



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>	A (represented by counsel, Philip Grant of 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 (not issued in document form)
<i>Date of present decision:</i>	2 August 2019
<i>Subject matter:</i>	Right to fair and adequate compensation
<i>Procedural issues:</i>	None
<i>Substantive issues:</i>	Right to a remedy and compensation
<i>Articles of the Convention:</i>	14 (1) in conjunction with 1 (1)

1. The complainant is A, a citizen of Bosnia and Herzegovina, born in the former Yugoslavia in 1961. She claims that the State party has violated her rights under article 14 (1) in conjunction with article 1 (1) of the Convention against Torture.¹ The complainant is represented by counsel.²

The facts as submitted by the complainant

2.1 In 1992, the complainant and her 10-year-old daughter lived in Semizovac, within Vogosca Municipality, an area that was controlled by the forces of the Army of Republika Srpska (Vojska Republike Srpske, VRS) during the non-international armed conflict in

* 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 Yugoslavia ratified the Convention on 10 September 1991. Bosnia and Herzegovina acceded to the Convention on 1 September 1993. On 4 June 2003, Bosnia and Herzegovina made a declaration recognizing the competence of the Committee to receive communications from individuals in accordance with article 22.

² The complainant requested anonymity and strict confidentiality.



Bosnia and Herzegovina. The complainant lived in constant fear as during the civil war ethnic minorities were exposed to threats, killing, rape and arbitrary detention.

2.2 On an unknown date between May and June 1993, Slavko Savić, a member of VRS, invaded the complainant's 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. He raped her again subsequently.

2.3 The complainant became pregnant and had to terminate her pregnancy. These events severely affected her, leaving serious permanent psychological damage. 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 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 per cent due to her permanently changed personality after the catastrophic experience ...".³

2.4 The complainant did not report the events immediately because she was afraid to do so while living in a locality controlled by VRS. 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 filed an indictment against Slavko Savić for war crimes against the civilian population.

2.5 On 19 January 2015, the Court of Bosnia and Herzegovina Section I for War Crimes decided that the author's and her daughter's personal data were confidential and assigned them the 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 Slavko Savić guilty of war crimes against civilians for the rapes perpetrated against the complainant, sentenced him to eight years of imprisonment and required him to pay the complainant 30,000 marka (approximately 15,340 euros) for non-pecuniary damages within 90 days. On 24 November 2015, the Court, sitting as an Appellate Division, confirmed the sentence. Mr. 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. Savić had no assets; the complainant was therefore compelled to withdraw the enforcement motion on 7 April 2017.

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

2.8 The complainant refers to the practice of the Committee on the Elimination of Discrimination against Women whereby alleged violations are considered to have continuing effects although they occurred prior to the entry into force of the Optional Protocol for the respondent State. She argues that the Committee against Torture should consider applying, *mutatis mutandis*, the same reasoning and reach the same conclusions in her case, declaring her communication admissible and duly assessing that not only are the violations she alleges ongoing in their nature, but also that the effects of the rapes and ill-treatment she was subjected to are ongoing.⁴

³ *Prosecutor's Office of Bosnia and Herzegovina v. Slavko Savić* (case No. S1 1 K 017213 14 Kri), para. 391.

⁴ See, for example, Committee on the Elimination of Discrimination against Women, *A.T. v. Hungary* (CEDAW/C/32/D/2/2003), para. 8.5; *A.S. v. Hungary* (CEDAW/C/36/D/4/2004), para. 10.4; and

2.9 The complainant further states that she has exhausted all available domestic remedies and, in her case, that such remedies did not prove effective; 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 effective relief. The Committee has continuously held that complainants are not expected to exhaust domestic remedies that do not offer any realistic prospect of success.⁵ The complainant contends that her situation falls precisely within this exception, given that the submission of any further claim to the Bosnian authorities has no prospect whatsoever of success. 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 alleging in her communication because it would be considered time-barred. There is a statute of limitations in the applicable law⁶ that has been interpreted by the Constitutional Court of Bosnia and Herzegovina since its decision of 23 December 2013⁷ as meaning that any claims for non-pecuniary damages against legal entities filed more than five years after the injured party learned about the damage and the identity of the person who caused it are time-barred. Concerning this aspect, the complainant considers it unrealistic to expect that a victim of rape or any other conflict-related crime would have been able to claim their rights during the early 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 reasons mentioned and were then forced to pay between 2,000 and 10,000 marka (approximately 1,020 and 5,110 euros).⁸

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 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 wartime sexual violence, without any effective remedy.⁹

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 declaring claims for non-pecuniary damage concerning violations perpetrated during the war to be time-barred and not acknowledging the subsidiary liability of the State or other entities (i.e., VRS).

2.12 The complainant submits that the facts presented in her case must be seen in the context of the widespread practice of failing to undertake a prompt investigation and provide the payment of fair and adequate reparation for crimes committed during the armed conflict, which triggers an aggravated responsibility on the part of the respondent State for the provision of fair and adequate compensation to victims. The complainant also states that the 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.¹⁰ The complainant has not received any form of compensation for the harm suffered, despite her attempts to obtain it. This constitutes, for the complainant, an ongoing violation of article 14 (1) in conjunction

Kayhan v. Turkey (CEDAW/C/34/D/8/2005), para. 7.4; and Human Rights Committee, *Prutina and others v. Bosnia and Herzegovina* (CCPR/C/107/D/1917,1918,1925/2009 and 1953/2010), para 8.3; *Durić 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; and *Lale and Blagojević v. Bosnia and Herzegovina* (CCPR/C/119/D/2206/2012), para 6.5.

⁵ 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; and *Enrique Falcón Rios v. Canada* (CAT/C/33/D/133/1999), para. 6.6.

⁶ Law on Civil Obligations, art. 376.

⁷ *Hamza Rekić v. Republika Srpska*, decision No. AP-3111/09.

⁸ The complainant currently survives on very limited resources coming solely from the disability pension she receives.

⁹ CCPR/C/BIH/CO/3, paras. 17–18.

¹⁰ *G.N. v. Burundi* (CAT/C/60/D/579/2013), para. 7.4; and *V.L. v. Switzerland* (CAT/C/37/D/262/2005), para. 8.10.

with article 1 (1) of the Convention, as Bosnia and Herzegovina has not ensured in its legal system or in its practice that she can obtain redress. The State party 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 law¹¹ and, in certain circumstances, it may amount to a war crime.¹² In the instant case, in 2015 the Court of Bosnia and Herzegovina convicted the perpetrator of the rapes and ill-treatment inflicted on the complainant of 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”.¹³

2.14 The complainant is of the view that it is a well-established fact pursuant to international law and jurisprudence that victims of torture are entitled to redress, including compensation, restitution, rehabilitation, satisfaction and guarantees of non-repetition. The undisputed right to obtain redress for victims of torture, including sexual violence, has two corollaries that are at the core of 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 that would render 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, 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, crimes 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 the progressive development of international law, the non-applicability of statutes of limitations should also encompass civil claims for crimes under international law, whether made in civil proceedings or as part of criminal proceedings.¹⁴

2.16 Applying statutes of limitations of three to five 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 marginalization, which often prevent them from coming forward, denouncing the crime and filing complaints to seek compensation. Imposing on them a statute of limitations of three to five years, as 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 deprives 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 in question are war crimes or crimes against humanity and, as such, shall not be subjected to any statute of limitations, in terms of both 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

¹¹ Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law*, Vol. I: *Rules* (International Committee of the Red Cross and Cambridge University Press, 2009), rule 93. See also common article 3 to the Geneva Conventions of 12 August 1949; article 27, second paragraph, of the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention) and articles 76 (1) and 77 of the Protocol Additional to the Geneva Conventions of 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I).

¹² Rome Statute of the International Criminal Court, para. 8 (2) (b).

¹³ International Criminal Tribunal for the Former Yugoslavia, *Prosecutor v. Anto Furundžija* (case No. IT-95-17/1-T), Judgement of 10 December 1998, paras. 153–157.

¹⁴ See Amnesty International, *International Law Commission: Second Report on Crimes against Humanity—Positive Aspects and Concerns* (London, 2016).

International Humanitarian Law contain two further provisions that are relevant and that are violated by the practice and jurisprudence of Bosnia and Herzegovina as shown in the case of 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.” Moreover, pursuant to principle 17, “States should provide under their domestic laws effective mechanisms for the enforcement of reparation judgments.” In the case of A, not only has Bosnia and Herzegovina not offered any effective mechanism to guarantee the enforcement of the sentence issued 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 way of 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’.”¹⁵ The legislation of Bosnia and Herzegovina is plagued by pitfalls in this regard and the existing jurisprudence completely disregards the notion of subsidiary liability, hence leaving victims – including 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) in conjunction with article 1 (1) of the Convention because the State party has not ensured in its legal system or practice that she can 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 as a result of the sexual violence and ill-treatment to which she was subjected, the complainant received no redress or compensation. She therefore calls on the Committee, pursuant to rule 118, paragraph 5, of its rules of procedure and according to 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,¹⁶ but must also cover rehabilitation,¹⁷ satisfaction¹⁸ and guarantees of non-repetition.¹⁹

3.3 The complainant recalls the Committee’s views that redress should cover all the harm suffered by the victim and encompass, 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 “the comprehensive reparative concept therefore entails restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition”; that “reparation must be adequate, effective and comprehensive”; and that “monetary compensation alone may not be sufficient redress

¹⁵ REDRESS, *Reparation for Torture: A Survey of Law and Practice in Thirty Selected Countries* (London, REDRESS Trust, 2003), p. 47.

¹⁶ Committee against Torture, general comment No. 3 on the implementation of article 14, para. 9. On the obligation to provide compensation and the criteria to be followed, see, among others, Human Rights Committee, *Usaev v. Russian Federation* (CCPR/C/99/D/1577/2007), para. 11.

¹⁷ See, among others, Human Rights Committee, *Sendic v. Uruguay*, Views adopted on 28 October 1981, para. 21. In this sense, see 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, principle 21.

¹⁸ Basic Principles, principle 22.

¹⁹ See, among others, *Usaev v. Russian Federation*, para. 11.

for a victim of torture and ill-treatment”.²⁰ 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,²¹ 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; and commemorations and tributes to the victims.²² 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.²³

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 to: (a) ensure prompt, fair and adequate compensation proportional to the gravity of the violations she was subjected to; (b) provide her with immediate medical and psychological care free of charge; (c) bring the complainant and her family official apologies; (d) 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) 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 days inform the Committee about the measures taken and 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. In this regard, the establishment of a dedicated fund must be envisaged. Similarly, A wishes to receive adequate and fair compensation for the damage suffered, rehabilitation, and a public apology from the authorities of Bosnia and Herzegovina.

State party’s observations on admissibility and the merits

4.1 In its observations dated 7 January 2019, the State party referred to letters received from eight State institutions and entities²⁴ 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 prompt, fair and adequate compensation, the Court of Bosnia and Herzegovina states that it fulfilled its obligations towards the complainant, namely granting the complainant’s property claim for

²⁰ General comment No. 3, paras. 2, 6 and 9. See also Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, “Study on the phenomena of torture, cruel, inhuman or degrading treatment or punishment in the world, including an assessment of conditions of detention” (A/HRC/13/39/Add.5), paras. 167–173.

²¹ General comment No. 3, para. 11.

²² *Ibid.*, para. 16.

²³ *Ibid.*, para. 18.

²⁴ 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 the 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.

non-pecuniary damage compensation in the amount of 30,000 marka.²⁵ As for the execution of the decision, the Executive Unit of the Court reports that the complainant decided to withdraw her property claim because she was aware that the convict did not have any property which could be used for her damage compensation and because she could initiate a civil proceeding under the Law on Civil Obligations or file a new property claim with the Court of Bosnia and Herzegovina. The Court also submits that the legislation foresees the possibility to impose temporary measures in order to secure fulfilment of the property claims in the criminal proceedings; however, the complainant never filed such a motion.

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

4.4 Further, the State party submits 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 a monetary benefit called "personal monthly income" in the amount of 59,494 marka since 1 February 2008.²⁶

4.5 In its letter of 19 March 2018, the Ministry of Human Rights and Refugees stated that the requested legal remedy for the complainant is partially acceptable since A did not receive swift, fair and adequate compensation, her rights were implemented only 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 states 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 centres and centres for social work as well as to primary and secondary health care. Most of these services are free of charge apart from some specialist services, which must be paid for.

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

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 issuing an official apology²⁷ to the victims of torture, the State party found this remedy acceptable.

4.9 With regard to the applied statute of limitations for claims of compensation of non-pecuniary damage for the crimes of torture and sexual violence related to the armed conflicts, the State party states that the requested remedy of amending the existing legislation and practice is acceptable since Bosnia and Herzegovina has not aligned its legislation with the provisions of the Convention and the European Convention on the Compensation of Victims of Violent Crimes.

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

²⁵ The amount of 16,000 marka for mental pain caused by her rights violations and the amount of 14,000 marka for mental pain due to her reduced life activities.

²⁶ Monthly personal income is 70 per cent of the monthly disability allowance for war veterans of the first disability group.

²⁷ The draft law on the rights of victims of torture in Bosnia and Herzegovina provides for an official apology as a remedy for the victims of torture; however, this draft law has not been adopted.

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. She reiterates the facts of her case and all her arguments and claims. She adds that since the submission of her complaint to the Committee, her state of health and psychological condition have deteriorated due to the additional stress she has been experiencing in relation to the proceedings.

5.2 The complainant provided some clarifications concerning the State party's declining to contest the admissibility and the merits of the communication. 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 had informed her that the perpetrator had no property whatsoever, thus making it clear that there were no means to ensure execution of the court judgment and rendering the withdrawal of the motion the sole viable option.

5.3 The complainant observes that she receives a 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 59,494 marka per month, as claimed by the State party, but 600 marka. Moreover, this pension is a social allowance, different from the compensation she is entitled to pursuant to the verdict of the Court of Bosnia and Herzegovina and article 14 (1) of the Convention. The 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's pledge does not encompass all the measures of reparation she requested. In this regard, the complainant reiterated all her claims for redress. She adds 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 any claim submitted 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 In accordance with article 22 (5) (b) of the Convention, the Committee shall not consider any communication from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The Committee notes that, in the present case, the State party has not contested that the complainant has not exhausted 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 allegations of war crimes against the civilian population 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 had 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 an 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.²⁸

²⁸ *Gerasimov v. Kazakhstan* (CAT/C/48/D/433/2010), para. 11.2.

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 a new property claim in the Court of Bosnia and Herzegovina once she had 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 virtually impossible. Moreover, having unsuccessfully exhausted one remedy, it should not be required, for the purposes of article 22 (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.²⁹ In these circumstances, the Committee concluded that it was not precluded by the requirements of article 22 (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, 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.³⁰ 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.³¹ In this respect, the Committee notes the decision of the Court of Bosnia and Herzegovina wherein the complainant was found to be a victim of rape as a war crime against the civilian population committed during the armed conflict. The Committee notes that the State party has not contested these allegations.

7.3 The Committee notes that during the period 1992–1995, the territory where the complainant lived was controlled by the Vojaska Republike Srpske and that during the civil war ethnic minorities were exposed to threats, killing, rape and arbitrary detention.³² The Committee notes the complainant's claim that in May and June 1993, she was forcibly taken from her home at gunpoint and raped by a member of VRS, which resulted in her becoming pregnant and undergoing an abortion. The Committee observes that the rape and other 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 and to humiliate and degrade her, representing a form of discrimination³³ on the basis of her gender³⁴ and ethnicity. The Committee observes that, in the 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,³⁵ 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.

²⁹ *Osmani v. Serbia* (CAT/C/42/D/261/2005), para. 7.1.

³⁰ *Rakishev and Rakishev v. Kazakhstan* (CAT/C/61/D/661/2015), para. 8.2.

³¹ *Ben Salem v. Tunisia* (CAT/C/39/D/269/2005), para. 16.4.

³² On the crimes committed in Vogosca Municipality during the war, see, among others, Court of Bosnia and Herzegovina, *Prosecutor v. Dragan Damjanovic*, decisions of 15 December 2006 (Trial Chamber) and 13 June 2007 (second instance verdict).

³³ See, generally, International Tribunal for the Former Yugoslavia, *Prosecutor v. Zejnil Delalić, Zdravko Mucić, Hazim Delić and Esad Landžo* (case No. IT-96-21-T), Judgment of 16 November 1998, para. 493.

³⁴ 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.

³⁵ See, generally, E/CN.4/1993/50, annex II.

7.4 The Committee notes the complainant's statement that, as the 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 other things, 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's 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 States parties to provide redress under article 14 is twofold: 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.³⁶ The Committee recalls that, on account of the continuous nature of the effects of torture, statutes of limitations should not be applicable as they deprive victims of the redress, compensation and rehabilitation due to them.³⁷ The Committee also recalls its concluding observations on the sixth periodic report of the State party in which it urged the State party to take all the necessary measures to enable victims of torture and ill-treatment, including victims of wartime sexual violence, to exercise their right to redress.³⁸ 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 violation, 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 compensation, and given the lack of any possibility to enforce her right as fully 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 or financial means to compensate the complainant for the violations committed. The Committee notes that the domestic legislation regulating civil claims for non-pecuniary damage provides for a statute of limitations³⁹ for such cases, and that 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.⁴⁰

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 to: (a) ensure that the complainant obtains prompt, fair and adequate compensation; (b) ensure that the complainant receives medical and psychological care immediately and free of charge; (c) offer public official apologies to the complainant; (d) 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 to develop and adopt a framework law that clearly defines the criteria for obtaining the status of victim of a

³⁶ General comment No. 3, para. 5.

³⁷ *Ibid.*, para. 40.

³⁸ CAT/C/BIH/CO/6, para. 19.

³⁹ Law on Civil Obligations, art. 376.

⁴⁰ See also *Osmani v. Serbia*, para. 10.8.

war crime, including sexual violence, and sets out the specific rights and entitlements guaranteed to victims throughout the State party.⁴¹

10. Pursuant to rule 118, paragraph 5, of its rules of procedure, the Committee invites the State party to inform it, within 90 days of the date of transmittal of the present decision, of the steps it has taken to respond to the above observations.

⁴¹ CAT/C/BIH/CO/6, para. 19 (a) and (b).