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i. Acronyms

PDIF - Pension and Disability Insurance Fund
ICTY- International Criminal Tribunal for the former Yugoslavia
UNSC – United Nations Security Council
WWII - World War 2
UN – United Nations
TJ- Transitional Justice
NGO - Non-Governmental Organizations
UNMIK - United Nations Mission in Kosovo
CRDP - Centre for Research, Documentation and Publication
NN - Nomen nescio no:.men
ID – Identity Cards
EU – European Union
ECHR - European Convention on Human Rights
SRSG - *Special Representative of the Secretary-General*
DAPK - Department of Administration of Pensions in Kosovo
FRY – Former Republic of Yugoslavia
KFOR – Kosovo Force
PAYG - “pay-as-you-go”
ICJ - International Court of Justice
WWI – World War I

1. The Right to Reparations in Kosovo

1.1 Introduction

This discussion paper explores the legal and political implications for reparations in Kosovo, and proposes the most efficient way to claim compensation from Serbia for the unpaid pension debt that belonged to the Kosovo Albanians and Non-Serb pensioners. The pensions in Kosovo were administered by the self-governing Association of Pension and Disability Insurance (BVI IPS).¹

To better elaborate the notion of reparations,² a short description is given on the international normative acts such as the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law, violations of International Humanitarian Law and the history of afflicted states that have begun to seriously deal with reparations. Afterwards, the distinction between reparative justice, under the modality of compensatory measures and social policy, was analyzed. It appeared that in many cases - like Colombia and Kosovo, it is in the nature of the state's obligations to respond to immediate obligations which are considered as social assistance after the conflicts. It does not always happen that the victims find peace, and perpetrators are punished. Usually, victims demand compensation from the state, as being unable to file the lawsuit against perpetrators, as was the case with Kosovo survivors of war. That is why the first part of this discussion paper, consists of a thorough analysis of the war-related reparations that are provided by Kosovo institutions to civilian victims of war crimes and crimes against humanity in the form of social assistance.

The second part of the paper sheds light on pre-war offences (property rights) against the Kosovo civilian population, and options for compensations, which to date remain an issue of less importance compared to reparations for war crimes.

The right to pensions, as an economic and legal category, is an inalienable property right and a protected one over the numerous acts of domestic and international laws. Alienation of a right acquired under the law, can only be carried out according to the law and only to the general interest justifiable, yet, with adequate compensation (Fetahu, 2014).

The aim of this paper is to shed light on the past misconducts of the Serbian regime against the majority of Albanian and Non-Serb population in Kosovo, in terms of the lack of payment of the pensions' debt, and search for the best model of reparations that should be required from the offender - in this case Serbia, during an ongoing dialogue. Only after such matters are resolved, pensioner's dignity will be restored and both sides may achieve progress in the dialogue.

Kosovo pensioners never stopped searching for a solution since the aftermath of the conflict and during the UNMIK mandate, by exhausting all legal remedies and pressuring the then

¹ Adil Fetahu 2016

² This term has started being used in Kosovo after an amendment of the Law No. 04/L-054, where raped women were incorporated as civilian victims of war in 2012.

Kosovo Provisional Government to take political measures. However, UNMIK did not feel obligated to respond within its authority, by claiming that the issue is entirely of a Political nature.

The narrative did not stop here, abandoned by Kosovo institutions which were unable to even regulate legislation, the pensioners, as an injured party decided to seek justice within the Serbian justice system and exhaust legal remedies there, unsuccessfully. Rejected by the Serbian courts and confronted with political games of Serbian authorities, two couples turned to the European Court of Human Rights in Strasbourg, and the case of the couple Grudic prevailed in 2012. This case alarmed Serbia who took backward steps and changed the legislation to the detriment of the injured parties - in this case Kosovan Albanians, Bosniaks and Turks, while for almost 17 years since the end of the conflict in 1999, Serbia has never stopped paying pension contributions to Serbs and Montenegrins in Kosovo.

In the words of the President of the Union of Pensioners of Kosovo, *'Serbia has a legal obligation to pay the pensions' debt regardless the fact if there is money left in the Fund or not. The fund is not in question here. Serbia did not carry on with its legal obligation'*.

However, it is highly unlikely that any new large-scale initiative for compensations will be undertaken in regard to these particular types of violations, unless the international community decides to pressure Serbia in the first place to meet such demands from offenders and provide compensations, or a formal apology.

1.2 It is recommended:

- † That the Serbian Government is morally, legally, politically and financially responsible to compensate the payment for unpaid debt to Kosovo Albanians and other Non-Serbs from the end of 1998-s.
- † That evidence shows that the Kosovo Albanians and other non-Serbs employers were discriminated against on the basis of their ethnic minority status, and as such, their compensation should be made accordingly, and should include not only the exact amount of contribution abolished, but also non pecuniary costs, damage suffered and the default interest rate.
- † That Serbia should be determined to clear the past if it wants to get away with its ostracized position in the region and beyond, in order to be considered as a serious partner and an equal member of the international community.
- † That the Kosovo Government should consider changes in an existing legal framework and start a reform of pension schemes and other benefits that are paid from the state budget. The drafting of a single law is needed for the basic pension system - which will regulate all pension and disability schemes, contributory and non-contributory.

- † That Kosovo government should get well prepared before entering the technical dialogue on the pension contribution fund. It should be determined to get engaged not only because it is in the interests of the state, but it should genuinely prepare relevant documentation and enter the dialogue with strong arguments on behalf of its citizens.
- † Both sides, Kosovo and Serbia should agree explicitly to set aside arguments so that they can focus on mutual understanding. That's all about dialogue.
- † That the International community and the EU in particular insist that Serbia should deal with the issue of pensioner's debt.

1.3 Methodology

This discussion paper, recommendations and the conclusion it contains are based upon:

- An extensive desk review of relevant academic literature on redress and reparations, international and local Civil Society Organizations reports, media, and careful analysis of current Laws of categories of war in Kosovo and Serbia.
- Review of International norms, standards, and guidance regarding victims' reparations as well as good practices related to victims' reparations programs and transitional justice efforts in post-conflict contexts in Kosovo and beyond.
- A focus group discussion organized with the participants from the following institutions: Union of Pensioners of Kosovo, Pensioners League of Kosovo, Women pensioner; representative, a Lawyer and pension experts.

2. International norms on reparations

The idea of providing reparations to the victims of various sorts of harms is not new. "Aristotle, in book V of the *Nicomachean Ethics*, articulated what was surely not an original view even at that time, according to which, '*rectificatory justice*' requires the judge to '*equalize by means of the penalty, taking away from the gain of the assailant*'³. In the domain of practice on the other hand, the Treaty of Westphalia signed in 1648, has also included a reference to restitution. According to the Treaty: "*focus on reparation and restitution claims is related to a fundamental shift in international law toward the plight of victims during conflicts.*"⁴ However, it was World War II and only after the international community witnessed a Holocaust that prompted a decision that such global scale horror should never occur again. This marked an unprecedented period of human rights atrocities, when victims and their representatives demanded justice.

³ Greiff, Pablo De. "Dealing with the past and Transitional Justice Creating Conditions for Peace, Human Rights and the Rule of Law, 'Reparations and the Role of International Cooperation.pp.49.

⁴ Ellis, Mark S., and Elizabeth Hutton. "Policy Implications of World War II Reparations and Restitution as Applied to the Former Yugoslavia." *Berkeley Journal of International Law* 20, no. 1, 342

The Holocaust and more atrocities that followed WWII, prompted the International Community in general, and the United Nations Commission on Human Rights in particular, to lead the process and draft the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law, and Violations of International Humanitarian Law. In that regard, several independent experts worked on the development of the Principles, after which the document, in the form of a resolution, was unanimously adopted by the UN General Assembly. All members of the organization gathered support.⁵ By the 16th of December 2005, the Basic Principles and Guidelines were adopted and proclaimed by General Assembly resolution 60/147.⁶ According to this resolution, reparations include the rights to restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.⁷

In the last two decades, states have been engaged in reparation politics for various political and economic reasons, including recognition that the injustice or atrocity continues to impact the citizens who were victimized. Several leaders in the past went further and apologized also for moral reasons, reflecting an awareness that historical injustices conducted by their predecessors can impact the present⁸, thus victims dignity must be restored.

2.1. Reparations or social assistance?

It is essential that the perpetrators (offenders) are punished, or under an Amnesty oath they offer an apology as a highest moral act towards victims, for their crimes committed in the past. However, as it often appears in practice, the victims do not necessarily find justice nor perpetrators punishment. In most cases, the victims of historical injustices who have no positive law claims against perpetrators often seek reparations from governments, and occasionally they obtain them. The best-known reparations programs provided to victims so far are reparations for victims of the Nazi Germany, and reparations for Japanese Americans who were detained by the United States government during World War II.⁹ The relationship between 'social assistance' and 'reparations/compensations' in the transitional justice (TJ) context proved to be an issue of concern and so far has exposed fundamental tensions not only in practice but also in the theory of Transitional Justice.

Peter J. Dixon in his comparative paper on *Reparations, Assistance and the Experience of Justice: Lessons from Colombia and the Democratic Republic of the Congo*, described the tensions between the International Criminal Court's decision on reparations in the Democratic Republic of the Congo and reparation program for victims of its armed conflict in Colombia as a

⁵ United Nations. General Assembly. *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*. 60/147 ed. Vol. Resolution. <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx>. Accessed on February 2.2016.

⁶ Ibid

⁷ United Nations. General Assembly. *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*. December 16, 2005. <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx>, Accessed on February 3. 2016. Points 19-23.

⁸ Wolfe, Stephanie. *The Politics of Reparations and Apologies*, Volume 7, Springer Science Business Media New York 2014. Pg. 47

⁹ Posner, Eric A. "Reparations for Slavery and Other Historical Injustices." *Chicago Unbound*, 2003, Pp 689.

blurred line between reparations and assistance and how that functions in practice”¹⁰. Both programs according to him, look similar in form, with similar process of distribution of reparations to deliver similar concepts of responsibility and recognition to victims. Yet, there will always be types of violence and unpredictable needs that may fall outside the reparations programs.”¹¹ Similar clashes, reparations versus social assistance and legal versus political implications in the Kosovo context, and how related they are to civilian victims and offenders will be discussed throughout this analysis.

3. Gross violations of human rights in Kosovo

In the Kosovo conflict, the international community witnessed some of the worst human rights violations since the end of World War II, including but not limited to forced displacements, massive rape of women, arbitrary detentions, plundering of civilian property, torture, use of human shields, and other inhuman treatments. These were acts that happened before and during the bombing of Serbia between March 2nd and June 10th, 1999.¹² Around 90% of the Kosovan Albanians population was displaced from Kosovo during this period, where the arbitrary killings were executed primarily by Serbian police, paramilitary and military forces against them.¹³ According to the Humanitarian Law Centre - an NGO that documented human rights abuses in Kosovo, the number of Kosovan Albanians killed during that period exceeded 10,812.¹⁴ However, the disintegration and gross violations of human rights of the Albanian population that lead to an armed conflict started in early 1990-s. First it started with an expulsion of Albanian workers and teachers from their jobs, establishment of apartheid in schools, followed with the appropriation of the Pension and Disability Fund and personal savings in the then Yugoslav banks etc.

The return of internally displaced people after the conflict in 1999s and reparations, in the form of social assistance that was and is still provided to survivors of conflict by the Kosovo government, are not sufficient means to bring about full social rehabilitation and cohesion into society. Even though some people on both sides of the divide are trying to solve issues independently, important obstacles exist that prevent a full accounting of past wrong-doings and moving to more sustainable peaceful relations and mutual respect and dignity. Restitution of any kind, remains one of the main obstacles to be resolved among Albanians and Serbs, in order for compromise to take place.

The issue of human and economic losses and to what extent they are protected is a deeply complex issue which has affected all communities in Kosovo before and after the conflict. It affects all aspects of life in a society that remains deeply divided along ethnic and identity lines. In the period between the end of the conflict, June 1999, and the signing of the unilateral

¹⁰ Dixon, Peter J. "Reparations, Assistance and the Experience of Justice: Lessons from Colombia and the Democratic Republic of the Congo." *IJTJ International Journal of Transitional Justice*, 2015. <http://ijtj.oxfordjournals.org/content/early/2015/12/28/ijtj.ijv031.abstract>.

¹¹ Ibid

¹² Belgrade, Victims' *Right to Reparation in Serbia and the European Court of Human Rights Standards 2014/2015 Report*. Report. Belgrade, Serbia: Humanitarian Law Center, 2016

¹³ Ibid

¹⁴ Ibid

declaration of independence on February 17th, 2008, those ethnic lines have remained deep-rooted.

3.1. Kosovo’s survivors of war crimes and crimes against humanity receive social assistance from the Kosovo government

3.1.1 Who to blame?

Back to the dynamics between *reparations vs. social assistance*, in Kosovo, the reparations’ system was designed in the form of social assistance, aiming at restoring the dignity of survivors, and meeting some elementary needs of survivors and categories of war as addressed in the current Law No. 4/L-054.¹⁵ This Law was never given the form of fundamental reparation proceedings where, *“the prosecution must establish the relevant facts to the standard of ‘beyond a reasonable doubt’.*¹⁶

The recognition and assistance of these groups was initially addressed by the United Nations Mission in Kosovo (UNMIK), with Regulation No. 2000/66, adopted on December 21, 2000, one year after the conflict. The full title was, “Regulation No.2000/66 on Benefits for war Invalids of Kosovo and for the Next of Kin of those who died as a Result of the Armed Conflict in Kosovo.” Only on January 21, 2012, Law No. 4/L-054 on the “Status and Rights of Martyrs, Invalids, Veterans, Members of the Kosovo Liberation Army, Civilian Victims and their Families” was adopted by Kosovo’s Parliament.¹⁷

The members of families of civilian victims and missing persons, as well as relatives of martyrs and other categories included in Law No. 4/L-054 and who applied to gain access to the benefits this law provides, were required to follow procedure and bring proof of their losses, and/or their physical damage they suffered. A confirmation obtained from a specialized and accredited local NGO should have documented that; for instance, the NN person suffered severe damages and abuses before he/she was granted access to the benefits under this law. Otherwise, survivors did not take legal approaches as suggested in the Principles of Reparations and its proceedings, *“The applicant shall provide sufficient proof of the causal link between the crime and the harm suffered, based on the specific circumstances of the case.”*¹⁸ Although the intention of the regime was to destroy all evidence of their wrongdoings, there was, yet, sufficient evidence that Kosovan survivors could bring in the courtroom. However, survivors could not even imagine of seeking justice in the Serbian legal system. In determining the appropriate standard of proof in reparation proceedings, “various factors specific to the case

¹⁵ Law No. 04/L-054, Kosovo Assembly Cong. (2011) (enacted)

¹⁶ “Order for Reparations.” International Criminal Court. <https://www.icc-cpi.int/iccdocs/doc/doc1919026.pdf>

¹⁷ Centre for Research, Documentation and Publication (CRDP). *Monitoring of Law No. 4/L-054 “On The Status And The Rights of the Martyrs, Invalids, Veterans, Members of Kosovo Liberation Army, Civilian Victims of War and Their Families”*. Pristina: CRDP, 2014. pg.57. <http://crdp-ks.org/wp-content/uploads/2014/03/2014-raporti-mbi-ligjin-WEBFINAL.pdf>

¹⁸ “Order for Reparations.” International Criminal Court. <https://www.icc-cpi.int/iccdocs/doc/doc1919026.pdf>

should be considered, including the difficulty victims may face in obtaining evidence in support of their claim due to the destruction or unavailability of evidence.”¹⁹

The majority of Kosovo Albanian survivors did not give it a second thought when choosing to bring evidence to file the lawsuits within Kosovo versus the Serbian legal system. Kosovo was under the UN protectorate for almost 9 years until it declared its independence from Serbia in 2008. Its political status continues to be challenged by Serbia. In the aftermath of the conflict, the international community and UNMIK suggested that reparations for Kosovo survivors of conflict should be given in a form of social assistance and financed by Kosovo’s consolidated budget. Eventually, within the current Law No. 4/L-054, “*new social categories emerged in Kosovo’s society as a result of the armed conflict of 1999*”,²⁰ and this Law includes, “*invalids and civilian victims who were injured as a result of the conflict, as well as the family members of the deceased, the wounded, and the missing.*”²¹ The benefits outlined by Law No. 4/L-054 support not only survivors but their families too. The law was designed not only to recognize the suffering that survivors experienced during the conflict, but also to provide support for their basic needs, trauma and financial damages.²² Though the Law did not meet demands of those in need, and it was inadequate, it served the survivors better than nothing.

Seeking justice within the Serbian judicial system was not a preferred solution for Kosovan Albanian survivors, therefore, Kosovan families of victims remained ‘satisfied’ with the financial support ²³ which was provided by Kosovo institutions. A significant number of Albanian survivors and their families who went through trauma during the conflict, strongly believed that dealing with the Serbian justice system institutions and proving their victimhood against the Serbian justice system was an unthinkable act to be undertaken. *In determining the appropriate standard of proof in reparation proceedings, various factors specific to the case should be considered, including the difficulty victims may face in obtaining evidence in support of their claim due to the destruction or unavailability of evidence.*²⁴ The fact is that a significant number

¹⁹ Ibid

²⁰ Law No. 04/L-261, Kosovo Assembly, [Http://www.kuvendikosoves.org/common/docs/ligjet/04-L-261 a.pdf](http://www.kuvendikosoves.org/common/docs/ligjet/04-L-261_a.pdf) (2014) (enacted)

²¹ These individuals are not immediately recognizable (except in cases of visible physical harm), and they easily assimilate with the rest of the population. Their day-to-day lives are not markedly different, and they face the same social, financial, and political problems as other Kosovars. As such, people who belong to these post-war groups are often forgotten in the midst of Kosovo’s other myriad social problems. However, their need for meaningful psychosocial and economic assistance is urgent. The recognition and assistance of these groups was initially addressed by the United Nations Mission in Kosovo (UNMIK), with Regulation No. 2000/66, adopted on December 21, 2000. (Fully titled: “Regulation No.2000/66 on Benefits for war Invalids of Kosovo and for the Next of Kin of those who died as a Result of the Armed Conflict in Kosovo.”). On January 21, 2012, Law No. 4/L-054 on the “Status and Rights of Martyrs, Invalids, Veterans, Members of the Kosovo Liberation Army, Civilian Victims and their Families” was adopted by Kosovo’s parliament, <http://crdp-ks.org/wp-content/uploads/2014/03/2014-raporti-mpi-ligjin-WEBFINAL.pdf>, pg.57. (Enacted)

²² Centre for Research, Documentation and Publication (CRDP). *Monitoring of Law No. 4/L-054 “On The Status And The Rights of the Martyrs, Invalids, Veterans, Members of Kosovo Liberation Army, Civilian Victims of War and Their Families”*. Prishtina: CRDP, 2014. pg.57. <http://crdp-ks.org/wp-content/uploads/2014/03/2014-raporti-mpi-ligjin-WEBFINAL.pdf>

²³ Article 1 of THE LAW ON THE STATUS AND THE RIGHTS OF THE MARTYRS, INVALIDS, VETERANS, MEMBERS OF KOSOVA LIBERATION ARMY, CIVILIAN VICTIMS OF WAR AND THEIR FAMILIES Aim is: The purpose of issuing this Law is to determine the status and financial support through pensions and special benefits for categories of the war emerged from the KLA, who with their contribution and sacrifice were crucial factors for freedom and liberation of the country, Law No. 04/L-054, Kosovo Assembly Cong. (2011) (enacted)

²⁴“ORDER FOR REPARATIONS (AMMENDED).” PRINCIPLES ON REPARATIONS. Accessed January 17.2016. ICC-01/04-01/06-3129-AnxA 03-03-2015 1/20 NM A A2 A3

of Kosovo Albanians who were forced to leave Kosovo, their ID cards, and other relevant documentation were taken from Serbian forces and were destroyed.

Eventually, if there were survivors brave enough to file law suits, they could and they should have done more in seeking justice by providing evidence to the courts in Serbia, and exhaust all legal remedies. Regardless of fact that the Serbian justice system is severely flawed and corrupt, according to international and local organizations that monitor the work of justice system there, yet, Kosovan survivors lost the chance to challenge the Serbian justice system. In that way, not only that the chance of winning the case, if well proved, would have been high, but they (potential claimants) would have gained financial reparations from Serbia (as an offender). Consequently, Kosovan survivors' dignity would have been restored and their sufferings recognized. On the other hand, the Serbian government would have benefited internationally by being accepted as a serious partner in its accession within the EU family.

Contrary to this scenario, Kosovo Albanians survivors and other survivors never discussed seriously the exhaustion of all legal remedies in the Serbian legal system, as they strongly believed that being Kosovo Albanians, their chances to get justice in Serbia are null. There were very few successful cases when Kosovan survivors were represented by human rights NGOs which documented the war crimes and presented the victims in the Serbian courts, such as the Bogujevci family from Podujeva/Podujevo.

It is difficult to imagine restitution and reparations without accountability. The Order of reparations No.6 under standard and burden of proof 22 suggests that: *"In the reparation proceedings, the applicant shall provide sufficient proof of the causal link between the crime and the harm suffered, based on the specific circumstances of the case."*²⁵ In post-conflict Kosovo, Kosovo-Serbia relations were at a standstill and neither side recognized the other, hence the international community acted as a negotiator. Negotiations over these claims are not really about the past, but the future: *"In contrast to other transitional justice initiatives, reparations are measures taken explicitly on behalf of the victims, and not primarily against perpetrators."*²⁶

Social assistance and the compensation scheme which were designed for survivors and victims of war in the aftermath of the conflict in Kosovo are covering only basic needs. Here, one should distinguish between 'reparations' efforts made by Kosovo Governments in one hand, and lack of 'reparations programs' that should have been developed in order to rehabilitate survivors, and integrate them into society.²⁷ Pablo de Greiff suggests that: The *"Reparations*

²⁵ Ibid

²⁶ Greiff, Pablo De. "Dealing with the past and Transitional Justice Creating Conditions for Peace, Human Rights and the Rule of Law, 'Reparations and the Role of International Cooperation. Pp 50

²⁷ Centre for Research, Documentation and Publication (CRDP). *Needs Assessment of Kosovo Victims*. Publication. Pristina: CRDP, 2012

benefits are most often the result of relatively isolated initiatives that come about incrementally, rather than from a deliberately designed plan.”²⁸

The field of reparation politics was further expanded in 2000, with Elazar Barkan’s publication of *The Guilt of Nations*. Barkan’s approach focuses on the concept of universal human rights and morality. He draw attention in the vein of Karl Jaspers, arguing that states have a moral responsibility to come to terms with their past. Barkan proposed a new explanatory framework for reparation politics arguing that this new international trend of states engaging in reparations and restitution is the result of the emergence of a “neo-Enlightenment morality”, which further explains the demand coming from within of states to act morally and reflectively in acknowledging the injustices or atrocities in which they have engaged in the past. Yet, as a new phenomenon, it differs from past practices because of the voluntary nature of reparation politics.²⁹

To conclude in a less positive tone, individual criminal responsibility brings those accused of violations to justice and may have a preventive effect. Unfortunately, in the vast majority of cases, it does not provide redress, nor restore the dignity of victims of violations and survivors.³⁰ The new states of the former Yugoslavia and its leaders have not themselves rectified past injustices by prosecuting wrongdoers, nor have they made efforts to provide apologies on behalf of their respective states. Accountability for the former Yugoslavia has been structured solely through the ICTY,³¹ whereas the ICTY itself was not intended to deal with victim compensation and it is not authorized to award victim compensation.

4. What lead to the armed conflict in 1999?

The demise of Yugoslavia begun in the beginning of 1990 s. In December of that year, elections were held only in Serbia, after which Milosevic forcefully dissolved all the Kosovo institutions.³²

This and his following legal authorizations to suppress all the public demonstration of discontent in Kosovo, were marked with shutting down of the Albanian language media, an imposition of Belgrade approved and controlled school curricula instead of the one approved by the Kosovo institutions, laying of Albanian workers, especially those employed in the industries and public administration.³³

²⁸ Greiff, Pablo De. “Dealing with the past and Transitional Justice Creating Conditions for Peace, Human Rights and the Rule of Law, ‘Reparations and the Role of International Cooperation. pp.49

²⁹ Wolfe, Stephanie. *The Politics of Reparations and Apologies*, Volume 7, Springer Science Business Media New York 2014. Pg.2

³⁰ Permanent Representative of Portugal to the United Nations." Letter to President of the Security Council. May 18, 2012. New York. <http://reliefweb.int/sites/reliefweb.int/files/resources/N1235537.pdf>

³¹ Ellis, Mark S., and Elizabeth Hutton. "Policy Implications of World War II Reparations and Restitution as Applied to the Former Yugoslavia." *Berkeley Journal of International Law* 20, no. 1,353

³² The regime of Serbia of that time, imprisoned the leader of the Communist party Azem Vllasi and the leadership of Trepça miners (Maliqi, 2011).

³³ Pula, Besnik. "The Emergence of the Kosovo “parallel State,” 1988–1992." *The Journal of Nationalism and Ethnicity*, 2004th ser., 32, no. 4 (January 23, 2007). <http://www.tandfonline.com/doi/abs/10.1080/0090599042000296131>.

In 1990-91, most Kosovo Albanian workers had been excluded from the system as of 1989.³⁴ From the beginning of the conflict in 1998, Belgrade ceased paying pensions to most past Albanian pension contributors.³⁵

At the end of 1998, in Kosovo, there were a total of 86.383 pensioners (Fetahu, 2016). This led Kosovo Albanians to find other ways to bring about justice. After 1999, in the UN administered Kosovo claimants started to file law suits within Kosovo legal system.³⁶ Although several claimants were persuasive, no positive case was finalized.

4.1. Expelled workers and unpaid pension debts

The situation with workers in administration was no better than that of the education sector, including legislative and executive branches of the then autonomous province of Kosovo. In every possible position which Kosovo Albanians held, they were told to sign loyalty oaths to the new regime in order to keep their jobs. As a sign of disloyalty to the regime, and in solidarity with the national cause (not to obey to such discriminatory measures), a majority of Albanians refused to sign loyalty oaths, consequently losing their jobs.

Before the 1998 conflict, Kosovo was covered by the Yugoslav pension system, “this was a “pay-as-you-go” (PAYG) system in which current workers made contributions to the pension fund, and those contributions were used to pay benefits for current pensioners. Pension levels were determined by a formula based on years of service and salary level. Until 1989, the system was decentralized, and Kosovo had an autonomous pension fund that collected contributions and paid benefits. However, once in power, in 1989 Milosevic centralized these functions to Belgrade, and the regional Kosovo fund was parted. As of 1989, a majority of Kosovar workers were removed from formal-sector labor positions. From the beginning of the conflict in 1998-1999, Belgrade ceased paying pensions to most past contributors.”³⁷

In their discussion paper, a group of three world experts (Gubbels, Snelbecker, Zezulin) who later assisted local Kosovan experts in setting up the pension fund system in Kosovo, described the chronology of the system how it was, and how it evolved into a more advanced European pension fund system. According to them: “*For each former pensioner, a record existed in a computer database (programmed in UNIX on a PC) that included birth date, address, and other*

34 In 1989 Milosevic rallied 1 million Serbs to the Kosovo battle site, nullified Albanian autonomy and put the province back under tight Serb control. Albanian human rights activists in Kosovo say more than 100,000 of their ethnic kin there have lost their jobs since 1990. High schools and the local university stopped teaching courses in Albanian and introduced a new Serb curriculum. Police and state functionaries were imported from Belgrade, http://articles.philly.com/1992-10-16/news/25997683_1_kosovo-albanians-ibrahim-rugova-kosovo-s-albanian

35 Gubbels, John, David Snelbecker, and Lena Zezulin. *The Kosovo Pension Reform: Achievements and Lessons. Report*. World Bank. <http://siteresources.worldbank.org/SOCIALPROTECTION/Resources/SP-Discussion-papers/Pensions-DP/0707.pdf>

36 UNMIK Regulation 2001/35 of Pensions in Kosovo—which provided the legislative base for Pillars II and III (Pillar II: Defined Contribution Scheme, Pillar III: Voluntary schemes), was the first act to regulate the pension policy in Kosovo after 1999. The regulation 2002/1510 laid the legislative foundation for Pillar I (Pillar I: Basic and Disability Pension and Early Pensions for employees of TREPCEA) so as to allow for the entire three components of the system to become operational in 2002. In April of the same year, the Assembly approved the Law no. 2011/04-L-101 on Pension Funds of Kosovo, which abrogated the Regulation no. 2005/20 and Law no. 03/L-08411. (Group for Legal and Political Studies, December 2012)

37 Gubbels, John, David Snelbecker, and Lena Zezulin. *The Kosovo Pension Reform: Achievements and Lessons. Report*. World Bank. <http://siteresources.worldbank.org/SOCIALPROTECTION/Resources/SP-Discussion-papers/Pensions-DP/0707.pdf>

personal information." However, most of this data does not exist any longer, "since during the NATO bombing, a NATO cruise missile hit the post and telecommunication building next to the Social Insurance Fund in capital Pristina."³⁸ In addition, "a fire destroyed most M139 and M2 Forms, but M4 and PS Forms, stored on a lower floor, thus survived. As a result, there still existed good information on birth-dates of older contributors to the system (PS Forms) but not of younger contributors to the system (M1 and M2 Forms). Hence, there was good record of past contributions to the system (M4 Forms), to the extent that employers had sent this information to the Pension Fund, but no information on start and stop dates of employment (M1 and M2 Forms)."⁴⁰ Termination of payment of retirees' pensions Kosovo's mainly Albanians and Bosniaks), without providing any reasons for termination, not only is a form of discrimination based on nationality, but is illegal and violates people's property rights, guaranteed and protected by national and international laws. Pensions are not government budget funds, but contributions collected for years, and should be compensated accordingly.⁴¹

The particular governing structure of the Kosovo Provisional Institutions of Self Government, under a UN protectorate, was unlike the governance of almost any sovereign country. Interruption of pension payments during the conflict in the late 1990s made it easier to consider abandoning the old pension system and starting a new one. Continuing ethnic tensions left the issue of Belgrade's pension liabilities to be addressed during multi-party negotiations in later years."⁴² Therefore the issue of pension funds is planned to be brought to the negotiation table between Kosovo and Serbia in the near future.

From the beginning, the Kosovo institutions, more specifically the Ministry of Labor and Social Welfare has insisted that UNMIK pressure Belgrade to pay the outstanding debt to Kosovan non-Serb's pensioners. It is estimated that some 100,000 Kosovar retirees contributed to the Fund, and Belgrade has misappropriated their contributions.⁴³ "We know how the Fund functioned, with one generation providing for another. We also know that the Serbian Government in Belgrade currently provides pensions to certain Kosovar citizens, in particular to members of the Serb ethnic community."⁴⁴ While representatives of the Pensioners League of

38 Ibid

39 The data on former contributors who had not reached pension age was less complete. The way contributions were recorded in the old system was as follows: Employers would send to the Pension Fund an M1 Form notifying when individuals had started employment, and an M2 Form notifying when individuals ceased employment. (The M1 and M2 Forms were introduced around 1968, replacing PS Forms that had been used in earlier years. An M3 Form was used to correct mistakes on M1 and M2 Forms) Employers would notify the Pension Fund about salary level (from which contributions were made) on a periodic basis using M4 Forms. When a person reached retirement age, the "Professional Service" of the Pension Fund would evaluate the salary history, often contacting former employers to verify salary levels since employers did not consistently provide M4 information to the Pension Fund. This introduced considerable discretion into the process of determining the level of the pension (The Kosovo Pension Reform: Achievements and Lessons John Gubbels David Snelbecker Lena Zezulin April, 2007).

40 Gubbels, John, David Snelbecker, and Lena Zezulin. *The Kosovo Pension Reform: Achievements and Lessons. Report.* World Bank. <http://siteresources.worldbank.org/SOCIALPROTECTION/Resources/SP-Discussion-papers/Pensions-DP/0707.pdf>, pg. 12

41 Grudić v. Serbia, No. 31925/08 (The European Court of Human Rights April 17, 2012) (Dist. file).

42 Gubbels, John, David Snelbecker, and Lena Zezulin. *The Kosovo Pension Reform: Achievements and Lessons. Report.* World Bank. <http://siteresources.worldbank.org/SOCIALPROTECTION/Resources/SP-Discussion-papers/Pensions-DP/0707.pdf>, pg. 8

43 Selmanaj, Ibrahim. "Issue of Kosovar Pension and Invalid Fund Misappropriated by Serbia Must Be Resolved." Albanian-Serbian Information Exchange Forum. <http://kosovakosovo.org/issue-of-kosovar-pension-and-invalid-fund-misappropriated-by-serbia-must-be-resolved.html>.

Kosovo and the Union of Pensioners of Kosovo confirm that; despite the fact that at the end (1998) there were no sufficient funds for pensions to be paid. Serbia is obliged to pay the unpaid debt to pensioners, but not for the return of the Fund.

Only Kosovo ethnic Serbs continue to receive pension benefits from Belgrade, and there are indications that a small number of ethnic Albanians have succeeded in receiving pensions by collecting benefits through Serbia on an individual basis. So far this has remained an individual initiative for former pension contributors to fight for their property rights. In the past, several attempts were made by the Kosovo Ministry of Labor and Social Welfare to resolve the issue institutionally, unfortunately unsuccessfully. While Kosovo Serbs receive the pensions, the Kosovo Albanians and Bosniaks remain determined to fight for their abolished pension contributions regardless of the fact that the justice is taking longer than expected. Subsequently, several Kosovar claimants who lost pension contributions and their pension payments were ceased since the end of the conflict in 1999, have started legal actions against Serbian state authorities in order to get compensated.

Roughly 11463 requests were made in Serbia for Kosovo pensioners' pension payments. According to Serbian authorities, *"of these claims, 8,518 have not completed documentation, while 1442 documentation requirements are in order and just expected the decision to be made."*⁴⁵

Out of thousands of claimants, two Kosovan couples succeeded in bringing the matter to the European Court of Human Rights. After years of exhaustion of all legal remedies within the Serbia's legal system, the couple Grudić from Mitrovica in Kosovo won the first case in the second section - Grudić v. Serbia (Application no. 31925/08) - Judgment Strasbourg on the 17th of April 2012. ⁴⁶ Consequently, this verdict prompted the Serbian authorities to change the legislation and make it even harder for individual claimants to seek justice.

4.2. Kosovo Albanians and non-Serbs did not find justice under UNMIK administration

The facts are that subsequent to the suspension of the claimants' Yugoslav pension, by Regulation No. 2001/35 on Pensions in Kosovo, of 22nd December 2001 and Regulation No. 2005/20, of 19th April 2005, amending Regulation No. 2001/35, UNMIK established an alternative pension scheme providing for "basic" (old age, non-contributory) and "savings" (contributory) pensions in Kosovo.⁴⁷

This scheme, however, did not solve the issue of unpaid funds from Belgrade before the conflict has started, neither did it search for modalities in negotiating with Belgrade to bring to return

⁴⁴ Ibid

⁴⁵ Llapashtica, Liridon. "Serbia 2 Miliardë Euro Borxh Pensionistëve (Serbia Owns 2 Billion Euros to Pensioners)." *Zeri.info*, January 8, 2014. <http://old.zeri.info/artikulli/24366/undefined>.

⁴⁶ Grudić v. Serbia, No. 31925/08 (The European Court of Human Rights April 17, 2012) (Dist. file).http://www.zastupnik.gov.rs/uploads/cr/presude/u-odnosu-na-rs/grudic-protiv-srbije-p.-br.-31925-08/Grudic_p_3192508_eng.pdf

⁴⁷ Krasniqi, Tome. The Human Rights Advisory Panel, sitting on 6 June, Date of adoption: 6 June 2013 Case No. 08/10 2013, Accessed February 15, 2016 http://www.unmikonline.org/hrap/Eng/Cases%20Eng/DC_08-10_ENG.pdf

unpaid pensions debts for pensioners. Instead, UNMIK as an authority remained indifferent in sensitive political issues, thus firmly stood behind its 'responsibilities' which aimed at facilitating a political process.

The first claimant was a resident of Kosovo from municipality of Pejë/Pec. Born in 1938, he had contributed for his pension into a state Federal Republic of Yugoslavia pension fund entitled the "Fund of Pensioners and Disabled People", accumulating the right to a pension as of 3 May 1998. In his complain, he stated that he received a pension of a value of 180 euros per month from that date until 1st of December 1998. After this date, his pension was terminated without any prior notification or explanation being provided to him. 48

The claimant states that following the establishment of UNMIK pursuant to UN Security Council Resolution 1244 (1999) he, and other Kosovo Albanians, were prevented from obtaining this pension from Belgrade while Kosovo Serbs continued to receive this pension. 49 "The complainant alleges discrimination with respect to payment of the pension. In particular, that Kosovo Serbs retain regular receipt of pension funds whilst Kosovo Albanians stopped receiving any payments altogether."50

According to the President of the Union of Pensioners of Kosovo, the national structure of the users of the right to pension, as of the 31st of December 1998, was: 61 705 of an Albanian ethnicity and others, while 27 430 were Kosovo Serbs and Montenegrins. The Kosovo Serbs and Montenegrins are to date regularly receiving their pensions from both the fund of Serbia and Kosovo, while Albanian pensioners were abolished and they stopped receiving pensions as of December 1998.

In such alleged Discrimination under Article 14 ECHR, the Advisory Panel on behalf of SRSG highlights that: "UNMIK had no power or control with regard to Serb pensioners living in Kosovo receiving their pension on a regular basis from Belgrade. As such any alleged discriminatory practice in the selection of beneficiaries and the payment of pensions cannot be attributed to UNMIK and therefore the Panel lacks jurisdiction *ratione personae* over this part of the complaint."51

As documentation was presented to the Human Rights Advisory Panel (the complaint was introduced on 8 March 2010 and registered on the same day), it appears that, on the 11th of April 2007, the claimant addressed a complaint to the Department of Administration of Pensions in Kosovo (DAPK) of the Kosovo Ministry of Labor and Social Welfare requesting the payment of the pension accrued under the former Yugoslav system. On the 13th of April 2007, the DAPK sent a written response to the claimant stating that the non-payment of the pension accrued through contributions was due to the "stolen funds by the Serbian occupants" which

48 Ibid

49 Ibid

50 Ibid

51 Ibid

constituted an “unsolved political problem” and informing the complainant of the on-going pension schemes administered by the DAPK. 52

The above mentioned, explains the subordinate position of the then Provisional government of Kosovo vis-a-vis UNMIK authority, consequently proves UNMIK’s lack of a pragmatic approach for the benefit of Kosovo citizens. While the UN held a total political authority in both central and local levels, the then existing structure of government should have been designated as a more political executive.

The aforementioned claimant together with other Kosovo Albanian pensioners, were prevented from obtaining their contributory pensions. Although the funds were accumulated from employees’ contributions for years, they have ‘disappeared’. Subsequently, according to them, as of today, ‘no other funds have been created for Albanian pensioners’ to date. In this regard, the claimants believed that UNMIK was an authority to assist, and shall be held responsible of “mismanagement” for not doing so. 53

The SRSG 54 on the other hand, dismissed the case on the basis that, “UNMIK was under “no legal obligation to pay pensions to persons who have accrued pension rights through other institutions”. Therefore, insofar as the claimant complains against the deprivation of the claimant’s possessions, this violation shall be attributed to the FRY or Serbia and, as such, shall be declared by the Panel outside of its jurisdiction “*ratione personae*” ...”Serbia is a party to the ECHR 55 since 2004. Therefore, this part of the complaint shall be declared inadmissible pursuant to Section 3 of UNMIK Regulation No. 2006/12 for non-exhaustion of remedies. 56 Regulation no. 1999/1 expressly stated that “all legislative and executive authority, which relates to Kosovo, including the administration of the courts, belongs to UNMIK, and that is exercised by the Special Representative of the Secretary General (SRSG) [Riza Shala 2016].

UNMIK did not feel obligated under Article 1 Protocol No. 1 to “find a solution” to the pension issue in Kosovo, which, in the Advisory Panel’s view, is a political matter that shall be settled “between Pristina and Belgrade with the support of international stakeholders”. Yet, according to the SRSG, even though Security Council Resolution No. 1244 (1999) provides that UNMIK’s responsibilities shall include facilitating a political process designed to determine Kosovo’s future status, this responsibility cannot be interpreted as an obligation “to find a solution” to the pension problem ...”57

Finally, the SRSG argues that the claimant did not provide any evidence that he took steps to obtain payment of his pension from the Serbian authorities; in particular he did not file a claim against Serbia to the European Court of Human Rights which, according to the SRSG, would

52 Ibid

53 Ibid

54 Special Representative of the Secretary-General (SRSG)

55 European Convention on Human Rights (ECHR).

56 Krasniqi, Tome. The Human Rights Advisory Panel, sitting on 6 June, Date of adoption: 6 June 2013 Case No. 08/10 2013, Accessed February 15.2016 http://www.unmikonline.org/hrap/Eng/Cases%20Eng/DC_08-10_ENG.pdf

57 Ibid

constitute an effective remedy. Having considered that, the Panel unanimously declared inadmissible the remainder of the complaint. 58

UNMIK's reluctance to meet the demands of Kosovan civilians that were under its protection was best described in Wills' book 'Protecting civilians' and the obligations of peacekeepers to do so, since the establishment of the United Nations Mission in Kosovo, whose staff enjoys full immunity, *"UNMIK has both perpetuated and created obstacles to the full protection of human rights, issuing Regulations granting themselves and the international military presence (KFOR) total immunity from legal process in Kosovo. In addition, by removing decision-making authority over important civil rights from the courts and placing it in administrative bodies under direct control of UNMIK, and pursuing similar courses of action that serve to eliminate or severely restrict the rights of individuals from Kosovo."*59

4.3 Seeking justice through Serbian Courts and European Court of Human Rights or an ongoing Political Dialogue?

4.3.1 Would the European Court of Human Rights bring justice to all?

The case Grudić v. Serbia originated in an application (no. 31925/08) against Serbia and lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Serbian nationals of Bosniak origin (earlier being Kosovan residents), Ms Ljutvija Grudić, formerly Klapija, ("the first applicant") and Mr Mahmut Grudić ("the second applicant"), on the 24th of June 2008.⁶⁰ A decision of the Human Rights Court in Strasbourg obligated the state of Serbia to pay disability pensions to the Grudić couple from Mitrovica (Kosovo), currently residing in Novi Pazar (Serbia), for the entire period during which the payments were discontinued, and continue with further payments of pension (Decision no. 31925/08, April 17, 2012).

Reacting to the above decision of the Strasbourg Court, the Government of Serbia (on the 12th of February 2013) adopted the Action Plan for Solving the Problem of Pensions in the Territory of Kosovo and Metohija. In accordance with this plan, the Republican Fund for Pension and Disability Insurance of Serbia published on the 20th of February 2013 in website in Serbian: *"The Announcement to the Pension Beneficiaries from the Region of the Autonomous Province of Kosovo and Metohija."*⁶¹ In the notification, published in Serbian, a timeframe was set (60 days) together with a list of documents and evidence required to attach to the application form for the continuation of pension payments.

Following the announcement, many pensioners from Kosovo presented their requests for the continuation of pension payment from the date it was discontinued. Yet, after reviewing the applications, the professional services of the Serbian Fund had concluded that a small number of requests were fully completed. However, to those who had completed their paperwork as

58 Ibid

59 Wills, Siobhan. *Protecting Civilians*, The Oxford University Press, 2009, pp 217

60 Ibid

61 This is an official name of Kosovo as it stand the Constitution of Serbia

required, the Republican Fund for Pension and Disability Insurance of Serbia started issuing decisions whereby almost all of the applicants had their claims rejected on the grounds that they were receiving pensions from UNMIK. Many claimants lost their trust in the justice system and gave up, while only those who were more persistent, either personally or through their lawyers appealed against the first instance ruling in the administrative procedure of the Fund. *"The second instance ruling largely rejected the appeals as unfounded and upheld the first instance ruling, maintaining the same explanation" ... "Two pensions cannot be received in the Republic of Serbia!" They treat Kosovo as an autonomous province within Serbia."*⁶²

This is not only a form of discrimination on ethnic grounds, but is also illegal, immoral and a violation of human and property rights, guaranteed and protected by national and international laws. The pension fund is not merely a budgetary means, but rather contributions collected over the years and they should be returned accordingly.

The European Court of Human Rights, in its trial practice and some of its decisions explicitly states that, *"the right of acquiring a pension is a property right, in terms of Protocol 1 of the European Convention on Human Rights" (...)* and concludes: *"that the termination of pension payment is a violation of the right to enjoy this property as a fundamental human right guaranteed by the Convention."*⁶³ The decisions of Serbian authorities, on one side drags issues through complicated administrative and judicial procedures, and on the other hand justifies itself before the European Court on Human Rights in Strasbourg, pretending to examine cases one by one and thus 'operating within' the justice system. In addition, the Serbian authorities' decision was made in conformity with the change of the legislation in Serbia as described above, and concludes that all those pensioners who have not received a pension from Kosovo since 1999 are entitled to file an application for pension. This does not necessarily imply that the Serbian pension will be obtained, due to the fact that most Kosovo Non-Serbs ⁶⁴ were registered within the Kosovo system to receive the benefits. Consequently, they will be denied to apply for two pensions.

This policy is unfair, as the funds were taken from previous generations who contributed to the pension fund, and the claimants should be entitled compensation. The effect of this justice is worthless for Kosovo pensioners, or in certain cases, barely minimal.

The pension fund remains a sensitive matter, and is uncertain if it will be ever resolved at the state level by two governments. With individual claims, Kosovo citizens who strive to get their unpaid debt back may be waiting for years for justice to come. Until then, Kosovo government and its institutions should negotiate with Serbia. But how?

62 Fetahu, Adil. "Serbia Po Manipulon Me Pensionet E Pensionistev Kosovare (Serbia Is Manipulating with the Pension Funds of Kosovo)." *Zemra Shqiptare*. February 22, 2013. http://www.zemrashqiptare.net/news/id_31091/Adil-Fetahu:-Serbia-abuzon-me-pensionet.html

63 Grudić v. Serbia, No. 31925/08 (The European Court of Human Rights April 17, 2012) (Dist. file). http://www.zastupnik.gov.rs/uploads/cr/presude/u-odnosu-na-rs/grudic-protiv-srbije-p.-br.-31925-08/Grudic_p_3192508_eng.pdf

64 Albanians, Bosniaks, Turks, Roma

Serbia, on the other hand, should rethink in approaching this issue differently. Through changing legislation to the detriment of future Kosovo claimants, Serbia shows that it is not willing to deal with its past wrongdoings and look forward. The fact is that Serbia's debt to Kosovo's citizens is large and that Kosovar citizens deserve the sweat of their brow. On the other hand, it is an inevitable fact that the matter of the pension unpaid debt will be a very tense topic in the ongoing dialogue.

5. The institution of an Apology

In terms of reparations related to war crimes and crimes against humanity, there may be several reasons and aspects why political leaders from the Western Balkans are reluctant to exchange sincere apologies as symbolic reparation, let alone financial reparation packages.

Based on typology, there are various apologies. What kind of institution is saying 'sorry' or offering an apology? Apologies ought to be given by individuals, religious organizations, spiritual leaders, governments, and heads of states. A good and mature political, religious or spiritual leader can be the one who dares to take tough decisions and commitments that go beyond daily politics. The case for an apology is most convincing on the grounds that it has the potential to improve relations between communities, if the apology in whatever formulation, is sincere and is acceptable to the recipients.⁶⁵

Lack of a visionary and strong leadership, the short period of time since the end of the conflict, lack of proper data on human and economic losses, and an ownership of 'self-victim narrative' produced by political leadership all over the region, still suffocates the spirit of open debates in the countries of the Former Yugoslavia.

On March 26th 2014, feminist and anti-militarist NGO called 'Women in Black' from Serbia held a commemorative performance in the Republic Square in downtown Belgrade, commemorating the massacre against ethnic Albanian civilians during NATO bombings in 1999.: *"Today we commemorate the massacre against the Albanian population, which besides the NATO bombing, was exposed to the armed terror and ethnic cleansing by the Serbian regime. We express our deepest condolences and solidarity with the families of the victims, said Zajovic."*⁶⁶ This was so far the only commemoration and tribute ever offered to Kosovar victims of war crimes and survivors, let alone other human rights abuses that have taken place before the conflict.

Never has a formal apology been offered from any Serbian politician, institution or religion leader up to now. During consultations with Kosovo survivors and civilian victims of war for setting up the Truth Commission for war crimes in the Former Yugoslavia, the voices for recognition and an apology from the perpetrators or their respective institutions were vibrant;

⁶⁵ Cunningham, Michael. *Saying Sorry: The Politics of Apology*, the Political Quarterly Publishing Co. Ltd, 1999, pp 291.

⁶⁶ "Women in Black, Apologize Albanians from Belgrade Center." *Kosova Press*, March 26, 2014. <http://www.kosovapress.com/en/nacional/women-in-black-apologize-albanians-from-belgrade-center-13410/>.

*“If Serbia could only send a public apology that would have made things much easier for us.”*⁶⁷ A public apology includes an acknowledgment of the past wrongdoings and acceptance of responsibility. Several politicians from Serbia, Croatia, and Montenegro, exchanged individual apologies for all the crimes committed in Croatia and Bosnia and Hercegovina respectively.⁶⁸ Not a single Serbian leader, yet, has apologized for crimes committed against Kosovo Albanians. Here one must also add the fact that the Kosovo leadership is not immune to accountability for its past wrong-doings during the armed conflict of 1998-2000 either.

Roughly 2,197 Serbs and 526 Roma were killed or reported unaccounted after abductions since the end of the conflict.⁶⁹ But the mass atrocities committed by the Serbian regime for a period longer than a decade, are unmatched and cannot be moderated. An official recognition of the Government of Serbia for the past wrongdoings committed by the former regime would have contributed in calming tensions and relaxing the climate between Kosovo Albanians and Serbs.

History shows us that on September 20th 1952, the Chancellor Adenauer signed the Luxemburg accord. He set the reconciliation with Israel and the Jewish world as the most immediate and vital task of his government. He wanted the new Germany to regain the confidence of the Western Allies and to win a place for it in the Western Alliance against possible Soviet aggression.⁷⁰ Konrad Adenauer believed that:

*“Holocaust reparations would persuade the international community that West Germany had shaken off its Nazi past and could be trusted with political autonomy”*⁷¹

Chancellor Adenauer was a visionary leader, who despite society and government internal disparities in relation to reparations for Jewish victims, Adenauer decided to improve the German position in the international arena, and mark discontinuity with the past wrongdoings under Nazis.

Serbia on the other hand, was not formally in a “state of war”, except during the NATO air raid, yet, it played an active role in the armed conflicts in the former Yugoslavia. The government of Serbia still has not reneged its claim on Kosovo, not only by not recognizing it, but Kosovo remain as part of Serbia’ Constitution, and Serbia has offered neither a symbolic apology nor

⁶⁷ Interview with women, members of families of killed from Rahovec/Orahovac, December 4.2010. <http://www.recom.link/national-consultations-with-women-victims-of-war-rahovecorahovac-kosovo-4th-december-2010-the-initiative-for-rekom/>

⁶⁸ In September 2003, the Presidents of Serbia and Montenegro and Croatia, Svetozar Marović and Stjepan Mesić respectively, exchanged apologies for all the crimes committed. Serbian President Boris Tadić apologized on behalf of Serbian citizens in Sarajevo in 2004 and in Zagreb in 2007. On 10 July 2010 he visited the Potočari Memorial Centre. In a talk show Interview 20 broadcast on Bosnian BHT in April 2013, Serbian President Tomislav Nikolić apologized for the crimes against Bosniaks committed by individuals in the name of Serbia and the Serbian people. The National Assembly of the Republic of Serbia adopted in March 2010 the Declaration condemning the crime in Srebrenica, and in October of the ear the Declaration condemning all crimes against members of the Serbian people and Serbian citizens. Humanitarian Law Center, *Belgrade, Victims’ Right to Reparation in Serbia and the European Court of Human Rights Standards 2014/2015 Report*. Report. Belgrade, Serbia: Humanitarian Law Center, Belgrade, 2016. Pp 8

⁶⁹ Human Rights Watch, 2001. <https://www.hrw.org/reports/2001/kosovo/undword2c.html>

⁷⁰ Balabkins, Nikolas. *West German Reparations to Israel*. 1971. Pg.142 – 153.

⁷¹ Posner, Eric A. "Reparations for Slavery and Other Historical Injustices." *Chicago Unbound*, 2003, 694.

reparations for the state-sanctioned violence inflicted on Kosovo's population before and during the armed conflict.

5.1. Compensations

Whereas reparations for war damages in Kosovo, such as human, economic and property losses should be well investigated, documented and estimated before the officials would be able to seek compensation from Serbia, it is the right time that compensations for the unpaid pension debt of pensioners. Four years after the end of an armed conflict, at the end of 1999, Croatia completed the investigation and documentation to file a lawsuit against the Federal Republic of Yugoslavia (later changed to Serbia as Montenegro left the union with Serbia) at the International Court of Justice (ICJ) for genocide and seeking compensation for war damages.⁷² In early February 2015, the highest court of the United Nations ruled that neither Croatia nor Serbia committed genocide against each other's peoples when they waged war during the breakup of Yugoslavia, therefore, conclusion was that no reparations were to be paid.

Kosovo institutions, on the other hand, lay far behind in terms of documenting the past, in order to be able to file a law-suit against Serbia. Investigation and documentation of human losses were mostly finalized by NGOs specialized in the field of war crimes' investigations. But economic and property losses can still be well researched and documented before being negotiated. The new states of the former Yugoslavia have not themselves rectified past injustices by prosecuting wrongdoers, nor have they made efforts to restore the dignity of the victims.

Nonetheless, while Kosovo remains a unique case in this issue since similar examples cannot be drawn from the Agreement on Succession Issues between the successor states of former Yugoslavia, some good examples on reparations on property confiscation from Eastern Europe can help us as a starting point. The latest wave of reparations that took place in Eastern Europe arose with the end of the Cold War. These reparations were not intending to rehabilitate victims and survivors of an armed conflict as it is the case with the countries of the Western Balkans. These reparations took place in the newly democratic states, like Czech Republic or East Germany, when property of its citizens had been confiscated by Communist governments. Subsequently, the citizens wanted the return of that property or compensation. Both countries are known for the most notable reparations programs established. Both, the East German and Czech reparations schemes were designed in that way to permit the children of victims of expropriation to seek a return of the property. No regime does harm without knowing the consequences of its wrong-doings towards its own people. When the communist governments of above mentioned countries expropriated land, they knew that they were harming the children of the property owners as well as the owners themselves, assuming that children have a baseline entitlement to inherit property from their parents.⁷³ These respective governments, as well as others prior to WWI and after WWII are also to blame because they could have acted

72 Vukic, Ina. "Croatia: Reparations for War Damages – A Priority in Relating To Serbia." April 26, 2015. <http://inavukic.com/2015/04/26/croatia-reparations-for-war-damages-a-priority-in-relating-to-serbia/>.

73 Posner, Eric A. "Reparations for Slavery and Other Historical Injustices." *Chicago Unbound*, 2003, pp 695.

otherwise, and they didn't. Consequently, they owe a remedy to the descendants because they could have foreseen that the descendants would be injured by the harm to the original property owners."⁷⁴

Serbia's PDIF und authorities initially justified their pension payment discontinuation with the impossibility of collecting contributions in Kosovo. And this suggests lack of determination from the Serbian side to resolve an issue that will remain a firm obstacle in the future relations between the two countries. In the words of the Kosovo lawyer Adil Fetahu: *"When this reasoning was thrown down for its lack of legal grounding by the very Supreme Court of Serbia itself as well as the Strasbourg Court, the discontinuation of the payment of pensions, was then "justified" with the impossibility of receiving two pensions "in the Republic of Serbia."*⁷⁵

Serbia has shown its willingness to become an EU member, and as such it would be required to respect the democratic standards inherent to EU membership. One of these standards is respecting and complying with agreements signed under the Agreement on Normalization of Relations with its neighbors. By changing legislation in its favor, thus treating Kosovo, still, as part of Serbia, according to the Preamble of Kostunica's Constitution, official Belgrade does not consider that the benefits that Kosovan citizens receives since the end of the conflict in 1999 from the Kosovo consolidated budget are not in fact pensions, but part of a financial benefit scheme for Kosovo citizens of a certain age (Fetahu, 2015).

To wrap it up, normalization of relations with neighbors cannot be done without dealing with the legacy of the violent past, and transitional justice is usually at the heart of reparation politics.

6. Conclusion

The aim of this discussion paper was not to justify lack of initiatives of victims and survivors of war crimes and crimes against humanity to challenge Serbian courts in obtaining justice and reparations in aftermath of the Kosovo conflict. Neither did it aim to discourage the war crimes survivors to try again. However, the idea is to encourage the Kosovans whose economic and property rights were abused in 1990s, to pursue justice from the Serbian state, and exhaust all international mechanisms to force Serbia to follow up on reparations for Kosovans. The ongoing Pristina-Belgrade dialogue offers hope that some sort of reparations can be obtained. Kosovo cannot persuade Serbia to pay reparations of war crimes and offer an apology. States mostly voluntarily enter into negotiations for redress as a result of pressure, whether gentle or more coercive, from a group which is associated with a reparation movement or international actors. But what Kosovo should do is to document the unpaid pension and disability debts abolished by the Serbian regime during the 1990s, thus ask for redress in the next round of dialogue.

⁷⁴ Ibid, pp 700

⁷⁵ Fetahu, Adil. "Serbia Po Manipulon Me Pensionet E Pensionistevë Kosovare (Serbia Is Manipulating with the Pension Funds of Kosovo)." *Zemra Shqiptare*. February 22, 2013. http://www.zemrashqiptare.net/news/id_31091/Adil-Fetahu:-Serbia-abuzon-me-pensionet.html

Although the United States and other countries did pressure Germany to pay reparations to the Holocaust victims, the Holocaust case differs from the other cases of coerced wartime reparations. While external factors can be utilized to pressure the state (offender) into negotiations, the very concept of sovereignty means that external actors cannot force the state into domestic actions. This is explicit by the fact that in the state-victim relationship, the victim is always in the weaker position.⁷⁶

Voluntary redress and reparation, is often the only option that victimized communities have to obtain justice, in addition to being the only available framework within which political reconciliation can occur. If the state freely admits that it was wrong, that admission helps bring closure and fosters the perception that there is little chance of the action recurring.⁷⁷ By admitting they did wrong, Serbia does not favor Kosovo (Albanians), as much as it brings good and great favor to Serbia. Yet, in many cases, such admission of wrongdoing does not occur, consequently justice is not achieved.

⁷⁶ Wolfe, Stephanie. *The Politics of Reparations and Apologies*, Volume 7, Springer Science+Business Media New York 2014. Pg.60

⁷⁷ Wolfe, Stephanie. *The Politics of Reparations and Apologies*, Volume 7, Springer Science+Business Media New York 2014. Pg.60

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