



Humanitarian Law Center



Transitional Justice in the process of Serbia's accession to the European Union

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Abstract

*Up till now, the European Union (EU) has not developed a common strategy regarding transitional justice, nor is this process included in the accession negotiations with candidate countries. At the same time, for a country to become an EU member, it must meet the so-called Copenhagen Criteria in the areas of democracy, rule of law and protection of human rights. In countries that carry a legacy of widespread human rights violations, these criteria cannot be met without implementing the mechanisms of transitional justice. Considering that Serbia, together with the other successor states of the former Yugoslavia, has made modest success when it comes to dealing with the past, a clear and coherent EU position on the need for implementation of the standards of all transitional justice mechanisms is crucial in the process of Serbia's accession to the EU. Although the EU is developing a strategy on transitional justice, this analysis will show that the EU already has a developed, although ad hoc practice, on transitional justice and that it is already possible to include it in the process of accession negotiations with Serbia. Furthermore, this analysis will indicate the key EU standards in the field of transitional justice that have not yet been applied in Serbia, and recommend ways to accelerate and facilitate harmonisation of national legislation with the *acquis* in the accession process.*

I. Introduction

The wars in the former Yugoslavia during the nineties left a serious and long-term human, social and material impact in the successor states of the former Yugoslavia. The approximately 130,000 people who lost their lives, with nearly 12,000 still missing, and the tens of thousands of victims of torture and sexual violence, represent just a fragment of the terrible outcome of these wars. After a decade of destruction, the collapse of the rule of law before the violence and the systemic violations of fundamental human rights, these countries are still facing the challenges of consolidating their legal systems, building democratic institutions which will adopt a responsible approach to the violent past, and fostering a culture of human rights.

The process of democratisation of societies that have gone through a period of large-scale human rights violations in the past is unthinkable without the use of mechanisms of transitional justice, which are a precondition for reconciliation and successful democratisation: the establishment of individual criminal responsibility for the crimes; the establishing, public presentation and recognition of the facts about the crimes; reparations to the victims; and comprehensive reforms of institutions, which will guarantee that such crimes will not recur in the future.

The aforementioned mechanisms for the establishment of transitional justice are not provided for in any political document produced by EU institutions. However, they embody the spirit of the political criteria that the European Council adopted in 1993 in Copenhagen – the so-called Copenhagen Criteria - in response to requests for membership by former communist countries.¹ These criteria set the conditions for accession for countries interested in joining the EU: stable institutions that guarantee democracy, the rule of law, protection of human rights and respect for and protection of minority rights.

This process is difficult and politically unattractive for governing parties in post-conflict societies, and the following quote is what the EU Committee for Civilian Aspects of Crisis Management stated in the discussion of this subject: „In transitional contexts, while the perceived need for justice is high, there are usually real constraints on the capacity or willingness of successor governments to deliver this justice. At the same time, the pursuit of justice and reconciliation must be combined with other public interest objectives, such as the consolidation of peace and democracy and the need for economic development and public security.”²

A look back into history

The EU emerged as a mechanism for overcoming conflict and hostility on European soil. The idea of European integration was created with the aim of ending the frequent and bloody wars between neighbours that culminated in the Second World War, and above all, to end the hostility between

¹ European Council in Copenhagen, Conclusions of the Presidency (SN 180/1/93), June 21st-22nd, 1993, p. 13.

² European Council, correspondence between the EU Committee on Civilian Aspects of Crisis Management and the EU Political and Security Committee (10674/06), June 19th, 2006, p. 2.

the two politically most powerful countries – Germany and France. This process started with the European Coal and Steel Community in 1950, and eventually led to the economic and political unification of the European countries in order to ensure lasting peace.³ A significant example of the dedication of the EU countries to overcoming misunderstandings from the past is precisely the example of France and Germany, the countries which in 2006 and 2008 introduced common textbooks of modern history in their school programmes.⁴

At the same time, the EU welcomed into the Union countries carrying a legacy of armed conflicts and massive violations of human rights in their recent past. These countries still bear the burden of the non-implementation or unsuccessful implementation of the mechanisms of transitional justice: around 120,000 victims of the Spanish Civil War are still reported as missing after 75 years;⁵ perpetrators of the most serious crimes during the Spanish Civil War remain unprosecuted because of the Law on Amnesty dating from 1977;⁶ around 1,500 victims of the conflict in Cyprus are still missing after 40 years;⁷ absence of criminal proceedings against those responsible for crimes during the Cyprus conflict, on both the Turkish and Greek sides;⁸ around 2,000 victims of the armed conflict in Croatia are still missing;⁹ the Czech Republic, Hungary and Poland offer examples of multiply flawed legislation laws,¹⁰ etc.

Contribution to regional cooperation and good neighbourly relations

"As France and Germany did, the countries of former Yugoslavia need to overcome the wounds of the war to be able to definitely engage into the European project."¹¹

The request for the establishing of transitional justice through its inclusion in the *acquis* and processes of accession to the EU has a key role in strengthening one of the fundamental principles of the EU – regional cooperation. The widespread human rights violations of the past and dealing with their legacy is rarely a problem which a society faces alone within one country, without it usually also straining relations with neighbouring countries. Given the number of unresolved

3 "The History of the European Union", available at the European Union's web page http://europa.eu/about-eu/eu-history/index_en.htm, last visited on May 20th, 2014.

4 See BBC, "Franco-German textbook launched", May 5th, 2006, available at <http://news.bbc.co.uk/2/hi/4972922.stm>, last visited on May 20th, 2014; Corine Defrance, Reiner Marcowitz, Ulrich Pfeil, "Europe and the World from the Congress of Vienna to 1945", *Introduction*, available at http://www.gei.de/index.php?id=1331&L=1&type=123&no_cache=1 last time visited on June 27th, 2014.

5 Alasdair Fotheringham, "Scandal of the Spanish Civil War mass graves", *Independent*, November 14th, 2010 <http://www.independent.co.uk/news/world/europe/scandal-of-the-spanish-civil-war-mass-graves-2133563.html>, last time visited on June 27th, 2014.

6 Anja Mihr, "Transitional Justice and the Quality of Democracy", *International Journal of Conflict and Violence*, Vol. 7 (2) 2013, p. 298 – 313. Also see the recommendation of the UN Human Rights Committee for Spain to abrogate the Law on Amnesty: Report by the UN Human Rights Committee, A/64/40 (Vol. I), p. 41.

7 Umut Bozkurt and Cristalla Yakinthou, *Legacies of Violence and Overcoming Conflict in Cyprus: The transitional justice landscape*, 2012, p. 13.

8 *Ibid.*

9 International Commission on Missing Persons – Southeast Europe <http://www.ic-mp.org/BA/icmp-worldwide/southeast-europe/> last time visited on June 27th, 2014.

10 Alexander Mayer-Rieckh and Pablo de Greiff, "Justice as Prevention: Vetting Public Employees in Transitional Societies", *Social Science Research Council*, New York, 2007, p. 222-348.

11 EU Commissioner for Enlargement, Olli Rehn, ICTY Conference, April 2nd, 2009, available at http://europa.eu/rapid/press-release_SPEECH-09-167_en.htm last time visited on June 27th, 2014.

issues in relations between the countries of the Western Balkans, such as the lack of reparations for victims of war and the thousands of missing, it is certain that without the involvement of the EU in their resolution, they will obstruct good neighbourly relations and potentially lead to mutual blocking in the progress towards EU membership.

The relevance of this challenge was confirmed by Hungary's position in 2011, when it stated it would veto the decision on the candidate status of Serbia unless Serbia amended its Law on Restitution to include members of the Hungarian minority in Serbia. The EU formally responded and asked Hungary to withdraw from such an approach, guaranteeing that the EU would „closely monitor” the implementation of the law.¹²

II. The principles of transitional justice as part of the *acquis*?

In the Treaty on European Union there are several provisions that affirm the values of transitional justice. The preamble confirms the commitment of Member States to the principles of freedom, democracy, respect for human rights and fundamental freedoms and the rule of law. It is stated that the Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of minorities.¹³ When it comes to foreign policy, „the Union's aim is to promote peace, its values and the well-being of its people [and to] contribute to peace, security ... solidarity and mutual respect among peoples and the protection of human rights.”¹⁴

The European Council pointed out in the Stockholm Programme (in which the priorities of the EU in the field of justice, human rights and security are defined) that „The Union is an area of shared values, values that are incompatible with genocide, crimes against humanity and war crimes.”¹⁵

The European Council Concept on Strengthening EU Mediation and Dialogue Capacities of 2009, states the principles which guide the EU in processes in which it participates as a mediator, including the principle of „transitional justice and human rights”. The European Council points out that „it is only through justice to victims that enduring peace can be achieved”, and that all the efforts of the EU in the field of mediation „must contribute to fighting impunity for human rights violations”.¹⁶

The European Parliament and the European Council, in a joint Regulation on the establishing

12 Gordana Filipovic, "EU's Fulle Urges Hungary to Drop Veto Threat on Serbia's Candidacy", *Businessweek* October 14th, 2011, available at <http://www.businessweek.com/news/2011-10-14/eu-s-fule-urges-hungary-to-drop-veto-threat-on-serbia-candidacy.html>, last time visited on May 20th, 2014.

13 Consolidated version of the Treaty on European Union (Official Journal C 326 , 26/10/2012 P. 0001 - 0390), Article 2.

14 Ibid, Art. 3-4

15 European Council, The Stockholm Programme – An open and secure Europe serving and protecting citizens (17024/09), December 2nd, 2009, p. 12.

16 European Council, Concept on Strengthening EU Mediation and Dialogue Capacities (15779/09), November 10th, 2009, p. 2.

of a financial instrument for the promotion of democracy and human rights worldwide in 2006, pointed out that the EU, among other things, would put an effort into: „strengthening the rule of law, promoting the independence of the judiciary, supporting and evaluating legal and institutional reforms, and promoting access to justice; promoting and strengthening the International Criminal Court, ad hoc international criminal tribunals and the processes of transitional justice and truth and reconciliation mechanisms; supporting reforms to achieve effective and transparent democratic accountability”.¹⁷

Also, the European Parliament and the European Council adopted a resolution in 2013, where one of the declared objectives is „to contribute to the prevention of conflicts and to ensure capacity and preparedness to address pre- and post-crisis situations and build peace.” According to this resolution, which refers to the period 2014-2020, the EU will provide technical and financial support: „to international criminal tribunals and ad hoc national tribunals, truth and reconciliation commissions [and] the rehabilitation and reintegration of the victims of armed conflicts”.¹⁸

The European Parliament in its Resolution on the Annual Report on Human Rights and Democracy for 2013 emphasises “that a key element of the EU approach to transitional justice should be support for institutional reform of the judiciary to enhance the functioning of the rule of law in line with international standards; stresses the need for criminals whose crimes were committed some time ago to be prosecuted through national or international courts; emphasises the importance of public dialogue to confront the past and for proper victim consultation and compensation programmes, including reparations; considers that vetting the background of personnel working in the transitional institutions is a credibility test for transitional justice.”¹⁹

In the EU’s Strategic Framework and Action Plan on Human Rights and Democracy in 2012, the European Council announced the development of a policy on transitional justice in 2014.²⁰ Also, in the Annual Report of the EU on Human Rights in 2013, the European Council stressed that „the EU will develop a policy on transitional justice, so as to help societies to deal with abuses of the past and to fight impunity, covering issues such as truth and reconciliation commissions, reparations and the criminal justice system...”²¹

Financial support for initiatives aimed at establishing transitional justice

The European Commission continuously provides financial support to official initiatives and civil society initiatives that deal with transitional justice. For example, the EU contributes 80% of the total cost of the reparations scheme recommended by Morocco’s Truth Commission. In Colombia,

17 Regulation (EC) No 1889/2006 of the European Parliament and of the Council of 20 December 2006 on establishing a financial instrument for the promotion of democracy and human rights worldwide, Article 2.

18 European Parliament Legislative Resolution dated December 11th, 2013 in relation to the European Parliament and Council draft Resolution establishing an Instrument for Stability (COM(2011)0845 – C7-0497/2011 – 2011/0413(COD)), Article 3.

19 European Parliament, Resolution on the Annual Report on Human Rights and Democracy in the World in 2012 and the European Union’s policy on the matter (2013/2152(INI)), December 11th, 2013, para 60.

20 European Council, The Strategic Framework and Action Plan on Human Rights and Democracy, June 25th, 2012.

21 European Council, EU Annual Report on Human Rights and Democracy in the World in 2012 (9431/13), May 13th, 2013.

the EC financially supports the Justice and Peace Law, including the work of NGOs on reparations as well as the local prosecution endeavours.²² Also, the EU supports the Initiative for the establishing of the regional commission tasked with establishing the facts about all victims of war crimes and other serious human rights violations committed on the territory of the former Yugoslavia in the period from 1991-2001 (RECOM).²³

III. The EU policy regarding the specific mechanisms of transitional justice and the level of their implementation in Serbia

The right of victims to compensation, restitution and rehabilitation (reparations)

„The EU seeks to prevent violations of human rights throughout the world and, where violations occur, to ensure that victims have access to justice and redress“.²⁴

The European Council Directive that relates to compensation for victims of crimes requires Member States to establish an authority that would provide compensation to victims of crimes. The Directive also requires that the procedures before this authority be simple and that the victims have access to information about their rights.²⁵

Furthermore, the Directive of the European Parliament and the European Council on establishing minimum standards on the rights, support and protection of victims of crimes of 2012, emphasises, along with the right to information, free legal aid and other rights, the right in particular of victims to compensation or reparation.²⁶ Member States are urged to ensure that the property seised from the perpetrator in the course of criminal proceedings be speedily returned to the victim of the crime.²⁷

In dealing with some crisis situations in the world, the EU authorities have emphasised the importance of the right to reparations for victims of gross human rights violations. Thus the European Parliament, in its resolution on impunity in Africa, called on "Member States to do whatever they can to ensure that ... the victims of such crimes ... receive compensation."²⁸

22 Thomas Unger, "European Union and Transitional Justice", *CLEER Working Papers 2010/1*.

23 Dinko Gruhonjic, "Europe supports the process of dealing with the past", *Deutsche Welle*, December 2nd, 2009, available at <http://www.dw.de/evropa-podr%C5%BEava-proces-suo%C4%8Davanja-s-pro%C5%A1lo%C5%A1%C4%87u/a-4956380> last time visited on June 27th, 2014.

24 European Council, The Strategic Framework and Action Plan on Human Rights and Democracy, June 25th, 2012.

25 The European Council Directive relating to compensation for crime victims, 2004/80/EC, Articles 3 and 4.

26 European Parliament and Council Directive 2012/29/EU on establishing minimum standards on the rights, support and protection of crime victims, October 25th, 2012, para. 49, 62, Article 3(e), Article 9 (a), Article 16.

27 Ibid, Article 15.

28 European Parliament's Resolution on impunity in Africa and in particular the case of Hissene Habre, March 16th, 2006, Article 17.

Moreover, the issues of reparations to victims is what the EU deemed as the central issue and condition for the improvement of bilateral relations with Morocco. Stating the EU position, the European Council pointed out at the sixth meeting of the EU-Morocco Association Council in 2007 in Brussels, that it "applauds the payment of reparation to victims [and that] such progress henceforth enables the European Union and Morocco to step up their dialogue and their cooperation on the basis of shared experience."²⁹

Serbia

The rights of victims of human rights violations³⁰ during the nineties in Serbia are below the minimum international standards, whether the victims are Serbian citizens or citizens of other countries in the region.

The legal framework for the exercise of the rights of victims – Serbian citizens, is the Law on Civilian Invalids of War, dating from 1996.³¹ Pursuant to this law, the right to the assistance and support of the state is denied to the families of missing persons, victims of sexual violence, victims who suffer from psychological consequences of violence sustained, victims with physical disabilities of less than 50%, victims who perished on the territory of another country and those who perished as a result of the crimes committed by the Serbian armed forces. There is no fact sheet on victims' rights in Serbia, nor are victims informed of their rights in practice. The allocation of rights is decided by the local government in lengthy and complicated procedures that additionally violate the dignity of victims.

The victims of crimes committed by Serbian forces who are nationals of other post-Yugoslav countries, in view of the fact that the previously mentioned law does not apply to them, are trying to achieve the right to material compensation in court proceedings against the Republic of Serbia before the courts in Serbia. In most cases, the courts dismiss the victims' compensation claims because of an alleged statute of limitations, interpreting the relevant legal norms to the detriment of victims. In the rare cases where the claims are granted, they result in minimum compensation amounts. The procedures in these cases last on average five years. The Serbian government pays out-of-court settlements to victims of political crimes committed by the Milošević regime, but not to the victims of war crimes committed by members of the police and the army. In this sense, the victims of war who are not citizens of Serbia do not have access to effective and just compensation.³²

In the European Commission 2013 Progress Report, it is stated that "assistance to victims has not

29 The European Union's press statement (12062/07), the sixth meeting of the EU-Morocco Association Council, July 23rd, 2007, p. 4-5.

30 "Victims are persons who have individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law. See UN General Assembly Resolution (A/RES/60/147) dated March 21st, 2006 entitled 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, Article 8.

31 Law on Civilian Invalids of War ("Republic of Serbia Official Gazette" nr. 52/96), Article 2.

32 The Humanitarian Law Center, "Serving Justice or Trivialising Crimes – Fulfilling the Right of Victims of Human Rights Abuses to Seek Reparation Before the Serbian Courts", 2012 report, p. 5 and 12, available at <http://www.hlc-rcd.org/?p=23280&lang=de> last time visited on June 27th, 2014.

improved.³³ Also, in the report from 2009 in the context of war crimes, it was emphasised that "the victims and their families are denied justice".³⁴

Establishing individual responsibility for the crimes committed

Criminal proceedings

*"There should be no safe haven for those who have committed the crime of genocide, crimes against humanity and war crimes. Furthermore, prosecution can, as a deterrent, contribute to prevention of these crimes."*³⁵

The significance that the EU attributes to the effective prosecution of war crimes and preventing impunity for war crimes is seen primarily in the agreement that the EU signed with the International Criminal Court, in which the EU commits itself to full cooperation with and assistance to the Court's work.³⁶ Celebrating the 15th anniversary of the adoption of the Rome Statute, the EU High Representative for Foreign Affairs, Catherine Ashton, emphasised that justice for the victims of these crimes is a moral imperative and a key contribution to peace, security and prosperity in the world.³⁷

In its Strategic Framework and Action Plan on Human Rights and Democracy of 2012, the European Council pointed out that the EU „will fight vigorously against impunity for serious crimes of concern to the international community”.³⁸ The Conclusion on the subject of respect for humanitarian law notes “the importance of dealing effectively with the legacy of serious violations of international humanitarian and human rights law by supporting appropriate accountability mechanisms”.³⁹

The EU authorities have also, in dealing with specific crisis situations, emphasised the importance of prosecuting those responsible for severe violations of human rights, and of the fight against impunity. For example, in relation to the conflict in the Great Lakes region (Africa), the European Council called on „the Democratic Republic of Congo to ensure without exception that those responsible for violations of international law, including human rights and international humanitarian law, are held accountable.”⁴⁰ The European Parliament in its resolution on impunity in Africa pointed out that “the fight against impunity is one of the cornerstones

33 European Commission's Serbia 2013 Progress Report, October 16th, 2013, p. 12.

34 European Commission's Serbia 2009 Progress Report, October 14th, 2009, p. 20.

35 European Council, EU Annual Report on Human Rights and Democracy in the World in 2012 (9431/13), May 13th, 2013. godine.

36 Agreement between ICC and the EU on cooperation and assistance, April 28th, 2006, Official Journal of the EU.

37 Declaration by the High Representative, Catherine Ashton, on behalf of the European Union on the occasion of the fifteenth anniversary of the adoption of the Rome Statute of the International Criminal Court, July 17th, 2013.

38 European Council, Strategic Framework and Action Plan on Human Rights and Democracy, June 25th, 2012.

39 Council conclusions on promoting compliance with international humanitarian law, 2985th FOREIGN AFFAIRS Council meeting, Brussels, December 8th, 2009, para. 2.

40 Council conclusions on the Great Lakes Region, 2971st FOREIGN AFFAIRS Council meeting, Brussels, July 22nd, 2013, para 3.

of the Union's human rights policy" and called on "the Commission, and the Council ... to continue to pay due attention to this question."⁴¹

The EU has on numerous occasions stressed the importance and has supported the work of the ICTY for prosecution of those responsible for genocide, war crimes and crimes against humanity.⁴² In addition, the EU has set cooperation with the International Criminal Tribunal for the former Yugoslavia as a condition for obtaining the status of a candidate country for the countries of the Western Balkans.⁴³ Furthermore, the European Council, in its decision on the investigation and prosecution of genocide, crimes against humanity and war crimes, emphasised that these crimes "must not go unpunished and that their effective prosecution must be ensured by taking measures on the national level."⁴⁴

Serbia

Given the scale of the crimes committed by the Serbian forces and the number of victims affected by these crimes, it is reasonable to say that, in terms of the vast majority of these crimes in Serbia, there has in effect been de facto impunity. In ten years of prosecuting the war crimes committed by specialised institutions, around 70 persons have been convicted for war crimes before the courts in Serbia. Individuals responsible under the doctrine of command responsibility have so far completely eluded justice, because of the unwillingness of the Office of the War Crimes Prosecutor to apply this doctrine.⁴⁵

The lack of a national strategy for the prosecution of war crimes, which would set objectives, priorities and resources for the coming period, reinforces the impression of an institutional indifference as regards this important segment of dealing with the past.

The problem of impunity in Serbia has been a special category and a regular subject of criticism by the EU in the progress reports since 2007, and as early as 2008 the European Commission has been stressing the need to strengthen the capacities for the prosecution of war crimes in response to this problem.⁴⁶ The EC 2013 Progress Report pointed out that the number of persons indicted for war crimes is low and that no progress has been made with regard to the prosecution of high-ranking officers involved in war crimes.⁴⁷

41 European Parliament Resolution on Impunity in Africa and the particular case of Hissene Habre, March 16th, 2006, Article 3.

42 European Council, The Stockholm Programme – An open and secure Europe serving and protecting citizens (17024/09), December 2nd, 2009, Doc. 17024/09, p. 12; European Commission's working document SEC (2009) 932, p. 57.

43 General Affairs and External Relations Council, June 16th, 2003.

44 Decision of the European Council on investigation and criminal prosecution of genocide, crimes against humanity and war crimes, May 14th, 2003, para 2.

45 Amnesty International Report, Serbia: Ending Impunity for Crimes Under International Law, June 17th, 2014, available at <http://www.amnesty.org/en/library/info/EUR70/012/2014/en> last time visited on June 27th, 2014.

46 European Commission's Serbia 2008 Progress Report, November 5th, 2008, p. 15 .

47 European Commission's Serbia 2013 Progress Report, October 16th, 2013, p. 12.

The support and protection of witnesses and victims

*"Crime is a wrong against society as well as a violation of the individual rights of victims. As such, victims of crime should be recognised and treated in a respectful, sensitive and professional manner."*⁴⁸

The Directive of the European Parliament and the European Council establishing minimum standards on the rights, support and protection of victims of crime, dating from 2012, requires Member States to ensure that in the context of criminal proceedings "victims are recognised and treated with respect and sensitivity, in an appropriate, professional and non-discriminatory manner, in all victims' communication with the services aimed at victims' support or competent authority."⁴⁹ This Directive also guarantees victims the right to all relevant information regarding the proceedings, and the rights to support, compensation, protection and legal assistance from the time of the first contact with a competent authority.⁵⁰ Also, the victims and their families are assured of their right to access confidential and free support services before, during and after criminal proceedings.⁵¹ The Directive requires these services to, as a minimum, provide victims with information, advice and support in relation to their participation in the proceedings; emotional and psychological support; advice related to the prevention of secondary victimisation; and shelter and accommodation in cases where there is a risk of secondary victimisation or threats; as well as specialised support for victims with special needs, such as victims of sexual violence.⁵²

The European Council's Roadmap on strengthening the rights and protection of victims, of 2011, states the general objectives which the EU will strive to achieve in terms of strengthening these rights: "to establish adequate procedures and structures to respect the dignity, personal and psychological integrity as well as the privacy of the victim in criminal proceedings; to enhance the access to justice by victims of crime, also by fostering the role of victim support services; to design adequate procedures and structures aimed at preventing secondary and repeat victimisation; to encourage victims to participate actively in criminal proceedings; to strengthen the right of victims and of their legal counsel to receive timely information about the proceedings and their outcomes; ... to ensure that Member States provide training, or encourage the provision of training, to all relevant professionals."⁵³

Serbia

Support for victims in war crimes trials in Serbia is limited to a short period before and during their testimony at the main hearing before the War Crimes Department of the Higher Court in Belgrade. The Service for help and support to witnesses and affected persons has been established within this court, and it provides witnesses and victims with help to organise their trips, informs them

48 Directive of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, October 25th, 2012, Preamble, Item 9.

49 Ibid, para 49, 62, Article 3(e), Article 9 (a), Article 1, para 2.

50 Ibid, para 49, 62, Article 3(e), Article 9 (a), Article 4.

51 Ibid, para 49, 62, Article 3(e), Article 9 (a), Article 8.

52 Ibid, para 49, 62, Article 3(e), Article 9 (a), Article 9.

53 European Council, Roadmap for Strengthening the Rights and Protection of Victims, in particular in criminal proceedings, Annex to the European Council Resolution from June 10th, 2011 (2011/C 187/01).

about some aspects of the procedure and offers emotional support. The jurisdiction of the Service is limited when it comes to witnesses and victims from other countries. The Service is unable to organise direct meetings and visits to witnesses and victims outside the court building. The most serious deficiency of the current system of support is the lack of professional psychological support. In practice, the traumatised victims and witnesses remain without adequate support and follow-up after their testimony. The Social Welfare Centres, which in accordance with their statutory powers should be involved in supporting the victims, do not have the capacity to do so.⁵⁴ The number and capacity of NGOs who provide psychological support to victims is limited, and they act only in the larger centers of Serbia.

The amendments to the Code of Criminal Procedure (CPC) of 2012 stipulate that injured parties can only be represented by attorneys, and thus the decades-long practice of representing victims in war crimes cases by human rights experts has been abandoned.⁵⁵

The protection of witnesses and victims in the trials of war crimes has procedural and non-procedural elements. Their application in practice is often insufficient or completely absent, which negatively affects the prospects of bringing the perpetrators of war crimes to justice. Among other things, in situations when witnesses and victims are being threatened and insulted, the reactions of the court and the prosecution are not always adequate. The court and the prosecution are under no obligation to seek police protection for the witnesses who complain of being threatened during the trial.⁵⁶ The witness protection program is totally ineffective when it comes to former members of the Serbian forces who are willing to testify about the crimes of their former colleagues. Unlawful actions committed by members of the Protection Unit, which is responsible for the implementation of the programme, against former members of the armed forces under the Unit's protection, has not led to serious reform of this unit. The lack of reaction of state authorities to the documented incidents and threats directed against the protected persons in the Programme, points to the shortcomings of the existing legal framework with regard to the control and supervision of the implementation of protection programmes.⁵⁷

Weaknesses in the system of support and protection of victims and witnesses in criminal proceedings in Serbia have repeatedly been criticised by the EU. Namely, the 2009 Progress Report points out that "in cases related to Kosovo, there have been allegations of intimidation of witnesses, and law enforcement authorities have been reluctant fully to investigate allegations within their own ranks."⁵⁸ It was also pointed out that "the witness protection system needs further upgrading";⁵⁹ and in the 2012 report the EU warned that "serious problems with witness protection hinder the

54 Social Service Law, Official Gazette of the Republic of Serbia, no. 24/2011, Article 10, Para. 3, Article 14, Article 24, Article 29, Article 41, para. 3, Article 46, Para 1 in particular.

55 Criminal Procedure Code, Official Gazette of the Republic of Serbia, nos. 72/2011, 101/2011, 121/2012, 32/2013 and 45/2013, Article 50, Para. 1 Item 3.

56 Criminal Procedure Code, Official Gazette of the Republic of Serbia, nos. 72/2011, 101/2011, 121/2012, 32/2013 and 45/2013, Article 102, Para. 5, and the Criminal Procedure Code, Official Gazette of the FRY, nos. 70/2001 and 68/2002 and Official Gazette of the Republic of Serbia, nos. 58/2004, 85/2005, 115/2005, 85/2005 – other law, 49/2007, 20/2009 – other law, 72/2009 and 76/2010, Article 109, Para. 13.

57 HLC, Victims/Witnesses Counselling and Legal Representation – A model of support – Project Implementation Report, February 2007, available at: <http://www.hlc-rdc.org/?p=13582&lang=de> last time visited on June 27th, 2014.

58 European Commission's Serbia 2009 Progress Report, October 14th, 2009, p. 20 .

59 *Ibid*, p. 54.

handling of sensitive cases.⁶⁰ The latest report states that "serious problems in the system of witness protection have not been addressed and assistance to victims has not improved."⁶¹ The amendments to the CPC in the field of victims' representation have also been criticised, and the following was pointed out: "Victims are only allowed to be assisted by members of the Bar, when they would benefit from assistance by experienced human rights experts."⁶²

Truth-telling initiatives

"Victims always deserve justice and truth."⁶³

In the Joint Regulation of 2006 on establishing a financing instrument for the promotion of democracy and human rights, the European Parliament and the European Council emphasised that the EU shall, among others, advocate for "promoting and strengthening the processes of transitional justice and truth and reconciliation mechanisms".⁶⁴

The European Parliament and the European Council adopted in 2014 a resolution on establishing an Instrument for Stability, which has set as one of the objectives for the period 2014-2020 to provide technical and financial support to truth and reconciliation commissions.⁶⁵ Through the Instrument for Stability programme, the EU has, to this date, provided technical and financial support to a number of truth-telling initiatives, such as the projects aimed at supporting and establishing truth and reconciliation commissions in Sierra Leone,⁶⁶ Liberia,⁶⁷ Cote d'Ivoire,⁶⁸ Peru⁶⁹ and the Solomon Islands.⁷⁰

RECOM Initiative

The RECOM Initiative advocates for the establishing of a regional fact-finding commission about war crimes and other serious violations of human rights committed on the territory of the former

60 European Commission's Serbia 2012 Progress Report, October 10th, 2012, p. 19.

61 European Commission's Serbia 2013 Progress Report, October 16th, 2013, p.12.

62 *Ibid.*

63 EU Commissioner for Enlargement, Olli Rehn, ICTY Conference, April 2nd, 2009, available at http://europa.eu/rapid/press-release_SPEECH-09-167_en.htm last time visited on June 27th, 2014.

64 Regulation (EC) No 1889/2006 of the European Parliament and of the Council of December 20th, 2006 on establishing a financing instrument for the promotion of democracy and human rights worldwide, Article 2.

65 Legislative Resolution of the European Parliament from December 11th, 2013 re the proposal for a regulation of the European Parliament and of the Council establishing an instrument contributing to stability (COM(2011)0845 – C7-0497/2011 – 2011/0413(COD)), Article 3.

66 European Commission Staff Working Document, Accompanying document to the Report from the Commission to the Council and the European Parliament, Annual report from the European Commission on the Instrument for Stability in 2008 (SEC(2009) 932), July 9th, 2009, p. 40.

67 European Union External Action, EU Relations with Liberia, March 17th, 2014, available at http://eeas.europa.eu/liberia/index_en.htm last time visited on June 27th, 2014.

68 Press release (8741/11 REV 1), Catherine Ashton, April 12th, 2011, available at http://europa.eu/rapid/press-release_PRES-11-96_en.htm last time visited on June 27th, 2014.

69 European Council, Note to the Annual EU Report on Human Rights and Democracy in the World in 2012 (15144/13), October 21st, 2013, p. 254, available at http://eeas.europa.eu/human_rights/docs/hr_report_country_2012_en.pdf last time visited on June 27th, 2014.

70 European Commission Staff Working Document, Accompanying document to the Report from the Commission to the Council and the European Parliament, Annual report from the European Commission on the Instrument for Stability in 2008 (SEC(2009) 932), July 9th, 2009, p. 41.

Yugoslavia in the period 1991-2001. The RECOM Initiative has gained the support of more than 2,000 organisations and individuals from all the successor states of the former Yugoslavia, gathered in the Coalition for RECOM. In the period from 2008 to 2011, they participated in the making of the draft Statute of the future Commission, by means of a broad consultation process. In late 2011, the RECOM Initiative entered the phase of political lobbying, during which the regional team of advocates presented the RECOM Initiative to the representatives of institutions.

By June 2013, the majority of the presidents of the states in the region appointed personal envoys to the Regional Expert Group for RECOM. Their task is to analyse the Draft RECOM Statute and offer their legal opinions on the provisions regulating the establishing, mandate, and obligations of the states in the context of national constitutions and the legislature. The President of the Republic of Serbia, Tomislav Nikolić, appointed Siniša Važić, a judge of the Court of Appeals in Belgrade, as his representative on June 30th, 2013.

The EU has been supporting the Initiative for establishing RECOM since 2009. It has also been following the development of this Initiative in its progress reports for the last three years, in the section dedicated to the issues of regional cooperation and good-neighbourly relations.⁷¹ Considering the regional character and complex challenges of establishing a regional fact-finding body about the past, the support of the EU for the institutionalisation of RECOM and its future operation plays a key role.

Search for missing persons

The EU's dedication to the process of searching for the missing is reflected in the financing of institutions which are involved in this search (for instance, the Committee on Missing Persons in Cyprus),⁷² and in political condemnations of states in cases of forced disappearances.⁷³

At the 31st International conference of the Red Cross and Red Crescent, the EU representatives pledged that in the period between 2012 and 2015, "The EU Member States shall consider ratifying the 2006 Convention for the Protection of All Persons from Enforced Disappearance; consider adopting other measures aiming at avoiding enforced disappearances, such as those included in the model law suggested by the ICRC; support mechanisms to investigate effectively and resolve the cases of missing persons in several regions of the world; and encourage processes acknowledging the rights and needs of families of missing persons and aiming at adjusting national legislation and programmes to meet these needs."⁷⁴

71 European Commission's Serbia 2013 Progress Report, October 16th, 2013, p. 14-15; European Commission's Serbia 2012 Progress Report, October 10th, 2012, p. 27; Analytical Report - Accompanying the document Commission Opinion on Serbia's application for membership of the European Union, October 12th, 2011, page 35.

72 European Commission Delegation to Cyprus, "The European Union gives an additional €2.6 million to support the Committee on Missing Persons", February 4th, 2014, available at http://ec.europa.eu/cyprus/news/20140204_missing_en.htm last time visited on June 27th, 2014.

73 See e.g. press release by the European Union External Action, "EU and Laos hold Working Group on Human Rights and Governance", May 21st, 2014, available at http://www.eeas.europa.eu/statements/docs/2014/140521_02_en.pdf last time visited on June 27th, 2014; 30th round of dialogue between EU and China, June 16th, 2011, available at http://eeas.europa.eu/delegations/china/press_corner/all_news/news/2011/20110616_01_en.htm last time visited on June 27th, 2014; Daily Observer, "EU concerned over rise in killings and forced disappearances", May 8th, 2014, available at <http://observerbd.com/details.php?id=18117> last time visited on June 27th, 2014.

74 Communication of the European Council Secretary-General to Delegations (9238/12), June 6th, 2012, Annexe 1, Pledges made to the 31st international conference of the Red Cross and Red Crescent, Geneva, 28 November to 1 December, 2011, p.305.

The former EU Commissioner for Enlargement stressed in an interview that "there had been insufficient progress on the question of missing persons [in successor countries of the former Yugoslavia]." He added that "there cannot be reconciliation if there are still thousands of cases of missing persons, and when their families, 20 years after the war, still cannot find the mortal remains."⁷⁵ He also criticised the lack of interest of authorities in resolving this issue - "More needs to be done to bring closure to the suffering of the tens of thousands of families with missing relatives. We co-finance the International Commission on Missing Persons, ICMP, through the IPA, but this support must be matched by political will."⁷⁶

Serbia

According to the information of the International Committee of the Red Cross, more than 11,600 persons who went missing during the armed conflicts in the former Yugoslavia in the nineteen-nineties, are still reported as missing.⁷⁷ The role of the institutions of the Republic of Serbia is of crucial importance for the process of establishing the fate of the missing, considering the participation of Serbia in four armed conflicts during the nineties, and the proven role of the institutions of Serbia in concealing the bodies of crime victims.

The work of the Commission on Missing Persons of the Republic of Serbia, responsible for conducting the process of the search for missing persons, is invisible to the expert and general public. The Commission lacks a strategy of proactive approach in gathering information on secret locations containing bodies of the missing (for instance media campaigns, anonymous phone lines, etc.). A further contribution to the insufficient activity of the Commission is represented by the fact that its head is a politician, who also holds several other important government positions.⁷⁸

The insufficient results in the search for the missing was subject to the criticism of the EC in a number of Serbia's progress reports, and the lack of political will and dedication of the authorities to this issue has been identified as the key problem in each one of them. Namely, in the 2013 Report, the EC stressed that the "the process remains slow overall and greater political commitment, supported with financial and technical resources, is needed."⁷⁹ In 2012, it was stressed that "Sustained efforts and enhanced political commitment are needed towards identifying gravesites and clarifying the fate and whereabouts of people still unaccounted for."⁸⁰

75 Balkan Open Report, War Crimes Justice Remains Key to EU Accession, February 14th, 2014, available at <http://www.balkanopen.com/article.php?id=1651> last time visited on June 27th, 2014.

76 *Ibid.*

77 International Committee of the Red Cross, Annual Report for Western Balkans for 2013, p. 401, available at <http://www.icrc.org/eng/assets/files/annual-report/current/icrc-annual-report-western-balkans.pdf> last time visited on June 27th, 2014.

78 Nataša Latković, "Record-holder in number of positions is..." June 11th, 2013, *Blic*, available at <http://www.blic.rs/Vesti/Politika/387309/Rekorder-po-broju-funkcija-u-Srbiji-je>, last time visited on June 24th, 2014.

79 European Commission's Serbia 2013 Progress Report, October 16th, 2013. p. 12.

80 European Commission's Serbia 2012 Progress Report, October 10th, 2012, p. 20.

Institutional reform as a guarantee of non-recurrence of crimes

"The human rights of all, both victims and offenders, should be ensured at all stages of the process and at all times. This requires ending the culture of impunity, such as granting a role to war criminals in a national army or political bodies."⁸¹

Stable institutions which guarantee democracy, the rule of law and human rights represent the essential condition for accession to the EU. In post-conflict countries, state institutions are compromised by their role in the violent past, hence their reform is necessary in order to restore confidence in their work. The EC illustrated the importance of institutional reform as a mechanism for the establishing of peace and the rule of law in their communication on the subject of reaction in volatile situations: „Sustainable peace requires a legitimate and effective justice sector, which is particularly weak in situations of fragility. In post-conflict settings, a nationally-owned transitional justice and rule of law system, engaging official and non-governmental institutions is fundamental. Parallel advancement of justice and reconciliation initiatives has contributed to stabilising divided societies after a conflict.”⁸²

The EC, in its communication with the European Council and Parliament on EU support of security sector reform in 2006, stated that “the security sector reform is not a new area of engagement for the European Union. It has been an integral part of EU integration, enlargement and external assistance for many years.”⁸³ The EC has further pointed out that some of the key problems in this area are “ensuring accountability of security services, human rights abuses by police and defence forces [and] a culture of state impunity”.⁸⁴

The European Council in its Conclusions in relation to the conflict in the Great Lakes region in Africa called on the Democratic Republic of Congo to prosecute those responsible for massive violations of human rights, and especially emphasised that „timely vetting of FARDC [armed forces of the DRC] commanders and soldiers is of crucial importance in this respect”.⁸⁵

Also, when extending the mandate of the EU High Representative in Bosnia and Herzegovina, the European Council pointed out that one of the functions of the High Representative is to „support the preparation and implementation of police restructuring”.⁸⁶

The EU has had several missions of the common security and defence policy, with mandates in the area of institutional reform as an element of transitional justice – Georgia (EUJUST THEMIS),⁸⁷

81 EU Concept for Support to disarmament, demobilisation, and reintegration adopted by the European Commission on December 14th, 2006 and by the European Council on December 11th, 2006.

82 European Commission communication, „Towards an EU response to situations of fragility”, COM (2007) 643, Brussels, October 25th, 2007, p. 9.

83 Communication of the European Commission to the European Council and the Parliament: “The concept of support of the European Community to the reforms in the area of security”, May 24th, 2006, p. 3.

84 *Ibid*, p. 5.

85 European Council Conclusions on the Great Lakes Region, 2971th Foreign Affairs Council Meeting, Luxembourg, October 27th, 2009, para 3.

86 European Council Joint Action 2008/130/CFSP dated February 18th, 2008, Article 3(i).

87 European Council Joint Action 2004/523/CFSP dated June 28th, 2004.

Iraq (EUJUST-LEX)⁸⁸ and Kosovo (EULEX KOSOVO).⁸⁹ In addition to the reform of the judiciary, which was the aim of the missions in Georgia and Iraq, the mission in Kosovo included the reform of the police.

Serbia

Institutional reforms in the form of lustration and vetting have not been carried out in Serbia. The Law on Lustration, which was supposed to carry out an assessment of the eligibility of state officials to hold top government positions, ceased to exist in 2013, without ever having been applied.⁹⁰ Vetting of members of the security services has neither been implemented nor made possible, because the current legal solution does not provide background checks of the wartime past of the members of the army and the police, nor can it be used as grounds for permanent removal from service. The fact that about 15% of those indicted for war crimes in Serbia were, at the time of indictment, in active police or military service, illustrates the need for background checks of active members of the army and the police, as well as civil servants. The laws on the army and police do not require removal from service of the person against whom criminal proceedings are taking place.⁹¹

Although progress reports on Serbia do not include lustration and vetting as separate categories, nor mention them, the numerous problems that the EC points to in its reports are in reality a result of the lack of institutional reforms of this kind. The 2009, 2012 and 2013 reports indicate "serious problems in the witness protection system,"⁹² and the report from 2009 especially points out how "law enforcement authorities have been reluctant fully to investigate [witness intimidation] allegations within their own ranks".⁹³

The progress report from 2011 emphasises that "a professional, reliable and efficient police organisation is of paramount importance."⁹⁴ Also, the 2010 progress report indicates that "the lack of openness and transparency of recruitment procedures and career development within the police remains of concern."⁹⁵

88 European Council Joint Action 2005/190/CFSP dated March 7th, 2005.

89 European Council Joint Action 2008/124/CFSP dated February 4th, 2008.

90 Law on responsibility for human rights violations (Official Gazette of the RS nos. 58/2003 and 61/2003 - corrections.).

91 See Article 77 of the Law on the Army of Serbia ("Official Gazette of the RS", nos. 116/2007 and 88/2009) and Article 165 of the Law on Police ("Official Gazette of the RS", nos. 101/2005, 63/2009 – Ruling of the Constitutional Court and 92/2011).

92 European Commission's Serbia 2013 Progress Report, October 16th, 2013, p. 12.

93 European Commission's Serbia 2009 Progress Report, October 14th, 2009, p. 20.

94 European Commission's Serbia 2011 Progress Report, October 12th, 2011, p. 105.

95 European Commission's Serbia 2010 Progress Report, November 9th, 2010, p. 52.

Reform of the education system⁹⁶

"The primary goal of European cooperation should be to support the further development of education and training systems in the Member States which is aimed at ... promoting democratic values, social cohesion and intercultural dialogue."⁹⁷

Although each Member State of the EU is responsible for the education system in their country, the EU, within the goals declared in the founding agreements, imposes certain standards and guidelines for the national education programmes. According to the Treaty on the Functioning of the EU, the Union "fully respects the responsibility of the Member States for the content of teaching and the organisation of education systems and their cultural and linguistic diversity."⁹⁸

At the same time, however, the EU "shall contribute to the development of quality education by encouraging cooperation between Member States."⁹⁹ The Treaty further specifies that the Union's action in this sphere will be aimed at "promoting cooperation between educational establishments [and] developing exchanges of information and experience on issues common to the educational systems of the Member States."¹⁰⁰

In the Conclusion of the European Council on the Strategic Framework for European Cooperation in Education and Training of 2009, it was pointed out that the goal of European cooperation in the period until 2020 is to develop education systems of the Member States that will promote "respect for fundamental rights and the fight against all forms of discrimination, [and to equip] all young people to interact positively with their peers from diverse backgrounds."¹⁰¹

On account of its own history, in the field of education the EU especially promotes the study of the past and the circumstances that have resulted in armed conflict and violations of human rights. So the EU Agency for Fundamental Rights has published several publications that deal with precisely these issues: "Excursion to the past – teaching for the future: Handbook for teachers",¹⁰² "Discover the past for the future – The role of historical sites and museums in the study in Holocaust education and human rights education in the EU"¹⁰³ and "Human rights education at Holocaust memorial sites across the European Union – An overview of practices."¹⁰⁴

96 In the process of accession negotiations, education has a special chapter, Chapter 26. Considering the extreme importance of education for the success of transitional justice mechanisms, the reform of the education system has been included in this policy paper.

97 Conclusion of the European Council on strategic framework for European cooperation in education and training (2009/C 119/02), May 12th, 2009, p. 2.

98 Consolidated version of the Treaty on the Functioning of the European Union (2008 O.J. C 115/47), Article 165, para 1.
99 *Ibid.*

100 *Ibid.* para 2.

101 Conclusion of the European Council on Strategic Framework for European cooperation in education and training (2009/C 119/02), May 12th, 2009, p. 4.

102 European Union Fundamental Rights Agency, „Excursion to the past-teaching for the future: Handbook for teachers”, 2010, available at <http://fra.europa.eu/en/publication/2010/excursion-past-teaching-future-handbook-teachers> last time visited on June 27th, 2014.

103 European Union Fundamental Rights Agency, "Discover the past for the future- The role of historical sites and museums in Holocaust education and human rights education in the EU", 2010, available at <http://fra.europa.eu/en/publication/2012/discover-past-future-role-historical-sites-and-museums-holocaust-education-and-0> last time visited on June 27th, 2014.

104 European Union Fundamental Rights Agency, "Human rights education at Holocaust memorial sites across the European Union - An overview of practices" 2011, available at <http://fra.europa.eu/en/publication/2011/human-rights-education-holocaust-memorial-sites-across-european-union-overview> last time visited on June 27th, 2014.

In addition, the EU has supported the efforts of France and Germany in their endeavour to develop a common history textbook, and supports the proposal of Germany, in following that model, to develop a textbook of European history that would be used in all schools in the EU.¹⁰⁵

Guided by the view that better understanding of the history of the 20th century can contribute to the prevention of conflicts and the establishment of reconciliation, the Committee of Ministers of the European Council in 2001 specifically reflected on the role of history teaching in the Recommendation on History Teaching in Europe in the 21st century and its annex. Although this recommendation is not part of the *acquis*, it is significant in the sense that all EU member states are also members of the Council of Europe; so it can be said that this recommendation is universally applicable on European soil. According to the Recommendations of the Council of Europe, the teaching of history in the democratic Europe of the 21st century should be "a decisive factor in reconciliation, understanding and trust"¹⁰⁶ among nations, as well as "an instrument for the prevention of crimes against humanity".¹⁰⁷ It must not be a means of ideological manipulations, nor can it be based on "the distortion of history for propaganda purposes, a nationalist version of history, abuse of historical records, and the denial or neglect of historical facts".¹⁰⁸

Serbia

One of the obstacles to a positive contribution by new generations to the process of dealing with the past in Serbia and to the European integrations at the same time, is represented by the education system inherited from the period of the Milošević regime. First and foremost, this is reflected in the history books that cover the period of recent history and the wars in the 1990s, which have been in use in schools in Serbia since 2000. The content of these textbooks is ethnically biased, and, as such, represents one of the most powerful mechanisms for nationalistic mobilisation of the new generations. The new generations are being educated on a foundation of self-victimisation; the responsibility and guilt for war crimes are typically attributed to the opposite side; there is an obvious selection of facts about the crimes committed, and a failure to disclose those facts that do not favour the Serbian version of the war past during the nineties, as well as a presentation of inaccuracies that serve as justification for Serbian politics during the wars. Only rare non-formal education programmes try to correct such a distorted picture of the past, and these programmes do not receive support nor do they reach out to a larger number of young people in Serbia.

The 2020 Education Development Strategy of the Republic of Serbia, adopted in 2012, does not in any way reflect on the importance of studying human rights in schools, nor does it suggest mechanisms for fostering non-discriminatory and de-ideologised curricula.¹⁰⁹

105 Bruno Waterfield, "Germans want EU history lessons", *Telegraph*, February 22nd, 2007, available at <http://www.telegraph.co.uk/news/worldnews/1543509/Germans-want-EU-history-lessons.html> last time visited on June 27th, 2014; and the Joint statement at the Franco-German Council of Ministers, February 4th, 2010, available at <http://www.ambafrance-uk.org/Franco-German-Council-of-Ministers,16810> last time visited on June 27th, 2014.

106 Annex to the Council of Europe Committee of Ministers' Recommendation Rec(2001) 15 to members states on history teaching in twenty-first-century Europe, October 31st, 2001, Article 1, para. 2.

107 *Ibid*, para. 8.

108 *Ibid*, Article 2.

109 2020 Education Development Strategy of the Republic of Serbia ("Official Gazette of the RS" nr. 107/2012).



IV. Conclusion

Since the last large-scale conflict in which Serbia participated, fifteen years have passed, in the absence of a comprehensive and effective implementation of mechanisms of transitional justice. With the additional passage of time, chances for their implementation are being reduced – victims who should be provided with reparations are dying, together with the perpetrators responsible; and the members of the security services whose past should be checked occupy positions which gives them power to decide on the implementation of the rule of law and security.

The EU now has a decade-long practice of implementation and advocacy for transitional justice mechanisms. The Union's adoption of a uniform strategy would bring transparency into the expectations that the EU has in its foreign relations. However, the previous analysis shows that the absence of such a strategy is not an obstacle to the inclusion of transitional justice in the accession negotiations with Serbia.

The EU should, within the framework of the accession negotiations, recognise the timeliness of the moment for the implementation of mechanisms of transitional justice in Serbia, and also the necessity of this process for the creation of stable institutions that guarantee democracy, the rule of law, human rights and respect for and protection of minority rights, without which no country can join the EU.

V. Selected Recommendations to the Government of Serbia and the European Commission

1. Establish a Fund for compensation of victims of war crimes and human rights violations during the nineties, that would provide just compensation to the victims of wrongdoings, which, as the final judgments before the national courts and the ICTY established, were committed by the police and military forces under the control of Serbia; in accordance with the European Council Directive on compensation for victims of crimes and the European Parliament and European Council Directive on the establishment of minimum standards for the rights, support and protection of victims of crime.
2. Reform the Law on Civilian Invalids of War and harmonise it with the European Council Directive on compensation for victims of crimes and the European Parliament and European Council Directive on the establishment of minimum standards for the rights, support and protection of victims of crimes.
3. Adopt a Strategy for processing war crimes in Serbia 2015-2025, which will contribute to the intensification of prosecution of perpetrators of war crimes, regardless of their rank.
4. Apply the doctrine of command responsibility and prosecute crimes against humanity

in accordance with Article 15, paragraph 2 of the International Covenant on Civil and Political Rights and Article 7 paragraph 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, in order that the competent authorities in Serbia should fight impunity more effectively.

5. Improve the system of support and protection of victims and witnesses, especially through continuous training of all institutional representatives who come into contact with the victims, as well as through employment of psychologists in the service for the help and support of the witnesses and affected individuals.
6. Establish clear mechanisms for the control and supervision of the work of the Witness Protection Unit.
7. Establish criteria for employment with regard to the wartime past of the members of security services, and guarantee their worthiness to work in the service, especially in those services that deal with victims and witnesses.
8. Adopt and implement a Law on Lustration, which will require the investigation of roles in planning, committing and covering-up of crimes by public office holders.
9. Add elements which will be focused on the development of tolerance among young people, an impartial study of history and fostering human rights, to the Education Development Strategy.
10. Improve the capacities of the Commission for Missing Persons.