



**Convention against Torture  
and Other Cruel, Inhuman  
or Degrading Treatment  
or Punishment**

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**Committee against Torture**

**Decision adopted by the Committee under article 22 of the  
Convention, concerning Communication No. 854/2017\*\*\***

<i>Communication submitted by:</i>	Mrs. A. (represented by counsel, Mr. Philip Grant from TRIAL International)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Bosnia and Herzegovina
<i>Date of complaint:</i>	1 November 2017 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 115 of the Committee's rules of procedure, transmitted to the State party on 10 May 2016
<i>Date of present decision:</i>	2 August 2019
<i>Subject matter:</i>	Right to fair and adequate compensation
<i>Procedural issues:</i>	..
<i>Substantive issues:</i>	..
<i>Article of the Convention:</i>	14 (1) in conjunction with article 1 (1)

\* Adopted by the Committee at its sixty-seventh session (22 July - 9 August 2019)

\*\* The following members of the Committee participated in the examination of the communication: Essadia Belmir, Felice Gaer, Abdelwahab Hani, Claude Heller Rouassant, Jens Modvig, Ana Racu, Diego Rodríguez-Pinzón, Sébastien Touzé and Bakhtiyar Tuzmukhamedov.



1. The complainant is Mrs. A, a citizen of Bosnia and Herzegovina, born in the former Yugoslavia in 1961. The complainant claims to be a victim of violations by Bosnia and Herzegovina of her rights under article 14 paragraph 1 in conjunction with article 1 (1) of the Convention against Torture.<sup>1</sup> The author is represented by counsel Mr. Philip Grant from TRIAL International.<sup>2</sup>

#### **The facts as submitted by the complainant**

2.1 In 1992, the complainant and her 10-year old daughter lived in Semizovac, within the Vogosca Municipality, an area that was controlled by the forces of Republika Srpska - Vojska Republike Srpske during the non-international armed conflict in Bosnia and Herzegovina. The complainant lived in constant fear since ethnic minorities during the civil war were exposed to threats, killings, rapes and arbitrary detention.

2.2 On an unknown date between May and June 1993, Mr. Slavko Savić, a member of the Vojska Republike Srpske, invaded the complainant house armed with a gun. Threatening the complainant with his gun, he forced her into his car. He took the complainant to the bus station and raped her there. Subsequently, he repeated the rape.

2.3 The complainant became pregnant and had to terminate her pregnancy. These events severely affected her, leaving serious permanent psychological consequences. As a consequence of the trauma she started experiencing fear, insomnia, intrusive thoughts, nightmares and images of rape. In 2008, she started psychiatric treatment and has been diagnosed with permanent personality disorder symptoms and chronic post-traumatic stress disorder. An expert witness heard by the Court of Bosnia and Herzegovina submitted that "the injured party's general quality of life has been permanently diminished by 25% due to her permanently changed personality after the catastrophic experience..."<sup>3</sup>

2.4 The complainant did not report the events immediately as she was afraid to do so while living in the locality controlled by the Vojska Republike Srpske. Even after the conflict, for many years, she did not feel comfortable speaking about her experience. After other women spoke out, she eventually found the courage to report the events to the authorities and on 5 November 2014, the Prosecutor's Office raised an indictment against Mr. Slavko Savić for war crimes against civil population.

2.5 On 19 January 2015, the Court of Bosnia and Herzegovina Section I for War Crimes issued a decision and declared the author and her daughter personal data confidential and assigned them pseudonyms A. and E., respectively, as a protection measure. On 29 June 2015, the Court of Bosnia and Herzegovina Section I for War Crimes found Mr. Slavko Savić guilty of war crimes against civilians for the rape perpetrated against the complainant and sentenced him to eight years of imprisonment and required him to pay the complainant 30,000 BAM (approximately 15,340 €) for non-pecuniary damages within 90 days. On 24 November 2015, the Court, sitting as an Appellate Division, confirmed the sentence. Mr. Slavko Savić did not pay the complainant the amount established by the Court.

2.6 On 10 June 2016, the complainant filed an enforcement motion with a view to ensuring the payment of non-pecuniary damages. On 8 August 2016 and 27 March 2017 the complainant was informed by the Court of Bosnia and Herzegovina that Mr. Slavko Savić had no assets under his name, the complainant was thus compelled to withdraw the enforcement motion on 7 April 2017.

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<sup>1</sup> Yugoslavia ratified the Convention on 10 September 1991. The Bosnia and Herzegovina's date of accession is 1 September 1993. On 4 June 2003, Bosnia and Herzegovina made a declaration recognizing the competence of the committee to receive communications from individuals according to article 22.

<sup>2</sup> The complainant requested anonymity and strict confidentiality.

<sup>3</sup> Prosecutor's Office of Bosnia and Herzegovina v. Slavko Savić, Case no.: SI 1 K 017213 14 Kri, para 391.

2.7 On the admissibility of the communication *ratione temporis*, the complainant submits that, Bosnia and Herzegovina is a State party to the Convention since 1 October 1993. The rape and ill-treatment took place in May-June 1993. However, these events gave rise to the ongoing obligations of Bosnia and Herzegovina to investigate, prosecute and sanction the perpetrator, and to ensure that Mrs. A. obtains redress and has enforceable right to compensation. All the relevant facts concerning the continuing lack of redress in favour of Mrs. A. also occurred after 4 June 2003.<sup>4</sup> Accordingly, the Committee is competent both *ratione loci* and *ratione temporis* to examine this communication.

2.8 The complainant refers to the practices of the Committee on the Elimination of Discrimination against Women where the facts occurred prior to the entry into force on the Optional Protocols for the respondent State, but they have continuing effects. She argues that the Committee should consider applying, *mutatis mutandis*, the same reasoning and reach the same conclusions in her case, declaring her communication admissible, duly assessing that not only the violations she alleges are ongoing in their nature, but also that the effects of the rape and ill-treatment she was subjected to are also ongoing.<sup>5</sup>

2.9 The complainant further states that she has exhausted all available domestic remedies and in her case, such remedies did not prove effective and in Bosnia and Herzegovina there is no other remedy likely to bring her relief. The complainant submits that both the Convention and the Committee's Rules of procedures specify that a complainant is excused from pursuing domestic remedies if they are unlikely to bring him or her an effective relief. The Committee has continuously been holding that complainants are not expected to exhaust domestic remedies that do not offer any realistic prospect of success.<sup>6</sup> The complainant contends that her situation falls precisely in this exception, given that the submission of any further claim to the Bosnian authorities has no prospect of success whatsoever. She points out that, in her case, the fact that submission of a claim of non-pecuniary damage in civil proceedings would not produce any meaningful result constitutes *per se* part of the violations she is actually alleging in her communication because it would be considered time-barred. There is a statute of limitations in the applicable law<sup>7</sup> that has been interpreted by the Constitutional Court of Bosnia and Herzegovina since its decision of 23 December 2013<sup>8</sup> as meaning that any claims for non-pecuniary damages against legal entities filed after five years since the injured party learned about the damage and the identity of the person who caused it are time-barred. On this aspect, the complainant considers unrealistic to expect that a victim of rape or any other conflict-related crime would have been able to claim their rights during the first post-war years, when there was instability and many still feared reprisals from public institutions, thus rendering such a remedy ineffective. The victims who nevertheless submitted claims found their complaints rejected for the mentioned reasons and were then forced to pay between 2.000 and 10.000 BAM (approximately 1020 and 5110 €).<sup>9</sup>

2.10 The complainant notes that in its concluding observations on Bosnia and Herzegovina of March 2017, the Human Rights Committee expressed its concern at this jurisprudential

<sup>4</sup> On 4 June 2003, Bosnia and Herzegovina made a declaration recognizing the competence of the committee to receive communications from individuals according to article 22.

<sup>5</sup> See, for example, CEDAW, A.T. v. Hungary (communication N 002/2003), para. 8.5, A.S. v. Hungary (CEDAW/C/36/D/4/2004), para. 10.4, Kayhan v. Turkey (CEDAW/C/34/D/8/2005), para. 7.4, Prutina, Zlatarac, Kozica, Cekic v. Bosnia and Herzegovina (CCPR/C/107/D/1917,1918,1925/2009&1953/2010), para 8.3, Duric v. Bosnia and Herzegovina (CCPR/C/111/D/1956/2010), para 8.3, Selimović et al. v. Bosnia and Herzegovina (CCPR/C/111/D/2003/2010), para 11.3, Lale and Blagojevic v. BiH (CCPR/C/119/D/2206/2012), para 6.5.

<sup>6</sup> See, among others Sahli. v. Algeria (CAT/C/46/D/341/2008), para. 8.3, Boily v. Canada (CAT/C/47/D/327/2007), para. 13.2, Dimitrijevic v. Serbia and Montenegro (CAT/C/35/D/172/2000), para. 6.2, Dimitrijevic v. Serbia and Montenegro (CAT/C/33/D/207/2002), para. 5.2, Enrique Falcon Rios v. Canada (CAT/C/33/D/133/1999), para. 6.6.

<sup>7</sup> Law on Civil Obligations, article 376.

<sup>8</sup> Constitutional Court of Bosnia and Herzegovina, Decision N. AP-3111/09 of 23 December 2013, Case Hamza Rekic v. RS.

<sup>9</sup> The complainant currently survives with very limited resources coming solely from the disability pension she receives.

interpretation adopted by the Constitutional Court of Bosnia and Herzegovina and found that it leaves victims of crimes under international law, and in particular of war-time sexual violence, without any effective remedy.<sup>10</sup>

2.11 The complainant adds that the submission of her claim before any other Bosnian authority is unlikely to bring her effective relief, given the jurisprudence of the domestic courts and the Constitutional Court, in the sense of declaring time-barred claims for non-pecuniary damage concerning violations perpetrated during the war and not acknowledging subsidiary liability of the State or other entities (i.e. Vojska Republike Srpske).

2.12 The complainant submits that the facts presented in her case must be seen in the context of the widespread practice of crimes committed during the armed conflict followed by the lack of prompt investigation and fair and adequate reparation, which triggers an aggravated responsibility of the respondent State in the provision of fair and adequate compensation to victims. The complainant also states that rapes and acts of sexual violence and ill-treatment to which she was subjected amounted to acts of torture pursuant to article 1 (1) of the Convention.<sup>11</sup> The complainant has not received any form of compensation for the harm suffered despite her attempts. This constitutes for the complainant an ongoing violation of article 14 (1), in conjunction with article 1(1) of the Convention as Bosnia and Herzegovina has not ensured in its legal system nor in its practice that she may obtain redress. Bosnia and Herzegovina also failed to ensure that she has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible.

2.13 She observes that rape is outlawed under customary international humanitarian law<sup>12</sup> and in certain circumstances, it may amount to a war crime.<sup>13</sup> In the instant case, in 2015 the Court of Bosnia and Herzegovina convicted the perpetrator of rapes and ill-treatment inflicted on the complainant for war crimes. The fact that the prohibition of torture has evolved into a peremptory norm or *jus cogens* triggers significant consequences, including that “torture may not be covered by a statute of limitations”.<sup>14</sup>

2.14 The complainant opines that the fact that victims of torture are entitled to redress, including compensation, restitution, rehabilitation, satisfaction and guarantees of non-repetition is a well-established fact pursuant to international law and jurisprudence. The undisputed right to obtain redress for victims of torture, including sexual violence, has two corollaries that are at the core for the present communication. On the one hand, claims for compensation for crimes under international law, including war crimes and crimes against humanity, cannot be subjected to a statute of limitations, since it renders ineffective the right to redress. On the other hand, subsidiary liability shall be applied to make this right enforceable even when the perpetrator has not been identified or, such as in the present case, is unable or unwilling to pay compensation.

2.15 The complainant states that, as statutes of limitations do not apply to genocide, crime against humanity and war crimes, they should not apply to criminal or civil proceedings in which victims of these crimes seek full reparation. In this sense, it is held that as a trend in progressive development of international law, the non-applicability of statutes of limitations should encompass also civil claims for crimes under international law – whether made in civil proceedings or as part of criminal proceedings.<sup>15</sup>

<sup>10</sup> HRC, Concluding Observations on Bosnia and Herzegovina, *supra* note 5, paras. 17-18.

<sup>11</sup> See *G.N. v. Burundi* (CAT/C/60/D/579/2013), para. 7.4., *VL v. Switzerland* (CAT/C/37/D/262/2005), para. 8.10.

<sup>12</sup> Henckaerts, Doswald-Beck, *Customary International Humanitarian Law*, Cambridge, 2009, rule 93. See also common article 3 to the Four Geneva Conventions; article 76, para. 1 and 77, of the Additional Protocol I to the Geneva Conventions; and article 27, para. 2 of the Fourth Geneva Convention.

<sup>13</sup> See, Rome Statute of the International Criminal Court, para 8 (2) (b).

<sup>14</sup> International Criminal Tribunal for the Former Yugoslavia, case *Prosecutor v. Anto Furundžija* (IT-95-17/1-T). Judgement of 10 December 1998, paras. 153-157.

<sup>15</sup> See Amnesty international, *Second Report on Crimes against Humanity; Positive Aspects and Concerns*, 2016, available at <https://www.amnesty.org/download/Documents/IOR4036062016ENGLISH.pdf>.

2.16 Applying statute of limitations of 3 to 5 years to the submission of civil claims for non-pecuniary damage by victims of torture, including sexual violence, committed during the armed conflict in Bosnia and Herzegovina, de facto renders ineffective the right to redress of victims, including the complainant. The victims of rape or other forms of sexual violence face special stigma, fear and marginalisation, which often prevent them from coming forward, denouncing the crime and filing complaints to seek compensation. Imposing on them a statute of limitations of 3 to 5 years, such as that established pursuant to article 366 of the Law on Civil Obligations, is definitely unduly restrictive and represents an insurmountable barrier to the enforcement of their right to compensation. This provision does not take into account the continuous nature of the effects of torture or the slow pace of rebuilding a trustworthy, independent justice system in the aftermath of conflicts and deprive victims of redress and compensation. Furthermore, the jurisprudence of Bosnia and Herzegovina courts in this regard, endorsed by the Constitutional Court of Bosnia and Herzegovina, overlooks the fact that the crimes at stake are war crimes or crimes against humanity and, as such, shall not be subjected to any statute of limitations, both in terms of criminal and civil proceedings.

2.17 The 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 contains two further provisions that are relevant and that are violated by Bosnia and Herzegovina practice and jurisprudence as shown in the case of Mrs. A. Principle 15 sets forth that “a State shall provide reparation to victims for acts or omissions which can be attributed to the State and constitute gross violations of international human rights law or serious violations of international humanitarian law. In cases where a person, a legal person, or other entity is found liable for reparation to a victim, such party should provide reparation to the victim or compensate the State if the State has already provided reparation to the victim”.<sup>16</sup> Moreover, pursuant to Principle 17 “States should provide under their domestic law effective mechanisms for the enforcement of reparation judgement”. In the case of Mrs. A. not only Bosnia and Herzegovina has not offered any effective mechanism to guarantee the enforcement of the sentence issues in 2015 by the Court of Bosnia and Herzegovina, but the flawed jurisprudence endorsed by the Constitutional Court of Bosnia and Herzegovina makes it impossible to apply subsidiary liability, eventually leaving the victim without any enforceable right to compensation and redress.

2.18 The legal systems of most countries provide that the wrongful infliction of personal injuries carries reparations liability, particularly by compensation. It has been observed that “in the majority of countries, both the individual offender and the State are liable. The State is in most countries vicariously liable for torts committed by its officials, either expressly or on the basis of employers ‘liability’”.<sup>17</sup> Bosnia and Herzegovina’s legislation is plagued by pitfalls in this regard and the existing jurisprudence completely disregards the notion of subsidiary liability, hence leaving victims – including Mrs. A. – without any enforceable right to compensation.

### **The complaint**

3.1 The complainant claims that the facts as submitted reveal an ongoing violation of article 14 (1), read in conjunction with article 1 (1) of the Convention, because the State party has not ensured in its legal system or practice that she may obtain redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible.

3.2 Despite the grave harm suffered and the ongoing psychological and medical consequences endured by the complainant due to the sexual violence and ill-treatment she was subjected to, the complainant received no redress or compensation. She, therefore, calls on the Committee, pursuant to Rule 118, para. 5, of its Rules of Procedure, and according to

<sup>16</sup> The 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, Adopted and proclaimed by General Assembly resolution 60/147 of 16 December 2005, para. 15.

<sup>17</sup> REDRESS Trust, A Survey of Law and Practice in Thirty Selected Countries, London, 2003, p. 47.

its well-established practice, to urge the State party to adopt adequate measures of reparation in her favour. Indeed, such measures cannot be limited to pecuniary compensation,<sup>18</sup> but must cover also rehabilitation,<sup>19</sup> satisfaction,<sup>20</sup> and guarantees of non-repetition.<sup>21</sup>

3.3 The complainant recalls the Committee's views that redress should cover all the harm suffered by the victim and encompasses, among other measures, restitution, compensation and guarantees of non-repetition of the violations, taking into account the circumstances of each case. In particular, the Committee pointed out that "comprehensive reparative concept therefore entails restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. [...] Reparation must be adequate, effective and comprehensive. [...] Monetary compensation alone may not be sufficient redress for a victim of torture and ill-treatment."<sup>22</sup> With regard to rehabilitation, the Committee indicated that "it should be holistic and include medical and psychological care as well as legal and social services",<sup>23</sup> while satisfaction should include "an official declaration or judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim; judicial and administrative sanctions against persons liable for the violations; public apologies, including acknowledgement of the facts and acceptance of responsibility; commemorations and tributes to the victims".<sup>24</sup> Finally, with regard to guarantees of non-repetition, the Committee declared that States "should undertake measures to combat impunity for violations [...] including [...] ensuring that all judicial proceedings abide by international standards of due process, fairness and impartiality [...] training for law enforcement officials as well as military and security forces on human rights law [...] and specific training on the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol) for health and legal professionals and law enforcement officials".<sup>25</sup>

3.4 The complainant requests the Committee to urge the State party to ensure that she receives adequate redress for the harm suffered. This shall encompass material and moral damages and incorporate measures aiming at providing restitution, rehabilitation, satisfaction (including restoration of dignity and reputation), and guarantees of non-repetition. In particular, the State party should be required: a) to ensure prompt, fair and adequate compensation proportional to the gravity of the violations she was subjected to; b) to provide her immediate medical and psychological care free of charge; c) to bring the complainant and her family official apologies; d) to ensure that, civil claims for non-pecuniary damage related to claims under international law (in particular, sexual violence and torture) are not subjected to any statute of limitations; e) to ensure that, when victims are awarded compensation in the context of criminal proceedings, this is in fact enforced, notwithstanding the alleged indigence of the perpetrator; f) within 90 day to inform about the measures taken and to translate the decision of the Committee.

3.5 The complainant also calls on the Committee to urge the State party to amend the existing flaws in its legislation and practice, in order to ensure that civil claims for damage concerning crimes under international law are not subjected to statutes of limitations irrespective of whether they are directed against individual perpetrators or the responsible State or entity and to apply subsidiary liability when individuals are unable to pay compensation.<sup>26</sup> In this regards, the establishment of a dedicated Fund must be envisaged.

<sup>18</sup> CAT, General Comment N. 3, para. 9. On the obligation to provide compensation and the criteria to be followed, see, among others, *Adrakhim Usaev v. Russian Federation* (CCPR/C/99/D/1577/2007), para. 11.

<sup>19</sup> See among others, *Raul Sendic Antonaccio v. Uruguay* (views of 28 October 1981), para. 21. In this sense see UN Principles on Reparation, Principle 21.

<sup>20</sup> *Ibid* 18. Principle 22.

<sup>21</sup> See among others, *Adrakhim Usaev v. Russian Federation* (CCPR/C/99/D/1577/2007), para. 11.

<sup>22</sup> CAT, General Comment N. 3, paras. 2, 6, 9. See also Special Rapporteur on Torture, *Study on the Phenomena of Torture*, paras. 167-173.

<sup>23</sup> *Ibid*, para 11.

<sup>24</sup> *Ibid* 25, para 16.

<sup>25</sup> *Ibid* 25, para 17.

<sup>26</sup> See, among others, Rules 12.1, 22.1 and 22.2 of the Beijing Principles.

Similarly, Mrs. A. wishes to receive adequate and fair compensation for the damage suffered; rehabilitation; and a public apology from the Bosnian authorities.

#### **State party's observations on admissibility and the merits**

4.1 In its observations dated 7 January 2019, the State party refers to letters received from eight State institutions and entities<sup>27</sup> providing information on the steps taken with regard to the present case.

4.2 With regard to the complainant's claim to ensure that she receives a prompt, fair and adequate compensation, the Court of Bosnia and Herzegovina stated that it had fulfilled its obligations towards the complainant namely, had granted the complainant's property claim for non-pecuniary damage compensation in the amount of BAM 30.000.<sup>28</sup> As for the execution of the decision, the Executive Unit of the Court informed that, the complainant had decided to withdraw her property claim because she was aware that the convict did not have any property which can be used for her damage compensation and because she could initiate a civil proceeding under the Law on Civil Obligations or file new property claim to the Court of Bosnia and Herzegovina. The Court also submitted that the legislation foresaw the possibility to impose the temporary measures in order to secure fulfilment of the property claims in the criminal proceedings; however the complainant had never filed such motion.

4.3 The State party reiterated the provisions of the Law on Civil Obligations, which establish compensation of non-pecuniary damage, statute of limitations for such claims, and the Criminal Code, article 19, which states that war crimes and crimes against humanity are not subject to the statute of limitations.

4.4 Further, the State party submitted that according to the Law on Social Protection, Protection of Civilian Victims of War and Protection of Families with Children, the complainant, as a civilian victim of war, has been receiving monetary benefit called "Personal Monthly Income" in the amount of BAM 59494 since 1 February 2008.<sup>29</sup>

4.5 In its letter of 19 March 2018, the Ministry of Human Rights and Refugees stated that requested legal remedy for the complainant is partially acceptable since Mrs. A. did not receive swift, fair and adequate compensation, her rights were implemented partially, and the existing statute of limitations did not allow her to claim compensation for non-pecuniary damage.

4.6 Regarding the claim to ensure access to medical and psychological care immediately and free of charge for the complainant, the Ministry of Human Rights and Refugees stated that, according to the Law on Social Protection, Protection of Civilian Victims of War and Protection of Families with Children, the complainant is entitled to free services in Mental Health Center and Center for Social Work as well as primary and secondary health care. Most of these services are free of charge apart from some specialists' services which are paid for.

4.7 The Ministry of Human Rights and Refugees submitted that during the criminal trial the complainant had been receiving psychological support provided by the Witness Support Unit of the Court of BiH. The Unit provided psychological, emotional, logistical, administrative and other support to all witnesses who testified before the Court of BiH. The Ministry of Human Rights and Refugees states that the requested remedy need not be provided as the complainant has all the required medical and psychological care available.

<sup>27</sup> Constitutional Court of Bosnia and Herzegovina, Court of Bosnia and Herzegovina, Witness Support Unit of the Court of Bosnia and Herzegovina, Prosecutor's Office of Bosnia and Herzegovina, Ministry of Justice of Bosnia and Herzegovina, Ministry of Justice of Republika Srpska, Ministry of Justice of the Federation of Bosnia and Herzegovina, Ministry of Labour and Social Policy of the Federation of Bosnia and Herzegovina.

<sup>28</sup> The amount BAM 16,000 for mental pain caused by her rights violations, the amount BAM 14.000 for mental pain due to the reduced life activities.

<sup>29</sup> Monthly personal income is 70% of the monthly disability allowance for war veterans of the first disability group.

4.8 In relation to the requested official apology to the complainant and her family, the State party submitted that, even though the current legislation and law enforcement practice do not foresee the official apology<sup>30</sup> to the victims of torture, the State party found this remedy acceptable.

4.9 With regard to the applied statute of limitations for claims on compensation of non-pecuniary damage for the crimes of torture and sexual violence related to the armed conflicts, the State party stated that the requested remedy to amend the existing legislation and practice is acceptable since Bosnia and Herzegovina has not aligned its legislation with the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and European Convention on the Compensation of Victims of Criminal Violence.

4.10 In relation to the request to ensure that the complainant receive her compensation even if the perpetrator has no means by implementing the principle of subsidiary responsibility, the State party found the remedy acceptable since it has an obligation to bring its legislation in line with international standards.

### **Complainant's comments on the State party's observations**

5.1 On 21 February 2019, the complainant submitted her comments on the State party's observations where she reiterated the facts of her case and all her arguments and claims. She adds that since submission of her complaint to the Committee, her state of health and psychological conditions has deteriorated due to the additional stress she has been experiencing in relation to these proceedings.

5.2 As far as the State party has not contested the admissibility and the merits of the communication, the complainant provided some clarifications. She stated that her withdrawal of the motion on property claim was a direct consequence of the fact that the Court of Bosnia and Herzegovina informed her that the perpetrator had no property whatsoever, thus making it clear that there were no means to ensure execution and rendered the withdrawal of the motion the sole viable option.

5.3 The complainant observes that she received disability pension pursuant to the Law on Social Protection, Protection of Civilian Victims of War and Protection of Families with Children; however, the amount of the pension is not BAM 59494 per month, as claimed by the State party, but BAM 600. Moreover, this pension is a social allowance, different from the compensation she is entitled to pursuant to the verdict of the Court Bosnia and Herzegovina and article 14 (1) of the Convention. These administrative welfare measures in favour of victims of gross human rights violations can complement, but not replace, fair and adequate compensation for the damage suffered.

5.4 The complainant notes that the State party pledge does not encompass all the measures of reparation she requested. In this regard, the complainant reiterated all her claims for redress. She added that the adoption and implementation of the Law on the Rights of Victims of Torture should be regarded as a necessary additional measure aiming at overcoming a structural problem and providing guarantees of non-recurrence.

### **Issues and proceedings before the Committee**

#### *Consideration of admissibility*

6.1 Before considering a claim contained in a communication, the Committee must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22 (5) (a) of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

6.2 The Committee recalls that, in accordance with article 22 (5) (b) of the Convention, it shall not consider any communication from an individual unless it has ascertained that the

<sup>30</sup> The Draft Law on the Rights of Victims of Torture in Bosnia and Herzegovina envisaged the official apology as a remedy for the victims of torture, however, this draft law has not been adopted.



individual has exhausted all available domestic remedies. It notes that, in the present case, the State party has not submitted any challenges regarding the exhaustion of all available domestic remedies.

6.3 The Committee observes that even though the events complained of occurred before the date of the Convention's entry into force for the State party, the decision of the Prosecutor's Office to open a criminal investigation into the war crime against civilian population allegations was dated 5 November 2014, and that the verdict was issued by the Court of Bosnia and Herzegovina on 29 June 2015 and confirmed by the second instance court on 24 November 2015, that is, after the State party made the declaration under article 22 of the Convention. Therefore, the State party's alleged failure to fulfil its obligations to provide the complainant with redress and enforceable right to fair and adequate compensation occurred after the State party's recognition of the Committee's competence under article 22 of the Convention. The Committee further notes that the State party does not contest the Committee's competence *ratione temporis*. In these circumstances, the Committee considers that it is not precluded *ratione temporis* from considering the complainant's allegations regarding violations of her rights under article 14 (1) in conjunction with article 1 (1) of the Convention.<sup>31</sup>

6.4 The Committee also took note of the State party's argument that the complainant could initiate a civil proceeding under the Law on Civil Obligations or file new property claim in the Court of Bosnia and Herzegovina having met certain conditions. In this regard, the Committee considers that the State party's failure to adopt adequate and effective domestic legislation and law enforcement practice rendered the application of a remedy that may bring, in the particular circumstances of the present case, effective and sufficient redress to the complainant effectively impossible. Moreover, having unsuccessfully exhausted one remedy one should not be required, for the purposes of the article 22, paragraph 5 (b) of the Convention, to exhaust alternative legal avenues that would have been directed essentially to the same end and would in any case not have offered better chances of success.<sup>32</sup> In these circumstances, the Committee concluded that it was not precluded by the requirements of article 22, paragraph 5 (b), of the Convention, from considering the communication.

#### *Consideration of the merits*

7.1 The Committee has considered the communication in the light of all the information made available to it by the parties concerned, in accordance with article 22 (4) of the Convention.

7.2 The Committee notes that the complainant claims a violation of articles 14 (1) in conjunction with article 1 (1) of the Convention on the grounds that the State party failed in its duty to ensure in its legal system that victims of an act of torture obtain redress and have an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. ...".<sup>33</sup> These provisions are applicable insofar as the acts to which the complainant was subjected are determined to be acts of torture within the meaning of article 1 of the Convention.<sup>34</sup> In this respect, the Committee notes the decision of the Court of Bosnia and Herzegovina where the complainant was found a victim of rape as a war crime against civilian population during the armed conflict. The Committee notes that the State party has not contested these allegations.

7.3 The Committee notes that during the 1992 -1995, the territory, where the complainant lived, was controlled by the Vojska Republike Srpske, and during the civil war ethnic minorities were exposed to threats, killings, rapes, and arbitrary detention.<sup>35</sup> The Committee notes the complainant's claim that, in May and June 1993, she was forcibly taken from her

<sup>31</sup> See *Gerasimov v. Kazakhstan*, para. 11.2.

<sup>32</sup> See *Besim Osmani v. Serbia* (CAT/C/42/D/261/2005), para. 7.1.

<sup>33</sup> See *Ashim Rakishev and Dmitry Rakishev v. Kazakhstan* (CAT/C/61/D/661/2015), para. 8.2.

<sup>34</sup> See *Ali Ben Salem v. Tunisia* (CAT/C/39/D/269/2005), para. 16.4.

<sup>35</sup> On the crimes committed in the Vogosca Municipality during the war, see, among others, Court of Bosnia and Herzegovina, Prosecutor v. Dragan Damjanovic, verdicts of 15 December 2006 (trial chamber) and 13 June 2007 (second instance verdict).

home under the threat of a gun, and raped by a member of the Vojska Republike Srpske, which resulted in her becoming pregnant and forcing her to have an abortion. The Committee observes that the rape and others acts of sexual violence and ill-treatment to which she was subjected caused her severe physical and mental pain and suffering and were inflicted intentionally during the armed conflict in the State party, in order to punish and intimidate the complainant, to humiliate and degrade her, representing a form of discrimination against her<sup>36</sup> on the basis of her gender<sup>37</sup> and ethnicity. The Committee observes that, in light of the complainant's detailed and consistent description of rape, which is corroborated by the Court of Bosnia and Herzegovina verdict of 28 June 2015 and coincides with the general pattern of sexual violence, particularly rape of women, committed during the internal armed conflict, as documented in various intergovernmental and non-governmental reports,<sup>38</sup> due weight must be given to the complainant's allegations. The Committee concludes that the facts, as submitted, constitute torture within the meaning of article 1 of the Convention.

7.4 The Committee notes the complainant's statement that as rape and acts of sexual violence and ill-treatment to which she was subjected twice in 1993 amounted to torture pursuant to article 1 (1) of the Convention, the State party is under an obligation to, among others, provide her adequate compensation and integral redress pursuant to article 14 (1) of the Convention. The Committee notes that the State party has not contested these allegations.

7.5 With regard to the alleged violation of article 14 (1) of the Convention, the Committee notes the complainant's allegations that the State party has deprived her of the right to fair and adequate compensation by failing to ensure that she is compensated because of the State party failure to adopt adequate legislation and develop law enforcement practice which would ensure that victims of torture obtain redress and enforce their right to compensation. The Committee recalls that article 14 of the Convention not only recognizes the right to fair and adequate compensation but also requires States parties to ensure that the victim of an act of torture obtains redress. The Committee recalls that the obligation of the State parties to provide redress under article 14 is two-fold - procedural and substantive. To satisfy their procedural obligations, States parties shall enact legislation and establish complaints mechanisms, ... and ensure that such mechanisms and bodies are effective and accessible to all victims.<sup>39</sup> The Committee recalls that on account of the continuous nature of the effects of torture, statutes of limitations should not be applicable as these deprive victims of the redress, compensation, and rehabilitation due to them.<sup>40</sup> The Committee also recalls its Concluding observations on the sixth periodic report of the State party where it urged the State party to take all the necessary measure to enable victims of torture and ill-treatment, including victims of war-time sexual violence to exercise their right to redress.<sup>41</sup> The Committee considers that redress should cover all the harm suffered by the victim, including restitution, compensation, rehabilitation of the victim and measures to guarantee that there is no recurrence of the violations, while always bearing in mind the circumstances of each case. Given the severity of the act of torture and the complainant's right to obtain her compensation, and given the lack of any possibility to enforce her right as full as possible, the Committee concludes that the State party has breached its obligations under article 14 of the Convention.

7.6 The Committee observes that although the complainant was granted compensation, there is no possibility to receive it in practice since the perpetrator has no property and financial means to compensate the complainant for committed violations. The Committee notes that the domestic legislation regulating civil claims for non-pecuniary damage foresees

<sup>36</sup> See generally: ICTY, *Prosecutor v. Zejnir Delalić, Zdravko Mucić, Hazim Delić and Esad Landžo*, case No. IT-96-21-T, judgment of 16 November 1998, para. 493.

<sup>37</sup> On the issue of discrimination against women, including gender-based violence, see Committee on the Elimination of Discrimination against Women, general recommendation No. 19 (1992) on violence against women, para. 6.

<sup>38</sup> See generally: E/CN.4/1993/50, annex II.

<sup>39</sup> CAT, General Comment N. 3, para 5.

<sup>40</sup> *Ibid*, para. 40.

<sup>41</sup> Concluding observations on the sixth periodic report of Bosnia and Herzegovina, CAT/C/BIH/CO/6, 22 December 2017, para. 19.

a statute of limitations<sup>42</sup> for such kind of cases, and the Constitutional Court jurisprudence on the matter, interpreting article 377 of the Law on Civil Obligations, fails to acknowledge the principle of subsidiary liability. The Committee is therefore of the view that the State party has failed to fulfil its obligations under article 14 of the Convention by failing to provide the complainant with redress including fair and adequate compensation.<sup>43</sup>

8. The Committee, acting under article 22 (7) of the Convention, concludes that the facts before it disclose a violation of article 14 (1) in conjunction with article 1 (1) of the Convention.

9. The Committee considers that the State party is required: (a) to ensure that the complainant obtains prompt, fair and adequate compensation; (b) to ensure that the complainant receives medical and psychological care immediately and free of charge; (c) to offer public official apologies to the complainant; (d) to comply with Concluding observations with respect to establishing an effective reparation scheme at the national level to provide all forms of redress to victims of war crimes, including sexual violence, and development and adoption of a framework law that clearly defines criteria for obtaining the status of victims of war crimes, including sexual violence, and sets out the specific rights and entitlements guaranteed to victims throughout the State party.<sup>44</sup> In accordance with rule 118 (5) of its rules of procedure, the Committee requests the State party to inform it, within 90 days of the date this decision is transmitted, of the steps it has taken to respond to the above observations.

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<sup>42</sup> Law on Civil Obligations, article 376.

<sup>43</sup> See also Communication No. 261/2005, *Osmani v. Serbia*, CAT/C/42/D/261/2005, 25 May 2009, para. 10.8.

<sup>44</sup> Concluding observations on the sixth periodic report of Bosnia and Herzegovina, CAT/C/BIH/CO/6, 22 December 2017, para 19 (a-b).