



## Conclusions of the round table "Compensation claims of victims of war crimes in criminal proceedings - the next steps to improve existing practices"

On 12th December 2015, TRIAL (Track Impunity Always) organized in Sarajevo a round table discussion on the realization of compensation claims of war crimes victims in the criminal proceedings. The roundtable brought together representatives from the Prosecution, the Court of BiH, the High Judicial and Prosecutorial Council (HJPC), the Ministry of Justice, and the relevant legal experts from local and international organizations in order to identify the next steps to be taken in order to improve the current practice in this regard. During the discussion participants presented the following proposals or conclusions:

The representatives of the judicial community and the responsible authorities in Bosnia and Herzegovina should provide victims of war crimes with expectations that the particular circumstances of the case will be taken into account and that the victims will be able to exercise their rights to realize compensation claims in the criminal proceedings.

In this sense:

- It is necessary to organize an adequate exchange of experience and training of prosecutors and judges on the implementation of the legal obligations arising from the Criminal Procedure Code, related to compensation claims, through:
  - specialized training within the entity Training Centers for Judges and Prosecutors;
  - by organizing special TAIEX seminars by the EU Delegation to BiH, through which comparative experiences from other countries would be shared;
  - through further meetings and discussions on this subject, forums for the exchange of experiences and knowledge that will take place within the judicial institutions, and involve representatives from the various institutions in Bosnia and Herzegovina;
- The creation and circulation of appropriate general guidelines or protocols for prosecutors and judges by the chief prosecutors and court presidents on the method of implementation of their legally defined role related to compensation claims in the context of prosecution of certain war crimes cases is desirable.
- The key is to ensure that representatives of judicial authorities will fulfill their existing obligations arising from the Criminal Procedure Code:



- For prosecutors, it would mean that they in their strategy for prosecution of individual cases, take into account the particular circumstances of the case, in a timely manner, ie. during the investigation, integrating the rights and interests of injured parties toward compensation, which implies an active duty to establish the facts and collect evidence relevant to deciding on the compensation claim, and timely provision of detailed information and support to victims so that they can exercise their rights in relation to this request.

-This kind of instruction for a legal remedy as well as leaflets and forms, published by the OSCE Mission to BiH should be provided to the victims by the prosecution as guidance for their proposals for the realization of compensation claims . Alternatively, a proposal was presented for creating an official unique form for submission of compensation claims for victims within the BiH judiciary

- In order to monitor the implementation of these duties, it is necessary before sending indictments to ensure internally under the supervision of the head of the Prosecutor's Office whether they meet all legal and additionally assigned criteria in connection with the exercise of compensation claims of injured parties.

-The courts should abandon the practice of automatically referring the injured parties to realize their compensation claims in civil proceedings, and decide on the claims based on a full and comprehensive discussion on the request, along with the main facts, whenever possible during the criminal proceedings, , and make sure to produce well-reasoned court decisions on compensation claims.

- It is necessary to consider a proposal that in the framework of assessing the work of prosecutors and judges, an evaluation of activities related to the exercise of compensation claims of injured parties is incorporated into the process.

- Participants have agreed that the position of the injured parties is unduly weak in the context of criminal proceedings. Thus, victims of war crimes as injured parties should be provided in the course of the investigation with free legal aid to represent their interests in the framework of criminal proceedings, analogous to the existing defense ex officio for suspects and those accused of committing these crimes. Furthermore, the legal aid provided to the victims should be of an equivalent standard of legal services to that which is being provided to the accused, by adequately trained lawyers or other legal services. In this regard it has been also proposed to introduce legal provisions analogous to the existing Article 84, paragraph 5 of the Criminal Procedure Code, that provide a lawyer for the witnesses who are exposed to criminal prosecution.

-In order to facilitate decisions about affording compensation claims, as well as specifying the requirements of the injured parties, it would be desirable to develop certain principles or guidelines in accordance with how the amount of damage incurred during the war would be determined, analogous to the existing orientation criteria of the entity supreme courts in connection with damages incurred during peacetime.

-Special attention should be paid to the compensation claims of protected witnesses in the criminal proceedings. At the same time it is necessary to initiate amendments to the Civil Procedure law, or provide



adoption of an official harmonized attitude within the judiciary in BiH, in order to ensure full protection of the witnesses, which have certain identity protection measures within the framework of civil proceedings aimed for compensation.

- In order to ensure the protection of victims in cases in which it is impossible to obtain compensation from the assets of perpetrators of war crimes, it is necessary to ensure payment of the award of victim compensation amounts from special government funds, with a subsequent refund of those funds provided by the state of property by the convicted person.