

COMPENSATION TO WAR CRIMES VICTIMS IN BIH A MATTER OF WILLINGNESS

Compensation for survivors of war crimes is possible, as four recent examples in Bosnia and Herzegovina (BiH) have shown. But only if prosecutors' offices, courts and legal aid providers, dedicatedly work on this matter. However, in case that the perpetrator is insolvent, the state should take the responsibility for paying the compensation awarded to survivors. Four recent cases, in which victims were awarded compensation, demonstrate that proper redress is feasible, provided that all parties involved cooperate.



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TRIAL International had repeatedly pointed out that most perpetrators of wartime sexual violence had still not fulfilled their obligation to pay compensation ordered by judgments in criminal proceedings. However, as time passes, perpetrators are being forced to pay or are "voluntarily" paying their penalties. According to TRIAL International, to date, four perpetrators have already paid or begun to pay compensation after being ordered to do so by criminal verdicts.

Payment of these reparations is significant for victims of war crimes, including survivors of wartime sexual violence, for many different reasons. This story of N, a wartime rape survivor, is a case in point.

RAPE SURVIVOR FINALLY COMPENSATED AFTER 20 YEARS

After being raped in 1992, N waited over 20 years for justice for the crime she survived. Now she hopes that her story will encourage others in their fight for justice, truth and reparation.

"After so many years, I did not expect anything, given this situation. While seeking justice, I gave statements on numerous occasions. After 20 years, he was sentenced to prison and ordered to

pay compensation. It means a lot to me that they imprisoned him, but it also means a great deal to me that they have ordered him to pay the compensation. Although it is a minimal amount, in this way he can at least feel the sufferings that we have felt. ", said N.

During her fight for justice, she was supported primarily by her family, but also by TRIAL International. She first contacted the organization in 2014, hoping that those responsible for the crimes committed against her in 1992 will finally get prosecuted. In addition to the support of TRIAL International, the survivor was represented by the Office for Free Legal Aid at the Ministry of Justice of BiH when filing a compensation claim, making her case among the first that the Office has worked on and making her one of the first survivors to benefit from this free aid. Five years later, after more than two decades of waiting for justice, the perpetrator was finally sentenced to prison and ordered to pay compensation for her physical and mental suffering.

In her words, *"Their support was important to me during the trial, they tried to inform me about everything, let me know about all my rights. They gave me an additional strength, so that it was clear to me I had some form of protection, that I could exercise my rights, that I had to be persistent."*

SURVIVORS REPRESENTED IN COURT FOR FREE

In 2016, TRIAL International successfully introduced an amendment to the State Law on Free Legal Aid which led to the possibility for victims to receive free legal aid by the Ministry of Justice of Bosnia and Herzegovina in regards to compensation claims in criminal proceedings. The story of N illustrates how significant free legal aid is for survivors. In order for this type of support to fully serve its purpose, the Ministry of Justice of BiH must be adequately staffed and it must establish procedures for cooperation with judicial institutions. It is therefore necessary that the Ministry of Justice of BiH strategically sets out to work on these challenges in the upcoming period.

By reviewing survivors' experiences, TRIAL International noticed numerous benefits of compensations, including acknowledgement of the harm caused to survivors, additional sanction and social condemnation of war criminals as well as deterrence against possible commission of such acts in the future. This process also empowers survivors, as it enables them to play a more active role when seeking their legitimate rights.

"Compensation is important in the economic sense, but also it is just as important for future generations in order that these types of crimes do not happen again. The possibility of compensation gives victims more confidence to go forward and to fight for justice to the end." said K, survivor of sexual violence.

A JOINT ENDEAVOUR

Prosecutors' offices, courts, legal aid providers and victims' representatives must use all available measures to ensure that compensation is awarded in criminal proceedings, and that it is eventually paid by perpetrators. To do so, prosecutors should inform victims of this possibility in a timely manner. Psychiatric examination of the harm that was caused to the victims should be routine. Furthermore, as part of the investigation, the financial situation of the perpetrators / accused should be assessed in order to secure a claim, which facilitates the later collection of awarded compensation.

On the other hand, free and adequate legal aid must be guaranteed to all survivors in order to enable them to successfully file compensation claims. The examples of non-pecuniary damages that were collected so far show that this is possible, but only if all actors involved in this process dedicatedly work on this matter. Unfortunately, such practice is still insufficiently applied. In addition to that, in some cases, although a compensation claim has been filed in a criminal proceeding, BiH courts refer victims to a subsequent criminal proceeding regarding these requests, which is why it is important that courts award compensations in criminal proceedings whenever possible.

"In situations where the collection of compensation is, despite all invested efforts, not possible due to the insolvency of the perpetrator, the state must, in accordance with international standards, take responsibility for the payment of the awarded amount" said Adrijana Hanušić Bećirović, Senior Legal Adviser at TRIAL International's office in Bosnia and Herzegovina.

UNITED NATIONS MECHANISMS TO THE RESCUE

In November 2017, the survivor of wartime sexual violence "Ms. A" from BiH, represented by TRIAL International, filed a complaint to the UN Committee against Torture against Bosnia and Herzegovina. She used this UN body to expose the failures of the Bosnian authorities to comply with their obligations under the Convention, and to ensure that "Ms. A" obtained redress and had an enforceable right to compensation. In August 2019, the Committee issued a decision, ordering Bosnia and Herzegovina to pay the compensation.

The decision also requires BiH to establish an effective reparation scheme at the national level to provide all forms of redress to victims of war crimes, including sexual violence. The implementation of this decision could pave the way for other survivors who are in a similar or the same situation as "Ms. A" to obtain compensation, which would prevent such violations of their rights in the future. By doing so, 25 years after the war, the State would send a clear message that it is still willing to work on improving the rights of victims in BiH.