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SHADOW REPORT FOR THE COMMITTEE AGAINST ENFORCED DISAPPEARANCES

The Humanitarian Law Center (HLC) is a regional non-governmental organization dealing with issues of human rights and international humanitarian law. It was founded in 1992 in connection with the armed conflicts in the former Yugoslavia. By way of interviewing witnesses and victims since its establishment, the HLC has researched the murders, enforced disappearances, concentration camps, torture of prisoners of war and the pattern of ethnic cleansing during the armed conflicts.

THE COMMITTEE'S FUNCTIONS *RATIONE TEMPORIS*

In accordance with the HLC's mission, this shadow report will be dealing solely with cases of enforced disappearances which commenced before the entry into force of the Convention for Serbia. Notwithstanding Article 35 and the Committee's statement on the *ratione temporis* element in the review of reports submitted by States parties, the HLC strongly holds that these cases are within the functions of the Committee. Primarily, the information contained in this shadow report is useful as a means for the Committee to understand fully the challenges of the present in Serbia. However, it is also the HLC's position that the Committee may issue comments, observations or recommendations in Serbia's case even in relation to cases of enforced disappearances which commenced before the entry into force of the Convention for Serbia. Namely, the failure to investigate a case of enforced disappearance as well as to inform family members about the fate of those forcibly disappeared constitutes a continuous violation of the rights of the victims. In the case of a continuous violation, the State should not be shielded from the Committee's review by the principle of non-retroactivity of treaties. In case of a continuing or permanent violation, which begins before the acceptance of the relevant international body's jurisdiction and





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persists after that acceptance, the international body is competent to examine the actions and omissions occurring subsequent to the recognition of jurisdiction, as well as their respective effects. This rule has been adopted in the jurisprudence of the European Court of Human Rights (ECtHR), the Inter-American Court for Human Rights,¹ and the UN Human Rights Committee (UNHRC).² The temporal jurisdiction of the ECtHR has especially been stressed in cases of enforced disappearances.³ Finally, it would be a paradox for both relevant bodies for Serbia - the ECtHR and the UNHRC to have a completely different position from the Committee over the same issue. Also, this situation would be contrary to the goals of these human rights mechanisms as it would preclude the effective protection of victims of enforced disappearances. Namely, the Committee is in a far better position to ameliorate the sufferings of victims of enforced disappearances in Serbia than the ECtHR. The ECtHR is a court, hence, it is reactive and intervenes too late – when a violation already occurred. On the other hand, with its periodic reviews, comments, recommendations, the Committee is in a unique position to anticipate problems and to prevent violations from taking place.

The HLC thus expects that the Committee will take into full consideration that problems emphasized in this shadow report.

BACKGROUND

During the armed conflict in the former Yugoslavia, between 35,000 and 40,000 people disappeared. The search for missing persons began immediately after the conflict in Croatia and Bosnia in 1995 and 1996. According to the International Committee of the Red Cross (ICRC), during the wars in the former Yugoslavia, 34,883 people disappeared. Nearly 12,000 people are still missing.

¹ See e.g. IACHR case of the *Moiwana Community v. Suriname*. Preliminary Objections, Merits, Reparations and Costs. Judgment of June 15, 2005. Series C No. 124.

² See e.g. HRC's Final decision on Communication No. 310/1988 of 11 April 1991 (forty-first session).

³ See e.g. *Varnava and other v Turkey*, Grand Chamber Judgment of 18 September 2009, paras. 148/149; *Palic v Bosnia and Herzegovina*, Judgment of 15 February 2011, para. 46).





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According to the ICRC, nearly 8,000 people are missing in Bosnia and Herzegovina⁴ and around 2,000 are still missing from the armed conflict in the Republic of Croatia.⁵ The total number of missing persons from the conflict in Kosovo is 1,770, according to the ICRC.⁶

SERBIA'S DENIAL OF THE RIGHT TO KNOW THE TRUTH AND OMISSION OF THE DUTY TO INVESTIGATE (Art. 24 of the CED)

Summary: *Not only did Serbia not fulfill the victims' right to know the truth regarding the circumstances of the enforced disappearances, but it proactively concealed evidence regarding these crimes. Nearly the entire Serbian political leadership has been convicted by the ICTY for the concealment of the bodies of Kosovo Albanian civilians in secret mass graves. The current government has not detached itself from the wrongdoings of the Milosevic regime, hence, it has done nothing or very little to uncover these massive operations conducted on the state level and to find the remains of those still missing.*

In Serbia, since the conflict began in 1991 until today over 1,300 bodies have been found, over 900 of which originate from the conflict in Kosovo and around 400 bodies from other conflicts. Of the total number, nearly 400 bodies had come via rivers in the period 1991-1995, while the rest were exhumed. Most of the missing persons exhumed from mass graves in the territory of the Republic of Serbia are Kosovo Albanians, who were killed during the armed conflict in Kosovo, and whose bodies were transferred and buried in secret locations in Serbia, in order to conceal evidence of crimes. The existence of secret mass graves in Serbia created right before and during the NATO bombing of FR Yugoslavia, was revealed by the first transitional government of the Republic of Serbia after the arrest of Yugoslav President Slobodan Milosevic and before his transfer to the ICTY detention unit

⁴ ICRC, „Bosnia and Herzegovina: Families of missing persons pursue their quest“, 28/08/2013, available at <https://www.icrc.org/eng/resources/documents/feature/2013/09-28-bosnia-herzegovina-disappeared-missing.htm>

⁵ ICRC, „Croatia: seventeen years on, missing persons list still contains more than 2000 names“, 18/07/2012, available at <https://www.icrc.org/eng/resources/documents/news-release/2012/croatia-news-2012-07-18.htm>

⁶ ICRC, „For persons unaccounted for in connection with the crisis in Kosovo“, available at <http://familylinks.icrc.org/kosovo/en/Pages/background-information.aspx>





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on 28 June 2001. According to the data of that government, Serbian forces transferred about 1,000 bodies of Kosovo Albanians from Kosovo who were previously buried, also in secret graves in Kosovo. The then Prime Minister Zoran Djindjic revealed the existence of mass graves in the training facility of the Special Antiterrorist Unit (SAJ) of the Serbian Interior Ministry (MUP) in **Batajnica** (on the outskirts of Belgrade); the training ground of the Special Operations Unit (JSO) in **Petrovo Selo**, near Kladovo; and near Lake **Perucac** at Bajina Basta. The exhumation and autopsies were carried out efficiently and in a short time. However, for unknown reasons, experts of the Institute of Forensic Medicine in Belgrade did not deal with determining the cause of death of the victims whose remains were found in mass graves in Batajnica, while the medical team of the Military Academy [VMA] that performed the autopsy on victims at the Perucac location, in some cases determined that the death was caused by missiles fired at the back of the head.

There are serious indications that war crimes were concealed in Serbia, under Slobodan Milosevic, through the burning of the remains of Kosovo Albanian victims in some factories that use furnaces with high temperatures. In December 2004, a group of NGOs addressed the Serbian Parliament with a request to form a commission to determine the facts relating to the allegations of the HLC that several dozen bodies of Kosovo Albanian victims transferred from Kosovo were burned during NATO bombing in the Mačkatica factory. This request was never answered.

For the concealment of bodies, the International Criminal Tribunal for the former Yugoslavia (ICTY) convicted nearly the entire political, military and police leadership of the Republic of Serbia from 1999 - Nikola Sainovic, Dragoljub Ojdanic, Nebojsa Pavkovic, Vladimir Lazarevic and Sreten Lukic. Vlastimir Djordjevic, the former chief of the Public Security Department (RJB) at the MUP addressed the Appeals Chamber of the ICTY in 2012 with a submission of comments relating to the first instance judgment by which he was sentenced to 27 years in prison for crimes against Kosovo Albanian civilians in Kosovo in 1999 and the concealment





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of their bodies. In his submission, Djordjevic admitted to his involvement in the burial of corpses in Batajnica and knowledge of the concealment of bodies in lake Perucac.⁷

Furthermore, the ICTY has determined that the Serbian army and police were responsible for the collection of bodies in Kosovo and the police for their concealment.⁸ Also, the laws on the military and military courts (in force during the 90's), as well as official military orders required for all cases of crimes, discovery of bodies and their treatment to be documented by special organs within the military. Irrefutable evidence exists that these cases were indeed documented.⁹ However, the State has thus far been unwilling to open its archives in order to locate the remains of those persons still missing. Moreover, the State has been concealing these documents, not only from the public, but even from the Office of the War Crimes Prosecutor.¹⁰

In 2013 a new mass grave was found in Serbia (in **Rudnica**, Raska) containing 52 bodies of Kosovo Albanian civilians. Excavations of this site ended in August 2014. This is the first mass grave discovered in Serbia that will not be taken up by the ICTY due to the completion of its mandate. Therefore, the investigation of this mass grave falls within the exclusive jurisdiction of Serbian authorities, which they must commence in compliance with Art. 24 of the CED.

So far no one in Serbia has been charged for the concealment of bodies of Kosovo Albanians in the period 1999-2002.

SERBIA'S DENIAL OF THE RIGHT TO REPARATION (Art. 24 of the CED)

⁷ The Prosecutor v. Vlastimir Đorđević, Case No: IT-05-87/1-A, Vlastimir Đorđević submission following translation of the Trial Judgment.

⁸ See ICTY Trial Chamber Judgment in the case of *Vlastimir Djordjevic* (23 February 2011), paras. . 553, 985, 988, 2118, 2119 and 2121; ICTY Trial Chamber Judgment in the case of *Sainovic et al* (13 September 2010) paras. 1356 and 1357.

⁹ See ICTY Exhibit No. P1011, Report of the Commission for the collection of materials on the battlefield sanitization performed on the territory of Kosovo and Metohija 1998-1999, *Sainovic et al case*.

¹⁰ Omer Karabeg, "Are Dikovic and Guri intouchable", 14 September 2014, available in Serbian at <http://www.slobodnaevropa.org/content/da-li-su-dikovic-i-guri-nedodirljiviji/26581902.html>





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Summary: *Serbia has not adopted a special law or a special legal procedure that would enable the victims of enforced disappearances to obtain reparation. Under the current legal framework, victims of enforced disappearance are not considered to be civilian victims of war, thus them and their families cannot obtain any type of state support. In order to obtain any kind of state support, these families are required to declare their missing family member as deceased, which is insensitive and exposes the victims to re-traumatization.*

Specific procedures for compensation and reparations for victims within the meaning of Article 24 of the Convention have not been established. The only available procedures are civil lawsuits for damages which are governed by the general rules of civil procedure, in which the victim is in the position of a prosecutor who entirely bears the burden of proof. According to the latest changes in the Code of Civil Procedure, whenever the State is the defendant in these proceedings, mediation is compulsory. Before starting the proceedings, the victim or their family members are required to apply to the Ministry of Justice with a request for resolution of the dispute, while the Ministry has a 60-day deadline to respond to this request. Silence of the Ministry is taken as a negative response. According to the latest European Commission's 2014 Progress Report for Serbia, "the system of awarding compensation to victims of crime through criminal or civil proceedings is not functional."¹¹

Serbia has not adopted a special rehabilitation program for families of victims of enforced disappearance either, nor is there an indication of steps planned in this direction.

One of the problems with which the families of missing persons in Serbia are facing is the lack of a law on missing persons, which would regulate the special status of these individuals and define the rights and benefits of the families of missing persons, in accordance with the severity and longevity of the crime of enforced disappearance. Serbia has still not adopted such a law despite constant demands of associations of families of the missing and examples from neighboring countries where such a law has been adopted (Bosnia and Herzegovina, Kosovo).

¹¹ European Commission, 2014 Progress Report – Serbia, p. 41, available at http://www.seio.gov.rs/upload/documents/eu_dokumenta/godisnji_izvestaji_ek_o_napretku/serbia-progress-report14.pdf





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The only available mechanism for state support for victims and families of enforced disappearance is the Law on Civilian Invalids of War. The rights that the Law provides for civilian victims and their families can be divided into three groups: (1) monetary compensation; (2) healthcare and (3) reduced prices of public transport tickets. This Law, however, severely neglects these victims and discriminates against them. According to Article 3 of this Law: “A war victim's family member is considered to be a family member of a person who was **killed or** has **died** [...]; if the family member has lived in a common household with the aforementioned person, prior to their death.”¹² Since the definition of a family member does not include family members of missing persons, but only those who have died, the only option available for these families is to declare the missing person deceased. Many families refuse to declare their loved ones dead until their mortal remains are found and before the circumstances of their enforced disappearance are determined. Considering the fact that the families of the missing belong to one of the most vulnerable categories of victims, and that they live in a state of continuous trauma, their decision not to declare their loved ones deceased should not affect their right to receive help and support from the state.

Furthermore, the Law specifies which members of the family are entitled to administrative reparations, and it prescribes an additional condition, that they “lived in a common household” before the victim’s death. The recognized family members are: spouse, children (born in or out of wedlock, adopted or stepchildren) and parents. The Law excludes siblings of victims, but also children and parents in cases where they did not live in the same household. In this way, the connection between close relatives is reduced to a mere economic community in one household, and completely ignores the emotional dimension of family relationships.

An additional discriminatory measure contained in this Law, applicable in the cases of families of missing persons, is the condition relating to the identity of the perpetrator. According to Article 2: “A civilian invalid of war is a person who has suffered [...] injury [...]

¹² Law on Civilian Invalids of War, Art. 3 (“Official Gazette of RS”, No. 52/96). Available in English at http://www.hlc-rdc.org/wp-content/uploads/2014/03/The_Law_on_Civilian_Invalids_of_War.pdf





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caused by [...] **the enemy**.” The Law thus explicitly excludes from the circle of potential beneficiaries all victims who suffered violence or were injured by formations that the Republic of Serbia does not consider as an enemy, such as the Yugoslav National Army (JNA), the Yugoslav Army (VJ), the Ministry of the Interior (MUP) or the Republic of Srpska Army (VRS) and their subordinate formations. And in this discriminatory manner is exactly how administrative organs in charge of implementing this Law apply it.¹³

The legal framework for victims’ right to compensation, as well as the Law on Civilian Invalids of War been criticized by the UN Human Rights Committee,¹⁴ the Committee for the Prevention of Torture¹⁵ and the Commissioner for Human Rights of the Council of Europe.¹⁶ Furthermore, the inconsistency with the EU *acquis* in this area has been pointed out also by the European Commission in its 2014 Progress Report on Serbia. The report states that "only few victims of war crime have access to effective compensation under the current legal framework", and that "assistance to victims has not improved."¹⁷

In December 2014, the Ministry of Labour, Employment, Veteran and Social Policy prepared a Bill on the Rights of War Veterans, Disabled War Veterans, Civilian Victims of War and their Family Members. Despite the aforementioned criticism by international human rights bodies, the Bill was prepared without any consultation with victims’ associations or other relevant stakeholders. In essence, the Bill improves solely the position of war veterans and

¹³ The Decision of the Department of Social Services of the Town Administration for original and delegated tasks of Novi Pazar, number: 585-12/13, dated April 26th, 2013; The Decision of the District Department for Healthcare, Social Policy and Demography, number: 129-585-79/2012-02, dated November 29th, 2012 following the appeal against the decision of the Department of General Administration, Social Affairs and Municipal Affairs of the Municipal Administration of Apatin, number: 585-1/2012-IV/03. dated October 4th, 2012.

¹⁴ Report of the Human Rights Committee A/66/40 (Vol. I), p. 56, available at [http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=A%2f66%2f40\(VOL.I\)&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=A%2f66%2f40(VOL.I)&Lang=en)

¹⁵ Committee against torture, Consideration of reports submitted by State parties (CAT/C/SRB/CO/1), Forty-first session, pp. 7-8, available at <http://www.mfa.gov.rs/en/images/stories/human%20rights/CAT%20Srbija%20zakljucci.pdf>

¹⁶ Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Serbia on 12-15 June 2011 (CommDH(2011)29), paras. 25/27, available at <https://wcd.coe.int/ViewDoc.jsp?id=1834869>

¹⁷ European Commission, 2014 Progress Report – Serbia, p. 42, available at http://www.seio.gov.rs/upload/documents/eu_dokumenta/godisnji_izvestaji_ek_o_napretku/serbia-progress-report14.pdf





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just takes over the existing discriminatory legal framework relating to civilian victims of war.¹⁸

THE CASE OF THE MISSING BROTHERS CATOVIC

Summary: *Brothers Ramahudin and Sabahudin Catovic from Sjeverin (municipality of Priboj, Serbia) were forcibly disappeared on October 21 and 22, 1992, respectively. Twenty two years since their forced disappearance, the Republic of Serbia has yet to establish all of the circumstances of their disappearance. It is yet to punish those responsible for the crime, fulfill the family's right to know the truth regarding the circumstances of the enforced disappearances, to conduct an effective investigation into the enforced disappearances and to prosecute those responsible for enforced disappearances.*

Facts of the case

Introduction

Sanjak is an underdeveloped region in southwest Serbia, bordering Bosnia and Herzegovina (B&H). Most of its population is Muslim minority. At the beginning of the armed conflict on the territory of B&H in 1992, the already hard life in this area was further complicated by the arrival of the Yugoslav Army (VJ), particularly in the period between 1992 and mid - 1993. This is when the local Muslim population was being mistreated, their homes searched, property stolen and the Muslim population massively arrested for police interrogation on suspicion of hiding weapons.¹⁹ One of the most serious crimes in Sandzak was the abductions of Bosniaks from the village of Sjeverin.

Ramahudin's disappearance

On the morning of October 22, 1992, Ramahudin (1968) took a regular bus from Sjeverin to go to work in Priboj. At a place where the road to Priboj passes through the territory of

¹⁸ See HLC's Press Release: "Bill on Rights of Civilian Victims of War should be Withdrawn", 26 December 2014, available at <http://www.hlc-rdc.org/?p=27883&lang=de>

¹⁹ The Humanitarian Law Center, *Under Spotlight – Violation of Human Rights in the former Yugoslavia, 1991-1995* (Belgrade, 1996), p. 117-126; The University of Tuzla and the Research and Documentation Center of Sarajevo, *Mazowiecki Reports, 1992-1995*, p. 81. (partially available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G93/856/23/PDF/G9385623.pdf?OpenElement>).





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B&H, in the village Mioce, the bus was stopped by members of the “Avengers,” a group belonging to the Visegrad Brigade of the Republika Srpska Army (VRS). All passengers were ID’ed. Passengers with Muslim names, including Ramahudin, were ordered to step out of the bus. They were then boarded onto a truck and taken to Visegrad (in B&H). In the motel “Vilina vlas” they were brutally abused both physically and mentally, following which they were taken to the bank of the Drina river, where they were all shot dead.

Ramahudin and all the victims of kidnapping are still registered as missing – all except Medredin Hodzic, whose body was found in lake Perucac in 2011. Ramahudin Catovic was added to the list of the missing persons by the ICRC, as “BAZ-108830-01.”

Sabahudin’s disappearance

The night before, on October 21, 1992, Ramahudin’s younger brother Sabahudin was kidnapped in front of his home in Sjeverin. His parents, Ramiz and Safija, heard from some locals that unknown persons stopped Sabahudin on the road in front of the house and forcibly pushed him into a car. His fate has remained unknown. The disappearance of Sabahudin Catovic is registered with the ICRC under “BAZ-108830-02.”

1. Determining the responsibility for the forcibly missing Catovic brothers

For the kidnapping and murder of Ramahudin Catovic, in July 2005 the District Court in Belgrade sentenced Milan Lukic and Oliver Krsmanovic (both *in absentia*) to 20 years in prison, and Dragutin Dragicevic and Djordje Sevic to 15 years in prison.²⁰ Serbia’s Supreme Court upheld the decision on May 18, 2006.²¹ At the beginning of August 2005 Lukic was arrested in Argentina and extradited to The Hague where he was sentenced to life imprisonment in 2009 for the crimes committed in Visegrad. Krsmanovic was arrested in May 2011 in the Visegrad area. The proceedings against him are underway before the War Crimes Chamber of the Court of B&H for the war crimes committed in Visegrad.

²⁰ The judgment of the District Court K.No. 1419 / 04.

²¹ Supreme Court decision Kz.I - 1807/05 of April 13, 2006.





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In the proceedings against those responsible for the kidnapping of the 16 travelers before the District Court in Belgrade, the prosecutor charged the indictees, among other counts, with kidnapping Sabahudin Catovic.²² However, after the Serbian Supreme Court quashed the first instance verdict, the prosecutor removed the kidnapping of Sabahudin Catovic from the indictment, and the re-trial before the court of first instance was completed while the circumstances of the disappearance of Sabahudin Catovic had not been clarified.

Through the Law on Access to Public Information, the HLC requested from the Ministry of Interior (MUP), the Higher Public Prosecutor's Office in Belgrade, as well as the Office of the War Crimes Prosecutor (TRZ) the information about the trial concerning Sabahudin Catovic's forced disappearance. Replying to the request, the Ministry of the Interior²³ said that no information were available, since the incident occurred on the territory of B&H, which is outside the jurisdiction of the MUP of the Republic of Serbia. The Higher Public Prosecutor's Office in Belgrade responded to HLC's request with a letter in which it claimed not to have conducted separate criminal proceedings concerning Sabahudin Catovic's forced disappearance, of which it only learned from the testimony of his father, Ramiz Catovic in the course of the trial of the "Avengers."²⁴ In its letter of reply, the TRZ notified the HLC that in relation to Sabahudin Catovic's forced disappearance it was conducting neither the preliminary investigation nor regular investigation.²⁵

2. The denial of the right to compensation

In 2007, on behalf of the families of the kidnapped and murdered, HLC instituted proceedings for damages against the Republic of Serbia. The verdict was reached in February 2009, whereby all of the plaintiff claims had been rejected as unfounded. The HLC appealed this decision.

The Court of Appeals in Belgrade took six years since the original complaint to render the final judgment in this case. It did so in October 2013, whereby all plaintiff claims of the

²² Indictment No: KT-94/02

²³ Letter 03 No : 037-58-2/2012 from June 6, 2012.

²⁴ Letter from May 23, 2012.

²⁵ Letter TRZ from May 4, 2012.





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victims were dismissed as unfounded because, as the Court stated in its judgment, the authorities of the Republic of Serbia were not obligated to protect their citizens who crossed over into the territory caught in an armed conflict. Nor were the authorities responsible for terminating the bus route that he crossed into the territory of B&H. During the proceedings before the Court of Appeals, the HLC filed on August 16, 2013 a constitutional complaint with the Constitutional Court of Serbia, for the delay in the proceedings. HLC's claimed the plaintiffs' right to a fair trial (i.e. a trial within a reasonable time) to have been injured. The Constitutional Court decided positively on this appeal in October 2013. It awarded each victims' family the sum of 600 euros in damages.²⁶

Against the judgment of the Court of Appeals the HLC filed a constitutional complaint in October 2013, which cited the violation of the right to a fair trial, ban on discrimination, effective legal remedy and the right to rehabilitation and compensation.

3. Non-recognition of the status of civilian victims of war

In September 2012, on behalf of Ramiz Catovic, his wife Safija and their daughters, Ramiza Oparnica and Azra Bihorac, HLC initiated the procedure for the families of victims of war to be given the status of civilian victims of war in accordance with the Law on Civilian Invalids of War.²⁷ The authorities refused this request.²⁸

The decisions indicate that no "enemy forces" were responsible for the kidnapping (which is a requirement of Article 2 of the Law) and that the abduction took place on the territory of another state, which is why the Law on Civilian Invalids of War may not applied in this case. Furthermore, although Sabahudin's family declared him deceased, the Municipal Government considered there to be insufficient evidence that Sabahudin disappeared in the first place, since as stated in the decision "*the parents failed to report him missing to the police.*" Because of such decisions, the HLC initiated an administrative dispute before the Administrative Court of Serbia in December 2013 on behalf of parents, and in January 2014

²⁶ The decision of the Constitutional Court of Serbia, UŽ-6652/2013 from October 15, 2013.

²⁷ Official Gazette of RS, No. 52/96.

²⁸ The decision of the municipal administration Priboj 04 Number: 580-5/2012 from October 10, 2012, and 04 Number: 580-6/2012 from October 10, 2012.





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on behalf of sisters of Ramahudin and Sabahudin. In November 2014, the Administrative court in Kragujevac rejected both claims and affirmed the position of the Municipal Government.

