



TRIAL
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ACCESS TO JUSTICE FOR CIVILIAN VICTIMS OF WAR / VICTIMS OF WARTIME TORTURE

From Legal

to Judicial

Obstacles



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TABLE OF CONTENTS

1. INTRODUCTION 5	2. IDENTITY PROTECTION MEASURES AND COMPENSATION FOR DAMAGES IN CIVIL PROCEEDINGS 8	2.1. INTERNATIONAL RESPONSE TO BIH PRACTICE 10
2.2. TRAINING OF LAWYERS AND JUDGES 11	2.3. LEGISLATIVE RESPONSE AND CONSTITUTIONAL LITIGATION 11	2.4. IMPLEMENTATION OF THE REVISED NATIONAL WAR CRIMES PROCESSING STRATEGY 12
3. COLLECTION OF COSTS OF PROCEEDINGS AND ATTORNEY GENERAL'S FEES 13	3.1. INTERNATIONAL RESPONSE TO COURTS' PRACTICE IN BIH 14	3.2. TRAINING OF JUDGES AND STAFF IN THE OFFICES OF ATTORNEY GENERAL 18
3.3. LEGISLATIVE RESPONSE 20	3.4. JUDICIAL PRACTICE HARMONISATION PANELS 21	4. CONCLUSION 22

1. INTRODUCTION

Faced with the absence of a national reparation programme for civilian victims of war/victims of wartime torture, as well as shortcomings in the existing social protection system, civilian victims of war/victims of wartime torture/prisoners of war in Bosnia and Herzegovina sought to exercise their rights through criminal and civil proceedings. During the former, in 2015, with the support of the non-governmental organisation TRIAL International – BiH Office, civilian victims of war/victims of wartime torture, as injured parties, asserted compensation claims against the defendants. On the other hand, civil proceedings were initiated either when the injured parties were referred to them in criminal proceedings or, independently of criminal proceedings, by civilian victims of war/victims of wartime torture seeking compensation for pecuniary and non-pecuniary damages.

In criminal cases concerning war crimes, a current and central issue of debate is the referral of the injured party, appearing as a witness under protection measures – non-disclosure of the witness's identity¹ – to pursue their rights through civil proceedings.² In 2021, the state legislator amended the Civil Procedure Code before the Court of BiH³ by integrating a new chapter titled "XXVIIIa – Civil Proceedings Concerning the Exercise of Rights by Persons under Identity Protection Measures." This amendment obliges the Court of BiH to ensure a certain level of protection in civil proceedings for a party who, as a witness under threat and vulnerable witness, was previously granted protection measures in criminal proceedings (Article 1 of the Code). At the same time, nearly identical provisions were adopted in the Brčko District of BiH (BD BiH).⁴ Unfortunately, the entities failed to address these changes in the other two civil procedure codes (with the exception of two unsuccessful attempts in the Parliament of the Federation

¹ In accordance with the Law on Protection of Witnesses under Threat and Vulnerable Witnesses (Official Gazette of BiH, 3/03, 21/03, 61/04, 55/05), the Law on Protection of Witnesses under Threat and Vulnerable Witnesses of the Federation of Bosnia and Herzegovina (Official Gazette of FBiH, 36/03), the Law on Protection of Witnesses in Criminal Proceedings (Official Gazette of RS, 21/03, 61/04, 55/05) and the Law on Protection of Witnesses under Threat and Vulnerable Witnesses (Official Gazette of BD BiH, 11/03, 8/07).

² This practice has been criticised by the Commissioner for Human Rights of the Council of Europe as "creating further delays and re-traumatisation." See: Commissioner for Human Rights of the Council of Europe, *Dealing with the Past for a Better Future Achieving justice, peace and social cohesion in the region of the former Yugoslavia*, Council of Europe, Strasbourg: 2023, pg. 46. Available at: <https://www.coe.int/en/web/commissioner/-/dealing-with-the-past-for-a-better-future-resolute-efforts-on-dealing-with-the-violent-past-are-required-in-the-region-of-the-former-yugoslavia> (accessed on: 20 March 2025). The change in practice at the level of the Court of BiH occurred in 2015, when the Court began accepting compensation claims from injured parties. This changed practice has generally been adhered to by the Court. The new practice of the Court of BiH was welcomed by the UN Human Rights Committee in the *Concluding observations on the third periodic report of Bosnia and Herzegovina*, CCPR/C/BiH/CO/3 of 13 April 2017, para. 17. Available at: <https://www.ohchr.org/en/documents/concluding-observations/ccprbihco3-concluding-observations-third-periodic-report-bosnia> (accessed on: 20 March 2025). At the entity-level courts, the practice has remained unimplemented. It is important to note that at the entity level, there are mandatory instructions on activities to be taken by prosecutors with regard to the compensation claims of injured parties in war crimes cases – commission of criminal offences of rape and sexual violence (for FBiH, see: *Mandatory Instructions on Activities to be Taken by Prosecutors in the Federation of Bosnia and Herzegovina with Regard to the Compensation Claims of Injured Parties in War Crimes Cases – Commission of Criminal Offences of Rape and Sexual Violence*, number A-231/24, dated 22 May 2024. For RS: *Mandatory Instructions on Activities to be Taken by Prosecutors with Regard to the Compensation Claims of Injured Parties in War Crimes Cases – Commission of Criminal Offences of Rape and Sexual Violence*, number A-88/24, dated 25 March 2024).

³ Law on Amendments to the Civil Procedure Code before the Court of BiH, Official Gazette of BiH, 34/21.

⁴ Law on Amendments to the Civil Procedure Code of the BD BiH, Official Gazette of the BD BiH, 6/21.

of BiH (FBiH), justifying that such amendments to the FBiH Civil Procedure Code should be part of broader and more comprehensive reforms), despite the fact that their representatives participated in the Working Group of the BiH Ministry of Justice, which proposed a set of amendments to the civil procedure codes. Furthermore, the Revised National War Crimes Processing Strategy,⁵ adopted in September 2020, outlines as one of its strategic measures: “To improve the legal framework for the enforcement of compensation claims in civil proceedings for witnesses under protection measures.” The responsibility for implementing this measure rests with the entity ministries of justice, with a six-month deadline for execution. Meanwhile, injured parties who have been granted identity protection measures are still directed to pursue their compensation claims through proceedings before entity-level civil courts.⁶

In the context of other proceedings, the main issue, which was thought to have been resolved and put ad acta after the Decision of the Constitutional Court of BiH on Admissibility and Merits in Case No. AP-1101/17 of 22 March 2018,⁷ concerns the obligation of the plaintiff – a civilian victim of war /victim of wartime torture – to reimburse the costs of proceedings after losing the case and the fee to the entity offices of the attorney general, as representatives of the entities/their institutions in these proceedings. Reports from both governmental and non-governmental organisations indicate that courts, particularly those in the Republika Srpska (RS), continue to require plaintiffs to reimburse the excessive costs of proceedings and fees of the Office of the Attorney General.

In the absence of precise and accurate statistical data⁸, it is impossible to get a full grasp of the extent of the problem. That is why we have turned to the cantonal and district courts in BiH, the Court of BiH and the Appellate Court of the BDBiH, with a request for access to statistical data. Given that the courts could not generate the required data through the CMS (Case Management System), some courts refused the request for access to information (Court of BiH, Cantonal Court in Sarajevo, Cantonal Court in Bihac and District Court in Istočno Sarajevo), while others inspected criminal case files and provided the information they had available⁹ (however, incomplete information was often provided). For the sake of illustration, we present the following statistical data: the total number of war crimes cases in which the courts decided on compensation claims by injured parties is 0; the courts reported 123 war crimes cases in which 248 injured parties were referred to civil proceedings to pursue their compensation claims; in one case, the injured party – a witness – was granted an identity protection measure and was referred to civil proceedings to pursue the compensation claim.

5 Available on the website of the HJPC BiH: <https://pravosudje.ba/vstvfo/B/10/Article/124085> (accessed on 20 March 2025).

6 E-mail correspondence with TRIAL International office in BiH, 25 March 2025. In the author’s archive.

7 Available on the website of the Constitutional Court of BiH: https://www.ustavnisud.ba/uploads/odluke/_bs/AP-1101-17-1123864.pdf. Published in the Official Gazette of BiH, 24/18.

8 Based on the state and entity laws on freedom of access to information, the following information was requested: 1) information on the number of finalised war crimes cases, in which the courts decided on compensation claims by the injured parties; 2) information on the number of finalised war crimes cases in which the courts instructed injured parties to pursue their compensation claims in civil proceedings, and information on the number of injured parties thereon; 3) information on the number of finalised war crimes cases in which the courts decided on compensation claims by injured parties – witnesses – who were granted identity protection measures in accordance with the relevant law on protection of witnesses under threat and vulnerable witnesses, and information on the number of injured parties thereon; 4) information on the number of finalised war crimes cases in which the courts referred the injured parties – witnesses – granted identity protection measures in accordance with the relevant law on the protection of witnesses under threat and vulnerable witnesses, to pursue their compensation claims in civil proceedings, and information on the number of injured parties thereon.

9 In the 15-day deadline to respond to the request for access to information, the Cantonal Court in Mostar and the District Court in Doboј failed to the requested information.

Before addressing the specifics of this legal matter, we will briefly refer to its genesis, which revolves around the application of statutes of limitations in damage compensation claims filed against the entities based on strict liability. Courts in the RS adopted the position that restrictive statutes of limitations should apply in such proceedings, meaning that the limitation period in these cases expired in June 2001. In contrast, courts in the FBiH took the opposite stance, asserting that the limitation period aligns with the statute of limitations for the criminal offence, with war crimes being exempt from any statute of limitations. These conflicting judicial practices led to legal uncertainty and unequal treatment of citizens before the law, making the likelihood of success in a case highly dependent on the court where the proceedings were initiated. Initially, the Constitutional Court of Bosnia and Herzegovina (CC BiH) supported the practice of the courts in the FBiH,¹⁰ However, it later shifted its stance, aligning with the position of the courts in the RS¹¹ without providing adequate reasoning, as required by the standard of a well-reasoned judicial decision under Article 6(1) of the European Convention on Human Rights when altering established judicial practice. As a result, courts in the FBiH were compelled to adopt a more restrictive interpretation of limitation periods, leading to the dismissal of claims. Notably, court proceedings are still ongoing in which plaintiffs argue that their claims are not time-barred, while the Constitutional Court of BiH continues to dismiss appeals in such cases.¹² The shift in judicial practice of the Constitutional Court of BiH was unanimously criticised by human rights bodies, including the UN Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence (UN Special Rapporteur),¹³ Commissioner for Human Rights of the Council of Europe,¹⁴ e UN Human Rights Committee,¹⁵ and the UN Committee against Torture.¹⁶

¹⁰ Decision of the Constitutional Court of BiH on Admissibility and Merits in Case No. AP-289/03. Available on the website of the Constitutional Court of BiH: https://www.ustavnisud.ba/uploads/odluke/_bs/AP-289-03-24234.pdf.

¹¹ Decision of the Constitutional Court of BiH on Admissibility and Merits in Case No. AP-3111/09. Available on the website of the Constitutional Court of BiH: <https://www.ustavnisud.ba/uploads/odluke/AP-3111-09-624133.pdf>.

¹² See the latest Decision of the Constitutional Court of BiH on Admissibility in Case No. AP-344/23. Available on the website of the Constitutional Court of BiH: <https://www.ustavnisud.ba/uploads/odluke/AP-344-23-1379767.pdf>.

¹³ Stating: "This is contrary to international standards, according to which atrocity crimes are not subject to statutes of limitations." See: *Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence on his visit to Bosnia and Herzegovina*, A/HRC/51/34/Add.2, para. 55. Available at: <https://docs.un.org/en/A/HRC/51/34/Add.2> (accessed on: 20 March 2025).

¹⁴ Commissioner for Human Rights of the Council of Europe, *Dealing with the Past for a Better Future Achieving justice, peace and social cohesion in the region of the former Yugoslavia*, Council of Europe, Strasbourg: 2023, pg. 46. Available at: <https://www.coe.int/en/web/commissioner/-/dealing-with-the-past-for-a-better-future-resolute-efforts-on-dealing-with-the-violent-past-are-required-in-the-region-of-the-former-yugoslavia> (accessed on: 20 March 2025).

¹⁵ UN Human Rights Committee, *Concluding observations on the third periodic report of Bosnia and Herzegovina*, CCPR/C/BiH/CO/3 dated 13 April 2017, para. 17. Available at: <https://www.ohchr.org/en/documents/concluding-observations/ccprbihco3-concluding-observations-third-periodic-report-bosnia> (accessed on: 20 March 2025).

¹⁶ UN Committee against Torture, *Decision adopted by the Committee under Article 22 of the Convention, concerning communication No. 854/2017*, dated 2 August 2019, para. 7.5. Available at: <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6FHiXpUB%2f0IEISG6udNxjyzZZtfk%2fG6Ka%2f0fg7CUDah6tyLTH2R8PqrATxr95KSd-j7gR4dvM8nQsYvMYK%2beRGYsJtVKR9NMRSo52Rw2ctF0%3d> (accessed on: 20 March 2025).

2. IDENTITY PROTECTION MEASURES AND COMPENSATION FOR DAMAGES IN CIVIL PROCEEDINGS

The matter of compensation for damages to an injured party, who appears as a witness in civil proceedings under protection measures – specifically the non-disclosure of the witness’s identity – originates from the fact that entity courts (primarily), and occasionally the Court of BiH, tend to be cautious and infrequently rule on the compensation claim of an injured party in criminal proceedings, citing concerns about delaying the proceedings.¹⁷ This leads to the question of how a compensation claim can be pursued in civil proceedings, given that one of the key elements of such a claim is the determination of the identity of the plaintiff. In the absence of identity, the claim should be rejected. Unlike at the state and BD BiH levels, the entities do not allow for identity protection in civil or criminal proceedings for such categories of injured parties. This forces the injured party to choose between pursuing a compensation procedure under the condition to disclose their identity or forgoing proceedings for the sake of compensation. In response to such a legal solution, practice has led to the development of the following protocol:¹⁸ **1)** The lawsuit is filed with the court under a pseudonym, without a power of attorney or any documentation that could potentially disclose the plaintiff’s identity. **2)** A request is then submitted to the court, seeking the removal of identity protection measures (in accordance with Article 13, paragraph (3) of the Law on Protection of Witnesses under Threat and Vulnerable Witnesses), in order to facilitate the conduct of civil proceedings. **3)** Once the court issues a decision removing the identity protection measures, it is forwarded to the judge presiding over the civil proceedings, along with information on the plaintiff’s identity. In this manner, only the judge becomes aware of the plaintiff’s identity, thereby fulfilling the formal requirement of the lawsuit – that the identity of the plaintiff be disclosed. **4)** The civil proceedings then continue with due regard for the protection of the injured party’s identity in relation to the defendant. A similar practice has been applied in enforcement proceedings. This practice has been tacitly established and accepted by both attorneys and the courts. However, it is a product of the attorney’s good will and ingenuity, and as such, it cannot be considered a permanent solution or solution upon which any individual can reliably depend before any court in BiH. Also, regardless of whom the removal of identity protection measures applies to or who becomes aware of the plaintiff’s identity (in this case, the judge in the civil proceedings), this still results in the re-traumatisation of civilian victims of war/victims of wartime torture and exposes them to fear due to a sense of vulnerability – both from the perpetrator of the criminal offence and from public authorities that failed to protect this vulnerable

¹⁷ OSCE Mission to BiH, *Nearly 30 years following the end of the war in Bosnia and Herzegovina, war victims remain neglected*, dated 18 January 2024. Available at: <https://www.osce.org/mission-to-bosnia-and-herzegovina/561697> (accessed on: 20 March 2025). The practice of not awarding compensation to civilian victims of war in criminal cases was also criticised by the High Representative. See *65th Report of the High Representative for Implementation of the Peace Agreement on Bosnia and Herzegovina to the Secretary-General of the UN*, dated 15 May 2024, para. 127. Available at: <https://www.ohr.int/65th-report-of-the-high-representative-for-implementation-of-the-peace-agreement-on-bosnia-and-herzegovina-to-the-secretary-general-of-the-un/> (accessed on: 20 March 2025).

¹⁸ Kanita Pruščanović, Anisa Ruhotina, *Kontinuitet zaštite oštećenog krivičnim djelom u sistemu krivičnog i građanskog pravosuđa: prevencija sekundarne viktimizacije u svjetlu najnovijih izmjena Zakona o parničnom postupku pred Sudom Bosne i Hercegovine*, *Zbornik radova Pravnog fakulteta u Splitu*, god. 60, 4/2023, pg. 794-795. Available at: <https://hrcak.srce.hr/311846> (accessed on: 20 March 2025).

social group from trauma. In such cases, the civilian victim of war/victim of wartime torture often fears that the perpetrator may learn their identity as a result of the initiated civil proceedings. At the same time, there is fear that their family and the broader community, if they are not already aware, might learn about their wartime experience, as well as the details of the testimony given in court about that experience or the torture they endured.

When adopting the Law on Amendments to the Civil Procedure Code before the Court of BiH, the state legislator took into account¹⁹ that its adoption ensures the “continuous protection of identity during subsequently initiated civil proceedings,” the equal right of all victims to an effective legal remedy in exercising their right to compensation for damages, and the prevention of re-victimisation and re-traumatisation of injured parties.

The Association “Women Victims of War” Sarajevo emphasised²⁰ that referring injured parties *has serious emotional and psychological consequences. Many women experience re-traumatisation, feel emotionally drained and exploited, and are generally in financially precarious situations, which further complicates their ability to engage in legal proceedings.* Regarding the willingness of injured parties to waive identity protection measures, the Association’s members are generally unwilling to undertake such proceedings due to concerns for their *safety and fear for their own lives and the lives of their family members.* In the words of a representative of the Association: *These women do not feel ready to face the risks that the proceedings may bring.* For this reason, the Association believes that public authorities, *which should provide protection, particularly to witnesses and injured parties through legal frameworks and judgments, have unfortunately failed to fulfil their promises. This population has never received the attention it deserves. Therefore, individuals who continue to fight for their rights in the courts today are sending a clear message – once they leave the courtroom, they are left to fend for themselves, without any protection or support.* On the other hand, even when civilian victims of war/victims of wartime torture initiate proceedings, the process *is extremely lengthy.* Moreover, *existing practice shows that even when the proceedings are completed and the injured party is awarded financial compensation for the harm suffered, additional obstacles arise. Namely, convicted perpetrators often claim they have no means or assets to pay the compensation, and it is well known that many of them, aware that they would be prosecuted, transferred their assets to other persons or concealed their financial traces in time.* Thus, the issue of initiating proceedings by persons under identity protection measures is closely intertwined with other procedural guarantees, including the possibility of forced collection of the awarded compensation for non-pecuniary damage or providing a substitute through a public fund, as required of the State of Bosnia and Herzegovina by both the European Commission (EC) and the UN Committee against Torture.²¹ Among other things, the UN Committee against Torture has obligated the State of BiH to establish “an effective reparation scheme

¹⁹ See the explanatory note of the Law on Amendments to the Civil Procedure Code before the Court of BiH, available at: <https://www.parlament.ba/session/GetOwisDocument?id=140647> (accessed on: 20 March 2025).

²⁰ Electronic correspondence dated 6 March 2025. In the author’s archive.

²¹ See: UN Committee against Torture, *Decision adopted by the Committee under Article 22 of the Convention, concerning communication No. 854/2017*, dated 2 August 2019, para. 7.5. Available at: <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6FHiXpUB%2f0IEISG6udNxjyzZZtfk%2fG6Ka%2f0fg-7CUDah6tyLTH2R8PqrATxr95KSdj7gR4dvM8nQsYvMYK%2beRGYsJtVKR9NMRS052Rw2ctF0%3d> (accessed on: 20 March 2025). European Commission, *Commission Staff Working Document: Analytical Report accompanying the document Commission Opinion on Bosnia and Herzegovina’s application for membership of the European Union*, SWD(2019) 22 final, dated 29 May 2019, pg. 44. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52019SC0222> (accessed on: 20 March 2025).

at the national level to provide all forms of redress to victims of war crimes, including sexual violence.²² Despite two attempts (in May and June 2024), the Council of Ministers of BiH has yet to fulfil this or any of the other three remaining recommendations issued by the UN Committee against Torture.

In conclusion, civilian victims of war/victims of wartime torture who have been granted identity protection measures in criminal proceedings are deprived of their right to access the courts and, consequently, their right to justice in civil proceedings. Their rights remain illusory and abstract, rather than efficient and effective, as required by the European Court of Human Rights (ECtHR). It is important to recall that civilian victims of war/victims of wartime torture belong to the most vulnerable groups in society, having suffered the gravest violations of international humanitarian law.

2.1. INTERNATIONAL RESPONSE TO BIH PRACTICE

The UN Special Rapporteur criticised the practice of courts that neglect to award compensation to civilian victims of war/victims of wartime torture in criminal proceedings, instead referring them to civil proceedings. According to the Rapporteur, protection mechanisms are not available in civil proceedings, which has led to instances of revelation of the identities of the injured parties – civilian victims of war/victims of wartime torture.²³

In its Opinion on BiH's application for EU membership, the European Commission calls for improvements to the compensation system for civilian victims of war,²⁴ including better protection of the identity of victims and witnesses in civil proceedings.²⁵ In 2017, one of the recommendations made by the European Commission during a meeting of the Subcommittee on Justice, Freedom and Security (a body established under the Stabilisation and Association Agreement) was that public authorities should "plan amendments to the civil procedure code regarding the protection of witness identity in civil proceedings."²⁶

²² UN Committee against Torture, *Decision adopted by the Committee under Article 22 of the Convention, concerning communication No. 854/2017*, dated 2 August 2019, para. 9. Available at: <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6FHiXpUB%2f0IEISG6udNxjyzZZtfk%2fG6Ka%2f0fg7CUDah6tyLTH2R8PqrATx-r95KSdj7gR4dvm8nQsYvMYK%2beRGYsJtVKR9NMRS052Rw2ctF0%3d> (accessed on: 20 March 2025).

²³ *Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence on his visit to Bosnia and Herzegovina*, A/HRC/51/34/Add.2, para. 57. Available at: <https://docs.un.org/en/A/HRC/51/34/Add.2> (accessed on: 20 March 2025).

²⁴ European Commission, *Commission Opinion on Bosnia and Herzegovina's application for membership of the European Union*, COM(2019) 261 final dated 29 May 2019, pg. 10. Available at: <https://enlargement.ec.europa.eu/system/files/2019-05/20190529-bosnia-and-herzegovina-opinion.pdf> (accessed on: 20 March 2025).

²⁵ European Commission, *Commission Staff Working Document: Analytical Report accompanying the document Commission Opinion on Bosnia and Herzegovina's application for membership of the European Union*, SWD(2019) 22 final, dated 29 May 2019, pg. 45. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52019SC0222> (accessed on: 20 March 2025).

²⁶ Second meeting of the Subcommittee on Justice, Freedom and Security, Brussels, 30 November – 1 December 2017, Recommendations of the European Commission. Available at: https://www.dei.gov.ba/uploads/documents/pododbor-za-pravdu-slobodu-i-sigurnost-drugi-sastanak-brisel-3011-i-112-2017_1604486138.pdf (accessed on: 20 March 2025). Repeated in: Third meeting of the Subcommittee on Justice, Freedom and Security, Banja Luka, 28/29 November 2018, Recommendations of the European Commission (Recommendation No. 24) (Available at: https://www.dei.gov.ba/uploads/documents/pododbor-za-pravdu-slobodu-i-sigurnost-treci-sastanak-banja-luka-28-i-29112018_1604486144.pdf (accessed on: 20 March 2025)).

The UN Human Rights Committee expressed concern over the fact that victims are seeking compensation in civil proceedings without adequate protection.²⁷ In the context of human rights protection, an important issue that has not been sufficiently addressed in previous research relates to the right of access to court for injured parties who are granted identity protection measures. By failing to fulfil their positive obligation – to integrate special provisions into the civil procedure codes – the public authorities have effectively deprived such injured parties of their right of access to court and the exercise of their civil right to compensation (Article 6(1) of the European Convention on Human Rights), while human rights and freedoms must be efficient and practical, not illusory and abstract. This constitutes a human rights-based argument that justifies insisting on amendments to the entity-level civil procedure codes, or alternatively, initiating a procedure for abstract review of the constitutionality of the laws on civil and enforcement procedure.

Faced with the inaction of public authorities in the entities, it is necessary to develop new strategies of action. Action within the state of BiH, supported by international response, should be directed toward several strategic steps: **1)** training of lawyers (organised by bar associations) and judges (carried out by the entity-level Judicial and Prosecutorial Training Centres – JPTCs); **2)** legislative response (both in the field of civil and enforcement law), and in the absence thereof, constitutional litigation; **3)** engagement of the Supervisory Body monitoring the implementation of the Revised National War Crimes Processing Strategy.

2.2. TRAINING OF LAWYERS AND JUDGES

Bar associations, as well as the entity-level Judicial and Prosecutorial Training Centres, must direct their resources, in cooperation with civil society organisations, toward training judges and lawyers about the existing practice of handling proceedings involving civilian victims of war who are witnesses under identity protection measures. This practice should be promoted and accepted by the courts in order to ensure access to court for civilian victims of war.

2.3. LEGISLATIVE RESPONSE AND CONSTITUTIONAL LITIGATION

There is no justification for the entities to refrain from amending their laws on civil and enforcement procedure, especially given that they equally participated in the process of preparing the legislative amendments. A departure from adopting the proposed legal solutions, which have already been adopted at the level of BiH and BD BiH, raises serious concerns about the entities' obligation to ensure the highest level of internationally recognised human rights (Article II paragraph (1) of the Constitution of BiH), and to assist BiH in fulfilling its international obligations, including those related to the process of European integration (Article III paragraph (2) item b of the Constitution of BiH). In the event of inaction of the entity legislator, proceedings should be initiated before the Constitutional Court of BiH against the entities for human rights violations, namely for failing to fulfil their positive obligation to establish a legal framework

²⁷ UN Human Rights Committee, *Concluding observations on the third periodic report of Bosnia and Herzegovina*, CCPR/C/BIH/CO/3 dated 13 April 2017, para. 17. Available at: <https://www.ohchr.org/en/documents/concluding-observations/ccprbihco3-concluding-observations-third-periodic-report-bosnia> (accessed on: 20 March 2025).

that enables the effective enjoyment of human rights, including the right of access to court, specifically in the case of injured parties who have been granted identity protection measures in criminal proceedings.

The Law on the High Judicial and Prosecutorial Council of BiH²⁸ (HJPC BiH) stipulates that the HJPC BiH has the authority to initiate the procedure for the adoption of laws. In this regard, civil society organisations must act jointly towards the HJPC BiH, so that through its coordinated actions at the entity level, it ensures the adoption of amendments to the civil procedure codes that are identical to those adopted at the level of BiH and BD BiH. In addition to the HJPC BiH, the Judicial Practice Harmonisation Panels, bodies established in 2014, may also initiate legislative amendments in cases where there is no harmonisation of legal solutions, resulting in inequality of citizens before the law (Article 3, paragraph 2 of the Rules of the Judicial Practice Harmonisation Panels),²⁹ as is the case in this particular legal matter.

2.4. IMPLEMENTATION OF THE REVISED NATIONAL WAR CRIMES PROCESSING STRATEGY

A Supervisory Body was established for the purpose of monitoring the effectiveness and quality of the implementation of measures under the Revised National War Crimes Processing Strategy.³⁰ Among other things, the Supervisory Body directs the work of authorities responsible for implementing strategic measures and provides guidelines for improving the implementation of the Strategy. Given that one of the strategic measures concerns the improvement of the legislative framework for the realisation of compensation claims in civil proceedings by witnesses under protection measures, the Supervisory Body should undertake additional activities to ensure that the competent entity ministries of justice implement the said measure – particularly since the deadline for its implementation has already expired. In this process, civil society organisations that participate in monitoring the implementation of the Revised Strategy once again play a significant role.

²⁸ Unofficial consolidated text available on the HJPC website: <https://vstv.pravosudje.ba/vstvfo/E/141/Article/8236> (accessed on: 20 March 2025).

²⁹ Available on the website: <https://csd.pravosudje.ba/vstvfo/B/142/Article/50694> (accessed on: 20 March 2025).no: 20. 3. 2025).

³⁰ Decision on the Establishment of the Supervisory Body for Monitoring the Implementation of the Revised National War Crimes Processing Strategy, Official Gazette of BiH, 28/23.

3. COLLECTION OF COSTS OF PROCEEDINGS AND ATTORNEY GENERAL'S FEES

The expectations arising from the Decision of the Constitutional Court of BiH on Admissibility and Merits in case number AP-1101/17 of 22 March 2018, that civilian victims of war (plaintiffs in compensation claims for damages suffered due to wartime events) in proceedings conducted against the entities (as defendants) would not bear an excessive burden as losing parties, particularly regarding the reimbursement of the costs of proceedings to the Office of the Attorney General, the legal representative of the entity, have proven to be unfulfilled. It is important to note that in the aforementioned case, the Constitutional Court of BiH, referring to the case before the European Court of Human Rights – *Cindrić and Bešlić v. Croatia*³¹ – found that although the court's decision to award the compensation of costs of proceedings to the Office of the Attorney General was lawful and legitimate, it was nevertheless disproportionate for the following reasons: **1)** the appellant's lawsuit, at the time of filing the claim against the defendant, was neither unreasonable nor unfounded; in fact, the appellant could have expected her lawsuit to be successful, since courts in BiH had diverging legal opinions regarding the legal norm she relied upon, including opinions under which such claims had previously been granted; **2)** the Office of the Attorney General is financed from the budget, placing it in a different position compared to a lawyer; **3)** the full amount of the awarded costs (BAM 3,000) is not insignificant, especially considering the plaintiff's financial circumstances, due to which she was exempted from paying the court fee.

For these reasons, the Constitutional Court of BiH found that the appellant's right to property had been violated (as the interference with that right was not proportionate), as well as her right to a fair trial, specifically the right of access to court. At this point, it is important to recall that in several of its decisions and rulings concerning non-enforcement of its decisions, the Constitutional Court of BiH has taken the following position:

"... the compliance with the final and binding decisions of the Constitutional Court relates not only to the enacting clause of the relevant decision but also to the legal opinion and the legal assessment as to what constitutional right has been violated and in what manner."³²

The Constitution of BiH stipulates that the human rights and freedoms set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms shall apply directly in BiH

³¹ Application number 72152/13, Judgement dated 6 September 2016. For an overview of ECtHR standards, see: *Novi stavovi Evropskog suda za ljudska prava kao putokaz za rješavanje pitanja naplate sudskih troškova od žrtava ratnih zločina u Bosni i Hercegovini*, available at: <https://trial.ba/wp-content/uploads/2021/02/Analiza-presude-Cindric-i-Beslic-u-bh.-kontekstu-TRIAL.pdf> (accessed on: 20 March 2025).

³² Decision on Admissibility and Merits of the Constitutional Court of BiH in case number U 8/19, para. 41. Decision of the Constitutional Court of BiH in case number U 3/13, dated 30 September 2016. Decision of the Constitutional Court of BiH in case number AP 289/03, dated 1 April 2006, para. 8. Decision of the Constitutional Court of BiH in case number AP 854/04 dated 1 June 2006, para. 8. In other decisions of the Constitutional Court of BiH, it is emphasised that the competent authority "shall be bound by the legal opinion of the Constitutional Court concerning the violation of the appellant's rights and freedoms guaranteed under the Constitution." See: Decision on Admissibility and Merits of the Constitutional Court of BiH in case number AP 2578/15, para. 84. Decision on Admissibility and Merits of the Constitutional Court of BiH in case number AP 699/15, para. 61. Decisions and rulings available on the website of the Constitutional Court of BiH.

and shall have priority over all other laws (Article II, paragraph (2) of the Constitution of BiH). It also states that all courts, agencies, governmental organs, and instrumentalities operated by or within the Entities, shall apply and conform to the human rights and fundamental freedoms (Article II, paragraph (6) of the Constitution of BiH). This means that, even in the absence of explicit legal provisions or arguments presented by the party, courts must directly apply the standards established in case AP-1101/17 when deciding on the reimbursement of costs and fees of the Office of the Attorney General.

At the same time, the Constitutional Court of BiH found that the provisions of the Civil Procedure Codes of the Republika Srpska and the FBiH, which stipulate that the provisions on costs and fees also apply to parties represented by the Office of the Attorney General, are in accordance with the Constitution of BiH.³³ However, in that decision, the Constitutional Court of BiH emphasised that “within the framework of abstract review of constitutionality, it will not examine how the contested legal provision might be applied in practice or what consequences might arise from its practical application” (para. 65 of the Decision).

3.1. INTERNATIONAL RESPONSE TO COURTS' PRACTICE IN BIH

The decisions of the Constitutional Court of BiH were supposed to put an end to the *legal torment* experienced by civilian victims of war who initiated proceedings seeking compensation for damages suffered during the 1990s war, damages caused by the entities themselves. However, according to reports and warnings issued by non-governmental organisations, international organisations, and the High Representative, this has not happened, primarily in the courts in the RS.

After his visit to Bosnia and Herzegovina in 2021, the UN Special Rapporteur noted that in a significant number of cases in the RS, the seizure of assets that had already been initiated continued.³⁴ He criticised this practice as “unethical,” “unacceptable,” and “contrary to the international standards on the protection of victims of serious violations of human rights and international humanitarian law.”³⁵ As a result, the UN Special Rapporteur issued the following recommendation to the BiH authorities: “Immediately halt (...) the imposition and forced collection of legal fees from victims whose claims have been unsuccessful. Immediately cancel the related debts imposed on victims, and compensate those who had their income or assets seized.”³⁶

The issue of the payment of legal costs to the Offices of the Attorney General was also raised during the Third Universal Periodic Review of the UN Human Rights Council in 2019. At that time, BiH was recommended to ensure in practice the right to compensation for victims – civilian victims of war – in civil and criminal proceedings (Recommendation No. 120.29), and support war victims, particularly victims of sexual violence, in proceedings aimed at securing adequate compensation (Recommendation No. 120.67).

³³ Decision of the Constitutional Court of BiH on Admissibility and Merits in case number U 16/18.

³⁴ *Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence on his visit to Bosnia and Herzegovina*, A/HRC/51/34/Add.2, para. 56. Available at: <https://docs.un.org/en/A/HRC/51/34/Add.2> (accessed on: 20 March 2025).

³⁵ *Ibid.*

³⁶ *Ibid.*, para. 110.

The Commissioner for Human Rights of the Council of Europe, following a visit to Bosnia and Herzegovina in 2017, expressed “serious concern” over the practices of domestic courts.³⁷ In 2023, the Commissioner highlighted cases of evictions of civilian victims of war from their properties due to their inability to bear court proceeding costs as a practice that is contrary to the principles of international human rights law.³⁸

The European Commission, in its Opinion on BiH’s application for EU membership, referred to the payment of court fees borne by civilian victims of war, stating: “This judicial practice, which has a particularly detrimental impact on women, should be discontinued.”³⁹ BiH was required to improve the system of redress for civilian victims of war.⁴⁰ Furthermore, in its *Bosnia and Herzegovina 2024 Report*, the European Commission noted that the Republika Srpska “has not taken measures to waive court fees for victims of wartime torture. As a worrying consequence, victims continue to face repossession of property for defaulting on payments.”⁴¹ In addition, the European Commission has repeatedly reiterated the following recommendations during meetings of the Subcommittee on Justice, Freedom and Security: “analyse the deterrent effects of high court fees charged in cases of unsuccessful civil proceedings”⁴² (2017), or “significantly improve the system of redress for civilian victims of wartime sexual violence and torture, particularly on subsidiary liability including application of statute of limitations against third persons and imposition and pursuit of court fees in related unsuccessful civil compensation claims”⁴³ (2019, 2022 and 2023) and “as a matter of urgent priority, waive court fee charges levied on victims of wartime torture in the

³⁷ Commissioner for Human Rights of the Council of Europe, *Commissioner for Human Rights of the Council of Europe Following His Visit to Bosnia and Herzegovina from 12 to 16 June 2017*, para. 36. Available at: <https://rm.coe.int/report-following-the-visit-to-bosnia-and-herzegovina-from-12-to-16-jun/16807642b1> (accessed on: 20 March 2025).

³⁸ Commissioner for Human Rights of the Council of Europe, *Dealing with the Past for a Better Future Achieving justice, peace and social cohesion in the region of the former Yugoslavia*, Council of Europe, Strasbourg: 2023, pg. 46. Available at: <https://www.coe.int/en/web/commissioner/-/dealing-with-the-past-for-a-better-future-resolute-efforts-on-dealing-with-the-violent-past-are-required-in-the-region-of-the-former-yugoslavia> (accessed on: 20 March 2025).

³⁹ European Commission, *Commission Staff Working Document: Analytical Report accompanying the document Commission Opinion on Bosnia and Herzegovina’s application for membership of the European Union*, SWD(2019) 22 final, dated 29 May 2019, pg. 45. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52019SC0222> (accessed on: 20 March 2025).

⁴⁰ European Commission, *Commission Opinion on Bosnia and Herzegovina’s application for membership of the European Union*, COM(2019) 261 final dated 29 May 2019, pg. 10. Available at: <https://enlargement.ec.europa.eu/system/files/2019-05/20190529-bosnia-and-herzegovina-opinion.pdf> (accessed on: 20 March 2025).

⁴¹ European Commission, *Bosnia and Herzegovina 2024 Report*, SWD(2024) 691 final, dated 30 October 2024, pg. 37. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52024SC0691> (accessed on: 20 March 2025).

⁴² Second meeting of the Subcommittee on Justice, Freedom and Security, Brussels, 30 November – 1 December 2017, *Recommendations of the European Commission*. Available at: https://www.dei.gov.ba/uploads/documents/pododbor-za-pravdu-slobodu-i-sigurnost-drugi-sastanak-brisel-3011-i-112-2017_1604486138.pdf (accessed on: 20 March 2025).

⁴³ Fourth meeting of the Subcommittee on Justice, Freedom and Security, Brussels, 5 – 6 December 2019, *Recommendations of the European Commission*. Available at: https://www.dei.gov.ba/uploads/documents/jfs-preporuke-4-sastanak-brisel-5-6122019_1616673203.pdf (accessed on: 20 March 2025). Identical to: Fifth meeting of the Subcommittee on Justice, Freedom and Security, Sarajevo – via interaction/video conference, 17 – 18 December 2020. Sixth meeting of the Subcommittee on Justice, Freedom and Security, Brussels (virtual meeting), 8 – 9 December 2022. Seventh meeting of the Subcommittee on Justice, Freedom and Security, Sarajevo (hybrid meeting), 6 – 7 December 2023. Recommendations in the author’s archive.

Republika Srpska entity due to application of statute of limitation to their compensation claims"⁴⁴ (2023).

The Alternative Report on BiH's Progress on the European Union Membership Path for the period April 2023 – July 2024⁴⁵ states that "upon the rejection of the request for non-material damage compensation, the decision on the collection of court expenses is nonetheless issued to the victims." Such situations cause severe re-traumatisation and increase the financial burden on survivors. Furthermore, it is highlighted that TRIAL International – Office in BiH recorded a rise in legal aid requests from civilian victims of war/victims of wartime torture in early 2024.

The High Representative, in his most recent periodic report to the UN Security Council (November 2024), stated that "the courts in the Republika Srpska continue the practice of seeking reimbursement for court costs from victims of war who were barred by statutes of limitations from seeking compensation through civil proceedings. All other levels in Bosnia and Herzegovina ceased this practice following relevant ECtHR and Bosnia and Herzegovina Constitutional Court rulings."⁴⁶ The High Representative emphasised: "Obliging victims of war to pay thousands of convertible marks of court fees to the very entities they had initially sued, asking them to compensate for the harm they suffered lead to grave re-traumatisation and aggravate the already difficult socio-economic situation in which they find themselves, predominantly in returnee communities."⁴⁷

Given that the courts, as well as the offices of the attorney general, primarily those in the RS, have failed to implement the standards and legal opinions of the Constitutional Court of BiH, as evidenced by the Court's subsequent case law,⁴⁸ it is necessary to develop new strategies of action. The first is the training of judges, to be carried out by the entity-level judicial and prosecutorial training centres, as well as of staff in the offices of the attorney general; the second is a legislative response; and the third is action of the HJPC BiH through the Judicial Practice Harmonisation Panels.

⁴⁴ Seventh meeting of the Subcommittee on Justice, Freedom and Security, Sarajevo (hybrid meeting), 6 – 7 December 2023.

⁴⁵ Alen Gudalo, Edo Kanlić, Snježana Ivandić Ninković, Vesna Ilićtarvić (ed.), *Alternative Report on Bosnia and Herzegovina's Progress on the European Union Membership Path for the period April 2023 – July 2024*, Sarajevo Open Centre, Sarajevo: 2024, pg. 20. Available at: <https://eu-monitoring.ba/en/alternative-report-on-bosnia-and-herzegovinas-progress-on-the-european-union-membership-path-april-2023-july-2024/> (accessed on: 20 March 2025). Similar in: Adrijana Hanušić Bećirović, Ajna Mahmić, Amina Hujdur, Lamija Tiro, *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, Sarajevo: 2022, pg. 62. Available at: https://trialinternational.org/wp-content/uploads/2022/03/GSFRReportBiH_ENG_Web.pdf (accessed on: 20 March 2025).

⁴⁶ *65th Report of the High Representative for Implementation of the Peace Agreement on Bosnia and Herzegovina to the Secretary-General of the UN*, dated 15 May 2024, para. 130. Available at: <https://www.ohr.int/65th-report-of-the-high-representative-for-implementation-of-the-peace-agreement-on-bosnia-and-herzegovina-to-the-secretary-general-of-the-un/> (accessed on: 20 March 2025). *66th Report of the High Representative for Implementation of the Peace Agreement on Bosnia and Herzegovina to the Secretary-General of the UN*, dated 1 November 2024, para. 130. Available at: <https://www.ohr.int/66th-report-of-the-high-representative-for-implementation-of-the-peace-agreement-on-bosnia-and-herzegovina-to-the-secretary-general-of-the-un-2/> (accessed on: 20 March 2025).

⁴⁷ *66th Report of the High Representative for Implementation of the Peace Agreement on Bosnia and Herzegovina to the Secretary-General of the UN*, od 1. 11. 2024, para. 130. Available at: <https://www.ohr.int/66th-report-of-the-high-representative-for-implementation-of-the-peace-agreement-on-bosnia-and-herzegovina-to-the-secretary-general-of-the-un-2/> (accessed on: 20. 3. 2025).

⁴⁸ See Decision on Admissibility and Merits in case number AP-1289/20, available on the website of the Constitutional Court of BiH: <https://www.ustavisud.ba/uploads/odluke/AP-1289-20-1306747.pdf>.

The urgency of strategic action is particularly evident in the fact that, behind the aforementioned legal standards, which place the victim – the civilian victim of war – at the centre of the process of reparation and transitional justice in a post-conflict society, lies the tangible and visible human suffering of the most vulnerable social groups. Members of the Association of Camp Detainees “Omer Filipović” Ključ, which has recorded 50 members facing such legal issues, point out⁴⁹ that being ordered to pay the legal costs of the Office of the Attorney General is experienced as *torture, harassment, and a kind of return to the camps*, as well as a *victory* for those who originally and unlawfully detained them. This drives civilian victims of war into a state of *despair, social exclusion, and apathy*. In addition to these internal emotions, the collection of legal costs owed to the Office of the Attorney General generates *economic oppression* of civilian victims of war, as well as their *social stigmatisation*, both in the workplace and within their families and communities, who witness the arrival and presence of court enforcement officers. Moreover, family members living in the same household with a civilian victim of war experience a form of *traumatisation* when confronted with court enforcement officers. Although there was an informal agreement with enforcement officers to compile inventories of movable assets discreetly – while household members were not at home, i.e., *under the radar* – this again pushed civilian victims of war into a state of *helplessness* and the *re-experiencing of trauma*. The second level of trauma is the public auction as the method of sale that follows the inventory of movable assets. At this stage of the procedure, civilian victims of war experience anxiety, stress, and fear, and *we all pray to God that the auction notices go unnoticed as much as possible*. To summarise in the words of members of the Association of Camp Detainees “Omer Filipović”: *In the camps, we felt helpless and miserable, and now, by the will of some court or the state, it is happening all over again*.

Associations of civilian victims of war, which provide *amateur legal aid, moral support, and psychosocial assistance, speak with employers, enforcement officers, and judges, and attempt to generate public response through public appearances, are the only bright spots in their nightmare*. As for expectations from public authorities, the very least that civilian victims of war expect is that the state covers the costs they are forced to pay due to losing a case. In this context, the argument is often made that exceptionally large financial resources are allocated for the defence of individuals accused of war crimes, while, in contrast, there is a lack of adequate financial support in cases like these. In conclusion, according to the Association of Camp Detainees “Omer Filipović,” one of the reasons why a timely and stronger response to this issue has been lacking is the absence of understanding from the umbrella – state-level – associations of civilian victims of war. Had there been a strategy guiding their actions, the reaction of public authorities would have been different.

The Association of Camp Detainees of the Tuzla Canton, although it does not have the exact number of members or cases in which enforcement proceedings were or are being conducted for the collection of legal costs and fees awarded to the Office of the Attorney General, states⁵⁰ that there are several thousand cases with final judgements, and *even more* in the enforcement phase. Similar to the Association of Camp Detainees from Ključ, their view is that civilian victims of war suffer *severe psychological and financial consequences* due to the failure of court proceedings. In parallel with the *psychological, material, and physical consequences* of their time spent in detention camps, civilian victims of war are additionally burdened with *legal torment*, as a result of which they feel *miserable, powerless, worthless, and abandoned by the state of BiH*. Faced with the threat of forced execution of a judgement that obliges them to reimburse the costs of proceedings and the fee of the Office of the Attorney General, civilian victims of war *wander*

⁴⁹ E-mail correspondence from 3 and 24 March 2025. In the author’s archive.

⁵⁰ E-mail correspondence from 24 March 2025. In the author’s archive.

from institution to institution, hoping to find help for the misery and hardship that has befallen them. At such times, non-governmental organisations mostly provide legal assistance, which is *ineffective* (as it is not recognised by the courts), while families suffer *psychological and material abuse* along with the victims. According to the Union of Concentration Camp Detainees, *all levels of government have failed the victims*. Civilian victims of war, faced with the obligation to pay legal fees to the Office of the Attorney General, expected *support and a solution from public authorities, as this is a unique case in the world in which a victim must pay for the crimes committed against them*. In addition, civilian victims of war are losing faith even in victims' associations, which initiated legal proceedings on their behalf through powers of attorney. In summary, the civilian victim of war *loses hope in justice, becoming collateral damage, betrayed by both the authorities and the associations*. Finally, it should be noted that additional trauma is also suffered by individuals employed in associations of civilian victims of war, as they listen daily to the testimonies and experiences of victims, whom they can hardly help.

3.2. TRAINING OF JUDGES AND STAFF IN THE OFFICES OF ATTORNEY GENERAL

The entity-level JPTCs are responsible for the continuous training of judges and prosecutors within the judicial authorities of the entities. A review of the initial training and professional development programmes for judges and prosecutors from 2019 to 2024 in both entity JPTCs⁵¹ reveals that no specific training was organised on the understanding and application of the standards set by the Constitutional Court of BiH in case number AP-1101/17. Furthermore, this topic was not included as part of any general or related topic (e.g., costs of civil proceedings or current issues in civil proceedings).⁵²

⁵¹ For programmes, see the website of JPTC FBiH: <https://www.fbih.cest.gov.ba/> (accessed on: 20 March 2024) and RS JPTC: <https://rs.cest.gov.ba/> (accessed on: 20 March 2025).

⁵² See (1) Public Institution FBiH Judicial and Prosecutorial Training Centre, *Program stručnog usavršavanja i početne obuke za 2020. godinu*, Public Institution FBiH Judicial and Prosecutorial Training Centre, Sarajevo: 2022, pg. 107. Available at: <https://www.fbih.cest.gov.ba/index.php/dokumenti-centra/category/9-programi-obuke?download=407:program-obuke-za-2020-godinu> (accessed on: 20 March 2025). The programme included the implementation of a seminar titled "Costs of Civil Proceedings" for judges. The seminar covered the following topics: right of access to court, principle of cost-effectiveness of proceedings, procedural discipline of the parties, costs of parties and other procedural subjects, and criteria for individual costs. In the section titled "Seminar Objective," it is stated: Although certain issues related to the costs of proceedings have been addressed within the Judicial Practice Harmonisation Panels in civil matters, judicial practice regarding the costs of proceedings across BiH remains inconsistent (even the Constitutional Court of BiH has changed its practice regarding this issue – see Decision of the Constitutional Court of BiH No. AP-4828/16 dated 6 December 2018). (2) Public Institution FBiH Judicial and Prosecutorial Training Centre, *Program stručnog usavršavanja i početne obuke za 2022. godinu*, Public Institution FBiH Judicial and Prosecutorial Training Centre, Sarajevo: 2021, pg. 52 and 118. Available at: <https://www.fbih.cest.gov.ba/index.php/dokumenti-centra/category/9-programi-obuke?download=500:program-obuke-za-2022-godinu> (accessed on: 20 March 2025). The programme included the implementation of a seminar titled "Costs of Civil Proceedings," covering the following topics: costs of civil proceedings, value of the dispute, and judicial practice. The aim of the seminar was to present to participants the issue of costs of proceedings as one of the requirements during civil proceedings, and their connection to the value of the subject matter of the dispute, which is a mandatory element of a lawsuit. The seminar was organised as a joint activity of the entity-level JPTCs and the Judicial Academy of the BD BiH. Additionally, a seminar titled "Current Issues in Civil Proceedings" was also planned.

Therefore, it is necessary for non-governmental organisations, either directly or through the HJPC BiH, to exert pressure for the organisation of a seminar focused on the determination of the costs of civil proceedings in cases where one of the parties is the Office of the Attorney General or is represented by the Office. Such seminars could be organised by JPTCs in cooperation with non-governmental organisations, which is in line with previous practice in the work of the JPTCs.

On the other hand, Offices of the Attorney General should, either independently or in cooperation with non-governmental organisations such as TRIAL International, organise training sessions to ensure compliance with the Constitution of BiH and human rights protection standards, bearing in mind their obligation to uphold human rights as stipulated in Article II, paragraph (6) of the Constitution of BiH.

One of the topics of this seminar was "Costs of Proceedings and the Application of Legal Opinions of the Judicial Practice Harmonisation Panels." (3) Public Institution FBiH Judicial and Prosecutorial Training Centre, *Program stručnog usavršavanja i početne obuke za 2023. godinu*, Public Institution FBiH Judicial and Prosecutorial Training Centre, Sarajevo: 2022, pg. 101-102. Available at: <https://www.fbih.cest.gov.ba/index.php/dokumenti-centra/category/9-programi-obuke?download=544:program-obuke-za-2023-godinu> (accessed on: 20 March 2025). The programme included a seminar on "Current Issues in Civil Proceedings." One of the topics of this seminar was "Costs of Proceedings and the Application of Legal Opinions of the Judicial Practice Harmonisation Panels." (4) Public Institution FBiH Judicial and Prosecutorial Training Centre, *Program stručnog usavršavanja i početne obuke za 2024. godinu*, Public Institution FBiH Judicial and Prosecutorial Training Centre, Sarajevo: 2023, pg. 119-120. Available at: <https://www.fbih.cest.gov.ba/index.php/dokumenti-centra/category/9-programi-obuke?download=564:program-obuke-2024> (accessed on: 20 March 2025). The programme included a seminar on "Current Issues in Civil Proceedings." One of the topics of this seminar was "Costs of Proceedings and the Application of Legal Opinions of the Judicial Practice Harmonisation Panels." (5) Public Institution FBiH Judicial and Prosecutorial Training Centre, *Program početne obuke i program stručnog usavršavanja za 2024. godinu*, Public Institution FBiH Judicial and Prosecutorial Training Centre, Sarajevo: 2023, pg. 119-120. Available at: <https://www.fbih.cest.gov.ba/index.php/dokumenti-centra/category/9-programi-obuke?download=564:program-obuke-2024> (accessed on: 20 March 2025). The programme included a seminar on "Current Issues in Civil Proceedings." One of the topics of this seminar was "Costs of Proceedings and the Application of Legal Opinions of the Judicial Practice Harmonisation Panels." (6) Public Institution "RS Judicial and Prosecutorial Training Centre," *Program stručnog usavršavanja i početne obuke za 2025. godinu*, Public Institution "RS Judicial and Prosecutorial Training Centre," Banja Luka, pg. 29. Available at: <https://rs.cest.gov.ba/wp-content/uploads/2025/01/Program-2025.pdf> (accessed on: 20 March 2025). A seminar titled "Proceedings Before the Second-Instance Court in Civil Proceedings" was also planned, with costs of proceedings included as one of its topics. (7) Public Institution "RS Judicial and Prosecutorial Training Centre," *Program stručnog usavršavanja i početne obuke za 2024. godinu*, Public Institution "RS Judicial and Prosecutorial Training Centre," Banja Luka, pg. 30-32. Available at: https://rs.cest.gov.ba/wp-content/uploads/2024/05/Program_2024.pdf accessed on: 20 March 2025. The programme included a seminar titled "Means of Evidence and Costs of Civil Proceedings," with one of its six topics being "Decision-Making on Costs of Proceedings." Another seminar, "Proceedings Before the Second-Instance Court in Civil Proceedings," also touched upon the topic of "Costs of Proceedings." The RS JPTC training programmes for 2023, 2022, 2021, and 2019 are not publicly available. The Initial Training and Professional Development Programme for 2020 contains no indication of any seminar addressing the topic of the costs of proceedings. See: Public Institution RS Judicial and Prosecutorial Training Centre, *Program stručnog usavršavanja i početne obuke za 2020. godinu*, Public Institution RS Judicial and Prosecutorial Training Centre, Banja Luka. Available at: <https://portalfo1.pravosudje.ba/vstvfo-api/vijest/download/60866> (accessed on: 20 March 2025).

3.3. LEGISLATIVE RESPONSE

On 15 September 2020, the House of Representatives of the Parliamentary Assembly of BiH adopted an initiative “recommending that the competent state, entity, and Brčko District institutions (governments and legislative bodies) prepare and adopt amendments to the civil procedure codes to include provisions on exemption from payment of the costs of proceedings, including the amount that would otherwise be awarded to the party as attorney’s fees in cases where the party is represented by the Office of the Attorney General, in line with the judicial practice of the European Court of Human Rights.”⁵³

In light of this initiative, the FBiH Draft Law on Amendments to the Civil Procedure Code was submitted into parliamentary procedure in the House of Peoples of the FBiH Parliament.⁵⁴ The explanatory note accompanying the Draft Law states that the positions of the European Court of Human Rights and the Constitutional Court of BiH regarding the collection of costs of proceedings and Office of the Attorney General’s fees are applied in the judgements of certain regular courts and/or individual judges, but only exceptionally – and typically in cases where the plaintiff presents strong legal arguments and requests. The strength of these arguments, however, depends on several factors: whether the plaintiff had access to adequate legal assistance, whether the plaintiff or their legal representative possesses sufficient knowledge of judicial practice and international standards, and whether those arguments were properly presented before the court.⁵⁵ At the same time, the final outcome depends on the knowledge and willingness of judges to apply the legal opinions and standards of the Constitutional Court of BiH and the ECtHR. The result of such judicial practice is an unequal outcome of civil proceedings in similar factual circumstances, which generally leads to inequality before the law and legal uncertainty among the citizens of the FBiH. Ultimately, citizens can protect their rights in such situations only through proceedings before the Constitutional Court of BiH. Access to this court depends on the persistence and awareness of the party, adequate legal assistance, their financial means, availability of time resources, since the proceedings may last several years, and above all, it does not postpone the forced collection of costs (except in exceptional circumstances when the Constitutional Court of BiH issues a decision on temporary measures). The proposed amendments to the FBiH Civil Procedure Code provide that: **1)** the Office of the Attorney General shall be denied the right to claim a fee in civil proceedings, modelled after the Institution of Human Rights Ombudsman, when it appears as a party to the proceedings; **2)** the court shall not order a party to pay a fee to the Office of the Attorney General when it appears as the party’s representative, if such payment would impose a disproportionate burden on the party and result in a violation of the right to property and access to court; and **3)** when deciding on the payment of a fee to the Office of the Attorney General, the court shall take into account all circumstances of the specific case,

⁵³ See: *Zapisnik 12. sjednice Predstavničkog doma Parlamentarne skupštine BiH, održane 15. 9. 2020*. Available at: <https://www.parlament.ba/session/OSessionDetails?id=2059&ConvernerId=1> (accessed on: 20 March 2025).

⁵⁴ Available at: https://parlamentfbih.gov.ba/v2/userfiles/file/Materijali%20u%20proceduri_2025/Nacrt%20Zakona-Aida%20Obu%C4%87a.pdf (accessed on: 20 March 2025). The proposed provisions are identical to those submitted in April 2022 by Members of the House of Representatives of the FBiH Parliament, Adnan Efendić and Adisa Kokić-Hinović. See: https://parlamentfbih.gov.ba/v2/userfiles/file/pisma_pd_22_26/Pismo-PD-izm-dop-Parnicni-postupak-Efendic-Hinovic.pdf (accessed on: 20 March 2025).

⁵⁵ “At the time of writing the Study, in many cases it also seems that the possibilities for protection of their rights in court are almost non-existent due to the fact that their legal representatives did not present the necessary arguments in time or use the necessary legal remedies.” Adrijana Hanušić Bećirović, Ajna Mahmić, Amina Hujdur, Lamija Tiro, *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, Sarajevo: 2022, pg. 62. Available at: https://trialinternational.org/wp-content/uploads/2022/03/GSFReportBiH_ENG_Web.pdf (accessed on: 20 March 2025).

particularly whether the party has been exempted from paying the costs of the proceedings. Considering the standards established in case AP-1101/17, it would be appropriate under point 3) to include other circumstances as particularly relevant, such as the financial situation of the party and the prevailing judicial practice at the time of filing the lawsuit – specifically, whether it was unfounded and lacked any reasonable basis for partial or complete success.

The Law on the High Judicial and Prosecutorial Council of BiH⁵⁶ stipulates that the HJPC BiH has the authority to initiate the procedure for the adoption of laws. In this regard, the HJPC BiH should be one of the key bodies to act, working in a coordinated manner across all levels of government to ensure the adoption of harmonised amendments to the civil procedure codes. In addition to the HJPC BiH, the Judicial Practice Harmonisation Panels, bodies established in 2014, also have the authority to initiate legislative amendments in situations where a lack of harmonisation of legal solutions results in unequal treatment of citizens before the law (Article 3, paragraph 2 of the Rules of the Panel).

3.4. JUDICIAL PRACTICE HARMONISATION PANELS

As a result of the Structured Dialogue on Justice between BiH and the EU, panels were established in 2014 as platforms for the harmonisation of judicial practice and for facilitating dialogue among the highest courts in BiH on the challenges they face in their work. When there is harmonisation of legal norms (as is the case with the relevant provisions of all four civil procedure codes),⁵⁷ but differences arise in their interpretation, the panel is tasked with harmonising legal views and issuing legal opinions (Article 3, paragraph 1 of the Rules of the Panel).⁵⁸ One of the areas in which a panel may be formed is civil law. The panel is composed of judges from the Appellate Division of the Court of BiH, the Appellate Court of the Brčko District of BiH, and the supreme courts of the entities. The legal opinions adopted by the Panel are binding for the courts (the supreme courts of the entities, the Court of BiH, and the Appellate Court of BD BiH) and are advisory for lower-instance courts.⁵⁹ These legal opinions are distributed to the courts and publicly published on the website of the HJPC BiH Court Documentation Department (Article 17 of the Panel Rules). The Judicial Practice Harmonisation Panel in civil law has already addressed issues related to the costs of proceedings (such as in cases of partial success of the parties in civil proceedings).⁶⁰ This creates a clear opportunity for the Panel to adopt a relevant legal position concerning costs of proceedings and fees awarded to the Office of the Attorney General in cases where the legal positions of the Constitutional Court of BiH are applicable. An additional reason to insist on the Panel adopting such a legal opinion is the particular attention that entity-level JPTCs pay to the legal opinions in their annual training programs.⁶¹

⁵⁶ Unofficial consolidated text available on the HJPC website: <https://vstv.pravosudje.ba/vstvfo/B/141/Article/8236> (accessed on: 20 March 2025).

⁵⁷ See: Article 395 of the FBiH Civil Procedure Code (Official Gazette of FBiH, 53/03, 73/05, 19/06, 98/15); Article 332 of the Civil Procedure Code before the Court of BiH (Official Gazette of BiH, 36/04, 84/07, 58/13, 94/16, 34/21); Article 129 of the Civil Procedure Code of the BD BiH (Official Gazette of the BD BiH, 28/18, 6/21); Article 395 of the RS Civil Procedure Code (Official Gazette of the RS, 58/03, 85/03, 74/05, 63/07, 105/08 – Decision of the Constitutional Court, 45/09 – Decision of the Constitutional Court, 49/09, 61/13, 109/21 – Decision of the Constitutional Court, 27/24).

⁵⁸ Available on the website: <https://csd.pravosudje.ba/vstvfo/B/142/Article/50694>, accessed on: 20 March 2025.

⁵⁹ Article 15, paragraph (3) of the Rules.

⁶⁰ Pravno shvatanje: *Naknada troškova u slučaju djelimičnog uspjeha stranaka u parnici*, dated 29 August 2014. Available at: <https://csd.pravosudje.ba/vstvfo/B/142/Article/52041> (accessed on: 20 March 2025).

⁶¹ See footnote No. 48.

4. CONCLUSION

The two legal issues presented, which arise in proceedings initiated by civilian victims of war in their efforts to exercise their right to compensation for the damage they have suffered, illustrate the scope of *judicial harassment* that has both immediate and long-term consequences for their mental and physical health, their status within their families and communities, and their trust in the state and the judicial system. Moreover, these practices go beyond mere *judicial mistreatment* and represent an abuse of rights and a novel form of inflicting harm on civilian victims of war. As such, they carry a deterrent and intimidating effect, discouraging other civilian victims of war from exercising their rights. In contrast, the state has a clear obligation to treat this social category with humanity and respect for their dignity and human rights, and to prevent their re-victimisation.⁶² A key responsibility of the state is to ensure an effective legal remedy for all the suffering that victims have endured. This paper has outlined several directions for action aimed at addressing the damage suffered by civilian victims of war. Some of these measures require long-term procedures, while others could be implemented in the shorter term. It is reasonable to expect that the HJPC and other professional bodies will act, following interventions by civil society organisations, in cases where public authorities fail to respond. They can be compelled to act through strategic litigation or through the building of a coalition of interested stakeholders capable of applying sustained pressure for action. The upcoming 30th anniversary of the Dayton Peace Accords presents an opportunity to refocus attention on the needs of civilian victims of war and to strengthen the influence of victims' associations in the public sphere. It appears that public authorities have quickly forgotten that the human suffering endured 30 years ago, in the absence of an adequate support and reparation system, remains neglected and pushed to the margins of social issues, further deteriorating and endangering the quality of life of survivors, their families, and society at large.

⁶² Cf. *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, para 10. Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-and-guidelines-right-remedy-and-reparation> (accessed on: 20 March 2025, UN Committee on Economic, Social and Cultural Rights, *Concluding observations on the third periodic report of Bosnia and Herzegovina*, E/C.12/BiH/CO/3, dated 11 November 2021, para. 23. Available at: <https://www.ohchr.org/en/documents/concluding-observations/ec12bihco3-committee-economic-social-and-cultural-rights> (accessed on: 20 March 2025). The Committee recommends BiH to “provide civilian victims of war with compensation commensurate with the gravity of their pain and to restore their dignity.”



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