

Answers to questions of the Human Rights Committee

1. (Paragraph 11 -a) Please provide more detailed and updated statistics regarding the investigation and prosecution of perpetrators of war crimes and past human rights violations, at the national level, including, inter alia, information on discontinued cases, the nature of the charges, and the sentences pronounced (previous concluding observations, paras. 9-10; State party's report, paras. 35-38 and 111-119). Furthermore, please also provide information on:

(a) The work carried out by the Special War Crimes Chamber, including the political support and protection provided to it, as well as on the War Crimes Investigation Service of the Ministry of the Interior;

The legislative framework and mechanisms for witness protection do exist and they have been regulated by the Republic of Serbia Criminal Procedure Code¹ and the Law on the Protection Programme for Participants in Criminal Proceedings². According to the legislative framework, a *Protection Unit* has been established. This is a specialized organizational unit within the Ministry of Interior, which implements the protection programme and which is, as part of its implementation, obliged to provide necessary financial, psychological, social, and legal assistance to protected persons.³

The Humanitarian Law Center possesses firm evidence⁴ that persons who are insider witnesses in war crimes trials are treated very badly; they are being humiliated, and members of the Ministry of Interior within the *Protection Unit* consider them traitors. They receive financial assistance as an act of charity and they are continuously being put under pressure to stop giving false accusations and give up their testimonies.

2. (Paragraph 11 -b) The progress made regarding the investigation and the prosecution of the perpetrators of murders and other human rights violations discovered through the exhumation of the mass grave in Batajnica;

Bodies of 889 Kosovo Albanians, victims of war crimes committed by Serb forces during the conflict in Kosovo, have been found in mass graves in Serbia.⁵ These are the mass grave sites near Batajnica (in the vicinity of Belgrade), at the Republic of Serbia Ministry of Interior Special Counter-terrorist Unit (SAJ) training field, in Petrovo Selo (near Kladovo), on the Special Operations Unit training field, and in the vicinity of Lake Perućac near Bajina Bašta (Western Serbia).

Six high ranking political, military, and police officials of the then regime were prosecuted before ICTY for crimes committed against Albanians found in Batajnica and they have been convicted to a total of 123 years

1 Article 109, Paragraph a, b, v and g [RS Official Gazette 72/2009].

2 RS Official Gazette 85/2005.

3 Law on the Protection Programme for Participants in Criminal Proceedings, Article 12, Paragraph 1 and 2

4 HLC's confidential report.

5 ICTY judgment in *Vlastimir Đorđević (IT-05-87/1) „Kosovo“ Case*, states that 744 bodies of Kosovo Albanians were exhumed from a mass grave site in Batajnica, 61 in Petrovo Selo, and 84 from Lake Perućac.

of imprisonment by a first instance judgment.⁶ Despite the fact that a large number of evidence, which allow prosecution of other persons responsible for crimes committed in Kosovo, were presented in these trials, only eight members of the Ministry of Interior were prosecuted in Serbia for the killing of 49 members of the Berisha family in Suva Reka /Suharekë⁷ and two members of the Ministry of Interior for the murder of three brothers Bytyqi in Petrovo Selo⁸, whose bodies were found in the mass graves in Batajnica and Petrovo Selo. Respective investigative authorities in the Republic of Serbia did not take any steps to investigate, identify and prosecute persons responsible for the killing of the remaining Albanians buried in the mass graves in Serbia.

3. (Paragraph 11 -c) The compensation and other reparation awarded to war crimes victims and their families

In the attached answers to the List of questions pertaining to the application of the International Covenant on Civil and Political Rights in Serbia, the state revealed a fact that victims of war crimes were instructed to take civil action since victims and their families were not able to specify their compensation requests in criminal proceedings. Unfortunately, the state failed to inform the Committee that courts have dismissed civil actions filed by victims' families and victims (Case Podujevo and Case Sjeverin)⁹, thus denying them any sort of compensation.

Instead of compensating families of victims of war crimes upon completion of war crimes trials in which it was established that war crimes were committed in the most humane manner and in accordance with the local and international law, the state forces victims, because of the state's negative opinion regarding out-of-court settlement, to exercise their rights in civil proceedings by filing compensation lawsuits, and therefore, victims have to deal with a number of difficulties, thus being humiliated by the state once more. This act of the state shows that it has no intention of compensating victims of war crimes and their families.

Additionally, civil actions in Serbia are highly inefficient and inappropriate procedures for realizing material reparation. They last over three years on average, and the state automatically violates its international obligation to provide prompt and efficient compensation to victims of war crimes by instructing them to initiate lawsuits. Furthermore, a very rigid interpretation of provisions regulating the statute of limitations given by courts in Serbia leaves victims with only one possibility, due to the passage of time, and that is to file compensation lawsuits against immediate perpetrators whose accountability was established in criminal judgments, and not against the state which is accountable for acts of its authorities, thus practically preventing victims from realizing their right to reparations. Victims are still afraid of perpetrators and they believe that by filing lawsuits they would jeopardize their life and the lives of their families. Additionally, victims' fundamental dignity is being violated by making them face immediate perpetrators of crimes again and deal with the traumas they had already experienced.

6 Milan Milutinović et al. (IT-05-87): acquitted, Nikola Šainović – 22 years of imprisonment Dragoljub Ojdanić – 15 years of imprisonment, Nebojša Pavković – 22 years of imprisonment, Vladimir Lazarević – 15 years of imprisonment, Sreten Lukić – 22 years of imprisonment ; Vlastimir Đorđević (IT-05-87/1) „Kosovo“ – 27 years of imprisonment.

7 The judgment was rendered convicting three defendants to a total of 48 years of imprisonment, while others were acquitted, and in the case of one defendant retrial was ordered

8 War Crimes Chamber acquitted both defendants.

9 *Enver Duriqi et al. vs. Republic of Serbia and Alagić Nerminka et. al vs. Republic of Serbia*

Victims of war crimes and their families are able to realize their right to administrative reparations in Serbia on the basis of three laws, the most important of which is the Law on Rights of Civilians Disabled as a Result of War. The law itself contains a number of discriminatory provisions, which practically exclude many victims of war crimes and their families from the circle of beneficiaries. Discriminatory conditions and criteria listed in the law that victims and their families have to meet in order to become beneficiaries of the right to reparations are as follows:

α) “Who is the perpetrator?” condition

The Law on Civilian Victims of War defines a circle of beneficiaries of administrative reparations by setting a condition that beneficiaries can only be victims who experienced violence committed;

...by the enemy during the war, military operations, from leftover military ordnances or enemy sabotage, i.e. terrorist operations.

(Article 2 of the Law on Civilian Victims of War)

Victims, who experienced violence committed by formations that the Republic of Serbia naturally does not consider enemy, terrorists, or sabotage units, such as members of the Yugoslav Peoples Army (JNA), Yugoslav Army (VJ), Ministry of Interior, but also the Army of the Republic of Srpska (VRS) and its subordinate units, therefore, do not have the right to administrative reparations in Serbia. Hence, **victims of acts committed by members of Serb security forces, VRS and its subordinate units do not have the right to administrative reparations in Serbia.**

β) “When did the violation of human rights occur?” condition

In determining a timeline, in which a crime or other serious violation of human rights occurred, the Law on Civilian Victims of War sets a condition that it was committed:

...by enemy during the war, military operations, or by leftover military ordnances or enemy, sabotage, or terrorist operations.

(Article 2 of the Law on Civilian Victims of War)

Since FRY, a legal predecessor of the Republic of Serbia, was engaged in war only in the period March 24, 1999 – June 26, 1999, the condition set in Article 2 of the Law on Civilian Victims of War **prevents victims who suffered violence and other violations of human rights during 1990’s not within the time period in which FRY was officially engaged in war operations, from realizing their right to administrative reparations.**

χ) “Where did the violation happen?” condition

Legal framework for realization of the right to administrative reparations does not set the “territorial condition”, i.e. it does not set a request relating to the territory where the violation occurred. Still, the Ministry of Labour and Social Policy interprets this law in a manner to “recognize” only violations, which occurred on the territory of the Republic of Serbia.

By this interpretation, **victims who experienced violence on the territory of the neighbouring countries, are excluded from the circle of beneficiaries of administrative reparations.**

δ) “Physical injuries“ condition

Medicine and law have treated equally psychological and physical consequences of violence with regard to the effect they have on lives of victims, for decades now. Despite this, the Law on Civilian Victims of War defines that a victim is only:

A person who suffers **physical damage** of at least 50% due to a wound or injury, which left visible traces...
(Article 2 of the Law on Civilian Victims of War)

This legal condition excludes all victims of violence, who suffered serious and, in almost all cases, lifetime psychological consequences of violence, from the circle of beneficiaries of administrative reparations. Unsustainability of this solution from the aspect of human rights bears special significance when it comes to rape victims since they are not able to realize the right to administrative reparations in Serbia due to this condition!

ε) “Gravity of consequences for physical health” condition

With regard to the gravity of consequences to physical health, the Law on Civilian Victims of War sets a condition that the right to administrative reparations belongs to a victim who suffered:

„... **physical damage of at least 50%** due to a wound or injury, which left visible traces...
(Article 2 of the Law on Civilian Victims of War)

By prescribing a threshold for physical damage, victims with a slightly lesser “physical damage” are excluded from any sort of assistance. Discriminatory nature of this provision is especially highlighted if one bears in mind that the threshold for physical damage for disabled war veterans is set at 20%.

φ) “Social vulnerability” condition

In order to realize their right to monthly financial assistance, victims (direct victims and families of victims who lost their life) have to meet three cumulative conditions set by the legal framework with regard to:

- Material insecurity,
- Inability to work, and
- Property census.

Due to the nature of these conditions (if met they point to the social vulnerability of a victim), the right to monthly financial assistance is becoming a social welfare and it stops being a measure of reparation because, as we would like to remind, the right to reparation is based on the fact that a member of society unjustly suffered and that, due to this fact, the state and the society (on the basis of responsibility and solidarity) should offer some type of satisfaction and assistance, without considering victims’ social vulnerability.

γ) “Family member” and “living in a household” condition

This condition relates only to victims who lost their close family members. Namely, the Law on Civilian Victims of War explicitly lists family members who are able to realize the right to administrative reparations:

- spouse,
- children (born in marriage or out of wedlock, foster children or step children), and
- parents.

Furthermore, the same provision of the Law on Civilian Victims of War, prescribes an additional condition for family members; they had to:

„... **live in a household** together with the victims prior to his/her death”

These legal conditions, **exclude brothers and sisters of a deceased victim from the circle of beneficiaries of administrative reparations and children and parents unless they lived in a household together with the victim**. This provision defines the relationship between relatives in an unnatural manner as an economic community, i.e. a household and it completely neglects emotional foundation of family affairs.

α) Person to be “dead or deceased” condition

In order to enter the circle of beneficiaries of administrative reparations, the law sets a condition for victims’ family members that their relatives were **killed or died** under the aforementioned circumstances.

A family member of a civilian war victim is a family member of a person who was killed or otherwise died under the circumstances described in Article 2 of this Law...
(Article 3 of the Law on Civilian Victims of War)

By this provision, the state has excluded families of persons who disappeared during armed conflicts from the circle of beneficiaries of administrative reparations. In order to become beneficiaries of administrative reparations, family members have to meet the condition to have their missing relatives proclaimed dead (in a specific court procedure), thus seriously ignoring the specific nature of this category of victims of human rights violations.