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# **‘Missing babies’ in Serbia**

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Still without  
Redress

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*Information for the Human  
Rights Committee, on the  
Occasion of Committee’s  
Review of Serbia at the  
119th Session (6 March  
2017 – 29 March 2017)*

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## **Missing babies in Serbia – deaths or disappearances from maternity wards still without the redress**

For decades, thousands of parents in Serbia have been struggling to understand what happened with their children that have been declared as deceased immediately after the birth in Serbian maternity wards. Disappearances were happening mostly in the period from the 1970s until 1990s, although there are more novel cases from 2000s. In most of these cases, medical staff from maternity wards and medical institutions has declared new-born children as dead but did not have provided the parents with the opportunity to identify their new-borns, take the remains and bury them. Furthermore, the parents were not provided with adequate medical reports and other documents, so they started asking medical and other authorities about the fate of their children officially declared deceased during their stay in maternity wards.

In 2002 a number of parents from different regions in Serbia gathered and compared the documents issued by the medical institutions after their new-born children were declared deceased in maternity wards. The main conclusion was that there have been a lot of similar irregularities identified in cases coming from different medical institutions throughout Serbia. Because of that, a group of parents founded an informal association called Belgrade group of parents, which was followed by a number of other parents from different towns in Serbia which have been struggling to realise what happened with their new-borns declared deceased immediately after the delivery. This group is still advocating for effective investigations and redress in cases concerning babies missing from Serbian maternity wards.

*Belgrade Group of Parents* would like to submit this report to the Human Rights Committee on the occasion of the Committee's consideration of Serbia's report submitted under article 40 of the International Covenant on Civil and Political Rights, and the preparation of the Concluding observations from the 119<sup>th</sup> session (6 March 2017 – 29 March 2017). This report provides the Committee with additional information to the State's report and the reply to the list of issues (paras. 97 and 98).<sup>1</sup>

## **First phase of the parents' struggle for justice – from the early 2000s until the conclusions of the Parliamentary Investigating Committee**

The first step in parents' quest for the truth in cases concerning their babies missing from Serbian maternity wards was to seek information from public utility companies providing funeral services about their records about still-born and children deceased immediately after the delivery that is buried or cremated in Serbian cemeteries.

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<sup>1</sup> United Nations, Human Rights Committee, 119th session 6 -29 March 2017, Item 7 of the provisional agenda, Consideration of reports submitted by States parties under article 40 of the Covenant, List of issues in relation to the third periodic report of Serbia, Addendum, Replies of Serbia to the list of issues\*, UN Doc. No. CCPR/C/SRB/Q/3/Add.1

Responses from these companies were stunning – in some cases, parents have received the information that their ‘allegedly deceased children’ *were neither buried nor cremated at the cemeteries and that companies have no records of them*. It is very important to note that for other children that passed away in the same year (children that were not missing) these records contained all the necessary information. Furthermore, Parliamentary Investigating Committee confirmed the fact that public utility companies had most relevant and up-to-date management of the official records about persons cremated or buried at the cemeteries.<sup>2</sup>

Information provided by the medical institutions in Serbia confirmed the parents’ concerns as to what had really happened to their children. The responses that medical institutions provided were similar – parents were informed that medical documentation does not exist or that it has been destroyed due to floods or fires that happened in medical institutions. After that, the Medical Operations Inspection of the Ministry of Health conducted the inspections in a number of maternity wards and other medical institutions in Serbia, and the results of the inspection demonstrated that the records were not held in accordance with the existing laws and regulations, that there has been a serious number of erroneous information in the records, that some of the medical institutions managed more than one record per year, a number of forgeries in autopsy reports, mistakes in discharge letters issued by hospitals and maternity wards, misplaced medical records and the lack of information on persons responsible for delivering remains of missing babies to public utility companies providing funeral services.

Parents’ attempts for accessing information contained in Municipal Registry Books remained without success. Administrative inspection of the Ministry of Public Administration and Local Self-government assessed the work of Registry Offices and determined that these books had inaccurate information, blank spots in registry books, incongruity in birth registry books and death certificates, unlawful determination of citizens’ unique personal numbers, and other elements that raised the concerns about the real destiny of children missing from Serbian maternity wards.

Having that in mind, a number of parents pressed criminal charges against unidentified perpetrators. In the period from 2001 until 2006 there has been *1339 criminal charges* lodged to the Ministry of Interior and the Public Prosecutor’s Offices.<sup>3,4</sup> These criminal

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<sup>2</sup> Republic of Serbia, Parliament, Parliamentary Investigating Committee, Report 01 No. 02-445/05, p. 8, 20 February 2006, Belgrade (Serbian only).

<sup>3</sup> Ministry of Interior, General Police Directorate, Criminal Investigations Directorate, *Report on the activities of the Working Group established for the investigation of the cases of children missing from maternity wards in the Republic of Serbia*, p. 2, Belgrade, March 2007 (Serbian only).

<sup>4</sup> However, it should be noted that the Government of Serbia indicated in its reports with the Committee of Ministers of the Council of Europe that there has been only 320 complaints lodged with the Ministry of Health and just 50 criminal complaints with the prosecution authorities. For more information, please see: NGO ASTRA, Submission to the Committee of Ministers of the Council of Europe, under Rule 9.2 concerning the case of *Zorica Jovanovic v Serbia* (Application no 24794/08), para 10, Belgrade, 5 November 2014.

charges were dismissed due to the statute of limitations, and none of the investigations has brought justice in any of the cases.

Having all this in mind, in 2005 the Parliament of Serbia established Parliamentary Investigating Committee<sup>5</sup> that concluded its work in 2006 and provided the relevant State authorities with a number of recommendations for providing redress for parents of missing babies. The Report adopted by the Committee<sup>6</sup> established, *inter alia*, that:

- (a) there had been serious shortcomings in the applicable legislation at the relevant time and in the procedures before various State bodies and health authorities;
- (b) the situation justified the parents' doubts or concerns as to what had really happened to their children;
- (c) no criminal redress could now be effective in view of the applicable limitation periods; and
- (d) a concerted effort on the part of all government bodies, as well as changes to the relevant legislation, were, therefore necessary in order to provide the parents with adequate redress.

After the conclusion of the Commission's work, there has been no progress in bringing justice to parents of babies missing from Serbian maternity wards. In 2007 Belgrade group of parents once again approached relevant ministries and public authorities with the proposed set of measures for investigating cases of missing babies, but this initiative remained without success.

## **Ombudsman's Report on the Situation of Missing Babies from Serbian Maternity Wards**

In 2009 a number of mothers of missing babies initiated the procedure before the Ombudsman of Serbia. The Ombudsman issued the report<sup>7</sup> that confirmed a number of irregularities in State authorities' conduct regarding this issue and proposed a set of measures for overcoming the difficulties for investigating the cases of missing babies. Furthermore, this report reiterated some of the concerns parents had and proposed a

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<sup>5</sup> 'Official Gazette of Republic of Serbia' No. 44/2005, 27 May 2005 (Serbian only).

<sup>6</sup> Republic of Serbia, Parliament, Parliamentary Investigating Committee, Report 01 No. 02-445/05, 20 February 2006, Belgrade (Serbian only).

<sup>7</sup> Ombudsman, Special Report on the Issue of 'Missing Babies' from Maternity Wards in Serbia, 29 July 2009, Belgrade, online, available at: <http://www.ombudsman.rs/index.php/izvestaji/posebnii-izvestaji/992-2010-08-03-12-03-30> (Serbian only).

set of measures for providing redress for parents of missing babies. After the thorough investigation into the issue, the Ombudsman found, *inter alia*, that:

- (a) at the relevant time, there were no coherent procedures and/or statutory regulations as to what should happen in situations where a new-born baby died in hospital;
- (b) the prevailing medical opinion was that parents should be spared the mental pain of having to bury their new-born babies, which was why it was quite possible that certain couples were deliberately deprived of the opportunity to do so;
- (c) any autopsy reports were usually incomplete, inconclusive, and of highly dubious veracity;
- (d) it could not, therefore be ruled out that the babies in question were indeed removed from their families unlawfully;
- (e), the government response between 2006 and 2010 had itself been inadequate;
- (f) the parents, therefore remained entitled to know the truth about the real fate of their children, which could only be arrived at through the enactment of *lex specialis*.

In 2010, following a detailed analysis of the current, already amended, legislation, the Parliamentary Working Group established after the Parliamentary Investigating Committee conclusions, found that no legislative changes were necessary except as regards the collection and use of medical data. Furthermore, his Working Group specifically noted, *inter alia*, that Article 34 of the Constitution made it impossible to extend the limitation period for criminal prosecution in respect of crimes committed in the past or, indeed, to introduce new, more serious, criminal offences and/or harsher penalties applicable to crimes committed in the past.

## First Decision of the European Court of Human Rights in Cases concerning 'Missing Babies' in Serbia

On 26 March 2013, the European Court of Human Rights delivered the decision in the case of *Zorica Jovanovic*<sup>8</sup> v *Serbia*<sup>9</sup> in which it found the violations of the applicant's right to private and family life (Article 8 of the European Convention on Human Rights).

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<sup>8</sup> N.B. State reply to the list of issues wrongfully spelled the case name as the Case of *Zorica Markovic*.

<sup>9</sup> European Court of Human Rights, Case of *Zorica Jovanovic v Serbia* (Application no. 21794/08), Judgement 26 March 2013

In this case, the Court also held that the State must, within one year from the date on which the judgment became final (9 September 2014) take all appropriate measures to *secure the establishment of a mechanism aimed at providing individual redress to all parents in a situation such as, or sufficiently similar to, the applicant's*.

In 2013 Belgrade Group of Parents, with the assistance of legal experts proposed the adoption of the Model Law for the Investigation of Cases of Missing Babies from Hospitals in the Republic of Serbia. Until now, none of the relevant authorities has officially replied to this document. Instead, the State decided to set up a new working group with the sole purpose of preparing Draft Law for the implementation of the abovementioned judgement. This working group had a number of meetings and roundtables and consisted of the representatives of relevant ministries (Ministry of Interior, Ministry of Health and the Ministry of Justice), representatives from the judiciary and the representatives of the associations of parents' of missing babies. However, there has been a lack of consultations with the parents and the Government decided to prepare the draft law to secure the establishment of a mechanism aimed at providing individual redress to all parents in a situation such as, or sufficiently similar to, the applicant's<sup>10</sup> which entered parliamentary procedure in October 2016.

It is worth noting that concerns raised by the parents' remained unsolved in the proposed legislation. The Draft Law is not adequate as it will not be sufficient for providing redress in each individual case concerning babies missing from Serbian maternity wards. First of all, it is prescribed that the establishment of the facts in these cases should be carried out through the existing Court, non-contentious procedure, without strong investigative powers that could finally provide parents with the information about the destiny of their children and identify perpetrators of these gross violations of human rights. The absence of special investigatory powers which this non-litigation Court lacks will not in any way create the conditions needed to determine the truth about each and every case of missing babies in Serbia. Furthermore, if adopted, this Draft Law will preclude the number of possible applications submitted from parents whose new-born babies are missing from other medical institutions than maternity wards (such as Institute of Neonatology, Mother and Child Health Care Institute of Serbia, etc.). Additionally, in the proposed piece of legislation the Government excluded parents that have not been contacting public authorities until 9 September 2013 (the date when the Judgement in the Case of *Zorica Jovanovic v Serbia* became final). Also, proposed legislation provided only the parents with the opportunity to submit their claims to the Courts, while children that believe they are 'missing babies' are not being eligible to petition the Court.

Finally, and most importantly, the Draft Law that has been proposed does not provide the parents with the redress for the human rights violations they have been experiencing. Rather than that, the Government, in the proposed Law prescribed that 'If the facts which explain what happened to the missing child cannot be determined, the

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<sup>10</sup> Parliament of Serbia, online, available at: [http://www.parlament.gov.rs/upload/archive/files/cir/pdf/predlozi\\_zakona/2674-16.pdf](http://www.parlament.gov.rs/upload/archive/files/cir/pdf/predlozi_zakona/2674-16.pdf) (Serbian only).

court will [...] ascertain that it cannot determine the status of the missing new-born child' and provide the parents with the compensation for the non-pecuniary damage which will not exceed 10000 €. <sup>11</sup>

Furthermore, Serbian judicial system could not provide the parents with the effective legal remedy in cases related to the destiny of babies missing from Serbian maternity wards. So far, in cases concerning 'missing babies', the Constitutional Court have not found a single violation of parents' human rights and struck all the applications as inadmissible. Due to that, there have been a number of new, pending cases before the European Court of Human Rights.

## Recommendations

- Establish a mechanism for investigation of cases of babies missing from Serbian maternity wards and other medical institutions (such as Truth Commission or other similar transitional justice mechanisms);
- Provide full and meaningful participation of parents in the process for the establishment of such mechanism;
- Establish the mechanism for identifying perpetrators and bringing them to justice;
- Provide the parents and children with individual redress, including the determination of the facts in each of the case and providing the remedies in accordance with the human rights standards;
- Adopt the Declaration on Parents' and Children's Right to Reparation and Remedy, and;
- Reassurance the parents and children that this gross violation of human rights will never happen again.

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<sup>11</sup> Article 23 of the Draft Law.