

through ACCESSION towards JUSTICE



Humanitarian Law Center

The newsletter **through ACCESSION towards JUSTICE** will address the theme of obstacles to and solutions for establishing the rule of law and accountability for the crimes committed in our recent past. Also, it will seek to affirm, in the context of the EU accession talks, individual and societal needs arising from that experience.

7/2014



Prosecution of War Crimes as one of Requirements for Accession to EU

Mr. Kristian Turkalj, negotiator for Chapter 23 "Judiciary and fundamental rights" and Chapter 24 "Area of Freedom, Security and Justice" in the Ministry of Justice in Croatia

1) The Republic of Croatia recently completed the negotiations for EU membership, during which it had to meet a number of criteria. Was the issue of prosecuting war crimes included?

Prosecution of war crimes has greatly influenced the negotiation process and its dynamics. The importance of this issue is clearly indicated by the fact that, at one point, the negotiation process was even stopped, because the EU felt that



Kristian Turkalj



Croatia did not meet the required standards. The European Commission, but, even more, certain EU member states, have paid a great deal of attention to this issue, and Croatia was required to deal with all of the identified deficiencies in the investigation and prosecution of war crimes. Moreover, the EU defined the question of investigating and prosecuting war crimes as a closing benchmark for Chapter 23.

2) What exactly did the EU demand from Croatia regarding the prosecution of war crimes?

The EU focused on a range of issues related to the investigation and prosecution of war crimes, such as the resolution of the issue of impunity for those responsible for war crimes, ensuring impartiality in the detection, prosecution and punishment of war crimes, renewal of proceedings for in absentia judgments, strengthening of administrative and judicial capacity during investigation and prosecution, witness protection, compensation of victims of war and ensuring adequate defense for those accused of war crimes. Furthermore, Croatia was requested to adopt and implement a clear strategy for prosecuting war crimes and to engage at a bilateral and regional level in dealing with the related issues. Additionally, it was extremely important to establish an effective cooperation with the International Criminal Tribunal for the former Yugoslavia. With each of these issues, there were many related questions and problems that were the subject of intense dialogue between the competent institutions

of Croatia and the EU.

3) How did the EU monitor the implementation of activities in prosecuting war crimes, and how did it verify whether Croatia met the required conditions and commitments?

The EU, in addition to its usual mechanisms for monitoring progress, had at its disposition some additional mechanisms.

To be more specific, the regular mechanisms included conducting political dialogue within the framework of the negotiation process and the work of institutions established under the Stabilisation and Association Agreement – principally, the Council and Committee for Stabilisation and Association, but also the Subcommittee for Justice and Internal Affairs. In addition, the aforementioned issues were discussed in the meetings of the Joint Parliamentary Committee.

For the experts' check, the EU had experts coming in peer based missions for determining the actual state of affairs, and it also made use of the reports of NGO's that were following the war crimes trials. In Croatia, for example, Documenta was one of the most active organizations, regularly publishing its reports related to perceived weaknesses in punishing war crimes. It was precisely through the continuous open dialogue with civil society representatives that Croatia managed to identify certain problems and to achieve excellent results in improving the punishment of war crimes.

Furthermore, Croatia created a database of war crimes, which was made

available to the partners in the region, for the purpose of monitoring the achievement of the set goals (the so-called track record) in the process of investigating and prosecuting war crimes.

However, in Croatia there was another special mechanism for monitoring progress in the prosecution of war crimes. The Croatian government, in cooperation with the international community, established the so-called Platform for Monitoring the Prosecution of War Crimes, to decisively address and resolve this issue. The Platform was composed of key representatives of relevant institutions in Croatia (the Prosecution, the Supreme Court, the Ministry of Justice and the Ministry of Internal Affairs), along with the representatives of the OSCE, the ICTY Office in Zagreb and the EU Delegation. The OSCE in Croatia had a mandate to monitor war crimes trials and was therefore in possession of direct knowledge of all the weaknesses that appeared in this area. It would report on developments on a regular monthly basis.

Evidently, the EU had a very strong mechanism for monitoring the implementation of all activities related to the prosecution of war crimes in Croatia, and for this reason it could follow very precisely the progress accomplished.

4) What were the key requirements for meeting the conditionality regarding the prosecution of war crimes?

It was essential that the competent institutions accepted the fact that previous practices in investigating

and prosecuting war crimes were not on the level of the democratic standards achieved in the European Union with regard to independence, impartiality and professionalism in the conduct of investigations and court proceedings. In addition, at a certain point the judiciary became aware of the negative effects that some „very weak“ judicial decisions had had for the reputation of the entire justice system. That is how the determination critical to resolving this issue was established. The Prosecution should be especially commended here, because it found the strength to review all of its proceedings and to revise court proceedings in every case where the legal standards were not met. In addition, Croatia put victims first in the cases of war crimes; so in order to punish the individuals responsible, the necessary evidence was collected regardless of the ethnicity of the perpetrator or of the victim. Concrete results were achieved in these processes and, of course, the EU recognized these efforts.

5) Which key changes occurred in Croatia regarding the prosecution of war crimes and because of the negotiations for EU membership?

The negotiation process significantly contributed to raising legal standards in the prosecution of war crimes, particularly in terms of impartiality in relation to prosecuting perpetrators, and even more importantly, in relation to the victims of war crimes.

In addition, a witness protection programme that achieved extremely positive results and was later ex-



tended to the prosecution of all other serious crimes was created. Specifically, this system protects witnesses and victims of crimes from secondary victimization, and it ensures the quality of the probative value of their testimonies.

Finally, thanks to the negotiation process, these very delicate issues could finally be openly discussed and the stakeholders could contribute to the resolution of these matters through public debate.

[news]

Analysis of War Crimes Prosecution in Serbia

On September 30th, the Humanitarian Law Center (HLC) published the [Analysis of the Prosecution of War Crimes in Serbia in the period 2004 to](#)

[2013](#) (Analysis), which provides an overview of the achievements and problems in the work of the institutions which were responsible for the enforcement of criminal justice in cases of crimes committed during the

armed conflicts in the former Yugoslavia. The Analysis also contains 75 recommendations to institutions and other stakeholders aiming to advance this process. The Analysis is based largely on official data and inter-



Analysis of the Prosecution of War Crimes in Serbia

views which the HLC conducted with the representatives of the institutions and other actors involved in the prosecution of war crimes. The findings and recommendations of the Analysis represent a baseline for expert consultation on the draft Strategy for the Prosecution of War Crimes in Serbia, which the HLC will hand in to the Ministry of Justice of Serbia in late 2014.

The general findings of the Analysis show that the achievements of domestic institutions in the prosecution of war crimes are modest, partly as the result of the absence of a national strategy for the prosecution of war crimes in Serbia. Especially significant are the problems concerning the **victims and witnesses support and protection system**, which is not in compliance with international standards; while at the same time the institutions do not show an interest in resolving the numerous problems in this area. Nor has the efficiency of the **Office of the War Crimes Prosecutor** reached the level of

the expectations of the professional and interested public. Among the reasons for this are the lack of clear political support for the prosecution of war crimes and insufficient human and financial resources, along with the prosecutorial policy of prosecuting the less demanding cases, the absence of charges against high-ranking police and military officials, and of indictments in politically sensitive cases. Key findings on the work of the **War Crimes Department of the Higher Court in Belgrade** refer to the lenient penal policy, inadequate protection of witnesses, lack of reliance on the practice of the International Criminal Tribunal for the former Yugoslavia, and the underdeveloped Public Relations Service.

Speaking at [the presentation of the Analysis](#), the Deputy Head of the EU Delegation to Serbia, Mr. Oscar Benedict, reiterated that dealing with the past has a great impact on Serbia's EU accession process and recommended the inclusion of NGOs in the process of identification of the

priorities, as well as in the design of strategies and policies in the prosecution of war crimes in Serbia.

Action Plan on Chapter 23 - Judiciary and Fundamental Rights

The Ministry of Justice of the Republic of Serbia issued a [draft Action Plan on Chapter 23](#), which defines the activities and measures for meeting the recommendations of the European Commission in the Screening Report for this chapter. The Action Plan proposes activities and projected results in the field of criminal justice for war crimes, but completely ignores the right of victims of war crimes to material compensation and other forms of reparation, as well as other mechanisms for the establishing of justice for the crimes committed. In addition, the Ministry of Justice did not take the opportunity to address those shortcomings that are not identified in the Screening Report but are also relevant to the





Meeting with Mr Eduard Kukan, Delegation to the EU-Serbia Stabilisation and Association Parliamentary Committee Chair

advancement of the rule of law in Serbia - a possibility that had been suggested in the [accompanying letter](#) which was received from the Council of the EU along with the Screening Report.¹

The HLC had previously submitted its recommendations to the Ministry, in which it identified a series of

1 "Outcome of the Screening – Chapter 23, Justice and Fundamental Rights", a letter from Ambassador Mr. Stefano Sannino, the chairman of the Committee of the Permanent Representatives (COREPER II) of the Council of the European Union, accompanying the set of documents that were submitted to the institutions of the Republic of Serbia along with the Screening Report for Chapter 23. http://www.hlc-rdc.org/wp-content/uploads/2014/10/Outcome_of_screening_Chapter_23.pdf

actions and measures for the protection of rights of the victims of war crimes, but the Ministry of Justice did not include these recommendations in the published version of the draft Action Plan.

Obstacles to Establishing Transitional Justice in Serbia Presented to Representatives of EU Institutions

The representatives of the HLC, Sandra Orlović, Milica Kostić and Jelena Krstić, as well as Saša Gajin, Human Rights Professor at the Faculty of Law, Union University in Belgrade, met with the representatives of the

European Commission, the European Parliament and the European External Action Service (EEAS) to discuss the key issues concerning the legacy of war crimes in Serbia. Problems appearing in the field of victims' rights, prosecution of war crimes, witness protection and reform of institutions were presented to the interlocutors from the EU institutions.

Among the interlocutors were the members of the European Parliament Ms. Tanja Fajon and Mr. Eduard Kukan, and representatives of the Directorate-General for Enlargement, the Directorate-General for Justice and the EEAS in charge of Serbia and Western Balkans issues.



No Justice for the Atrocities Committed by the Police and Army against Bosniaks in Sandžak during the Nineties

Ms. Semiha Kačar, Sandžak Committee for the Protection of Human Rights and Freedoms

The wars on the territory of the Socialist Federal Republic of Yugoslavia have left numerous and profound traumas in the “collective memories” of the many national and ethnic communities that were in so many ways involved in this conflict. The territory of Sandžak has definitely experienced the heavy consequences of the wars, especially those in Bosnia and Kosovo, during the last decade of the 20th century. A number of events (murder, robbery, kidnapping, immigration, so-called ‘informative interviews’, police raids, torture, arson, etc.) created an environment in which fear, alienation and distrust became the dominant feeling among Bosniaks towards the state in which they live.

The Bosniak community in Sandžak has paid a very high price for the “war peace”. The fact is that, even two decades after the tragic events, the state institutions and authorities have not yet fulfilled their legal and civil obligations. A very small number of perpetrators have been held accountable for crimes against Bosniaks. Nobody is talking about the reprisals to which they had been exposed, an indication of the tendency towards forgetting the “dark past”. Such an attitude towards the past only increases the anxiety in Sandžak and feeds the suspicion



Semiha Kačar

that a small “spark” would be sufficient to ignite the same situation all over again.

It is precisely this passive approach of the state to what happened in Sandžak during the nineties, that benefits both the speculative and manipulative capacities of certain structures and interest groups to act “protectively”, and to pronounce themselves, without any democratic legitimacy, “guardians of the national interest”, in order to install themselves in the vacated seat of “tutors” who can also, at some point, appear in uniform.

The failure by the relevant institutions, primarily the Ministry of the Interior, the Ministry of Justice and the judicial authorities, to fulfill



their obligations to investigate and prosecute those responsible for the violations of human rights committed in Sandžak during the nineties has continued for more than two decades. The cases of massive violations of human rights in Sandžak, for which a very small number of perpetrators have been held accountable, have left huge consequences for its municipalities and cities. Numerous reports and publications by non-governmental organizations, which have been submitted to the relevant state institutions, have provided many documents concerning everything that was going on in the said area, including data on victims, witnesses and perpetrators. But so far, the relevant institutions have not responded, except in a few cases.

According to data from the Sandžak Committee for the Protection of Human Rights and Freedoms and the Humanitarian Law Center (HLC), in the period from 1992 to 1995, several thousand people were illegally detained at local police stations in Prijepolje, Novi Pazar, Tutin and Sjenica. The former Chief of Police for the Novi Pazar Department of the Interior, Suad Bulić, said during the show "Sandžak pita"², broadcast on Regional TV in 2006, that over 10,000 Bosniaks from Novi Pazar, Sjenica and Tutin underwent the so-called "informative interviews" treatment in the Novi Pazar Secretariat for the Internal Affairs. Reports by the UN Committee against Torture, the report of the Commission established by the municipality of Tutin and the report by the Mu-

² TV show "Sandžak asks"

nicipal Assembly of Sjenica, all talk about these events.

The Sandžak Committee, beginning in 1993, brought criminal complaints against those responsible for torture and illegal arrest. We continued with this practice after "the October democratic changes." In March 1996, extensive material was submitted to the FRY President Zoran Lilić at his request, and in 2000 the material was submitted to the Federal Minister of Justice, Momčilo Grubač. In 2002, the publication entitled "The Testimonies from Sandžak" was submitted to the Ministry of Justice and the Ministry of the Interior.

Despite numerous criminal charges, only a few cases have resulted in trials. Guilty verdicts were rendered in the cases of several defendants, who were then sentenced to suspended jail sentences, while in most cases, the length of the procedures led to the obsolescence of the criminal prosecution. The HLC has initiated compensation lawsuits, and in most proceedings the courts have held that the lawsuits were outdated; whilst in cases in which a decision on the merits of the case was rendered, the amount of compensation for the most serious human rights violations were to the amount of 200 to 300 thousand RSD.

In addition to the police repression, a large number of Bosniaks had to abandon Sandžak during the conflict in Bosnia and Herzegovina on account of the constant threats and pressures. Those who lived in villages along the borders with Monte-

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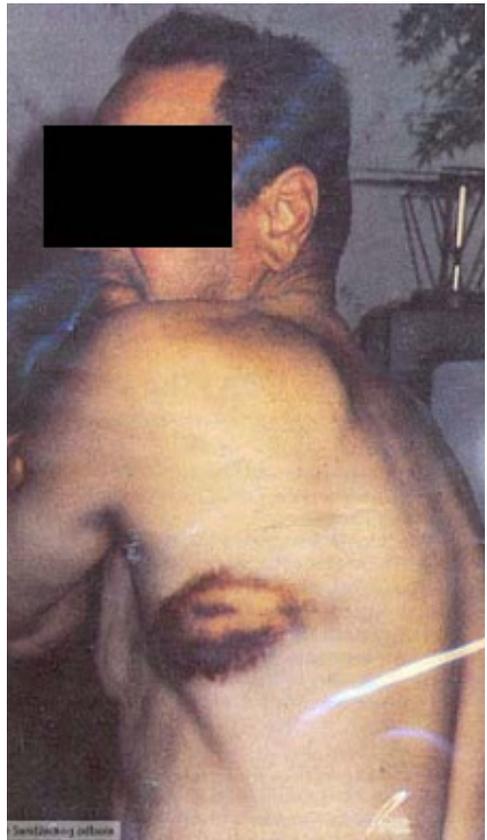
negro and Bosnia and Herzegovina experienced a particularly difficult fate. With the beginning of the war, members of the Yugoslav Army came to their villages and harassed, threatened, plundered, raided and often abused them on a daily basis. Fearing for their lives, the residents of over 20 villages in the Municipality of Priboj left their homes, after which their properties were burned or looted. In the most drastic example of violence by the Yugoslav Army in Kukurovići on February 19th, 1993, three older residents were killed and their houses burned down. The perpetrators have never been punished. Ethnically motivated killings and forcible removals were documented in other villages.

The whole world has heard about the kidnapping of Bosniaks in Štrpci and Sjeverin. Few of the perpetrators have been convicted, and only five of the victims' bodies have been found. Nevertheless, the state of Serbia acts as if the families of the victims do not exist. It does not recognize them as civilian victims of war, on the grounds that they became victims on the territory of another state.

In order for the Bosniak community to see themselves as an equal and respected community in Serbia, the state must show its willingness to deal with the fact that a number of violations of human rights were committed in its name. The injured persons are still waiting for the state to initiate the proper procedures - both criminal procedures and compensation lawsuits - in order for them to be recognized as victims, thus ensuring for them the rights

that Serbian victims already have. Instead, those responsible for the crimes committed by institutions are still working in those institutions, and frequently advancing in their careers.

If the goal is to strengthen the confidence of Bosniaks in Serbia's institutions, these institutions need to recognize that the atrocities occurred, and to bring to justice those who have violated the fundamental rights of the people and send a clear message that there is no room for them in the police, military and other state agencies. They also need to provide dignified treatment for all the victims. There can be no doubt that this would help strengthen public confidence in state institu-



Victim of Torture in Sandzak



tions, as well as the belief that all people are equal. Justice for them and their families will be a sign that the society has matured and accepted the values of the rule of law and the human rights underlying

the European Union towards which we are striving. To ignore the obligation to establish responsibility for the nineties is incompatible with the policies of European integration and democratization.

[In the period September 10th
– October 28th there were no
war crimes trials]

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