying it was incomplete and asked the court to reject it because it did not offer evidence confirming that Šefko Bibić was tortured by the police. They also invoked the statute of limitations.

### **Course of the Proceedings<sup>71</sup>**

The trial began on May 12, 2008.<sup>72</sup> There were eight main hearing days during which the Court heard Šefko Bibić and two witnesses proposed by HLC. The Court also ordered a medical examination to be conducted.

Šefko Bibić described in detail how he was tortured in the Karajukići Local Community Office and that it had had permanent consequences to his health.

Witness Sabit Bibić testified that he was also ordered to report for questioning in the Karajukići Local Community Office and that he saw Šefko Bibić and Elmaz Hukić there. They both had blood on their faces when he saw them. He

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70 HLC Press Release on the occasion of the initiation of the lawsuit on behalf of Šefko Bibić: "Charge Filed for Violations of Human Rights in Sandžak in 1993" dated September 12, 2007.

71 Case: P-45986/10.

72 The case was originally assigned to Justice Jasna Belović. Following reform of the judicial system, it was transferred to Justice Ida Nikitović.

was also beaten that day. In addition to Milan Nedić and Dragan Paunović, Sabit identified another two police officers who beat Šefko Bibić and Elmaz Hukić: Milinko Veličković and Milorad Jovanović. When the police officers let them go, they asked them to report back again but they were afraid to do so and for a while they hid from the police.

Witness Elmaz Hukić said that on the day in question he was in the Local Community Office with Šefko Bibić and that the police beat them both in the same room.

The HLC Lawyer enclosed two documents testifying about systematic torture on the territory of the Sjenica municipality: 1) the report of the Sjenica Municipal Assembly listing cases of police torture in the municipality between 1992 and 2002); 2) a criminal complaint against police officers Milan Nedić, Dragan Paunović and unidentified members of the SUP in Sjenica for torture committed against Šefko Bibić and 13 men from Sjenica and surrounding villages in 1993, filed by the Sandžak Committee for Protection of Human Rights and Freedoms.

The HLC lawyer also enclosed medical documentation confirming that Šefcet Bibić had been diagnosed with PTSD.

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The court-appointed expert Dr. Ratko Kovačević testified that it was not possible to diagnose PTSD 12 years after the event and that he was unable to establish the existence of any mental disorder or a reduction in overall quality of life.

After the HLC lawyer expressed disagreement with such a finding, the Court ordered another examination to be conducted by a panel of court-appointed experts consisting of Dr. Marija Popović and Dr. Dragan Marinković. On November 30, 2009 the commission released their findings and opinion concluding that 13 years after the event that could have triggered PTSD, they were unable to diagnose Šefko Bibić with a psychological illness in connection with the torture he had been exposed to.

### **Judgment of the First Basic Court**

On October 29, 2010 the First Basic Court handed down their decision rejecting the compensation lawsuit filed on behalf of Šefko Bibić on the grounds of the statute of limitations.

### **Appellate Court Judgment**

In a ruling handed down on March 8, 2012 the Appellate Court in Belgrade

rejected the appeal of the HLC lawyer and upheld the decision of the First Basic Court in Belgrade which made the decision legally binding.

### **Analysis of the Judgment of the Appellate Court**

I The position of the Appellate Court in Belgrade that Šefko Bibić's compensation claim expired three years after torture happened (Article 300, ZOO) is in compliance with the discriminatory practices of the courts in Serbia with respect to victims of human rights violations in the 1990s. In other words, in this case, due to the fact that Šefket Bibić was a victim of a criminal act, the court was expected to apply a longer statute of limitations period, as stipulated for compensation for damages caused by a criminal act. (Article 377, ZOO).<sup>73</sup>

The First Basic Court and the Appellate Court failed to establish that Šefko Bibić was abused by officers of the MUP of the Republic of Serbia, a relevant legal issue when it comes to the application of the statute of limitations. More specifically, if the Court had previously established that Šefko Bibić was a victim of police torture, it would have been possible to apply a longer statute of limitations period as stipulated for damages caused by a criminal act.

II The Court based its decision entirely on the findings and opinion of the court-appointed experts who stated that they could not diagnose Šefko Bibić with "any psychological illness directly associated with the incident in question" and the court therefore ruled inadmissible any medical documentation submitted on behalf of Šefko Bibić. More precisely, the experts adopted a view that PTSD could not be diagnosed 12 years after the traumatic experience and that it would be impossible from a scientific point of view. In the opinion of the HLC, this position was not established through medical practice and it certainly does not exist in modern expert literature dealing with PTSD because there is no time limit for diagnosing such a disorder. In contrast, cases of "deferred symptom manifestation of PTSD" where first symptoms appear years after the event that triggered PTSD have been long known to medical experts in the field.<sup>74</sup>

73 More on the discriminatory practices of the courts in Serbia with respect to the application the statute of limitations can be found on page 8.

74 Rachel Yehuda, „Treating trauma survivors with PTSD” American Psychiatric Publishing 2002, strana 22; „Diagnostic and Statistical Manual of Mental Disorders – Fourth Edition” American Psychiatric Publishing 1994, strana 429; Clipp EC, Elder GH: The Aging Veteran of World War II: psychiatric and life course insights, in Aging and Posttraumatic Stress Disorder. Edited by Ruskin PE, Talbott JA. Washington DC, American Psychiatric Press 1996, 19-51.

## Constitutional Appeal

On May 17, 2012 on behalf of Šefko Bibić the HLC lawyer filed an appeal with the Constitutional Court of the Republic of Serbia against the decision of the Appellate Court of the Republic of Serbia for violation of Šefko Bibić's right to a fair trial, prohibition of discrimination, the right to rehabilitation and reparation, the violation of his right to have his rights equally protected, and for the violation of his right to access the available legal means.<sup>75</sup>

### 3. Torture and Illegal Detention of Kosovo Albanians between 1998 and 2000

In the course of 1998 and particularly during the NATO bombardment of the Federal Republic of Yugoslavia (FRY), Serbian security forces arrested and illegally detained several thousand Kosovo Albanians who were allegedly suspected of engaging in terrorist activity. The men were arrested in their homes, on the street, and in other public places. All of them received almost identical treatment. Once they were in police custody, they were taken to a local police station where they were questioned by police about their affiliation with the Kosovo Liberation Army (KLA), attacks on the army or police, etc. During the interrogation, police officers beat them with police batons, kicked them and hit them with their fists, and forced them to sign statements that they were guilty of all of the allegations. Some of them were tested for gunpowder residue on their hands.

From the police station, the Kosovo Albanian men were taken to prisons in Lipljan/Lipjan or Dubrava/Dubravë near Istok/Istog. The Kosovo Albanian men in police custody were forced to run a gauntlet of beatings from police officers as they were boarding the bus. When they arrived in prison, they were first searched and identified and then taken to their cells. Some prisoners, arrested during the NATO bombing, were held in a sports hall in prison in Lipljan/Lipjan. There were between 300 and 400 prisoners at any given time and the living conditions were unacceptable by any standards and degrading in every respect. They were repeatedly beaten and tortured by the police; they were only occasionally allowed to use the restroom; they slept on the floor because there were not enough beds or mattresses for everyone. They were only given one meal a day – a piece of bread and some soup.

After the signing of the Kumanovo Agreement on June 9, 1999, Serbian forces

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75 Articles 21, 32, 35, and 36 of the Constitution of the Republic of Serbia.

transferred all prisoners from Kosovo to prisons in Niš, Požarevac, and Sremska Mitrovica. Once they reached their destination, the prisoners beaten on arrival as they exited the bus and entered prison. Most prisoners were sent to cells or barracks, while some were sent to isolation units where they spent a number of months<sup>76</sup>. Prison guards beat the prisoners frequently; they were not allowed to use the restroom and they were given buckets instead. The prisoners were only occasionally allowed to take exercise. There was only basic medical care available, and it was not available to all of them. Their families went for months without knowing about their destiny.

Most of these prisoners were never indicted and yet some of them spent almost two years in prison without being charged of any crime. They were released following a decree of the Ministry of Justice of the Republic of Serbia.

Those who were indicted were charged with criminal acts such as association for the purpose of conducting hostile activities directed against the state<sup>77</sup>, terrorism<sup>78</sup>, and armed protest<sup>79</sup>. They were released from prison after the adoption of the Amnesty Law that came into effect on March 2, 2001.<sup>80</sup>

Between 2005 and 2009 the HLC filed 26 compensation lawsuits on behalf of 77 victims demanding financial compensation on the grounds of all or some of the following: suffering from physical pain, fear, emotional pain due to the violation of their personal rights and freedoms, and the reduction in overall quality of life.

### 3.1. The Case of Zenun Behrami

Even before the NATO bombardment of the FRY, Zenun Behrami and his family had been regularly forced to flee their village, Domanek/Domanek, (in the Glogovac/Glogoc municipality) due to frequent shelling of the village by Serbian forces. On March 24, 1999, Serbian forces entered the village and Zenun and his family had to flee again along with other villagers. They went to Novo Čikatovo/Çikatove e Rë where they spent about a month.

In the morning of April 28, 1999, Serbian police entered the house where Zenun Behrami and his family were staying and took all of the men present

76 Refer to Case: Tahir Bytyqi et al.

77 Article 136, Penal Code of the Republic of Yugoslavia (KZJ).

78 Article 125, KZJ.

79 Article 124, KZJ.

80 «Official Gazette of the Republic of Serbia», Issue No. 9, March 2, 2001.

to the police station in Glogovac/Gllogoc. They were held there for two days and then released. In the morning of May 28, 1999, members of the Serbian forces came to the house again and separated Zenun and other men from their families and took them to the center of Glogovac/Gllogoc. There were approximately 500 Kosovo Albanian men there. Police confiscated his Personal Identification Card and then they started beating him. Zenun was taken to the prison in Lipljan/Lipjan and on June 9, 1999 he was transferred to the prison in Požarevac.<sup>81</sup>

Zenun Behrami has never been criminally processed. He was released on April 18, 2000, after 11 months of illegal detention.

From the beating he was subjected to, he lost hearing in his right ear and his mobility is reduced due to a double fracture of his leg. In 2005, physicians at the Kosovo Center for Rehabilitation of Victims of Torture diagnosed him with PTSD.

## **The Lawsuit**

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On July 5, 2007 the HLC filed a compensation lawsuit on behalf of Zenun Behrami against the Republic of Serbia at the First Municipal Court in Belgrade for the responsibility of the State for torture committed during his illegal detention in Serbian correctional facilities, demanding that the State to pay compensation of RSD 1.85 million to Zenun Behrami for the reduction in his overall quality of life and the violation of his personal rights and freedoms. With the lawsuit, the HLC enclosed Behrami's medical documentation and the decree of the Ministry of Justice of the RS ordering his release from prison.

## **Response to the Lawsuit**

In their response to the lawsuit, the RJP stated that the lawsuit did not offer evidence corroborating torture allegations and invoked the five-year statute of limitations for the compensation claims.

## **Course of the Proceedings<sup>82</sup>**

The trial began on October 31, 2007.<sup>83</sup> During the 13 main hearing days the

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81 More information about the treatment of ethnic Albanian men in prisons in Lipljan/Lipjan, Dubrava, Požarevac, Niš, and Sremska Mitrovica can be found on page 49.

82 Case: P-54043/2010.

83 The case was assigned to Justice Irena Garčević.

Court heard Zenun Behrami and ordered two medical expertise. In his testimony Zenun Behrami described all of the circumstances surrounding his arrest, torture, and the time he spent in illegal detention. He also testified about the physical and psychological consequences of the torture he experienced and his inhumane treatment by the Serbian police.

In his findings and opinion, court-appointed expert, psychiatrist Dr. Dragan Marinković, stated that Zenun Behrami had been diagnosed PTSD but that it had only been present in the first three months after his release from prison.

The HLC lawyer objected to this finding and the Court ordered new medical examination by court-appointed experts Dr. Milun Jovanović and Dr. Marija Jovanović. In their findings and opinion they reported that no form of psychological illness or disorder could be diagnosed in Zenun Behrami that was connected to the torture he experienced during illegal detention. As a possible consequence of the abuse, they listed a hematoma Zenun had and suggested another expert examination by a neurosurgeon. During their testimony, the two experts upheld the findings of Dr. Marinković stating that PTSD had only been present in the first three months following his release from prison.

### **Judgment of the First Basic Court**

The First Basic Court in Belgrade handed down a ruling on March 7, 2011 rejecting the compensation claim filed on behalf of Zenun Behrami on the grounds of the statute of limitations.

### **Judgment of the Appellate Court**

In its decision delivered on March 14, 2012, the Appellate Court in Belgrade rejected the appeal of the HLC lawyer and upheld the ruling of the First Basic Court.

### **Analysis of the Judgment of the Appellate Court**

The Appellate Court in Belgrade confirmed the conclusion of the first-instance court that the right of Zenun Behrami to request compensation had expired three years after he was released from prison. This position of the Court is derived from a legal interpretation of the Supreme Court of Serbia from 2004 of the provisions of the ZOO, that is unfavorable for the victims of human rights violations committed by members of Serbian law enforcement

agencies<sup>84</sup>. The Court concluded that it was inappropriate to apply a longer statute of limitations period as allowed under Article 377 of ZOO<sup>85</sup>, since the application of a longer statute of limitations period requires the existence of a legally binding criminal trial decision.

II The Appellate Court also upheld the first-instance court ruling in terms of the application of the statute of limitations for the plaintiff's compensation claim for the reduction in overall quality of life, invoking the findings and opinions of the court-appointed experts who stated that Behrami did not suffer from PTSD and that the other psychological disorders he was diagnosed with, could not be associated with police torture.

The findings and opinions of court-appointed experts are inconsistent and they contain a number of illogical and contradictory conclusions:

- a) Under "main problems" the experts observe that during the examination Behrami described psychological problems that were directly connected with police torture ("he often dreams that there are army and police everywhere around him", "he can't sleep well", "sometimes even during the day, when he is awake, he feels that he sees all of that", "he is afraid of people in uniforms", "sees people shooting from their firearms and so on").
- b) Under "objective psychological finding" the experts also observe that Behrami did not show signs of a psychological disorder while he talked about past events, and that there was "an abundance of details and information in his memory". In the same section of the report they state that Behrami manifested symptoms typical for PTSD patients.
- c) In the part of the report containing their professional opinion, the experts claim that: "not all of the disorders he exhibited could be classified as post-traumatic".
- d) In the "conclusion" of the report the experts state that at the time

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84 For more details about the interpretations of the VSS on the statute of limitations which are unfavorable to victims of human rights abuses please refer to page 8.

85 Article 377 of ZOO: (1) When the damages were caused by a criminal act, and a longer statute of limitations period is provided for a criminal prosecution, compensation claims against the responsible party expire at the same time as the statute of limitations expires for the criminal prosecution for those damages. (2) Discontinuation of the statute of limitations automatically results in the discontinuation of the statute of the limitations of the compensation claim. (3) The same rule applies if the statute of limitations is suspended.

of writing Behrami did not display signs of psychological damage or psychotic disorder “that were necessarily triggered by illegal detention and the time he spent in prison”.

In short, the experts are familiar with all aspects of Behrami’s experience in prison and psychological consequences he still suffered from at the time of the exam, and they evaluate as good his ability to remember and talk about the details; they also say that some of the symptoms he exhibited are characteristic for PTSD (points a, b). However, in their conclusion they largely ignore everything they stated under points a and b and they conclude that Behrami’s experience in detention had no impact on his mental health (points c and d), without explaining the lack of consideration of their previous statements (a and b).

### **Constitutional Appeal**

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The HLC filed a constitutional appeal to the Constitutional Court of Serbia on behalf of Zenun Behrami on May 8, 2012, against the decision of the Appellate Court of Serbia on the grounds of the violation of his right to a fair trial, prohibition of discrimination, the right to rehabilitation and compensation, the violation of his right to have his rights equally protected, and for the violation of his right to access all available legal means.<sup>86</sup>

#### **3.2. The Case of Tahir Bytyqi, Smajl Gashi, Rrahman Elshani, Hysni Podrimçaku, and a minor, Bekim Istogu**

At the end of 1998 Serbian forces drove Tahir Bytyqi, his family and all of the other villagers of Đurđica/Gjergjica (in the Glogovac/Gllogoc municipality) out of their houses. They took refuge in the village of Obrinje/Abri (in the Glogovac/Gllogoc municipality) where they spent six months. In May 1999, the Yugoslav Army shelled Obrinje/Abri and Tahir fled with his family to Novo Čikatovo/Çikatove e Rë where they lived in an agricultural co-op building. On May 27, 1999 Serbian police entered the village. They separated the men and took them to the police station in Glogovac/Gllogoc. During the interrogation a police officer stabbed Tahir in the stomach with a knife. He was later taken to the hospital in Priština/Prishtinë. When he received the necessary medical treatment he was taken to the prison in Lipljan/Lipjan where he spent 10 days and was later transferred to the prison in Požarevac where he spent two

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86 Articles 21, 32, 35, and 36 of the Constitution of the Republic of Serbia.

months in isolation. All the time he suffered from various health problems and had no medical care whatsoever. He was released after nine months of imprisonment on March 23, 2000.<sup>87</sup> He was never criminally charged and he was not interrogated during his stay in the prison.

Intimidated by the attacks of Serbian forces, Smajl Gashi and his family fled his native village of Lapušnik/Llapushnik in May 1998 and went to Novo Čikatovo/Čikatove e Rë (in the Glogovac/Gllogoc municipality). Serbian police arrested him in that village on April 24, 1999. He was first taken to the prison in Priština/Prishtinë and then to the prison in Lipljan/Lipjan. The guards beat him on a daily basis in order to force him to admit that he had helped the KLA in the past.<sup>88</sup> On June 10, 1999 he was transferred to the prison in Požarevac. He was charged with terrorism. His trial lasted for seven months. In July 2000 the District Court of Niš acquitted him of all charges and after 14 months of illegal detention he was released from prison.

Rrahman Elshani was arrested in May 1999 in the village of Štrbulovo/Shterubullojë where he was staying temporarily after being forced with his family to leave his village of Krajkovo/Krajkovë (in the Glogovac/Gllogoc municipality). He was taken to the police station in Glogovac/Gllogoc where the police gave him a document to sign. When he said he wanted to read the document, they beat him up. Two days later he was taken to the Lipljan/Lipjan correctional facility where he remained for about 10 days. He was transferred to the prison in Požarevac on June 10, 1999.<sup>89</sup> During his stay in the Požarevac correctional facility he was never interrogated and he was released on April 22, 2000 after 11 months of illegal detention.

Hysni Podrimçaku was forced to leave his native village of Krajkovo/Krajkovë (in the Glogovac/Gllogoc municipality) in mid April 1999 following the invasion of the Serbian forces. He found refuge in the Štrbulovo/Shtrebullojë village. Serbian forces entered the village on the morning of April 28, 1999. They arrested Hysni, his uncle, and several other men. They were taken to a movie theater in Glogovac/Gllogoc where there were already more than 100 men. The police kept asking Hysni whether he belonged to the KLA and he was beaten the whole time. Two days later he was transferred to the prison in Priština/Prishtinë and then to the prison in Lipljanu/Lipjan. On June 10, 1999 he

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87 More information about the treatment of Kosovo Albanian men in prisons in Lipljan/Lipjan, Dubrava, Požarevac, Niš, and Sremska Mitrovica can be found on page 49.

88 Ibid.

89 Ibid.

was transferred to the prison in Sremska Mitrovica. He was charged with terrorism and he was tried before the District Court of Niš. The trial lasted for seven months. He was acquitted and released on July 5, 2000 after 14 months of illegal detention.

56 After Serbian forces started shelling his village and entering the houses, sixteen-year-old Bekim Istogu fled his native village with his family and other villagers and settled in pasture land near the village of Vrbovac/Verbovc [in the Glogovac/Gllogoc municipality]. Serbian forces found them shortly after. They separated the men from the women. Although he was still underage, Bekim was grouped with the men, together with his brother Florim. They were taken to a crop field in the vicinity where they were beaten and threatened all day long that they would be killed. One soldier came carrying a bloody scythe and threatened to cut their heads off. They spent the night in a nearby cattle barn. The following morning they were taken to Glogovac/Gllogoc. As soon as they left the truck, the police started beating them with sticks, police batons, and electrical cable. Bekim was taken to the Cultural Center where there were approximately 150 Kosovo Albanian men. The following day he was transferred to the prison in Priština/Prishtinë where he was again beaten as soon as he got off the truck. He did not receive any food or water for the first four days. During his stay in prison in Priština/Prishtinë, he was questioned about whether he belonged to the KLA, whether he dug ditches for them, etc. They forced him to sign a statement in Serbian although he did not know Serbian and did not know what was in it. On June 10, 1999 he was transferred to the prison in Sremska Mitrovica.<sup>90</sup> He was never criminally prosecuted. He was released in October 2000 after 18 months of illegal detention.

Bytyqi, Gashi, Elshani, Podrimçaku, and Istogu were tortured during their arrest and during their time in prison and this had serious consequences to both their mental and physical health. They were all diagnosed with PTSD.

### **The Lawsuit**

On April 26, 2010 the HLC filed a compensation lawsuit with the First Basic Court in Belgrade on behalf of Bytyqi, Gashi, Elshani, Podrimçaku, and Istogu against the Republic of Serbia for the responsibility of the State for police torture of the imprisoned men. The lawsuit requested that the State make a total payment of RSD 3 million for non-pecuniary damages caused by Serbian law enforcement officers. Along with the lawsuit, the HLC submitted medical

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90 Ibid.

documentation, statements from the ICRC confirming that they were prisoners in the above mentioned prisons, as well as a court decision ordering extension of police custody for Hysny Podrimçaku.

## **Response to the Lawsuit**

In their response to the lawsuit, the RJP rejected all allegations from the lawsuit and asked the Court to dismiss it as incomplete because it did not offer sufficient evidence. In addition, the RJP invoked the statute of limitations.

## **The Course of the Proceedings<sup>91</sup>**

The trial began on August 5, 2010.<sup>92</sup> There were six main hearing days during which Bytyqi, Gashi, Elshani, Podrimçaku, and Istogu were heard and medical examinations were conducted.

Bytyqi, Gashi, Elshani, Podrimçaku, and Istogu testified about the circumstances surrounding their arrest, police torture, and inhumane treatment during detention. They talked about their medical treatments after they were released from prison<sup>93</sup>. Court-appointed expert, psychiatrist Dr. Zoran Đurić diagnosed Bytyqi, Gashi, Elshani, Podrimçaku, and Istogu with PTSD caused by torture and fear that they suffered while in illegal detention. In the opinion of the expert, this disorder caused a reduction in their overall quality of life.

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## **Judgment of the First Basic Court in Belgrade**

In their ruling of May 21, 2012, the Court accepted the compensation lawsuit claim of Bytyqi, Gashi, Elshani, Podrimçaku, and Istogu and ordered the Republic of Serbia to pay total compensation amount of RSD 1.3 million for the responsibility of the State for the reduction in their overall quality of life.<sup>94</sup>

## **Analysis of the Judgment of the First Basic Court**

I The Court properly established the fact that the MUP and VJ members who

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91 Case: P-70831/2010.

92 The Case was assigned to Justice Jasmina Tubić.

93 More information from the testimony of Rrahman Elshani and Bekim Istogu can be found in the HLC trial report “Testimonies of victims of illegal detention Rrahman Elshani and Bekim Istogu” dated May 23, 2012.

94 HLC Press Release on the occasion of the ruling of the first-instance court “Courts in Serbia award humiliatingly low compensation amounts to non-Serbian victims” dated June 18, 2012.

arrested Bytyqi, Gashi, Elshani, Podrimçaku, and Istogu had done so without any legal justification and that those arrested were subjected to police torture during the time they spent in illegal detention.

**II** The Court established that MUP members violated the rights of persons in police custody as stipulated in the Criminal Procedure Code and the Law on Internal Affairs.<sup>95</sup> It was established, among other things, that MUP Serbia officers violated legal provisions regulating the use of force against persons in police custody, the obligation to issue a written document ordering police custody, and the obligation to inform their families about their police detention.

**III** The Court rejected the request of the RJP to reject the lawsuit on the grounds of the statute of the limitations because in the opinion of the Court, the statute of limitations for the compensation claim began to run when Bytyqi, Gashi, Elshani, Podrimçaku, and Istogu learnt that PTSD had caused a permanent reduction in their overall quality of life (in 2011).

**IV** The Court awarded compensation of RSD 200,000 to 300,000 respectively to Bytyqi, Gashi, Elshani, Podrimçaku, and Istogu, quoting Serbian standard court practices in terms of financial compensation for the reduction of overall quality of life.

The decision of the Court to award such low compensation amounts shows disrespect for the most prominent feature of those cases – the violation of basic human rights, during the war, by representatives of the State, who had a legal obligation to protect the life and health of their citizens. In the explanation of its decision, the Court listed a number of legal provisions violated by the acts of the MUP officers to illustrate the gravity and the proportions of their illegal conduct. However, when deciding on the compensation amount, the Court opted to look at the health consequences of Bytyqi, Gashi, Elshani, Podrimçaku, and Istogu in isolation, outside the broader context, and evaluated them in a manner consistent with peacetime situations that cannot be classified as human rights violations. In this way, the illegal conduct of MUR RS officers, i.e. the violation of human rights of illegally detained persons, was treated as an instance of car accident.

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95 Article 5, paragraph 4 and Article 174 of the Criminal Procedure Code and Articles 11 and 12 of the Law on Internal Affairs.

Both the HLC lawyer and the RJP appealed the decision.

### **3.3. The Case of Mustafa Kolgeci**

Mustafa Kolgeci was President of the Municipal Court and President of the Municipal Assembly of Suva Reka/Suharekë in the 1990's. He was arrested on September 28, 1998 in front of his house in Vranić/Vraniq (in the Suva Reka/Suharekë municipality). He was taken to the Fire Department building in Prizren/Prizren where there were already some 40 Kosovo Albanian men. State Security inspector Milorad Nešević "Miško" questioned him there. Later that day, all of the men were all transferred to the prison in Prizren/Prizren where they received written statements ordering police detention.

Mustafa was taken to a room without a bed, a mattress, or a blanket. Police officers entered the room daily and beat him and other prisoners with police batons. Seven months later he was transferred to prison in Dubrava/Dubravë.

During his time in prison in Dubrava/Dubravë, NATO forces bombed the prison twice (on May 19 and May 21, 1999). Prison guards fled the facility, leaving the prisoners locked up. 23 prisoners died from the direct consequences of the bombardment or from the lack of medical care. On May 22, 1999 police officers rounded up all the prisoners in the prison yard and opened fire with their weapons. That day and the following day, the police killed 87 Kosovo Albanian prisoners in the prison yard. Mustafa survived because he was hiding in the prison complex with a group of other prisoners. The surviving prisoners, including Mustafa Kolgeci, were transferred to the Lipljan/Lipjan correctional facility on May 25, 1999 where they stayed until June 10, when 'Niš Express' buses took them to the prison in Niš.

The Office of the District Prosecutor of Požarevac charged Mustafa Kolgeci with an act committed 19 hours after Mustafa had been arrested. The trial before the District Court of Požarevac began on December 7, 1999. On January 11, 2000 the District Prosecutor dismissed the criminal charges and Mustafa was released immediately. Mustafa Kolgeci spent 15 months in illegal detention. The decision of the District Court in Požarevac dismissing all charges against him was delivered to Mustafa on December 3, 2004.

Because of his stay in prison and the daily physical and psychological torture, Kolgeci lost 60 kg. When he was released from prison he was unable to walk. His kidneys failed soon after and he was diagnosed with PTSD.

## The Lawsuit

On January 24, 2008, on behalf of Mustafa Kolgeci, the HLC filed a compensation lawsuit with the First Municipal Court in Belgrade demanding compensation of RSD 3.65 million from the Republic of Serbia for its responsibility for his torture and illegal detention. Along with the lawsuit, the HLC submitted Mustafa Kolgeci's medical documents and documents from the District Court of Požarevac, acquitting him of all charges.<sup>96</sup>

## Response to the Lawsuit

The RJP invoked the statute of limitations claiming that there was no proof that Kolgeci had received the documents from District Court in Požarevac as late as 2004. The RJP also rejected the lawsuit as incomplete, pointing out the lack of medical documentation from the period immediately following his release from prison, saying that: "even if the lawsuit claims are credible, there is no clear connection between the negative situation and the illness that occurred".

## Course of the Proceedings<sup>97</sup>

The trial began on April 15, 2008<sup>98</sup> and there were 13 hearing days. Kolgeci had to testify three times, in part because of the justice system reform and changes in the composition of the trial panel and partly because the judge for reasons that are not clear, wanted to question him about the medical condition which was the stated reason for him not serving in the Army.

Mustafa Kolgeci gave a detailed description of his experience during his arrest and detention, the consequences of the police torture and his illegal detention, and his ongoing treatment.

Court-appointed expert Dr. Dubravka Kolundžić conducted a psychiatric examination and appeared in court twice to present her findings and opinion. She diagnosed Kolgeci with PTSD.

## The Judgment of the First Basic Court

In a ruling delivered on September 7, 2012, the First Basic Court in Belgrade

<sup>96</sup> Case K.84/99 dated January 2000.

<sup>97</sup> Case: P-46233/2010.

<sup>98</sup> The Case was assigned to Justice Valentina Todorović Vorkapić. Following the justice system reform, the Case was transferred to the First Basic Court in Belgrade and assigned to Justice Aleksandra Vasiljković.

confirmed that the Republic of Serbia was responsible for the torture and inhumane treatment of Mustafa Kolgeci and ordered a payment of RSD 380,000 in compensation for non-pecuniary damages. In the same ruling, the First Basic Court rejected his compensation claim for illegal detention lasting 16 months on the grounds of the statute of limitations.

The HLC appealed this decision.

### **The Analysis of the Judgment**

I The Court established that during the 16-month-long detention Mustafa Kolgeci was exposed to “all sorts of physical and psychological abuse” on a daily basis and described the consequences of torture as “permanent changes in personality reflected in a reduction of social interaction and general capabilities”.

II Having established the responsibility of the State for the 16-month-long torture Kolgeci endured, the Court ordered the State to pay compensation of RSD 380,000 explaining that this award was “adequate financial compensation” for the PTSD that caused his overall quality of life to be reduced by 20%. Such a low compensation amount is not in compliance with the established facts and did not provide satisfaction for the victim of the unjust treatment. The Court acted in compliance with the practice of the Serbian courts with respect to determining the compensation amount for the reduction of overall quality of life, which does not recognize the specific nature of human rights violations and crimes committed by the state security forces during war.<sup>99</sup>

III The Court rejected the compensation claim for illegal detention on the grounds of the statute of limitations<sup>100</sup>. In the opinion of the Court, the statute of limitations began to run on the day the decision of the District Court in Požarevac acquitting Mustafa Kolgeci of all charges was made public in the presence of Kolgeci and his legal council. Also, the Court pointed to the fact that the decision had been delivered to Mustafa’s legal council in 2000 and that at the same time it was posted on the noticeboard in the court building. The Court explained that it was not in a position to evaluate the validity of document delivery procedures.

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99 More information on the low compensation amounts awarded by Serbian courts to victims of human rights abuses committed by members of Army and police can be found on page 15.

100 In accordance with Article 123, paragraph 4 of the previous Criminal Procedure Code, the statute of limitations for compensation claims for illegal detention is six months.

This opinion of the Court was in contradiction with the then existing Criminal Procedure Code stipulating that the Court was under obligation to deliver the judgment personally to the defendant.<sup>101</sup> Furthermore, the Criminal Procedure Code stipulates that, if the defendant has a legal representative, the delivery of the decision is considered legally binding only when it is delivered to both the defendant and his legal representative. The posting of the decision on the noticeboard is considered legally binding only when the address of the defendant is unknown to the Court, which is not the case here because the RJP failed to present proof that there were any failed attempts to deliver the court's decision to Kolgeci.

### **3.4. The Case of Refik Hasani, Sokol Jakupi, Agim Ibrahim, and Zijadin Blakqori**

62 On March 28, 1999 fearing an attack from Serbian forces, Refik Hasan and his family left Podujevo/Podujevë and went to the village of Šajkovac/Shajkoc, nearby. Two weeks later, they went to his relative's house in Priština/Prishtinë and stayed there until May 19, 1999. That morning, Serbian police blocked the street and started arresting Kosovo Albanian men. Refik and his relatives were arrested and taken in a van to the police station in Muhadžer Mahala/Muhaxher Mahala. They were first locked up in the basement and later taken to the ground floor for a paraffin test. As they were walking to the upper floor, Refik and the others were cursed at and beaten continually with bats. They were ordered to stand in the hallway facing the wall with their hands behind their backs. From the hallway Refik was taken to a room where he gave the police his personal information and where he was ordered to sign some documents. Later that day Refik and a group of men were taken in a van to the prison in Lipljan/Lipjan. On June 10, 1999 Refik was transferred to the prison in Sremska Mitrovica and was released on June 30, 2000 after 13 months of illegal detention.

On the day NATO bombardment began, Sokol Jakupi from the village of Grdovac/Gërdoc (in the Glogovac/Glllogoc municipality), was in Priština/Prishtinë, staying at his cousin's house in the Sunčani breg neighborhood. A few days earlier, his wife had given birth to their child in hospital in Priština/Prishtinë. After the beginning of the bombing they did not return to their village. On the morning of May 20, 1999, police officers wearing 'balaclavas' entered the house and asked to see their documents. They asked Sokol what he was doing in Priština/Prishtinë, and when he told them that his wife had just had a baby,

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101 Article 123 of the previous Criminal Procedure Code.

they asked him for money. Since he had no money, they handcuffed him and took him to the police van where there were more Kosovo Albanian men who had been arrested in their homes. They took them to the police station and escorted them to the basement. During that time the police officers hit them with police batons. There were some 30 men in the basement and they were all ordered to stand against the wall. A few hours later they were taken one by one to an office where they were forced to sign some documents. Sokol noticed the word “terrorism” in those documents. When he signed, two police officers took him to a room and started beating him. Sokol lost consciousness from the pain. He came to when he was taken to the prison in Lipljan/Lipjan. On the night of June 9, 1999 he was transferred to the prison in Sremska Mitrovica. He was released on June 30, 2000 after 13 months in illegal detention.

Agim Ibrahim and his family fled their village of Rakinica/Rakinicë (in the Podujevo/Podujevë municipality) a few days after the NATO bombardment had begun. Initially they hid in nearby villages and later went to stay with Agim’s uncle in Priština/Prishtinë. On May 18, 1999 Serbian police broke into the house. When he showed his Identity documents they established that he was not from Priština/Prishtinë. They took him to the police station where they held him for approximately three hours during which time they continuously beat him. They confiscated all his money. Along with a group of 20 men he was taken to the prison in Lipljan/Lipjan. He was beaten on a number of occasions during questioning. On June 10, 1999 he was transferred to the prison in Sremska Mitrovica. Agim was released on June 30, 2000 after 13 months of illegal detention. He was never criminally prosecuted.

Zijadin Blakqori lived with his family in Priština/Prishtinë. On May 7, 1999 Serbian police officers fired at their house and Zijadin decided to move his family to a friend’s house in Muhadžer Mahala/Muhaxher Mahala. They stayed with his friends until May 19, 1999 when five police officers broke into the house in the early morning hours. They searched all the men and asked them to show their IDs. Zijadin, his brother, and his brother-in-law were taken with a group of 60-70 Kosovo Albanian men to a nearby police station. They were taken into the basement and escorted in groups of ten to have a paraffin test done. When that was over, he was constantly beaten for an hour and then he was taken to an office where an inspector in civilian clothes ordered him to take all of his clothes off to be searched. While the inspector asked him about the KLA, he was beaten by the police officers. An hour later they took him out to a hallway where there were approximately 100 Kosovo Albanian men. They had to stand on their toes for a couple of hours, facing the wall. Around 6 p.m. police

officers took Zijadin and a group of 15 men to the prison in Lipljan/Lipjan. He was questioned once. Inspectors in civilian clothes questioned him about the KLA and threatened to “burn him alive” with power cables if he did not give them the information they wanted. He was beaten for hours. On June 10, 1999 he was transferred to the prison in Sremska Mitrovica. He was released on October 28, 1999 after four months of illegal detention.

Hasani, Jakupi, Ibrahim, and Blakqori still suffer from the consequences of police brutality. They were all diagnosed with PTSD.

### **The Lawsuit**

On October 29, 2008 the HLC filed a compensation lawsuit against the Republic of Serbia, on behalf of Hasani, Jakupi, Ibrahim, and Blakqori demanding that the State pay a total compensation amount of RSD 2.4 million for the responsibility of the State for the torture committed by MUP officers. The HLC also enclosed documents ordering their police detention, decisions of the Ministry of Justice ordering their release from prison, and their medical documentation.

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### **The Response to the Lawsuit**

The RJP rejected all of the allegations in the lawsuit, claiming that the HLC had failed to submit evidence corroborating the allegations and that the medical documentation enclosed did not demonstrate a connection between the conduct of MUP officers and the health problems of Hasani, Jakupi, Ibrahim, and Blakqori. The RJP also invoked the statute of limitations.

### **Course of the Proceedings<sup>102</sup>**

The trial began on March 10, 2009.<sup>103</sup> There were three main hearing days during which Hasani, Jakupi, Ibrahim i Blakqori testified about their arrest and their treatment by the police officers, the torture they endured in the police station and in prison, and the consequences of the torture. The Court rejected

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102 Case: P-46946/2010.

103 Justice Vesna Mijuš (First Municipal Court in Belgrade) where the proceedings first took place, rejected the lawsuit on October 1, 2008 stating invalid power of attorney, although HLC appeared as legal representative of a number of victims of human rights violations with the same power of attorney and no other judge challenged its validity. When this decision was appealed by HLC, the case was transferred to the First Basic Court in Belgrade and assigned to Justice Maja Ćorugić who did not schedule a single hearing in this case in two years. Following an intervention by HLC, the case was assigned to Justice Nataša Petričević Milisavljević.

a motion from the HLC lawyer to order medical examinations in order to establish the consequences of torture on the mental and physical health of Hasani, Jakupi, Ibrahim, and Blakqori.

### **Decision of the First Basic Court**

On June 6, 2011 the Court rejected in its entirety the lawsuit that the HLC had filed on behalf of Hasani, Jakupi, Ibrahim, and Blakqori. In its explanation of the decision, the Court stated that they believed the statements of Hasani, Jakupi, Ibrahim, and Blakqori with respect to the circumstances surrounding their arrest, but that the statute of limitations had run out on their right to claim compensation.

Based on the enclosed medical documentation, the Court established that Hasani, Jakupi, Ibrahim, and Blakqori learned in 2003 or 2004 respectively that they suffered from PTSD and that the statute of limitations had started to run at that moment.

The HLC appealed this decision with the Appellate Court of Belgrade.

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### **Judgment of the Appellate Court in Belgrade**

In a decision handed down on August 24, 2012, the Appellate Court rejected the appeal of the HLC lawyer and upheld the judgment of the First Basic Court.

### **Analysis of the Judgment of the Appellate Court**

The Court granted the motion of the RJP to dismiss the lawsuit on the grounds of the statute of limitations. The opinion of the Court is that the right of Hasani, Jakupi, Ibrahim, and Blakqori to claim compensation expired three years after they had learned that they suffered from PTSD, in 2006 or 2007 respectively. This decision of the Court is in contradiction with established court practice. In other words, the Court had a legal obligation to establish precisely when Hasani, Jakupi, Ibrahim, and Blakqori learned that PTSD had caused them a reduction in their overall life quality of life ("the extent and level of damage").<sup>104</sup>

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<sup>104</sup> The District Court of Belgrade, Gž. 11891/04, dated January 24, 2005: "The Court is under obligation to establish the date of the completion of the medical treatment of the plaintiff and especially the date the plaintiff learned about the damage which implies not only the realization that the damage occurred, but also the knowledge of the extent and level of damage." Also: District Court in Valjevo, Gž. 259/05 dated February 17, 2005, the Supreme Court of Serbia, Rev. 1025/2011 dated November 14, 2001, Rev. 2559/07 dated December 11, 1997.

Hasani, Jakupi, Ibrahim, and Blakqori could have only learned from the findings and opinions of a court-appointed expert that PTSD had reduced their overall quality of life. However, the first-instance court rejected a motion from the HLC lawyer to conduct medical examinations and the Appellate Court upheld that decision. This resulted in the inability of the Court to establish the key fact necessary to determine the date that the statute of limitations should have been measured from.

II In its explanation of the decision, the Court independently interpreted the supplied medical documentation. More precisely, the Court evaluated the psychological consequences of torture without seeking expert opinion, although that matter was beyond the professional knowledge of the members of the Trial Panel<sup>105</sup>:

“In the opinion of the Appellate Court, after the feeling of acute fear they endured in detention became a psychotic disorder and after all of the plaintiffs underwent psychiatric treatment, and at the moment they were told what their diagnosis was, and started to receive therapy, their acute condition became a chronic disorder thus acquiring its final form, and the fact that treatment was ongoing was without consequence because it was reasonable to believe that their condition might require life-long treatment”.

On behalf of the plaintiffs, on November 6, 2012, the HLC lawyer filed a Constitutional Appeal to the Constitutional Court of Serbia alleging violation of their right to a fair trial, prohibition of discrimination, the right to rehabilitation and compensation, the violation of their right to have their rights equally protected, and for the violation of their right to access available legal means.<sup>106</sup>

### **3.5. The Case of Xheladin and Zenel Bylykbashi and Jashar Kukici**

Xeladin Bylykbashi, Jashar Kukici, and Zenel Bylykbashi lived in Trstenik/Terstenik (in the Glogovac/Glogoc municipality) with their families. Xeladin and his family left the village in February 1999 and went to Štrbulovo/Shterubullovo because Serbian forces had frequently attacked the village. Jashar and his family also went to Štrbulovo/Shterubullovo two days before the beginning of the NATO air campaign. Zenel left Trstenik/Terstenik in mid May when the

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105 Criminal Procedure Code, The Official Gazette of RS», issue No. 72/2011, Article 259: “The Court has a legal obligation to engage court-appointed experts when establishing facts beyond their professional knowledge.”

106 Articles 32, 35, 36, and 21 of the Constitution of the Republic of Serbia.

Serbian forces occupied his house. He went to Novo Čaikatovo/Çikatovë e Re. All three men were arrested on May 28 when Serbian forces entered Štrbulovo/Shterubullo, Novo Čaikatovo/Çikatovë e Re and other villages in the area. They arrested any men they came across, among them Xheladin, Jashar, and Zenel and took them in trucks to Glogovac/Gillogoc. They were taken to a business office where police officers confiscated their personal identification documents. While they were giving their personal information to the police officers, the officers beat them with sticks and metal bars. After that, all of the prisoners were ordered back onto the truck and taken to the prison in Lipljanu/Lipjan. When Serbian forces began to withdraw from Kosovo on June 10, 1999, Xheladin, Jashar, and Zenel were taken to the prison in Požarevac.

Xheladin was only able to contact his family three months after he was arrested. In January 2000 he was transferred to a cell with 30 prisoners and the physical abuse by the guards finally stopped. In March 2000 the guards allowed them to go out for exercise for the first time. Xheladin was released on April 11, 2000, after 11 months of illegal detention. During the time he spent in prison he was never interrogated and he never received a written statement ordering detention or the initiation of a criminal proceedings.

Jashar was first able to send a letter to his family through the ICRC, six months after he was taken into custody. He was released on April 14, 2000, following 11 months of illegal detention. Zenel was released around January 28, 2000. He spent eight months in illegal detention and he was never criminally processed.

### **Consequences of illegal detention**

Xheladin, Jashar, and Zenel were diagnosed with PTSD caused by the physical and psychological torture they endured while they were illegally detained.

### **The Lawsuit**

On May 4, 2010 the HLC filed a compensation lawsuit with the First Basic Court in Belgrade on behalf of Xheladin Bylykbashi, Jashar Kukici, and Zenel Bylykbashi demanding total compensation of RSD 1.8 million to be paid to the plaintiffs for the consequences of the torture they endured during their illegal detention. The HLC also enclosed a copy of the decision ordering their release from prison, issued by the Ministry of Justice of the Republic of Serbia, ICRC statements, and their medical documentation.

## **Response to the Lawsuit**

The RJP called for the rejection of the lawsuit as incomplete, claiming there was not enough evidence to corroborate the allegations in the lawsuit. As especially inadmissible they listed the document ordering the detention by the police of Zenel Bylykbashi on May 29, 1999 because the “ink seal was not clear”. The RJP invoked the statute of limitations and pointed to the lack of medical documentation from the period in question.

## **Course of the Proceedings<sup>107</sup>**

The trial began in February 2011<sup>108</sup>. There were three main hearings during which the Court heard the testimonies of Xeladin, Zenel, and Jashar who gave detailed accounts of their arrest, their treatment by the police and the consequences of the police brutality, which they continue to feel. Court-appointed psychiatric expert, Dr. Branislav Filipović, concluded that in his professional opinion all three of them suffered from PTSD, that the condition acquired its final form in 2009 and that it had caused a reduction in their overall quality of life.

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## **Decision of the First Basic Court**

On January 18, 2012, the First Basic Court rejected as unfounded the compensation lawsuit filed on behalf of Xeladin Bylykbashi, Jashar Kukici, and Zenel Bylykbashi on the grounds of the statute of limitations, as proposed by the RJP. The HLC appealed this decision on January 31, 2012.

## **The Analysis of the Judgment**

By declaring that the statute of limitations had run out for the compensation claim, as suggested by RJP, the Court failed to establish that the statute of limitations did not begin to run from time the damage occurred, but from the time that Xeladin and Zenel Bylykbashi and Jashar Kukici learned the details of their condition. Court practice is very clear on this: for this kind of condition, the statute of limitations begins to run from the day that treatment is over and the victim learns about a reduction in their overall quality of life. In this specific

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107 Case: P-71250/2010.

108 Justice Sanja Ivanković.

case, that is the moment when the court-appointed expert established that for all three victims, PTSD had caused a reduction in overall quality of life.<sup>109</sup>

### **3.6. The Case of Behram Sahiti, Elmi Musliu, Enver Baleci, Elmi Musliu, and a minor, Faton Halilaj**

Behram Sahiti and Elmi Musliu lived with their families in the village of Štrbulovo/Shterbullovë (in the Glogovac/Gllogoc municipality). On the morning of May 28, 1999 Serbian police entered the village and separated the men from the women. Behram and Elmi were taken to Glogovac/Gllogoc with a group of 40-50 men. They were beaten during the entire duration of the trip. When they arrived in Glogovac/Gllogoc, they were lined up in front of a high-rise building where there were a lot of police officers and soldiers. The men were all beaten with sticks and police batons. After a while, they were asked to give their personal information and they were all tested for gunshot residue. Over the following three days, Behram and Elmi were locked up in a flour processing facility with other Kosovo Albanian men. They were continuously beaten and abused by the police. Three days later they were transported to the prison in Lipljan/Lipjan and on June 9, 1999 they were transferred to the prison in Požarevac. They were released on April 18, 2000 after spending 11 months in illegal detention. They were never criminally prosecuted or brought before a judge or any authorities.

Enver Baleci lived with his family in the village of Novo Čikatovo/Çikatovë e Re (in the Glogovac/Gllogoc municipality). In September 1998 they left the

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109 “Since it is the opinion of the Supreme Court of Serbia that the realization that damage exists is not connected with the day damage was caused (the day damage occurred) but with the circumstances regarding the duration and the cessation of physical pains and fear, i.e. the end of the treatment and the realization that the remaining consequences have caused permanent damage to that individual’s health and overall capabilities resulting in the reduction of overall quality of life, each aspect of non-pecuniary damages has its own statute of limitations. So, it the opinion of the VSS, the statute of limitations on compensation for non-pecuniary damages for physical pain begins to run at the time the pain was gone. For fear, it begins when the fear is gone (and should be compensated in accordance with the duration and the level of intensity, even if it does not represent an element in the reduction of overall quality of life). For emotional pain following the realization that there is a reduction of the overall quality of life or a worsening of general health it begins on the day of the realization that there are new, more serious health consequences, as long as the victim, given his or her mental health, is able to understand the significance of these circumstances. This means that the realization that damage exists following the end of the treatment or the worsening of a health condition may occur outside of the deadlines provided in Article 367 of ZOO with respect to claiming compensation for such damages” (Rev. 2559-07, December 11, 1997, the Supreme Court of Serbia).

village and took refuge in the neighboring village of Banjica/Baicë. Seven days later, Serbian police forces entered the village and took Enver and 300 other men into custody. He spent the following three days in the police station in Glogovac/Gllogoc. Enver, his brother, and their two cousins returned to Novo Čikatovo/Çikatovë e Re and he did not leave the village after that. On May 25, 1999 police officers and soldiers broke into his house. Enver and the other men from the village were taken to Glogovac/Gllogoc. They were taken to a business office and held there for two days. Police asked him about the KLA and they performed a paraffin test on him. He was beaten during the interrogation. On May 28, 1999, with a group of other arrested Kosovo Albanian men, Enver was taken to the prison in Lipljan/Lipjan. On June 10, 1999 he was transferred to the prison in Požarevac. He was released on June 14, 2000 and he was never criminally prosecuted or questioned. He spent 13 months in illegal detention.

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Thirteen-year-old Faton Halilaj lived with his family in the village of Trdevac/Tërdec (Glogovac/Gllogoc municipality). In mid March 1999, fearing attack from Serbian forces, they fled to the neighboring village of Novo Čikatovo/Çikatovë e Re. On May 28, 1999, Serbian forces entered the house where they were staying. They separated the men from the women and children, and took some 20 of them on foot towards Glogovac/Gllogoc. They were beaten throughout the journey. When they arrived in Glogovac/Gllogoc, Faton was treated like the Kosovo Albanian men held in police custody. They gave their personal information and underwent a paraffin test. In the evening he was taken for questioning. He was asked about the KLA and beaten continuously. The following day he was taken to the Lipljan/Lipjan correctional facility. On June 10, 1999 he was transferred to the prison in Požarevac. He was released on November 19, 1999 after spending five and a half months in illegal detention.

Torture, inhumane and degrading treatment by MUP members during their illegal detention resulted in serious health problems for Sahiti, Baleci, Musliu, and Halilaj. All four of them have been diagnosed with PTSD.

### **The Lawsuit**

On April 27 the HLC filed a compensation lawsuit with the First Basic Court against the Republic of Serbia, on behalf of Sahiti, Baleci, Musliu, and Halilaj 2010, for the responsibility of the State for the torture and inhumane and degrading treatment of illegally detained prisoners by MUP officers. The HLC also enclosed directives ordering the captives' police detention, along with

their medical documents. The HLC demanded a total compensation amount of RSD 2.7 million for the four plaintiffs.

### **Response to the Lawsuit**

The RJP disputed all of the factual allegations in the lawsuit, claiming that there was not enough evidence to corroborate the allegations, pointing especially to the lack of medical documentation from the time immediately after the plaintiffs were released from prison. They also denied the validity of the medical documentation that was presented because it was issued by physicians who were not licensed to practice medicine in Serbia. The RJP also invoked the statute of limitations.

### **Course of the Proceedings<sup>110</sup>**

The trial began in November 2010.<sup>111</sup> There were four hearing days during which the Court heard the statements of Sahiti, Baleci, Musliu, and Halilaj and the findings and opinions of a court-appointed expert.

Sahiti, Baleci, Musliu, and Halilaj provided a detailed description of the circumstances surrounding their arrest and the time they spent in police custody, as well as torture they endured on a daily basis during their illegal detention. They also talked about the course of their medical treatment after they were released from prison and the consequences of the torture that they still felt.

Court-appointed expert psychiatrist, Dr. Branislav Filipović confirmed in his findings and opinion that Sahiti, Baleci, Musliu, and Halilaj had been diagnosed with PTSD and that it had caused a reduction in their overall quality of life.

### **Judgment of the First Basic Court**

In a decision handed down on July 17, 2012, the First Basic Court rejected the claims of Sahiti, Baleci, Musliu, and Halilaj on the grounds of the statute of limitations.

### **Analysis of the Judgment of the First Basic Court**

**I** The Court established that Sahiti, Baleci, Musliu, and Halilaj had been illegally detained and that they had endured numerous acts of torture and inhumane

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<sup>110</sup> Case: P-70585/2010.

<sup>111</sup> Justice Irena Martinović.

treatment by MUP officers. The opinion of the Court was that their statements were clear and truthful and in compliance with other evidence presented to the Court. The Court also admitted the findings and opinion of the court-appointed expert.

II The Court accepted the statute of limitations as invoked by the RJP. The position of the Court was that the statute of limitations began to run at the time the PTSD occurred and “its form of manifestation” (i.e. symptoms were evident) and not at the moment the victims learned they had PTSD or that the PTSD had caused a permanent reduction in their overall quality of life. The Court’s position is in contradiction with court practice which states that the beginning of the statute of limitations for damage compensation claims should not be the date any damage was caused but the date the victim realized what the final consequences of the damage were.<sup>112</sup>

According to established court practice, the statute of limitations in this case began to run on the day that Sahiti, Baleci, Musliu, and Halilaj learned that they were suffering from PTSD and that consequently their overall quality of life had been reduced, and not at the time that PTSD occurred. Sahiti, Baleci, Musliu, and Halilaj only learned that PTSD had caused the reduction in their overall quality of life from the findings and opinion of the court-appointed expert in 2008 (Baleci, Musliu, and Halilaj) and in 2011 (Sahiti).

### **3.7. The Case of Agron, Ekrem, and Fahri Ejupi**

Agron and his family lived in Podujevo/Podujevë. On March 24, 1999, fearing the influx of Serbian forces, they went to Priština/Prishtinë where they stayed until May 20, 1999. In the early morning hours of May 20, police entered the apartment where they were staying. After checking everyone’s ID, they took Agron to the police station in Muhadžer Mahala/Muhaxher Mahala. He was asked about the KLA, beaten and forced to sign a statement admitting to being a terrorist. That same day as one of a group of 20 prisoners Agron was taken to the prison in Lipljan/Lipjan. On June 10, 1999 Agron was transferred to the prison in Sremska Mitrovica. He was released on April 21, 2000 after 13 months of illegal detention. He was never criminally charged.

Ekrem Ejupi fled his native village of Sekirače/Sekiraqë (in Podujevo/Podujevë mu-

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<sup>112</sup> Decision of the VSS, Rev. 1025/2001 – The Bulletin of Court Practices of the Supreme Court of Serbia, No. 2/2003, page 62; Decision of the VSS, Rev. 2559/07, dated December 11, 1997; District Court of Belgrade, Gž. 11891/04, dated January 26, 2005.

nicipality) with his family after the NATO bombardment began and went to his uncle's house in Priština/Prishtinë. They stayed there until May 19, 1999 when police entered the house and arrested him. He was taken to the police station in Muhadžer Mahala/Muhaxher Mahala where he was questioned and beaten. From there he was transferred to the prison in Lipljan/Lipjan. A day after the signing of the Kumanovo Peace Accord, he was transferred to the prison in Sremska Mitrovica. During the summer months of 1999 and 2000 Ekrem and other young prisoners were forced to work all day in the fields. He was released on October 28, 2000 after 17 months of illegal detention. He was never criminally charged.

Fahri Ejupi spent the first days of the NATO bombing in his family house in Podujevo/Podujevë. Shortly after, fearing the arrival of Serbian security forces, he moved to his brother's house in Surkiš/Surkish. Several days later they went to Priština/Prishtinë. On May 19, 1999 police came to the apartment where they were staying and having checked his ID, took Fahri to the police station in Muhadžer Mahala/Muhaxher Mahala. After several days of questioning and beatings, Fahri was taken to the prison in Lipljan/Lipjan. On June 10, 1999 he was taken to the prison in Sremska Mitrovica and was released on June 30, 2000 after 13 months of illegal detention. He was never criminally prosecuted.

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Fahri, Ekrem, and Agron Ejupi experience serious and permanent consequences from the physical and psychological abuse endured during their arrest and illegal detention. They were all diagnosed with PTSD.

### **The Lawsuit**

On September 2, 2008, the HLC filed a compensation lawsuit against the RS with the First Municipal Court in Belgrade on behalf of Fahri, Ekrem, and Agron Ejupi demanding that the State pay a total of RSD 1.8 in damages to Fahri, Ekrem, and Agron Ejupi for the State's responsibility for the illegal conduct of MUP officers. The HLC submitted directives ordering police custody, the decision of the Ministry of Justice of RS to order their release, as along with their medical documentation.

### **Response to the Lawsuit**

The RJP denied all of the factual allegations in the lawsuit, claiming that there was no proof of physical and psychological abuse. The RJP also stated that a connection between "the events of the year 1999 and 2000" and men's health conditions could not be established from the medical documentation issued in 2008. In addition, the RJP invoked the statute of limitations.

## **Course of the Proceedings<sup>113</sup>**

The trial began on January 20, 2009.<sup>114</sup> There were seven main hearing days during which the Court heard Agron, Ekrem, and Fahri Ejupi, and ordered a psychiatric examination to be conducted by court-appointed expert, Dr. Cvetin Urošević.

Agron, Ekrem, and Fahri Ejupi testified about the circumstances of their arrest, police brutality in the police station in Priština/Prishtinë and in the prison in Sremska Mitrovica. The court-appointed expert established that Ekrem Ejupi was suffering from PTSD, that his treatment was ongoing, and that PTSD had caused a permanent reduction in his overall quality of life. In his opinion Agron and Fahri Ejupi could not be diagnosed with PTSD but were suffering from a “reactive condition” that did not cause psychological disorders.

## **Judgment of the First Basic Court**

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In a ruling handed down on December 3, 2010, the First Basic Court accepted the compensation claim of Ekrem Jakupi and awarded him RSD 250,000 in damages but rejected the compensation claims of Fahri and Agron Ejupi as unfounded.

Both the HLC and the RJP appealed this decision with the Appellate Court in Belgrade.

## **Judgment of the Appellate Court in Belgrade**

On February 6, 2012 the Appellate Court in Belgrade dismissed the HLC appeal and upheld the ruling of the first-instance court concerning Fahri and Agron Ejupi. In the same decision, the Appellate Court overturned the decision awarding compensation to Ekrem Ejupi and ordered a retrial.

## **Analysis of the Judgment of the Appellate Court**

I The Appellate Court confirmed the facts established by the first-instance court that Agron, Ekrem, and Fahri Ejupi were illegally arrested and tortured by MUP officers.

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113 Case: P-46780/2010.

114 The Case was assigned to Justice Maja Pavlović.

**II** The Appellate Court overturned the first-instance decision awarding compensation to Ekrem Ejupi because the Court had failed to establish a connection between “the acts of violence and the consequences of those acts”. Later in its judgement, the Appellate Court opines that in order for “the plaintiff to be eligible to claim compensation on the grounds of resulting consequences, it is necessary to determine, beyond doubt, that there is a connection between the illegal detention of Ekrem Ejupi and the PTSD diagnosed by the court-appointed expert.” This position of the Appellate Court is in contradiction with the findings of the court-appointed expert who explicitly established just such a connection between the illegal detention and PTSD.<sup>115</sup> The Appellate Court failed to elaborate on its reason for not accepting the findings of this court-appointed expert or for considering those findings insufficient to establish a connection between PTSD and illegal detention.

**III** The Appellate Court instructed the first-instance court to establish, in the retrial, “the way in which PTSD had manifested itself since the incidents and whether there was any record of that”. Again, it is unclear why the Appellate Court chose not to accept the findings of the court-appointed expert who specifically stated that PTSD, as diagnosed in Ekrem Ejupi, was a chronic disorder.<sup>116</sup>

**IV** The Appellate Court upheld the decision of the first-instance court rejecting the compensation claims of Fahri and Agron Ejupi as unfounded. Both courts based their decisions on the findings and opinions of court-appointed experts who stated that a diagnosis of PTSD was not indicated. The expert stated two reasons for such a diagnosis in the case of Fahri and Agron Ejupi. Firstly, after they had been diagnosed with PTSD by the Kosovo Rehabilitation Center for the Victims of Torture (KCRT) they did not subsequently contact their physicians. Secondly, the court-appointed expert did not diagnose them with PTSD but with a “reactive condition” that did not cause psychological disorders or a reduction in overall quality of life.<sup>117</sup> It appears that the court-appointed expert did not take into consideration specific aspects of the very patriarchal culture Agron and Fahri Ejupi belong to. In such cultures, because of

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115 Professional finding and opinion of court-appointed expert Dr. Cvetin Urošević, July 17, 2009, page 2: “There is a direct connection between the Post-traumatic Stress Disorder in this patient and the physical and psychological torture he endured in prison. PTSD was first diagnosed by KCRT on December 13, 2007”.

116 Professional finding and opinion of court-appointed expert Dr. Cvetin Urošević, July 17, 2009, page 2.

117 The KCRT medical team diagnosed Fahri and Agron Ejupi as suffering from PTSD.

their role in the family, men only seek medical help when absolutely necessary and extremely rarely in case of mental health problems. Dr. Branislav Filipović, the court-appointed expert in the case of Isuf Isufi et al., pointed out the need to show more consideration for the specific aspects of the culture victims of human rights abuses comes to the fore when considering treatment plans for PTSD patients.<sup>118</sup>

### **Constitutional Appeal on Behalf of Agron Ejupi**

On April 12, 2012 the HLC filed a constitutional appeal with the Constitutional Court of the Republic of Serbia on Behalf of Agron Ejupi for the violation of Ejupi's right to a fair trial and the right to rehabilitation and compensation.<sup>119</sup>

In its ruling handed down on October 2, 2012, the Constitutional Court rejected the HLC's appeal claiming that the Constitutional Court does not control evidence unless they are evaluated obviously in a manner unfavorable for the person filing the constitutional appeal.

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On behalf of Agron Ejupi, the HLC intends to file an application to the European Court of Human Rights.

### **4. The Case of Saranda, Jehona, and Lirie Bogujevci (War Crime in Podujevo, March 28, 1999)<sup>120</sup>**

In the morning of March 28, 1999, Saranda, Jehona and Lirie Bogujevci were in their family house with their mothers, sisters and brothers, and their cousins. Their father and the fathers of their cousins had left the house earlier and gone into hiding into the woods. MUP officers (members of the "Scorpions" unit) entered the house, forced all of them outside and took them to the backyard of the Gashi family house. They ordered them to lift their arms up and searched them, and then they took them to a nearby police station, shouting obscene words and curses at them as they walked.

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118 Minutes from the main hearing held on February 8, 2011, First Basic Court in Belgrade P. 46976/2010.

119 Fahri Ejupi decided to terminate further proceedings.

120 Five MUP officers have been sentenced by legally binding decisions: Saša Cvjetan (20 years), Dragan Medić (20 years), Dragan Borojević (20 years), Željko Đukić (20 years), and Miodrag Šolaja (15 years).

All of a sudden, they separated Hamdi Duriqi and Selman Gashi, took them into a café and killed them. Then they ordered the women and the children to go back to the Gashi family house. Shortly after they returned to the Gashi family house, an unidentified “Scorpions” unit member shot Shefkate Bogujevci. Realizing that their mother had just been shot, Fatos, Jehona, Lirie, and Genc Bogujevci ran towards her. At that moment other “Scorpions” unit members opened fire on them. Seven women and seven children were killed.<sup>121</sup> Saranda, Jehona, Lirie, Fatos, and Genc Bogujevci were seriously wounded. Saranda, Jehona, and Lirie sustained a number of serious injuries. Saranda was hit 13 times on the arm, two times on the leg, and once on the back. Jehona sustained wounds to her shoulders, her left arm and left leg. Lirie was shot in the neck, in the back, one shoulder, and her fingers were also shot. Saranda, Jehona, and Lirie are still being treated for serious physical injuries and psychological traumas.

## **The Lawsuit**

On behalf of Saranda, Jehona, and Lirie Bogujevci, on August 28, 2008 the HLC filed a compensation lawsuit with the First Municipal Court in Belgrade against the Republic of Serbia demanding the State pay total compensation in the amount of RSD 10.5 to Saranda, Jehona, and Lirie for the responsibility of the State for the crimes committed against them by MUP officers. The compensation claim for non-pecuniary damages was based on physical pain and fear they endured, the violation of their personal rights, and for the emotional pain caused by the reduction in their overall quality of life. Also, in compensation for the material damages for their bodily injuries, overall poor health condition, permanent dependence on others, and reduced ability to further develop and prosper, the HLC demanded monthly payments of RSD 40,000 to the plaintiffs.

## **Response to the Lawsuit**

The RJP rejected the compensation claims, stating that the MUP could not be held responsible for the damage because the responsibility of the State only exists when the act of violence or terror that caused damage was “directed against the State itself”. The RJP invoked the statute of limitations and claimed

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<sup>121</sup> Fezrije Llualiju (21), Shefkate Bogujevci (42), Nefise Llualiju (55), Sala Bogujevci (39), Shehide Bogujevci (67), Esmā Duriqi (69) i Fitnete Duriqi (36), Nora Bogujevci (14), Shpend Bogujevci (13), Shpetim Bogujevci (10), Dafina Duriqi (9), Arber Duriqi (7), Mimoza Duriqi (4), and Albion Duriqi (2).

that the “plaintiffs demanded a very high compensation amount,” which was “contrary to the Article 200 of the ZOO”.<sup>122</sup>

### **Course of Proceedings<sup>123</sup>**

The trial began on October 29, 2008.<sup>124</sup> There were six main hearing days during which the Trial Panel discussed procedural issues and heard Saranda, Jehona, and Lirie Bogujevci.

Saranda, Jehona, and Lirie Bogujevci were heard twice. First, before the First Municipal Court on December 24, 2008 when they testified about the events of March 28, 1999 – the execution of their families, injuries they sustained at the time, and medical treatments they underwent.<sup>125</sup>

Following the justice system reform in Serbia, the Trial Panel was changed and newly appointed judge Anđelka Opačić called the Bogujevci sisters to testify again. Although the HLC lawyer objected to this request stressing the existence of a legal provision<sup>126</sup> allowing the earlier testimonies of Saranda, Jehona, and Lirie Bogujevci to be read before the new trial panel, Justice Opačić insisted on hearing them again. She ignored arguments presented by the HLC lawyer that another court appearance and a trip to Belgrade would cause further traumatization to the victims and that numerous documents had been presented demonstrating their health condition.

On September 13, 2012, Saranda, Jehona, and Lirie Bogujevci gave their testimonies again. Justice Anđelka Opačić questioned them about legally irrelevant facts, facts that were already available in the case file, and matters inappropri-

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122 Article 200, ZOO: (1) For physical pain, for emotional pain because of the reduction in overall quality of life, disfiguration, violation of one’s reputation, honor, freedom or personal rights, death of a loved one, and fear, the court will - if it is established that the circumstances of the case justify it, especially the intensity of pain or fear or their duration - award just compensation, in addition to, or without compensation awarded for material damages. (2) When considering the compensation claim for non-pecuniary damages, and when determining the amount of compensation to be awarded, the Court will take into consideration the significance of damaged objects and the purpose of the compensation, but in such a way that it does not contribute to goals that are in contrast with its nature and social purpose.

123 Case: P-2142/2010.

124 Case: P-2142/2010.

125 More details from the testimony of the Bogujevci sisters can be found in the HLC trial report “Compensation lawsuit – war crime committed against Albanian civilians in Podujevo – testimonies of Saranda, Jehona, and Lirie Bogujevci” dated December 25, 2008.

126 Article 245, ZPP.

ate for discussion in court. For example, she asked them where they lived and with whom, and why did they decide to go to “Great Britain of all places” after they survived the crime.<sup>127</sup>

Before the beginning of the main hearing, Justice Opačić asked all those present except the parties in the proceedings to leave the courtroom “due to a lack of oxygen”. Following the HLC lawyer’s objection, she allowed observers (the brother of Lirie and Jehona and HLC associates) to remain in the courtroom. After that, without a proper legal justification, she asked all observers to show their IDs and ordered their personal information entered into the minutes. Further on, she ordered the observers to keep to themselves everything that was said in the courtroom, and not to disclose any information to the media. This is another request made by Justice Anđelka Opačić with no legal justification under the Civil Procedure Code (ZPP) because only those present at the main hearing, which is closed to the public, are bound by such a confidentiality request.<sup>128</sup>

After she had heard the testimonies of the Bogujevci sisters, the judge closed this element of the proceedings. In the closing argument, HLC lawyer pointed out the position adopted by the Constitutional Court of Serbia on July 14, 2011 regarding the interpretation of the statute of limitations, establishing that an extended statute of limitations is applied for damages caused by a criminal act with respect to all parties responsible, both the direct perpetrator and the State on behalf of which that individual committed the crime – if there is a legally binding decision establishing the commission of the crime.<sup>129</sup>

### **Partial Interim Judgment of the High Court in Belgrade**

On December 14, 2012 the High Court in Belgrade handed down a partial interim decision declaring the compensation claim filed on behalf of the Bogujevci sisters legally founded. The Court will determine the amount of compensation if the Appellate Court confirms this ruling.

The Court rejected the objection on the grounds of the statute of limitations invoked by the RJP. The Court explained that longer statute of limitations periods are applied as stipulated in Article 377 of ZOO, because damage was

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127 More details from the testimony of Saranda, Jehona, and Lirie Bogujevci can found in the HLC trial report dated September 13, 2012 available on the HLC website.

128 Artilce 323, ZPP.

129 The decision of the Constitutional Court of RS (Su broj: I-400/1/3-11, dated July 14, 2011) adopted at the regular meeting held on July 7, 2011.

caused by a criminal act that is not subject to a statute of limitations. The Court believes that longer statute of limitations periods for damages caused by a criminal act (Article 377 of ZOO) are applied “not only with respect to the direct perpetrator but to each and every responsible person or entity, in this case the Republic of Serbia as the legal successor of the Federal Republic of Yugoslavia (SRJ)”.

The RJP appealed the partial interim decision with the Appellate Court in Belgrade.

### **5. The Murder of Mušan Husović (War Crime Committed in Kukurovići on February 18, 1993)**

The village of Kukurovići, once a predominantly Muslim village, is located close to the border between three states: Serbia, Montenegro, and Bosnia and Herzegovina. A great number of Yugoslav Army reserve soldiers were stationed in Kukurovići and other villages in the Municipality of Priboj located on the border, from May 8<sup>th</sup> 1992 until the end of the war in BiH. Yugoslav Army soldiers abused the citizens of these villages everyday, searched their houses without reason and threatened them. On February 18<sup>th</sup>, 1993 at around 18:00, Yugoslav Army soldiers who were positioned around the village launched an attack on the village of Kukurovići. The citizens of this village, including the children, escaped through the forest in the direction of Pljevlje and Priboj. Two days later, a number of residents returned to Kukurovići to check what had happened to their houses. They found smoldering ruins and slaughtered cattle. Inside burnt-out houses, they also found the corpses of Uzeir Bulutović, Mušan Husović and Fatima Sarač, who had not managed to escape the village during the attack. On April 11<sup>th</sup>, 1993, when there were no residents left in the village, another eight houses and their outbuildings were set on fire.

The investigating judge conducted inspections at the scene of the crime in both cases, but no residents of Kukurovići were interviewed after this and no further investigations were conducted. On October 23<sup>rd</sup>, 2006, the HLC filed a criminal complaint against unidentified soldiers of the Yugoslav Army's Užice Corps with the Office of the District Public Prosecutor in Užice. On October 27<sup>th</sup>, 2006, the Prosecutor's Office in Užice informed the HLC that the case was being transferred to the Office of the War Crimes Prosecutor.

## The Lawsuit

On August 28, 2008, on behalf of the son and six daughters (Husein Husović, Rašida Kaltak, Mevla Berbo, Emina Muratović, Zahida Rovčanin, Ramiza Arbak, and Džemila Čalaković) of Mušan Husović killed by VJ members, the HLC filed a compensation lawsuit with the First Municipal Court in Belgrade against the Republic of Serbia demanding the State to pay RSD 7 million in compensation for non-pecuniary damages because of the responsibility of the State for the killing of their father<sup>130</sup>. The HLC enclosed investigation reports, his death certificate, the investigation report of the District Court in Užice, documentation from the District Court of Užice, and documents made available by the Office of the War Crimes Prosecutor, confirming that pre-trial proceedings were underway against unidentified perpetrators of the killing of Mušan Husović.<sup>131</sup>

## Response to the Lawsuit

The Department of Legal and Ownership Affairs of the Ministry of Defence (the Department) acting as legal representative of the State in this case, denied the lawsuit and rejected the compensation amount claimed on behalf of the plaintiffs on the grounds of insufficient evidence of the responsibility of the State, especially the absence of a report from the VJ unit in question or evidence demonstrating how and under what circumstances Mušan Husović died. The Department also invoked the statute of limitations.

## Course of the Proceedings<sup>132</sup>

The trial began in December 2007 and lasted for almost four years.<sup>133</sup> There were as many as 18 main hearing days, nine of which were scheduled because of procedural issues such as the absence of the judge, because the representatives of the State did not receive an invitation to a scheduled hearing in the prescribed manner, because other institutions failed to submit requested documents in a timely manner, because of a walk-out by court clerks, and on one occasion because of the death of the Serbian Patriarch.

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130 HLC Press Release on the occasion of the initiation of a lawsuit on behalf of the children of Mušan Husović: "Lawsuit Against RS for the Murder of Mušan Husović" dated April 27, 2007.

131 Pre-trial proceedings have been underway for the past eight years at the Office of the War Crimes Prosecutor of RS: Case No. KTRN.2/04.

132 Case: P-1142/2010.

133 The case was assigned to Justice Marina Brkić.

As proposed by the HLC lawyer, the Court heard the children of Mušan Husović as well as an eye-witness to the events, Džafer Kaltak. The Department did not call any witnesses and they did not enter any evidence.

Witness Džafer Kaltak lived in the village of Kukurovići until February 18, 1993. When the war in Bosnia and Herzegovina began, VJ soldiers arrived in the village. On February 18, 1993 they attacked the village and Kaltak fled with his family. Three days later Džafer returned to the village and saw that many houses had been burned to the ground. In one of the burned houses he found the body of Mušan Husović and his wife Fatima Sarač. Along with Džafer, the President of the Court in Priboj came to the village to conduct an investigation. All of Džafer's property had been destroyed: his new house and a barn were burned down, and all of his livestock killed.<sup>134</sup>

Emina Muratović, daughter of Mušan Hasović lived in Pljevlja in 1992. She visited her father more often than her siblings. Since the VJ soldiers had moved into the village in 1992, the villagers were afraid to leave their houses and at night they put blankets on their windows to black them out. One night, someone called her to tell her that her father's house was on fire. When she arrived at the village, she saw that the house had been burned to the ground and her father was not there. She saw that the house of Uzeir Bulutović was burned, too. Emina only found just one bone belonging to her father and buried it a few days after he was killed.<sup>135</sup>

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### **Judgment of the First Basic Court in Belgrade**

In a ruling delivered on May 16, 2011 the Court rejected the compensation lawsuit filed on behalf of the children of Mušan Husović on the grounds of the statute of limitations. In its explanation of the decision, the Court stated that longer statute of limitations periods from Article 377 of ZOO<sup>136</sup> could be ap-

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134 More details from the testimony of Džafer Kaltak can be found in the HLC trial report dated November 6, 2008 available on HLC website.

135 More details from the testimony of Emina Muratović can be found in the HLC trial report «Compensation lawsuit – the killing of Mušan Husović – testimony of Emina Muratović», dated February 16, 2009.

136 Article 377, ZOO:

(1) When damage is caused by a criminal act which has a longer statute of limitations period, the statute of limitations on the compensation lawsuit against the responsible party expires at the same time.

(2) Termination of the statute of limitations in a criminal prosecution means automatic termination of the statute of limitations for the compensation lawsuit.

(3) The same applies to the suspension of the statute of limitations.

plied only when damage compensation was claimed from the perpetrator(s) of the criminal act, but not in a case when compensation was claimed from a legal entity responsible for such damage according to Article 172 of ZOO.<sup>137</sup>

The HLC appealed this decision with the Appellate Court in Belgrade.

### **Judgment of the Appellate Court in Belgrade**

In a ruling of February 8, 2012 the Appellate Court rejected the appeal filed by the HLC and confirmed the decision of the First Basic Court in Belgrade.

### **Analysis of the Judgment of the Appellate Court**

The Appellate Court in Belgrade confirmed the ruling of the first-instance court rejecting the compensation claim of Mušan Hasović's children on the grounds of the statute of limitations. In its explanation of that decision, the Court confirmed the standard interpretation of the provisions of Article 377 of ZOO stipulating that longer statute of limitations periods in compensation lawsuits only apply to damages claimed from a physical subject, i.e. the perpetrator of the criminal act and they cannot be applied to a legal subject on whose behalf the perpetrator of the criminal act committed the crime.<sup>138</sup>

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### **Constitutional Appeal**

On April 19, 2012 HLC filed a constitutional appeal with the Constitutional Court of the Republic of Serbia on behalf of seven children of Mušan Husović - Husein Husović, Rašida Kaltak, Mevla Berbo, Emina Muratović, Zahida Rovčanin, Ramiza Arbak, and Džemila Čalaković - demanding that the Court to establish the violation of their right to a fair trial, prohibition of discrimination, the right to rehabilitation and compensation, the violation of their right to have their rights equally protected, and for the violation of their right to access available legal means.<sup>139</sup>

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137 Article 172, ZOO:

(1) Legal subjects are responsible for damages caused to third parties by their institutions in the exercise of their regular duties.

(2) If not otherwise specified in the law, a legal subject is entitled to compensation from an individual who caused damages willfully or by extreme negligence.

(3) That right expires six months after the payment of the compensation amount.

138 More on the interpretation of the statute of limitations can be found on page 8.

139 Articles 21, 24, 32, 35, and 36 of the Constitution of the Republic of Serbia.

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