COMPENSATION IN THE CASES OF FORCIBLY MOBILIZED REFUGEES[1]

Mojca Šivert

The circumstances under which 705.667[2] persons have left the territory of the Republic of Croatia and Bosnia-Herzegovina are widely known, as well as the disasters and suffering that they have sustained in their attempt to get to Serbia. To all of them, after entering the territory of the Republic of Serbia, it seemed, at least for a moment, that they have reached the place where they didn't have to fear for their safety and safety of their families any more. Beside their personal belief, this kind of safety was guaranteed to them both by the national and the international legislation.

Once outside their country of citizenship, they were given the status of refugees in the Republic of Serbia, in compliance with the international Refugee Convention of 1951[3], the Protocol to this Convention of 1967, as well as on the basis of the valid Law on Refugees of the Republic of Serbia.

Art. 33 of the Convention explicitly states that "no Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion."

Unfortunately for all, in the period of June to September 1995, this presented no obstacle for the agencies of the Republic of Serbia, more specifically, the official bodies of the Republic of Serbia Ministry of Internal Affairs (MUP RS)

1 The data were obtained from the plaintiffs themselves, as well as from their witnesses

2 Data of the Commissariat for Refugees of the Republic of Serbia

3 The People's Federative Republic of Yugoslavia ratified this Convention on 01.07.1960, thus becoming a signatory state, bound by the Convention.

to deprive of liberty approximately 10,000 exiled and expelled persons[4] and conduct them across the state border to the territory of the Republic of Croatia and Bosnia-Herzegovina, that is, the territory they had previously fled from.

Namely, members of the Serbian police would come to the collective centers where the refugees were accommodated, under the pretext of conducting informational interviews or checking the data, at the same time threatening the refugees with the use of force unless they comply. The police would then unlawfully arrest the refugees, take them to local police stations and, after several hours of detention, conduct them across the state border, under armed threat and abusive treatment. Some of the refugees were transferred to the town of Erdut in East Slavonia, the location of the Serbian Voluntary Guard camp (hereinafter: the Camp), under the command of Željko Ražnatović Arkan, and others were sent via Bijeljina and Janja to Manjača, the Republic of Srpska, also a camp of the Serbian Voluntary Guard.

In the Camp they were exposed to ill-treatment and humiliation. The methods of "punishment" they were subjected to, for the "offences" they did not commit, were deeply insulting to human dignity. They were forced to run in circles, carrying a rock of 20kg of weight, named "Mr. Discipline", that they had to bow to before they took it up, and do the same after putting it down. They were locked up and tied to doghouses, and forced to bark like dogs. They were stripped to the waist and remained tied to flag poles for several days. This type of violence was used as an instrument of coercion against the exiled and expelled persons, with the aim to intimidate them and break their personalities.

After several days in the Camp, the refugees were sent against their will to the combat units of the Republic of Serb Krajina or the Republic of Srpska Army. They were deployed to the frontline where they were constantly exposed to all risks of war, and many of them lost their lives. Most of them remained within these units until the signing of the Dayton Agreement in December 1995. Some of them were captured in the course of war actions and held captive in Sarajevo, Mostar, Bihac, until the official exchange of war prisoners, in some cases even until June 1996.

From the moment they were arrested by the Serbian police to their return to Serbia, these people have suffered extreme pain, primarily emotional and mental, due to the violation of their personal freedom and rights (by the unlawful deprivation of liberty), and many of them have also suffered physical pain and fear as a result of torture they were subjected to. All of this has had negative impact on their health.

The above actions of the Serbian Ministry of Internal Affairs represent gross violation of fundamental human rights and liberties of the exiled and expelled persons, and infliction of emotional pain, which is a direct consequence of the

4 Unofficial data

unlawful deprivation of liberty, use of force and brutal procedures, and forcible participation in the war.

The Republic of Serbia not only failed to provide the necessary protection of the exiled/expelled persons on its territory, according to the Convention and the Law on Refugees, but in fact through its agencies exposed these persons to the very dangers they had fled from when obtaining the status of refugees. These actions are also in violation of the provisions of Article 23 of the FRY Constitution, Article 25 of the Constitution of the Republic of Serbia, and Article 1 of the Law on Internal Affairs of the Republic of Serbia.

The Code of Obligations (CO) envisages the possibility of initiating proceedings, i.e. filing claims for compensation of non-material damages to all persons who have suffered emotional pain, fear or physical pain. The claims are filed against natural persons or legal entities or agencies, whose actions have caused one or more aspects of the non-material damages. The aim of the legislators was to allow the persons who have sustained aspects of the damages to alleviate the suffering they have been or are still exposed to, by the financial compensation awarded to them.

Pursuant to Art. 376 of the Code of Obligations (CO), the general statute of limitation for compensation claims is the subjective period of 3 years from the day of the plaintiff's knowledge of the damage and the perpetrator, i.e. the objective period of 5 years.

Out of approximately 10,000 forcibly mobilized refugees, only about 1,000 have filed claims for compensation of non-material damages within the legally prescribed period. The reason for this was the fear of further persecutions by the Slobodan Milosevic's regime, as well as the fear of Arkan and his command personnel. Furthermore, we should not disregard the fact that persons in question are refugees who were forced to struggle for their existence due to poor economic situation in Serbia and that most of them had no material resources and information that the claims for compensation of non-material damages should be initiated within the legally prescribed statute of limitation for this type of damages.

In the compensation claim proceedings initiated before the year 2000, the court has established beyond doubt the responsibility of the official bodies of the Republic of Serbia for the infliction of damage manifested in the sustained fear and emotional pain resulting from the injury to reputation, freedom and rights of person, and the Republic of Serbia was obligated to award indemnity to the plaintiffs (exiled/expelled persons who filed the claims) for the damages sustained[5].

Acting on behalf of persons exiled from the territory of Bosnia-Herzegovina and Croatia, the International Aid Network (IAN) has initiated 42 legal proceedings (in the name of 51 persons) before the First Municipal Court in Belgrade, after the expiry of the statute of limitation, claiming compensation for

5 Depending on the actual case, the amounts range from 150,000.00 to 250,000.00 CSD – judicial practice

non-material damages due to violation of freedoms and rights of person, sustained physical pain, fear and emotional pain as a result of diminished life capacity. Simultaneously, the same number of criminal charges was submitted to the competent public persecutor's offices.

The charges were made because, in our opinion, actions of the Serbian officials on the occasion of unlawful deprivation of liberty – forcible mobilization, correspond entirely with the criminal act of unlawful deprivation of liberty under Art. 63, par. 3 and 4 of the Criminal Code of the Republic of Serbia, and we believe that the statute of limitation for the described cases ought to be extended in accordance with Art. 377 of the Code of Obligations. The above Article stipulates that "when the damage is caused by a criminal act, and criminal charges foresee a longer statute of limitation, the right to instigate a compensation claim against the person responsible expires upon termination of the period designated as the statute of limitation for criminal charges".

Criminal act under Art. 63 par. 3 and 4 of CC RS consists of unlawful detainment, holding in custody or deprivation of the freedom of movement in any other way. The criminal act was committed by the officials – members of the Republic of Serbia Ministry of Internal Affairs, through the abuse of power and authority, and the deprivation of liberty was conducted in a particularly cruel manner and lasted a considerable period of time. From the above stated facts, it can be concluded beyond doubt that in the procedure of depravation of liberty, the official bodies of the RS Ministry of Internal Affairs have acted against the law.

Therefore, due to the manner in which the refugees have been unlawfully deprived of liberty, the duration of the deprivation of liberty, as well as the consequences that followed as a result of the unlawful deprivation of liberty, the damages sustained by the refugees were caused by the commitment of the criminal act of unlawful deprivation of liberty under Art. 63, par. 3 and 4 of the CC RS. Pursuant to provisions of Art. 95, par. 3 of the Criminal Code, charges for a criminal act for which the term of more than 5 years of imprisonment is stipulated, can be made within the statute of limitation of 10 years from the time when the criminal act was committed.

On February 10, 2004, on the matter of statute of limitation for the compensation of non-material damages in cases when damage was inflicted by unlawful deprivation of liberty conducted by the official bodies of the Republic of Serbia, the Supreme Court of Serbia, Civil Law Section, has taken legal stand by which compensation claims based on the state responsibility for the damages caused by its official body, by means of unlawful deprivation of liberty, have the statute of limitation in the duration as envisaged under provisions of Art. 376 of CO. In the explanation of this stand, it is declared that by applying the provisions of Art. 377 of CO, the statutes of limitation could be applied only on the direct perpetrator of the criminal act that caused the damage, and not on the state as well,

that is, on the legal entity responsible for the damages instead of the direct perpetrator.

On 26 November 2004, Humanitarian Law Center, Belgrade Human Rights Center and International Aid Network have addressed an initiative for the amendment of the above legal stand, based upon the opinion that this was not the case of individual instances of unlawful acts committed by the members of the police, but that this conduct was in fact a consequence of the general policy of the Republic of Serbia, and therefore the principle of responsibility of the immediate perpetrator would not be consistent with the doctrine of justice and righteousness.

In support of the proposal to prolong the statute of limitation for the claims for compensation of non-material damages by connecting them with the criminal act of unlawful deprivation of liberty, we present two legal stands adopted by the Civil Law Section of the Supreme Court of Serbia.

> 1. In the session held on 27.12.1999, the Civil Section of SCS took the legal stand on the matter of statute of limitation for war damages claims. Namely, the damages sustained by the members of the former JNA (Yugoslav National Army) in the course of armed conflicts against paramilitary formations of the former republics of SFRY … were caused by the criminal act of armed insurgence under Art. 124 of the Criminal Code of Yugoslavia, and the claims related to this damage have the statute of limitation of 15 years, pursuant to Art. 377, par. 1 of CO. **(I Su. -147/99)**
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> 2. In the session of 25.06.2001, the Civil Section of the Supreme Court of Serbia altered its legal stand[6] on the matter of responsibility of the Republic of Serbia for unlawful acts of the official agencies of the MIA. The above legal stand has established full responsibility of the Republic of Serbia for the detrimental consequences that ensued due to unlawful acts of its official agencies, even in case they were committed in the territory of the Republic of Srpska and the Republic of Serb Krajina, on the grounds that "justice and the need to provide compensation to the victim require the use of adequate causality theory, since, without a doubt: **if it had not been for the unlawful action, the detrimental consequence would not have ensued**". The proof that the actions undertaken by the Republic of Serbia agencies were unlawful and that there were no grounds for the deprivation of liberty, is evident in the fact that after the actual arrest, no criminal charges pursuant to Art. 191 and 195 of the Criminal Procedure Code have been made against these persons.

Therefore, damages sustained by the members of the JNA in the course of armed conflicts with paramilitary formations and the damages caused to the forcibly mobilized persons by the RS Ministry of Internal Affairs, are, in both cases, caused

6 The amended stand was adopted based on the initiative of the Humanitarian Law Center

by unlawful actions of the perpetrators. Having in mind the already accepted right to indemnity based on the criminal act of armed insurgence in the first case, adoption of the proposed legal stand presents itself as a just solution, since the damages sustained by the forcibly mobilized persons are caused by the criminal act of unlawful deprivation of liberty under Art. 63, par. 3 and 4. The obvious reason for this is the fundamental rule in the application of law, that "in equal cases one must act in an equal manner".

The Supreme Court of Serbia has not taken legal stand on this initiative, even though more than six months have passed since it was addressed. Criminal proceedings are also still in the phase of criminal charges, namely, the identity of the immediate perpetrators has not been established yet. There is danger that criminal proceedings would fall under the statute of limitations and that both immediate perpetrators and their commanding officers would remain unknown and unpunished.

We believe that there is no political will to solve this problem, and that a separate law to regulate the compensation of damages to these persons, with an unlimited period for exercising their rights, would present the only just solution.