

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.

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[★] Transitional Justice in the EU Accession Context

A talk with Mr. Michael Davenport, Head of the [Delegation of the European Union to the Republic of Serbia](#)

What is the EU's standpoint with regard to the issue of resolving the legacy of armed conflicts and systematic human rights violations – which encompasses the official recognition and acknowledgment of responsibility of states for atrocities committed in the past, the prosecution of responsible individuals, material compensation of damages and support to the victims, institutional reform and other mechanisms for truth-seeking and truth-telling about the past – for



Michael Davenport



a state which strives to become an EU member? How important is resolving open issues with regard to the legacy of armed conflicts and systematic human rights violations for the EU as an entity and for member states, as well, bearing in mind their historical experiences and internal relations?

Transitional justice in the Western Balkans has been crucial in the EU integration/accession process.

The European Union was created with the motto: "never again", which laid the first post war foundations of European integration on which we have been building ever since. Twenty years ago, a key element was added: the Copenhagen Criteria which are now enshrined in the Treaty. The Copenhagen Criteria clearly set out the rules of the game, firmly anchoring conditionality in the accession process.

With the Copenhagen criteria, key elements that later became chapters 23 (judiciary and fundamental rights) and 24 (justice, freedom and security) were formally included in the accession process. The use of opening and closing benchmarks in the negotiations of chapter 23 has proved to be a powerful tool in pushing reforms in this area within the enlargement process and throughout the whole pre-accession period.

The European Union develops its relations with Western Balkan countries within a special framework known as the Stabilisation and Association Process (SAP). SAP conditionality includes co-operation with the International Criminal

Tribunal for the Former Yugoslavia (ICTY) and regional cooperation/good neighbourly relations.

These conditions are also an integral part of the Stabilisation and Association Agreements (SAAs).

This conditionality translates into effective Transitional Justice in several ways.

First and foremost there has been an impact through bringing war criminals to justice. Cooperation with ICTY applies as a condition to all countries.

Furthermore, local war crimes must also be properly investigated and prosecuted.

Processing war crimes cases in the Western Balkans is a key regional priority. Truth and reconciliation in the region can be consolidated only by guaranteeing justice, for the victims, their families and more broadly for all affected communities. In the absence of extradition agreements for war criminals, cooperation between prosecutors is crucial and we have seen significant improvements in this respect.

From a wider perspective, I should underline the need for judicial systems to be professional and transparent. The Commission has a new approach to the hard issues of organised crime and corruption and judicial reform. They are tackled early in the accession process. In addition, countries have to draw up action plans which form the basis for opening negotiations on these issues. The objective is that countries should demonstrate a solid

track record of implementation.

But transitional justice is not only a justice matter; it is also about knowing the past and telling the truth in the wide sense. And this is where NGOs play an invaluable role in documenting human rights violations for this and future generations and in assisting victims and promoting multi-ethnicity.

Finally there are other crucial issues which must be addressed in striving for genuine transitional justice and reconciliation: missing persons and refugee returns.

On missing persons more needs to be done across the region to bring closure to the suffering of the tens of thousands of families with missing relatives.

This depends fundamentally on stepping up regional co-operation in this area. Meeting the needs of refugees and displaced persons is a key step toward reconciliation between countries in the region. The renewed commitment to the Sarajevo Process (which aims at finding durable solutions for the hundreds of thousands of refugees and displaced persons by all participating states) is very welcome. It is a clear sign that the region wishes to leave the past behind, without forgetting it, and move on towards the future – and I would say: “towards their European future” - as good neighbours.

What is the significance of the negotiation process with Serbia for the process of reconciliation alone and for establishing responsibility with

regard to the armed conflicts in the former Yugoslavia? Is the perspective of the negotiations such that it may contribute to the deepening and spreading of initiatives and processes aimed at the dealing with the past?

My previous answer makes clear how significant the negotiation process can be for Serbia in fostering reconciliation. Let me stress that, while it is important to face up to the past, it is even more important to build for the future. Reconciliation and shared regional truth are ultimate goals, but in the meanwhile we should also pursue realistic objectives, such as achieving peaceful coexistence and dialogue between different interpretations of mutually acknowledged events. Our final goal is to assist countries in the region to come to terms with difficult legacies of the past and to enable them to construct their future together, in Europe.

In this respect, on bilateral issues, there have been great improvements. Serbian President Tomislav Nikolic and Croatian President Ivo Josipovic have turned a new page in relations between their countries. Ties between Serbia and Bosnia and Herzegovina have normalised to a considerable extent and the historic agreement reached by Belgrade and Pristina is further proof of the power of the European Union perspective and its role in healing history’s deep scars.

Cross border cooperation programmes between Western Balkan countries should also be used more fruitfully. Regional cooperation is a central element in our efforts to drive forward



reform processes in the Western Balkans and help the region to achieve economic prosperity and political stability.

Is there a possibility for the EU, due to certain political and economical issues and serious reform that Serbia is facing, to put out of focus during the negotiations issues such as rights of victims, prosecution of perpetrators and institutional reform?

I would say it is quite the contrary. Processing of War Crimes cases is important for EU integration for many reasons, including in particular strengthening of the Rule of Law and the judicial cooperation in criminal matters, and ensuring Protection of Human and Fundamental Rights. These areas are covered by two specific chapters in the EU accession negotiations, and form a significant part of the EU's dialogue with regional jurisdictions.

As the ICTY approaches the end of its mandate, national and local prosecutors and judges become even more key. They have a vital role in bringing war criminals to justice, not least with the aim of supporting the reconciliation process and bringing sustainable peace and security in the region.

The recommendations in the Screening Report for Chapter 23 relating to war crimes contain only recommendations relating to war crimes trials. Do you think that the prosecution of individuals responsible for war crimes is sufficient for accepting and dealing with the legacy of armed conflicts and systematic

human rights violations within a society and the establishing of good-neighbors relations in the region?

Justice has to do its job. However, civil society can play perhaps the main role in moving from transitional justice to reconciliation. I hope that their efforts combined with those of government and backed by continuous support and engagement by the European Union, will allow countries in the region to come to terms with their past and construct their future, anchored in the European Union.

Despite the fact that relevant regulations do exist, the Screening Report does not encompass the recommendations for material compensation to victims of war crimes and other serious violations of human rights committed during the 1990's and other types of reparation. Is it possible that, despite the fact that they have not been explicitly recommended in the Screening Report, they still can be subject to harmonization and in which manner?

Victim compensation is a wider issue when it comes to the Serbian judicial system and it is duly outlined in the Progress Report. On the part related to access to justice we specifically mention that the system of awarding compensation to victims of crimes through criminal or civil proceedings is not functional. When it comes to war crimes, the PR explicitly states that few victims of war crimes have access to effective compensation under the current legal framework.

[news]

European Parliament: European Integration Process Helps Peaceful Transformation of Relations in Western Balkans

The European Parliament Subcommittee on Human Rights held a public hearing on November 5th, with Human Rights in the Western Balkans as the topic. Members of the European Parliament (EP), representatives of the Republic of Serbia Mission to the European Union, and non-governmental organizations based in the European Union (EU) and the Western Balkans, participated in this public hearing.

The topics that the participants discussed also related to the process of dealing with the past

in the Western Balkans. The conclusion emerged during this debate that the reconciliation process in the region had not been completed; and that the EU accession process could support and encourage it. Ivo Vajgl, a member of the EP and a member of the Delegation to the EU-Serbia Stabilisation and Association Parliamentary Committee expressed his expectation that the EU would recognize reconciliation as being a very important process, and therefore insist with the states in the region that they continue their endeavours in the direction of the implementation of the measures concerning the process of dealing with the past and regional cooperation. Heather Grabbe, Director of the Open Society European Policy Institute, pointed to the fact

that many current issues are the results of the belated reforms, incomplete reconciliation, and problems in the field of regional cooperation, which still exist in the region. The Head of the Republic of Serbia Mission to the EU, Ambassador Duško Lopandić, stated that Serbia is taking measures in the reconciliation field, and he indicated refugees and displaced persons as being a particularly vulnerable part of the population.

The only representative of the civil society from the Western Balkans region was Ms. Tea Gorjanc Prelević from the Montenegrin Human Rights Action. Speaking of issues of regional importance, she particularly stressed the RECOM Initiative, and called upon the members of the Parliament to try



to influence the states in the region to continue supporting this process and render concrete political decisions in the direction of establishing RECOM.

International Forum for Transitional Justice Held in Belgrade

The 10th International Forum for Transitional Justice in Post-Yugoslav Countries was held on November 15th and 16th in Belgrade. Some 250 participants, including non-governmental organizations, associations of victims, artists, journalists and scholars, summed up the achievements and presented the priorities in the transitional justice field in the Western Balkans. The Forum was organized by the [Coalition for RECOM](#), whose members advocate for the establishment of a Regional Commission for Establishing the Facts about War Crimes and Other Gross Violations of Human Rights Committed on the Territory of the Former Yugoslavia (RECOM).

Non-governmental organizations, representa-



X International Forum for Transitional Justice

tives of the academic community, victims, victims' family members and artists assessed the achievements and the overview of the priorities in dealing with the past in post-Yugoslav countries. The biggest issues from the standpoint of non-governmental organizations are the lack of political interest in dealing with the past, the poor results of the work of institutions specialized for the prosecution of war crimes and the neglect of victims' rights. The priorities include regional cooperation between judicial institutions and the support of the international community—the EU in particular—for endeavours by the civil society to point to the problems existing in this field. For victims and members of their families the establishment of criminal jus-

tice takes too long and does not offer satisfaction; they want to speak of their experiences, they expect attention, listening and compassion, and they hope that RECOM will offer the platform for the satisfaction of these needs. The academic experts also concluded that the approach nurtured by RECOM corresponds to the needs of the region and that RECOM can establish the much needed dialogue about the past. The artists held that art pieces allow for empathy with the victims of crime, offer facts which cannot be manipulated, provide understanding and forgiveness, bring epiphany and personal catharsis, and shed light on facts connected with the crimes.

The Forum was also marked by the testimonies given by victims

and victims' family members. Dragan Pjevač, Bekim Gashi, Nada Bodiroga, Sunčica Antić, Nikola Šašo, Ljubiša Filipović, Marica Šeatović, Amir Kulagić, Mevludin Lupić, Kada Hotić and Prenk Gjetaj spoke about their personal experiences and the search for their loved ones.

Step Towards the Establishment of RECOM

At the Assembly session held on November 14th in Belgrade, the [Coalition for RECOM supported the Regional Expert Group amendments to the Draft RECOM Statute](#). The Assembly expressed the expectation that the presidents of the states

will call for the national parliaments in early 2015 to adopt decisions on the establishment of RECOM.

The Regional Expert Group consists of the envoys of the presidents of Croatia, Montenegro, Serbia, Kosovo, and Macedonia, and of two members of the BiH Presidency. Since September 2013, the Expert Group has been discussing the Draft RECOM Statute with regard to the constitutional and legal possibilities for the establishment of this regional commission. The Envoy of the President of Serbia is Judge at the Court of Appeal in Belgrade, Siniša Važić. The Regional Expert Group

completed its work in May 2014 and submitted its proposal for amendments to the Draft RECOM Statute to the Coalition for RECOM.

Establishing Justice for War Crimes Necessary Prerequisite for Lasting Reconciliation Process

The EP adopted a [Resolution on Serbia: The Case of Accused War Criminal Vojislav Šešelj](#) on November 27th. Stating that the war-mongering rhetoric of Vojislav Šešelj causes pain for victims of war



Vojislav Šešelj in Benkovac (Croatia) in 1991



crimes and puts the progress made in regional cooperation and reconciliation at risk, the Resolution “Strongly condemns Šešelj’s war-mongering, incitement to hatred and encouragement of territorial claims and his attempts to derail Serbia from its European path”. The members of the EP expressed their concern at the lack of political and legal response to such actions, and “encouraged the Serbian authorities and the democratic parties to condemn any public manifestation of hate speech or wartime rhetoric”. The Resolution calls for the ICTY to reconsider its decision on provisional release in the case of Vojislav Šešelj

in the light of the new circumstances, and encouraged the Tribunal to speed up the completion of all first-instance and appellate proceedings.

The EP Rapporteur for Serbia, Mr. David McAllister, assessed that the objective of the Resolution is to encourage the Serbian authorities to condemn all types of hate speech and promote the protection of the rights of minorities. On the other hand, the Chair of the Delegation to the EU-Serbia Stabilisation and Association Parliamentary Committee Mr. Eduard Kukan, and the Shadow Rapporteur for Serbia from the Progressive Alliance of Socialists and Demo-

crats in the EP MP club, Ms. Tanja Fajon, stated that the Resolution only raises existing tensions in the region, gives significance and media attention to Šešelj and criticizes the independent Tribunal founded by the United Nations Security Council.

A day earlier, November 26th, the Croatian Parliament adopted a similar [declaration](#), on which occasion the members of the Parliament unanimously condemned the provisional release of Vojislav Šešelj and emphasized the obligation of Serbia to condemn every instance of hate speech and invitation for a change of borders.



Serbia's EU Negotiations - New Impetus to Transitional Justice in Serbia?

Jelena Krstić, [Humanitarian Law Center](#)

According to the [latest survey](#), support for the European integration of Serbia has increased lately. This also points to the increase in citizens' expectations relating to the reforms which this process carries along with it, and which refer to the development of areas such as the rule of law, public governance, environment, social policy, the economy, education, health care, etc. The end result that the citizens expect is an organized and economically stable society. At the same time, there is an impression that accession to the European Union (EU) is perceived in Serbia as the final end of Serbia's process of "dealing" with topics related to the wars and the crimes committed during the nineteen-nineties. The fact that there has not been a single surveyee in the aforementioned poll who stated the importance of reconciliation in the context of the European integration also confirms this position. This paradox speaks volumes about the support that the accession to the EU and the process of dealing with the past which have existed to date, have received, and it represents a cornerstone for deliberation on the role of Serbia's current negotiations with the EU with respect to strengthening the process of transitional justice.



Jelena Krstić

Certain mechanisms of transitional justice used by states in their endeavour to overcome the legacy of the violent past had already been introduced into Serbia after the democratic changes in 2000. The initial impression that dealing with the responsibility for crimes committed during the armed conflicts in the former Yugoslavia would be one of the first priorities for Serbia in the post-Milosevic era soon faded. It has been shown that the transitional justice mechanisms applied contain a number of shortcomings, due to which the entire process of society's dealing with the past has stagnated, and thereby markedly affecting other reform processes.

From the establishment of full cooperation with the Hague Tribunal in 2011, that is to say, with



the extradition of the last Hague indictee, Goran Hadžić to that court, the challenges which Serbia has been dealing with in the transitional justice area has received insufficient EU attention. The focus moved to the prosecution of war crimes before domestic courts, with superficial and only occasional monitoring of other areas, such as the witness protection system. Only in [Serbia's 2014 Progress Report](#) does the EU mention the right of victims to reparation - despite the fact that the EU itself has set high standards for the protection of victims of violent crime. Only two progress reports (2005, 2006) warn about the failure to establish responsibility for mass graves in Serbia, while only the 2005 progress report states that no progress was made in the application of the Law on Lustration.

The consequences of the insufficient attention of the EU when it comes to the mechanisms applied by Serbia to address the legacy of the wars from the nineteen-nineties represent serious problems in the prosecution of war crimes - political pressures, insufficient capacities of the prosecution and the police, small number of indictments, impunity of high-ranking members of the army and police, dysfunctional system of witnesses' protection, inadequate victims' support, lenient penal policy, etc., the humiliating status and disempowerment of victims, and the continued presence of individuals who participated in committing and/or concealing crimes within the army and the police.

Serbia's EU accession negotiations

open an essential opportunity to implement the process of dealing with and accepting responsibility for the past in a politically responsible manner. Political support for the initiative launched by non-governmental organizations for establishing a regional truth commission – the RECOM Initiative - represents a positive example of a long-term, carefully considered and coordinated engagement of the EU in the process of building long-term peace in the former Yugoslavia. However, the current course of the negotiations within Chapter 23, which relates to judiciary and fundamental rights, shows that the EU is not changing its approach to issues in the transitional justice field in Serbia for the time being, since the emphasis remains on the prosecution of war crimes, whereas other mechanisms of transitional justice are still being neglected. Even though a special part of the Chapter 23 Screening Report was dedicated to war crimes, there is not a single recommendation for the improvement of protection of the rights of the and other violations of human rights. The establishment of criteria for the inspection of the fitness of members of security agencies is not recommended either by the Chapter 23 Screening Report or the report relating relating to Chapter 24 which deals with justice, freedom and security. The non-inclusion of transitional justice in the reform processes of a EU candidate country which carries a legacy of armed conflicts does not contribute to the establishment of the rule of law in this state, nor to the stability of the community

of which it is striving to become a member. Moreover, this sends a bad message to victims' communities in other countries in the region, whose support and participation in the process of regional reconciliation and establishing good-neighbour relations is essential.

An indication of a different approach could be the aforementioned addressing of the problems with respect to the realization of the rights of victims of war crimes in Serbia's 2014 Progress Report, which is a procedure that has not yet been implemented in a single accession process of any other state

in the region. This represents an encouragement, and offers hope that the EU will seize the opportunity offered by accession negotiations to instigate the institutions in Serbia to pay attention to the key issues for the encouragement of transitional justice and the process of dealing with the past.

The EU member states also have a huge importance in this process. Their responsibility is to show whether the values that the European Union rests on are alive and applicable, thus essentially contributing to the reconciliation process in the Western Balkans.

[In the period September 10th
2014 – January 1st 2015 there
were no war crimes trials]

Humanitarian Law Center

12 Decanska St.
Belgrade 11000, Serbia

Tel: +381-11-3349-600
+381-11-3349-766
+381-63-210-536

e-mail: office@hlc-rdc.org
www.hlc-rdc.org

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