



Humanitarian Law Center

**THE RIGHT TO
REPARATION
IN COMPENSATION
LAWSUITS - THE PRACTICE
OF SERBIAN COURTS 2017-2020**



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compensation lawsuits -**
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2017-2020

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SUMMARY

The right to reparation for victims¹ is an important aspect of the administration of justice and thus a vital element of the process of establishing the rule of law, building solidarity and human rights culture for societies that have gone through periods of mass crimes. Given the fact that the Republic of Serbia was an actor in all large-scale conflicts during the 1990s, it has a responsibility to provide just reparations to victims of war crimes in the former Yugoslavia. The obligation of the Republic of Serbia to provide reparations to victims of human rights and international humanitarian law violations committed in the 1990s is derived from the international human rights conventions ratified by Serbia, and from the Serbian Constitution, which provides for the state's responsibility for the harm caused by the conduct of its authorities. Victims who wish to claim reparations may do so either through compensation lawsuits against the Republic of Serbia or under the Law on the Rights of Veterans, Disabled Veterans, Civilian Disabled Veterans and Their Family Members.² The Criminal Procedure Code³ provides for a third mechanism - restitution claim - which is available to injured parties in criminal proceedings, but this mechanism is not used in practice at all.

This analysis covers the cases that were active in the period between 2017 and 2020. Since the duration of most of these cases is longer than three years, for the ease of following the course of the proceedings, this report gives a brief overview of the course of the proceedings even before 2017.

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- 1 "Victims are persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law. Where appropriate, and in accordance with domestic law, the term "victim" also includes the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization" - 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, United Nations General Assembly Resolution 60/147 of 16 December 2005.
 - 2 Until the Law on the Rights of Veterans, Disabled Veterans, Civilian Disabled Veterans and Their Family Members ("Official Gazette of the RS", No. 18/2020) was adopted on 29 February 2020, the administrative procedure for granting the rights, and the requirements for acquiring the status of a civilian disabled veteran were regulated by the Law on the Rights of Civilian Disabled Veterans ("Official Gazette of the RS", No. 52/96), which was adopted as early as in 1996 under Slobodan Milošević rule.
 - 3 The Criminal Procedure Code ("Official Gazette of the RS", Nos. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014 and 35/2019).



The report is divided into three parts. First part analyzes the legal framework that regulates the victims' right to reparation in Serbia. Second part analyzes individual cases where the HLC represented the victims, while third part deals with the main problems that the HLC has identified in its work as key obstacles hindering the victims from vindicating their reparation claims.



I. INTRODUCTION

The disintegration of the Socialist Federal Republic of Yugoslavia (SFRY) had led to a number of international and internal armed conflicts in almost all parts of the country. The most salient feature of the armed conflicts waged in the territory of the former Yugoslavia from 1991 to 2001 includes numerous war crimes that claimed lives of more than 130,000 people, with about 4.5 million people who fled their homes or became displaced, and another 10,000 missing persons⁴ in the region, who are still unaccounted for. During and in the aftermath of the conflicts in Croatia and Bosnia and Herzegovina (BiH) more than half a million refugees came to Serbia, whereas more than 200,000 internally displaced persons from Kosovo arrived in Serbia between 1999 and 2005. Thus Serbia became a country hosting the highest number of refugees in Europe and one of five countries worldwide affected by a protracted refugee crisis.⁵ In addition to a high number of persons who were killed, went missing or became refugees as a result of war operations, huge pecuniary and non-pecuniary damage was incurred. Although Serbia was not formally in a state of war, except during the NATO bombing, it still played an active part in all of the above armed conflicts, so the number of victims it owes reparations to is enormous. The largest category of victims includes those who were citizens of other countries (Croatia or BiH) at the time the crimes were committed or those who became citizens of other countries after the armed conflict had ended (Kosovo).⁶ The latter includes citizens of Serbia or those who have subsequently acquired Serbian citizenship.⁷

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The obligation of the Republic of Serbia to provide just compensation (the right to reparations) to victims of human rights violations is also derived from the fundamental legal principle of accepting responsibility for the harm done. Although, in the

4 Radio Slobodna Evropa, *Potruga za nestalima: 'Jednoga dana postoji politička volja, a sledećeć ne'* [Radio Free Europe, In search of the missing persons: One day there is political will to do so, but the following day it is gone] available at: <http://www.hlc-rdc.org/?p=37860>, accessed on 5 January 2021.

5 See the HLC report, *Pravo žrtava na reparacije u Srbiji i standardi Evropskog suda za ljudska prava* [Victims' Right to Reparation in Serbia and the European Court of Human Rights Standards], 2014/2015 Report, p. 5, available at: http://www.hlc-rdc.org/wp-content/uploads/2016/01/Izvestaj_o_reparacijama_2014_FF.pdf, accessed on 8 January 2021.

6 See the HLC report, *Ostvarivanje prava žrtava na reparacije u sudskim postupcima u Srbiji - Uspostavljanje pravde ili relativizacija zločina?* [Fulfilling the Right for Victims of Human Rights Abuses to Seek Reparation before the Serbian Courts - Serving Justice or Trivializing Crimes?], p. 6, available at: <http://www.hlc-rdc.org/wp-content/uploads/2013/06/Ostvarivanje-prava-%C5%Bertava-na-reparacije-u-sudskim-postupcima-u-Srbiji-izvestaj-za-2012.pdf>, accessed on 16 December 2020.

7 This mainly refers to Serb citizens of the Republic of Croatia who fled to Serbia as refugees following Operation Storm and who were then forcibly mobilized by the Ministry of the Interior (MUP) of the Republic of Serbia.



aftermath of the conflicts, the victims may have had various expectations with respect to reparations due to many different ways in which the war may impact the victims, the exercise of this right is still hard to attain in Serbia even today. Namely, one of the key prerequisites for the exercise of this right, i.e. a clear political will to admit and accept responsibility for the harm done in the past, has still not been met.⁸ In Serbia, victims may claim reparations, through judicial proceedings or administrative procedure. Judicial proceedings for compensation are conducted before Serbian courts. Several hundred compensation lawsuits have been filed against the Republic of Serbia so far, both through the Humanitarian Law Center (HLC)⁹ and individually retained attorneys. Compensation lawsuits refer to multiple categories of past human rights violations, such as unlawful detention of Kosovo Albanians, war crimes against civilians in Bosnia and Herzegovina (BiH), Croatia and Kosovo, murders and expulsions of Bosniaks from Sandžak, police torture against members of minority groups, and torture in detention camps in Western Serbia (Šljivovica and Mitrovo Polje) where Bosniak defectors were held in 1995. Apart from court proceedings, some citizens of Serbia have initiated administrative procedure before municipal, provincial or state authorities for recognition of the status of civilian victims of war pursuant to provisions of the previous Law on the Rights of Civilian Disabled Veterans¹⁰ (the old Law), which ceased to be valid upon adoption of the Law on the Rights of Veterans, Disabled Veterans, Civilian Disabled Veterans and Their Family Members (the new Law).¹¹

When the HLC started drafting this report its archives contained significant case law derived from the lawsuits in which the HLC represented victims in compensation cases against the Republic of Serbia. In addition to HLC's own archives, another source of information used for purposes of this report includes abundant case law that is available on the Internet in online legal databases and official websites of the courts. Moreover, earlier HLC reports and analyses served as another important source of information for the preparation of this report.

8 See HLC report. *Pravo žrtava na reparacije u Srbiji i standardi Evropskog suda za ljudska prava [Victims' Right to Reparation in Serbia and the European Court of Human Rights Standards]*, p. 7, available at: http://www.hlc-rdc.org/wp-content/uploads/2016/01/Izvestaj_o_reparacijama_2014_FF.pdf, accessed on 14 December 2020.

9 In the period from 2000 to 2019 the HLC represented more than 1,000 victims of war crimes, torture, unlawful detention, forcible mobilization and other human rights violations committed by members of Serb forces in BiH, Croatia, Serbia and Kosovo in compensation lawsuits against the state (Serbia, Montenegro and Kosovo). On the other hand, the exact number of compensation lawsuits filed through private attorneys is not available.

10 The Law on the Rights of Civilian Disabled Veterans ("Official Gazette of the RS", No. 52/96).

11 The Law on the Rights of Veterans, Disabled Veterans, Civilian Disabled Veterans and Their Family Members ("Official Gazette of the RS", No. 18/2020), available at: <https://www.paragraf.rs/propisi/zakon-o-pravima-boraca-vojnih-invalida-civilnih-invalida-rata.html>, accessed on 12 December 2020.



This report indicates that Serbia's lack of readiness to accept responsibility for the crimes that were committed in the past is also reflected in court decisions with respect to compensation by imposing a disproportionate burden of proof on the injured parties, lack of trust in their testimonies and evidence they submit, awarding far too low amounts of damages to the victims, minimizing the role and responsibility of state authorities, or interpreting provisions on the statute of limitations for compensation claims to the detriment of the victims.¹² Such arbitrary application of legal provisions to the detriment of the victims may be categorized as a gross violation of the right to a fair trial guaranteed by domestic and international regulations. Moreover, these acts of hindering the victims from exercising their right to compensation boost an impression that this is yet another systemic violation of human rights in Serbia.

II. THE CONCEPT AND TYPES OF REPARATIONS IN SERBIA

Reparations are defined as a measure used by post-conflict societies to remedy various types of damage sustained by victims due to certain crimes committed by an earlier government and its institutions.¹³ Underprivileged and vulnerable groups in society are often more affected by armed conflicts than other groups. Therefore, reparations are a vital element of justice in the post-conflict period that is necessary to enable the victims to restore their dignity, move on with their lives and take an active part in society and societal processes.¹⁴

To numerous victims, reparations are the most tangible manifestation of efforts of society to remedy the damage they had suffered.¹⁵ Types of reparation include financial, symbolic, individual and collective reparations.¹⁶ With respect to the right to reparations, pecuniary compensation is one of the most common forms of

12 See the HLC report, *Zaobilazanje pravde: Zastarelost kao mehanizam uskraćivanja prava žrtvama rata na naknadu štete* [Circumventing Justice: The Statute of Limitations as a Mechanism for Denying War Victims the Right to Compensation], p. 11, available at: http://www.hlc-rdc.org/wp-content/uploads/2018/06/Izvestaj_Zastarelost_web.pdf, accessed on 20 December 2020.

13 See HLC report, *Tranziciona pravda u Srbiji u periodu od 2013. do 2015. godine* [Transitional Justice in Serbia in the Period from 2013 to 2015], p. 8, available at: http://www.hlc-rdc.org/wp-content/uploads/2016/06/izvestaj_o_TP_2013-2015.pdf, accessed on 20 December 2020.

14 See the HLC Kosovo report, *Priručnik o tranzicionoj pravdi - Koncepti, Mehanizmi i Izazovi* [Manual on Transitional Justice - Concepts, Mechanisms and Challenges], p. 186, available at: https://www.hlc-kosovo.org/storage/app/media/Animacionet/hlc_tj_publication_final%2019.1%20MANUAL%20srb.pdf, accessed on 18 January 2021.

15 *Ibid.*

16 *Ibid.*



redress, although other forms may also be used.¹⁷ Symbolic reparations may take the form of formal apologies to the victims, public commemorations, establishing monuments or memorials to the victims, and such instances are usually referred to as memorialization.¹⁸ Irrespective of their type, reparations include important social and psychological functions of rehabilitation, reintegration and tributes to the victims.¹⁹

The 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 (Basic Principles and Guidelines)²⁰ is the most important international document that gives the most comprehensive definition of the right to reparation.²¹ According to the provisions of this UN Resolution, reparation to victims of gross violations of international human rights law and serious violations of international humanitarian law includes restitution²², compensation²³, rehabilitation²⁴, various forms of satisfaction (cessation of violations, establishing facts and their full public disclosure, search for the whereabouts of the disappeared, officially restoring dignity and reputation to the victim, public apology, commemorations and tributes

17 Restitution, compensation, rehabilitation, social benefits, satisfaction and guarantees of non-repetition.

18 See the HLC Kosovo report, *Priručnik o tranzicionoj pravdi - Koncepti, Mehanizmi i Izazovi* [Manual on Transitional Justice - Concepts, Mechanisms and Challenges], p. 186, available at: https://www.hlc-kosovo.org/storage/app/media/Animacionet/hlc_tj_publication_final%2019.1%20MANUAL%20srb.pdf, accessed on 18 January 2021.

19 *Ibid.*, p. 121

20 See the procedure for the adoption of the Resolution: http://legal.un.org/avl/pdf/ha/ga_60-147/ga_60-147_ph_e.pdf.

21 The United Nations Commission on Human Rights had initiated the drafting of the resolution in which a number of independent experts were involved. The draft document was later unanimously adopted by the UN General Assembly in the form of a resolution, which was supported by all members of the UN.

22 Restitution should, whenever possible, restore the victim to the original situation before the violations of the victims' rights occurred. Restitution includes different measures, such as restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one's place of residence, restoration of employment and return of property.

23 Compensation should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from gross violations of international human rights law and serious violations of international humanitarian law, such as: physical or mental harm; lost opportunities, including employment, education and social benefits; material damages and loss of earnings, including loss of earning potential; moral damage; costs required for legal or expert assistance, medicine and medical services, and psychological and social services.

24 Rehabilitation should include medical and psychological care as well as legal and social services.



to the victims, inclusion of facts on violations of rights in educational material)²⁵, and guarantees of non-repetition^{26, 27}

A state has the duty to provide reparation for acts or omissions which can be attributed to the state and constitute gross violations of international human rights law or serious violations of international humanitarian law. A state also has the duty to provide reparation if the party responsible for the harm inflicted is unable or unwilling to do so.²⁸ What characterizes the current reparation mechanisms in Serbia is, for the most part, the practice of the absence of the principle of responsibility, and the lack of solidarity with the victims of different ethnic affiliations. This is best reflected in the fact that the exercise of the right to reparation for victims of war crimes and other human rights violations that occurred in the 1990s is almost unattainable due to numerous legal and institutional obstacles. Victims may pursue the right to reparation in Serbia through administrative procedure or judicial proceedings. However, administrative and judicial mechanisms are two completely separate avenues of pursuing reparation. They are based on different legal provisions and concern different legal concepts and

25 Satisfaction should include any or all of the following: effective measures aimed at the cessation of continuing violations; verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further harm or threaten the safety and interests of the victim, the victim's relatives, witnesses, or persons who have intervened to assist the victim or prevent the occurrence of further violations; the search for the whereabouts of the disappeared; an official declaration or a judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim; public apology, including acknowledgement of the facts and acceptance of responsibility; judicial and administrative sanctions against persons liable for the violations; commemorations and tributes to the victims; inclusion of an accurate account of the violations that occurred in international human rights law and international humanitarian law training and in educational material.

26 Guarantees of non-repetition should include any or all of the following measures, which will also contribute to prevention: ensuring effective civilian control of military and security forces; ensuring that all civilian and military proceedings abide by international standards of due process, fairness and impartiality; strengthening the independence of the judiciary; protecting persons in the legal, medical and health-care professions, the media and human rights defenders; providing, on a priority and continued basis, human rights and international humanitarian law education to all sectors of society and training for law enforcement officials as well as military and security forces; promoting the observance of codes of conduct and ethical norms, in particular international standards, by public servants; promoting mechanisms for preventing and monitoring social conflicts and their resolution; reforming laws contributing to or allowing gross violations of international human rights law and serious violations of international humanitarian law.

27 See the HLC report, *Tranziciona pravda u post-jugoslovenskim zemljama - Izveštaj za 2007. godinu* [Transitional Justice in Post-Yugoslav Countries - 2007 Report], p. 38, available at: http://www.hlc-rdc.org/images/stories/pdf/izvestaj_tranziciona_pravda/izvestaj_tran_pravda_srp.pdf, accessed on 27 December 2020.

28 See the HLC report, *Pravo žrtava na reparacije u Srbiji i standardi Evropskog suda za ljudska prava* [Victims' Right to Reparation in Serbia and the European Court of Human Rights Standards], p. 9, available at: http://www.hlc-rdc.org/wp-content/uploads/2016/01/Izvestaj_o_reparacijama_2014_FF.pdf, accessed on 14 December 2020.



fields. Judicial reparations are based upon the concept of compensation, whereas the administrative mechanism, as it is currently defined in the Law, pertains to the domain of social protection.²⁹ In addition to these two mechanisms, a third mechanism is also available, namely filing a restitution claim for pecuniary or non-pecuniary damages in the course of the criminal proceedings.³⁰

i. Pursuing the right to reparation through administrative procedure

One of the ways for the state to ensure that the right to reparation is respected is to adopt specific laws and/or by-laws that lay down the procedure for the exercise, type and scope of victims' rights.³¹ For citizens of Serbia the exercise of the right to reparation through administrative procedure is regulated by a retrograde and discriminatory legal framework, which completely denies such rights to a large number of victims.

While drafting the new Law, the competent ministry³² failed to take into consideration the views of the victims' associations and human rights organizations and so the new Law runs contrary to the basic standards and international obligations of Serbia with respect to victims' rights. Up until the adoption of this Law, the administrative procedure on reparations had been regulated by the old Law, which was adopted in 1996 under Slobodan Milošević rule. This law is still the only mechanism in Serbia whereby victims of past human rights violations can be granted the right to financial support.

Pursuant to the above law, only citizens of Serbia who were victims of violence committed by members of the hostile side in the armed conflicts and who suffered a certain degree of physical impairment may initiate the administrative procedure.³³

29 See the HLC report, *Pravo žrtava na reparacije u Srbiji i standardi Evropskog suda za ljudska prava* [Victims' Right to Reparation in Serbia and the European Court of Human Rights Standards], p. 16, available at: http://www.hlc-rdc.org/wp-content/uploads/2016/01/Izvestaj_o_reparacijama_2014_FF.pdf, accessed on 14 December 2020.

30 See the HLC report, *Tranziciona pravda u Srbiji u periodu od 2013. do 2015. godine* [Transitional Justice in Serbia in the Period from 2013 to 2015], p. 34, available at: http://www.hlc-rdc.org/wp-content/uploads/2016/06/izvestaj_o_TP_2013-2015.pdf, accessed on 20 December 2020.

31 Pablo de Greff, *Priručnik o reparacijama*, članak "Pravda i reparacije" [Pablo de Greff, *The Handbook of Reparations*, article on Justice and Reparations], HLC, 2011, p. 450.

32 The Ministry of Labour, Employment, Veteran and Social Affairs of the Republic of Serbia.

33 In its judgment Už.24/04 of 1 July 2004, the Supreme Court of Serbia held that "*the status of a civilian disabled veteran may even be granted to persons who were not citizens of the RS and the FRY at the time when they suffered physical impairment if at the time when they applied for the status of a civilian disabled veteran they held the citizenship of the RS and the FRY.*"



The law recognizes three categories of victims: civilian disabled veterans, families of civilian disabled veterans and families of civilian victims of war (civilian victims of war). Upon acquiring such a status, the victim becomes entitled to a monthly cash benefit, free public transport pass, and healthcare. To be eligible for the most important right – the cash benefit – family members of the victim must fulfill an additional requirement of social vulnerability.³⁴

The application of the new Law in practice, makes it virtually impossible, for the majority of victims of human rights violations in connection with the armed conflicts in the 1990s, to seek reparation via the administrative mechanism. According to HLC data, due to such a solution provided in the law, at least 15,000 civilian victims of war and their families have been disenfranchised.³⁵ To that effect, the following categories of victims will not be eligible for the status of a civilian disabled veteran: 1) victims with less than 50% disability; 2) victims of sexual violence because, as a rule, this type of violence usually leaves mental rather than physical consequences; 3) victims of torture and inhuman treatment, who, as a rule, develop post-traumatic stress disorder leading to the loss of amenities of life; 4) victims (refugees from Croatia and BiH who were forcibly mobilized by the Serbian MUP, citizens of Bosniak nationality who were unlawfully taken into custody in Sandžak during the conflict in BiH, Bosniaks who were murdered or expelled from villages in Serbia's Priboj municipality near the border with BiH) upon whom injuries were inflicted by what Serbia deemed non-hostile units – this primarily means units of the Serbian Ministry of the Interior (MUP), Yugoslav Army (VJ) or the Republika Srpska Army (VRS); and 5) victims who did not suffer injuries in the territory of the Republic of Serbia – victims of abduction and murder from the village of Sjeverin, victims of abduction and murder in the village of Štrpci, and victims refugees from Croatia who came to Serbia following Operations Storm and Flash.

Given the above, it is evident that both the current and the previous legal frameworks are not in line with international legal principles and standards in this field, which is why only a low percentage of victims can in fact exercise this right in practice.

34 Article 75 of the Law on the Rights of Veterans, Disabled Veterans, Civilian Disabled Veterans and Their Family Members ("Official Gazette of the RS", No. 18/2020).

35 See the HLC report, *Pravni i institucionalni okvir u Srbiji u pogledu prava i potreba civilnih žrtava rata* [The legal and institutional framework in Serbia regarding the rights and needs of civilian victims of war], p. 5, available at: <http://www.hlc-rdc.org/wp-content/uploads/2017/08/Pravni-i-institucionalni-okvir-u-Srbiji-u-pogledu-prava-i-potreba-civilnih-%C5%BErtava-rata.pdf>, accessed on 25 January 2021.



ii. Pursuing the right to reparation through judicial proceedings

The judicial mechanism for exercising the right to reparation includes filing compensation lawsuits for both pecuniary and non-pecuniary damages. Due to the lack of adequate reparation programmes established by the state, the majority of victims of human rights violations during the armed conflicts in the former Yugoslavia seek financial (pecuniary) compensation from the Republic of Serbia in lawsuits filed with courts in Serbia, invoking the state's responsibility for the acts committed by members of its armed forces. These plaintiffs are mostly citizens of other post-Yugoslav states who are not eligible for the status of a civilian victim of war in Serbia because they are foreign citizens, or citizens of Serbia who cannot acquire this status due to discriminatory norms in the current Law that regulates administrative reparations. Within this reparation mechanism, the victims are faced with the following major problems with respect to their claims: restrictive application of provisions regulating the statute of limitations for compensation claims; disproportionate burden of proof imposed on the victims; lengthy proceedings, which may last for years; lack of trust by the courts in the victims' allegations or evidence they propose; the courts seeking to diminish the responsibility of the state for the crimes committed; and inconsistent court practice. Moreover, lawsuits against states entails considerable expenses on the part of victims-plaintiffs, while positive outcome is uncertain since the burden of proof is high and rests on the plaintiff.³⁶ For these reasons, victims very rarely decide to seek reparations in a court of law in Serbia.

iii. Restitution claims within criminal proceedings

In the course of criminal proceedings conducted against those responsible for war crimes and other human rights violations, victims can file a claim seeking restitution from the offenders for pecuniary and/or non-pecuniary damage suffered. Having the status of an injured party in criminal proceedings, the victim must file a restitution claim before the completion of the trial stage. The court may decide the amount of damages to be awarded, unless the proceedings would be substantially prolonged thereby. The Office of the War Crimes Prosecutor (OWCP) is obliged to gather evidence concerning

36 See the HLC report, *Tranziciona pravda u post-jugoslovenskim zemljama - Izveštaj za 2007. godinu* [Transitional Justice in Post-Yugoslav Countries - 2007 Report], p. 48, available at: http://www.hlc-rdc.org/images/stories/pdf/izvestaj_tranziciona_pravda/izvestaj_tran_pravda_srp.pdf, accessed on 27 December 2020.



the merits of the claim and the amount of damages to be awarded.³⁷ Still, the courts in Serbia have a practice of not awarding compensation to victims (injured parties) during criminal proceedings, even though the Criminal Procedure Code (CPC) enables it.³⁸ Namely, although not deciding on restitution claims within criminal proceedings is provided for as an exception under the CPC, in practice it is almost the norm that the courts do not decide on a claim, but refer the victim (injured party) to civil proceedings in order to exercise their right. Courts, as a rule, refer the victim (injured party) to civil proceedings, stating that deciding on such claims would further extend the duration of the criminal proceedings. Such action significantly worsens the status of the victims (injured parties), as they are forced to start another court proceeding, which is very expensive and time consuming. Recognizing the practice that courts do not decide on a claim in criminal proceedings, the Supreme Court of Cassation Working Group of the Republic of Serbia in October 2019 issued “The Guidelines for improving court practice in compensation proceedings for victims of serious crime in criminal proceedings (the Guidelines)”³⁹, clearly stating that the court is obliged to decide on a restitution claim within the criminal proceedings if the right conditions are met.⁴⁰ Moreover, the Guidelines state that the possibility of not deciding on a claim in criminal proceedings should be interpreted as an exception to the rule, so that the exercise of this right is not unnecessarily procrastinated.⁴¹ The Guidelines also provide answers to questions that so far have been in dispute with respect to determining the amount of damage, forms of non-pecuniary damage, determining the amount of financial compensation for both pecuniary and non-pecuniary damage. They also highlight the importance of informing the victims about their rights, i.e. the obligation of the public prosecutor and the court to inform the victims about their rights at different stages of criminal proceedings, assist in filing restitution claims and work on providing evidence to decide on them.⁴²

37 See the HLC report, *Pravo žrtava na reparacije u Srbiji i standardi Evropskog suda za ljudska prava [Victims' Right to Reparation in Serbia and the European Court of Human Rights Standards]*, p. 16, available at: http://www.hlc-rdc.org/wp-content/uploads/2016/01/lzvestaj_o_reparacijama_2014_FF.pdf, accessed on 14 December 2020.

38 Article 252 of the Criminal Procedure Code (“Official Gazette of the Republic of Serbia”, Nos. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013 and 55/2014).

39 The Guidelines were developed and published with the support of the OSCE Mission to Serbia through the project “Support for Victims and Witnesses of Crime in Serbia”, implemented by the OSCE Mission and financed by the European Union.

40 The Supreme Court of Cassation of the Republic of Serbia, *The Guidelines for improving court practice in compensation proceedings for victims of serious crime in criminal proceedings*, p. 8, available at: <https://www.podrskazrtvama.rs/media/domaci/Smernice.pdf>, accessed on 8 January 2021.

41 *Ibid.*, p. 21.

42 See the HLC policy paper, *Unapređenje prava i položaja žrtava i svedoka u postupcima za ratne zločine u Srbiji [Improving the Status and Rights of Victims and Witnesses in War Crimes Proceedings in Serbia]*, p. 25, available at: http://www.hlc-rdc.org/wp-content/uploads/2019/12/Predlog_prakticne_politike_sr.pdf, accessed on 12 January 2021.



III. LEGAL GROUNDS FOR PURSUING REPARATION IN JUDICIAL PROCEEDINGS

As mentioned earlier, the victims who decide to seek redress in Serbian courts of law are mainly the ones who are not included in any of the categories of victims entitled to receive regular compensation benefits due to limitations in the administrative reparation system, or the ones who are citizens of other post-Yugoslav states. Plaintiffs mostly claim non-pecuniary damages for unlawful detention, physical impairment or emotional pain suffered, including pain over the death or disappearance of a family member. The obligation to compensate the victims of human rights violations is contained in numerous international human rights conventions ratified by Serbia: the International Covenant on Civil and Political Rights⁴³, the International Convention on the Elimination of All Forms of Racial Discrimination⁴⁴, the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment⁴⁵, Convention on the Rights of the Child⁴⁶, and regional mechanisms for the protection of human rights, under the European Convention for the Protection of Human Rights and Fundamental Freedoms⁴⁷ and the European Convention on the Compensation of Victims of Violent Crimes⁴⁸. The right to compensation is also guaranteed by the practice of international bodies for the protection of human rights - the European Court of Human Rights⁴⁹, the UN Committee against Torture⁵⁰, the UN Human Rights Committee⁵¹ and the UN Committee on the Elimination of Discrimination against Women⁵² - which have elaborated this right in their decisions. In addition to the aforementioned Basic Guidelines and Principles (the 2006 UNGA Resolution), in 2013 the Republic of Serbia also signed the Declaration of Commitment to End

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43 Articles 2 and 9 of the International Covenant on Civil and Political Rights (“Official Journal of the SFRY – International Treaties”, No. 7/71).

44 Article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination (“Official Journal of the SFRY – International Treaties”, No. 31/67).

45 Article 14 of the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (“Official Journal of the SFRY – International Treaties”, No. 9/91).

46 Article 39 of the Convention on the Rights of the Child (“Official Journal of the SFRY – International Treaties”, Nos. 15/90 and 2/97 and “Official Journal of the SFRY – International Treaties”, No. 7/02).

47 Articles 13 and 41 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (“Official Journal of Serbia and Montenegro – International Treaties”, No. 9/03).

48 Articles 2 and 4 of the European Convention on the Compensation of Victims of Violent Crimes.

49 See, for instance, *Cyprus v. Turkey*, application no. 25781/94, judgment of 10 May 2001.

50 See, for instance, *Hajrizi Dzemajl et al. v. Yugoslavia*, Comm. No. 161/2000, U.N. Doc. CAT/C/29/D/161/2000, 2 December 2002 (the Danilovgrad case).

51 See, for instance, *Maria del Carmen Almeida de Quinteros et al. v. Uruguay*, UN, Com. No. 107/1981, U.N. Doc. CCPR/C/OP/2, 21 July 1983.

52 See, for instance, *Şahide Goekce v. Austria*, Comm. No. 5/2005, U.N. Doc. CEDAW/C/39/D/5/2005, 6 August 2007.



Sexual Violence in Conflict, whereby it undertook, *inter alia*, to provide assistance and care to these victims, including medical and psycho-social support.⁵³ Given that the Republic of Serbia is an EU candidate country and is thus required to align its legislation with the EU *acquis*, the 2004 Council *Directive* relating to compensation to crime victims⁵⁴ and the 2012 Directive of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime⁵⁵, which guarantee the victims the right to compensation, free legal aid and medical and psycho-social support, are also relevant.

In addition to the ratified international treaties, the Constitution of the Republic of Serbia also guarantees that everyone shall have “the right to compensation of material or non-material damage inflicted on him by unlawful or irregular work of a state body, entities exercising public powers, bodies of the autonomous province or local self-government.”⁵⁶, including state assistance for the purpose of overcoming “social and existential difficulties” in line with “the principles of social justice, humanity and respect of human dignity”⁵⁷. The legal grounds for claiming compensation for the state’s responsibility for human rights violations in connection with the armed conflicts in the former Yugoslavia include the provisions of Article 35, paragraph 2 of the Constitution of the Republic of Serbia⁵⁸, and provisions of Article 172, paragraph

53 Declaration of Commitment to End Sexual Violence in Conflict, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/274724/A_DECLARATION_OF_COMMITMENT_TO_END_SEXUAL_VIOLENCE_IN_CONFLICT.pdf, accessed on 12 January 2021.

54 Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims, recitals 6 and 7, Articles 2, 5, and 12.

55 Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, recitals 49 and 62, Article 4, paragraph 1, item e), Article 9, paragraph 1, item a), and Article 16.

56 Article 35, paragraph 2 of the Constitution of the Republic of Serbia (“Official Gazette of the RS”, No. 98/06).

57 Article 69, paragraph 1 of the Constitution of the Republic of Serbia (“Official Gazette of the RS”, No. 98/06).

58 Everyone shall have the right to compensation of material or non-material damage inflicted on him by unlawful or irregular work of a state body, entities exercising public powers, bodies of the autonomous province or local self-government.



1⁵⁹ and Article 180, paragraph 1⁶⁰ of the Law on Contracts and Tort⁶¹ (LCT).⁶² The LCT stipulates that “a legal person shall be liable for damage caused by its members or branches to a third party in performing or in connection with performing its functions”⁶³ and “a State whose agencies, in conformity with the existing regulations, were bound to prevent injury or loss, shall be liable for loss caused by death, bodily injury or damaging or destroying property of an individual due to acts of violence or terror”.⁶⁴ Compensation litigations for pecuniary damages are conducted before the First Basic Court in Belgrade and the High Court in Belgrade, while second-instance proceedings are conducted before the Appellate Court in Belgrade.⁶⁵ The applicable procedural law in these proceedings is the Civil Procedure Law.⁶⁶

Despite such clear provisions of both international and domestic law and jurisprudence of international bodies, victims are almost completely unable to exercise their right to reparation before domestic courts. Namely, persons whose physical damage or emotional pain was caused by Serbian state authorities can only pursue compensation through lawsuits against the state. However, the state may be liable only if the lawsuit was filed within three years since the victim became aware of the damage and the perpetrator. Therefore, one of major obstacles faced by the victims are the provisions on the statute of limitations for compensation claims, i.e. the manner in which these provisions are interpreted and applied by judges in Serbia.

59 A legal person shall be liable for damage caused by its members or branches to a third party in performing or in connection with performing its functions.

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

61 The Law on Contracts and Tort (“Official Journal of the SFRY”, Nos. 29/78, 39/85, 45/89 – decision of the Constitutional Court of Yugoslavia and 57/89, “Official Journal of the FRY”, No. 31/93 and “Official Journal of Serbia and Montenegro”, No. 1/2003 – Constitutional Charter).

62 See the HLC report, *Pravo žrtava na reparacije u Srbiji i standardi Evropskog suda za ljudska prava [Victims’ Right to Reparation in Serbia and the European Court of Human Rights Standards]*, p. 12, available at: http://www.hlc-rdc.org/wp-content/uploads/2016/01/Izvestaj_o_reparacijama_2014_FF.pdf, accessed on 14 December 2020.

63 Article 172 of the Law on Contracts and Tort (“Official Journal of the SFRY”, Nos. 29/78, 39/85, 45/89 – decision of the Constitutional Court of Yugoslavia and 57/89, “Official Journal of the FRY”, No. 31/93 and “Official Journal of Serbia and Montenegro”, No. 1/2003 – Constitutional Charter).

64 Article 180 of the Law on Contracts and Tort (“Official Journal of the SFRY”, Nos. 29/78, 39/85, 45/89 – decision of the Constitutional Court of Yugoslavia and 57/89, “Official Journal of the FRY”, No. 31/93 and “Official Journal of Serbia and Montenegro”, No. 1/2003 – Constitutional Charter).

65 Pursuant to Article 40 of the new Civil Procedure Law (“Official Gazette of the RS”, No. 72/11), i.e. Article 41 of the old Civil Procedure Law (“Official Gazette of the RS”, Nos. 125/04 and 111/09), in lawsuits brought against the Republic of Serbia general territorial jurisdiction shall lie with the court in whose territory the assembly of the aforementioned is situated.

66 The Civil Procedure Law (“Official Gazette of the RS”, Nos. 72/2011, 49/2013 - Constitutional Court decision, 74/2013 - Constitutional Court decision, 55/2014, 87/2018 and 18/2020).



Even though the United Nations General Assembly adopted a Resolution on the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law⁶⁷, whose Chapter IV governs the issue of statutes of limitations as follows: “where so provided for in an applicable treaty or contained in other international legal obligations, statutes of limitations shall not apply to gross violations of international human rights law and serious violations of international humanitarian law which constitute crimes under international law”⁶⁸, one may infer that for domestic courts this Resolution has no legal validity whatsoever. Courts still restrictively apply the provisions on the statute of limitations for compensation claims, contrary to the purpose and aim of the content of these provisions. Since, for instance, prosecution of war crimes is not subject to the statute of limitations, the victims are supposed to have an unlimited deadline for bringing a compensation lawsuit. However, the Supreme Court of Serbia held in 2005 that this longer deadline only applied to the direct perpetrator of the crime or damage, rather than to the responsible person.⁶⁹ On the other hand, in 2011 the Serbian Constitutional Court held that this longer deadline applied to any responsible person, rather than to the direct tortfeasor alone. However, the Constitutional Court held that this deadline was applicable “only if the existence of the crime was established and the defendant was found guilty of the crime by a final judgment.”⁷⁰ Hence, such an interpretation has a very limited effect in practice because judgments of conviction are lacking for most of the crimes committed during the 1990s. As a result of this interpretation by the courts, the deadlines for filing compensation claims have already expired for most victims, while many potential plaintiffs who have not been able to bring lawsuits before are unable to do so now.

Where the claims are rejected by the Appellate Court on appeal, the parties can file a constitutional appeal with the Constitutional Court of Serbia for violation of a constitutionally guaranteed right. Should the Constitutional Court reject the appeal, the parties have a deadline of six months to file an application against Serbia

67 UNGA Resolution 60/147 of 16 December 2005.

68 UNGA Resolution 60/147 of 16 December 2005, Chapter IV. Statutes of Limitations, point 6, page 5.

69 Judgment of the Supreme Court of Serbia Rev-1432/05.

70 View of the Constitutional Court of Serbia, Su br. I - 400/1/3 - 11 of 14 July 2011.



with the European Court of Human Rights for violation of a right protected under the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).⁷¹

IV. THE ANALYSIS OF INDIVIDUAL COMPENSATION LAWSUITS

This chapter offers a brief overview of individual compensation lawsuits before Serbian courts.

1) SJEVERIN

Sjeverin is a village in the municipality of Priboj in south-western Serbia, situated near the border with BiH. It is inhabited mostly by Bosniaks. At the beginning of the war in BiH, residents of this and the surrounding villages were terrorized by members of the Bosnian Serb armed forces who were crossing unhindered into Serbia. Murders, abductions and other human rights violations were reported to have taken place in the area in that period.⁷² On 22 October 1992, members of the “Osvetnici” (“Avengers”) paramilitary unit, which operated under the auspices of the Republika Srpska Army (VRS), stopped a bus that regularly transported residents of Sjeverin and other villages to Priboj. After checking the identity of the passengers, they took 15 men and one woman (all of whom were citizens of Serbia of Bosniak nationality) off the bus. From the location where the bus was stopped (the village of Mioče in BiH), these Bosniaks were then transported by truck to the “Vilina Vlas” motel in Višegrad, where they were brutally abused, physically and mentally. Some time later, the group was taken to the banks of the Drina River, where all of them were executed. All the

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71 The Law on Ratification of the European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol No. 11, the Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Securing Certain Rights and Freedoms Other Than Those Already Included in the Convention and in the First Protocol Thereto, Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Concerning the Abolition of the Death Penalty, Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms, and Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Concerning the Abolition of the Death Penalty in All Circumstances (“Official Journal of Serbia and Montenegro – International Treaties”, No. 9/03).

72 See *Human Rights in 1991-1995*, Humanitarian Law Center, Belgrade, 1997.



victims of this abduction are still listed as missing, except Medredin Hodžić, whose body was found in Lake Perućac in 2011.

a. The case of Nerminka Alagić et al.

In July 2005, the District Court in Belgrade sentenced Milan Lukić, Oliver Krsmanović and Dragutin Dragičević to 20 years in prison each, and Đorđe Šević to 15 years in prison, for the abduction and murder of the 16 Bosniaks.⁷³ The Supreme Court of Serbia upheld the sentence on 18 May 2006.⁷⁴ Despite statements by Serbia's top leadership, there has been a lack of real efforts to-date towards finding the mortal remains of the murdered villagers of Sjeverin. The families of the murdered villagers of Sjeverin decided to pursue compensation in court proceedings as the status of family members of civilian victims of war was not granted to them by the state.

i. Course of the proceedings

In June 2007, on behalf of 25 family members of abducted and murdered villagers of Sjeverin, the HLC filed a compensation lawsuit against the Republic of Serbia. The lawsuit sought for the victims to be awarded non-pecuniary damages by the state of Serbia, as the party that bears responsibility for the crime on several grounds: for providing assistance to the Republika Srpska Army, whose members (who were part of the VRS Višegrad Brigade) abducted and executed 16 Bosniaks; for failure to provide necessary protection to its citizens passing through a territory affected by an armed conflict; for failure of MUP to provide security for the buses travelling on that route or prevent them from operating; and for failure of the Army of Yugoslavia (VJ) to secure the state border. In its lawsuit, the HLC also pointed out that Serbia was responsible under the International Covenant on Civil and Political Rights⁷⁵, whereby it undertook to ensure respect for the right to life and the right to liberty and security for all individuals within its territory and subject to its jurisdiction, and ensure that persons deprived of their liberty are treated with humanity.⁷⁶ The HLC sought from the court an order that the Republic of Serbia pays a total of RSD 37.25 million in damages to the families of the abducted and murdered villagers of Sjeverin. Along with the lawsuit, the HLC submitted the evidence presented before the International Criminal

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73 Judgment of the District Court in Belgrade K.1419/04 of 15 July 2005.

74 Judgment of the Supreme Court of Serbia Kž. I 1807/05 of 13 April 2006.

75 The Law on Ratification of the International Covenant on Civil and Political Rights ("Official Journal of the SFRY", No. 7/71).

76 See Articles 2, 6, 9 and 10 of the International Covenant on Civil and Political Rights ("Official Journal of the SFRY", No. 7/71).



Tribunal for the Former Yugoslavia (ICTY) that confirms that Serbia financed and armed the VRS and cooperated with it. That Serbia bears responsibility for this crime is corroborated by the fact that Serbian state authorities knew of the activities of the armed units near its state border that were targeted against the Muslims, and were therefore responsible for protecting its citizens – Bosniaks living in this border area.⁷⁷ That obligation was also laid down in the then Constitution and prescribed in more detail by the Law on Internal Affairs, according to which the MUP had the authority to suspend or impose temporary limitations on the movement of people in certain areas “in order to protect the people who are at risk because of widespread crimes or for reasons relating to the defence of the Republic.”⁷⁸

More than one year passed between the filing of the lawsuit and the first hearing, which was held in July 2008, though only after the urging of the HLC attorney. Four hearings were held during the trial, where five family members of the victims and one witness testified about their relationship with the victims.⁷⁹

ii. Judgment of the First Municipal Court

In February 2009, the First Municipal Court handed down a judgment rejecting the lawsuit, finding the allegations contained therein to be unfounded.⁸⁰ Stating the reasons for its judgment, the court said that the authorities of the Republic of Serbia were not responsible for securing the bus in question, because such an obligation of the MUP was not stipulated in any act or by-law. The argument presented by the victims’ attorney that the Republic of Serbia provided assistance to the VRS was considered irrelevant by the court, because the judgment rendered in the criminal proceedings on this matter established that the individuals convicted of this crime were not members of the VRS but of a paramilitary unit, and that “they committed the crime not as members of the Republika Srpska Army but as individuals and as a group

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77 See the HLC report, *Pravo žrtava na reparacije u Srbiji i standardi Evropskog suda za ljudska prava* [Victims’ Right to Reparation in Serbia and the European Court of Human Rights Standards], p. 38, available at: http://www.hlc-rdc.org/wp-content/uploads/2016/01/Izvestaj_o_reparacijama_2014_FF.pdf, accessed on 14 December 2020.

78 See Article 15 of the Law on Internal Affairs (“Official Gazette of the RS”, Nos. 44/91 and 79/91).

79 See the HLC report, *Pravo žrtava na reparacije u Srbiji i standardi Evropskog suda za ljudska prava* [Victims’ Right to Reparation in Serbia and the European Court of Human Rights Standards], p. 39, available at: http://www.hlc-rdc.org/wp-content/uploads/2016/01/Izvestaj_o_reparacijama_2014_FF.pdf, accessed on 14 December 2020.

80 Judgment of the First Municipal Court in Belgrade, P br. 5509/07 of 6 February 2009.



with an autonomous will.”⁸¹ Furthermore, the court failed to order that the evidence indicating the existence of a connection between the state of Serbia and Republika Srpska be presented during the proceedings. In the court’s view, admitting evidence given by witnesses who had testified before the ICTY and not in the proceedings at hand would go against the principle of immediacy. Also, the court held that presentation of such evidence required consent from the representative of the state. The allegations that the Serbian government violated international treaties about the protection of human rights were also rejected, because, in the court’s opinion, the state of Serbia “is obliged to ensure the implementation of these acts within the territory of the Republic of Serbia and may be held responsible only for the damage caused by acts of terror and other breaches of international treaties committed on the territory of the Republic of Serbia.”⁸²

iii. Appellate Court ruling against the judgment of the First Municipal Court

In April 2009, the HLC lodged an appeal with the Appellate Court in Belgrade. The Appellate Court took more than four years to decide upon the appeal. Because the Appellate Court was delaying the proceedings, the HLC lodged an appeal with the Constitutional Court for infringement of the right to a trial within a reasonable time. In September 2013, the Constitutional Court of Serbia ruled that the right of family members of victims to have their case heard within a reasonable time had been violated.⁸³ In September 2013, the Appellate Court rendered a decision overturning the appeal and upholding the decision of the trial court.⁸⁴ No other legal remedy was allowed against this second-instance decision, except a petition for review to the Supreme Court of Cassation and a constitutional appeal to the Constitutional Court of Serbia.

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iv. Supreme Court of Cassation and Constitutional Court rulings

In October 2013 the HLC lodged a constitutional appeal with the Constitutional Court of Serbia and a petition for review with the Supreme Court of Cassation against

81 See the HLC report, *Pravo žrtava na reparacije u Srbiji i standardi Evropskog suda za ljudska prava* [Victims’ Right to Reparation in Serbia and the European Court of Human Rights Standards], p. 39, available at: http://www.hlc-rdc.org/wp-content/uploads/2016/01/Izvestaj_o_reparacijama_2014_FF.pdf, accessed on 14 December 2020.

82 See the HLC report, *Pravo žrtava na reparacije u Srbiji i standardi Evropskog suda za ljudska prava* [Victims’ Right to Reparation in Serbia and the European Court of Human Rights Standards], p. 40, available at: http://www.hlc-rdc.org/wp-content/uploads/2016/01/Izvestaj_o_reparacijama_2014_FF.pdf, accessed on 14 December 2020.

83 Constitutional Court ruling, Už 6652/13 of 15 October 2013.

84 Judgment of the Appellate Court in Belgrade Gž-2044/12 of 4 September 2013.



the Appellate Court ruling. In December 2015 the Supreme Court of Cassation issued a ruling dismissing the petition as inadmissible, while the Constitutional Court in its ruling of April 2016 dismissed the petitioner's constitutional appeal as unfounded.⁸⁵

v. The case before the European Court of Human Rights

The Constitutional Court is the last instance in the legal system of the Republic of Serbia. This legal system knows no other legal remedy one can resort to before the national judiciary. Therefore, having exhausted all domestic remedies, deemed effective by the European Court of Human Rights (ECtHR), the plaintiffs filed an application with this court. In January 2019⁸⁶ the European Court of Human Rights rejected the application filed by the victims' families, reasoning that the crime took place at the time when the European Convention on Human Rights was not in legal force in Serbia, i.e. the application was inadmissible *ratione temporis*. All legal instances the victims' families could take recourse to in order to exercise their right to compensation were exhausted with this decision.

Although the ECtHR jurisprudence was built decades ago to the effect that when deciding on applications filed after the Convention came into force in respect of the State concerned, only the events that took place upon the entry into force of the Convention⁸⁷ will be taken into consideration, nevertheless the ECtHR has rendered a series of decisions that deviated from the standard rule. For instance, the ECtHR has done so in situations where a permanent injury occurred prior to the entry into force of the Convention but continued to exist after the Convention came into force⁸⁸; if the State failed to conduct an effective investigation to uncover the perpetrators of the crime even if the death of a person occurred before the Convention came into force⁸⁹; if persons had gone missing prior to the entry into force of the Convention, but the State still failed to investigate their disappearance after the Convention came into force⁹⁰, etc. Given the above examples of the ECtHR jurisprudence, the HLC sees no reason why the standard already embraced in earlier judgments of the ECtHR should not equally apply to the *Sjeverin* case.

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85 Constitutional Court ruling, Už – 8771/2013 of 20 May 2016.

86 The European Court of Human Rights decision No. 58650/16 of 31 January 2019.

87 See, for instance *Blečić v. Croatia* [Vv], paragraph 70; *Šilih v. Slovenia* [Vv], paragraph 140; *Varnava and Others v. Turkey* [Vv], paragraph 130.

88 *De Becker v. Belgium*

89 *Šilih v. Slovenia* [Vv], paragraphs 159-167, particularly paragraphs 161-163

90 (*Varnava and Others v. Turkey* [Vv], paragraphs 148-149)



vi. Administrative procedure

In addition to their efforts to get adequate redress for their plight in court, the families of Sjeverin victims have for many years been faced with refusal of Serbian institutions to grant them the status of civilian victims of war. The reason for denying them this status can be found in the discriminatory provisions of the newly adopted Law that regulates the rights of family members of civilian victims of war. Namely, although the Sjeverin victims of abduction were citizens of Serbia, the crime itself took place in the territory of BiH and was committed by what Serbia deems non-hostile troops. Therefore, from the perspective of the Serbian institutions, these victims are not treated as civilian victims of war. Instead of rectifying such discriminatory solutions from the previous law, the new law retained exactly the same requirements under which the Sjeverin victims will still not be able to acquire the status of civilian victims of war in Serbia.

2) PODUJEVO

On the morning of 28 March 1999, during the armed conflict in Kosovo, members of the MUP unit “Škorpioni” (“Scorpions”) roused 20 members of the Bogujevci, Duriqi and Llugaliu families from a house in Podujevo and marched them into the courtyard of the house of the Gashi family. Shortly after they arrived in the courtyard, a member of the “Scorpions” shot Shefkate Bogujevci. Seeing that their mother had just been shot, Shefkate’s children ran towards her. At that moment, other “Scorpions” unit members opened fire on them and other civilians who were in the courtyard, killing 14 women and children. The youngest of the victims was two years old, and the oldest, a woman, 69. Five children aged between six and 14 were seriously injured. The War Crimes Chamber of the High Court in Belgrade delivered a final judgment in the *Podujevo* case, sentencing four members of the “Scorpions” as follows: Željko Đukić, Dragan Medić and Dragan Borojević each to 20 years in prison and Miodrag Šolaja to 14 years in prison.⁹¹ Saša Cvjetan was sentenced to 20 years in prison for the same crime by a final judgment of the District Court in Belgrade.⁹²

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91 Judgment of the High Court in Belgrade, War Crimes Department, K.Po2-44/2010 of 22 September 2010; Judgment of the Appellate Court in Belgrade, Special Department, Kž1 Po2 2/2011 of 11 February 2011.

92 Judgment of the District Court in Belgrade K.br.1823/04 of 17 June 2005; Judgment of the Supreme Court of Serbia Kž.I 1847/05 of 22 December 2005.



a. The case of Duriqi et al.

i. Course of the proceedings

On 24 January 2007, on behalf of 24 family members of murdered civilians, the HLC filed a lawsuit against the Republic of Serbia seeking compensation for victims for non-pecuniary damage caused by the death of a close family member. The lawsuit was based on the provisions of the Serbian Constitution and the LCT, which stipulate the liability of the state to award compensation to any person who has suffered pecuniary or non-pecuniary damage as a result of the unlawful acts or misconduct of a person acting on behalf of the state or of a state body. The amount claimed totalled RSD 52 million. On 20 March 2009, the First Municipal court handed down a judgment⁹³, rejecting the compensation claim because the standard limitation period of five years following the occurrence of the damage had expired, and granting the motion submitted by the representative of the state invoking the statute of limitations.

Acting upon an appeal lodged by the HLC, the Appellate Court in Belgrade on 10 March 2010⁹⁴ upheld the judgment of the trial court, stating that as the families of the killed “on 28 March 1999, the date when their family members were killed, became aware of the damage, they could have filed a lawsuit as of that day.”⁹⁵ In the court’s view, the three-year, or the five-year time limit(s) started to run on that date, because of which their claims (submitted in January 2007) were time-barred.

Following this decision of the Appellate Court, the HLC, on behalf of the victims, filed a petition for review with the Supreme Court of Cassation. On 13 April 2011⁹⁶, the court decided as follows: the part of the petition concerning one appellant (Enver Duriqi) was rejected as unfounded, and the part concerning the remaining 20 appellants was dismissed as inadmissible. This is because the Supreme Court of Cassation treated these claims individually, because of which the total value of the

93 Judgment of the First Municipal Court in Belgrade V P.BR.491/07 of 20 March 2009.

94 Judgment of the Appellate Court in Belgrade GŽ-4185/10 of 10 March 2010.

95 See the HLC report, *Pravo žrtava na reparacije u Srbiji i standardi Evropskog suda za ljudska prava* [Victims’ Right to Reparation in Serbia and the European Court of Human Rights Standards], p. 45, available at: http://www.hlc-rdc.org/wp-content/uploads/2016/01/Izvestaj_o_reparacijama_2014_FF.pdf,

96 Judgment of the Supreme Court of Cassation of the Republic of Serbia Rev 85/11 of 13 April 2011.



dispute was below the threshold prescribed for review.⁹⁷ No other legal remedy was allowed against this second-instance decision, except a constitutional appeal to the Constitutional Court of Serbia.

ii. Constitutional Court ruling

On 17 August 2011, the HLC lodged a constitutional appeal on behalf of all the claimants – family members of the victims – alleging that their right to have a fair trial had been violated. In August 2014, the Constitutional Court issued a decision granting the appeal only in one part. Namely, the Constitutional Court found that the Supreme Court of Cassation had erred in law in establishing that the standard limitation periods (of three and five years) applied, instead of limitations applicable in cases where the damage results from a crime. Following the decision of the Constitutional Court, a retrial of this case before the trial court was ordered.⁹⁸

iii. The retrial

After eight years of proceedings, the First Basic Court in Belgrade handed down a judgment⁹⁹ in December 2015, imposing on the Republic of Serbia an obligation to pay compensation totalling to RSD 25.9 million to 24 members of immediate families of the victims - 14 women and children who were killed by the members of the MUP unit “Škorpioni” (“Scorpions”) outside their homes in Podujevo in March 1999. The compensation awarded to all the claimants was more than 50 percent lower than the one initially claimed. The First Basic Court only stated in its rationale that it had found the claim to be too high and therefore it was partly rejected. Since the court failed to give any reasons or explanation whatsoever as to why it deemed the claim to be too high, reducing the amount of compensation, apart from determining it in a lump sum, this action represents a violation of the right to compensation due to misconduct of a state body, as guaranteed under Article 35 of the Serbian Constitution¹⁰⁰, and

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97 This interpretation of the conditions for filing a petition for review is extremely restrictive and erroneous, because the damage inflicted upon the victims resulted from the same criminal offence (factual background), so the amount of the claim should have been considered in its totality, not separately, per claimant. On the other hand, the damages claimed by Enver Duriqi individually meet and exceed the threshold set for filing a petition for review (Enver Duriqi claims damages for the murder of his six family members).

98 See the HLC report, *Pravo žrtava na reparacije u Srbiji i standardi Evropskog suda za ljudska prava [Victims' Right to Reparation in Serbia and the European Court of Human Rights Standards]*, p. 46, available at: http://www.hlc-rdc.org/wp-content/uploads/2016/01/Izvestaj_o_reparacijama_2014_FF.pdf, accessed on 14 December 2020.

99 Judgment of the First Basic Court in Belgrade, 52. P 21734/15 of 16 December 2015 and supplemental judgment, 52. P 21734/15 of 22 March 2016.

100 The Constitution of the Republic of Serbia (“Official Gazette of the RS”, No. 98/2006).



a violation of the right to an effective remedy, as guaranteed under Article 13 of the European Convention on Human Rights. The victims' attorney has lodged an appeal with the Appellate Court, with a motion that the court should grant the appellants' claim in its entirety.

On 30 August 2018¹⁰¹ the Appellate Court in Belgrade upheld the trial court judgment¹⁰² against the Republic of Serbia with respect to the lawsuit filed by 24 plaintiffs who claimed compensation for non-pecuniary damage caused by the death of a close family member. After the judgment became final, and because the Republic of Serbia failed to voluntarily comply with its obligation, the claimants had to initiate enforced collection proceedings to vindicate their claim. The enforcement procedure was thus completed and each claimant was awarded compensation in the amount of approximately RSD 700,000 on average, while the respondent was obliged to cover the legal costs. In fact, this was the first judgment in Serbia in which compensation was awarded for established responsibility of the Serbian state for a crime committed by its units against ethnic Albanian civilians during the conflict in Kosovo.

a. The case of Saranda, Jehona and Lirie Bogujevci

On the morning of 28 March 1999, Saranda, Jehona and Lirie Bogujevci were in their family house with their mothers, sisters and brothers, and their cousins. Fearing Serbian forces, 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 cursed at them as they walked. 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.¹⁰³

101 Judgment of the Appellate Court in Belgrade, Gž-3441/2016 of 30 August 2018.

102 Judgment of the First Basic Court in Belgrade, 52. P 21734/15 of 16 December 2015 and supplemental judgment, 52. P 21734/15 of 22 March 2016.

103 Fezrije Llugaliju (21), Shefkate Bogujevci (42), Nefise Llugaliju (55), Sala Bogujevci (39), Shehide Bogujevci (67), Esmā Duriqi (69) and 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).



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, Lirie and Jehona are still being treated for serious and long term physical injuries and psychological traumas.

i. Course of the proceedings

On behalf of Saranda, Jehona, and Lirie Bogujevci, on 28 August 2008 the HLC filed a lawsuit with the First Municipal Court in Belgrade against the Republic of Serbia, claiming compensation for pecuniary and non-pecuniary damage caused by a war crime against civilians, which the claimants sustained as the victims of this serious crime that was established in a final criminal judgment. In the claim it was sought that the court imposes on the state an obligation to pay compensation in the total amount of RSD 10.5 million 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 damage was based on physical pain and fear they endured, personal injury, and emotional pain caused by the loss of amenities of life. Also, in compensation for the pecuniary damage for their bodily injuries, overall poor health condition, permanent dependence on others, and reduced ability to further develop and prosper, the HLC sought monthly payments of RSD 40,000 to the plaintiffs.

The HLC supported the claim with final criminal judgments by which the members of the “Scorpions” were convicted of this crime, and also with medical records of Saranda, Jehona and Lirie Bogujevci. Apart from proposed physical evidence, Saranda, Jehona and Lirie Bogujevci were also heard by the court.¹⁰⁴ Namely, they testified for the first time before the First Municipal Court in Belgrade in December 2008, when they provided detailed accounts of the crime they survived, multiple surgeries and long-term treatments they had to undergo, and the consequences that still persist today. With the new court network in place and upon insistence of the sitting judge, the Bogujevci sisters had to testify again in 2010, two years after their initial testimonies, something that was unnecessary given the fact that they have already gave detailed testimonies in 2008.

104 See the HLC report, *Ostvarivanje prava žrtava na reparacije u sudskim postupcima u Srbiji - Uspostavljanje pravde ili relativizacija zločina?* [Fulfilling the Right for Victims of Human Rights Abuses to Seek Reparation before the Serbian Courts - Serving Justice or Trivializing Crimes?], p. 68, available at: <http://www.hlc-rdc.org/wp-content/uploads/2013/06/Ostvarivanje-prava-%C5%BErtava-na-reparacije-u-sudskim-postupcima-u-Srbiji-izvestaj-za-2012.pdf>, accessed on 18 January 2021.



The High Court in Belgrade rendered an interlocutory judgment¹⁰⁵ after four years of trial. The court dismissed as unfounded a motion for supplemental interlocutory judgment filed by the victims' attorney.¹⁰⁶ The Appellate Court¹⁰⁷ quashed the interlocutory judgment due to formal omissions in determination of the case by the sitting judge and referred the case for a retrial. Upon receiving the Appellate Court decision, the sitting High Court judge scheduled the first hearing, which was set to take place only in five months' time. Upon the order of the Appellate Court, all the evidences proposed were presented during the retrial. On 7 May 2015 the Bogujevci sisters were heard for the third time with regard to the injuries they have sustained and the consequences of the incident they survived. Moreover, a thorough medical expertise was performed on the victims by four court-appointed medical witnesses. Due to such action, the Bogujevci sisters incurred unnecessary costs as they had to travel to Serbia from the United Kingdom where they live, they had to undergo detailed medical examinations and were exposed to re-traumatization by having to give detailed testimonies of the crime they had survived and of the resulting consequences that still persist today. On 7 June 2018 the High Court allowed the lawsuit to be objectively modified, based on the submissions by the victim's attorney.¹⁰⁸ Finally, ten years after the lawsuit was filed, the High Court in Belgrade handed down a judgment on 7 June 2018, imposing an obligation on the Republic of Serbia to pay the total amount of RSD 3,050,000 in non-pecuniary damages to Saranda, Jehona and Lirie Bogujevci (the Bogujevci sisters), who were seriously injured in the crime committed by the members of the "Scorpions" unit.¹⁰⁹ The court established a causal link between the crime committed by the "Scorpions" members and the physical pain, fear and mental anguish that the Bogujevci sisters had suffered. The court partly rejected the plaintiffs' claim, bearing in mind "the purpose and the nature of the concept of just compensation for non-pecuniary damage i.e. primarily the fact that this is not a compensation in the true sense of the word because *restitutio in integrum* is impossible, but is rather aimed at satisfying the injured party, and, therefore, the court finds that the damages awarded provide appropriate satisfaction"¹¹⁰ Such a rationale, however, failed to give an adequate and credible explanation as to how the damages awarded would satisfy the plaintiffs or how they would fulfill the purpose and the nature of the concept of just compensation for non-pecuniary damage.

105 Interlocutory judgment of the High Court in Belgrade, P.2142/10 of 13 September 2012.

106 Ruling of the High Court in Belgrade, P br. 2142/10 of 5 February 2013.

107 Ruling of the Appellate Court in Belgrade, Gž. 2425/13 of 2 April 2014.

108 Judgment of the High Court in Belgrade, 10 P. br.2142/10 of 7 June 2018.

109 *Ibid.*

110 Judgment of the High Court in Belgrade, 10 P. br. 2142/10 of 7 June 2018.



The proceedings lasted for almost 11 years and during that time five sitting judges that heard the case were changed. The trial courts have thus evidently violated the plaintiff's right to a fair trial, or more specifically, the right to a trial within a reasonable time, as guaranteed by the Constitution of the Republic of Serbia and the European Convention on Human Rights. The amount of compensation that was awarded was more than 50 percent lower than the one that the plaintiffs had initially claimed in their lawsuit. When awarding a just compensation, the court is obliged to take into account the protected good that was damaged and the purpose for which the compensation is awarded. Given the fact that at the time of the crime the Bogujevci sisters were minors (they were 13, 10 and 8 years old), that they survived a shooting spree and were victims of a war crime, that they lost a large number of their family members, that they themselves suffered serious injuries that required long-term treatment and whose consequences still persist today, one may infer that the compensation awarded to the victims is a lump sum does not provide an adequate satisfaction for the injuries sustained. By awarding such a low amount of compensation to the injured parties, the courts in Serbia are rendering pointless the concept of non-pecuniary damages. Moreover, such a reduction of the amount of compensation, apart from determining it in a lump sum, is a violation of the right to compensation due to misconduct of a state body, as guaranteed under Article 35 of the Serbian Constitution, and a violation of the right to an effective remedy, as guaranteed under Article 13 of the European Convention on Human Rights. The European Convention on Human Rights and the jurisprudence of the European Court of Human Rights promote the State's obligation to provide pecuniary compensation to victims of violations of human rights and freedoms, as provided under the Convention, and their position is that the award of damages below the minimum generally awarded by the court cannot remedy a violation of the rights that the victims had suffered and that, therefore, such damages do not represent a just and adequate satisfaction.¹¹¹

In its judgment of 5 September 2019¹¹², the Appellate Court in Belgrade partly modified the trial court judgment and the plaintiffs were awarded significantly higher damages for the injuries they suffered. Namely, the trial court judgment was modified to the effect that Saranda Bogujevci was awarded RSD 2,600,000 instead of RSD 1,300,000, Jehona Bogujevci was awarded RSD 2,450,000 instead of RSD 1,150,000 and Lirie Bogujevci was awarded RSD 1,250,000 instead of 600,000, while most of their other claims were rejected as unfounded. The Appeals Chamber was guided by the relevant facts that the victims' attorney had highlighted (the type of crime, level

111 See the ECtHR case *Ciorap v Moldova*.

112 Judgment of the Appellate Court in Belgrade, Gž-8845/2018 of 5 September 2019.



of public threat, etc.), the overall circumstances surrounding the case, the appellants' age at the time of the crime, and found that the compensation awarded by the trial court judgment was too low and should be increased.

Since the Republic of Serbia had failed to voluntarily enforce this judgment, enforced collection proceedings were initiated and completed during 2020. Once the enforcement proceedings were finalized, the Bogujevci sisters' case was finally completed after more than a decade and they managed to vindicate their claim for the damage they had suffered.

3) TORTURE AGAINST KOSOVO ALBANIANS

During the armed conflict in Kosovo (from February 1998 through June 1999), and particularly during the NATO bombing (from March through June 1999), Serbian security forces baselessly arrested and unlawfully detained several thousand Kosovo Albanians under alleged suspicion that they were terrorists. Kosovo Albanian men were arrested in their homes, on the street and in other public places. All those who were arrested underwent almost identical treatment. They were arrested and taken to a local police station where they were questioned by the police about their alleged affiliation with the Kosovo Liberation Army (KLA), KLA activities, attacks on the army and the police, etc. During the questioning, the police brutally beat them with truncheons, hit them with their fists and feet, forced them to sign confessions, and performed paraffin tests¹¹³ on some of them.

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The police then transported the arrested Kosovo Albanian men to the prison in Lipljan and the prison in Dubrava near Istok. As the Serbian troops were pulling out of Kosovo, the unlawfully detained Kosovo Albanian men were transferred by buses to the prisons in Niš, Požarevac and Sremska Mitrovica.

113 The paraffin test, also known as diphenylamine test or gunpowder test, is used for establishing whether a person has recently discharged a firearm. This method was first used in 1933 by Mexican forensic expert Teodoro Gonzalez. The test is performed by applying the so-called 'paraffin gloves', i.e. the suspect's hands are covered with a layer of molten paraffin wax or with an adhesive aluminum foil for the gathering of organic products proceeding from the discharge of a firearm (nitrates and nitrites). See: Dr Aleksandar Ivanović and doc. dr Ivana Bjelovuk, „Pouzdanost kriminalističko-tehničkih metoda za detektovanje tragova barutnih čestica na šakama osumnjičenih”, [Reliability of forensic methods of detecting gunshot residue on the suspect's hands], *Bezbednost* [Security]– the magazine of the Ministry of the Interior of the Republic of Serbia, No. 3/2010, Belgrade, 2010, pp. 12-13.



No criminal proceedings have ever been initiated against the vast majority of the detainees, some of whom were baselessly detained for almost two years. They were released under decisions of the Ministry of Justice of the Republic of Serbia. Those against whom criminal proceedings were initiated were charged with crimes of armed rebellion, terrorism or associating for the purpose of hostile activities.¹¹⁴ They were released under the Amnesty Law, which came into force on 2 March 2001.¹¹⁵ Serbian institutions have never issued to them any document concerning the time they have spent in detention.¹¹⁶

a. The case of Behram Sahiti et al.

Behram Sahiti, Elmi Musliu, Enver Baleci and Faton Halilaj lived in villages outside Glogovac. After Serbian police had moved into their villages, all four men were arrested on 28 May 1999 and taken to a flour warehouse in Glogovac. In the warehouse, the police officers beat them with truncheons and metal bars, took their personal details and performed paraffin test on their hands. The following day, they were transported by bus to the prison in Lipljan. The conditions in this prison were inhumane: the small cells were packed with dozens of detainees who slept on a hard bare floor, and they received only minimum amounts of food. Faton Halilaj was thirteen years old at the time of his arrest. In the early hours of the morning of 10 June, Sahiti, Musliu, Baleci and Halilaj, together with other Kosovo Albanian men, were tied and transported by bus under police escort to the prison in Požarevac. Upon arriving at the prison, they were made to run under gauntlet of police officers and prison guards hitting them with truncheons, bats and metal bars. After that, the detainees were lined up and taken to the cells. The conditions in the prison were appalling (the men shared their cells with about one hundred other inmates and slept on the floor, wrapped only in blankets). Because of the poor hygiene conditions, they were all infected with head lice and mange. As food was scarce, they suffered from constant hunger. None of them were interrogated while in detention in Požarevac.

¹¹⁴ Articles 124, 125 and 136 of the Basic Criminal Law (“Official Journal of the SFRY”, Nos. 44/76, 36/77, 34/84, 37/84, 74/87, 57/89, 3/90, 38/90, 45/90 and 54/90, and “Official Journal of the SFRY”, Nos. 35/92, 37/93, and 24/94).

¹¹⁵ Article 1, paragraph 2 of the Amnesty Law (“Official Journal of the FRY”, No. 9/01).

¹¹⁶ See the HLC report, *Pravo žrtava na reparacije u Srbiji i standardi Evropskog suda za ljudska prava* [Victims’ Right to Reparation in Serbia and the European Court of Human Rights Standards], p. 51, available at: http://www.hlc-rdc.org/wp-content/uploads/2016/01/lzvestaj_o_reparacijama_2014_FF.pdf, accessed on 14 December 2020.



Following a visit by a delegation of the International Committee of the Red Cross (ICRC), the conditions slightly improved. Faton Halilaj was released from prison on 19 November 1999, Behram Sahiti and Elmi Musliu in April 2000, and Enver Baleci in June 2000. They were never prosecuted. The torture and the inhumane and degrading treatment they were subjected to by MUP officers while in custody has left lasting effects on their mental health. All of them were diagnosed with PTSD, which requires lifelong treatment.¹¹⁷

i. Course of the proceedings

In April 2010, the HLC, acting on behalf of Sahiti, Musliu, Baleci and Halilaj, filed a lawsuit against the Republic of Serbia as the party responsible for the torture performed by the MUP officers. The HLC sought that the court orders the Republic of Serbia to pay RSD 2.7 million to these victims in compensation for the loss of amenities of life caused by the torture they had endured. During the proceedings, the court heard all the victims and a medical expertise was performed by a court-appointed medical witness – a psychiatrist – who established PTSD and the resulting permanent loss of amenities of life of all four victims.

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In a judgment handed down in June 2012, the First Basic Court dismissed the victims' claims.¹¹⁸ In the court's view, their right to claim compensation from the Republic of Serbia became time-barred following the expiration of the standard limitation period of five years following the occurrence of the damage, i.e. in 2005. While it admitted into evidence the findings of the medical witness, according to which the PTSD in the victims manifested itself in its definite form in 2008 and 2011, the court held that "[t]he moment when the victims became aware of the damage has relevance [...] only if it occurred within the standard five-year limitation period, not outside of it."¹¹⁹

After considering an appeal submitted by the victims' attorney, the Appellate Court in Belgrade in September 2013 delivered a decision¹²⁰ quashing the trial court judgment and remanded the case to the trial court to establish anew date when the limitation

117 See the HLC report, *Pravo žrtava na reparacije u Srbiji i standardi Evropskog suda za ljudska prava* [Victims' Right to Reparation in Serbia and the European Court of Human Rights Standards], p. 55, available at: http://www.hlc-rdc.org/wp-content/uploads/2016/01/Izvestaj_o_reparacijama_2014_FF.pdf, accessed on 14 December 2020.

118 Judgment of the First Basic Court in Belgrade, 32 P broj 70585/10 of 15 June 2012.

119 See the HLC report, *Pravo žrtava na reparacije u Srbiji i standardi Evropskog suda za ljudska prava* [Victims' Right to Reparation in Serbia and the European Court of Human Rights Standards], p. 57, available at: http://www.hlc-rdc.org/wp-content/uploads/2016/01/Izvestaj_o_reparacijama_2014_FF.pdf, accessed on 14 December 2020.

120 Decision of the Appellate Court in Belgrade, Gž.br.539/13 of 25 September 2013.



period had started to run. Explaining its decision, the court stated that “in our case law, the realization that damage exists refers not only to the day when damage was caused (the day the damage occurred) but also to the circumstances regarding the end of the treatment and the realization that the lingering consequences have caused permanent damage to the plaintiff’s health and his/her general ability to perform daily functions, as a result of which his/her daily life activities are reduced.”¹²¹

Taking into account the findings of the expert, who established that in the victims the disorder manifested itself in its definite form in 2008 and 2011, the court ordered the lower court to establish anew when the victims had become aware of the full extent of the consequences on their health. In the retrial, the trial court heard the medical expert, who, on the basis of his experience in treating PTSD patients, examination of the plaintiffs and the medical records they supplied, found that the plaintiffs had become aware of the definite form of their illness at the moment of being examined. Accordingly, the court found that their claims were not time-barred and delivered a new judgment awarding them compensation, albeit not at the amounts claimed.¹²²

Behram Sahiti and Enver Baleci each received RSD 125,000 in damages for emotional pain caused by the loss of amenities of life. Elmi Musliu received RSD 250,000, and Faton Halilaj RSD 370,000 on the same grounds. Explaining the difference in the amounts awarded, the court stated as follows: “the court took into consideration each plaintiff’s degree of loss of amenities of life, their age at the time of deprivation of liberty, and the fact that they will suffer those consequences for the rest of their lives.”¹²³ As regards Faton Halilaj, the court took into account the fact that he was underage at the time he was deprived of liberty. In its rationale, the court stated that the amounts of the damages claimed were too high and that awarding them would run contrary to the aim of the compensation and its social purpose. However, the court failed to provide a detailed explanation for its decision. It is evident that the damages awarded by the court cannot be an adequate compensation for the harm done. Even if the highest amount of damages had been awarded, it could not have been deemed a just compensation bearing in mind that Faton Halilaj was only 13 years old when he was arrested and tortured.

121 See the HLC report, *Pravo žrtava na reparacije u Srbiji i standardi Evropskog suda za ljudska prava [Victims’ Right to Reparation in Serbia and the European Court of Human Rights Standards]*, p. 57, available at: http://www.hlc-rdc.org/wp-content/uploads/2016/01/Izvestaj_o_reparacijama_2014_FF.pdf, accessed on 14 December 2020.

122 Judgment of the First Basic Court in Belgrade, 64 P.br.38854/13 of 13 February 2015.

123 See the HLC report, *Pravo žrtava na reparacije u Srbiji i standardi Evropskog suda za ljudska prava [Victims’ Right to Reparation in Serbia and the European Court of Human Rights Standards]*, p. 58, available at: http://www.hlc-rdc.org/wp-content/uploads/2016/01/Izvestaj_o_reparacijama_2014_FF.pdf, accessed on 14 December 2020.



4) TORTURE IN SANDŽAK

Sandžak is a region situated in south-western Serbia, along the border to Bosnia and Herzegovina and populated mostly by Bosniaks. Following the onset of the armed conflict in BiH, the Serbian MUP frequently conducted systematic actions to search the houses of local Bosniak residents under the pretence of searching for illegal weapons. After searching their homes and despite not finding any weapons, the police often took the Bosniaks into custody. In local police stations, police officers treated the Bosniaks with cruelty, including physical and mental abuse, in order to force them to confess to possessing illegal weapons or taking part in “activities against the state”. This systematic torture was documented by various UN bodies in their reports, in addition to the HLC and the Sandžak Committee for the Protection of Human Rights and Freedoms. The municipal assemblies of Sjenica and Tutin adopted a report on the widespread police repression and torture in the 1990s targeted against the Bosniaks

124 Rulings of the First Basic Court in Belgrade, P. br. 38854/13 of 4 June 2015.

125 Judgment of the Appellate Court in Belgrade, Gž. br. 3853/16 of 1 June 2016.

126 From EUR 10,000 to EUR 13,000.

127 See the cases *Stanimirović and Hajnal v Serbia*.

128 See the case *Ciorap v Moldova*.



living in these two municipalities, in 2002 and 2003 respectively.¹²⁹ Although the Sandžak Committee reported a number of torture cases to the competent authorities, the authorities in most situations did not prosecute or disciplined those responsible. Many of the police officers identified by tortured Bosniaks as those who abused them are still employed by the Serbian MUP.¹³⁰

a) The Case of Šećet Mehmedović

Šećet Mehmedović lives with his family in the village of Murovce, in the vicinity of Novi Pazar. In mid-January 1994 he was summoned by the Novi Pazar SUP to report for an informative interview. Mehmedović did as ordered. Upon arrival in the police station, he was shown 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 Democratic Action that Mehmedović belonged to. The inspector gave him a sheet of paper to write a statement about it. After a while, inspector Nino came into the office, read the statement and then tore it up, accusing Mehmedović of lying. He started to punch and slap Šećet. Other police officers joined in, including inspector Bratislav Gerić. They also hit him on the soles of his feet and on his hands with their police batons. They would beat him for a half an hour and then, after having taken a break, they would beat him again. This torture went on until 21:30 hours. Due to the pressure and abuse, Mehmedović signed a statement prepared for him by the police. They ordered him to report for informative interviews every 3-4 days. Mehmedović was summoned for informative interviews 11 more times and every time he was forced to admit he was taking part in the activities directed against the state. Mehmedović received the last summons in mid-May 1994. That was when he attempted to commit a suicide. The torture Mehmedović was subjected to caused him serious mental trauma. He has undergone constant treatment from that time until present day.¹³¹

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129 Conclusion of the Municipal Assembly of Sjenica number 06-3/2002-02, adopted at a session held on 14 February 2002; Conclusion of the Municipal Assembly of Tutin number 06-1/03, adopted at a session held on 14 February 2003.

130 See the HLC report. *Pravo žrtava na reparacije u Srbiji i standardi Evropskog suda za ljudska prava [Victims' Right to Reparation in Serbia and the European Court of Human Rights Standards]* p. 60, available at: http://www.hlc-rdc.org/wp-content/uploads/2016/01/Izvestaj_o_reparacijama_2014_FF.pdf, accessed on 14 December 2020.

131 See the HLC report. *Pravo žrtava na reparacije u Srbiji i standardi Evropskog suda za ljudska prava [Victims' Right to Reparation in Serbia and the European Court of Human Rights Standards]*, p. 61, available at: http://www.hlc-rdc.org/wp-content/uploads/2016/01/Izvestaj_o_reparacijama_2014_FF.pdf, accessed on 14 December 2020.



i. Course of the proceedings

On 24 December 2006, the HLC filed a compensation lawsuit with the First Municipal Court of Belgrade seeking non-pecuniary damages from the Republic of Serbia on behalf of Šefćet Mehmedović. The lawsuit sought to order the state to pay damages of RSD 1.1 million for the violation of his personal rights and freedoms, fear, sustained physical pain and loss of amenity. The HLC enclosed with the lawsuit medical records about subsequent treatment of Mehmedović and a proposed list of witnesses to be heard.

During the proceedings, the court heard Šefćet Mehmedović, his wife Medina and two more witnesses proposed by the plaintiff's attorney. Several pieces of documentary evidence were presented (medical records, a letter by the Novi Pazar SUP to the effect that that authority had no records of Šefćet Mehmedović's being taken into custody and other). Šefćet Mehmedović described to the court the circumstances under which he had been taken into custody and the torture he had been subjected to in the police station in Novi Pazar. Due to the sustained injuries and traumas, he has serious health issues which make him unfit for work. The performed medical expertise established that the health consequences of torture in Mehmedović acquired their definite form in 2002.¹³²

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The First Municipal Court handed down a judgement ordering Serbia to pay to Šefćet Mehmedović a compensation of RSD 200,000 for the responsibility of the state for the torture by MUP officers that resulted in the loss of Mehmedović's amenities of life. The court rejected the compensation claims for the violation of personal rights and freedoms, physical pain and fear on the grounds of statute of limitations. The trial court applied the three-year period of limitation standard, establishing that the statute started to run from the date of the medical expertise.

Following the appeals by the HLC and the attorney for the state, the Appellate Court handed down a judgement in July 2012, wherein it upheld the part of the trial judgement rejecting the plaintiff's compensation claims and overturned the decision to award damages to Mehmedović, ordering retrial.¹³³ The court held that the trial court had failed to establish a clear causal link between the actions of the MUP members and the ensuing damage (loss of amenity). Further, the court held that the trial court had failed to establish when the mental illness caused by the torture of

132 See the HLC report. *Pravo žrtava na reparacije u Srbiji i standardi Evropskog suda za ljudska prava [Victims' Right to Reparation in Serbia and the European Court of Human Rights Standards]*, p. 62, available at: http://www.hlc-rdc.org/wp-content/uploads/2016/01/Izvestaj_o_reparacijama_2014_FF.pdf, accessed on 14 December 2020.

133 Judgement of the Appellate Court of Belgrade Gž.br.10755/10 of 27 July 2012.



Mehmedović had acquired its definite form, which was relevant for determining the time limit applicable to the claim.

ii. The retrial

At the retrial, the expert witness was heard again and the evidence presented at the trial was read out. The expert witness testified that there was a causal link between the torture and the mental illness diagnosed in Mehmedović and that he was able to establish that causal link based on medical records of Mehmedović's treatment and by personally examining Mehmedović.

The court handed down a judgement in December 2012, rejecting as statute-barred the only remaining claim – compensation for non-pecuniary damage caused by loss of amenity.¹³⁴ The court reasoned that, as established by the court, the statute had started to run on 9 April 2002, which was the date when Mehmedović learned from the psychiatrist that his illness had acquired a chronic form.¹³⁵ Mehmedović's treatment from the consequences of torture is such that it will last for the rest of his life; the treatment will not and cannot lead to improved health, but will rather maintain the present level of impaired health, which would otherwise further deteriorate. The most significant fact in that respect is that Mehmedović first learned of the fact that his illness resulted in the loss of amenities of life upon examination by the expert witness, although the treatment had started earlier. The statute of limitations can start to run only when one has gained knowledge of the full extent of medical consequences.¹³⁶

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An appeal against this judgement was filed with the Appellate Court of Belgrade in January 2013. In its judgement, the Appellate Court rejected the plaintiff's appeal as unfounded, upholding the retrial judgement.¹³⁷ The statement of reasons stated *inter alia* that the first-instance court had properly applied substantive law, specifically Article 376 of the LCT, to the properly ascertained facts or, in other words, that it had properly assessed the plaintiff's claim as statute-barred, considering that,

134 Judgement of the First Basic Court of Belgrade 37 P.br. 17652/12 of 11 December 2012.

135 See the HLC report. *Ostvarivanje prava žrtava na reparacije u sudskim postupcima u Srbiji - Uspostavljanje pravde ili relativizacija zločina? [Fulfilling the Right of Victims to Seek Reparation before Serbian Courts: Serving Justice or Trivialising Crimes?]*, p. 41, available at: <http://www.hlc-rdc.org/wp-content/uploads/2013/06/Ostvarivanje-prava-%C5%Bertava-na-reparacije-u-sudskim-postupcima-u-Srbiji-izvestaj-za-2012.pdf>, accessed on 18 January 2021.

136 See the HLC report. *Pravo žrtava na reparacije u Srbiji i standardi Evropskog suda za ljudska prava [Victims' Right to Reparation in Serbia and the European Court of Human Rights Standards]*, p. 64, available at: http://www.hlc-rdc.org/wp-content/uploads/2016/01/Izvestaj_o_reparacijama_2014_FF.pdf, accessed on 14 December 2020.

137 Judgement of the Appellate Court of Belgrade, Gž. br. 2187/13 of 10 March 2016.



in the opinion of the expert witness, the plaintiff's illness had acquired its definite form in 2002 and that the plaintiff had learned in 2002 that his illness was chronic and in definite form, irrespective of the fact that the treatment was still going on. No other legal remedy was allowed against this second-instance decision, except a constitutional appeal to the Constitutional Court of Serbia.

iii. The case before the Constitutional Court

A constitutional appeal against the decision of the Appellate Court was filed in May 2016. The Constitutional Court rejected as unfounded the constitutional appeal for the violation of the right to fair trial and the right to compensation.¹³⁸ Deciding on the claim and rights of the appellant, the domestic courts failed to give justifiable reasons for their decisions, whereby they failed to give clear and justifiable responses to critical arguments in deciding on the appellant's rights. The appellant stated before the Constitutional Court that the second-instance court, namely the Appellate Court of Belgrade, had decided otherwise in cases having the same factual and legal merits as his case, i.e. had differently interpreted the time when the subjective three-year limitation period under Article 376 of the LCT started to run. Without a mechanism in place to ensure consistent approach, profound and long-term differences in decision-making on the matter of importance for the society will result in permanent uncertainty and ultimately in denial of the right to fair trial.

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iv. The case before the European Court of Human Rights

The Constitutional Court is the last instance in the legal system of the Republic of Serbia. This legal system knows no other legal remedy one can resort to before the national judiciary. Therefore, having exhausted all domestic remedies, deemed effective by the European Court of Human Rights, the plaintiff filed an application with this court in July 2018. The European Court of Human Rights rendered an inadmissibility decision,¹³⁹ reasoning that the crime took place at the time when the ECHR was not in legal force in Serbia, i.e. that the application was inadmissible *ratione temporis*. All legal instances Mehmedović could take recourse to in order to exercise his right to compensation were exhausted with this decision. Therefore, as stated above, although there had been judgements that would have justified deviation, the ECtHR decided in this case to take the path of least resistance and to not follow the same approach.

138 Decision of the Constitutional Court, Už – 4190/16 of 5 April 2018.

139 Decision of the European Court of Human Rights, number: 37572/18 of 12 September 2019.



5) TORTURE OF BOSNIAKS FROM ŽEPA IN THE ŠLJIVOVICA AND MITROVO POLJE CAMPS

Under the UN Security Council Resolution of 6 May 1992, Žepa was declared a safe area under UN protection.¹⁴⁰ After Srebrenica was taken on 11 July 1995, the VRS forces directed their operations to Žepa. The VRS took control over Žepa on 30 August 1995. After the fall of Žepa, more than 800 Bosniaks, both soldiers and civilians, including children, fearing for their lives, swam across the River Drina to seek refuge in Serbia. Upon crossing into Serbia, they were arrested by the VJ border officers. Mujo Hodžić, a young man from Žepa, was tortured and later killed by the VJ members on Mountain Zvezda. The VJ members took the captured Bosniaks in groups to the school playground in the village of Jagoštica (in Bajina Bašta municipality), where they were registered. Throughout the registration process, the captured Bosniaks were physically abused by soldiers and police officers. On the way to Jagoštica, the captured men were forced to run and soldiers have hit them as they ran. The school playground was guarded by the military police and Serbian MUP. Upon arrival in the playground, the captured men were searched again by the soldiers and then ordered to kneel or lie down and not look up. Some spent 24 hours or longer in that position, during which time soldiers verbally abused and hit them. Occasionally, the soldiers would let some civilians into the playground to beat the captured men. From Jagoštica, the Bosniaks were transported in military trucks to facilities in Šljivovica (Čajetina municipality) and Mitrovo Polje (Aleksandrovac municipality).¹⁴¹ Although the trucks had room for only about 15 people, the soldiers and police officers pushed as many as 50 men into each truck. Due to extreme heat and oxygen deprivation, many people lost consciousness and Edhem Torlak from Žepa died from suffocation. His body was taken from the truck only upon their arrival in Šljivovica. The Šljivovica and Mitrovo Polje camps were guarded by the MUP officers. Upon arrival, the captured Bosniaks were forced to run under the gauntlet and then they were once again searched and registered by police officers. The rooms were overcrowded by any standards. In the beginning there were no beds and everybody slept on the floor. They received food rations once a day. The last one to finish eating would be beaten by the guards. During the first month of their detention, the detainees in Šljivovica could not take a shower and when an improvised shower was set up in the backyard, it only supplied cold

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140 Srebrenica was declared a safe zone under the same Security Council resolution (no. 824).

141 See the HLC report. *Ostvarivanje prava žrtava na reparacije u sudskim postupcima u Srbiji - Uspostavljanje pravde ili relativizacija zločina? [Fulfilling the Right of Victims to Seek Reparation before Serbian Courts: Serving Justice or Trivialising Crimes?]*, p. 14, available at: <http://www.hlc-rdc.org/wp-content/uploads/2013/06/Ostvarivanje-prava-%C5%Bertava-na-reparacije-u-sudskim-postupcima-u-Srbiji-izvestaj-za-2012.pdf>, accessed on 18 January 2021.



water. During the night police officers would randomly call out detainees or take them out of rooms and beat them with police batons, sticks or electrical cords. Some of the officers stubbed out their cigarettes on detainees' bodies and forced them to drink water into which they had previously added motor oil. There were also several cases of sexual abuse. The physical and mental abuse by the police officers continued on a daily basis – they ordered inmates to fight with each other, to move large rocks from one place to another, to run around camp yard all night, to do push-ups or to stare at the Sun until they passed out. Four detainees died from the consequences of the abuse: Ahmo Krlić, Meho Jahić, Šećan Dizdarević and Nazif Krlić. MUP and DB (State Security Department) inspectors interrogated the detainees about their involvement in the war, all the while abusing them in a variety of ways, and in particular those who confessed to having been combatants of the Army of BiH or employees of the Žepa administration. The detainees were released in early 1996 through the mediation of the UNHCR.¹⁴²

a) The case of Enes Bogilović and Mušan Džebo

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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. He was not a member of the Army of BiH. Mušan Džebo was originally from the vicinity of Han Pijesak. He was a telephone operator in the Army of BiH. The fall of Žepa found him stationed at a position near Žepa. Enes Bogilović and Mušan Džebo fled to Serbia together on 2 August 1995 in a group of some dozen other men from Žepa. Members of the VJ registered and searched them in the presence of the police. The next day, they were transported in trucks to the camp in Šljivovica. There, they were forced to run under the gauntlet of about ten police officers, who hit them with police batons, after which they took them to the shacks, hitting them all the while. The torture continued during their stay in Šljivovica. At night, the men were repeatedly taken out for interrogation, during which they were hit with batons, tree branches and rubber hoses and, on one occasion, they stubbed out cigarettes on various parts of Bogilović's body. Mušan urinated blood from the beating. Both Enes and Mušan, like other detainees, experienced humiliation – police officers forced them to make the sign of the cross on their chest if they wanted to use the bathroom, etc. Both were forced, under threat of beating, to give themselves Serbian names. Mušan and Enes were released from the camp through the mediation

¹⁴² See the HLC report. *Pravo žrtava na reparacije u Srbiji i standardi Evropskog suda za ljudska prava [Victims' Right to Reparation in Serbia and the European Court of Human Rights Standards]* p. 69, available at: http://www.hlc-rdc.org/wp-content/uploads/2016/01/Izvestaj_o_reparacijama_2014_FF.pdf, accessed on 14 December 2020.



of the UNHCR. Enes Bogilović was released in January 1996, and Mušan Džebo one month earlier. The torture they endured while in the camp has left serious and lasting consequences on both men's health.¹⁴³

i. Course of the proceedings

On 23 November 2007, on behalf of Enes Bogilović and Mušan Džebo, the HLC filed a lawsuit with the First Municipal Court of Belgrade against the state of Serbia, as a party responsible for detaining the men in the camps in Šljivovica and Mitrovo Polje and the torture they were subjected to at the hands of officers of the Serbian MUP. The lawsuit sought that the court order the Serbian state institutions to pay to Bogilović and Džebo a total of RSD 2.6 million in damages for the physical and emotional pain and fear they suffered as a result of the violation of their personal rights and the emotional pain caused by the resulting loss of their amenities of life. Evidence enclosed with the lawsuit included the ICRC documents certifying that the men were detained in Šljivovica, a report by the State Commission for Missing Persons of BiH, and medical records stating Bogilović's and Džebo's respective health status.

At the first trial, a preparatory hearing was held 15 months after the filing of the lawsuit. At the hearings, the victims gave evidence about the conditions in the camp and the abuse they had been subjected to by MUP officers. The court refused all evidentiary motions of the victims' attorney, and in particular to hear as witnesses other former camp inmates and to hear Amor Mašović, the Chairman of the Commission for Missing Persons of BiH. A motion seeking medical expertise to assess how the torture endured by the victims in the camps impacted their health was also rejected. On the other hand, all evidentiary motions by the Office of the Attorney General were allowed. The witnesses proposed by the Office of the Attorney General stated that the prisoners had clearly been in bad health before coming to the camp and that the conditions in Šljivovica and Mitrovo Polje had not been up to the highest standard, but denied all allegations of torture against the Bosniaks. These witnesses attributed the injuries sustained by the imprisoned Bosniaks to their poor health and the war-time conditions in BiH.

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143 See the HLC report. *Ostvarivanje prava žrtava na reparacije u sudskim postupcima u Srbiji - Uspostavljanje pravde ili relativizacija zločina? [Fulfilling the Right of Victims to Seek Reparation before Serbian Courts: Serving Justice or Trivialising Crimes?]*, p. 16, available at: <http://www.hlc-rdc.org/wp-content/uploads/2013/06/Ostvarivanje-prava-%C5%Bertava-na-reparacije-u-sudskim-postupcima-u-Srbiji-izvestaj-za-2012.pdf>, accessed on 18 January 2021.



The First Basic Court rendered the first trial judgment on 17 November 2010,¹⁴⁴ rejecting all the claims by the victims as unfounded. Giving reasons for its judgement, the court stated that it gave no credence to the testimonies of the victims, considering them untrue, especially the segments relating to the physical and mental torture and conditions in the camps. In the court's view, Šljivovica was a "reception centre for refugees and all relevant international organizations were informed of its existence".¹⁴⁵ The court further stated that it gave full credence to the testimonies of witnesses – health care professionals – who had only indirect knowledge of the conditions in the camp and the way in which the detained Bosniaks were treated, and who, as they themselves said, visited the camps in Šljivovica and Mitrovo Polje only a few times. Also, the court gave credence to the testimonies of the MUP officers who participated in the setting up of the Šljivovica and Mitrovo Polje camps and guarded them. As regards the medical records enclosed with the lawsuit, the court, on its own and without seeking medical expertise, found that the health problems suffered by the plaintiffs had nothing to do with their stay in the Šljivovica camp, and that medical expertise, had it been performed, would have had no bearing on its decision. In so doing, the court put itself in a position to assess matters it was not competent to assess.

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In February 2012, the Appellate Court of Belgrade rendered a ruling¹⁴⁶ on the appeal filed against the judgment of the First Basic Court, wherein it quashed the judgment of the lower court, ordering a retrial. The Appellate Court established that the trial court had failed to properly ascertain facts given the opposing accounts by the disputing parties and given that the trial court had heard only witnesses of one of the parties. Therefore, the Appellate Court held that the key factual issues could not be considered to have been resolved. That was why the Appellate Court sent the case back to the trial court to take additional evidence, instructing it to examine the witnesses proposed by the plaintiffs and to seek neuropsychiatric medical expertise on the victims' health status.

ii. The retrial

At the retrial, which commenced in April 2012, there were two main hearings and one witness was heard. Witness Čamil Durmišević, a former detainee in Šljivovica, confirmed that he had been detained in Šljivovica at the same time as Džebo and

144 Judgement of the First Basic Court of Belgrade 63 P br. 46097/10 of 17 November 2010.

145 See the HLC report. *Pravo žrtava na reparacije u Srbiji i standardi Evropskog suda za ljudska prava [Victims' Right to Reparation in Serbia and the European Court of Human Rights Standards]*, p. 76, available at: http://www.hlc-rdc.org/wp-content/uploads/2016/01/Izvestaj_o_reparacijama_2014_FF.pdf, accessed on 14 December 2020.

146 Ruling of the Appellate Court of Belgrade Gž-301/11 of 6 February 2012.



Bogilović. During their stay in the 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 sedatives. On one occasion he witnessed a beating of Bogilović when he went to get some water. The witness spent the last month of his detention in the same barrack room with Bogilović and they left the detention camp on 29 January 1996. Džebo was in slightly better shape, although every prisoner was occasionally beaten and abused. Nevertheless, the First Basic Court again ruled to reject the victims' compensation claims.¹⁴⁷ The reasons for the judgement were in everything else identical to those given in the first trial. In June 2012, an appeal was filed against this judgement.

In December 2013, the Appellate Court held a hearing at which it ordered medical expertise. In June 2014, the Appellate Court of Belgrade rendered a judgement,¹⁴⁸ upholding the part of the trial judgement rejecting Bogilović's and Džebo's compensation claims for physical pain, fear and violation of personal rights. At the same time, the Appellate Court reversed the judgment of the lower court, granting Bogilović's and Džebo's compensation claims for emotional pain caused by the loss of amenity, and awarded them RSD 300,000 each.¹⁴⁹

A constitutional appeal was filed against the part of the Appellate Court's judgment rejecting the claims, while the attorneys for the state filed a petition for review with the Supreme Court of Cassation, seeking a review of the awarded compensation.¹⁵⁰ In deciding on the petition for review, the Supreme Court of Cassation of the Republic of Serbia (SCC) overturned the final judgement ordering the Republic of Serbia to pay compensation to Enes Bogilović and Mušan Džebo for torture and inhuman treatment by members of MUP during their detention at the Šljivovica camp. Therefore, the case was remanded to the second-instance court at the point when the proceedings had been going on for more than 8 years. The retrial and presentation of the same evidence for the fourth time is not only uneconomical, but also additionally prolongs the proceedings, which constitutes a gross violation of the victims' right to a speedy, efficient and fair trial.

147 Judgement of the First Basic Court of Belgrade 63 P br. 5238/12 of 1 June 2012.

148 Judgement of the Appellate Court of Belgrade Gž.br. 7271/12 of 13 June 2014.

149 See the HLC report. *Pravo žrtava na reparacije u Srbiji i standardi Evropskog suda za ljudska prava [Victims' Right to Reparation in Serbia and the European Court of Human Rights Standards]*, p. 77, available at: http://www.hlc-rdc.org/wp-content/uploads/2016/01/Izvestaj_o_reparacijama_2014_FF.pdf, accessed on 14 December 2020.

150 See the HLC report. *Ostvarivanje prava žrtava na reparacije u sudskim postupcima u Srbiji - Uspostavljanje pravde ili relativizacija zločina? [Fulfilling the Right of Victims to Seek Reparation before Serbian Courts: Serving Justice or Trivialising Crimes?]*, p. 22, available at: <http://www.hlc-rdc.org/wp-content/uploads/2013/06/Ostvarivanje-prava-%C5%Bertava-na-reparacije-u-sudskim-postupcima-u-Srbiji-izvestaj-za-2012.pdf>, accessed on 18 January 2021.



During the proceedings before the Appellate Court neither party motioned for any new evidence, which suggests that even the disputing parties agreed that sufficient facts had been established. In its judgement,¹⁵¹ the Appellate Court rejected the plaintiffs' appeal as unfounded, upholding the trial judgement rejecting the plaintiffs' compensation claim. Therefore, the litigation before the regular courts spanned almost nine years, and the case was heard three times by the Appellate Court, as a court of the second instance.

iii. The case before the Constitutional Court

A constitutional appeal was filed against the judgement of the Appellate Court in July 2016. As the appellants did not receive a decision of the Constitutional Court even two years after the constitutional appeal had been filed, they filed a petition with the Constitutional Court of Serbia on 28 August 2018, urging for their constitutional appeal to be decided as soon as possible. Following the petition to expedite the proceedings, the Constitutional Court rendered a decision,¹⁵² upholding the appellants' constitutional appeal concerning the right to trial within reasonable time, and awarding the appellants a compensation for non-pecuniary damage in the amount of EUR 1,000.00 each. In paragraph 3 of the quoted decision, the constitutional appeal on the ground of the violation of the rights guaranteed under the Constitution of the Republic of Serbia was rejected as unfounded, whereas the constitutional appeal on the ground of violations of the right to equal protection of rights and legal remedy¹⁵³ was dismissed.¹⁵⁴

iv. The case before the European Court of Human Rights

The Constitutional Court is the last instance in Serbia's legal system. This system knows no other legal remedy one could resort to before the national judiciary. Therefore, having exhausted all domestic remedies, deemed effective by the European Court of Human Rights, the plaintiffs filed an application with this court. The European Court of Human Rights rendered an inadmissibility decision,¹⁵⁵ without giving any further reasons as to why the court so concluded. All legal instances the applicants could take recourse to in order to exercise their right to compensation were exhausted with this

151 Judgement of the Appellate Court of Belgrade, Gž. br. 3976/15 of 19 May 2016.

152 Decision of the Constitutional Court, Už-5888/2016 of 7 September 2018.

153 Article 36 of the Constitution and Article 25 of the Constitution of the Republic of Serbia - Inviolability of Physical and Mental Integrity.

154 The right to a fair trial under Article 32, paragraph 1 of the Constitution and the right to rehabilitation and compensation under Article 35, paragraph 2 of the Constitution.

155 Decision of the European Court of Human Rights, 4386/19 of 7 March 2019.



decision. Moreover, this viewpoint and decision of the European Court of Human Rights have made it even more unlikely for the victims of crimes committed in the detention camps to get justice before the courts of Serbia.

6) RUDNICA

The village of Rudnica is located in Raška municipality, in the vicinity of the border-crossing at Jarinje, between Serbia and Kosovo. The mass grave in Rudnica was the first mass grave in the territory of Serbia to be discovered after the termination of the mandate of the ICTY to conduct investigations into the crimes committed in the former Yugoslavia.¹⁵⁶ The investigating authorities of the Republic of Serbia searched the locations in the disused quarry in Rudnica for the first time in 2007, and then in 2010, 2011, 2013 and 2014. The Office of the War Crimes Prosecutor of the Republic of Serbia (OWCP) issued several orders on the investigation of the locations in the quarry in Rudnica in 2014, with the view of resuming the search of the terrain where remains of persons believed to have been killed during the 1999 conflict in Kosovo had previously been exhumed.¹⁵⁷ The next order of the OWCP sought to investigate two more locations, with the view of gaining information about alleged existence of new mass graves holding the mortal remains of persons killed during the conflict in Kosovo in 1999 who were believed to be Kosovo Albanians. The OWCP's press release of 30 June 2014 stated that Veljko Odalović, the Chairman of the Commission for Missing Persons of the Government of the Republic of Serbia, confirmed that 37 human remains had been exhumed on the location in Rudnica until the beginning of July 2014. The fourth order on the investigation of the location in Rudnica (sites "Padina 1" and "Padina 2") stated *inter alia* that up to that point 45 partially or fully preserved human remains believed to be the bodies of Kosovo Albanians killed during the conflict in Kosovo in 1999 had been found.¹⁵⁸ In its last press release of 11 November 2015, the OWCP stated that the pre-investigation proceedings against unidentified persons had been initiated after the bodies had been found in the mass grave in Rudnica in order to shed light on the circumstances surrounding the death of these persons. Following the exhumation, the bodies were identified, and it was established that the bodies were of Albanian civilians and that they had most likely been killed in the area of the villages of Rezale and Ćirez. Until that point the OWCP interrogated, in collaboration with EULEX, more than 100 witnesses who defined the

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156 See the HLC dossier. *Rudnica*, p. 7, available at: http://www.hlc-rdc.org/wp-content/uploads/2015/01/Dosije_Rudnica_sr.pdf, accessed on 26 January 2021.

157 Press release of the OWCP of 30 June 2014.

158 Press release of the OWCP of 6 August 2014.



events in which these persons had died.¹⁵⁹ The relevant authorities of the Republic of Serbia handed over the mortal remains of 16 persons to EULEX at the border crossing in Merdare on 22 August 2014. Then 24 bodies were handed over on 12 September 2014 and the remaining 12 bodies on 13 October 2014.

a. The case of Abide Zabeli et al.

The remains of Latif Zabeli were found among the mortal remains recovered from the mass grave in Rudnica. Latif Zabeli lived in the village of Rezala (Srbica municipality) with his wife Abide (plaintiff), two daughters and seven sons. In the early morning hours on 5 April 1999, the officers of the respondent's authority entered Rezala accompanied by tanks and armoured vehicles. They entered Albanian homes and ordered the villagers to gather near a primary school at the village center. After the villagers had gathered near the school, they were ordered to go into the yard of a nearby house which belonged to Hashim Derguti. Then one of the officers of the respondent's authority ordered women and children to leave Hashim Derguti's yard and ordered men to remain. The men were then ordered to stand up as they were encircled by tractors. The tractors' engines were kept on to make noise. The women and children, who were escorted away by a couple of soldiers, heard firearm shots after going some 100 – 200 meters on foot. Latif was in the group of men who remained in the yard of Hashim Derguti's house and that was the last time he was seen alive. Members of his family had no information about him until the time when they have learnt that his mortal remains had been found in the mass grave in Rudnica (Raška municipality).

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i. Course of the proceedings

On 27 March 2017, on behalf of 10 family members of the murdered civilian, the HLC sued the state of Serbia seeking compensation for non-pecuniary damage caused by the death of a close person. The military operation in the territory of Rezale village was conducted on 5 April 1999 (the day of Latif Zabeli's murder) by the members of Serbian forces, under the command of the 37th Motorized Brigade of the Yugoslav Army. Pursuant to a judgement of the ICTY of 26 February 2009, Nikola Šainović, Dragoljub Ojdanić, Nebojša Pavković, Vladimir Lazarević and Sreten Lukić were sentenced to long-term imprisonment (15 and 22 years, respectively), and Milan Milutinović was acquitted, for the crimes committed in Kosovo from 1 January 1999 through 20 June 1999.¹⁶⁰ The lawsuit was grounded on the provisions of the

¹⁵⁹ Press release of the OWCP of 11 November 2015.

¹⁶⁰ Judgement of the ICTY, case IT – 05 – 87 – T, of 26 February 2009.



Constitution of the Republic of Serbia and the LCT stipulating responsibility of the state to compensate for pecuniary and non-pecuniary damage any person to whom such damage is inflicted through unlawful or improper work of an officer or a state body. The lawsuit sought a total compensation of RSD 20 million.

The First Basic Court of Belgrade declined *in rem* jurisdiction in this case, holding that the value of the dispute should be determined as a sum of amounts claimed by individual plaintiffs (RSD 2,000,000.00 each).¹⁶¹ The plaintiffs' attorney filed an appeal against this ruling, as well as a number of petitions to expedite the proceedings. The objection as to the lack of *in rem* jurisdiction was deliberated for three and a half years; namely, a legal action in this case was taken in March 2017 and it was in February 2020 that the High Court of Šabac ruled¹⁶² to overturn the ruling of the First Basic Court of Belgrade and remand the case for further action. The plaintiffs' attorney also objected to the violation of the right to trial within reasonable time in the proceedings conducted before the High Court of Šabac. The Appellate Court of Novi Sad upheld the appeal on the ground of the violation of the right to trial within reasonable time, awarding the appellants the costs of the proceedings of RSD 99,000.00.¹⁶³

Throughout the dispute over *in rem* jurisdiction, the lawsuit was not served on the respondent to respond and, as a result, the litigation did not even start to run its course for three and a half years. Considering that in the case at hand the issue of *in rem* jurisdiction was a procedural matter rather than the matter of law, it should have been all the more so promptly resolved before the deciding courts, and not after three and a half years. The preparatory hearing in this case was finally scheduled for the beginning of September 2020, but it has been postponed to the beginning of March 2021, upon petition of the respondent's attorney.¹⁶⁴

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7) MEJA

Eight mass graves holding mortal remains of 744 persons were discovered at the *13 May* Center in Batajnica near Belgrade between 2001 and 2003. The initial excavations on the location in Batajnica started on 2 June 2001. The exhumation was conducted by a team of experts from the Forensic Institute of Belgrade. The mortal remains were then handed over to UNMIK Office of Missing Persons and Forensics (OMPF) in

161 Ruling of the First Basic Court of Belgrade, 66 P broj 4603/17 of 3 April 2017.

162 Ruling of the High Court of Šabac, 5 Gž. 872/2019 of 12 February 2020.

163 Judgement of the Appellate Court of Novi Sad, Ržg. 18/20 of 10 July 2020.

164 Transcript of the preparatory hearing, 79. P.br. 7429/20 of 9 September 2020.



Kosovo. Each body bag was accompanied by an autopsy record made by the relevant authorities of the Republic of Serbia and a certificate of death. On 24 November 2005, the International Commission on Missing Persons published an Expert Report on Exhumations, stating *inter alia* that 705 bodies were recovered from the mass grave sites in Batajnica. Following the exhumation and examination, the mortal remains were sent to Kosovo and handed over to the OMPF, who conducted forensic testing and re-examined the mortal remains, concluding that those were the remains of 744 bodies.¹⁶⁵

In its judgement against Vlastimir Đorđević,¹⁶⁶ the ICTY established relevant facts in connection with the Reka operation and the role of the VJ and MUP. Namely, the Reka operation began at 06:00 hours on 27 April 1999 and ended at 17:00 or 18:00 hours on 28 April 1999.¹⁶⁷ Several units of the VJ participated in the action, including the 2nd Battalion of the 549th Motorized Brigade, the 52nd Armoured Brigade, the 52nd Battalion of the Military Police, the 63rd Parachute Brigade and the 125th Motorized Brigade. From the MUP, some 400 persons from Belgrade were sent to take part in the operation. They comprised PJP and included members of paramilitary groups, and they arrived in about ten buses and some civilian vehicles shortly before 27 April 1999.¹⁶⁸

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As found by the trial chamber, an objective of the Reka operation was, *inter alia*, to expel Kosovo Albanians from their homes en masse and to kill Kosovo Albanian men – regardless of Kosovo Liberation Army (KLA) association – found in the area.¹⁶⁹ The operation Reka was conducted under the command of General Vladimir Lazarević,¹⁷⁰ and the trial chamber established from the evidence that this operation was planned and ordered by the Priština Corps Command, in conjunction with the senior leaders of the MUP in Priština and Belgrade.¹⁷¹ During the course of the proceedings, the ICTY trial chamber determined beyond any doubt that no less than 296 individuals were killed by the members of the Yugoslav Army and MUP in Meja on 27-28 April 1999 during the Reka operation.¹⁷² Further, the ICTY trial chamber found that the bodies of a number of men killed during the Reka operation were exhumed from their initial burial sites in the Carragojs Valley, including near the Bistražin bridge, the public cemetery of Brekovac and in Guska, and loaded onto trucks. These exhumations were organized by MUP personnel and MUP personnel were present as bodies were

165 Judgement of the ICTY in the case of *Đorđević* of 23 February 2011, Volume 1, par. 990

166 Case no. IT-05-87/1-T, judgement of 23 February 2011.

167 Judgement of the ICTY in the case of *Đorđević* of 23 February 2011, Volume 1, par. 950

168 *Ibid.*, par. 938

169 *Ibid.*, par. 945

170 *Ibid.*, par. 946

171 *Ibid.*, par. 949

172 *Ibid.*, Volume 2, par. 1741



clandestinely excavated and transported from the original places of burial. VJ was also involved in the removal of some of the bodies.¹⁷³ Several trucks loaded with bodies arrived at the Batajnica Special Anti-terrorist Unit (SAJ) Center near Belgrade in the course of April and May 1999. These bodies were buried in mass graves at the training ground by MUP personnel.¹⁷⁴

The Batajnica site was subject to forensic examination and exhumations in June-July 2001. At the mass grave sites at Batajnica, the remains of 744 bodies were identified by the International Commission on Missing Persons. The OMPF compiled a list of 344 persons who were missing from Meja on 27-28 April 1999.¹⁷⁵ From the list of 344 persons who went missing from Meja, the OMPF exhumed from the mass grave sites in Batajnica the mortal remains of at least 281 victims, who are stated to have last been seen alive in Meja on 27-28 April 1999. Forensic examinations determined that 172 of these 281 victims died as a result of gunshot wounds. Because of the state of the remains exhumed from Batajnica, no cause of death could be established by forensic examination for the other 109 victims. However, the totality of the evidence and the circumstances established, determined that the chamber found as the only reasonable inference that all 281 victims were killed by Serbian forces on 27-28 April 1999 during the Reka operation. The chamber further found that the perpetrators intended to murder these 281 victims.¹⁷⁶

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The fact that the ICTY trial chamber also established is that there was no evidence that any of the Kosovo Albanians killed in Meja was armed or taking an active part in hostilities at the time of special relevance. Moreover, there is no evidence of any combat action between the Serbian forces and the KLA in the area at the time of the events in Meja. Further, while the Defence contended that the actions of the Serbian forces were directed against Kosovo Albanian terrorists, the Chamber found there was no evidence to suggest that those killed had participated or were participating in terrorist activities. Based on the totality of the evidence, with regard to the 281 persons whose mortal remains the chamber identified as being exhumed from Batajnica SAJ Center in Serbia, the only inference open on the evidence was that they had been deliberately killed by Serbian forces as part of the Reka operation in Meja on 27-28 April 1999. The chamber accepted that the murder of these 281 persons by Serbian forces in Meja on 27-28 April 1999 had been established.¹⁷⁷

173 *Ibid.*, par. 988.

174 *Ibid.*, par. 989.

175 *Ibid.*, par. 990.

176 *Ibid.*, Volume 2, par. 1738.

177 *Ibid.*, Volume 2, par. 1739.



Finally, the ICTY trial chamber established that 281 individuals were killed in and around Meja and Korenica by Serbian forces (members of the VJ and MUP, as the authorities of the respondent) engaged in the Reka operation mainly on 27-28 April 1999, including Mark Abazi, Pashk Abazi and Pjeter Abazi.¹⁷⁸

a. The Case of Dedë Krasniqi et al.

As stated above, the ICTY established beyond any doubt that the authorities of the Republic of Serbia killed, among other persons, Mark Abazi, Pashk Abazi and Pjeter Abazi. Their mortal remains were found at the mass grave sites in Batajnica. The plaintiffs are the victims' closest relatives who lived in the same household with them until the day they were killed. In the judgement of 23 February 2011,¹⁷⁹ the ICTY found Vlastimir Đorđević, the former Assistant Minister of the Serbian MUP and Chief of Public Security Department, guilty and sentenced him to 27 years' imprisonment, *inter alia* on counts 3 and 4 of the indictment, for a crime against humanity. In the appeal proceedings, the prison sentence of accused Vlastimir Đorđević was reduced from 27 to 18 years pursuant to the judgement of 27 January 2014;¹⁸⁰ nevertheless, he remained, responsible for the crime against humanity committed against Kosovo Albanians. At the trial, it was established beyond any doubt that, *inter alia*, 281 individuals were killed in and around Meja and Korenica by Serbian forces (members of the VJ and MUP, as the authorities of the respondent) engaged in the Reka operation mainly on 27-28 April 1999, including specifically Mark Abazi, Pashk Abazi and Pjeter Abazi. The bodies of the killed men were recovered from the mass grave sites in Batajnica near Belgrade.

i. Course of the proceedings

In May 2017, 14 plaintiffs filed, through their attorney, a compensation lawsuit against the Republic of Serbia, namely the Ministry of Defence and the Ministry of the Interior, for non-pecuniary damage caused by the death of a close person. The lawsuit was grounded on the provisions of the Constitution of the Republic of Serbia and the LCT stipulating responsibility of the state to compensate for pecuniary and non-pecuniary damage any person to whom such damage is inflicted through unlawful or improper work of an officer or a state body. The lawsuit sought a total compensation of RSD 28 million. In the response to the lawsuit and in the course of the proceedings,

¹⁷⁸ *Ibid.*, Volume 1, par. 992.

¹⁷⁹ Case no. IT-05-87/1-T.

¹⁸⁰ Case IT-05-87/1-A of 27 January 2014.



the attorneys for the state challenged the charges and the compensation claim as unfounded. They further argued that the lawsuit was improper due to lack of evidence about the responsibility of the respondent and, in conjunction thereto, pleaded the lack of capacity to be sued and the capacity to sue, as evidence was lacking for each of the three murdered persons. Most plaintiffs were heard at the main hearing, and 4 plaintiffs provided notarised statements. The trial court established in its judgement¹⁸¹ that Mark Abazi, Pashk Abazi and Pjeter Abazi had been killed on 27-28 April 1999 during the Reka operation, which had involved the members of the Yugoslav Army and the Serbian MUP, i.e. the authorities of the Republic of Serbia, as established in the final judgement of conviction rendered by the International Criminal Tribunal for the Former Yugoslavia.¹⁸² Although the lawsuit sought RSD 2,000,000.00 for each of the plaintiffs, the court awarded RSD 500,000.00 to each one of 12 plaintiffs and only RSD 100,000.00 to one plaintiff (reasoning that she had been a baby at the time and had no recollection of the event), and rejected the compensation claim of one plaintiff (because she had not lived with the victims at the time of the event and did not belong to a circle of close persons entitled to compensation under the law).

In the appeal proceedings, the Appellate Court quashed a portion of the trial judgement, remanding the case for retrial.¹⁸³

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In its ruling, the Appellate Court raised several issues of relevance for the proceedings in the first instance. First and foremost, the appellate court properly found that the ICTY's decisions are legally binding and have legal effect in Serbia as much as any domestic decision. Those judgements form part of Serbia's applicable law, based on international commitments assumed by Serbia and under the Law on Serbia and Montenegro's Cooperation with the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991.¹⁸⁴ Further, the second-instance court properly assessed that the limitation periods stipulated under Article 377 of the LCT applied to the case at hand.¹⁸⁵ In the case in question, final

181 Judgement of the First Basic Court of Belgrade, 65 P br. 8089/17 of 10 December 2018.

182 Case IT-05-87/1-A of 27 January 2014.

183 Ruling of the Appellate Court of Belgrade, Gž. 2377/19 of 23 July 2020.

184 The Law on Serbia and Montenegro's Cooperation with the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (Official Journal of FRY, no. 18/2002 and Official Journal of Serbia and Montenegro, no. 16/2003).

185 In case of a crime against humanity, limitation periods for compensation of non-pecuniary damage should be assessed under the provision of Article 377 of the LCT, as this period does not refer only to the perpetrator, but also to the respondent indicated as the responsible party under Article 172, paragraph 1 of the LCT.



judgements of conviction by the ICTY exist and form basis for the responsibility of the highest ranking military and police officials, which warrants the application of Article 377 of the LCT, in conjunction with Article 172, paragraph 1 of the LCT. The court also properly found that all plaintiffs were entitled to compensation for non-pecuniary damage.

Of particular relevance is the fact that with respect to the plaintiff whose claim is rejected in full, the court points out that she is the victims' sister; she was born in 1973; and she lived in a joint household with them until 1998, i.e. for full 25 years. She moved to Austria with her husband in 1998 (when the war in Kosovo started) and prior to that she had lived together with the victims. Here the court makes proper reference to Article 201 of the LCT, stating that "permanent personal association" does not imply their living together at the time of the murder, but rather the entire period of time they spent together. Also, the court grants the ground of appeal of the plaintiff who was awarded the lowest compensation, stating that rejection of her compensation claim was unfounded as her not having any direct recollections cannot be an acceptable reason in the case in question. Finally, the court states that each of the plaintiffs lost three family members and that that fact was taken into account only with respect to one plaintiff, who was awarded the highest compensation, although it should have been taken into account also with respect to other plaintiffs when their compensations were set.

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A judgement in this case was not rendered at the time of completion of this report.

8) KRALJANE

Kraljane village is situated in Đakovica municipality about 20 km north of the town of Đakovica. In late March 1999, a large number of Albanian civilians (refugees) from the municipalities of Klina, Mališevo and Đakovica found refuge in Kraljane village, believing they would be safe there as the village was under the control of the KLA. The Albanian civilians stayed in Kraljane village until 2 April 1999, when around 08:00 hours the authorities of the respondent entered the village, after having fought with the members of the KLA stationed at an entry into the village, and the KLA members withdrew from Kraljani. After the retreat of the KLA, the refugees raised a white sheet and surrendered to the Serbian army and police. After the surrender, Serbian forces separated men from women and children, whom they ordered to continue their journey towards Đakovica and Albania. Of the total number of the Albanian men who were detained in Kraljani by the authorities of the Republic of Serbia, bodies of



17 men were found in a mass grave near lake Perućac in Serbia and eight bodies were discovered at a cemetery in Brekovac village (Đakovica municipality). Up to now, the bodies of 53 men who were last seen alive in Kraljane have not been found and they are registered as missing.

a. The case of Emini Hajdaraj et al.

Rifat Hajdaraj and his son Škeljzen Hajdaraj were among 53 missing men who were detained by the authorities of the respondent and last seen alive in Kraljani. The plaintiffs are the closest relatives of Rifat and Škeljzen Hajdaraj. The plaintiffs lived together with Rifat and Škeljzen in a family home in Grebnik village. In late March 1999, they left their village, setting out for Albania, but ended up in Kraljane village at the persuasion of the KLA members they met on the way.

They stayed in Kraljane until 2 April 1999 when a conflict between the KLA and the Serbian army and police started; the KLA retreated towards the mountains and the Serbian army and police entered the village. Together with other Albanian civilians, the plaintiffs surrendered to the authorities of the Republic of Serbia by raising a white sheet. The members of the army and the police detained Rifat and Škeljzen (together with other men they found in the village), while the plaintiffs were ordered to continue their journey to Đakovica and Albania. The plaintiffs have not seen or had any information about the faith of Rifat and Škeljzen since 2 April 1999. They are still registered as missing on a list compiled by UNMIK Office of Missing Persons and Forensics.

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The documents of the Yugoslav Army (VJ) clearly show that the 125th Motorized Brigade (mtbr) was present in Kraljane in the critical period and that civilians were under their control. According to the orders of the Priština Corps Command dated 1 April 1999, the VJ 125th mtbr was engaged to “...take over a wider area of: village Kraljane, village Šaban Mahala and Čalok Mahala and stay alert for active actions on the axis of: village Kraljane – Montenegro – village Dašinovac.”¹⁸⁶ Next day (2 April 1999), the Joint Command for KiM issued an Order, Str.pov.br. 455-115 of 2 April 1999, to break up and destroy *Šiptar* terrorist forces in the area of Jablanica, tasking the VJ 125th mtbr with “providing support to the MUP forces in breaking up and destroying *Šiptar* terrorist forces on the axis of village Kraljane – village Jablanica –

186 Order of the Priština Corps Command, Str. pov. br. 455-109 of 1 April 1999.



village Maznik – village Čalopek – village Vranovac – village Dašinovac...”,¹⁸⁷ and with “ensuring full road passability in the area of Jablanica and establishing combat control of the territory.”¹⁸⁸ The Priština Corps Command issued an order on 3 April 1999, ordering the commander of the 252nd Armoured Brigade (okbr) “to re-subordinate 1 tank platoon (3 tanks) and 1 mechanised platoon (3 infantry combat vehicles with crew and personnel) to the commander of BG-125-5 (combat group) in the area of village Kraljane by 07:00 hours on 4 April 1999”.¹⁸⁹ The Regular Combat Report of the same date stated that BG-5 was engaged in the area of village Kraljane, village Šaban Mahala and village Calat Mahala based on a decision of the Priština Corps Commander.¹⁹⁰ The Regular Combat Report from the next day also included an order to engage BG-5, based on a decision of the Priština Corps Commander, in the area of village Kraljane, village Šaban Mahala and village Calat Mahala in the destruction of *Šiptar* terrorist forces in the area of Jablanica.¹⁹¹ The War Diary of the 5th Combat Group of the VJ 125th mtbr stated that the combat group, together with the Special Police Units (PJP) conducted active operations in the area of Jablanica (a village near Kraljani). An entry in the same diary of 2 April 1999 stated that the 5th Combat Group together with the PJP 24th Detachment established control at the village of Kraljane and that on that occasion 250 men were detained and about 3,000 refugees were sent off in the direction of village Kramavik (Rakovina).¹⁹²

i. Course of the proceedings

In August 2017, eight plaintiffs filed, through their attorney, a compensation lawsuit against the Republic of Serbia, namely the Ministry of Defence and MUP, for non-pecuniary damage caused by the disappearance of a close person. The lawsuit was grounded on the provisions of the Constitution of the Republic of Serbia and the LCT stipulating responsibility of the state to compensate for pecuniary and non-pecuniary damage any person to whom such damage is inflicted through unlawful or improper work of an officer or a state body. The lawsuit sought a total compensation of RSD 16 million. All plaintiffs stated that, in early April 1999, the Serbian military and police forces entered the village, and separated their close relatives Škeljzen and Rifat Hajdaraj in a group together with other men, forcing the plaintiffs to set out for Albania.

187 Order to break up and destroy *Šiptar* terrorist forces in Jablanica sector, Str. pov. br. 455-115 of 2 April 1999.

188 *Ibid.*

189 Order of the Priština Corps Command, Str. pov. br. 455-120 of 3 April 1999.

190 Regular Combat Report, Str. pov. br. 1722-3 of 3 April 1999.

191 Regular Combat Report, Str. pov. br. 1722-4 of 4 April 1999.

192 War Diary BG-5/125th mtbr.



In the response to the lawsuit and in the course of the proceedings, the attorneys for the state challenged the charges and the compensation claim as unfounded, pleading the lack of legal ground for non-pecuniary damages, the lack of evidence as to the responsibility of the respondent and limitations on the claim, and challenging the amount of compensation. Nine hearings were scheduled in this case, of which five were cancelled and four were held. After 3 years and 3 months of litigation in this case, the sitting judge retired from service, without rendering a trial judgement.

9) SUVA REKA

Under the Judgement of the War Crimes Department of the High Court of Belgrade,¹⁹³ Radojko Repanović was sentenced to a 20 years' imprisonment because, during the armed conflict between the military forces of the Federal Republic of Yugoslavia — the Yugoslav Army and the police force of the Republic of Serbia — on one side, and the members of the armed military formation of the Kosovo Liberation Armu (KLA, UČK) on the other, and at the same time between the armed forces of the FRY and NATO coalition, in Suva Reka starting from 12:00 hours noon on 26 March 1999 in his capacity as the commander of the municipal police station (OUP) in Suva Reka, he ordered a group of about ten members of active and reserve police force of the Suva Reka OUP to launch an attack and killings of Albanian civilians in Beriškansko Naselje, a part of the town along the Raštan road where the homes of the Beriša family and other Albanian families were situated, and then selected a group of the Suva Reka OUP officers whom he ordered to load the bodies of the murdered civilians onto a truck and remove them from the site, in violation of the rules of the international law during armed conflicts contained in the provisions of Article 3, paragraph 1, items 1a) and d) of Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War of 12 August 1949, Articles 51, 75, 76 and 77 of Additional Protocol (I) Relating to the Protection of Victims of the International Armed Conflicts and Articles 4 and 13 of Additional Protocol (II) Relating to the Protection of Victims of Non-International Armed Conflict and taking advantage of the combat operations against the KLA by the PJP 37th Detachment and the 5th Combat Group of the VJ 549th Motorised Brigade in the area of village Raštane, Studenčane. According to the final judgment of conviction, the defendant committed this crime in his capacity as the commander of the Suva Reka OUP.

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193 Judgement of the War Crimes Department of the High Court of Belgrade, K-Po2 – 49/2010 of 10 December 2010.



a. The case of Betim Berisha

In committing the crime in Suva Reka, members of MUP – the authority of the respondent Republic of Serbia – killed a total of 48 persons, including Avdi (aged 46), Fatima (aged 43) and their under-age son Kuštrim (aged 11). The plaintiff is the closest relative of the victims, namely Avdi Beriša was his father, Fatima Beriša was his mother and Kuštrim Beriša was his brother.

i. Course of the proceedings

58 The plaintiff's attorney sued the state of Serbia, i.e. MUP, for compensation of non-pecuniary damage caused by death of a close person in October 2019. The lawsuit was grounded on the provisions of the Constitution of the Republic of Serbia and the LCT stipulating responsibility of the state to compensate for pecuniary and non-pecuniary damage to any person whom such damage is inflicted through unlawful or improper work of an officer or a state body. The lawsuit sought a total compensation of RSD 2.4 million. In its response to the lawsuit, the respondent objected on the grounds of limitations on the claim and lack of capacity to be sued, and challenged the amount of compensation.¹⁹⁴ The plea of the statute of limitations is unfounded, considering that the provision of Article 376 of the LCT does not apply to the case at hand, but rather that of Article 377 of the LCT, since the claim relates to the damage caused by a crime. The plea of the lack of capacity to be sued is unfounded seeing as the operating part of the criminal judgement of conviction states that the defendant is convicted in his capacity as the Suva Reka OUP commander and that in committing the crime, the members of MUP – an authority of respondent Republic of Serbia – killed a total of 48 persons, including the closest relatives of the plaintiff (his father, mother and brother). Pursuant to Article 13 of the Civil Procedure Law, the civil court is bound by a final judgement adjudicating a person guilty of a crime as to whether or not a criminal offence and criminal responsibility exist, and it is indisputable that the operating part of the criminal judgement states that the defendant committed the crime in his capacity as the Suva Reka OUP commander. Therefore, the responsibility of the respondent under Article 172 of the LCT and Article 35 of the Constitution of the Republic of Serbia is not and cannot be questionable. Likewise, the challenge of the amount of the claim is unfounded, considering that the case in question concerns one of the gravest crimes (war crime against civilian population) where the state is the responsible party.

¹⁹⁴ Response of the respondent, the Office of the Attorney General, number: P – 6030/19 of 15 November 2019.



V. KEY CHARACTERISTICS OF THE COMPENSATION CASE LAW

In preparing this, as well as the previous analyses, the HLC identified a number of issues concerning compensation lawsuits, such as years-long duration of proceedings, interpretation of the statute of limitations to the detriment of victims, bias on the part of judges and low amounts of awarded compensations.

i. Years-long duration of compensation cases

While compensation proceedings generally take more than five years to complete, there have been cases which lasted longer [*sic*]. For example, the case (compensation for non-pecuniary damage caused by death of a close person) brought against the Republic of Serbia by the Duriqi family *et al.* lasted from 2007 through 2018.¹⁹⁵ Also, the proceedings in the case of the *Bogujevci* sisters spanned 11 years, from 2008 through 2019.¹⁹⁶ Furthermore, in 2013 the Constitutional Court found that the petitioners' right to trial within reasonable time was violated in the case of *Sjeverin* seeing as the proceedings had been going on since 2007.¹⁹⁷

Such lengthy proceedings, according to the standards of the European Court of Human Rights, constitute violation of the right to fair trial. The long duration of proceedings is a result of the courts' practice to schedule hearings every three months on average and of the fact that the scheduled hearings are often cancelled. The state of emergency in the Republic of Serbia due to COVID-19 epidemic was declared on 15 March 2020 and remained in force until 6 May 2020. In this period all hearings were postponed without the presence of the parties and their attorneys, except for the cases where deferral of proceedings would cause irreparable damage or gross violation, i.e. in cases

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195 This case was closed by the judgement of the Appellate Court of Belgrade number: 3441/2016 of 30 August 2018.

196 The lawsuit in this case was filed in August 2008 and the Appellate Court of Belgrade handed down a judgement, Gž. 8845/18 of 5 May 2019, upholding the judgement of the High Court of Belgrade P. 2142/10 of 7 June 2018.

197 In its judgement Už6652/13 of 15 October 2013, the Constitutional Court stated that the combined proceedings before the courts of the first and the second instance had taken more than six years to complete, which was unjustifiable considering that the case itself was not particularly complex, despite a large number of plaintiffs. The Constitutional Court found that the responsibility for delay lay exclusively with the courts and awarded each petitioner an amount of EUR 600 by way of compensation for non-pecuniary damage. See the HLC report. *Pravo žrtava na reparacije u Srbiji i standardi Evropskog suda za ljudska prava [Victims' Right to Reparation in Serbia and the European Court of Human Rights Standards]*, p. 37, available at: http://www.hlc-rdc.org/wp-content/uploads/2016/01/Izvestaj_o_reparacijama_2014_FF.pdf, accessed on 14 December 2020.



which “would not suffer delays”. All cases concerning compensation as a consequence of a war crime were also postponed due to the corona virus pandemic. Hearings were postponed to autumn or early 2021 and some have not yet been scheduled. For this reason, it can be inferred that reasonable and justifiable reasons existed for the deferral of trials in these cases, too. The situation caused by COVID-19 is expected to normalize some time during 2021.

ii. Interpretation of the Statute of Limitation in a Way unfavourable to the Victims

The issue of limitations on compensation claims for human rights violations of the 1990's is a most serious legal obstacle faced by victims seeking to exercise their right to reparation through judicial proceedings. Namely, a significant number of compensation claims have been rejected on the ground of expiry of rights. Limitation periods within which the right to reparation may be claimed through judicial proceedings are set under Article 376¹⁹⁸ and Article 377¹⁹⁹ of the LCT. The courts in most cases interpret the limitation periods stipulated under the LCT unfavourably for victims and, as a rule, do not take advantage of longer limitation periods allowed under the law.²⁰⁰ Thus, for example, the claim by the survivors and family members of the victims of the war crime committed in Podujevo in 1999 by officers of Serbian MUP was rejected by the High Court of Belgrade and then by the Appellate Court on the ground of purported limitation despite the fact that the criminal court instructed the claimants, upon pronouncing its judgement, to exercise their right to compensation in civil proceedings. The judgement was upheld by the Supreme Court of Cassation in 2011.²⁰¹ However, the Serbian Constitutional Court upheld the victims' constitutional appeal in 2014, remanding the case.²⁰² The retrial was concluded with a compensation

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198 Article 376 of the LCT: A claim for compensation of loss sustained shall be limited to three years after the party sustaining the loss has become aware of the loss and of the tortfeasor. In any event, such claim shall be limited to five years after the occurrence of loss.

199 Article 377 of the LCT: Should loss be caused by a criminal offence, and a longer limitation period be prescribed for the criminal prosecution, compensation claim against the person liable shall be limited up until the expiration of the time limit specified for criminal prosecution.

200 See the HLC report. *Pravo žrtava na reparacije u Srbiji i standardi Evropskog suda za ljudska prava [Victims' Right to Reparation in Serbia and the European Court of Human Rights Standards]*, pp. 28-32, available at: http://www.hlc-rdc.org/wp-content/uploads/2016/01/Izvestaj_o_reparacijama_2014_FF.pdf, accessed on 14 December 2020.

201 See the HLC report. *Pravo žrtava na reparacije u Srbiji i standardi Evropskog suda za ljudska prava [Victims' Right to Reparation in Serbia and the European Court of Human Rights Standards]*, pp. 45-46, available at: http://www.hlc-rdc.org/wp-content/uploads/2016/01/Izvestaj_o_reparacijama_2014_FF.pdf, accessed on 14 December 2020.

202 *Ibid.*



award to the victims under the judgement of the Appellate Court of Belgrade,²⁰³ which upheld the judgement of the First Basic Court of Belgrade.^{204, 205}

This approach adopted by courts is contrary to both domestic laws and international standards of protection of victims of gross violations of human rights. Violations of fundamental human rights, which constitute grounds for action in compensation cases, belong by their nature to the most serious crimes committed by members of the Serbian army and/or police. They are the cases of war crimes against civilians, torture, inhuman treatment, months-long unlawful detention and other, which is why the lawsuits are based on the provision of the LCT specifying longer limitation periods in criminal cases.²⁰⁶

Therefore, strict interpretation of limitation periods leads in practice to a situation where victims of crimes and other human rights violations committed during the wars in Croatia/BiH and Kosovo could file lawsuits against the state of Serbia no later than 2000 and 2004, respectively, i.e. at the time of or immediately after the fall of Slobodan Milošević's regime.²⁰⁷ Due to collapse of the judicial system and the rule of law and due to lack of fundamental trust in the institutions to which the cases should have been submitted – this was the time during and immediately after the fall of the regime responsible for the crimes – victims would very rarely opt to take legal action, in consequence of which their rights to pecuniary damages expired, given standard time limits prescribed for compensation claims.²⁰⁸ The only hope for these victims to receive compensation is that the courts in Serbia start to apply special limitation periods on compensation claims in the cases of gross violations of human rights.²⁰⁹

The practical impact of the described strict interpretation by the Serbian Constitutional Court and other courts in Serbia of the provisions governing the application of the statute of limitations in the cases where damage was caused by a criminal offence (Article 377 of the LCT) is such that victims cannot exercise their right to pecuniary damages or the extent to which they exercise this right is significantly reduced.

203 Judgement of the Appellate Court, number: 3441/2016 of 30 August 2018.

204 Judgement of the First Basic Court of Belgrade, P-21734/15 of 16 December 2015.

205 The compensation for non-pecuniary damage caused by death of a close person awarded to 24 plaintiffs amounted to RSD 12,300,000.00.

206 Article 377, paragraph 1 of the LCT.

207 See the HLC report. *Pravo žrtava na reparacije u Srbiji i standardi Evropskog suda za ljudska prava [Victims' Right to Reparation in Serbia and the European Court of Human Rights Standards]*, p. 29, available at: http://www.hlc-rdc.org/wp-content/uploads/2016/01/Izvestaj_o_reparacijama_2014_FF.pdf, accessed on 14 December 2020.

208 *Ibid.*

209 Article 377 of the LCT.



The only category of victims who can exercise their right to pecuniary damages, nevertheless to a significantly reduced extent, are the victims of torture and inhuman treatment who have sustained permanent psychological consequences due to the violence they have survived. Namely, these victims, in case of favourable outcome of court proceedings, are awarded damages on the ground of impaired health, but not on other grounds (violations of freedoms, dignity and other). To obtain that partial compensation in court proceedings, victims must prove the following circumstances: that the consequences of violence are permanent (e.g. that they suffer from a chronic form of post-traumatic stress disorder (PTSD), that they became aware of the illness three years before the filing of the lawsuit (standard limitation period) and that the consequences have led to the loss of amenity.²¹⁰

Nonetheless, even in such cases, courts often take a very rigid stand on victims' efforts to prove the circumstances of their suffering and when interpreting medical experts' findings, but also on the actual need to seek medical expertise.²¹¹ Thus, in *Refik Hasani et al.*,²¹² the court established that the limitation period for compensation claims by the victims of police torture had expired. The court based this decision on the medical records, which in the opinion of the court were sufficient for the court to establish on its own that the victims had learnt they suffered from the PTSD as early as in 2003 and 2004, respectively (compensation lawsuit was filed in 2008), without having to order medical expertise. As more than three years have passed between the time when the victims became aware they suffered from the PTSD, as found by the court, and the time when the lawsuit was filed, the court held that the subjective time limit for the claim had expired and that, as a consequence, the claim had become time-barred. This decision was upheld in the appeal proceedings by the Appellate Court. In *Behram Sahiti et al.*²¹³ (the lawsuit was filed in 2010), the First Basic Court of Belgrade handed down a judgement in 2012 whereby it rejected the victims' claims on the ground of statute of limitations. The expert witness in the case found that the victims had been diagnosed with PTSD and that the illness had acquired its definite form in 2008 and 2011, respectively (therefore, within the legal time limit of three years before the filing

210 See the HLC report. *Pravo žrtava na reparacije u Srbiji i standardi Evropskog suda za ljudska prava [Victims' Right to Reparation in Serbia and the European Court of Human Rights Standards]*, p. 31, available at: http://www.hlc-rdc.org/wp-content/uploads/2016/01/Izvestaj_o_reparacijama_2014_FF.pdf, accessed on 14 December 2020.

211 *Ibid.*

212 *Ibid.* p. 51.

213 See the HLC report. *Pravo žrtava na reparacije u Srbiji i standardi Evropskog suda za ljudska prava [Victims' Right to Reparation in Serbia and the European Court of Human Rights Standards]*, p. 55, available at: http://www.hlc-rdc.org/wp-content/uploads/2016/01/Izvestaj_o_reparacijama_2014_FF.pdf, accessed on 14 December 2020.



of the lawsuit). Contrary to the findings of the psychiatric expert witness, the court established that the damage, i.e. the PTSD in its definite form, had been sustained at the time of their “return from the war zone” (although it was the case of unlawful deprivation of liberty of civilians who did not participate in combat operations) and that therefore the claim was time-barred.²¹⁴

Therefore, such interpretation has made it absolutely impossible for most victims to exercise their right to receive pecuniary damages in Serbia, as the courts have not yet rendered criminal judgements establishing responsibility for the harm they suffered, with the exception of a very small number of cases.

iii. Courts are trying to shield the state from liability for damage

In the experience of the HLC, courts far more frequently give credence to the arguments and evidence of the respondent – the Republic of Serbia. At the same time, they do not accept evidence presented by plaintiffs/victims, giving arbitrary reasons most often to the detriment of victims and in favour of the attorney for the state.²¹⁵ In some cases the evidence unequivocally indicated the responsibility of Serbia for the damage caused.²¹⁶ Thus in *Sjeverin*,²¹⁷ the HLC enclosed with the lawsuit the evidence from a case heard before the ICTY, where Serbia’s involvement in the financing and arming of the Army of Republika Srpska (VRS) and collaboration with VRS (which was responsible for the abduction and killing of 16 Bosniaks from Sjeverin) was established, to show that in that respect Serbia was responsible for the crime against its citizens. The court did not deem this argument relevant and hence did not take it into consideration. Further, the court did not allow presentation of evidence showing the connection between the Republic of Serbia and Republika Srpska, reasoning that “the respondent [party] did not give its consent”. This decision was upheld by

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214 See the HLC report. *Pravo žrtava na reparacije u Srbiji i standardi Evropskog suda za ljudska prava* [Victims’ Right to Reparation in Serbia and the European Court of Human Rights Standards], p. 32, available at: http://www.hlc-rdc.org/wp-content/uploads/2016/01/Izvestaj_o_reparacijama_2014_FF.pdf, accessed on 14 December 2020.

215 *Ibid.* pp. 27-28.

216 The case of *Sjeverin*. See the HLC report. *Pravo žrtava na reparacije u Srbiji i standardi Evropskog suda za ljudska prava* [Victims’ Right to Reparation in Serbia and the European Court of Human Rights Standards], pp. 40-42, available at: http://www.hlc-rdc.org/wp-content/uploads/2016/01/Izvestaj_o_reparacijama_2014_FF.pdf, accessed on 14 December 2020.

217 See the HLC report. *Pravo žrtava na reparacije u Srbiji i standardi Evropskog suda za ljudska prava* [Victims’ Right to Reparation in Serbia and the European Court of Human Rights Standards], p. 37, available at: http://www.hlc-rdc.org/wp-content/uploads/2016/01/Izvestaj_o_reparacijama_2014_FF.pdf, accessed on 14 December 2020.



the Appellate Court in the appeal proceedings.²¹⁸ In other cases, courts denied the plaintiffs' motions to hear certain witnesses (former camp inmates), whereas they would hear all witnesses proposed by the attorney for the state.²¹⁹ Moreover, evidence proposed by victims in the course of proceedings is often met with distrust, suspicion and denial of their validity or authenticity by the court, whereas witnesses and evidence proposed by the attorney for the state is given unqualified credence. Thus in case of *Fehrat Suljić*,²²⁰ a victim of police torture in Sandžak, the court gave full credence to the testimonies of police officers who had interrogated and abused Suljić, dismissing the testimonies of Suljić and his wife.²²¹ In the case pursued against the state of Serbia by Mušan Džebo and Enes Bogilović²²² – victims of torture and inhuman treatment in the Šljivovica and Mitrovo Polje camps – the court gave credence to the testimonies of MUP officers who had been involved in the setting up and guarding of the camps. Also, the court rejected all evidentiary motions by the plaintiffs' attorney in the first trial: to hear former camp inmates as witnesses, to hear Amor Mašović (Chairman of the Commission for Missing Persons of BiH) and to order medical expertise of the victims to establish the health consequences of the torture they endured in the camps. On the other hand, the court heard all witnesses proposed by the Office of the Attorney General.²²³ By doing so, the courts in Serbia are violating the right to fair trial guaranteed under Article 6 of the ECHR.²²⁴

iv. Burden of proof

It is upon victims, in each individual case, to provide evidence that will satisfy the court that the members of Serbian forces committed a war crime, acts of torture, inhuman treatment or other gross violation of fundamental human rights. Victims are

218 *Ibid.* p. 27.

219 The case of Enes Bogilović and Mušan Džebo. See the HLC report. *Pravo žrtava na reparacije u Srbiji i standardi Evropskog suda za ljudska prava* [Victims' Right to Reparation in Serbia and the European Court of Human Rights Standards], pp. 74-77, available at: http://www.hlc-rdc.org/wp-content/uploads/2016/01/Izvestaj_o_reparacijama_2014_FF.pdf, accessed on 14 December 2020.

220 See the HLC report. *Pravo žrtava na reparacije u Srbiji i standardi Evropskog suda za ljudska prava* [Victims' Right to Reparation in Serbia and the European Court of Human Rights Standards], p. 64, available at: http://www.hlc-rdc.org/wp-content/uploads/2016/01/Izvestaj_o_reparacijama_2014_FF.pdf, accessed on 14 December 2020.

221 *Ibid.* p. 64.

222 *Ibid.* p. 74.

223 See the HLC report. *Pravo žrtava na reparacije u Srbiji i standardi Evropskog suda za ljudska prava* [Victims' Right to Reparation in Serbia and the European Court of Human Rights Standards], p. 28, available at: http://www.hlc-rdc.org/wp-content/uploads/2016/01/Izvestaj_o_reparacijama_2014_FF.pdf, accessed on 14 December 2020.

224 See: *Hiro Balani v. Spain*, application no. 18064/91, judgement of 9 December 1994, par. 28.



practically required to prove in civil proceedings that some of the most serious crimes were committed against them and that those crimes were perpetrated by members of the Serbian army and police against whom (in most of the cases) no criminal charges have ever been brought. In substantiating claims, attorneys motion that the court hears victims who are most often the only direct witnesses of the events. They also motion that the court hears eye-witnesses or other witnesses who can confirm based on their direct knowledge that the illegal acts of the police and army did actually take place. In rare cases where perpetrators have been prosecuted for the crimes, criminal judgements are submitted to the court.

As regards the type and quality of evidence, courts insist on evidence from the time when the critical event took place. Victims are very often required to submit medical records compiled shortly after the violence happened, although, according to victims' testimonies, most of the times such records could not be obtained²²⁵ or victims come from very traditional and patriarchal communities where men see doctors only when their condition becomes unbearable.²²⁶ For example, courts order victims of violations of human rights in Sandžak in the 1990's to submit medical reports specifying injuries inflicted by torture, despite testimonies by the victims and their family members that at the time, for the fear of the police, doctors refused to state that injuries were sustained by beatings.²²⁷

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To prove they were exposed to violence by the members of MUP, JNA and VJ and that the state of Serbia is also responsible for the crimes, victims are often required by courts to present final criminal judgements establishing the responsibility of the indicted members of MUP, JNA or VJ. Therefore, the courts disregard a generally recognized fact that the number of indicted war criminals and perpetrators of gross violations of human rights from among the ranks of MUP, JNA and VJ is almost negligible in

225 The case of *Fehrat Suljić*, see the HLC report. *Pravo žrtava na reparacije u Srbiji i standardi Evropskog suda za ljudska prava [Victims' Right to Reparation in Serbia and the European Court of Human Rights Standards]*, p. 64, available at: http://www.hlc-rdc.org/wp-content/uploads/2016/01/Izvestaj_o_reparacijama_2014_FF.pdf, accessed on 14 December 2020.

226 The case of *Agron, Ekrem and Fahri Ejupi*, see the HLC report. *Materijalne reparacije za povrede ljudskih prava u prošlosti - Praksa sudova u Republici Srbiji [Material Reparation for Human Rights Violations Committed in the Past: Court Practice in the Republic of Serbia]*, p. 26, available at: http://www.hlc-rdc.org/wp-content/uploads/2014/03/materijalne_reparacije_za_povrede_ljudskih_prava_u_proslosti.pdf, accessed on 18 January 2021.

227 See the HLC report. *Materijalne reparacije za povrede ljudskih prava u prošlosti - Praksa sudova u Republici Srbiji [Material Reparation for Human Rights Violations Committed in the Past: Court Practice in the Republic of Serbia]*, p. 6, available at: http://www.hlc-rdc.org/wp-content/uploads/2014/03/materijalne_reparacije_za_povrede_ljudskih_prava_u_proslosti.pdf, accessed on 18 January 2021.



Serbia, which is why final criminal judgements are few and far between.²²⁸ The lack of criminal judgements against members of the Serbian army and police considerably diminishes victims' chances of exercising their right to receive reparation. Namely, without a criminal judgement, victims are faced with a huge challenge of proving that members of the army and the police committed most serious crimes against them. Therefore, victims are required to independently prove things that state institutions failed to prove *ex officio*. Courts also do not show understanding for a notorious fact that during the 1990's victims were not in the position to collect *prima facie* evidence about things that happened to them, due to serious threat to their lives and lives of their family members.

v. Low amounts of awarded compensation

Courts in Serbia award extremely low compensations for the most serious violations of human rights committed by Serbian forces during and in connection with the armed conflicts of the 1990's. Taking into account the severity of human rights violations and their systemic nature, as well as the fact that they were committed by officers of the authorities responsible for the protection of human rights (the army and the police), the awarded damages do not represent equitable compensation for the victims. For example, the victims of torture and unlawful detention by members of the Serbian MUP in the 1990's – Bosniaks in Sandžak and Albanians in Kosovo – were awarded on average between RSD 200,000 and RSD 300,000 (EUR 1,500 to EUR 2,700) in damages, pursuant to court judgements against the state.²²⁹ On the other hand, the highest amount of damages finally awarded to date for death of a close person was in *Duriqi et al.*, where each of the plaintiffs was awarded about RSD 700,000.00 on average.²³⁰

In addition to being inadequate given the damage sustained, such low compensation awards by courts constitute violation of the ECHR. Namely, the ECtHR's awards in cases against Serbia concerning violation of the right to life, prohibition of torture and degrading and inhuman treatment ranged on average between EUR 10,000 and

228 *Ibid.* p. 5.

229 See the HLC press release. *Apelacioni sud u Beogradu: Srbija odgovorna za torturu i nečovečno postupanje nad Bošnjacima u logoru Šljivovica* [The Court of Appeal in Belgrade: Serbia is Responsible for the Torture and Inhumane Treatment of Bosniaks in the Šljivovica Concentration Camp], 10 September 2014, available at: <http://www.hlc-rdc.org/?p=27376>., accessed on 21 January 2021.

230 Judgement of the First Basic Court of Belgrade, 52. P 21734/15 of 16 December 2015 and supplemental judgement, 52. P 21734/15 of 22 March 2016.



EUR 13,000.²³¹ From the viewpoint of human rights and building of the rule of law, pecuniary damages are a symbolic equivalent to the injustice suffered by the victim and the responsibility of the state for the violation of human rights, as well as an expression of the willingness of the society to assist victims in regaining their dignity. Some compensation awards by Serbian courts to the victims of crimes committed by members of Serbian forces in the 1990's fail to satisfy any of these requirements.²³²

VI. CONCLUSION

While recognizing that, once massive violations of human rights and grave war crimes have been committed, one cannot turn back time and thus reverse the damage, however, the current reparation system can certainly be improved to enable a far higher number of victims to receive compensation. The ratified international conventions oblige Serbia to provide adequate reparation to all individuals whose human rights guaranteed under those international treaties have been violated, in any form applicable, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. Still, the practice in Serbia is such that receiving reparation under law or in a court action remains hardly achievable for many categories of victims, while relevant institutions fail to commit to fulfilling their obligation of providing reparation to victims, in accordance with their undertakings.

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Victims' associations and civil society organizations,²³³ as well as international bodies monitoring compliance with human rights obligations assumed by Serbia as a State

231 See the HLC report. *Pravo žrtava na reparacije u Srbiji i standardi Evropskog suda za ljudska prava* [Victims' Right to Reparation in Serbia and the European Court of Human Rights Standards], p. 34, available at: http://www.hlc-rdc.org/wp-content/uploads/2016/01/Izvestaj_o_reparacijama_2014_FF.pdf, accessed on 14 December 2020.

232 See the HLC report. *Ostvarivanje prava žrtava na reparacije u sudskim postupcima u Srbiji - Uspostavljanje pravde ili relativizacija zločina? [Fulfilling the Right of Victims to Seek Reparation before Serbian Courts: Serving Justice or Trivialising Crimes?]*, p. 13, available at: <http://www.hlc-rdc.org/wp-content/uploads/2013/06/Ostvarivanje-prava-%C5%Bertava-na-reparacije-u-sudskim-postupcima-u-Srbiji-izvestaj-za-2012.pdf>, accessed on 18 January 2021.

233 See the HLC report. *Administrativne reparacije u Srbiji – analiza postojećeg zakonskog okvira [Administrative Reparation in Serbia: An Analysis of the Existing Legal Framework]*, available at: http://www.hlc-rdc.org/wp-content/uploads/2014/03/Analiza_Zakona_o_pravima_civilnih_invalida-rata_FHP.pdf, accessed on 25 January 2021.



party to relevant treaties,²³⁴ have urged for years the improving of the established reparation system in Serbia. The UN Committee against Torture and the Commissioner for Human Rights of the Council of Europe have criticized the established practice by courts in Serbia vis-à-vis compensation cases for gross violations of human rights, stating that the provisions governing limitations on compensation claims are interpreted in a restrictive manner, that the threshold set for victims to prove the sustained damage is too high, that awarded compensations are low, and that a victim rehabilitation program is evidently lacking.²³⁵ Victims are increasingly more often giving up on court actions for the reasons such as lengthy proceedings, repetition of procedural actions and lack of faith that the proceedings might bring them justice. Finally, this issue has been recognized by EU institutions as one of the components in the process of building the rule of law and respecting the rights of citizens, which is a requirement for a fully-fledged EU membership.²³⁶

As shown in this report, one's exercising of the right to reparation in Serbia is accompanied by serious deficiencies and constraints. In 2020 Serbia had a great opportunity to take a step towards improving the administrative reparation law and by doing so demonstrate its willingness to ensure that victims receive just satisfaction for the harm they suffered, by way of pecuniary compensation. This would certainly enhance trust between the state and victims. Nevertheless, with the adoption of a rigid and discriminatory law, victims found themselves in a situation of having to pursue years-long court proceedings, while being exposed to humiliation, expenses, burden of proof, uncertain outcome of cases and traumatic return to the past. The practice so far has shown that courts adopt unilateral interpretation of provisions governing limitations on claims, which, as a result, makes it impossible for most victims to claim compensation in court proceedings. Therefore, by adopting restrictive interpretation of legal norms and taking discriminatory approach, the judicial authorities in

234 Human Rights Committee, Concluding observations on the third periodic report of Serbia, CCPR/C/SRB/CO/3, 10 April 2017, par 22–23; Letter by Nils Muižnieks, Commissioner for Human Rights of the Council of Europe, to Aleksandar Vulin, Serbian Minister of Labour, Employment, Veterans and Social Affairs, regarding reparation to victims of war-time crimes, CommHR/NM/sf 041-2016, Strasbourg, 12 September 2016; Committee on Enforced Disappearances, Concluding observations on the report submitted by Serbia under Article 29, paragraph 1, of the Convention, adopted at the 135th meeting, held on 12 February 2015, par. 23–26.

235 See the HLC report. *Tranziciona pravda u Srbiji u periodu od 2013. do 2015. godine* [Transitional Justice in Serbia in the period 2013-2015], p. 40, available at: http://www.hlc-rdc.org/wp-content/uploads/2016/06/izvestaj_o_TP_2013-2015.pdf, accessed on 20 December 2020.

236 See the HLC report. *Pravni i institucionalni okvir u Srbiji u pogledu prava i potreba civilnih žrtava rata* [The Legal and Institutional Framework in Serbia Regarding the Rights and Needs of Civilian Victims of War], p. 59, available at: <http://www.hlc-rdc.org/wp-content/uploads/2017/08/Pravni-i-institucionalni-okvir-u-Srbiji-u-pogledu-prava-i-potreba-civilnih-%C5%BErtava-rata.pdf>, accessed on 25 January 2021.



Serbia violate the victims' right to receive reparation, while their decisions taken in compensation cases violate the rights guaranteed under the European Convention on Human Rights, principally prohibition of torture, degrading and inhuman treatment, right to life, right to fair trial and prohibition of discrimination.²³⁷

All the above has shown that victims in Serbia evidently continue to face numerous difficulties in an attempt to seek justice and exercise their right to compensation. The struggle before both domestic and international forums continues for most victims, considering that their right to receive reparation in Serbia is still unattainable.

²³⁷ See the HLC report. *Pravo žrtava na reparacije u Srbiji i standardi Evropskog suda za ljudska prava* [Victims' Right to Reparation in Serbia and the European Court of Human Rights Standards], p. 3, available at: http://www.hlc-rdc.org/wp-content/uploads/2016/01/Izvestaj_o_reparacijama_2014_FF.pdf, accessed on 14 December 2020.



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