Humanitarian Law Center Foundation

MATERIAL REPARATIONS IN PROCEEDINGS FOR DAMAGES -

THE PRACTICE OF COURTS IN SERBIA 2021 – 2022

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Belgrade, 2023

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I. INTRODUCTION

For a long time, the Humanitarian Law Center (HLC) has been publishing reports on the exercise of the right to compensation for victims of war crimes, through civil proceedings conducted before the courts in Serbia. The last such report covered the period from 2017 to 2020 and was presented to the public in 2021.[1] This report covers the period from 2021 to the end of 2022.

The obligation of the Republic of Serbia to provide redress to victims of human rights abuses, including in the form of adequate material reparations, remains unchanged. The harm inflicted on individuals and their family members implies the duty of the wrongdoer, the Republic of Serbia in this case, either to remove its harmful effects or to provide the victims with adequate redress. 30 years since the outbreak of the armed conflicts in the territory of the former Yugoslavia, the Republic of Serbia has not yet fully met this obligation. The political will to face and accept responsibility for past crimes and provide redress to all victims is still absent. As a result, the victims and their family members are forced to pursue their compensation claims through lengthy, costly and often uncertain civil litigation before the courts in Serbia.

The approach of the authorities of the Republic of Serbia has many harmful consequences for victims. They are forced to testify repeatedly before the courts about the crimes committed; secondary victimisation has become the norm; the costs of court proceedings are very high, which puts an additional burden when it comes to access to justice upon those who have clearly acquired the status of victim; and in some cases, the proceedings can last almost a decade. Furthermore, the courts and the state rarely treat victims in a friendly manner, the burden of proof rests on the victims, the standard of proof is too high, and the provisions of substantive law, especially those relating to the statutory limitations for asserting the right to compensation, are always interpreted in a manner that is harmful to victims where there is no final judgment of conviction in a war crime case. This series of burdens placed on victims who have already been recognised as victims acts as a deterrent, and makes victims give up on the idea of filing a law suit to pursue compensation against the Republic of Serbia.

A lack of willingness on the part of the Republic of Serbia to accept its responsibility for past crimes is also reflected in the award of derisory non-pecuniary damages, minimising or glossing over the role and responsibility of state authorities for past

1 Humanitarian Law Center, Material Reparations in Compensation Lawsuits – the practice of courts in Serbia 2017-2020, available at: http://www.hlc-rdc.org/wp-content/uploads/2021/03/Materijalne-reparacije-2021.pdf.

crimes, and precluding victims from Kosovo from collecting damages awarded by Serbian courts by refusing to recognize their personal identification documents issued by Kosovo institutions. In this way, the Republic of Serbia further discourages the victims from exercising their legal right to receive compensation.

This report is based on the numerous court decisions available to the HLC in compensation proceedings which injured parties issued against the Republic of Serbia. Other sources include the case law available from public databases posted on the official websites of the courts, as well as HLC's previous reports and publications.

II. AN ANALYSIS OF INDIVIDUAL COMPENSATION PROCEEDINGS

This chapter presents individual compensation cases heard by the domestic courts.

i. OVČARA

The courts in Serbia have heard or are hearing a total of 14 compensation cases relating to the crime committed at the Ovčara farm in 1991.

On 21 November 1991, members of the Territorial Defence Force and the "Leva supoderica" Volunteer Unit that was attached to the JNA at the time, tortured and killed at least 200 prisoners of war at the Ovčara farm near Vukovar. 193 victims have been identified so far.

In 2017, the Court of Appeal in Belgrade sentenced Miroljub Vujović, Stanko Vujanović, Predrag Milojević, Goran Mugoša, Miroslav Đanković, Ivan Atanasijević, Saša Radak and Nada Kalaba to long prison terms.

Based on the judgment of the Court of Appeal in Belgrade in a criminal case, family members of those killed at the Ovčara farm filed lawsuits with the First Basic Court in Belgrade, seeking compensation from the Ministry of Defence of the Republic of Serbia for the damage they suffered as a result of the death of a close family member.

From 2018 to the end of 2022, a total of 14 lawsuits on behalf of 45 plaintiffs were filed with the court in Serbia seeking compensation for the death of a close family member. Of these, 11 cases have been completed and resulted in plaintiffs receiving around RSD 16 million in damages, while in three cases the proceedings are still in progress.

a) The Case of Stjepan Šarik

The first lawsuit was the one filed in November 2018 by the wife and children of the murdered Stjepan Šarik, who each claimed RSD two million by way of non-pecuniary damages. The lawsuit was filed against the Ministry of Defence of the Republic of Serbia as the legal successor of the JNA. On 5 June 2019,[2] a first-instance judgment was handed down, ordering the Ministry to pay each plaintiff RSD 800,000 by way of compensation for the non-pecuniary damage they suffered as a result of the death of a close family member. The rest of the claim was rejected. Both the plaintiffs and the Ministry appealed against the judgment. On 27 May 2020, the Court of Appeal in Belgrade passed a second-instance judgment[3] dismissing the appeals and upholding the first-instance judgement in its entirety. While the appellate court upheld the conclusion of the court of first instance that the Ministry of Defence had the capacity to be sued, as the legal successor of the JNA of which the Vukovar Territorial Defence Force was part, and rejected the plea that the lawsuit was time-barred under Article 377 of the Law on Contracts and Torts (ZOO) , it did not grant the plaintiffs' argument that the awarded compensations were unreasonably low given the gravity of the crime which gave rise to liability for damages.

b) The Case of Veronika Soldo

The second lawsuit was filed in December 2018 on behalf of plaintiff Veronika Soldo, whose father Ivan Crnjac was killed in the crime at Ovčara. The first-instance decision in this case was rendered on 14 February 2020,[4] ordering the Ministry of Defence to pay the plaintiff RSD 1,500,000 by way of compensation.[5] The Appeals Chamber on 8 July 2021[6] ruled in support of the appeal lodged by the Ministry and reduced the compensation amount from RSD 1,500,000 to RSD 900,000. The Ministry of Defence did not seek a review of the decision, while the plaintiff took the case to the Constitutional Court in November 2021. The Constitutional Court has yet to rule on the plaintiff's appeal.

2 First Basic Court in Belgrade, Judgment P-20038/2018 of 5 June 2019.
3 Court of Appeal in Belgrade, Judgment Gž - 7849/2019 of 27 May 2020.
4 First Basic Court in Belgrade, Judgment P - 20777/2018 of 14 February 2020.
5 The facts of this case, as well as all subsequent ones mentioned in the report, are the same as in the case Stjepan Šarik.
6 Court of Appeal in Belgrade, Judgment Gž-4208/2020 of 8 July 2021.

c) The Case of Željko Begov et al.

The next lawsuit, also filed in December 2018, was on behalf of five plaintiffs, all family members of the killed Željko Begov. The first-instance judgement in this case was handed down on 20 September 2019,[7] by which the Ministry of Defence was ordered to pay each of the plaintiffs RSD 1,000,000 in respect of the same injury as in the previous case. On 10 February 2022,[8] the Court of Appeal upheld the first-instance judgement in its entirety. In March 2022, the Ministry of Defence asked for a review of the decision. The case is now before the Supreme Court of Cassation, which has not yet decided on it. The plaintiffs, for their part, lodged a constitutional appeal in March 2022, and the proceedings before the Constitutional Court are still in progress.

d) The Case of Stjepan Herman et al.

The fourth lawsuit was filed on 5 December 2018 on behalf of four plaintiffs – the wife and three children of the killed Stjepan Herman. In its first-instance judgment of 6 June 2019, [9] the court ordered the Ministry of Defence to pay RSD 625,000 to the wife and RSD 850,000 to each of the children by way of compensation for the non-pecuniary damages they suffered. The appellate court partly modified this judgment on 18 March 2022[10] by awarding RSD 700,000 to the wife and RSD 900,000 to each of the children. In doing so, both the appellate court and the court of first instance court treated the wife less favourably than the children, thus discriminating against the wife of the killed man. There is not a single provision in Serbian law that provides grounds for awarding different compensation amounts to the closest family members of a victim. On the contrary, the provision of Article 201 of the Law on Contracts and Torts puts parents, spouses and children in the same category; so it is unclear why the court considered it justifiable to award a higher compensation for non-pecuniary damages to the children than to the wife of the murdered person, as there is no legitimate reason that would justify making such a distinction. In May 2021, the plaintiffs lodged a constitutional appeal, which the Constitutional Court has yet to rule on.

7 First Basic Court in Belgrade, Judgment P - 20785/2018 of 20 September 2019.
8 Court of Appeal in Belgrade, Judgment Gž-6222/2021 of 10 February 2022.
9 First Basic Court in Belgrade, Judgment P - 20776/2018 of 6 June 2019.
10 Court of Appeal in Belgrade, Judgment Gž-8133/2019 of 18 March 2022.

e) The Case of Imbrišić et al.

The fifth lawsuit was filed on 12 September 2019 on behalf of three plaintiffs – the wife and two children of the killed Ivica Imbrišić. A first-instance judgement was handed down on 27 April 2021,[11] by which the Ministry of Defence was ordered to pay the wife and children eachRSD 800,000. On 21 January 2022, the judgment was upheld in its entirety on appeal.[12] A constitutional appeal was lodged in May 2022 and the case is pending before the Constitutional Court.

f) The Case of Varenica et al.

The sixth lawsuit was filed on 18 September 2019 on behalf of four plaintiffs – the wife and three children of the killed Zvonko Varenica. A first-instance judgment was handed down as early as 13 February 2020.[13] The plaintiffs were each awarded RSD 1,500,000 by way of compensation for non-pecuniary damage. It is particularly important to emphasise that the judge hearing the case, in addition to adjudicating the case within a very short amount of time, also awarded amounts that were far more adequate than those awarded in previous cases.[14] However, the Court of Appeal, upon considering appeals lodged by both parties, on 8 October 2020[15] ruled to reduce compensation awards to RSD 900,000 for each plaintiff. In November 2020, the plaintiffs lodged a constitutional appeal against this ruling and the Constitutional Court has yet to decide on it. It is also important to note that, of all the court proceedings for compensation that have been conducted before the Serbian courts in relation to the crime at Ovčara, this one was adjudicated at both instances within as little as 13 months, which is a praiseworthy example of judicial efficiency in Serbia.

g) The Case of Bajnrauh et al.

The seventh lawsuit was filed in February 2020 by three plaintiffs – the wife and two daughters of the killed Tomislav Bajnrauh. The First Basic Court in Belgrade on 15 April 2021[16] ruled that the Ministry of Defence was to pay compensation to each plaintiff to the amount ofRSD 900,000. After considering appeals by both parties, the appellate chamber partly modified the judgment by awarding a total of RSD 1,000,000

11 First Basic Court in Belgrade, Judgment P-20692/2019 of 27 April 2021.
12 Court of Appeal in Belgrade, Judgment Gž-5050/2021 of 21 January 2022.
13 First Basic Court in Belgrade, Judgment P-21193/2019 of 13 February 2020.
14 Zajedno sa sudijom u predmetu Veronike Soldo.
15 Court of Appeal in Belgrade, Judgment Gž - 3764/2020 of 8 October 2020.
16 First Basic Court in Belgrade, Judgment P - 6795/2020 of 15 April 2021.

to the daughters and upheld the part of the judgment relating to the wife. Both parties sought a review and the case is currently before the Supreme Court of Cassation. In addition to this, the plaintiffs in June 2022 raised a constitutional appeal. The Constitutional Court has yet to rule on the appeal.

h) The Case of Raguž et al.

In February 2020, the eighth lawsuit was filed by four plaintiffs claiming compensation for non-pecuniary damage caused by the murder of their son, husband and father, Ivan Raguž. A first-instance judgment was handed down on 27 November 2020,[17] by which the Ministry of Defence was ordered to pay each plaintiff an amount of RSD 800,000. The Court of Appeal upheld this verdict on 26 May 2021.[18] The plaintiffs filed a constitutional appeal in July 2021. The appeal has not yet been decided.

i) The Case of Kačić

In March 2020, Irena Kačić as a plaintiff filed a lawsuit on the same grounds over the murder of her son Igor Kačić. The court issued a first-instance judgment on 27 November 2020,[19] ordering the Ministry of Defence to pay the plaintiff the sum of RSD 800,000. The appellate chamber upheld this judgment by its ruling dated 3 December 2021.[20] The plaintiff filed a constitutional appeal in February 2022, which is pending before the Constitutional Court.

j) The Case of Jarabek et al.

The tenth lawsuit was filed in February 2021 on behalf of three family members of the murdered Zlatko Jarabek. The wife and two sons of Jarabek were each awarded RSD 900,000 by the first-instance judgment of 7 April 2022.[21] Both the plaintiffs and the defendant appealed against the judgment. The appellate proceedings are in progress.

17 First Basic Court in Belgrade, Judgment P - 6792/2020 of 27 November 2020.
18 Court of Appeal in Belgrade, Judgment Gž - 2671/2021 of 26 May 2021.
19 First Basic Court in Belgrade, Judgment P - 12701/2020 of 27 November 2020.
20 Court of Appeal in Belgrade, Judgment Gž - 3025/2021 of 3 December 2021.
21 First Basic Court in Belgrade, Judgment P - 13809/2021 of 7 April 2022.

k) The Case of Vuković

In September 2021, plaintiff Mira Vuković filed a lawsuit seeking compensation in respect of the murder of her brother Milenko Galić. This was the eleventh lawsuit filed in connection with the crime at Ovčara. The first-instance judgment was handed down on 7 September 2022.[22] In it, the court ordered the Ministry of Defence to pay the plaintiff the sum of RSD 900,000 by way of compensation. The plaintiff appealed against the judgment. The appellate proceedings are in progress.

l) Other lawsuits

Three more lawsuits were filed in the 2021-2022 period. A total of eight plaintiffs launched court proceedings (*Posavec et al*., *Pinter et al*. and *Barbir et al.*) each seeking RSD two million in damages for the murder of their family members at the Ovčara farm. These proceedings are still ongoing.

What all these cases have in common is that the proceedings were completed within the reasonable time of about three years, at both first and second instance (on appeal), that the court practice in terms of the application of law and the interpretation of relevant facts was well-established and consistent, and that there were no deviations in decisions regarding the merits of the plaintiffs' claims. The Ministry of Defence voluntarily followed all the judgments, which also deserves praise, so there was no need to initiate proceedings for the enforcement of judgements.

On the other hand, there has been a clear lack of consistency in determining the amount to be awarded to the plaintiffs; in some cases, the amounts awarded to the wives were different than those awarded to the children, indicating that the plaintiffs were treated differently without any legal grounds. Another common characteristic of these cases has been that the compensation amounts seemed to have been capped by the appellate court at RSD 1,000,000 per plaintiff. With such low awards, the plaintiffs have retained victim status, which is why they have taken their cases to the Constitutional Court to determine whether the ordinary courts violated their right to a fair trial, their right to equal protection of the law, and their right to an effective remedy.

22 First Basic Court in Belgrade, Judgment P - 53091/2021 of 7 September 2022.

ii. SOTIN

Between the second half of October and late December 1991, members of the local militia and the Territorial Defence Force in Sotin, which were attached to the JNA at the relevant time, killed 16 Croat civilians in Sotin, a village near Vukovar. Dragan Mitrović and Žarko Milošević were convicted of this crime by the Higher Court in Belgrade, while Dragan Lončar, Mirko Opačić and Miroslav Milinković were acquitted.

In April 2013, the mortal remains of 13 civilians killed in Sotin were recovered from a mass grave outside Sotin.

The lawsuit was filed in November 2017 on behalf of 21 persons (*Petrović et al.*) all family members of victims who were killed between October and December 1991 in Sotin. They claimed compensation from the Ministry of Defence and two direct perpetrators – Dragan Mitrović and Žarko Milošević (jointly and severally liable) – for non-pecuniary damage arising from the death of a close person. The amount claimed was RSD 2,000,000 per plaintiff.

The judgment was handed down on 3 June 2021,[23] ordering the defendants – the Republic of Serbia and Žarko Milošević – to pay RSD 800,000 to each of the plaintiffs except Jelica Šarik, whose claim was rejected. Pursuant to an earlier judgment on omission passed on 23 June 2020,[24] the defendant Dragan Mitrović was ordered to pay RSD 2,000,000 to each plaintiff, because he did not engage in the dispute.

All litigants in this dispute appealed against the judgment. The case is still pending before the Court of Appeal in Belgrade, even though five years have passed since its commencement.

iii. RUDNICA

The Rudnica mass grave was the first mass grave discovered on the territory of Serbia after the ICTY mandate to investigate crimes committed in the former Yugoslavia ended. In the spring of 2001, three mass graves holding the bodies of 889 Kosovo Albanians, mostly civilians, were discovered at three locations in Serbia - in the Belgrade suburb of Batajnica, in Petrovo Selo (eastern Serbia), and next to Lake Perućac (western Serbia). The mortal remains of 52 people have been exhumed from

23 Higher Court in Belgrade, Judgment P - 2392/2020 od 3 June 2021.
24 Higher Court in Belgrade, Judgment P - 4942/2018 od 23 June 2020.

Rudnica and identified. DNA analyses have confirmed that the bodies belonged to Kosovo Albanians killed during the conflict in Kosovo in 1999.

The mass grave in Rudnica is located right next to a plot of land that had been used by the Yugoslav Army (VJ) since an unknown date before 1999. Army barracks were built on the lot, which, according to the Ministry of Defense, were put into use in 2002, to be handed over to the Ministry of the Interior (MUP) in 2006.

All the persons whose remains were found in Rudnica were civilians killed or forcibly disappeared in four separate crimes committed by members of the VJ and MUP during April and May 1999 in the Drenica area (an area in central Kosovo that covers the municipalities of Srbica/Skënderaj and Glogovac/Gllogoc).

On 27 March 2017, ten family members of the murdered Latif Zabeli (*Zabeli et al.*) filed a lawsuit against the Ministry of Defence and the Ministry of the Interior of the Republic of Serbia claiming compensation for the non-pecuniary damage they suffered as a result of the death of a close person, who was killed by members of the Serb forces under the command of the 37th Motorized Brigade of the Yugoslav Army in the village of Rezale/Rezallë in April 1999.

The lawsuit is based on the judgment of conviction issued by the International Criminal Tribunal for the former Yugoslavia (ICTY) on 26 February 2009. The ICTY imposed long prison sentences on Nikola Šainović, Dragoljub Ojdanić, Nebojša Pavković, Vladimir Lazarević and Sreten Lukić (15 and 22 years) for crimes committed in Kosovo from 1 January to 20 June 1999.

Following a three-and-a-half-year delay in the proceedings caused by the fact that the First Basic Court declared itself incompetent to hear the case, the case was returned to that court and the first-instance judgment was finally handed down on 11 April 2022, [25] five years after the lawsuit was filed. The court ordered the defendants to jointly and severally pay each plaintiff RSD 1,100,000 by way of compensation for non-pecuniary damage. The court held that the ICTY judgment was binding upon Serbia, and held the defendants responsible for the damage caused by their bodies to third parties, in accordance with Article 180 of the ZOO. All parties to the proceedings have lodged appeals against this decision, and the case is currently before the Court of Appeal.

25 First Basic Court in Belgrade, Judgment P - 7429/2020 of 11 April 2022.

Furthermore, the plaintiffs also received compensation for the violation of their right to a trial within a reasonable time, as the appellate proceedings before the Higher Court lasted longer than three years.

Although it is a first-instance judgment and the case is still awaiting an outcome on appeal, it is one of the first judgments to be based on an ICTY judgment as grounds for the award of compensation to family members of persons killed in Kosovo. The domestic courts fully recognized the legal effect of the ICTY judgment and directly applied it in the proceedings for compensation of non-pecuniary damage. Furthermore, the responsibility of the Serbian authorities for the killings of Kosovo Albanians and the subsequent concealment of their bodies in mass graves in Serbia was established, thus confirming the systematic and organised nature of the action to cover up the crimes committed by members of the military and police forces in Kosovo during the 1999 war.

iv. MEJA

On 27 and 28 April 1999, the Yugoslav Army (VJ) and the Serbian Ministry of the Interior (MUP) conducted a joint, large-scale operation, codenamed *Reka,* in several villages lying west of the town of Đakovica/Gjakovë in Kosovo. During the operation, members of Serbian forces killed at least 350 ethnic Albanian civilians, and expelled thousands more to Albania. The mortal remains of 309 victims were found in 2001 in a clandestine mass grave in the Belgrade suburb of Batajnica.

In the early morning of 27 April 1999, VJ soldiers and policemen, in a coordinated action, moving from the northern part of the Reka e Keq/Reka Valley towards the south, entered the Albanian-inhabited villages in the area (Dobroš/Dobrosh, Ramoc, Racaj/Rracaj, Korenica/Korenicë, Molić/Molliq, Brovina, Guska/Guskë, Nivokaz, and other). They entered houses and ordered local residents to leave for Albania, directing them towards the town of Đakovica/Gjakovë. While they were driving the civilians from their homes, members of Serb forces killed dozens of civilians. The largest numbers of civilians (68) were killed in the village of Korenica/Korenicë.

Several thousands of villagers who were forced out of their villages formed two convoys of tractors and headed towards Đakovica. In the village of Meja/Mejë near Đakovica, the convoys had to pass through two checkpoints manned by police officers of the Đakovica SUP. At the checkpoint, the police stopped the tractors, took the men out of the convoy and, after robbing them of their money and jewellery, ordered the women, children and the elderly to continue their journey to Albania. The police

separated 274 men from the convoys, including 36 underage boys, and later killed them in various still unknown locations. The mortal remains of 252 of those men were found in 2001 in the mass grave in Batajnica, another 10 in Mejë and surrounding villages, while 12 men are to this day unaccounted for.

Almost the entire police and military leadership of the then Federal Republic of Yugoslavia (FRY) – Vladimir Lazarević, the then Commander of the VJ Pristina Corps, Nebojša Pavković, the then Commander of the 3rd Army of the VJ and the superior of Vladimir Lazarević, Dragoljub Ojdanić, the then Chief of General Staff of the VJ, Sreten Lukić, the then Chief of Staff of the MUP in charge of Kosovo, and Vlastimir Đorđević, the then Assistant Minister of the Interior and Chief of Public Security Department of the MUP – were found guilty and convicted by the ICTY of the crimes committed during Operation *Reka*.

However, not a single individual has been tried before Serbian courts yet for crimes committed in Operation *Reka* and the concealment of bodies of victims in the mass grave in Batajnica in an attempt to cover up the crimes.

In May 2017, 14 plaintiffs (*Krasniqi et al.*) took legal action to claim compensation from the Ministry of Defence and the Ministry of the Interior of the Republic of Serbia (RS) for non-pecuniary damage arising from the death of close persons - Marko Abazi, Pashko Abazi and Pjeter Abazi. The action was based on the final ICTY judgments in two cases - *Đorđević* and *Šainović et al*. The ICTY found that on 27 and 28 May 1999, Serb forces (members of the Yugoslav Army and the MUP as agents of the Republic of Serbia) which were engaged in Operation *Reka* killed 281 people, including family members of the plaintiffs, in Meja and Korenica and their surroundings. The bodies of those killed were later found in the mass grave in Batajnica near Belgrade.

The first judgment in this case was issued on 10 December 2018,[26] ordering the defendants to pay the following sums to the plaintiffs: RSD 1,000,000 to the mother of the killed, RSD 100,000 to a plaintiff who was a baby at the time and does not remember the crime, and RSD 500,000 to other plaintiffs. One plaintiff's claim was dismissed in its entirety on the grounds that at the time of the crime she did not live with the killed. After both parties appealed against the decision, the appellate court on 23 July 2020[27] ruled to set aside the first-instance judgment and refer the case back to the first-instance court for a retrial.

26 First Basic Court in Belgrade, Judgment P - 8089/2017 of 10 December 2018.
27 Court of Appeal in Belgrade, Judgment Gž - 2377/2019 of 23 July 2020.

The retrial resulted in a new judgment on 27 January 2021.[28] The court ordered the defendants to pay RSD 800,000 in damages to each plaintiff except the mother of the killed, who was again awarded RSD 1,000,000 on the same grounds. Both parties appealed against the decision. Six-and-a-half years since the commencement of the litigation process, the appellate court has yet to rule on the appeals.

v. KRALJANE

In early April 1999, members of Serb forces (the 125th Motorized Brigade of the Yugoslav Army and the 24th Special Police Units detachment) entered the village of Kraljane/Kralan (in the municipality of Đakovica). Locals, who gathered in large numbers near the primary school, were ordered to form a column and head towards Đakovica. As the column was at the exit to the village, members of Serb forces took the men out of the convoy and ordered the women and children to continue their journey. The men, about 500 of them, were kept for two days in a meadow near the road. The first day, members of the Serb forces took money and other valuables from the prisoners, and after that transported most of the elderly men to Đakovica by trucks. The prisoners spent the whole night in the meadow without food and water. The next day, on 4 April 1999, trucks arrived again at the meadow, and the elderly men were loaded onto them with the remark that the younger men would join them shortly, as soon as they had backfilled the trenches dug by the Kosovo Liberation Army. As the trucks were leaving the meadow, a burst of fire was heard when 78 men were killed.

The bodies of 17 men who were held prisoner on 4 April 1999 by members of the VJ 125th MtBr and the 24th detachment of the PJP in Kraljane, were recovered in 2001 from a mass grave near Lake Perućac, in the municipality of Bajina Bašta, Serbia. The bodies of eight men were recovered from the cemetery in the village of Brekovac/Brekoc near Đakovica. The search for the bodies of 53 men who were kept prisoner by the VJ 125th MtBr and the 24th PJP detachment in Kraljane is still ongoing. 11 of the detained men were minors, the youngest two being 15 years old.

In August 2017, eight plaintiffs (*Hajdaraj et al.*) filed a compensation claim for non-pecuniary damage caused by the disappearance of their family members Rifat and Shkelzen Hajdaraj. The compensation claim, filed against the Ministry of Defence and the Ministry of the Interior of the Republic of Serbia, is founded upon the final ICTY judgment in the case of *Šainović et al.* In it, the court established that in early

28 First Basic Court in Belgrade, Judgment P-42355/2020 of 27 January 2021.

April 1999, the defendant's armed forces (military and police) carried out an attack on the village of Kraljane, during which they detained 53 men, who are missing to this day. The first-instance judgment in this case was only issued on 16 September 2021,[29] dismissing the claim of the plaintiffs on the grounds that the Law on Contracts and Torts does not recognize the right to compensation for family members of a missing person but only of those who have died, and that the Convention on Protection of All Persons from Enforced Disappearances does not apply to this case because it was only ratified in 2011. The appellate court set the first-instance judgment aside on 16 June 2022[30] and referred the case back for a new trial. At this moment, the proceedings are still in progress.

vi. SUVA REKA

On 26 March 1999, members of the Suva Reka Police Department killed 48 members of the Berisha family in Suva Reka/Suharekë. After the massacre, together with members of the Civil Defence Force, they pitched the corpses into the back of trucks and drove them away from the scene.

The attack on the Albanian civilians in the Berisha neighbourhood was ordered by the commander of the Muncipal Police Department in Suva Reka, Radojko Repanović, who was sentenced to 20 years in prison in 2010 for this crime by the High Court in Belgrade. In 2009, the District Court in Belgrade convicted Slađan Čukarić, Milorad Nišević and Miroslav Petković for this crime, while Radoslav Mitrović, Nenad Jovanović and Zoran Petković were acquitted of criminal responsibility.

a) The Case of Betim Berisha

On 3 October 2019, Betim Berisha filed a lawsuit against the Ministry of the Interior of the Republic of Serbia over the murder of his father, mother and brother, seeking compensation for non-pecuniary damage caused by the death of loved ones. The first-instance judgment in this lawsuit was handed down on 15 October 2021, [31] ordering the defendant to pay the plaintiff a total of RSD 2,400,000 by way of damages. At the moment, the case is being considered on appeal by the Court of Appeal in Belgrade.

29 First Basic Court in Belgrade, Judgment P-12745/2017 of 16 September 2021.
30 Court of Appeal in Belgrade, Judgment Gž - 1511/2022 of 16 June 2022.
31 First Basic Court in Belgrade, Judgment P - 22721/2019 of 15 October 2021.

b) The Case of Lirie Veselaj and Rahime Berisha

Plaintiffs Lirie Veselaj and Rahime Berisha filed a lawsuit against the Ministry of the Interior of the Republic of Serbia over the murder of five family members in the same incident. The litigation is still ongoing.

vii. TRNJE

On 25 March 1999, members of the Logistics Battalion of the VJ 549th Motorised Brigade killed 31 Albanian civilians in the village of Trnje/Tërrnj in Kosovo, including a pregnant woman and seven children. The attack on the village was ordered by Pavle Gavrilović, commander of the Logistics Battalion, who also ordered that "there shall be no survivors". Rajko Kozlina, also a member of the Logistics Battalion, shot an elderly man in the head to give other soldiers an example of how to kill civilians.

Both Pavle Gavrilović and Rajko Kozlina were charged with this crime before the Higher Court in Belgrade. In 2019, Pavle Gavrilović was acquitted, while Rajko Kozlina was sentenced to 15 years in prison.

a) The Case of Bekim Gashi

In March 2021, Bekim Gashi filed a lawsuit against the Ministry of Defence of the Republic of Serbia seeking compensation for the non-pecuniary damage he suffered as a result of the death of close persons - his mother and two sisters. On 27 January 2022,[32] the Higher Court in Belgrade ruled that the defendant had pay him a total of RSD 4,000,000 by way of compensation. The ruling was upheld by the Court of Appeal in Belgrade on 5 May 2022.[33] As the defendant sought a review, the case is currently before the Supreme Court of Cassation.

b) The Case of Hysen Gashi

In April 2022, Hisen Gashi filed a lawsuit against the Ministry of Defence of the Republic of Serbia on the same grounds as Bekim Gashi. Six members of his family (father, mother, wife and three children) were killed in March 1999 in the village of Trnje. The case is still ongoing.

32 Higher Court in Belgrade, Judgment P - 698/2021 of 27 January 2021.
33 Court of Appeal in Belgrade, Judgment Gž - 2067/2022 of 5 May 2022.

viii. HRTKOVCI

On 6 May 1992, Vojislav Šešelj gave a speech in Hrtkovci, Vojvodina, which was a clear call for the expulsion of the Croatian population from this village. After the speech, many Croats and other non-Serbs left for Croatia, either because they were afraid, or because they were coerced, harassed and intimidated into exchanging their houses with Serb refugees from Croatia. Local authorities took no action to stop this.

On 11 April 2018, the International Residual Mechanism for Criminal Tribunals in The Hague passed a final judgment on Vojislav Šešelj, sentencing him to 10 years in prison after finding him guilty of a crime against humanity Hrtkovci for instigating persecution (forcible relocation), deportation and other inhumane acts (forcible transfer).

Franja Baričević was born in Hrtkovci and lived there with his family until 19 May 1992. After 1992, he was forced to exchange his property in Hrtkovci with Branko Milosavljević, a Serb from Jakšić, Croatia.

In December 2019, Franja Baričević and his family filed a civil action against Vojislav Šešelj and the Ministry of the Interior seeking compensation for the material damage they suffered as a result of a forcible exchange of property and the non-pecuniary damage they suffered due to violation of the right to respect for private and family life. The basis for this action is the final judgment of the International Residual Mechanism for Criminal Tribunals against Vojislav Šešelj. The case is still ongoing.

ix. DETENTION CAMPS IN VOJVODINA

During February 1992, members of the Croatian National Guard who were captured in Vukovar in November 1991 were detained in the Sremska Mitrovica Penitentiary. On 27 February 1992, Marko Crevar, a member of the Territorial Defense Force in Vukovar, which formed part of the Yugoslav People's Army, tortured two prisoners – Dubravko Gvozdanović and Marjan Karaula – in order to coerce them to confess to crimes they were charged with.

After entering into a plea agreement, Crevar was sentenced in 2015 to one year in prison.

In October 2019, Dubravko Gvozdanović filed a lawsuit seeking compensation from the Ministry of Defence of the Republic of Serbia for non-pecuniary damage due to the physical pain, fear and humiliation he endured at the camp and loss of amenity

as a result of imprisonment in Sremska Mitrovica from December 1991 to May 1992, where he was exposed to daily ill-treatment, abuse, beatings and torture that left lasting effects on his mental and physical health. Court-appointed experts performed an examination of the plaintiff and determined the extent of the damage he suffered.

Gvozdanović's claim was dismissed on 27 July 2020[34] on the grounds that the Ministry of Defence of the Republic of Serbia does not have the capacity to act as a defendant because Marko Crevar was a member of the TO, which the court erroneously considered not to have been part of the JNA. The Court of Appeal, with its ruling of 11 June 2021[35] quashed the first-instance judgment and referred the case back for a retrial. Upon retrial, the court of first instance on 2 June 2022 granted the compensation claim and ordered the defendant to pay the plaintiff compensatory damages to the amount of RSD 1,250,000. As both parties appealed against the ruling, the case is currently before the Court of Appeal in Belgrade.

x. GLORIFICATION OF WAR CRIMINALS

The International Criminal Court for the former Yugoslavia, inter alia, passed final judgments of conviction in the cases of the "Vukovar Troika" (*Veselin Šljivančanin et al.*) and the "Kosovo Five" (*Šainović et al.*) for crimes committed in Croatia and Kosovo. The majority of those convicted have served their sentences and are now back in Serbia.

Upon their return to Serbia, the convicted war criminals were given a hero's welcome. They have been regarded as heroes and treated as innocent, unlawfully convicted men and awarded benefits that cannot be said to be justified. Their role is glorified by Serbian officialdom, they appear on national free-to-air channels and play an important role in the political life, their books are printed by state-owned publishers and every effort is made to gloss over the fact that they are convicted war criminals.

On 12 October 2020, the European Court of Human Rights (ECtHR) issued a judgment in the case of MAKUCHYAN AND MINASYAN v. Azerbaijan and Hungary[36], in which it decided that Azerbaijan had violated Article 14 taken in conjunction with Article 2 of the Convention. The case concerns a situation similar to that of Serbia - the authorities in Azerbaijan, after the extradition of a convicted criminal, treated

34 First Basic Court in Belgrade, Judgment P - 23990/2019 of 27 July 2020.
35 Court of Appeal in Belgrade, Judgment Gž - 1453/2021 of 11 June 2021.
36 European Court of Human Rights, MAKUCHYAN and MINASYAN v. Azerbajan and Hungary, available at: https://hudoc.echr.coe.int/eng?i=001-202524.

him in the same way as Serbian authorities treat convicted war criminals. The family members of the victims of the Azerbaijani national turned to the ECtHR claiming that the conduct of the national authorities of Azerbaijan amounted to a violation of Convention rights.

a) Ana Herman

Ana Herman is the daughter of Stjepan Šarik, a man killed at the Ovčara farm at the hands of members of the Territorial Defence Force, which operated as part of the JNA. Herman issued a civil case for damages before the First Basic Court due to the death of a close person, which resulted in a judgment in her favour in 2019. The judgment was upheld by the Court of Appeal in Belgrade in 2020, and Herman was awarded compensation for non-pecuniary damages caused by the death of a close person.

After this judgment was passed, Herman filed another lawsuit in December 2021 for non-pecuniary damages, claiming that the way public officials and institutions in Serbia treat Veselin Šljivančanin amounts to a violation of her personal rights, her right to privacy, her right to personal and family life, and her right to life, and of the prohibition of discrimination in connection with the right to life.

In her lawsuit, Herman cited the numerous panegyrics that Members of Parliament had delivered on Šljivančanin, and pointed to his role in the political life in Serbia, the promotions he received after committing a war crime, and the fact that he had not been stripped of his rank. She also mentioned the printing of his books, his guest appearances on nationally broadcast TV shows and many other facts that demonstrate that Serbian authorities and public institutions are making a hero out of a war criminal.

The preparatory hearing in this lawsuit is scheduled for December 2022, a whole year after the lawsuit was filed and only after a complaint was filed with the High Court in Belgrade, which was found to be justified.

b) Lizane Mala

Like Ana Herman, Lizane Mala also filed a lawsuit (in March 2022) seeking compensation for non-pecuniary damage as a result of the violation of her personal rights, right to personal and family life, and right to life, and of the prohibition of discrimination taken in conjunction with the right to life. In addition, she claimed

compensation for the death of loved ones, her husband and son. Mala testified before the ICTY in the case of the "Kosovo Five", and the court considered her testimony relevant when determining if the war crime in April 1999 had really happened.

The proceedings arising from the lawsuit are in still progress.

III. THE KEY CHARACTERISTICS OF ESTABLISHED PRACTICE IN HANDLING COMPENSATION LAWSUITS

The previous HLC report on material reparations[37] pinpointed the typical shortcomings of court proceedings conducted in 2020, which are still present. This report discusses additional shortcomings that have been identified over the past two years.

a) Delayed proceedings

In the past few years, proceedings before the First and Third Basic Courts in Belgrade have quite clearly lasted far too long – even more than before. This is especially evident if one looks at the intervals between hearings in a litigation process. In the preceding period, hearings were scheduled no more than three to four months apart, while nowadays more than two hearings within a year is a rare occurrence. The dramatic increase in the caseload in these courts is responsible for the lengthening of the intervals between hearings to five or six months, which cannot be considered acceptable.

Due to the inadequate numbers of judges and court staff, case files often remain too long in the courts of first instance after litigants have lodged appeals. In some instances, case files were not submitted to the court of appeal or the court of third instance for months, or sometimes almost as much as a year.

Although the lack of judges and court staff should not be something that litigants should have to concern themselves with, nor the possibility of suffering adverse consequences because of the state's failure to regulate the judicial system adequately, the fact is that adverse consequences are visible on a daily basis.

On the other hand, the fact that almost all the cases covered by this report were

37 Humanitarian Law Center, Material Reparations in Compensation Lawsuits – the practice of courts in Serbia 2017-2020, available at: http://www.hlc-rdc.org/wp-content/uploads/2021/03/Materijalne-reparacije-2021.pdf

concluded within a relatively acceptable time is praiseworthy. The biggest problem was the excessive duration of appeal procedures, either before the second-instance panel, or because the courts of first instance failed to submit case files to the court of appeal in time for consideration on appeal.

b) Non-recognition of personal documents issued by Kosovo institutions

Another problem that has arisen over recent years is that plaintiffs from Kosovo encounter many difficulties in collecting damages after winning their compensation cases before the courts in Serbia. The reason for this is that the Republic of Serbia decided overnight to stop recognizing identity documents issued in Kosovo by Kosovo authorities. As there are no payment transactions between Serbia and Kosovo, plaintiffs from Kosovo are not able to have their damages paid into accounts they have in Kosovo banks. And those with Kosovo documents are not allowed to open accounts in Serbian banks operating in the north of Kosovo. These problems were overcome in the past in the following manner: plaintiffs would authorise, with a notarized authorisation, third parties who have accounts in Serbia to have the awarded compensation amount paid into their accounts, which was then paid to them in cash. However, the Republic of Serbia no longer recognizes plaintiffs' authorisations notarized by public notaries from the north of Kosovo because they are based on documents issued by Kosovo institutions.

In the previous period, none of the above problems existed. Plaintiffs from Kosovo were able to collect their damages, as Serbia respected the Agreement on the Freedom of Movement signed between Serbia and Kosovo on 2 July 2011, which enabled citizens of Kosovo to move freely through Serbia and use documents issued by Kosovo authorities that Serbia did not recognize until 2008. Over the last few months, Serbia has unilaterally stopped observing this agreement.

With the Conclusion of the Government of Serbia No. 05 018-1862/2013-01 of 7 March 2013, amended on 15 September 2015, the Republic of Serbia adopted the Procedures on mutual legal assistance, which regulate cooperation with the provisional institutions of self-government in Kosovo. The Conclusion was not revoked, but the authorities in Serbia unilaterally stopped observing it.

Eventually, on 27 August 2022, the Republic of Serbia again reached an agreement with the authorities of Kosovo, which was supposed to eliminate all the problems that Serbia itself had caused. Serbia asked that a note be added to the agreement

stating that the recognition of personal documents does not imply the recognition of Kosovo's independence. Even this agreement did not bring a solution to the problems faced by plaintiffs, as they still cannot collect damages they have been awarded on the basis of legally binding court judgments issued in Serbia. This directly violates their right to property and the right to a fair trial.

c) Application of statutory limitations

The issue of the interpretation of the provisions governing the statute of limitations for compensation claims is still present. The courts continue their practice of applying the general limitation period of three or five years, whenever there is no final conviction for a war crime or any other criminal offence that would warrant the application of longer statutory limitation periods prescribed for criminal offences.

The courts fail to make use of their legal right to examine, as a preliminary question, whether in the act of the wrongdoer that gives rise to the damage in question there are elements of a criminal offence, in which case the longer limitation period would apply. If they used this right laid down in the Civil Procedure Law, a large number of victims would not be denied the right to claim compensation, even in the absence of a criminal conviction.

d) Derisory compensation amounts

The HLC has been pointing out for years that the amounts awarded to victims by domestic courts are utterly inadequate as regards freeing them from their victim status. The sum of RSD 800,000 on average per plaintiff, in respect of compensation for damages arising from the death of a close family member, cannot be considered either adequate or appropriate.

In the determination of awards, the courts fail to take into account the following elements: the circumstances of victims' sufferings; the fact that all these cases involve the most serious crimes recognized by domestic and international law; the fact that these criminal offences are not subject to any limitation periods, precisely because of the degree of danger they pose to society; and lastly, that the amounts awarded should bring some sort of satisfaction to victims and their family members, which is why they must be appropriate rather than merely symbolic.

During proceedings, plaintiffs submitted extensive case law of the ECtHR showing that this court in identical situations awarded amounts of around EUR 20,000. However, the domestic courts took no notice of this.

At the same time, judges who award significantly higher amounts in first-instance proceedings are largely sanctioned by having their judgments modified on appeal and by the appellate court awarding sums not exceeding RSD 900,000. All this further discourages victims from pursuing litigation, because even if they win, they will receive awards that cannot even be called symbolic, but utterly derisory.

IV. CONCLUSION

The key conclusion from the findings presented in this report covering the period from 2020 to 2022 is that the situation of victims and their family members during civil proceedings before the courts in Serbia has not improved. The right to redress is still difficult to realize, and is becoming more and more difficult as time passes. The perpetrators of the most serious crimes committed on the territory of the former Yugoslavia are dying before being brought to justice. The absence of legally binding criminal convictions results in the absence of material reparations, because the courts refuse to award compensation to victims who cannot produce a criminal conviction in their favour which gives them the right to issue court proceedings for damages outside the general limitation period. The political will to change the law to promote the interests of the victims is absent, so time is not on the side of the victims.

Furthermore, according to the Serbian legal framework, the right to compensation for non-pecuniary damage caused by the death of a close person is not inheritable. As a result, if a family member of a murdered or missing person dies, their descendants do not have the right to bring compensation lawsuits.

All this clearly shows that the entire legal framework governing reparations in Serbia is designed, and then in practice interpreted, in such a way as to make it almost impossible for injured parties to exercise their rights.

If the victims or their family members nevertheless decide to bring a legal action, what awaits them is a lengthy procedure with numerous obstacles along the road, and, even if they win the case, derisory amounts awarded by way of compensation for non-pecuniary damages, which are humiliating, rather than providing any sort of satisfaction. There is the additional problem faced by plaintiffs from Kosovo, who,

after winning a case, are precluded by the Republic of Serbia from collecting the damages awarded to them.

Everything presented in this report clearly suggests that the situation of war victims in Serbia will not improve any time soon. The new Law on the Rights of Veterans, Disabled Military Veterans, Civilian Invalids of War and their Family Members, [38] which entered into force on 1 January 2021, has tightened the requirements for family members of a civilian victim of war who wish to exercise their right to compensation. As a result, a huge number of people who were eligible for compensation even under the previously applicable law are now precluded from pursuing compensation on these grounds.

This clearly demonstrates how Serbian authorities intend to handle the issue of civilian victims of war and their family members. Therefore, as things stand, they have no recourse but to turn to international institutions, such as the European Court of Human Rights or certain UN Committees, which will make the final decision regarding whether they are entitled to receive compensation from the authorities of the Republic of Serbia as the party responsible for the damage they have suffered beyond any reasonable doubt.

38 Available at: https://www.paragraf.rs/propisi/zakon-o-pravima-boraca-vojnih-invalida-civilnih-invalida-rata.html

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