

UDK: 343.296

347.513

doi: 10.5937/crimen2501110K

ORIGINALNI NAUČNI RAD

PRIMLJEN / PRIHVAĆEN: 31.03.2025. / 09.05.2025.

*Milica Kolaković-Bojović\**

## CRIME VICTIMS AND THE RIGHT TO COMPENSATION: INTERNATIONAL STANDARDS AND CHALLENGES IN SERBIA<sup>1</sup>

**Abstract:** In this paper author sheds a light to the right to compensation for crime victims in Serbia, analyzing it from the multiple perspective: the relevant international standards, applicable national legal framework, the current state of play in the practice of Serbian courts, the recent progress made, as well as in term of the remaining challenges. The analysis shows that even though the national legal framework on compensation for crime victims provides for the solid ground for exercising this right, the reality seems to be quite different. Discouraged by the practice of regular referral to the civil proceedings, paired with a lack of legal aid in the process of claiming compensation or even discouraged by lawyers who represent them, victims are not skilled, empowered and/or supported enough to submit a compensation claim in criminal proceeding and pass through this process saved by a various protective measures that belongs to victims in criminal proceedings and especially those that are especially vulnerable. Neither legal nor institutional set up allows for compensation from a state fund in cases when there is no possibility for a victim to be compensated from an offender from various reasons (offender unknown or died or has no resources/property).

**Key words:** compensation, reparation, compensation claim, crime victims.

---

\* Institute of Criminological and Sociological Research – Belgrade, the President of the Advisory Committee on nomination of judges of the International Criminal Court and the Vice-President of the UN Committee on Enforced Disappearances, kolakius@gmail.com, ORCID 0000-0002-3130-5128.

1 The research preceded to the development of this paper was partially supported by the Ministry of Science, Technological Development and Innovations through Agreement on the realization and financing of scientific research work SRO in 2025, registration number 451-03-136/2025-03/200039 and partially through the Multi-Partner Contribution Agreement CRIS No. 2021/429-881, EUROLIS – EU Rule of Law in Serbia, “Facility supporting the strengthening of the Rule of Law in the Republic of Serbia – Victims support (Work package 6)”, financed by the Austrian Development Agency (ADA), Project Number: 6551-00/2021-SUB01.

## 1. INTRODUCTION OR HOW TO REPAIR?

“Let’s repair it!” This sounds so simple and so doable, almost for everything except for the human body and soul. Attacked by an act of crime and affected by sometimes extremely severe consequences of it, no victim should be left behind in his/her struggle for reparation.

Many decades had passed before the criminal law evolved enough to recognise that a victim should be alone in this fight, exclusively confronted to those who committed the crime in his/her attempts to get compensated. Step by step, led by the United Nations (UN) and followed by the regional mechanisms and organisations such as Council of Europe (CoE) and the European Union (EU), the international standards on the compensation to crime victims have become our reality. Furthermore, the request to incorporate and implement them in the national criminal justice system became one of the main requirements for the states around the world when the level of the human rights development in their national normative and institutional set up is being assessed.

Within each of these systems it has been articulated that the concept of reparation means much more than simple monetary or non-monetary compensation.<sup>2</sup> Namely, it includes the following forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition (UN, 2005). Each reparation should be adequate, effective and prompt reparation for harm suffered, which means that it should be proportional to the gravity of the violations and the harm suffered, adjusted to the need of a victim and provided in a timely manner.

Even though such a broad concept allows for multiple, synchronized and differential approaches aimed at repairing the harm suffered, the national criminal justice systems around the world are still struggling to address even the right of the crime victims to get compensation, while the broader approach is still to be developed in most states.

The same struggle appears to be one of the challenges the Serbian criminal justice system is facing with, which becomes particularly visible by EC bringing this topic in the list of the reform priorities in the process of EU accession negotiation, namely as a part of the Chapter 23 (Judicial Reform, Fight against corruption and Fundamental rights). As the State is about to fulfil the Interim Benchmarks necessary to continue negotiations based on the closing benchmarks, there is a need to foster reform processes to align, among others, with the relevant EU legislation governing the right of the crime victims to get compensation.

---

2 For more on the differentiation between the concepts/notions of compensation and reparation, see: M. Kolaković-Bojović, J. Džumhur /2025/, *Enforced Disappearances and the Right to Reparation in Western Balkans*, in: *Enforced Disappearances: On Universal Responses to a Worldwide* (in publishing); M. Kolaković-Bojović /2023/, *Víctimas de desaparición forzada y derecho a la reparación*, in: *Desaparición forzada: Colección en temas de derechos humanos*, Buenos Aires, pp. 196–226.

## 2. THE RELEVANT INTERNATIONAL STANDARDS ON COMPENSATION FOR CRIME VICTIMS

The right to compensation for crime victims, as a general standard applicable to all crime victims, has been recognised and granted through a number of universal and regional human rights instrument starting from the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power<sup>3</sup> which provides for obligation of offenders or third parties responsible for their behaviour to, where appropriate, make fair restitution to victims, their families or dependants. Such restitution should include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, the provision of services and the restoration of rights (par. 8).

The same obligation is contained in Article 16 of Directive 2012/29/EU<sup>4</sup> which requires the Member States to ensure that, in the course of criminal proceedings, victims are entitled to obtain a decision on compensation by the offender, within a reasonable time, except where national law provides for such a decision to be made in other legal proceedings. Member States shall promote measures to encourage offenders to provide adequate compensation to victims.<sup>5</sup>

The 2004 Directive requires Member States to ensure that “their national rules provide for the existence of a scheme on compensation to the specific victims of violent intentional crimes committed in their respective territories, which guarantees fair and appropriate compensation to victims”<sup>6</sup> (Article 12).

Directive 2011/36/EU,<sup>7</sup> Article 17, also requires the Member States to ensure that victims of trafficking in human beings have access to existing schemes of compensation to victims of violent crimes of intent.

3 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted on 29 November 1985 by General Assembly resolution 40/34.

4 Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.

5 See more in: M. Kolaković-Bojović /2020/, *Direktiva o žrtvama (2012/29/EU) i kazneno zakonodavstvo Republike Srbije*, in: *Žrtva krivičnog dela i krivičnopravni instrumenti zaštite (međunarodni pravni standardi, regionalna krivična zakonodavstva, primena i mere unapređenja zaštite)*, Belgrade, pp. 41–54; M. Kolaković-Bojović /2017/, *Žrtva krivičnog dela (Poglavlje 23 – norma i praksa u Republici Srbiji)*, in: *Reformski procesi i Poglavlje 23 (godinu dana posle) – krivičnopravni aspekti*, Belgrade, pp. 140–150.

6 In 2016 the Grand Chamber of the CJEU<sup>#</sup> interpreted the provisions of the 2004 Directive as for each Member State to provide a scheme on compensation for victims of violent intentional crimes without limiting “the scope of the compensation scheme for victims to only certain violent intentional crimes” [...] but guaranteeing compensation for victims of any violent intentional crime on its territory”. In 2020, the CJEU<sup>#</sup> clarified the interpretation of the Directive providing that a “fixed rate of compensation” cannot constitute a “fair and appropriate compensation” for victims of violent crimes “if it is fixed without taking into account the seriousness of the consequences of the crime for the victims”. The Court emphasises that the compensation has to be an “appropriate contribution to the reparation of the material and non-material harm suffered”.

7 Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA.

Directive 2011/93/EU<sup>8</sup> tackles this right to the right to legal representation of child victims of sexual exploitation recognising in Art. 20 importance of legal aid in exercising the right to compensation.

The most comprehensive legal framework on compensation could be found in legal instruments that address rights of victims of war crimes and crimes against humanity. Namely, references to compensation can be traced to Article 3 of the 1907 IV Hague Convention, wording which is repeated in Article 91 of the Additional Protocol I to the 1949 Geneva Convention<sup>9</sup>. The Article states that “A party to the conflict which violates the provisions of the Conventions or of this Protocol shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces”. Under Article 75 of the Rome Statute, the ICC may award reparations to victims against a convicted person. These reparations may include restitution, compensation and rehabilitation. As such, the Court may make an order directly against a convicted person specifying appropriate reparations to, or in respect of, victims, including restitution, compensation and rehabilitation (75 (2)) and where appropriate, the Court may order that the award for reparations be made through the Trust Fund provided for in Article 79 (75(3)). The 2006 International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED)<sup>10</sup> provides a particularly important contribution as its entry into force in 2010 provided a comprehensive and explicit definition of reparations in a legally binding instrument. Article 24(4) established that: “Each State Party shall ensure, in its legal system, that the victims of enforced disappearance have the right to obtain reparation and prompt, fair and adequate compensation. The right to obtain reparation [...] covers material and moral damages and, where appropriate, other forms of reparation, such as: (a) restitution, (b) rehabilitation, (c) satisfaction, including restoration of dignity and reputation;<sup>11</sup> (d) guarantees of non-repetition.” However, the most detailed instrument in this field are UN 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<sup>12</sup>. It is also important to mention the

8 Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA.

9 Protocol additional to the Geneva Convention of 12 August, 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, 1125 UNTS 3 art 91. See also E.C. Gillard /2003/, *Reparation for Violations of International Humanitarian Law*, *International Review of the Red Cross*, No. 851, pp. 529–553.

10 International Convention for the Protection of all Persons from Enforced Disappearance, adopted on 20 December 2006 during the sixty-first session of the General Assembly in resolution A/RES/61/177.

11 For more of the human dignity of crime victims see: M. Kolaković-Bojović, Z. Grujić /2020/, *Crime Victims and the Right to Human Dignity – Challenges and Attitudes in Serbia*, in: *Yearbook*, No. 3, *Human rights protection: the right to human dignity*, Novi Sad–Belgrade, pp. 239–269.

12 UN 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, Preamble, adopted by the UN Commission on Human Rights in 2005, UN

2004/80/EC Directive relating to compensation for crime victims. The Directive is relevant as it provides a national compensation scheme for victims of violent intentional crimes and a system of cooperation between authorities.

As obvious from the above elaborated provisions, those instruments provide for the right of a victim to be compensated by the offender or a state when there is responsibility of a state. However, there are a few instruments that go beyond this scope recognizing the importance of ensuring compensation to the most vulnerable victims regardless of the possibility to be compensated by an offender. This initiative has roots in Arts. 12–13 of the UN Basic principles. The establishment, strengthening and expansion of national funds for compensation to victims should be encouraged. Where appropriate, other funds may also be established for this purpose, including in those cases where the State of which the victim is a national is not in a position to compensate the victim for the harm.

Council of Europe Convention on the Compensation for Victims of Violent Crimes (1983)<sup>13</sup> (Article 2) specifies that when compensation is not fully available from other sources the State shall contribute to compensate: a those who have sustained serious bodily injury or impairment of health directly attributable to an intentional crime of violence; the dependants of persons who have died as a result of such crime. Compensation shall be awarded in the above cases even if the offender cannot be prosecuted or punished. It also specifies what kind of lost and or damage it should cover.<sup>14</sup>

Article 30 of the Istanbul Convention<sup>15</sup> which addresses the rights of gender based and family violence provides for obligations for the State to set up measures to ensure the victim's right to compensation – within reasonable time – against the perpetrator and from the State when the damages are not covered by other sources. This is a key instrument regarding reparation for victims of domestic violence.

Of course, this list of the relevant standards is non-exhaustive list of the relevant standards, but the most influential ones in terms of the need to align the national criminal justice system with them.

---

Doc. E/CN.4/RES/2005/35 and adopted by the General Assembly on 16 December 2005, UN Doc. A/RES/60/147.

13 Council of Europe, European Convention on the Compensation of Victims of Violent Crimes, Strasbourg, 24 November 1983.

14 Article 4: Compensation shall cover, according to the case under consideration, at least the following items: loss of earnings, medical and hospitalisation expenses and funeral expenses, and, as regards dependants, loss of maintenance. Article 5: The compensation scheme may, if necessary, set for any or all elements of compensation an upper limit above which and a minimum threshold below which such compensation shall not be granted. Article 6: The compensation scheme may specify a period within which any application for compensation must be made. Article 7: Compensation may be reduced or refused on account of the applicant's financial situation. Article 9: With a view to avoiding double compensation, the State or the competent authority may deduct from the compensation awarded or reclaim from the person compensated any amount of money received, in consequence of the injury or death, from the offender, social security or insurance, or coming from any other source.

15 Council of Europe Convention on preventing and combating violence against women and domestic violence, Istanbul, 11 May 2011.

### 3. NATIONAL CRIMINAL LEGISLATION GOVERNING THE RIGHT TO COMPENSATION: THE GAPS THEREIN AND ONGOING LEGISLATIVE AMENDMENTS

Differently from the national legal systems operating under the common law concept, Serbian criminal justice system traditionally recognises an active role of a victim (injured party)<sup>16</sup> in the criminal proceeding, including the right to request and get compensation for the harm suffered. Even more, the Criminal Procedure Code<sup>17</sup> (Article 252–260) provides for the obligation of the court and prosecutor's office to collect evidence needed to decide on the compensation claim before the claim itself has been filed. The court is obliged to decide on a compensation claim in the criminal proceeding unless it significantly prolongs the proceeding. Otherwise, the court can refer the victim to submitting the compensation claim in a separate, civil proceeding.

These provisions clearly show that the intention of the legislator was to ensure that most of the victims exercise their right to get compensation in the criminal proceedings. Such an approach has a number of positive impacts:

- Ensures that compensation is provided in a timely manner without waiting for the civil procedure to finalise;
- Avoids cumulation of additional workload for the civil courts;
- Ensures that victims are granted all the necessary protective measures if such measures are needed due to the sensitivity of the victim.

Therefore, the court should be mindful of those CPC provisions, both from the point of view of avoiding multiple interrogation of a victim in the criminal proceeding, but also in terms of the potential future position of that victim in the civil proceeding in the absence of the decision on the compensation claim in the criminal proceeding. Namely, in such civil proceedings a victim is not granted any protective measures during his/her testimony. Therefore, it should be imperative for the criminal court to collect as much evidence as needed, using all protective measures available in criminal proceedings.

However, it seems that all those positive sides of the CPC provisions are not properly recognized by Serbian courts in practice.

#### 3.1. *The present challenges in practice*

Despite this obvious interest of, not just victims, but also the judicial system as a whole to decide on most of the compensation claim in criminal proceeding, numerous analyses conducted in recent years indicate the need for more significant intervention in

16 The term „injured party“ is traditionally used in Serbian criminal legislation to describe direct victims of crimes and their family members/close relatives who are granted with a certain portion of the procedural rights.

17 Criminal Procedure Code, „Official Gazette of RS“, No. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014, 35/2019, 27/2021 – Constitutional Court Decision and 62/2021 – Constitutional Court Decision.

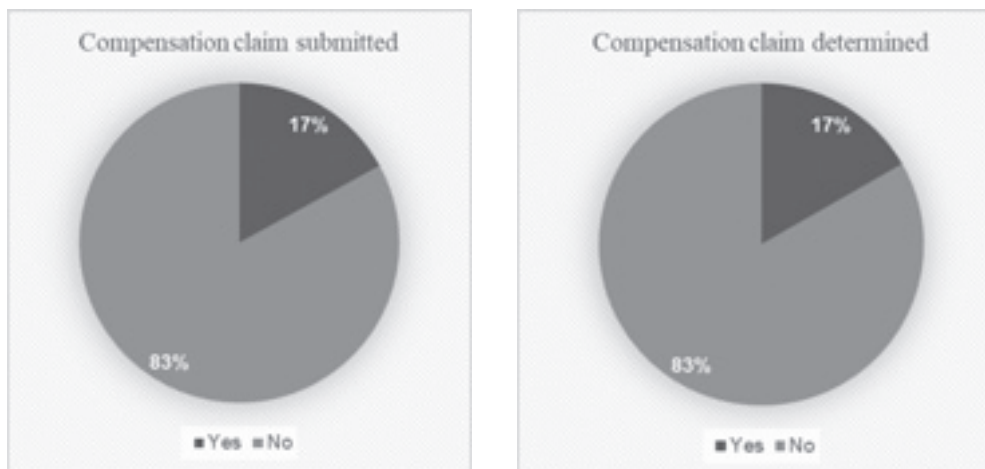


terms of improving the practice of realizing compensation claims. It is also important to mention that the ICT/case management systems in Serbian judiciary does not allow for systematic monitoring of this issue, so there is no data at the level of the whole judiciary, but all the recently conducted monitoring and analysis show that in the majority of cases victims are referred to submit the compensation claim in civil proceeding.

With this in mind, special attention has been paid to this issue, especially when it comes to providing compensation to the especially sensitive victims, such as children, victims of sexual, gender-based or family violence, victims of war crimes of trafficking in human beings.<sup>18</sup>

The monitoring of the position of juvenile victims in criminal proceedings in Serbia in 2020<sup>19</sup> showed that only 17% of the injured parties pointed out the compensation claim. Within those 17% who decided on this step, again only 17% of them determined their property claim.

Chart 1: Compensation claim



When it comes to the procedural phase of emphasizing the property claim, the same monitoring showed that the injured parties who pointed out the claim in general mostly did so only at the main trial (83% of them).

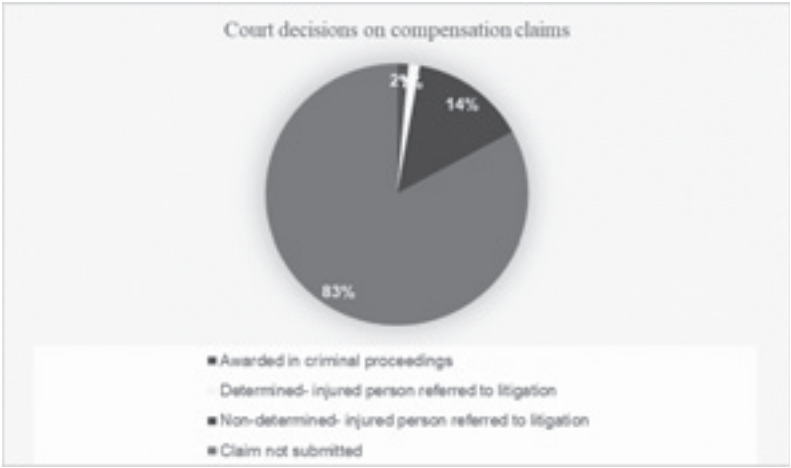
Regarding the court's decisions on the property claim, only one of the 70 injured parties was awarded a property claim in criminal proceedings. The key reason for that is certainly the fact that only 17% of them pointed out, and only two determined the request, which does not change the overall picture of the complete ineffectiveness of the mechanism prescribed by Art. 252–260. CPC.<sup>20</sup>

18 For more info. On the multiple vulnerability of child victims see: Jovanović, Slađana /2022/: "Dečji Brakovi" u senci krivičnih dela, *Crimen*, No. 13, 48–63.

19 M. Kolaković-Bojović /2022/, *Konačni izveštaj o praćenju sudske prakse o položaju maloletnih žrtava krivičnih dela pred sudovima u Republici Srbiji u 2020. godini/Final report on the monitoring of court practice on the position of juvenile victims of crime before the courts in the Republic of Serbia in 2020*, Belgrade.

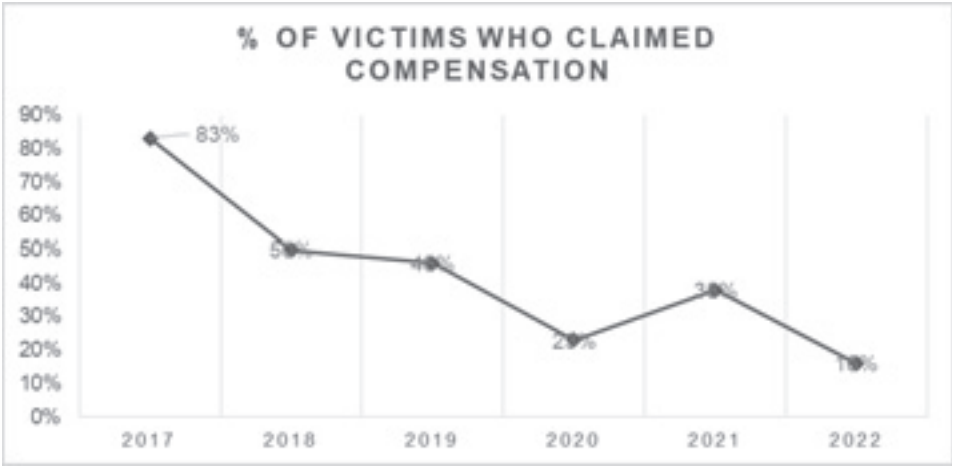
20 See also: M. Kolaković-Bojović /2022/, *Child Victims and Judicial Protection in Serbia*, in: *Protection of human rights and freedoms in light of international and national standards*, Kosovska Mitrovica, pp. 55–77.

Chart 2: Court decisions on compensation claims



Similar trends can be seen in criminal proceedings concerning human trafficking. Namely, the NGO ASTRA has established annual monitoring of those cases which includes, among others, the access to compensation for victims. We have analysed data from the ASTRA annual report and managed to develop the charts presenting the trends on this issue in 2017–2022 period.<sup>21</sup>

Chart 3: Compensation claims: victims of human trafficking



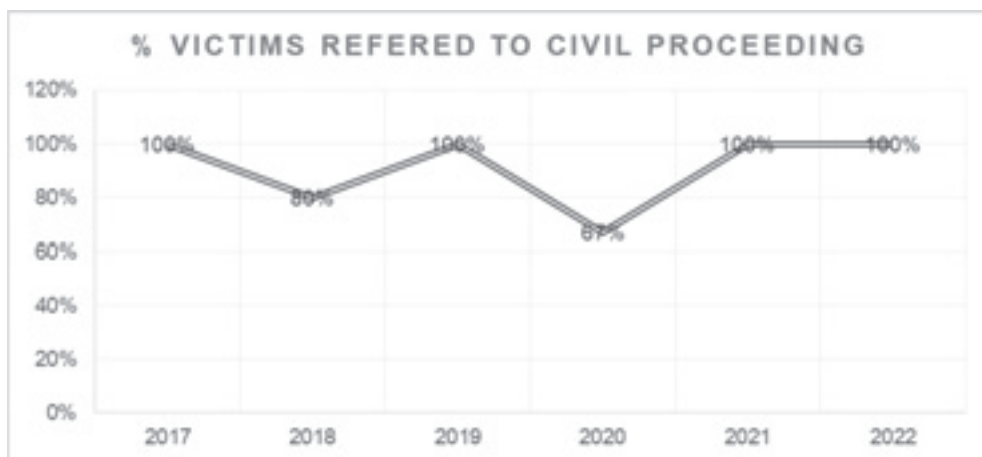
From the data presented in the Chart 8 it is obvious that there is a negative trend in the five years period where the percentage of the victims of human trafficking who submitted a compensation claim has been decreased from 83% in 2017 to 10% in 2022.

<sup>21</sup> See more at: <https://astra.rs/en/astras-publications/>, last accessed on October 28<sup>th</sup> 2024.



The reasons for such a trend can be found in data presented in the Chart 9 showing that the court has almost never (with the exception of 2018 and 2020) decided on the compensation claim in criminal proceeding.

Chart 4: Court decisions on compensation claims  
referring victims to the civil proceedings



### 3.2. The recent developments

Despite the obvious absence of the practice that would be in line with the earlier-mentioned intention of the legislator, it cannot be said that there is a complete ignorance on a side of the competence authorities. Namely, there are some initiatives already taken at the state level to address these serious challenges.

The Supreme Court of Cassation<sup>22</sup> adopted the Guidelines for improving the case law regarding procedures for compensation of damage to victims of serious crimes in criminal proceedings<sup>23</sup> (valid as of August 2019). The Supreme Court has also contributed to the continuous application of the Guidelines, in cooperation with the Judicial Academy, through organizing presentations of the Guidelines during the second quarter of 2022. With the support of the OSCE Mission in Serbia, four one-day training sessions were conducted in order to present the Guidelines to the judicial officials (judges from Higher Courts, public prosecutors and deputy public prosecutors, within four appellate areas). The emphasis of the Guidelines being promoted lies in the obligation of competent authorities to resolve the issue of compensation to victims within criminal proceedings, while the civil proceedings would remain an exception, not the rule, as is now the predominant practice. As a follow up, a number of training sessions and promotional events have been organized for judges and public prosecutors to get familiar with the content of Guidelines.

22 The official title of the Supreme Court before the latest constitutional amendments.

23 Guidelines for improving the case law with regard to procedure for compensation of damage to victims of serious crimes in criminal proceedings, available at: <https://www.podrskazrtvama.rs/en//posts/presentation-of-guidelines-for-damage-compensation-87.php>, last accessed on July 30<sup>th</sup> 2020.

Although it has been provided as an obligation prescribed by the National Strategy for Exercising the Rights of Crime Victims for 2020–2025 (and accompanying action plans for 2020–2022 and 2022–2025 periods), a system to continuously monitor exercising this right in practice hasn't been established yet. However, the predominant impression arising from the above presented statistics as well as from the qualitative analysis is that there are still a very few enthusiasts individuals who are trying to change the existing bad practice, but also that there is a significant difference between practices of the courts across the country, with no actions taken by the Supreme Court aimed at identifying causes of such differences and/or removing them.

It seems that the recent steps made towards the stimulation of criminal judges to decide on the compensation claims in criminal proceedings have resulted in some positive examples/good practices (still) based on the individual engagement/enthusiasm of the judges/court panels.

**Case study:** It is important to mention a very recent positive example of the case of sexual violence against two girls committed by their father, where in September 2024 the Higher Court in Novi Sad decided on the compensation claim in the criminal proceeding. The Judicial Chamber condemned the accused for the rape against one daughter, the incitement of the child to attend sexual actions to the detriment of that child (against other daughter), as well as three crimes of family violence against his daughters and the spouse. The two girls were assigned compensation of 1,100,000 dinars (approx. 9,400EUR) and 150,000 dinars (1,200EUR), while their mother was referred to submit the compensation claim in the civil proceeding.

In 2020/2021, there were also some efforts to develop a single form/template for submitting a compensation claim. The main idea behind this was to use such a template to enable victims to specify the compensation claims as in terms of the type of harm suffered, as with regards to the amount of compensation claimed. In this process, a victim can be supported by the professional in the victim support service<sup>24</sup> or by his/her lawyer. In parallel, this would make it easier for the prosecutors and judges to plan and conduct actions aimed at collecting evidence necessary to decide on a compensation claim.

However, the Supreme Court has never officially approved this template. Even more, predominant feedback received from the professionals (judges, lawyers and prosecutors) during the qualitative stage of the research that proceeded development of this paper, showed that they don't perceive such a form/template as a useful tool. Basically, they are explaining such a position through the importance of the awareness and a readiness of individual judges (and prosecutors) to deal with the compensation claim with or without uniform template existing and (non)being used.

### 3.3. *The remaining challenges*

In addition to this half-way stocked initiative, there is a much more burning issue preventing some tangible progress in this field which is associated with the two facts:

<sup>24</sup> On the role and the need of establishing the victim support services see more in: M. Kolaković-Bojović /2016/, Victims and Witnesses Support in the Context of the Accession Negotiations with EU, in: *Evropske integracije: pravda, sloboda i bezbednost*, Belgrade, pp. 355–366.

- Passive and/or non-ethical behaviour of lawyers.
- The lack of legal and institutional mechanisms to ensure compensation in cases when a victim cannot be compensated by an offender.

The role of the legal representative/proxy in the process of submitting a compensation claim and deciding on it is extremely important. Namely, despite the obligation of the competent authorities to inform a victim on his/her to submit compensation claim, the role of his/proxy is to explain all the relevant details of the procedure and the conditions to get compensation.

However, there is a widespread practice among lawyers to demotivate victims to push for getting compensation in criminal proceeding for purely lucrative reasons. Namely, instead of helping victims to specify their compensation claim, they instruct them just to submit to compensation claim without specifying it, in order to represent the same victim in the civil proceeding after the criminal court refer him/her to submit compensation claim in a civil proceeding.

Finally, even if there is a decision of the criminal court on the compensation claim, there is a great chance in practice that this victim cannot be compensated by an offender since he/she is not owning any property, employment, etc. or even if he/she has died or cannot be prosecuted and/or punished for other reasons. In those cases, as previously reflected in the analysis of the relevant international standards, the state should ensure that a victim can be compensated from a state fund,<sup>25</sup> while the state will further proceed with its efforts to reimburse itself from an offender, if possible, at the latter stage. An additional purpose of such funds is to ensure a prompt material support to victims in a situation of need even before the court decision, which is of the great importance for especially vulnerable victims who need to pay for medical treatments, repairing various sorts of damage.

#### 4. WAYS FORWARD

Considering all what was mentioned above it is obvious that further steps should go in three parallel directions:

- 1) Improving conditions for victims who were referred to submitting their compensation claims in civil proceedings, where there is a need to amend the Civil Procedure Code in a way to ensure that especially vulnerable victims are protected in the civil proceeding conducted upon their compensation claims based on the decision of the criminal court to refer them to litigation.
- 2) In parallel, there is a need to intensively and continuously work on dissemination, training for and monitoring the implementation of the Guidelines for improving the case law with regard to procedures for compensation of

<sup>25</sup> For more information on the upcoming amendments to the Directive 2012/29 including obligation to establish the state fund, see: M. Matić Bošković, T. Russo /2024/, *Novelties Proposed by the European Commission on Victims' Rights Protection and its Relevance for Serbian Authorities*, in: *The Position of Victims in the Republic of Serbia*, Belgrade, pp. 31–46.

damage to victims of serious crimes in criminal proceedings. There is also a need to finalise, adopt and start using the uniform template for submitting a compensation claim, and ensure support of the victim support services to the victims who need an aid in filling this form.

- 3) Finally, it is important to monitor the court practice in this field, but also to regularly analyse and publish (good) practice of the criminal courts regarding their decisions on compensation claims to ensure that all the future reforms are evidence informed based on the evidence-based policy making principle.<sup>26</sup>

## REFERENCES

- Gillard Emanuela-Chiara /2003/: *Reparation for Violations of International Humanitarian Law*, *International Review of the Red Cross*, No. 851, 529–553.
- Jovanović, Slađana /2022/: “Dečji Brakovi” u senci krivičnih dela, *Crimen*, No. 13, 48–63.
- Kolaković-Bojović Milica /2016/, Victims and Witnesses Support in the Context of the Accession Negotiations with EU, in: *Evropske integracije: pravda, sloboda i bezbednost* (Đorđević Đ. ed.), University of criminal investigation and police studies, Hanns Seidel foundation: Belgrade, 355–366.
- Kolaković-Bojović Milica /2017/, *Žrtva krivičnog dela* (Poglavlje 23 – norma i praksa u Republici Srbiji), in: *Reformski procesi i Poglavlje 23 (godinu dana posle) – krivičnoparni aspekti* (Bejatović S., ed.), Serbian Association for Criminal Law and Practice, Intermex: Belgrade, 140–150.
- Kolaković-Bojović Milica /2020/, Direktiva o žrtvama (2012/29/EU) i kazneno zakonodavstvo Republike Srbije, in: *Žrtva krivičnog dela i krivičnopravni instrumenti zaštite (međunarodni pravni standardi, regionalna krivična zakonodavstva, primena i mere unapređenja zaštite)* (Bejatović S., ed.), OSCE Mission to Serbia: Belgrade, 41–54.
- Kolaković-Bojović Milica /2022/, Child Victims and Judicial Protection in Serbia, in: *Protection of human rights and freedoms in light of international and national standards* (Blagić D., ed.), Faculty of Law: Kosovska Mitrovica, 55–77.
- Kolaković-Bojović Milica /2022/, Human Rights Protection: From Populism to the Evidence – Based Policy Making, in: *Yearbook*, No. 5, *Human rights protection: from childhood to the right to a dignified old age: human rights and institutions* (Pavlović Z., ed.), Provincial Protector of Citizens – Ombudsman, Institute of Criminological and Sociological Research: Novi Sad–Belgrade, 63–80.
- Kolaković-Bojović Milica /2022/, *Konačni izveštaj o praćenju sudske prakse o položaju maloletnih žrtava krivičnih dela pred sudovima u Republici Srbiji u 2020. godini/Final report on the monitoring of court practice on the position of juvenile victims of crime before the courts in the Republic of Serbia in 2020*, Institute of Criminological and Sociological Research: Belgrade.
- Kolaković-Bojović Milica /2023/, Víctimas de desaparición forzada y derecho a la reparación, in: *Desaparición forzada: Coercion en temas de derechos humanos*, Centro Internacional para la Promoción de los Derechos Humanos bajo los auspicios de UNESCO (CIPDH): Buenos Aires, 196– 226.

<sup>26</sup> See: M. Kolaković-Bojović /2022/, Human Rights Protection: From Populism to the Evidence – Based Policy Making, in: *Yearbook*, No. 5, *Human rights protection: from childhood to the right to a dignified old age: human rights and institutions*, Novi Sad–Belgrade, pp. 63–80.

- Kolaković-Bojović Milica, Džumhur Jasmina /2025/, *Enforced Disappearances and the Right to Reparation in Western Balkans*, in: *Enforced Disappearances: On Universal Responses to a Worldwide Phenomenon* (Baranowska G., Kolaković-Bojović M., eds.), Cambridge University Press, (in publishing).
- Kolaković-Bojović Milica, Grujić Zdravko /2020/, *Crime Victims and the Right to Human Dignity – Challenges and Attitudes in Serbia*, in: *Yearbook*, No. 3, *Human rights protection: the right to human dignity* (Pavlović Z., ed.), Provincial Protector of Citizens – Ombudsman, Institute of Criminological and Sociological Research: Novi Sad–Belgrade, 239–269.
- Matić Bošković Marina, Russo Teresa /2024/, *Novelties Proposed by the European Commission on Victims' Rights Protection and its Relevance for Serbian Authorities*, in: *The Position of Victims in the Republic of Serbia* (Kolaković-Bojović M., Stevanović I., eds.), Institute of Criminological and Sociological Research: Belgrade, 31–46.

## INTERNET SOURCES

- ASTRA, Položaj i prava žrtava u krivičnom postupku – Analiza sudske prakse za 2022. godinu za krivična dela posredovanje u vršenju prostitucije, trgovina ljudima i trgovina maloletnim licima radi usvojenja, available at: <https://drive.google.com/file/d/1ZLZWt83V1uEXcOyHkLFJnJzg2QL7bFyGu/view>.
- ASTRA, Položaj i prava žrtava u krivičnom postupku – Analiza sudske prakse za 2021. godinu za krivična dela posredovanje u vršenju prostitucije, trgovina ljudima i trgovina maloletnim licima radi usvojenja, available at: <https://drive.google.com/file/d/1hb79RIhUuWayaOve929J1SeOgRVjBYsJ/view>.
- ASTRA, Položaj i prava žrtava u krivičnom postupku – Analiza sudske prakse za 2020. godinu za krivična dela posredovanje u vršenju prostitucije, trgovina ljudima i trgovina maloletnim licima radi usvojenja, available at: <https://drive.google.com/file/d/1ZdVakPMLd8YaQQSdDbWUCmZTM3fOmmpl/view>.
- ASTRA, Položaj i prava žrtava u krivičnom postupku – Analiza sudske prakse za 2019. godinu za krivična dela posredovanje u vršenju prostitucije, trgovina ljudima i trgovina maloletnim licima radi usvojenja, available at: <https://drive.google.com/file/d/19c1O2lmFrUhKNp3oUnJEnyFxxGXFFycD/view>.
- ASTRA, Položaj i prava žrtava u krivičnom postupku – Analiza sudske prakse za 2018. godinu za krivična dela posredovanje u vršenju prostitucije, trgovina ljudima i trgovina maloletnim licima radi usvojenja, available at: <https://drive.google.com/file/d/1jPF2TrdvAo3dzOvCprUb9URSO4G0PrhC/view>.
- ASTRA, Položaj i prava žrtava u krivičnom postupku – Analiza sudske prakse za 2017. godinu za krivična dela posredovanje u vršenju prostitucije, trgovina ljudima i trgovina maloletnim licima radi usvojenja, available at: <https://drive.google.com/file/d/1l6aCZGbtC2VDg3V1hcJbtuQ40lARmufE/view>.
- European Union common negotiation position for Chapter 23, available on: <https://mpravde.gov.rs/tekst/26544/pregovaracka-pozicija.php>.
- Guidelines for improving the case law with regard to procedure for compensation of damage to victims of serious crimes in criminal proceedings, available at: <https://www.podrskazrtvama.rs/en//posts/presentation-of-guidelines-for-damage-compensation-87.php>.

*Milica Kolaković-Bojović\**

## ŽRTVE KRIVIČNIH DELA I PRAVO NA NAKNADU ŠTETE: MEĐUNARODNI STANDARDI I IZAZOVI U SRBIJI

### REZIME

U ovom radu autor analizira pravo na naknadu štete za žrtve krivičnih dela u Srbiji, posmatrajući ga iz više uglova: relevantnih međunarodnih standarda, važećeg nacionalnog pravnog okvira, trenutnog stanja u praksi srpskih sudova, nedavnog napretka, kao i preostalih izazova. Analiza pokazuje da, iako nacionalni pravni okvir koji reguliše naknadu štete žrtvama krivičnih dela pruža solidnu osnovu za ostvarivanje tog prava, stvarnost izgleda znatno drugačije.

Obeshrabrene praksom redovnog upućivanja na parnični postupak, u kombinaciji sa nedostatkom pravne pomoći u postupku ostvarivanja naknade štete, ili čak odvrćane od strane svojih punomoćnika, žrtve često nemaju dovoljno veština, snage niti podrške da podnesu zahtev za naknadu štete u krivičnom postupku i da prođu kroz taj proces zaštićene merama koje im, posebno ako su posebno osetljive, pripadaju u krivičnom postupku.

Ni pravni ni institucionalni okvir ne omogućavaju naknadu iz državnog fonda u slučajevima kada žrtva ne može da ostvari naknadu od učinioca iz različitih razloga (učinilac je nepoznat, preminuo ili nema imovinu/sredstva).

**Ključne reči:** naknada štete, reparacija, imovinskopravni zahtev, žrtve krivičnih dela.

---

\* Institut za kriminološka i sociološka istraživanja – Beograd, predsednik Savetodavnog komiteta za nominaciju sudija Međunarodnog krivičnog suda i potpredsednik Komiteta Ujedinjenih nacija za prisilne nestanke., kolakius@gmail.com, ORCID 0000-0002-3130-5128.