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## AMENDMENT TO THE ACT ON CIVILIAN VICTIMS OF WAR AND THE LEGAL SITUATION OF CHILDREN OF WAR RAPE IN BOSNIA AND HERZEGOVINA

### Abstract

War rape is a phenomenon that occurs in almost every armed conflict. The circle of victims includes not only the persons directly affected by this crime, but also their next of kin. Unwanted pregnancies as a result of wartime rape result in children who, from the moment they are born, are treated as inferior persons. Apart from marginal cases, the internal laws of individual states do not grant them any protection or compensation. For some time now, however, a change in this direction has been evident on the international stage. Bosnia and Herzegovina is the first European country which has responded to these calls and has taken steps to change the status of children from war rape.

**Keywords:** rape, children of shame, Bosnia and Herzegovina, war, ICTY, Brčko District.

### Introduction

The issue of war rape has always accompanied armed conflict. In the past, these acts were only criminalised in the criminal laws of individual countries, but were not framed as international crimes. This point of view was changed by the events related to the civil war in Rwanda or former Yugoslavia. It turned out then that rape constituted a genocide plan that was used as a war tactic. These cases were of interest to the International Criminal Tribunal for the former Yugoslavia<sup>1</sup>, and the In-

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<sup>1</sup> *International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 S/RES/827* (1993), International Criminal Tribunal for the former Yugoslavia, <https://www.icty.org>, 25.05.1993 (01.10.2022);\_hereinafter: ICTY.

ternational Criminal Tribunal for Rwanda<sup>2</sup>. It was noted at the time that rapes were not isolated incidents, but constituted a well-organised war machine aimed at annihilating the enemy. The sentences handed down at the time contributed to bringing these acts to public attention and to the inclusion of the crime of rape in the catalogue of international crimes, thus bringing them under the jurisdiction of the ICTY [Article 5(g)] and the ICTR [Article 3(g)], and they are now included in the catalogue of crimes against humanity [Article 7(1)(g)] and war crimes (Article 8(2)(a xxii) included in the Rome Statute of the International Criminal Court<sup>3</sup>.

Regardless of the location of the conflict, children are born as a result of the war rapes and experience stigmatisation in the form of social exclusion from the beginning of their birth. They are most often excluded from society, deprived of elementary rights. States affected by armed conflicts do not grant them any compensation, relegating and marginalising their existence. For some time now, however, a change of direction in the social narrative has been evident internationally, with the aim of including them in the system of war reparations.

The subject of this article is the legal situation of children of war-time rape born in the aftermath of the 1992-1995 war in Bosnia and Herzegovina. This article is a continuation of the considerations presented in the text entitled *Some remarks on the issues of the consequences of war rape on the example of Bosnia and Herzegovina*, which was published in the journal "Polityka i Społeczeństwo" in 2022<sup>4</sup>.

Presented article shows the change of part of the legal system in Bosnia and Herzegovina in terms of recognising children of war rape as civilian victims of war. It has been pointed out that this direction is of unprecedented importance in terms of the visibility of these persons in Bosnian society, and in the future will certainly contribute to grant them privileges reserved until now for categories of persons recognised as war victims under Bosnian legislation. The article uses the dogmatic-legal method, which is characteristic for the legal sciences. For this purpose, it

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<sup>2</sup> *Statute of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Violations Committed in the Territory Neighbouring States, between 1 January 1994 and 31 December 1994* S/RES/955 (1994), International Criminal Tribunal for Rwanda, <https://www.icttr.org>, 08.11.1994, (01.10.2022), hereinafter: ICTR.

<sup>3</sup> Rome Statute of the International Criminal Court, drafted at Rome on 17 July 1998 (Journal of Laws 2003. No. 78, item 708, as amended.); hereinafter: ICC.

<sup>4</sup> K. Czeszejko-Sochacka, *Some remarks on the issues of the consequences of war rape on the example of Bosnia and Herzegovina*, "Polityka i Społeczeństwo", 2022, no 1, pp. 35-46, DOI 10.15584/polispol.2022.1.

has analysed the provisions of the legislation in force in Bosnia and Herzegovina, it has also studied the reports of non-governmental organisations that continuously support children of war rape in their struggle for justice, it has analysed the current jurisprudence of the International Criminal Court that refers to this issue, and it has consulted press materials.

### **Progress in the assessment and criminalisation of war rape**

War rapes affect women in almost every armed conflict, apart from Bosnia and Herzegovina, as an example we can mention: Rwanda, Syria, Iraq, Democratic Republic of Congo, Nigeria, Burma and many others. These acts leave permanent marks on the psyche of the victims, determining their lives and often making it impossible to function 'normally'. S. Karović points out in this regard, that the attack on sexual freedom is clear example of striving for absolute domination of one side over the other one<sup>5</sup>. He points out that in the case of the former Yugoslavia, this was a mass crime with an organisational element, not individual, spontaneous cases<sup>6</sup>.

Approximately 4,000 children have been born in Bosnia and Herzegovina as a result of war rape. As with the number of women who have been raped, great care must be taken when quoting these figures. This is because many of these cases have not been reported. This state of affairs is directly related to the feeling of immense shame and the trauma that accompanies victims. This is often the result of approach of law enforcement agencies to such cases. Many of these cases are not reported to law enforcement, *Trial International* organisation reports that for every 15-20 cases of sexual violence that occur during wartime only one is reported<sup>7</sup>. However, when victims do decide to fight for their rights, they often face insuperable problems, in the form of a lack of political will to speak out about these issues, or a dysfunctional judicial system. Guilt and shame are unfortunately often shifted onto the victims rather than the perpetrators, this pattern often becomes apparent during trials causing additional trauma and stigmatisation for victims<sup>8</sup>. There are still many stereotypes operating in the judicial system. Unfortunately, the common

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<sup>5</sup> S. Karović, *Tretman silovanja u (međunarodnom) krivičnom pravu sa osvrtom na praksu ad hoc tribunala za bivšu Jugoslaviju*, "Pravne Teme", 2017, no 10, p. 93.

<sup>6</sup> *Ibidem*.

<sup>7</sup> *Wartime Sexual Violence Survivors: Bosnia and Herzegovina's Forgotten Ones*, Trial International, <https://trialinternational.org>, 19.06.2020 (01.11.2022).

<sup>8</sup> *BiH: Reducing Wartime Sexual Violence Survivors' Stigmatization During Criminal Proceedings*, Trial International, <https://trialinternational.org>, 17.01.2018 (02.11.2022).

perception is that the victim must physically resist the attacker, and there is often a lingering conviction that the victim bears part of the responsibility<sup>9</sup>. In sexual violence cases, common practice is to try to shift the blame onto the victims by presenting details of their sexual lives. This practice is particularly stigmatising, it also traumatises victims and violates international standards. A direction of change is, however, evident in March 2021, a provision was introduced into the Criminal Procedure Code of Republika Srpska criminalising the presentation of evidence of the victim's sexual behaviour prior to the commission of the crime (Article 279)<sup>10</sup>.

For many years, such children went unnoticed. In social discourse, they were called "children of the enemy", "little Chetniks", "invisible children" and even "children of shame". The state did not take care of such people in any way, without offering any form of reparation, which was reserved for those who were granted the status of civilian victims of war. Gradually, however, internationally this narrative began to change and the problem began to be recognised by the international community. The watershed moment was UNSC Resolution 2467 of 23 April 2019<sup>11</sup>. It highlights the specific problems faced by women and girls who became pregnant as a result of sexual violence during armed conflict and chose to become mothers. In doing so, it emphasised that the problems these women face on a daily basis are related to economic and social marginalisation, physical and psychological injury<sup>12</sup>. Their offspring are often affected by statelessness problem, discrimination and lack of access to redress. Significantly, the UNSC called on all States to implement solutions in their national laws to ensure equal rights for all persons affected by sexual violence during armed conflicts<sup>13</sup>. At the time it was pointed out that such obligations are imposed on States Parties to the Convention on the Elimination of All Forms of Discrimination against

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<sup>9</sup> *Sexual violence: Stigma at all levels*, Trial Justice, <https://trialinternational.org>, 11.05.2020 (02.11.2022).

<sup>10</sup> *The Criminal Procedure of Republika Srpska*, Official Gazette of Republika Srpska, 53/12, <http://www.ohr.int>, 17.05.2012 (03.01.2023).

<sup>11</sup> *Resolution 2467 (2019) Adopted by the Security Council at its 8514<sup>th</sup> meeting, on 23 April 2019*, S/RES/ 2467 (2019), United Nations Security Council, <https://www.un.org>, 23.04.2019, (03.01.2023).

<sup>12</sup> See: *Rape Myths in Wartime Sexual Violence Trials. Transferring the Burden from Survivor to Perpetrator*, Trial International, <https://trialinternational.org>, 21.01.2018 (03.01.2023).

<sup>13</sup> *Resolution 2467 (2019) Adopted by the Security Council at its 8514<sup>th</sup> meeting, on 23 April 2019*, 23 April 2019, United Nations Security Council, <https://www.un.org>, 23.04.2019, (03.01.2023).

Women<sup>14</sup> and the Convention on the Rights of the Child<sup>15</sup>. The UNSC also asked the UN Secretary-General to report back on these issues within two years (but not later than the end of 2021)<sup>16</sup>.

In turn, on 19 November 2021 The Committee on the Elimination of Discrimination against Women (CEDAW) and the Committee on the Rights of the Child (CRC) issued a joint statement on providing prevention, protection and assistance to children born as a result of conflict-related rape and their mothers<sup>17</sup>. The statement expressed deep concern over continuing acts of rape and sexual violence. The committees thus called for adequate assistance and support for children born of rape, and for the protection of the full range of rights of women survivors of rape and their children for their rehabilitation and reintegration during the post-conflict transition in the country. Thus, all states that are party to these conventions were called to urgently take measures to prohibit the recruitment and use of children in armed conflict and to protect women and girls from sexual slavery, military prostitution and forced pregnancies. In doing so, it was extremely important to point out lack of existence of compensation programs for such children, as a result of which they are exposed to further stigmatization in the form of acts of violence. The statement pointed to unfavourable practices that have the effect of curtailing elementary human rights, as well as hindering their integration into society as they enter adolescence. Attention was paid in particular to: their exclusion from birth registration, questioning of their rights to citizenship, or lack of existence of formal systems of civil status registration. In this position also noted that the COVID-19 pandemic contributed to increased civil unrest, and caused suspension of many regular activities of justice, law enforcement and security services. This was followed by an increased risk of victimization, especially of children born as a result of rape. CEDAW and the CRC thus called on States Parties to fulfil their obligations under the provisions of the Convention, such as protecting women and children from conflict-related sexual violence,

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<sup>14</sup> Konwencja w sprawie likwidacji wszelkich form dyskryminacji kobiet, przyjęta przez Zgromadzenie Ogólne Narodów Zjednoczonych dnia 18 grudnia 1979 r. (Dz.U. 1982, Nr 10, poz. 71).

<sup>15</sup> Konwencja o prawach dziecka przyjęta przez Zgromadzenie Ogólne Narodów Zjednoczonych dnia 20 listopada 1989 r. (Dz.U. 1991, Nr 120, poz. 526 z późn. zm.).

<sup>16</sup> *Women and girls who become pregnant as a result of sexual violence in conflict and children born of sexual violence in conflict. Report of the Secretary-General, S/2022/77*, United Nations Security Council, <https://www.un.org>, 31.01.2022, (01.02.2023).

<sup>17</sup> *CEDAW-CRC Join Statement: Ensuring prevention, protection and assistance for children born of conflict related rape and their mothers*, United Nations Human Rights, <https://www.un.org>, 19.11.2021 (03.01.2023).

ensuring access to health care, education and childcare. The need to ensure continued access to sexual and reproductive health services for women in times of armed conflict was emphasized. In addition, those who have experienced rape should have access to post-rape care, but also access to emergency contraception, prophylaxis against AIDS/HIV, or finally abortion and post-abortion services. It is also extremely important, to provide them with assistance in the form of psychosocial counselling, maternity facilities and postpartum care. For girls who are victims of rape, it is essential to guarantee access to education. The Committees also stressed that, within the provided humanitarian assistance, it is necessary, first and foremost, to remember to safeguard pregnant women and nursing mothers. All these activities are oriented towards fighting stigma and social exclusion. The position of the committees is a very important moment in the discussion on restoring the dignity of rape victims and their offspring, on ensuring their rightful place in society, drawing attention of the international community to the problem of their marginalization

Implementing the UNSC guidelines under Article 18 of the aforementioned resolution, on 22<sup>nd</sup> of January 2022, the UN Secretary-General presented a report on the situation of women and girls who have experienced sexual violence during the time of conflict<sup>18</sup>, as well as the situation of children, who were born as a result of it<sup>19</sup>. In the document, the Secretary-General noted that the atrocities of war are particularly severe for women and girls, as they violate their bodily autonomy and stigmatize them for life. He also noted that the issue only emerged in the public debate in the 1990s as a result of conflicts in Liberia, Rwanda, Sierra Leone, Uganda, and the former Yugoslavia. This report describes the problems faced by people who have been raped during conflicts in various parts of the world manifested in: stigmatization, exclusion, acts of violence or lack of social acceptance, etc. Resonating with the position of CEDAW and CRC, the Secretary General addressed the lack of access to sexual, reproductive and mental health services. He also touched on the tardiness of the judiciary in these matters and the frequent

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<sup>18</sup> According to the Secretary-General's position, the concept of sexual violence is understood in this regard as: rape, sexual slavery, forced prostitution, forced pregnancy, forced abortion, forced sterilization, forced marriage, trafficking for sexual exploitation or exploitation during the conflict, as well as any other form of sexual violence of comparable gravity committed against: women, girls, men, and boys, if it is directly or indirectly related to the conflict.

<sup>19</sup> *Women and girls who became pregnant as a result of sexual violence in conflict and children born of sexual violence in conflict*, S/2022/77, United Nations Security Council, <https://www.un.org>, 31.01.2023 (10.01.2023).

marginalization of this problem. He stressed on the inadequacy of the legal system on these issues. He noted that in some countries<sup>20</sup> the participation of the child's father is required for the issuance of birth or citizenship documents, which directly contributes to prevent children of war rape from exercising their basic rights, and thus deepening their social exclusion. He pointed out that children born of war rape face intergenerational trauma. The result can be problems related to their upbringing, which in extreme cases can cause them to become depressed, addicted to drugs or alcohol<sup>21</sup>. The report notes that the harm these people face include physical injuries, psychological trauma, socioeconomic marginalization, statelessness, but also discrimination, stigmatization and legal barriers<sup>22</sup>. In addition, raped women are often unable to find employment due to permanent gynaecological injuries, sexually transmitted infections or mental disorders. All of these restrictions hinder the realization of women's and children's rights and are directly linked to the outbreak or escalation of conflict<sup>23</sup>. It was emphasized that in patriarchal societies, such women, along with their offspring, are often perceived to be associated with the parties to the conflict. This perception in some cases is the cause of, among other things, infanticide, or the abandonment of offspring by women who have been victims of sexual assault. This lack of acceptance and understanding exacerbates intergenerational trauma, which can result in further acts of violence<sup>24</sup>. The UN Secretary General stressed that assistance to such victims requires extreme sensitivity, and should be provided with respect for their safety and confidentiality, with the aim of not exacerbating exclusion. In doing so, it should focus on promoting human rights including children of war rape.

The difficult situation of children of war rapes was highlighted by the ICC Prosecutor F. Bensouda in the case against *Dominic Ongwen*<sup>25</sup>. And in the *Bosco Ntaganda* case, the ICC ruled that children who were born as a result of war rapes and sexual slavery were eligible for \$30 million in reparations<sup>26</sup>. The ICC further noted that in light of the circumstances of the case, children born as a result of rape and sexual slavery may qualify as direct victims, as the harm suffered is a direct conse-

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<sup>20</sup> E.g. Libya, or Somalia.

<sup>21</sup> Such cases have been observed in the Democratic Republic of Congo, or Rwanda.

<sup>22</sup> *Women and girls...*

<sup>23</sup> *Ibidem.*

<sup>24</sup> *Ibidem.*

<sup>25</sup> *The Prosecutor v. Dominic Ongwen*, ICC-02/04-01/15, International Criminal Court, <https://www.icc-cpi.int>, 6.12.2015 (10.01.2023).

<sup>26</sup> *Summary of the Reparations Order; 8 March 2021. The Prosecutor vs. Bosco Ntaganda*, International Criminal Court, <https://www.icc-cpi.int>, 8.03.2021 (10.01.2023).

quence of the commission of the crime of rape and sexual slavery<sup>27</sup>. In the same document, he condemned all acts of sexual violence and called for greater support for survivors with particular regard to children of war rapes in order to respect their rights, announcing the continuation of systemic and coordinated efforts in this regard. He also recommended that the RB take the necessary measures to improve the situation of such people<sup>28</sup>.

### **Bosnia and Herzegovina Case**

Bosnia and Herzegovina has responded to these appeals. Thanks to the continued involvement of non-government organizations working on its territory, the situation of children of war rape has slowly begun to change<sup>29</sup>. However, before this happened, the now-adult children of war rapes were taking up the fight for their rights and to be noticed in society<sup>30</sup>.

On July 14, 2022, a landmark step was taken in legislation in Brčko District. Under an amendment to the Law on Civilian Victims of War, "children of shame" were recognized as civilian victims of war<sup>31</sup>. This is a very important and necessary step. Thanks to this action, an Article 2(g) has been added to the existing catalogue of war victims, under which an additional category of war victims has been introduced - children born as a result of war rape or sexual abuse of a person who has the status of a civilian war victim under the existing legislation. Until the legislation was amended under Article 2 of the law in question, such category was granted to persons who: suffered permanent damage to their mental health as a result of sexual abuse and rape, and the damage was not specified in percentage terms, to persons for whom the damage suffered was estimated to be at least 60%: who suffered permanent damage to their mental health as a result of forced labour, imprisonment, camp or during the escape, persons who suffered bodily damage due to wounds or injuries caused by warfare such as bombing, stray bullets, mortar and cannon shells, etc., as well as persons who sustained bodily injuries due to injuries caused by leftovers of military materials, and

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<sup>27</sup> *Ibidem*.

<sup>28</sup> *Women and girls...*

<sup>29</sup> We should listed here such organizations as: Forgotten Children of War Association or Trial International.

<sup>30</sup> *Conflict-related sexual violence Report of the Secretary-General*, S/2021/312, United Nations Security Council, <https://www.un.org>, 29.03.2022 (11.01.2023).

<sup>31</sup> *Zakon o Civilnim Žrtvama Rata Brčko Distrikta Bosne i Hercegovine*, Bosna i Hercegovina, Brčko distrikt BiH, <https://www.legal-tools.org>, 09.09.2022 (09.01.2023); *Children born as result of war get their first legal recognition in BiH*, N1 Sarajevo, <https://ba.n1info.com>, 15.07.2022 (24.11.2022r.).



persons who later sustained bodily injuries due to exacerbation of disease, long incubation period, loss of limb, loss of sight in both eyes, mental damage, other bodily injuries caused by such circumstances, and furthermore persons who were killed as a result of such acts. The wording of Article 3 identifies the subjects who are entitled to the rights provided by this law. However, this provision does not mention children born as a result of war rape or sexual abuse of a person who has been granted the status of a civilian victim of war. On the other hand, under the Article 4 of that Act specified the entitlements from which persons included in the category of civilian victims of war may benefit, and include civilian pension, family disability allowance, care and support allowance of another person, health care and exemption from payment for primary and auxiliary health care services, orthopaedic allowance, or reimbursement in funeral expenses. The Article 4(2) of this Act also provides for additional entitlements, such as the right to receive support for the cost of medical treatment and the purchase of orthopaedic aids, preparation for work in the form of vocational rehabilitation including retraining, the right to participate in special employment projects, priority for housing, and the right to receive free legal assistance. Subsequent legislation has provided for the use of disability benefits (Article 5), family disability benefits (Article 6), the right to exemption from payment for primary and specialized health care (Article 8), orthopaedic allowance (Article 9), or reimbursement of funeral expenses (Article 10), but these provisions also do not include the entities mentioned in the text of the Article 2(g). Ajna Jusic, president of the Forgotten Children of War Association, reacted positively to the amendment, noting however, the lack of proper consultation process with the future users of this law. Thus, she appealed to representatives of state institutions and political parties in Bosnia and Herzegovina for a continuous dialogue, as only in this way will civilian victims receive the effective law they deserve<sup>32</sup>. An additional complication is that the status of such victims can be granted only to those whose mothers in previous administrative proceedings have been granted the status of civilian victims of war. As A. Hanušić Bećirović emphasizes, such formulated provisions lead to exclusion of children whose mothers were not ready to apply for recognition of their status<sup>33</sup>. The number of women who have this status is small and amounts to

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<sup>32</sup> *The Federation Of Bosnia and Herzegovina Recognise The Victim Status Of "Invisible Children"*, Human Rights Pulse, <https://www.humanrightspulse.com>, 11.01.2023 (20.01.2023).

<sup>33</sup> *Children Born as a Result of Wartime Rape get their first legal recognition in Bosnia and Herzegovina*, Trial International, <https://trialinternational.org>, 21.01.2018 (20.01.2023).

1,049 people<sup>34</sup>. These are only marginal cases, taking into consideration the scale of rapes. In addition, it should be remembered that many children have been abandoned or given up for adoption by their biological mothers, as a result, they have no knowledge about them<sup>35</sup>. *Trail Justice* activists also point out that this category provided for in the wording of Article 2(g) does not apply only to children of war rape, but covers all children born during the war, including children - soldiers, or children who have been trafficked. This framing, however, may result in a lack of focus on the specific needs of children from wartime rape<sup>36</sup>.

At this point, it should be noted that the legal act in question does not apply to all residents of Bosnia and Herzegovina, but only to the said Brčko district, which is reflected in the wording of the Article 1, where it is indicated that it defines the status and rights of civilian victims of war and other persons who reside in the Brčko district. This state of affairs is the result of peace agreements that were concluded in 1995 in Dayton<sup>37</sup>. Under Article 1(3) of the 1995 Constitution of Bosnia and Herzegovina (constituting an annex to the Dayton Agreement), Bosnia and Herzegovina was divided into: Federation of Bosnia and Herzegovina<sup>38</sup>, Republika Srpska<sup>39</sup> and the Brčko District lying in between<sup>40</sup>. Federation of Bosnia and Herzegovina<sup>41</sup> covers 51% of the country's territory, and 10 territorial units (cantons), while the Republika Srpska<sup>42</sup> covers an area of about 49% of the country's territory. The Brčko District, which has been the subject of international disputes and arbitration, has a special status because it is not assigned to either the Federation of Bosnia and Herzegovina or the Republika Srpska<sup>43</sup>. Thus, it functions as a demilitarized, independent territory subject only to state control<sup>44</sup>. The system con-

<sup>34</sup> *Bosnians born of rape recognized as civilian victims of war*, Trial International, <https://www.youtube.com>, 20.07.2022 (22.01.2023).

<sup>35</sup> *Children Born as a Result of Wartime Rape get their first legal recognition in Bosnia and Herzegovina*, Trial International, <https://trialinternational.org>, 09.08.2022, (02.01.2023).

<sup>36</sup> *Bosnians born....*

<sup>37</sup> *General Framework Agreement for Peace in Bosnia and Herzegovina*, A/50/790/S/1995/999, United Nations General Assembly Security Council, <https://peace-maker.un.org>, 21.11.1995 (15.01.2023).

<sup>38</sup> This part of the country is mainly inhabited by Muslims and Croats.

<sup>39</sup> In Republika Srpska, Serbs are the majority of the population.

<sup>40</sup> Multiethnic community.

<sup>41</sup> Short: FBiH.

<sup>42</sup> Short: RS.

<sup>43</sup> L. Bonifati, *The Judicial System of Bosnia-Herzegovina: Between Courts and Politics*, <http://www.balanicaucaso.org>, (06.02.2022).

<sup>44</sup> *Ibidem*, p 4.

structured in this way results in four legal systems in the country: separate for Federation of Bosnia and Herzegovina, Republika Srpska, Brčko district and common for Bosnia and Herzegovina. With this, in turn, comes separate legislation<sup>45</sup>.

## Conclusions

The issue of war rapes and the children born of it, affects almost every corner of the earth that is affected by armed conflict. The legal situation of such people is particularly difficult and usually relegated to the margins of social discourse. For some time now, however, the international arena has seen a marked change in this direction. Norway and Colombia were, by the way, the first countries to notice the problem and introduce certain benefits for such people. In other countries, such victims have not lived to see their rights recognized at the level of national legislation. International organizations, have become increasingly effective in claiming the rights of raped women and their offspring who were born as a result of sexual violence. Bosnia and Herzegovina, has taken the first step, thus responding to these appeals. Despite all the momentousness of this amendment, it should be noted that the law, however, does not fully meet the assumptions expressed in the UNSC resolution, the position of CEDAW and CRC, or the UN Secretary-General's report, as such children are still deprived of rights in the form of priority to education or scholarships. Moreover, victims of these crimes are not granted the right to rehabilitative treatment or priority in the enjoyment of the right to health care<sup>46</sup>. Nevertheless, this law is a very important voice in the discussion of the fate of victims of wartime sexual violence. Thanks to it, the now-adult children of wartime rape are beginning to be recognized by society. It remains to be hoped that this amendment is the first step that will be followed by others, and that the entire legislation of Bosnia and Herzegovina will follow in the footsteps of the Brcko district. Finally, it should be mentioned that appreciation for this initiative was expressed by Karim A. Khan - the ICC Prosecutor, who announced that such children will receive special attention in the investigations con-

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<sup>45</sup> See S. Karović, M.M. Simonović, *Legal Nature and main procedural determinants of criminal procedure in Bosnia and Herzegovina*, "Journal of Criminology and Criminal Law", 2020, No. 3, p. 56-68, doi.org/10.47152/rkkp.58.3.4.

<sup>46</sup> *Children born as a Result of Wartime Rape in BiH were given the Status of Civilian Victims*, Sarajevo Times, <https://sarajevotimes.com>, 15.07.2022 (17.01.2023); *Forgotten Children of War want a Law that will protect them and their Mothers*, Sarajevo Times, <https://sarajevotimes.com>, 06.12.2022 (25.01.2023).

ducted by his office<sup>47</sup>. The adoption of the law was also welcomed by the UN, which has welcomed this direction with appreciation<sup>48</sup>.

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### **Zmiana ustawy o cywilnych ofiarach wojny oraz sytuacji prawnej dzieci ofiar gwałtów wojennych w Bośni i Hercegowinie**

#### **Streszczenie**

Gwałty wojenne są zjawiskiem występującym niemal w każdym konflikcie zbrojnym. Krąg osób pokrzywdzonych obejmuje przy tym nie tylko osoby bezpośrednio dotknięte tym przestępstwem, ale także ich osoby najbliższe. Z niechcianych cięż będą-

cych wynikiem wojennych gwałtów rodzą się dzieci, które od momentu swojego przyjścia na świat są traktowane jako osoby gorszej kategorii. Poza marginalnymi przypadkami prawodawstwa wewnętrzne poszczególnych państw nie przyznają im żadnej ochrony ani odszkodowań. Od pewnego jednak czasu na arenie międzynarodowej widać zmianę tego kierunku. Bośnia i Hercegowina jest pierwszym europejskim krajem, który odpowiedział na te wezwania i poczynił kroki zmierzające do zmiany statusu dzieci z wojennych gwałtów.

**Słowa kluczowe:** gwałt, dzieci wstydu, Bośnia i Hercegowina, wojna, MTKJ, dystrykt Brčko