



TRIAL
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ASSESSING THE EFFECTIVENESS OF COMPENSATION CLAIMS IN CRIMINAL PROCEEDINGS





British Embassy
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Sarajevo, 2022

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ACRONYMS

BDBiH	Brčko District of Bosnia and Herzegovina
BiH	Bosnia and Herzegovina
CC	compensation claim
CPC	Criminal Procedure Code
FBiH	Federation of Bosnia and Herzegovina
NGO	nongovernmental organisation
OSCE	Organization for Security and Co-operation in Europe
RS	Republika Srpska
SIPA	State Investigation and Protection Agency

INTRODUCTION

The war in Bosnia and Herzegovina (BiH) left deep and lasting consequences for the entire society, and so, the application of transitional justice principles have been required for the country's recovery. Reparations are an integral part of transitional justice and, in accordance with international law, states are obliged to provide reparations to all victims of serious human rights violations and violations of international humanitarian law. The purpose of reparations is to respond to harms resulting from these violations and to provide damages and redress through the identification of victims as right holders, including of the right to compensation. The families of the victims, survivors of war crimes, and their children bear the deep scars of war – therefore, life in a post-conflict country should enable the attainment of justice and satisfaction, in both a material and symbolic sense. War crimes trials in BiH are thus processes that, under positive law, have the potential to respond to two complementary demands: establish guilt and liability for the crime committed, and award non-pecuniary damages to victims of pain and trauma. The exercise of both of these components in criminal proceedings in BiH has been very slow and despite great efforts from NGO sector, there has been a limited willingness from the judiciary to make reparations an integral part of these proceedings.

Following the adoption of the first judgment of the Court of Bosnia and Herzegovina (Court of BiH) in June 2015, which, in addition to imprisonment, obliged war crimes perpetrators to compensate the injured party – a victim of wartime rape – a number of such judgments followed in several other courts in BiH.¹ In the case against Bosiljko and Ostoja Marković, who committed crimes as members of the Republika Srpska Army, the Court of BiH decided for the first time on the compensation claim (CC, *imovinskopravni zahtjev*) of a war crime victim. This marked a turning point for the BiH judiciary and the region, brought about by the BiH Prosecutor's Office and the BiH Court, which for the first time enabled the effective application of the BiH Criminal Procedure Code (CPC) so that the perpetrators of war crimes, in addition to being sentenced to imprisonment, were also obliged to pay compensation for non-pecuniary damage to the victims. In the cases completed so far (16 in total) before the Court of BiH, the District Court in Dobož and the Cantonal Court in Novi Travnik, one or more perpetrators were obliged to pay compensation to victims of war crimes in the amounts ranging from BAM 20,000 to 60,000.

The award of the first CC in criminal proceedings was not only a remarkable improvement in the judicial practice regarding reparations in BiH, but it also enabled the development of this practice in the years that followed. However, the challenges that accompanied this development are an important indicator for the assessment of efficiency, effectiveness and needs in implementing this reparation measure. Compensation claims are therefore the focus of this analysis, which will include a comprehensive assessment of the achievements and challenges in the practice of awarding non-pecuniary damages in criminal proceedings. The research included four segments in which the practice, establishment of standards, and challenges were examined: victims' awareness of the right to CC in criminal proceedings; the efficiency of free legal aid; the commitment of prosecutor's offices and courts to handle CCs; and the collectability of awarded damages. Different perspectives from the judiciary, legal aid providers and survivors were used to identify these elements. Only in this way is it possible to examine whether progress has been made – and in which areas – but also to find out what numbers and statistics mean for the lives of survivors. It is important to not forget the purpose of reparations, and to realise that it is high time to claim damages, because time is the only thing left for some of the victims. Many survivors fear that they will not live to see the prosecution of their perpetrators and that they will therefore not have the opportunity to seek redress through such proceedings.²

¹ Hanušić Bećirović, A. i Kajganić, M. *Imovinskopravni zahtjevi u krivičnom postupku, Priručnik za pravosudno osoblje*, [Compensation Claims in Criminal Proceedings – Judicial Handbook, TRIAL International, Sarajevo, 2018. <https://trial.ba/wp-content/uploads/2021/02/IMOVINSKOPRAVNI-ZAHTJEVI-U-KRIVICNOM-POSTUPKU.pdf>

² *Study on Opportunities for Reparations for Survivors of Conflict-Related Sexual Violence – Country Briefing*. 2021, Global Survivors Fund, Trial International, Vive žene. https://trial.ba/wp-content/uploads/2021/11/GSF_Country_Sheet_BiHFINAL.pdf.

1 DESCRIPTION OF THE METHODOLOGY

The analysis was organised around research questions, which included indicators for four identified areas relevant to compensation claims in war crimes proceedings. The following areas were examined: informing the victims about the possibility of filing CC; access to (free) legal aid; pursuing CCs – the role of the prosecutor in proving the harm and taking other necessary actions, as well as the role of judges in the CC process; and the collectability of the awarded damages (including investigation into the financial status of the perpetrator by the prosecutor, temporary securing of property, enforcement proceedings and out-of-court options for ensuring payment by the state).

These areas have been identified by reviewing the available literature, which relies heavily on the analysis of current case law in BiH. In certain areas, changes have been noticed that can qualify as progress, but again there is uncertainty as to whether these are systemic solutions or just partially visible outlines of solutions. It is understandable that any new practice requires time and realistic estimates, therefore, different perspectives will be included in this analysis, as well as different methods of collecting data needed for the assessment.

The three main research questions in this analysis are:

1. Have standards been established for the practice of adjudicating and pursuing CCs in criminal proceedings?
2. What are the challenges for the practice of awarding and pursuing CCs six years after the first judgment/decision?
3. What else is needed to ensure the effectiveness of the practice of awarding compensation?

The research applied qualitative and quantitative methods for court judgments. The main methods applied in this analysis are desk review of available materials (reports, court cases, previous analyses) and semi-structured interviews. The desk review focused on the analysis of secondary data, primarily available analyses, reports, court cases from the period 2013-2021. The focus was on sources published as of 2015, when the first judgment on CC in criminal proceedings was passed. The primary data sources in this research are interviews with relevant interlocutors. Interviews were of semi-structured nature, with three main groups of interlocutors identified according to their status within the CC process: representatives of legal aid providers, representatives of the judiciary, and representatives of victims/survivors. Diversity criteria such as competence level, territorial and gender representation were used to determine the samples. A number of interviews were anonymised (per survivors' decision), whereas the principle of anonymity was not applied to official representatives of the judiciary and legal aid providers.

Analysis and interpretation methods follow the research methods: inductive method of coding data collected in interviews and comparison/measurement of data collected in desk research. Intersecting the collected data (triangulation) increased the validity of research results.

The limitations of the research include two aspects: the research does not include all victims or the entire judiciary, but uses a sample – the results achieved by using this sample may differ randomly from the entire population. Furthermore, this analysis does not address the challenges that arise or may arise in civil proceedings for non-pecuniary damages. These proceedings will be presented as an option provided by BiH legislation, but will not be the focus of research.

2 LEGAL FRAMEWORK FOR COMPENSATION CLAIMS IN CRIMINAL PROCEEDINGS

The legal framework for compensation claims in criminal proceedings primarily lies in criminal procedure codes and the Law on Obligations. Four criminal procedure codes are in force in BiH: the Criminal Procedure Code of Bosnia and Herzegovina (CPC BiH), the Criminal Procedure Code of the Federation of Bosnia and Herzegovina (CPC FBiH), the Criminal Procedure Code of Republika Srpska (CPC RS), and the Criminal Procedure Code of the Brčko District of Bosnia and Herzegovina (CPC BDBiH).

The fundamental right related to damage compensation for victims of war crimes is the right to file a compensation claim against a person suspected or accused of having committed a criminal offense violating or endangering a personal right of the victim, or inflicting harm on the victim, and the right to have their claim decided on in accordance with the requirements specified by law. According to CPC BiH, a compensation claim may relate to compensation for pecuniary or non-pecuniary damages resulting from the perpetration of a criminal offense. A petition to pursue a claim under property law in criminal proceedings is filed with the Prosecutor or Court (Art. 195 (1) CPC BiH). During the interview, the victims must be asked if they want to pursue a compensation claim, which applies to statements made during investigations, as well as to testimony during trials. The victims may file a petition for a compensation claim no later than the end of the main trial or sentencing hearing before the Court (Article 195 (2) CPC BiH). The law stipulates that the person authorised to submit the petition must state his/her claim specifically and must submit evidence (Article 195 (3) CPC BiH). Prosecutors have a duty to collect evidence relevant to the compensation claim of the injured party, i.e., to establish facts necessary for deciding on this claim (Article 35 (2) (g) and 197 (1) CPC BiH). In this way, the prosecutors, within their legal powers, already have the opportunity during the investigation to ensure later unhindered proving of the amount of the compensation claim of the injured party.

The court must decide on the filed compensation claim in the judgment. If it is a conviction, the Court may award the injured party the entire claim under property law or may award part of the claim under property law and refer the injured party to a civil action for the remainder (Article 198 (2) CPC BiH). The Court instructs the injured party that he/she may take civil action to pursue his/her entire claim under property law (Art. 198 (2) CPC BiH) if the petition does not provide a reliable basis for either a complete or partial award. The court may also refuse to consider the claim if it could considerably prolong the criminal proceedings (Article 193 (1) CPC BiH).

BiH, on the other hand, does not have specific legislation on the rights of victims of crime, nor has the legislature incorporated special rules for victims of war crimes or victims of violence into general legislation on criminal procedure or enforcement proceedings to ensure that victims of crime actually receive compensation.³

The right to reparations is enshrined in a number of provisions of international law, such as Article 8 of the Universal Declaration of Human Rights, Articles 2 (3) and 9 (5) of the International Covenant on Civil and Political Rights, Articles 5 (5) and 13 of the European Convention on Human Rights, Article 14 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and Article 6 of the International Convention on the Elimination of All

³ Meškić, Z., *Djelotvorno ostvarivanje zahtjeva za naknadu štete žrtava ratnih zločina u okviru krivičnih postupaka u Bosni i Hercegovini – nalozi i standardi međunarodnog prava i prava EU*. TRIAL International, Sarajevo, 2017, <https://trial.ba/wp-content/uploads/2017/04/20170322-TRIAL-Djelotvorno-ostvarivanje-WEB.pdf>.

Forms of Racial Discrimination, Additional Protocol to the 1949 Geneva Conventions (Article 91), The Rome Statute of the International Criminal Court (Articles 68 and 75), the Declaration on the Elimination of Violence against Women (Article 4 d) and the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence. International standards require that victims of human rights violations be provided with full and effective reparation measures, including monetary compensation for pecuniary and non-pecuniary damages, as well as other measures aimed at enabling restitution, rehabilitation, satisfaction, restoration of dignity and reputation, and guarantees of non-repetition.⁴

The European Convention on the Compensation of Victims of Violent Crimes directly and explicitly stipulates in Article 2 (1) that, when compensation is not fully available, the state should compensate the victims. Based on this obligation of the Convention, BiH has to pay compensation to all victims of violent crimes, especially if such compensation is not possible from the perpetrator or from other sources. This obligation is also imposed by interpretation of Article 14 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment provided by the UN Committee against Torture. Article 14 of the Convention against Torture stipulates that each state party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. More specifically, states must ensure that victims have both *de jure* and *de facto* access to timely and efficient mechanisms. They must also ensure to eliminate all forms of formal and informal barriers that could be faced by the victims in the process.⁵

⁴ Hanušić, A. *Enforcement of Damage Compensation Claims of Victims of War Crimes in Criminal Proceedings in Bosnia and Herzegovina – Situation, Challenges and Perspectives*. TRIAL, 2015, https://trial.ba/wp-content/uploads/2021/02/ENG_Ostvarivanje-zahitjeva-za-naknadu-stete-zrtava-ratnih-zlocina-u-okviru-krivicnih-postupaka-u-Bosni-i-Hercegovini---stanje-problemi-i-perspektive-.pdf,

⁵ Meškić, Z. *Effective Enforcement of Compensation for Victims of War Crimes within the Criminal Procedure in Bosnia and Herzegovina – International Law and European Union Law Requirements and Standards*.

3 RESEARCH FINDINGS: ASSESSING THE EFFECTIVENESS OF COMPENSATION CLAIMS IN CRIMINAL PROCEEDINGS IN BiH

The existence of a legal framework that enables a successful compensation claim is not disputable. Although there are requests for a more precise regulation of certain parts, the main problem is actually the implementation of legislation. The observed period was crucial in this regard: the intensive raising of judicial awareness resulted in the first judgment awarding CC, which prompted the creation of the necessary case law through more proactive application of this institute in war crimes proceedings. In the period 2015-2021, there were 16 cases in which CCs have been awarded by final judgments and 22 convicted persons were obliged by final judgments to pay compensation for 18 injured parties. Therefore, the period 2015-2021 is considered a turning point, i.e.,

To me, it would be useful to get ten convertible marks. Those ten marks would be an acknowledgment that those things have happened.⁶

a period in which serious progress has been made. However, the root of the problem remains, which is reflected in the inconsistent application of the legal framework and the enforcement of CC in criminal proceedings. TRIAL reports that the challenges of enforcing CC in criminal proceedings can be summarised under two

points: 1) to persuade the judiciary to work on CCs and 2) to adequately train those who have no experience in this field.⁷

The analysis revealed a change in the challenges faced by the judiciary and the injured parties in the pursuance of property claims in criminal proceedings. While previous analyses pointed to basic problems that arise when a particular legal institute is introduced (lack of willingness and readiness to commit to working on CC, lack of understanding of the importance of this right for victims, lack of implementation), today's challenges relate to achieving uniform standards in case law. However, there are two types of problems in this regard.

The first is the difference between proceedings before the Court of BiH (state level), which has developed case law in this area, and before courts at entity levels (cantonal and district

Time works against justice and fairness in these cases.⁸

courts) where pursuing compensation claims in criminal proceedings in war crimes cases is still rare. The second problem is the inevitable impact of the passage of time, which means the biological loss of victims and perpetrators, leading to the suspensions of criminal proceedings and also a general decline in interest and willingness of survivors to participate in them.

The practice before 2015 shows that many prosecutors evaded their legal obligations under CPC, which has not been completely overcome to this day. The lack of an active role of prosecutors is reflected, for example, in the fact that they are often not proactive and fail to conduct timely investigations into the perpetrator's assets to facilitate effective payment of compensation, which leads to survivors not receiving compensation due to the insolvency of the perpetrator. Some courts continue to refer survivors (as injured parties in criminal proceedings) to civil proceedings to seek damages. Unlike in criminal proceedings, there are no identity protection measures in civil proceedings, which is why survivors whose identity was protected in criminal proceedings decide not to file compensation claims in civil proceedings.⁹

⁶ Anonymous interview with a victim.

⁷ Interview: Adrijana Hanušić Bećirović.

⁸ Interview: Amer Homarac.

⁹ *Study on Opportunities for Reparations for Survivors of Conflict-Related Sexual Violence – Country Briefing.*

The practice of the Court of BiH has changed in this regard and we can already speak of certain standards being established. However, it is necessary that this practice is followed at the entity/ BDBiH levels, especially now after the adoption of the Revised National War Crimes Processing Strategy (adopted in 2020)¹⁰ which stipulates that a large number of cases must be transferred to these levels. The challenge that remains at all levels concerns the enforcement procedure which still has no systemic solution in sight. Namely, when the perpetrator is found guilty and the victim is awarded compensation, it is unlikely that it will be paid if the perpetrator does not have sufficient assets or had concealed them. When this happens, there is no alternative procedure for survivors to be awarded financial reparations.¹¹

From the perspective of victims in 2021, this type of reparation comes with a great delay due to the passage of time, the trauma caused by participation in proceedings, and the impossibility of collection. Furthermore, only those victims who testified in criminal proceedings can claim compensation for non-pecuniary damage. On the other hand, social stigma is still widespread and prevents survivors from talking about their experiences or seeking justice and redress.¹² Despite these challenges, the pursuance of CCs in criminal proceedings is important for victims. Not only because of their more active involvement in this process, but also because it offers a sense of satisfaction, i.e., acknowledgment of their pain and trauma.

The general conclusion, through observing the pursuance of CCs throughout the criminal proceedings, is that progress has been made since 2015 when the first compensation was awarded. This assessment is supported by data on the number of cases in which CCs have been awarded. However, new challenges emerge with the development of judicial practice, as well as its maintenance, i.e., the continuity of the achieved progress.

To identify concrete developments, established standards and challenges, the findings were organised into three key areas for CCs, with practice outlined and specific recommendations presented for each area.

3.1. Filing Compensation Claims

CPC BiH	
<p>Article 195</p> <p>Procedure for Satisfaction of a Claim under Property Law</p> <p>(1) A petition to pursue a claim under property law in criminal proceedings shall be filed with the Prosecutor or Court.</p> <p>(2) The petition may be submitted no later than the end of the main trial or sentencing hearing before the Court.</p>	<p>Article 86</p> <p>Course of the Examination of a Witness</p> <p>(10) The injured party being examined as the witness shall be asked about his desires with respect to satisfaction of a property claim in the criminal proceedings.</p>

¹⁰ *Revidirana državna strategija za rad na predmetima ratnih zločina*, 2018, dostupno na: http://www.mpr.gov.ba/web_dokumenti/default.aspx?id=10809&langTag=bs-BA.

¹¹ Hanušić Bećirović, A, Mahmić, A, Hujdur, A, Tiro, L. *Bosnia and Herzegovina Study on Opportunities for Reparations for Survivors of Conflict-Related Sexual Violence — We Raise our Voices*. . Trial International, Vive Žene, Global Survivors Fund, 2022, <https://trial.ba/wp-content/uploads/2022/03/Bosnia-and-Herzegovina-study-on-opportunities-for-reparations-for-survivors-of-conflict-related-sexual-violence—We-raise-our-voices.pdf>.

¹² Ibid.

This is a very complex process, but if one is dedicated, it can be explained and victims can be lead through the procedure to get to understand it.¹³

In criminal proceedings, the term “injured party” refers to a person whose personal or property rights have been threatened or violated by a criminal offense. According to the provisions of CPC, the injured party – or his/her attorney – is

authorised to file a petition to pursue a compensation claim in criminal proceedings in war crimes cases. The injured parties should be informed about the possibility of pursuing CC rights already in the investigation phase; during the criminal proceedings, the injured party who is examined as a witness is asked once again whether he/she wants to pursue a compensation claim in criminal proceedings. The petition to pursue CC in criminal proceedings is filed with the court leading the criminal proceedings, no later than the end of the main trial or sentencing hearing before the Court. The injured party or his/her attorney is obliged to state the claim and to submit evidence.

The problem in the implementation of these provisions lies primarily in the inconsistent practice of informing the victims about their right to pursue CC in criminal proceedings. This refers to all actors, starting with those involved in investigations (State Investigation and Protection Agency, prosecutors and prosecutorial investigators). Although there is a legal obligation to inform the injured party about the possibility of pursuing CC and to ask whether they want to file a petition, this practice is not consistent in war crimes cases. According to data collected during the research, in the initial stages of the procedure - which are crucial for understanding the CC and its pursuance - the victims were only formally asked about CC (without being provided a thorough explanation thereon),¹⁴ and in some cases, even this was missing. This resulted and still results (both in the investigation phase and until the end of the main trial) in a large number of quite generally expressed intentions to pursue CC, without it being specified (in terms of amount, evidence). This leads to failure to file the petition, a necessary step for CCs to be decided on at all in criminal proceedings.¹⁵ Furthermore, it seems that this is not only the case with CCs, with the victims only being informed about witness protection rights formally in the investigation phase.¹⁶ As a result of such practices, the injured parties were not sufficiently aware of their rights, did not understand them and, ultimately, failed to take appropriate procedural actions to exercise them.

We should address the importance of the quality of information, not only its existence. The legal provisions on informing are clear, however, the extent to which they are implemented is disputable. For instance, it is disputable whether this right to being informed is explained sufficiently clear and in an understandable way. A major problem is that this question is asked purely formally without explaining what actions it actually entails.¹⁷ The injured parties are (legally) inexperienced and, as reported by a respondent, “even if they were legally educated, victims are so traumatised that they cannot help themselves”.¹⁸ Informing about CC should therefore not be a mere formality. Rather, it should include an explanation of what the victim should say and when during the proceedings and what steps should be taken. Or, as a pragmatic solution, the victim should be referred to professionals for CC representation in the early stages of proceedings (free legal aid, attorneys, nongovernmental organisation).¹⁹ Prosecutors report that in all cases in which CCs were awarded, the injured parties had an attorney, i.e., professional legal representation.²⁰

¹³ Interview: Amer Homarac.

¹⁴ Interviews: Alma Taso-Deljković, Adrijana Hanušić Bećirović, Iriša Čevra, Mira Smajlović.

¹⁵ Interviews: Zekerijah Mujkanović, Iriša Čevra.

¹⁶ Interviews: Iriša Čevra, Mira Smajlović.

¹⁷ Interviews: Milanko Kajganić, Adrijana Hanušić Bećirović, Alma Taso-Deljković.

¹⁸ Interview: Mira Smajlović.

¹⁹ Interviews: Milanko Kajganić, Ahmed Mešić, Alma Taso-Deljković, Adrijana Hanušić Bećirović.

²⁰ Interview: Ahmed Mešić.

A lot has been done and improved, now we have cases where victims come to us and where the prosecutor has done everything necessary. When the victims come to the prosecutor's office, that is the key moment, that's when informing is the key – make them fully aware of their rights and take more action. From these most recent successful cases we see that those were the key moments in the process.²¹

However, respondents in this research indicate that there has been a significant improvement of this practice in the last six years. Prosecutors, primarily of the Prosecutor's Office of BiH, have a more responsible attitude to this part of proceedings, both in their approach to informing the victims and to supporting them where possible (e.g., referring them to free legal aid and attorneys). Although the situation is better in judicial institutions at the state level, we should underline that this approach is not consistent – a lot depends on the individual prosecutor, because "when prosecutors are willing to work on this, they instruct the victim well".²² Although the respondents state that now the victims are generally more informed about their rights,²³ if the prosecutor is not interested, then he/she will not inform the victim in an appropriate way and will only formally ask about CCs. At the state level, the Witness Support Section has made additional efforts in the past to provide victims with complete information, sometimes serving as a corrective factor for prosecutors' actions.²⁴

The awareness started changing thanks to NGOs and the activities to raise awareness of the judiciary. These initiatives are important because they helped make the victim visible in criminal proceedings, not to be set aside.²⁵

The credit for improving the attitude towards CCs goes to the continuous work on raising awareness on this issue by all judicial actors involved in the proceedings, focused training, and perhaps primarily the development of case law before the Court of BiH, which serves as guidance for future proceedings. The challenge, to some extent, remains in the field of adequate informing of victims in the investigation phase (prosecutors, investigators) and adequate treatment by all authorised persons in proceedings before cantonal and district courts, where CCs are not yet a practice and are rare. Prosecutors note greater availability of information on victims' rights, a higher level of awareness among judicial actors, and better cooperation with non-judicial institutions in terms of informing and representing injured parties/victims.²⁶ Judge Smajlović points out that "progress in pursuing CCs is visible, especially because the prosecutors are now aware that judges are determined to decide on these petitions in criminal proceedings, we were trained for it and have acquired a routine in handling them during the main trial". Furthermore, it seems that prosecutors who have already handled CCs in their cases are becoming more proactive and willing to take the necessary actions, such as informing, involving expert witnesses, investigating financial status, etc., and are dedicated to fully communicate with the victim.²⁷

The victims – as soon as they say they want to pursue CC – need a full explanation as to what it means and to have an immediate contact with someone who will provide legal aid. I think that is the key step in informing.²⁸

We should underline the role of the prosecutor here, because it seems that the interpretation of the role of the prosecutor is relevant for CC petitions – prosecutor's role is to represent the interests of the state, not the injured party, and the prosecutor cannot take action on behalf the injured party, including in CC petition. However, this should not prevent the prosecutors from fulfilling their legal obligations, i.e., carrying out the legally prescribed actions of informing the injured parties about the possibility of pursuing CC and referring them to free legal aid. However, this interpretation of the prosecutor's role as a passive one – that they do not represent and should not represent the interests of victims – is an obstacle

²¹ Interview: Alma Taso-Deljković.

²² Interview: Adrijana Hanušić Bećirović.

²³ Interviews: Adrijana Hanušić Bećirović, Alma Taso-Deljković.

²⁴ Interview: Adrijana Hanušić Bećirović.

²⁵ Interview: Mira Smajlović.

²⁶ Interviews: Ahmed Mešić, Slavko Krulj.

²⁷ Interview: Adrijana Hanušić Bećirović.

²⁸ Interview: Adrijana Hanušić Bećirović.

for victims because, without adequate information on CCs, they are likely to miss the opportunity to pursue CC and exercise their rights.²⁹ The court does not decide on CCs *ex officio*, but only and exclusively upon petition of an authorised person (injured parties have the legal capacity to file petitions, as do persons authorised by law to file such a claim in civil proceedings).

With respect to the role of the prosecutor, emphasis is placed on the independence of an individual prosecutor, which may result in different approaches to the above challenges and in particular, in understanding and pursuing CCs by the injured parties or their representatives. There are attempts to improve the practice through trainings and the sharing of experiences and good

The sentence: “do you confirm your compensation claim” makes me sad – such an arid sentence from the prosecutor bothers me; one can clearly see that the prosecutor is not dedicated to the injured party and she responds reluctantly.³⁰

practices. This should ensure that this part of proceedings are implemented “not *pro forma* but to have the prosecutor engaged to refer the injured party to an attorney – or to ensure an attorney to represent the interests of the injured party”.³² However, there are positive examples – prosecutors dedicated and sensitised about the status and actual position of the victim (who

is both a witness and the injured party) significantly contributes to understanding and encouraging victims to take steps to pursue this right. At the same time, victims are encouraged not to feel as mere evidence in the criminal proceedings, but an active participant thereon. This is extremely important given how important a conviction, in addition to awarded CCs, is to survivors and how it can truly contribute to a sense of justice.

Obstacles that prosecutors encounter in the process of pursuing CCs include difficulties in finding witnesses and victims to testify in criminal proceedings, narrowing opportunities for CCs. As stated by the entity prosecutor’s offices, some victims completely refuse to pursue CC given the severity of the crime and the trauma suffered by the victims. Additionally, for some it is more important that the perpetrator be convicted, with CC not being as relevant.³³ As such, all actors involved (prosecutors, the court, victims) focus on proving liability and guilt of the accused, while CCs seem secondary.³⁴

Convincing a rape victim to testify (25 years later) is a huge undertaking for the prosecution – they are lucky if the victim agrees to testify at all.³¹

In addition to the prosecutor, the role of the injured party’s attorney is extremely important for legal advice and representation. Their early involvement in the investigation phase – with the aim to prepare and file a compensation claim, and communicate with the prosecutor – is necessary for several reasons, especially for timely issuance of the expert witness examination order, investigation into the financial situation of the suspect, and timely filing of a motion for temporary measures to secure property. Unfortunately, it rarely happens that free legal aid providers are involved in proceedings at such an early stage.³⁵

In the conclusion on the challenges of filing CCs, we should emphasise the particularly sensitive and complex position of the victim – the injured party. Victims do not easily decide on any procedure, including this one. Furthermore, there is justified fear that information about the CC will reach the accused. “There are victims who are returnees in areas where they have suffered harm, where the perpetrator or his close relatives live. It is neither easy nor simple. Victims experience most things through fear.”³⁶ However, the victims who decide to file a petition to pursue CC are unanimous in their view that they would do it again and that it is an important link in establishing justice for the crimes they have suffered.

²⁹ Interviews: Milanko Kajganić, Ahmed Mešić, Mira Smajlović.

³⁰ Interview: Iriša Čevra.

³¹ Interview: Mira Smajlović.

³² Interview: Ahmed Mešić.

³³ Interviews: Milanko Kajganić, Ahmed Mešić, Slavko Krulj, Iriša Čevra.

³⁴ Interviews: Zekerijah Mujkanović, Slavko Krulj.

³⁵ Interview: Ivana Zovko.

³⁶ Interview: Amer Homarac.

Recommendations:

- Develop recommendations and guidelines on the treatment of victims-witnesses in criminal proceedings for war crimes; to be applicable to all actors in the proceedings.
- For the purpose of a systematic approach to informing victims about CC, define information standards and include reference to legal aid in internal binding guidelines to be applied by all prosecutors and developed by chief prosecutors.
- Improve the prosecutorial practice of referring victims-witnesses to available free legal aid, i.e., to representatives/attorneys in order to receive appropriate support in pursuing the right to compensation in criminal proceedings.

3.2. Access to Free Legal Aid

As pointed out in the previous section, professional assistance and support have a key role in the process of pursuing CCs, which is why it is necessary to identify potential challenges thereon. The research revealed several problems: victims are not informed about free legal aid; the unavailability of free legal aid to all injured parties; and the insufficient specialisation of providers for appropriate representation (attorneys).

Without an attorney, it is difficult, almost impossible to get CC awarded in criminal proceedings.³⁷

With respect to the lack of information about the availability of free legal aid, it is noteworthy that the victims are mostly inexperienced in such affairs, still highly traumatised and further disturbed by criminal proceedings (especially when they do not understand their course and steps). Many feel fear and mistrust, and are unwilling to pursue CC, wanting only to finish with the testimony. Here, again, the key is the individual approach of prosecutors and their willingness to help and refer victims to adequate assistance and, on the other hand, the victim's knowledge of the options and the legal aid providers, victims' associations and NGOs that could help them. A lack of information was assessed during the research as one of the biggest problems in pursuing CCs, which includes the lack of knowledge of victims about who they can turn to for help. Victims are also often concerned about the length and uncertainty of proceedings. However, according to the experience of legal aid providers, such dilemmas are easily overcome in a conversation with the injured party.³⁸ The real challenge is how to establish a link between victims and legal aid providers.

We now have a problem of victims who get involved in criminal proceedings without knowing about CC and they lack legal aid. They have not heard of TRIAL or Vaša prava or the possibility of getting legal aid through the Institute. Our biggest problem is how to reach victims who would like to exercise this right and do not know how.³⁹

The prosecutors and the Witness Support Section contact the Office for Free Legal Aid of the Ministry of Justice of BiH (hereinafter: the Office) to provide information on cases and victims. However, there is still no memoranda of cooperation signed between these stakeholders,⁴⁰ which TRIAL International believes is absolutely necessary in the current situation.⁴¹ To date, the practice has been that, for example, the Office reaches the injured parties through non-governmental organisations, prosecutors of the Prosecutor's Office of BiH and the Witness Support Section of the Court of BiH. In its work so far, the Office has not had any cases where the injured parties found the Office independently and submitted a request for the right to free legal aid. The NGOs, through their work on

³⁷ Interviews: Ahmed Mešić, Milanko Kajganić, Mira Smajlović, Iriša Čevra, Zekerijah Mujkanović.

³⁸ Interview: Ivana Zovko.

³⁹ Interview: Adrijana Hanušić Bećirović.

⁴⁰ Interview: Ivana Zovko.

⁴¹ Interview: Adrijana Hanušić Bećirović.

empowerment and support to users (including victims of war crimes), data collection, surveys, and other forms of social, legal assistance, etc. inform victims about the Office and opportunities for free legal aid and thus establish a link between the Office and the injured parties.

The injured party is the least protected link in criminal proceedings – every suspect has a defence attorney paid for from the public budget, whereas the injured party does not have that possibility.⁴²

In terms of accessibility, there is a structural problem of lack of free legal aid. The inaccessibility of free legal aid to all victims is primarily manifested in a non-harmonised legal aid system in BiH: the lack of such services across all cantons/municipalities in BiH and a means test as a condition for exercising the right to free legal aid in some legal aid institutions, etc. For proceedings led at the state level (Court of BiH), there is the above Office for Free Legal Aid at the Ministry of Justice of BiH. However, at the entity level, this service is not available for all proceedings before cantonal or district courts. As for representation for injured parties in proceedings before the Court of BiH, pursuant to Article 15 of the Law on Provision of Free Legal Aid in BiH, victims of gender-based violence, *inter alia*, have the right to free legal aid by their status. Therefore, victims of wartime sexual violence are entitled to this type of protection without having to undergo a means test. Victims of sexual violence have significantly facilitated and accelerated access to the right to free legal aid.⁴³ However, some centres/institutes for free legal aid at lower levels of government avoid working on these cases (e.g., in the RS they claim they do not participate in criminal proceedings). It is therefore necessary to influence individual free legal aid institutes to make them willing to work on these cases, which may give rise to the need to amend existing laws on free legal aid (for example, in Tuzla Canton).⁴⁴

Information on the availability of free legal aid needs to be made more visible, especially by the Office. I do not know if they provide information on free legal aid because the Witness Support Section often does that – but sometimes when victims come to us it is too late because they come in an advanced stage. What victims need to know is that they are entitled to free legal aid from the beginning.⁴⁵

The Brčko District Legal Aid Office is the only office for BDBiH – in the opinion of the BDBiH Chief Prosecutor – where the staff are trained and have the capacity to provide legal aid. But, it is unclear whether they provided CC services in criminal proceedings, i.e., the injured parties are mostly represented by attorneys.⁴⁶

The assessment of the work of the Office for Free Legal Aid is twofold: representatives of the judiciary claim that cooperation in previous years was at a high level, that (realistic) CC

petitions have been regularly filed when representing victims in the proceedings, that staff were sensitised and trained, and that cases and the development of case law were duly followed.⁴⁷ The shortcomings include high staff turnover, i.e., the problem of introducing new employees into cases and practice, as well as the problem of understaffing. However, this problem is deeper because, according to the Court of BiH Witness Support Section, staff turnover reflects on the quality and standard of services they provide, which should not be the case. Another challenge may also be the procedure required of the injured party, such as the submission of certain documents to prove entitlement to free legal aid. This administrative procedure may discourage victims, and prosecutors state that they therefore prefer to recommend victims to contact an attorney or TRIAL.⁴⁸ However, TRIAL International states that the cooperation and work of the Office was excellent until the beginning of 2021, when a new person arrived whose passive

⁴² Interview: Milanko Kajganić.

⁴³ Interview: Ivana Zovko.

⁴⁴ Interview: Adrijana Hanušić Bećirović.

⁴⁵ Interview: Alma Taso-Deljković.

⁴⁶ Interview: Zekerijah Mujkanović.

⁴⁷ Interviews: Milanko Kajganić, Mira Smajlović, Ahmed Mešić.

⁴⁸ Interview: Ahmed Mešić.

attitude towards these cases resulted in at least one missed opportunity to obtain compensation in criminal proceedings (parents of a murdered child failed even though they wanted to pursue CC). The problem emerged earlier in addition to the refusal of an Office employee to contact the injured parties and inform them of the fact that they must submit a new power of attorney to institute enforcement proceedings in two cases in which the Office was involved in criminal proceedings. When the management of the Ministry of Justice of BiH was informed of the identified problems, the person in charge of these cases was replaced in March 2022.

As for relations between the representatives/attorneys of the injured parties and the prosecutors, it was pointed out that there is room for cooperation. This primarily includes providing access to certain material documentation available to the prosecutor, such as findings and expert witness opinions, as these provide data for a precise CC. Furthermore, this should include timely access also to evidence of assets collected by the prosecutor in order for the attorney to file a motion for a temporary measure to secure the property.⁴⁹ All these steps can significantly improve the position of the injured parties in criminal proceedings, making it possible, despite the fact that the prosecutor does not represent their interests with regard to CC, to facilitate the procedure and encourage victims to opt for it. Similar practices may in fact meet the frequent requirement for the prosecution to represent the interests of injured parties in a broader sense (not formally, but for the purpose and principles of transitional justice achieved through CCs in criminal proceedings).⁵⁰

In addition to institutional providers of free legal aid, the respondents mentioned the great importance of victims' associations and non-governmental organisations in providing free legal and psychological assistance. They reported that TRIAL has made an immeasurable contribution to the enforcement of CCs, through their expertise and sensitivity, which meant a lot to both prosecutors and judges during the proceedings. The OSCE Mission to BiH was also mentioned, which contributed to raising awareness amongst victims by developing a CC petition form for witnesses, informing them how to file a CC.

During the research, the respondents emphasised that efficiency does not depend only on any legal aid, but that this aid must be adequate in terms of knowledge of the procedures and sensitised in terms of access to and support for this group of victims. Actions that have harmed the victims are deeply traumatic and require an approach that will not hurt them, but lead them efficiently and, as much as possible, traumatisation-free through criminal proceedings and the pursuance of CC. In terms of representation by an attorney, there are two challenges: the financial capacity of victims to obtain this type of representation and the specialisation of attorneys to pursue CCs in criminal proceedings in war crimes cases. A number of attorneys have already expressed their willingness to work *pro bono* on these cases, but they are still an exception to the rule. In all other cases, victims usually do not have the financial means to hire them and funds are usually needed for the enforcement of a once-awarded CC, as it is likely that enforcement proceedings will have to be instituted. NGOs usually do not have the authority to represent victims in criminal proceedings, and only a few, such as the NGO Vaša prava, meet these requirements. Furthermore, NGOs very often depend on available financial resources, which can sometimes be made available to ensure representation by an attorney in court. TRIAL International, committed to systematically address the issue of representation and capacity building of existing free legal aid providers, for example, at one point provided certain financial resources for representation by an attorney in cases assessed as strategic. While Vaša prava did agree to take over several cases where there

⁴⁹ Interview: Ahmed Mešić.

⁵⁰ Interview: Iriša Čevra.

was no other option for free legal aid, it is important to find a solution for each individual case and this should therefore be addressed systematically.

In terms of specialisation, however, practice shows that there is not enough of it. There are only a few attorneys who are familiar and sufficiently sensitised for these types of cases, usually in larger cities.⁵² An approach that will not retraumatise the victim but provides an understanding of the procedure and the victims' rights and options, is crucial in legal aid.

I wanted to understand the victim to be able to better represent her.⁵¹

Victims of war crimes are extremely vulnerable and need a different approach to interviewing and counselling. We rely on the assumption that the injured parties do not know, as they are not obliged to know, what rights they have according to the law. Therefore, we organise the first meeting with the injured party, if possible, in a familiar and comfortable location, and we make sure she knows that a person of trust may be present with her. During the first meeting, we inform the injured party of her legal right to file a compensation claim, right to free representation in proceedings, but also that although a CC has been filed, this does not mean that it will be automatically awarded.⁵³

The importance of a sensitised approach not only implies an understanding of the victim's position (especially survivors of wartime sexual violence and a range of factors that make their position vulnerable), but also an individual approach to every victim. Interviews with attorneys representing victims in pursuance of CCs in criminal proceedings highlighted the importance of support, building trust and professional representation – the latter includes informing about the proceedings, the realistic opportunities and expectations of the proceedings, and regular informing about the status of

Everything from the start of the procedure to the end was terrible. I have never encountered such situations. No tranquiliser could calm me down. I put up with it, but the trauma remained. Trauma on top of a trauma.⁵⁴

the case. This may seem symbolic and irrelevant for the proceedings but it is highly important to the victims so that they do not feel abandoned, alone or lost in legal proceedings. "I accompanied the victim to expert witness examination; I took her to the door and waited for her to finish. It meant a lot to her, she was afraid of everything that a visit

to a psychologist might mean";⁵⁵ "I accompanied victims whenever they needed to obtain or submit anything for the proceedings and I kept in touch with them after their testimony"⁵⁶ Prosecutors also stressed the importance of communicating with and encouraging victims, as entering the proceedings is difficult and victims need to feel safe.⁵⁷

The victims pointed out that the support of primarily non-governmental organisations was crucial for them, both for the testimony and for CCs in criminal proceedings. They stated that the entire procedure was traumatic because they did not understand it, had to face the perpetrators and the defence asked provocative questions. At the same time, they expressed satisfaction with the actions of prosecutors (the Prosecutor's Office of BiH and the Prosecutor's Office in Doboj), which they described as kind and mindful. Experiences with expert neuropsychiatrists are different and include both empowering and retraumatizing experiences.

⁵¹ Interview: Irisa Čevra.

⁵² Interview: Irisa Čevra.

⁵³ Interview: Ivana Zovko.

⁵⁴ Anonymous interview with a victim.

⁵⁵ Interview: Irisa Čevra.

⁵⁶ Interview: Amer Homarac.

⁵⁷ Interviews: Ahmed Mešić, Milanko Kajganić.

According to the Law on Provision of Legal Aid, legal aid is available to victims at all stages of criminal proceedings. Therefore, it is crucial to inform the victims early in the phase of investigation of the possibility of obtaining free legal aid. This would contribute to the work on these cases, and would consequently increase the number of CCs, as well as their presence in criminal proceedings.

Recommendations:

- Sign memoranda of cooperation between the prosecutor's office and the court, free legal aid providers and, if necessary, NGOs, to improve communication and referral of victims to free legal aid, especially with regard to pursuing CCs in criminal proceedings in war crimes cases.
- Get the representatives of the injured parties involved early in the investigation phase to ensure the opportunity of effective compensation in a timely manner.
- Train and sensitise attorneys and other free legal aid providers as representatives for CCs in criminal proceedings in war crimes cases. These proceedings are specific, which is why it is necessary to develop specialisation of attorneys throughout BiH.
- Ensure adequate capacity of the Office of the Ministry of Justice of BiH, but also all other institutes/centres throughout BiH competent for providing free legal aid, by employing persons who meet the expertise criteria and have a sensitised approach to victims, and who will remain in those positions after the initial training, to avoid staff turnover that negatively affects the quality of services provided.
- Pay special attention to the capacity of institutes/centres for free legal aid at the cantonal level and in the RS. It is necessary to make an individual assessment of potential difficulties in providing legal aid to victims in all administrative units; initiate amendments to the law on free legal aid, where necessary, to make them applicable to victims of war crimes in pursuance of CCs in criminal proceedings; and work on additional activities necessary to provide adequate legal aid (such as training, sensitisation, advocacy). Develop guidelines for communication with victims/witnesses. This especially refers to representatives and providers of legal aid where it is necessary to address issues of procedural actions, communication with the victim, and stigmatisation.
- Establish a fund to ensure financing for representation in pursuance of CCs in criminal and enforcement proceedings that follow. This especially refers to areas where there is no institutional free legal aid currently provided.

3.3. Pursuing Compensation Claims

CPC BiH: OBLIGATIONS OF THE PROSECUTOR IN THE ESTABLISHMENT OF FACTS	CPC BiH: DECIDING ON THE CLAIM UNDER PROPERTY LAW	CPC BiH: SPECIFICITY OF CC
<p>Article 197</p> <p>The prosecutor is obliged to gather evidence and inspect everything necessary to decide on a property claim related to a criminal offense.</p>	<p>Article 193</p> <p>Subject of the Claim under Property Law</p> <p>(1) A claim under property law that has arisen because of the commission of a criminal offense shall be deliberated on the motion of authorised officials in criminal proceedings if this would not considerably prolong such proceedings.</p> <p>Article 198</p> <p>The Court shall render a judgment on claims under property law.</p> <p>In a judgment pronouncing the accused guilty, the Court may award the injured party the entire claim under property law or may award him part of the claim under property law and refer him to a civil action for the remainder. If the data of criminal proceedings do not provide a reliable basis for either a complete or partial award, the Court shall instruct the injured party that he may take civil action to pursue his entire claim under property law.</p>	<p>Article 195</p> <p>(3) The person authorised to submit the petition must state his claim specifically and must submit evidence.</p>

The victim should get satisfaction, he or she should not only be used as a tool, a means for the court to obtain evidence.⁵⁸

The provisions of the CPC regulate the manner in which CC is pursued. The analysis identified the need to make at least two aspects of the relevant legislation more precise to assign importance to CCs in war crimes cases,

primarily as part of the reparations system, while respecting the specifics of the harm suffered, the actions caused and the purpose of awarding CCs for both victims and society as a whole.

The first request refers to the need to define the notion of victim in CPC, in relation to the notion of injured party. Namely, the current participation of the victim in that capacity has been reduced to the status of a witness, which is simply not enough. Despite the fact that in this segment, as well as in terms of the right to CC, all rights and the procedural role are provided, it is important to recognise that the victim is a person who is directly harmed by war crimes.⁵⁹ In this context, specifying the status of the victim could contribute to the general sensitisation of the proceedings and certainly influence the change of practice of pursuing CCs as a segment of reparations.

⁵⁸ Interview: Mira Smajlović.

⁵⁹ Interview: Mira Smajlović.

The second request refers to the problem of the insufficient definition and regulation of the role of prosecutors in CPC. The mandate of prosecutors should be more clearly defined through mandatory actions and competencies of prosecutors, to ensure that they take those actions. The view is that this would be the basis for a more prevalent CC practice.⁶¹ This applies in particular to informing in the investigation (for what exactly the prosecutor should do see section 3.1. *Filing Compensation Claims*). Furthermore, CC regulation is not sufficiently linked to seizure measures and this results in inconsistent practices. For example, while investigations into the assets of the accused/suspect are conducted in some cases by the Prosecutor's Office of BiH, whether this will take place depends primarily on the prosecutor (some are more willing than others). Furthermore, they are not conducted as often in other prosecutor's offices.⁶² Because of this inconsistency, it would be necessary to regulate in the CPC the obligation of prosecutors to conduct investigations into the financial status of the suspect/accused. This is especially important because the current practice has shown that a detailed investigation and imposition of a temporary measure prohibiting transfer or disposal of the perpetrator's assets to secure the CC can lead to effective compensation payment after the final judgment, even without enforcement proceedings.⁶³

A timely investigation into the financial status can significantly shorten the procedure for damages, which happened in one case, when a measure prohibiting the disposal of property was imposed. The perpetrator voluntarily paid the awarded CC as soon as the judgment became final because he was aware that the awarded amount would be successfully collected from his assets in enforcement proceedings.⁶⁰

According to the prosecutors of the Prosecutor's Office of BiH, the biggest challenges in criminal proceedings related to CCs have already been resolved.⁶⁴ When one compares 2015, when all segments covered by this research had yet to begin in practice, with today, one can conclude that key obstacles, such as proving the amount of CC, have been resolved and that certain standards have been established within case law (especially before the Court of BiH). Important next steps in developing and maintaining a successful CC practice in criminal proceedings in war crimes cases relate to the application of this practice in entity and BDBiH courts.⁶⁵

Analysis of answers on the key current challenges in pursuing CCs in criminal proceedings for war crimes cases shows different perspectives at the state and lower (entity and BDBiH) levels.⁶⁶ While at the state level the respondents highlight the problem of informing victims and their representatives about their rights in criminal proceedings and maintaining the good practice of the previous six years, the levels of cantonal/district institutions report a challenge that has been somewhat overcome at the state level in the previous years: a shift from the primary interest of proving guilt towards inclusion of CC among all actors in the proceedings (injured parties, prosecutors, judges, attorneys). The respondents pointed out that the main focus of criminal cases for war crimes at the entity and BDBiH levels is actually proving guilt, and that there is no interest or willingness of prosecutors and courts to handle CCs within these processes. In their opinion, changing this situation requires a standardised application of CC legal provisions by prosecutors, eliminating the problem of inadequate representation of victims⁶⁷ and training, in order to avoid a lack of specificity of CCs. This primarily indicates the different level of development of practice and application of CCs in criminal proceedings between these two levels – as prosecutor Krulj

⁶⁰ Interview: Adrijana Hanušić Bećirović.

⁶¹ Interviews: Slavko Krulj, Iriša Čevra.

⁶² Interview: Iriša Čevra, Adrijana Hanušić Bećirović.

⁶³ Interview: Adrijana Hanušić Bećirović.

⁶⁴ Interview: Milanko Kajganić.

⁶⁵ Interviews: Milanko Kajganić, Ahmed Mešić, Slavko Krulj, Zekerijah Mujkanović.

⁶⁶ The current challenge identified by both levels is the collection of awarded CCs, i.e., enforcement – which will be discussed in section 3.4..

⁶⁷ Prosecutor Krulj stated: "representation has not been sufficiently elaborated yet; it is in the hands of free legal aid services that are operational in some places, in other not".

stated: “we are still taking the pioneering steps, there are not enough awarded CCs in general”. Furthermore, this conclusion should be interpreted in light of the transfer of an increasing number

The victims regret they testified. They are also beginning to lose hope that they will ever get compensation.⁶⁸

of war crimes cases to the entity/BDBiH levels, where difficulties in pursuing CCs in criminal proceedings may realistically be expected. The progress made in the proceedings before the Court of BiH could be reversed to 2015 – which

is a real problem that requires serious attention. Also, the context is very important because the coming years may be the last chance not only for CCs but for prosecution of war crimes in general. Time inevitably takes its toll and perpetrators and victims die. In the meantime, victims lose confidence in the system and will, and they become unable, primarily health-wise, to get involved in criminal proceedings either as witnesses or as victims.

Respondents from the institutions expressed confidence that the entity/BDBiH prosecutor’s offices will successfully follow the practice developed before the Court of BiH with respect to CCs, and that they will use the knowledge developed by colleagues. This primarily refers to informing the victims about their right to CC, cooperation and referral to legal aid, and regular practice of engaging expert witnesses. The risk remains that everything depends on the individual interest of prosecutors in the procedure and on their active engagement in encouraging the injured party to pursue CC. As the respondents point out, the courts at lower levels (entities and BDBiH) are still of the view that handling CCs would prolong the proceedings. They state that the courts explain this practice by saying that two separate legislations are involved – with separate proceedings – although there are no justified or well-founded reasons for that. There is also a practice of the Court of BiH that ensures victims are still referred to litigation in cases where there is no direct connection between the perpetrator and the victim (e.g., compensation for a murdered spouse, child).⁶⁹

The general problem is that entity judiciaries do not rely sufficiently on the case law of the Court of BiH, while it has not yet developed its own practice and the existing one is extremely inconsistent.⁷⁰

The text below presents an overview of practices and challenges in different segments of criminal proceedings that form the basis for pursuing CC.

3.3.1. Expert Witness Examination – the Basis for Specifying Compensation Claims

According to the provisions of CPC, prosecutors have the obligation to collect evidence, i.e., to establish the facts necessary for deciding on the CC. Fact-finding includes the obligation of prosecutors to issue an order for expert witness examination in the initial stages of the procedure (investigation), most often for a neuropsychiatric and/or psychologist. This expert witness examination is necessary to specify the CC, i.e., its amount and validity. Based on expert witness examination, non-pecuniary damage is determined, which in these cases most often cumulatively includes mental suffering, fear due to violation of liberty, rights of personality, dignity and morals, and mental suffering as a consequence of reduced life activity. Issuing an order for expert witness examination to determine the above types of harm was not a regular practice of prosecutors in the past and this previously prevented adequate specification of CC and/or led to referral to civil proceedings. At the state level, this problem, as practice shows, has been addressed to a great extent and expert witness examination takes place regularly, regardless of whether the petition for CC will be filed in the proceedings.⁷¹ As Judge Smajlović stated: “even without CC, an expert opinion is needed in order to understand the consequences of the harmful act”. These expert witness examinations are now being conducted as a

⁶⁸ Interview: Bakira Hasečić.

⁶⁹ Interview: Alma Taso-Deljkočić.

⁷⁰ Interviews: Iriša Čevra, Mira Smajlović.

⁷¹ Interview: Milanko Kajganić.

result of prosecutors' awareness.⁷² Acting Chief Prosecutor Kajganić stated that some prosecutors' offices have previously avoided expert witness reports that are not needed in every trial due to limited resources. Although these expert witness examinations are not expensive and the expert's findings help everyone – the injured parties, the prosecutor's office, the court – to understand what happened to the injured party, this practice of avoiding them due to costs was also underlined by BDBiH Chief Prosecutor Mujkanović. Along the line of this argument of cost, TRIAL investigated the amounts required for expert witnesses and found that these are insignificant (a few hundred BAM). Nevertheless, there are not many cases requiring expert witness examination and therefore, there is no legitimate reason to avoid it due to associated costs.⁷³

If there is no expert witness examination, it is not possible to specify and prove CC and the court instructs the injured party to pursue CC in its entirety in civil proceeding.⁷⁴ The experience of prosecutors shows that where there is no expert witness involved, there is always referral to litigation, while the expert witness report provides a basis for pursuing and specifying CC and for decision on its award.⁷⁵ It is noteworthy that when issuing an order for an expert witness examination, the prosecutors need to specify in the text of the order which facts – i.e., which types of harm, – should be determined. Without the appropriate expert witness report, the injured party risks that the CC, in the absence of substantiated facts, will not be awarded or will not be awarded in its entirety.⁷⁶

In addition to the primary goal of establishing the criminal offense and its perpetrator, in the phase of evidence collection, as well as in all phases of proceedings, it is important to prevent secondary victimisation of the victim of the criminal offense. If all stages of proceedings – obtaining evidence, interview, expert witness examination, etc. – are conducted by experts sensitised and trained to work with victims, respecting all fundamental human rights and freedoms, and the process of evidence collection, investigation and indictment, can and should have a positive effect on the victim due to the fact that the crime has not been forgotten and efforts are undertaken to confirm that fact.⁷⁷

3.3.2. Referral to Civil Proceedings

Previously, referring victims to pursue CCs in civil proceedings was common. There are three main reasons for this practice: no petition for CC was formally filed; insufficiently specified CC (especially if there was no expert witness report); and presumed prolongation of criminal proceedings due to CC.

Lack of specificity of CC, except in the case when expert witness examination was not conducted, also occurs when the petition itself is insufficiently specified or substantiated by the injured party or their attorney. Representatives of the judiciary state that such cases are not frequent, and when they do happen, they sometimes include unrealistic amounts of damages.⁷⁸ Also, there is a problem when experts are not "up to the task" – when they cannot answer all the questions asked by the court to determine the ground and amount of CC, especially in complex cases of multiple traumas, multiple perpetrators and only one trial, etc. In this case, the problem is to identify the trauma that is the subject of the main trial (gradation of trauma).⁷⁹ However, according to the prosecutors, the improvement of cooperation between the injured party's attorney and prosecutors also improved the specification of CC, which again brings us to the need to develop closer and more constructive cooperation.

CPC stipulates that the CC will be decided on in criminal proceedings if this procedure would not be significantly prolonged. Although the practice in BiH has shown that the rare occasions of CC consideration can indeed significantly prolong criminal proceedings, courts still use this reason unjustifiably, stating

⁷² Interview: Ahmed Mešić.

⁷³ Interview: Adrijana Hanušić Bećirović.

⁷⁴ Interview: Ahmed Mešić.

⁷⁵ Interviews: Slavko Krulj, Zekerijajah Mujkanović.

⁷⁶ Hanušić Bećirović, A. i Kajganić, M. *Imovinskopravni zahtjevi u krivičnom postupku, Priručnik za pravosudno osoblje* [Compensation Claims in Criminal Proceedings – Judicial Handbook].

⁷⁷ Interview: Ivana Zovko.

⁷⁸ Interview: Slavko Krulj.

⁷⁹ Interview: Mira Smajlović.

that CCs would make the procedure more expensive and protracted.⁸⁰ The law is not applied adequately here and this is often left to the court's discretion (even when all the prescribed conditions are met).⁸¹

Referral to litigation is just *pro forma* – it's not going to happen. Taking the victim's perspective – who would want to deal with that?⁸²

However, there has been noticeable progress in this regard in proceedings before the Court of BiH, ranging from regular expert witness involvement to specification and sensitivity of judges and judicial panels to consider the

petition in criminal proceedings. As respondents state, where the expert witness examination has been conducted and the CC has been specified, the procedure can be finalised in two hearings.⁸³ This certainly neither delays nor burdens the criminal proceedings. On the contrary, it makes them more efficient and brings benefits to the victim who gets the satisfaction of being in the centre of criminal proceedings and, in addition to establishing liability for the crime, he/she also gets recognition of his/her suffering and trauma through the award of damages.⁸⁴

Entity/BDBiH courts still struggle with this understanding of the process and problems range from failure to conduct expert witness examination to failure to consider CCs when filed. The main focus is still on proving guilt.⁸⁵ The practice of cantonal/district courts is scanty in awarding CCs – only one case has been reported in Dobož and one judgment in Novi Travnik. There was no such practice in other cases, which may be due to the potential lack of information of judges or the automatic referral to civil proceedings.⁸⁶ For example, in the case of Smiljanić and Others (2016) before the District Court in Banja Luka, contrary to the efforts made by the prosecutor regarding the CC and with the expert witness report, victim's attorney, and fulfilment of all the conditions, the Panel referred the injured party to civil proceedings reiterating the usual explanation thereon.

We should underline how harmful the unjustified referrals to civil proceedings are for victims. It is a fact that the injured party will hardly decide to institute civil proceedings regardless of the free legal aid, for various reasons, among which most common are re-victimisation, disclosure of identity and uncertainty of the outcome.⁸⁷ There is also the problem of financial burden where the victim is not entitled to free legal aid for any reason. The length of civil proceedings and the evidence process etc should also be taken into account. Furthermore, civil proceedings prolong their psychological suffering.⁸⁸

The development of CC decision-making practice in criminal proceedings has indicated that there are cases where there is a real risk of unjustified prolongation of criminal proceedings. This may happen in cases with, for example, many injured parties, where it is impossible to determine the extent of the harm due to several perpetrators, and with only one being tried (demarcation of liability). There are still no solutions to these problems and it is necessary to develop mechanisms and case law in order to find an adequate answer. For wartime sexual violence, however, representatives of the judiciary state that it is no longer questionable whether compensation claims will be addressed in criminal proceedings.⁸⁹

Where a petition for CC has been filed, the court should certainly, at least partially, resolve it and this practice would help other injured parties (in relation to crimes other than war crimes) to

⁸⁰ Interview: Milanko Kajganić.

⁸¹ Interviews: Ahmed Mešić, Milanko Kajganić.

⁸² Interview: Slavko Krulj.

⁸³ Interviews: Mira Smajlović, Iriša Čevra, Ahmed Mešić.

⁸⁴ Interviews: Milanko Kajganić, Mira Smajlović.

⁸⁵ Interviews: Zekerijah Mujkanović, Slavko Krulj, Andrej Mamontov.

⁸⁶ Interview: Ahmed Mešić.

⁸⁷ Interview: Ivana Zovko.

⁸⁸ Interviews: Slavko Krulj, Iriša Čevra.

⁸⁹ Interviews: Mira Smajlović, Milanko Kajganić, Slavko Krulj.

file for CCs more frequently in criminal proceedings.⁹⁰ In the proposals to improve handling CCs in criminal proceedings, there is a tendency – in addition to insisting on appropriate application of legal provisions, commitment and willingness of judicial institutions to address these issues within criminal proceedings and raising awareness and sensitisation – to promote incentives for judges and prosecutors to decide on CC petitions in criminal proceedings. Namely, prosecutors of both the Prosecutor's Office of BiH and entity/BDBiH prosecutor's offices propose changes to the provisions on appraisal of judges and prosecutors with the goal of recognising and rewarding them in cases where CC was handled efficiently in criminal proceedings. It is indisputable that two proceedings are in fact led. With this, the cost-effectiveness and efficiency of the judiciary as a whole are improved, as well as the issue of the lack of incentives for the work of the prosecutor's office and the court regarding the decision on CCs in criminal proceedings.⁹¹

In the Amendments to the Rulebook on Orientation Criteria of 17th January 2022, the provision that refers to evaluation of extremely complex cases includes also CCs as one of a number of possible factors for assessing complexity. According to the provisions, if a prosecutor considers that the assigned value in a specific case does not correspond to the true value, he/she may send a reasoned written request to the Chief Prosecutor to make a decision to recognise a higher value of the case. The Chief Prosecutor may determine that an extremely complex case is valued more than other cases, but only up to 30% of the annual norm – taking into account the actions taken by the prosecutor regarding pursuance of CCs in the assessment of complexity. However, that is not sufficient progress. According to the respondents, a meaningful incentive for prosecutors would be a special value assigned to CCs – in the form of regular recognition of a certain percentage of the norm, valuing thus the undertaking of actions which are required for the award and collection of compensation to be able to take place in criminal cases.⁹²

3.3.3. Awarding the Amount of Compensation Claims

Emphasising that compensation amounts cannot compensate for the overall suffering and pain of the victims,⁹³ the research showed that filing a 'realistic' claim means filing a claim within the established parameters of case law. The range of CC amounts awarded is from BAM 15,000 to BAM 60,000,⁹⁴ with the highest CC amount for one victim being BAM 40,000. However, this range is not final or approximate. In determining the amount of the awarded CC, the courts (FBiH and the Court of BiH) are guided by the Orientation Criteria of the Supreme Court of the Federation of BiH,⁹⁵ both on war crimes and other criminal cases. RS does not have these types of criteria, they simply apply general rules for non-pecuniary damages. A recommendation to this end would be to adopt uniform criteria for the entire state of BiH.

It is an entire life. The event completely marked the victim's life, both present and future. The victims live in that event.⁹⁶

What is seen as a problem from the perspective of transitional justice and fairness is that courts, in addition to the mathematical formula (for determining harms), should take into account fair compensation for this type of case. Former attorney Čevra stated that fairness is a higher standard than general orientation criteria and that this approach should be developed by court practice.

⁹⁰ Interview: Milanko Kajganić

⁹¹ Interviews: Milanko Kajganić, Zekerijah Mujkanović.

⁹² Adrijana Hanušić Bećirović.

⁹³ As Čevra stated: "It is not enough, but it represents a minimum of satisfaction and has the effects of psychological relief".

⁹⁴ The amount of BAM 60,000 was awarded in only one case with three victims, each victim was awarded BAM 20,000.

⁹⁵ The courts of the highest instance in BiH have established common orientation criteria for determining the amount of fair monetary compensation for physical pain, fear and mental pain due to the death of a close relative, as well as compensation for unjustified conviction and unjustified deprivation of liberty, i.e., detention. The benchmarks are quite close when it comes to compensation for mental pain due to physical impairment, and for mental pain due to particularly severe disability of a close person. Whereas, greater differences remain in compensation for mental pain due to reduced life activity, given that the Supreme Court of the Federation Bosnia and Herzegovina - with the latest amendments to its orientation criteria - has significantly increased the benchmarks for this type of harm.

⁹⁶ Interview: Irisa Čevra.

The court's position is also that this is not a simple mathematical formula and that these cases include very specific aspects such as rape in detention centres, with several perpetrators (the extent of liability of the accused and the extent to which other types of trauma are involved – the accused is not responsible for all traumas but only for that he is found guilty of) and the gradation of trauma (i.e., to what extent it affected the victim).⁹⁷ There is no automatic formula to calculate

No one can pay you for what you experienced.⁹⁸

fair monetary compensation, because the court must take into account all the circumstances of the case when deciding.⁹⁹ Therefore, it was

pointed out that there is no ideal decision; the court is obliged to evaluate the presented evidence, primarily through the expert witness's findings. As far as the defence is concerned, experience shows that the harm inflicted, i.e., the existence of a harmful action is rarely disputed. However, they dispute that the accused inflicted the harm. In only about 10% of cases did the defence dispute both the harmful actions and liability of the defendant, stating that the injured party is trying to benefit from the proceedings.¹⁰⁰

Concluding an agreement on CCs in a plea agreement is rather rare, both before the Court of BiH and in the entity/BDBiH courts. An example is the case of the Cantonal Court of Una-Sana Canton, which was criticised and led to differing opinions. An plea agreement was reached in relation to wartime sexual violence with a sentence of one year in prison and BAM 50,000 KM in damages to the injured party. As the defendant was employed abroad and was financially well-off, he substituted the prison sentence with a fine and paid the compensation, thus avoiding the prison sentence completely. The views of the respondents here suggest that the intention was good – had the prison sentence been more realistic and had the perpetrator served part of the prison sentence, this would have been a good example.¹⁰¹ Prosecutor Mešić, on the other hand, stated that his experience in negotiating plea agreements shows that prosecutors cannot assume the competence to negotiate CCs under this agreement. Rather, the solution is to include the injured party/attorney to validate the CC part. This step should not be skipped as it deprives the injured party of the opportunity to declare/agree with the part of the agreement that refers to compensation.

Recommendations

- Continue training and sensitising prosecutors about CCs in criminal proceedings, especially given the new challenges and discrepancies in different attitudes and practices of state and entity/BDBiH prosecutors' offices.
- Conduct training of judges on deciding on CC petitions in criminal proceedings. It is necessary to make good practices visible and to share knowledge and experiences. It is also necessary to change the paradigm that CC will prolong the proceedings and bring too much additional work to the case.
- Amend the rulebook on prosecutors' appraisal by introducing an additional valuation/norm for actions by prosecutors related to compensation claims in criminal proceedings.
- Establish uniform criteria for the entire territory of the state on the amount of compensation awarded for various types of harms in war crimes cases.

⁹⁷ Interview: Mira Smajlović.

⁹⁸ Anonymous interview with a victim.

⁹⁹ Hanušić Bećirović, A. (Ed.). *Dosuđivanje naknade nematerijalne štete i kriteriji za odmjeravanje iznosa naknada (Prikaz sudske prakse u krivičnim i parničnim postupcima u BiH)* [Awarding compensation for non-pecuniary damage and criteria for determining the amount of compensation (Overview of case law in criminal and civil proceedings in BiH)], TRIAL, 2017, <https://trial.ba/wp-content/uploads/2017/03/20170313-TRIAL-Prikaz-sudske-prakse-WEB.pdf>

¹⁰⁰ Interview: Mira Smajlović.

¹⁰¹ Interviews: Milanko Kajganić, Ahmed Mešić.

3.4. Collectability of Awarded Compensation

CPC BiH: TEMPORARY SECURITY MEASURES	CPC BiH: INVESTIGATION INTO FINANCIAL STATUS
<p>Article 202</p> <p>Temporary measures to secure a claim under property law that has accrued because of the commission of a criminal offense may be ordered in criminal proceedings according to the provisions that apply to judicial enforcement procedure.</p>	<p>Article 21</p> <p>All authorities of the Federation of Bosnia and Herzegovina, Republika Srpska and Brčko District of Bosnia and Herzegovina shall be bound to maintain official cooperation with the Court, the Prosecutor and other bodies participating in criminal proceedings.</p>

A unanimous position of all respondents in this research, supported by findings of previous analyses, is that the enforcement procedure is the weakest link in the entire CC chain. Bearing in mind that voluntary settlement of court awarded CCs by the convicted person rarely happens, enforcement proceedings are the last obstacle that the injured parties and their attorneys need to overcome. On the one hand, there are actual situations in which convicted person have no assets or income and are in a state of social need (as the respondents stated – “saved by the prison because they would have nowhere to live”) and the collection is impossible. There are also situations in which convicted person, due to the prison sentence imposed by a convicting judgment, stop earning income and if they do not have assets, there is no possibility of forced collection. The third situation, which will become more frequent due to the passage of time, is that the convicted persons die and thus the possibility of collection ceases. For example, Vuk Ratković, who was sentenced to eight years in prison for multiple rapes of a woman in Višegrad and obliged to pay a total of BAM 35,000,000 in non-pecuniary damages, died before the compensation amount was fully paid.

However, on the other hand, and much more often, convicted persons avoid payment by hiding, transferring or alienating property, or having their property located in another state, making it more difficult to access. For these reasons, enforcement proceedings are often uncertain and lengthy. Motivating the injured parties to initiate enforcement proceedings is of key importance as enforcement completes the process through reparation, ensuring not only a convicting judgment but also compensation for harms.¹⁰² The problem of instituting and conducting enforcement proceedings by the Office for Free Legal Aid was mentioned above; it was noted that in several cases in which the Office provided aid and in which a compensation claim was awarded by the Court of BiH, enforcement proceedings were never instituted. The explanation of the Office employee in charge of these cases from 2021 to 2022 is that the injured parties did not express an interest to institute the proceedings. However, if someone filed for compensation, he/she is certainly interested in enforcing the judgment. However, it is necessary to take into account the category of population and understand the duty to inform about the procedural obligations of beneficiaries as an integral part of the legal aid process.¹⁰³

¹⁰² Interview: Ivana Zovko.

¹⁰³ *Status izvršnih postupaka u CC predmetima – podobnost za isplatu odštete*, [Status of enforcement proceedings in CC cases – eligibility for compensation payment], TRIAL, 2021, internal document (in author’s possession).

In the Kešmer and Menzilović case, the awarded CC was paid without initiating enforcement proceedings, as was in the Jozić case. These are examples of good practice.

To ensure an efficient system of collection of awarded compensation, the key is to investigate the financial status of the suspect/accused, as well as to impose temporary measures to secure property, which should be insisted on in all proceedings. The time that elapses from the moment the accused learns about the petition for CC to the moment the judgment becomes final and possible enforcement proceedings are instituted against the perpetrators (potential debtors) gives them the opportunity to dispose of money from their accounts or other assets to the detriment of injured parties (potential judgment creditors). Due to the risk that the assets will disappear or that the enforcement on the property will be obstructed by the debtor, it is necessary to adequately apply temporary security measures from the earliest possible stage in criminal proceedings, as they prevent the disposal of property (prohibition of alienation or encumbrance of real estate or movables, etc.).¹⁰⁴

Investigation into the financial status is therefore very important in an effort to ensure the subsequent successful collection of CC and actions need to be taken as early as possible in the investigation phase.

Investigation into the financial status has two important determinants: comprehensiveness and time.¹⁰⁵

Furthermore, inquiries about assets must be comprehensive and submitted to all relevant bodies to determine whether the accused has assets (car, real estate in different municipalities, movables, income).¹⁰⁶ Acting Chief Prosecutor of BiH Kajganić states that in the initial cases, the prosecutors filed motions for interim measures and the Court of BiH accepted them, because the Court realised in time that without securing the property it will be difficult to enforce CC. However, in one case, it was established that the prosecutor was not authorised to file such a motion as it has to be filed by the person who filed the petition for CC – the injured party or his/her legal representative. The possible contribution of the prosecutor's office is that it can help obtain evidence of the accused's assets as they can easily obtain the relevant information,¹⁰⁷ The sooner the prosecutor's office responds the better because the accused dispose of their assets very quickly after learning about the investigation, especially after the indictment is filed, to ensure that there are no funds for forced collection if there is an enforcement procedure. If assets are found, then measures are requested – prohibition of disposal. If the attorney is informed about the course of the procedure already in the investigation phase or at least immediately after the indictment is filed, the procedure of temporary security measures is more meaningful. The passage of time reduces the effectiveness of the procedure for imposing a measure.¹⁰⁸

Prosecutors are crucial in creating conditions for the attorneys of the injured parties to submit motions for temporary measures. Prosecutors often fail to undertake actions to identify the accused's assets, even in cases where such a need is explicitly indicated.¹⁰⁹ As pointed out earlier, the practice differs between cantonal/BDBiH courts and the Court of BiH, with the practice of identifying assets is more regularly seen in criminal proceedings at the state level. However, based on its work so far, TRIAL notes that there are still cases in which certain prosecutors of the Prosecutor's Office of BiH refuse to conduct an investigation of assets because this obligation is not explicitly stipulated by law.¹¹⁰

¹⁰⁴ Hanušić Bećirović, A. i Kajganić, M. *Imovinskopravni zahtjevi u krivičnom postupku, Priručnik za pravosudno osoblje* [Compensation Claims in Criminal Proceedings – Judicial Handbook].

¹⁰⁵ Interview: Adrijana Hanušić Bećirović.

¹⁰⁶ Interview: Adrijana Hanušić Bećirović.

¹⁰⁷ Prosecutors, based on the broad powers at their disposal, have much better conditions than the injured party to access to comprehensive information on the suspect's or accused's property, and can act accordingly in a timely manner, determining the suspect's or accused's financial status during the investigation or after indictment. In the case of collecting such data, the positive effects on the injured party are shown in the very preparation for instituting enforcement proceedings on the basis of such collected data. In most cases, it is very difficult for the creditor to obtain data on assets that would be sufficient for effective enforcement due to inconsistent registers and databases, frequent concealment of assets and other technical difficulties associated with the process, including identity protection measures often assigned to injured parties. Due to all the above, it is extremely important that the prosecutor uses the powers available to facilitate the exercise of the rights of injured parties to an effective access to compensation.

¹⁰⁸ Interview: Ivana Zovko.

¹⁰⁹ Interview: Ivana Zovko.

¹¹⁰ Interview: Adrijana Hanušić Bećirović.

According to experience, the court usually accepts motions for temporary security measures in criminal proceedings. The practice before the Court of BiH is that the motions are adopted and security measures are imposed, because the court considers that on the basis of such actions, after the judgment becomes final, the enforcement of the awarded compensation claims can be expected.¹¹¹

Victims do not have confidence that justice is attainable.¹¹²

The respondents in the research share the view that the issue of ensuring the payment of compensation has not been adequately resolved. Namely, the uncertainty of the

enforcement proceedings regarding the payment of compensation is clear and recognised, but there is no systematic solution in sight. When there is no way to collect from the convicted person, the state should have mechanisms in place to address this shortcoming. However, BiH has not yet adequately addressed the issue of compensation payments, or the establishment of a victim compensation fund or budget lines for this purpose. In the long run, it is necessary to establish a mechanism for the state to pay the amount of awarded compensation in case it is impossible to collect from the perpetrator and subsequently get indemnity from him/her.¹¹³ We should recall that a number of international and European legal sources oblige BiH to provide an effective remedy in its legislation for compensation for war victims, including the obligation of the state – if compensation is not fully available – to compensate victims. Therefore, “there is an obligation of Bosnia and Herzegovina to pay compensation for all victims of crimes of violence, especially when this is not possible from the perpetrator or from other sources”.¹¹⁴ The state should demonstrate social solidarity and ensure justice for all victims.¹¹⁵ In general, there is a small percentage of victims who have been awarded CCs and even a smaller percentage of those who can actually collect compensation. According to TRIAL International, so far, after being obliged to do so by the criminal judgment, the perpetrators have paid or started paying compensation in six cases. In four cases, collection from convicted persons-debtors is potentially possible, since the cases are in the enforcement phase. In three cases, enforcement proceedings have not yet been instituted, while in three cases it is certain that it will not be possible to collect the awarded compensation.

Recommendations:

- It is necessary to regulate the obligations of prosecutors to carry out procedures to identify suspect's assets and to harmonise prosecutorial practice with regard to the timely investigation into the financial status. It is necessary to adopt amendments to criminal procedure code to establish more explicit and clear legal norms and thus improve the legal framework, but also to enable more efficient action from prosecutors. This primarily refers to incorporation into the criminal procedure code of a provision which would establish the unequivocal obligation of the prosecutor to conduct an investigation into the financial status of the suspects.
- It is necessary to develop internal binding instructions (chief prosecutors) which would be mandatory for all prosecutors and would define key segments in which a uniform approach is lacking: informing victims, ordering expert witness examination, investigating financial status.
- Improve the practice of filing motions for temporary measures to secure property through training and sharing the good practice of victims' representatives/attorneys.
- Introducing the possibility for victims of war crimes to directly collect damages from the state in case of inability to collect from the perpetrator.

¹¹¹ Hanušić Bećirović, A. i Kajganić, M. *Imovinskopravni zahtjevi u krivičnom postupku, Priručnik za pravosudno osoblje* [Compensation Claims in Criminal Proceedings – Judicial Handbook].

¹¹² Interview: Irisa Čevra

¹¹³ Interviews: Mira Smajlović, Adrijana Hanušić Bećirović.

¹¹⁴ Meškić, Z. *Effective Enforcement of Compensation for Victims of War Crimes within the Criminal Procedure in Bosnia and Herzegovina – International Law and European Union Law Requirements and Standards*.

¹¹⁵ Interview: Mira Smajlović.

3.5. What is the future of Compensation Claims in Criminal Proceedings?

During the research, contextual circumstances were noted, as well as underlined by the respondents, which will certainly affect the future of CCs in criminal proceedings. The following is a brief overview:

1. The passage of time leaves consequences on the possibility of prosecuting war crimes, and also on the CCs. The number of cases is decreasing, given the biological factor affects both perpetrators and victims. If they cannot provide testimonies, which in certain cases are the only evidence, such as in wartime rape cases,¹¹⁶ prosecutors have no grounds to institute proceedings. This is a serious problem identified by all respondents.
2. Lack of willingness of victims to testify and pursue CCs in criminal proceedings in war crimes cases. According to the respondents, too much time has passed and there is increasingly less willingness and confidence of the victims to go through any court proceedings. This is exacerbated by the deep trauma, stigmatisation and unwillingness of victims to talk about the violence they have suffered, especially wartime sexual violence. An increasing number of witnesses do not want to testify at all in both their own or other cases. This repeats the problem for prosecutors mentioned in the previous point.
3. The transfer of war crimes cases to the entity/BDBiH courts is a concern that the progress made with CCs before the Court of BiH could be more difficult to replicate at these levels. If this happens, it would further discourage victims and perhaps prevent the last options, given the effect of time for obtaining this type of reparation.
4. Shortcomings in cooperation between key actors are also reflected in the ability of victims to pursue CCs. It is necessary to opt for synchronised practice and to strengthen communication between the Office for Free Legal Aid, representatives and attorneys. It is necessary to share positive and successful practice, especially with regard to formulating legal positions of courts.

Addressing the future of CCs would be incomplete without the experiences of victims. Their

This is a process that is evolving, with one thing at a time changing; it is difficult to make huge strides all at once.¹¹⁷

perspectives on the importance of compensation, but also their experience of criminal proceedings, show how much determination and strength is needed in circumstances of general distrust of the state, institutions and justice. Although

most of the interviewed victims described criminal proceedings as a traumatic experience, all positively assessed the importance of this right. They all also stated that they would go through the whole process again and would not give up. However, there is a noticeable loss of faith that their compensation claims will be enforced – it should be noted that the interviews included victims whose awarded CCs could not be collected from the defendant's assets. The Association of Women Victims of War stated that criminal proceedings are faster than civil proceedings, and therefore the victim, as the injured party, has the opportunity to institute the forced collection procedure earlier. This is especially important because time is an aggravating factor.

From the interviews with victims:

"It means a lot to move forward. To know that justice has been served."

"I would recommend everyone to pursue their rights."

"I only hope that my case will be successful and that it will encourage other victims to take that path."

"I think we will all die; nobody will get anything."

"Criminal proceedings are fair and just for everyone but the victim."

¹¹⁶ It was pointed out that the circumstance of wartime sexual violence is indeed most often limited to the testimony of the victim – the injured party, because it happened without witnesses and there is no possibility of obtaining other evidence.

¹¹⁷ Interview: Adrijana Hanušić Bećirović.

Despite the traumatic experience of the trial and the doubts about the collection of compensation, it is evident how important the process is on a symbolic level for the victims. It is noteworthy that criminal proceedings alone cannot and should not replace CC collection or satisfy victims: adjudication is the first step in reparation – now the enforcement (collection) should be ensured..

Despite all the challenges and obstacles they face in pursuing CCs in criminal proceedings, the importance of exercising this right is big for victims. According to prosecutor Kajganić, “only with CC does the victim feel that she is at the centre of the proceedings taking place on the basis of what she has experienced. Where there is no CC, the victim is just a witness, often exposed to questions aimed at diminishing what she has experienced”. Adrijana Hanušić Bećirović emphasised that, in addition to the relationship with the court, which symbolically represents the community, and the perpetrator, another relationship is being established: between the victim and the perpetrator, where the perpetrator feels additional responsibility and obligation to the victim because he ruined her life. In addition to compensation, victims also experience a form of catharsis through testimony, while the pronouncement of a conviction and the award of a CC complete one life process for them.¹¹⁸ Awarding compensation – although all interviewed victims said that their greatest satisfaction was a conviction – still represents a sense of justice, i.e., that the convicted perpetrator should also pay compensation, that society has recognised their suffering and pain.

¹¹⁸ Interviews: Ahmed Mešić, Irisa Čevra, Slavko Krulj.

CONCLUSION

“I will never give up”¹¹⁹

One of the consequences of war crimes are the pecuniary and non-pecuniary damages caused to a large number of people. Establishing liability for damages and compensation to victims of war crimes is therefore just as important as prosecuting the perpetrators. The BiH judiciary has come a long way, from regulating the right to compensation for victims of war crimes to its application. This process has been a process of learning and understanding a much broader framework than the legal one and includes respect for the importance of justice for victims in criminal proceedings. Therefore, the main conclusion six years after the first CC award in criminal proceedings, but also after a series of subsequent judgments, is that it is necessary to move from a needs-based approach to a rights-based approach. This approach would profoundly change the relationship between victims and the state: the victim no longer asks for help based on vulnerability or needs, but asks the state to take seriously its duty and what it owes to individuals living in its territory.¹²⁰

Progress has been made in certain CC segments in criminal proceedings and we can already speak of standards being established, such as in determining the amount of CC, issuing an order for expert witness examination, or conducting an investigation into the perpetrator's assets. However, the main problem today is the inconsistency of this practice outside, although also within to some extent, the Prosecutor's Office of BiH and the Court of BiH where it is established. This does not mean that there are no positive examples in the entity judiciary, but that they are rare and an exception rather than the standard.

The consequences of the non-harmonised and/or non-existent practice of CCs in criminal proceedings in war crimes cases are at least twofold: the existing legal framework is not implemented, which threatens the rights of victims and the rule of law in general; and the victims lose the last hope that they will have the opportunity to be compensated for the harm suffered as envisaged by the state itself. These consequences do not end here, just as the trauma of victims does not end with the end of war crimes. Feelings of injustice, disappointment and mistrust replicate, and leave both the judiciary and wider society in a position of permanent dysfunction and inability to achieve justice.

For the victim, the compensation awarded by the Court of BiH means that she will be able to tell her child: “Anyone who does something bad will be punished, they will have to pay, so that it is not repeated”¹²¹

Pursuing CCs in criminal proceedings requires further systemic intervention, primarily in the area of application of criminal procedure codes at entity/BDBiH levels, but also improvement of certain segments at all levels, including the availability and functioning of free legal aid. Progress made within this time frame should not be considered complete. This progress needs to be maintained and advanced, and we should learn from evolving practices.

Finally, the victims should not be reduced to witnesses and left to fend for themselves in collecting the awarded damages. The attainment of reparations in criminal proceedings must be accompanied by state's responsibility for their collection.

¹¹⁹ Anonymous interview with a victim.

¹²⁰ *Strengthening victims' rights: from compensation to reparation – For a new EU Victims' rights strategy 2020-2025*, 2019, https://ec.europa.eu/info/sites/default/files/strengthening_victims_rights_-_from_compensation_to_reparation.pdf

¹²¹ *Compensating Survivors in Criminal Proceedings: Perspectives from the Field*. TRIAL International, https://trialinternational.org/wp-content/uploads/2016/11/TRIAL-International_compensation-publication_EN_web.pdf

GENERAL RECOMMENDATIONS

Each area covered in this analysis is followed by specific recommendations listed at the end of each section under heading 3 *Research Findings*. The goal of specific recommendations is to ensure immediate directions for improvement of the existing practice, especially in light of the purpose of this research to assess efficiency.

In addition to specific recommendations, this section provides an overview of general recommendations for improvements in areas that face challenges with pursuing CCs in criminal proceedings. It is important to emphasise that this analysis revealed that some problems are still recurring, i.e., no progress has been made (specifically for certain levels or for all levels of judiciary), but also that in certain areas the progress made should be enhanced.

- It is necessary to improve the procedure and quality of informing victims about their rights regarding CC in criminal proceedings. This applies both to the individual responsibility of the participants in the proceedings (legal aid providers, prosecutors, witness support officers, etc.) and to finding a systemic solution for all victims.
- It is necessary to sensitise judicial staff to the needs of war crimes victims.
- It is necessary to conduct a systematic assessment of the needs of prosecutors and create modules of training sessions based on the results of the assessment, particularly taking into account the different challenges and needs they face. These sessions should build on the case law developed so far and the experience of prosecutors who have worked on successful CC cases. Prosecutors at all levels should work to facilitate the practice of compensation claims and ensure that state and entity courts award compensation in criminal proceedings in parallel with the prosecution of wartime sexual violence.
- Given that courts often conclude that deciding on the CC would significantly prolong criminal proceedings and therefore refer victims to civil proceedings, these provisions need to be made more precise to reduce such practice and raise awareness and knowledge of judges about realistic frameworks for deciding on CC in criminal proceedings.
- It is necessary to ensure that all victims have equal access to free legal aid in criminal proceedings, regardless of which part of the country they live in and before which court criminal proceedings are conducted. Legal aid providers also need sensitisation and training tailored to the needs of war crimes victims.
- Given that in practice to date Witness Support Sections have often acted as a corrective factor in the chain of informing victims about CC and available legal aid, it is crucial that this practice is followed at lower levels.
- Non-governmental organisations and legal aid providers within institutions should strengthen mutual cooperation and develop a uniform approach to filing compensation claims, which includes mutual referral to free legal aid, where possible.
- In terms of cooperation, it is necessary to establish effective cooperation of all actors involved: prosecutors, witness support section, and legal aid providers/attorneys.
- The BiH authorities need to ensure that victims effectively receive compensation awarded in criminal proceedings. This means that even in cases where the perpetrator fails to pay the awarded amount, the authorities must ensure that the compensation awarded to victims is paid. It is therefore necessary to establish a mechanism for compensation payment by the state in cases where the victim fails to collect it through enforcement proceedings.
- Urgent action by the international community, civil society organisations in BiH and the authorities is needed to help, support and sustain survivors' efforts to exercise their right to reparations in criminal proceedings.

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List of research interviews:

CODE	NAME	DATE
001	Anonymous 1, survivor	20 Nov 2021
002	Anonymous 2, survivor	21 Nov 2021
003	Anonymous 3, survivor	22 Nov 2021
004	Anonymous 4, survivor	22 Nov 2021
005	Bakira Hasečić, President of Association Women Victims of War	23 Nov 2021
006	Milanko Kajganić, acting Chief Prosecutor of the Prosecutor's Office of BiH	24 Nov 2021
007	Ahmed Mešić, Prosecutor of the Prosecutor's Office of BiH	26 Nov 2021
008	Irisa Čevra, former attorney/representative for victims	1 Dec 2021
009	Alma Taso-Deljković, Head of Witness Support Section of the Court of Bosnia and Herzegovina	31 Nov 2021
010	Amer Homarac, attorney/legal representative for victims	3 Dec 2021
011	Andrej Mamontov, Director of Institute for Free Legal Aid of Una-Sana Canton	25 Nov 2021
013	Ivana Zovko, former employee of the Office for Free Legal Aid at the Ministry of Justice of BiH	29 Nov 2021
012	Mira Smajlovic, Judge of the Court of BiH	1 Dec 2021
014	Zekerija Mujkanović, Chief Prosecutor of BDBiH	1 Dec 2021
015	Slavko Krulj, Prosecutor of the District Public Prosecutor's Office in Doboј	7 Dec 2021
016	Adrijana Hanušić Bećirović, Senior Legal Advisor, TRIAL International	17 Nov 2021

ANNEX

TABLE OVERVIEW OF CASES IN WHICH COMPENSATION WAS AWARDED IN CRIMINAL PROCEEDINGS (2015-2021)

This annex was compiled by the TRIAL International team based on the records it keeps of criminal cases

CASE	FIRST INSTANCE JUDGMENT (date, court, outcome)	SECOND INSTANCE JUDGMENT (date, court, outcome)	AWARDED AMOUNT
BOSILJKO MARKOVIĆ AND OSTOJA MARKOVIĆ	24 June 2015	29 February 2016	Total: BAM 26,500.00 for: - mental pain due to violation of liberty or rights of personality in the amount of BAM 20,000.00 - mental pain due to reduction of life activity in the amount of BAM 6,500.00
	Court of BiH, Section I for War Crimes (S1 1 K 012024 14 Kri)	Court of BiH, Appellate Division (S1 1 K 012024 15 Krž)	
	Sentenced to imprisonment for a term of ten years, obliged to compensate the injured party in the amount of BAM 26,500.00	Prvostepena presuda potvrđena	

CASE	FIRST INSTANCE JUDGMENT (date, court, outcome)	SECOND INSTANCE JUDGMENT (date, court, outcome)	AWARDED AMOUNT
SLAVKO SAVIĆ	29 June 2015	24 November 2015	<p>Total:</p> <p>BAM 30,000.00 for:</p> <ul style="list-style-type: none"> - mental pain due to violation of liberty or rights of personality in the amount of BAM 16,000.00 - mental pain due to reduction of life activity in the amount of BAM 14,000.00
	Court of BiH, Section I for War Crimes (S1 1 K 017213 14 Kri)	Court of BiH, Appellate Division (S1 1 K 017213 15 Krž)	
	Sentenced to imprisonment for a term of eight years, obliged to compensate the injured party in the amount of BAM 30,000.00	First instance judgment upheld	

CASE	FIRST INSTANCE JUDGMENT (date, court, outcome)	SECOND INSTANCE JUDGMENT (date, court, outcome)	AWARDED AMOUNT
KRSTO DOSTIĆ	6 October 2016	27 January 2017	<p>Total:</p> <p>BAM 40,000.00 for:</p> <ul style="list-style-type: none"> - mental pain due to violation of liberty or rights of personality in the amount of BAM 15,000.00 - mental pain due to reduction of life activity in the amount of BAM 25,000.00
	Court of BiH, Section I for War Crimes (S1 1 K 019771 16 Kri)	Court of BiH, Appellate Division (S1 1 K 019771 16 Krž)	
	Sentenced to imprisonment for a term of 10 years. Obligated to compensate the injured party for non-pecuniary damage in the amount of BAM 40,000.00	First instance judgment upheld	

CASE	FIRST INSTANCE JUDGMENT (date, court, outcome)	SECOND INSTANCE JUDGMENT (date, court, outcome)	AWARDED AMOUNT
ADIL VOJIĆ AND BEKIR MEŠIĆ	16 March 2016	1 December 2016	<p>Total:</p> <p>BAM 28,000.00 for:</p> <p>- mental pain due to reduction of life activity</p>
	Court of BiH, Section I for War Crimes (S1 1 K 012506 15 Krl)	Court of BiH, Appellate Division (S1 1 K012506 16 Krž)	
	Sentenced to imprisonment for a term of seven years, obliged to compensate the injured party for non-pecuniary damage in the amount of BAM 28,000.00	First instance judgment was modified; they were sentenced to an increased prison sentence of nine years. The remaining part of the first instance judgment is unchanged.	

CASE	FIRST INSTANCE JUDGMENT (date, court, outcome)	SECOND INSTANCE JUDGMENT (date, court, outcome)	AWARDED AMOUNT
MATO BAOTIĆ	9 December 2016	14 April 2017	<p>Total:</p> <p>BAM 60,000.00</p> <p>where:</p> <p>MTB, total amount of BAM 20,000.00 for:</p> <ul style="list-style-type: none"> - mental pain due to violation of liberty or rights of personality in the amount of BAM 13,000.00 - mental pain due to reduction of general life activity in the amount of BAM 7,000.00 <p>S-5 total amount of BAM 25,000.00 for:</p> <ul style="list-style-type: none"> - mental pain due to violation of liberty or rights of personality in the amount of BAM 15,000.00 - mental pain due to reduction of general life activity in the amount of BAM 10,000.00 <p>S-4 total amount of BAM 15,000.00 for:</p> <ul style="list-style-type: none"> - mental pain due to violation of liberty or rights of personality in the amount of BAM 7,000.00 - mental pain due to reduction of general life activity in the amount of BAM 8,000.00
	Court of BiH, Section I for War Crimes (S1 1 K 020032 15 Kri)	Court of BiH, Appellate Division (S1 1 K 020032 17 Krž 11)	
	Sentenced to imprisonment for a term of ten years, obliged to compensate three injured parties for non-pecuniary damage in the amount of BAM 60,000.00	First instance judgment upheld	

CASE	FIRST INSTANCE JUDGMENT (date, court, outcome)	SECOND INSTANCE JUDGMENT (date, court, outcome)	AWARDED AMOUNT
NENAD VASIĆ	25 January 2017	18 April 2017	Total: BAM 20,000.00 for: - mental pain due to violation of rights and liberties of personality, reputation and due to the reduction of general life activity
	District Court in Doboj (13 0 K 003666 16 K2)	Supreme Court of RS (13 0 K 003666 17 Kž 2)	
	Sentenced to imprisonment for a term of five years. The injured party was awarded compensation for non-pecuniary damage in the amount of BAM 20,000.00	First instance judgment was modified, the defendant was sentenced to imprisonment for a term of three years. The remaining part of the first instance judgment is unchanged.	
ANTO JOZIĆ AND ĐEMAHUDIN MAHALBAŠIĆ	22 May 2017	14 November 2019	Total: BAM 22,050.00 where: - Anto Jozić total amount BAM 5,512.50 - Đemahudin Mahalbašić BAM 16,537.50. - for suffered fear and mental pain
	Cantonal Court in Novi Travnik (06 0 K 009862 16 K)	Supreme Court of the Federation of Bosnia and Herzegovina (06 0 K 009862 19 Kž 2)	
	Anto Jozić sentenced to imprisonment for a term of three years and six months, obliged to pay compensation to the injured party in the amount of BAM 5,512.50; Đemahudin Mahalbašić sentenced to five years and six months and compensation in the amount of BAM 16,537.50	First instance judgment upheld	

CASE	FIRST INSTANCE JUDGMENT (date, court, outcome)	SECOND INSTANCE JUDGMENT (date, court, outcome)	AWARDED AMOUNT
MOMIR TASIĆ AND PETAR TASIĆ	6 September 2018	23 August 2019	<p>Total:</p> <p>BAM 25,000.00 for:</p> <ul style="list-style-type: none"> - mental pain due to reduction of general life activity - mental pain due to violation of liberty or rights of personality
	Court of BiH, Section I for War Crimes (S1 1 K 024006 18 Krž)	Court of BiH, Appellate Division (S1 1 K 024006 18 Krž)	
	<p>Sentenced to imprisonment for terms of fourteen and ten years;</p> <p>Momir Tasić obliged to compensate the injured party the amount of BAM 25,000.00</p>	<p>First instance judgment was modified in relation to the decision on the sanction imposed on Petar Tasić, whose prison sentence has been reduced to five years. The remaining part of the first instance judgment is unchanged.</p>	
JANJIĆ DRAGAN	12 October 2018	18 July 2019	<p>Total:</p> <p>BAM 15,000.00 for:</p> <ul style="list-style-type: none"> - inflicted fear, physical and mental pain due to violation of liberty, dignity, morals and rights of personality - mental pain due to reduction of general life capacity
	Court of BiH, Section I for War Crimes (S1 1 K 026633 17 Kri)	Court of BiH, Appellate Division (S1 1 K 026633 19 Krž)	
	<p>Sentenced to imprisonment for a term of seven years, obliged to pay compensation to the injured party for non-pecuniary damage in the amount of BAM 15,000.00</p>	<p>First instance judgment upheld.</p>	

CASE	FIRST INSTANCE JUDGMENT (date, court, outcome)	SECOND INSTANCE JUDGMENT (date, court, outcome)	AWARDED AMOUNT
VUK RATKOVIĆ	19 October 2018	4 February 2019	<p>Total:</p> <p>BAM 35,000.00 for:</p> <ul style="list-style-type: none"> - mental pain due to violation of liberty or rights of personality - mental pain due to reduction of life activity
	Court of BiH, Section I for War Crimes (S1 1 K 024032 18 Kri)	Court of BiH, Appellate Division (S1 1 K 024032 18 Krž3)	
	Sentenced to imprisonment for a term of eight years, obliged to compensate the injured party in the amount of BAM 35,000.00	First instance judgment upheld	

CASE	FIRST INSTANCE JUDGMENT (date, court, outcome)	SECOND INSTANCE JUDGMENT (date, court, outcome)	AWARDED AMOUNT
MILAN TODOVIĆ	4 December 2018	12 March 2019	<p>Total:</p> <p>BAM 13,100.00 for:</p> <ul style="list-style-type: none"> - mental pain due to violation of liberty or rights of personality - mental pain due to reduction of life activity in the amount of
	Court of BiH, Section I for War Crimes (S1 1 K 021644 18 Kri)	Court of BiH, Appellate Division (S1 1 K 021644 19 Krž)	
	Sentenced to imprisonment for a term of ten years, obliged to compensate the injured party in the amount of BAM 13,100.00	First instance judgment upheld	

CASE	FIRST INSTANCE JUDGMENT (date, court, outcome)	SECOND INSTANCE JUDGMENT (date, court, outcome)	AWARDED AMOUNT
<p>GORAN MRĐA AND OTHERS (MILORAD MRĐA, MILE KOKOT, RANKO MRĐA)</p>	<p>19 May 2017</p>	<p>21 December 2018</p>	<p>Total:</p> <p>BAM 20,000.00 for:</p> <ul style="list-style-type: none"> - mental pain due to reduction of general life activity in the amount of BAM 7,000.00 - mental pain due to violation of liberty or rights of personality in the amount of BAM 13,000.00
	<p>Court of BiH, Section I for War Crimes (S1 1 K 018013 15 Kri)</p>	<p>Court of BiH, Appellate Division (S1 1 K 018013 17 Kžk)</p>	
	<p>This judgment was overturned. They were sentenced to fourteen, eight and ten years in prison. Milorad and Goran Mrđa obliged to pay compensation to the injured party in the amount of BAM 20,000.00</p>	<p>Sentenced to imprisonment for a term of eleven, seven and seven years, Goran Mrđa and Milorad Goran obliged to pay compensation to the injured party in the amount of BAM 20,000.00</p>	

CASE	FIRST INSTANCE JUDGMENT (date, court, outcome)	SECOND INSTANCE JUDGMENT (date, court, outcome)	AWARDED AMOUNT
MILOMIR DAVIDOVIĆ	27 February 2019	9 July 2019	Total: BAM 10,000.00 for: - inflicted fear, physical and mental pain, violation of liberty and reduced life capacity
	Court of BiH, Section I for War Crimes (S1 1 K 005151 18 Kri)	Court of BiH, Appellate Division (S1 1 K 005151 19 Krž)	
	Sentenced to imprisonment for a term of seven years, obliged to compensate the injured party in the amount of BAM 10,000.00	First instance judgment upheld	
SAŠA CVETKOVIĆ	22 March 2019	6 November 2019	Total: BAM 15,000.00 for: - inflicted fear, violation of liberty, dignity, morals and rights of personality in the amount of BAM 5,000.00 - reduction of general life activity in the amount of BAM 10,000.00
	Court of BiH, Section I for War Crimes (S1 1 K 023242 17 Kri)	Court of BiH, Appellate Division (S1 1 K 023242 19 Kž)	
	Sentenced to imprisonment for a term of twelve years, obliged to compensate the injured party in the amount of BAM 15,000.00	First instance judgment upheld	

CASE	FIRST INSTANCE JUDGMENT (date, court, outcome)	SECOND INSTANCE JUDGMENT (date, court, outcome)	AWARDED AMOUNT
<p>SAMIR KEŠMER AND MIRSAD MENZILOVIĆ</p>	<p>1 February 2019</p>	<p>5 July 2019</p>	<p>Total:</p> <p>BAM 30,000.00 for:</p> <ul style="list-style-type: none"> - mental pain due to reduction of general life activity in the amount of BAM 15,000.00 - mental pain due to violation of liberty or rights of personality in the amount of BAM 15,000.00
	<p>Court of BiH, Section I for War Crimes (S1 1 K 023906 18 Kžk)</p>	<p>Court of BiH, Appellate Division (S1 1 K 023906 18 Kžk)</p>	
	<p>First instance judgment was overturned. Elvir Muminović subsequently separated into another case.</p> <p>Sentenced to imprisonment for a term of six, five and five years.</p>	<p>In the second instance judgment, they were sentenced to six and six years in prison, and obliged to compensate the injured party in the amount of BAM 30,000.00.</p>	

CASE	FIRST INSTANCE JUDGMENT (date, court, outcome)	SECOND INSTANCE JUDGMENT (date, court, outcome)	AWARDED AMOUNT
<p>RADOVAN PAPRICA</p> <p>SLAVKO OGNJENVIĆ</p>	<p>3 December 2020</p>	<p>28 July 2021</p>	<p>Total:</p> <p>BAM 37,000.00 for:</p> <ul style="list-style-type: none"> - mental pain due to violation of liberty or rights of personality - mental pain due to reduction of life activity
	<p>Court of BiH, Section I for War Crimes (S1 1 K 033539 19 Kri)</p>	<p>Court of BiH, Appellate Division (S1 1 K 033539 21 Krž)</p>	
	<p>In the first instance judgment, the Court of Bosnia and Herzegovina sentenced Radovan Paprica aka Papro to 8 years in prison and Slavko Ognjenović aka Mačak to 8 years in prison.</p> <p>In addition, the Court of BiH obliged the perpetrators to pay compensation to the survivor in the amount of BAM 37,000.00.</p>	<p>The Appellate Panel of the Court of Bosnia and Herzegovina sentenced Radovan Paprica and Slavko Ognjenović to seven years in prison each. The judgment ordered the defendants to pay the injured party the amount of BAM 37,000.00.</p>	

About organization TRIAL International

TRIAL International is a non-governmental organisation fighting against impunity for international crimes and supporting victims in their quest for justice. The organisation provides legal assistance, litigates cases, develops local capacity and pushes the human rights agenda forward. The organisation TRIAL International has been active in Bosnia Herzegovina (BiH) since 2007, and **TRIAL International office opened in BiH** in 2013. The organisation fights against impunity and promotes transitional justice across BiH, and also promotes the rights of war crimes victims. In supporting war crimes victims in BiH, the organisation focuses on vulnerable groups, including sexual violence survivors, the families of missing persons and former camp detainees.

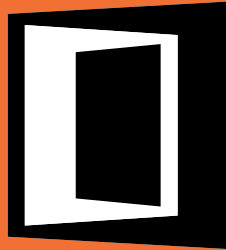
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