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## Humanitarian Law Center's amendment to the European Parliament Draft Motion for Resolution on the 2015 Report on Serbia

Proposed text	Amendment
<p>21. Appreciates the constructive approach of the Serbian Government to relations with neighbouring countries, since this has enabled substantial progress in both regional cooperation and closer relations with the EU; highlights Serbia's constructive role in the framework of the "Berlin Process" and the Western Balkan six initiative and its connectivity agenda; welcomes the continued good cooperation with the ICTY; underlines the importance of an overarching national strategy for domestic handling of war crimes, backed by adequate resources; urges the authorities to continue working on the issue of the fate of missing persons; notes that controversies still occur, particularly in the context of different interpretations of recent history;</p>	<p>21. Appreciates the constructive approach of the Serbian Government to relations with neighbouring countries, since this has enabled substantial progress in both regional cooperation and closer relations with the EU; highlights Serbia's constructive role in the framework of the "Berlin Process" and the Western Balkan six initiative and its connectivity agenda; <b>calls on the Serbian authorities to fully cooperate with the ICTY;</b> underlines the importance of an overarching national strategy for domestic handling of war crimes, backed by adequate resources <b>which should establish an effective witness and victims' protection system and improve regional cooperation in war crimes cases;</b> urges the authorities to continue working on the issue of the fate of missing persons <b>including opening the state; stresses the importance of providing reparations to victims and their families, of vetting public officials in regards to their involvement in human rights abuse and demonstrate its support to RECOM Initiative through concrete steps towards establishment of RECOM;</b> notes that controversies still occur, particularly in the context of different interpretations of recent history.</p>



## **RATIONALE**

### **1. Lack of cooperation with the ICTY in 2015**

On 19 January 2015 the ICTY issued an indictment for contempt of court and an arrest warrant against three officials of the Serbian Radical Party, Petar Jojic, Jovo Ostojic and Vjerica Radeta. The three party officials are charged with threatening, intimidating, bribing and otherwise tampering with the witnesses in the case against Vojislav Seselj. The indictment was unsealed on 1 December 2015. The decision to unseal the document stresses the fact that Serbia has yet to comply with the order to arrest the three individuals.<sup>1</sup>

### **2. Effective witness and victims' protection system**

The key issue in the prosecution of war crimes in Serbia lies in the lack of political will. The Office of the War Crimes Prosecutor deals with political pressure and threats, while government officials provide public support to the convicted individuals and present them as role models to future generations.<sup>2</sup> Evidence and information in the possession of non-governmental organizations relating to the responsibility of high level military officials relating to the war crimes committed in Kosovo face an avalanche of condemnation, denial, and threats coming from the highest levels of political authority.<sup>3</sup> The European Commission's (EC) Serbia 2015 Report also points to the frequent threats and their effects on the prosecution of war crimes in Serbia by saying that „*political pressure undermining the work of the War Crimes Prosecution Office is an issue of concern.*“<sup>4</sup> The ICTY's Annual Report for 2015 stresses: „*The Office of the Prosecutor is concerned by events during the reporting period that have the appearance of improper influence on judicial authorities and pressure to stop war crimes prosecutions.*“<sup>5</sup>

The result of twelve years of trials before the courts in Serbia is only 46 finally convicted individuals, despite the existence of hundreds of unresolved cases. Not a single indictment for war crimes has been issued during 2015. There are still no indictments against high ranking officers, and command responsibility has not yet been applied in a single case. The trend of decreasing prosecutorial activity was subject to criticism of a number of earlier

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<sup>1</sup> ICTY Press Release, Petar Jojić, Jovo Ostojić, and Vjerica Radeta charged with Contempt of Court, 1 December 2015, available [here](#).

<sup>2</sup> Humanitarian Law Center, “Victims Mocked by Government Reception for Lazarević”, press release, December 2015, available [here](#).

<sup>3</sup> Balkan Insight, “Serbia’s Leaders Find New ‘Enemies Within’”, article, February 2015, available [here](#).

<sup>4</sup> EC Serbia 2015 Report, November 2015, p. 19, available [here](#).

<sup>5</sup> ICTY 2015 Annual Report, par. 56, available [here](#).



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European Commission's Serbia progress reports, while the EC Serbia 2015 Report also adds that „*despite consistent efforts by the war crimes jurisdictions, the number of investigations against high level officers has remained low, and courts have continued to pass lenient sentences.*“<sup>6</sup>

The efficient prosecution of war crimes entails adequate witness protection and victims' support. Witness protection system was subject to criticism in the European Commission's 2009, 2010, 2012, 2013 and 2014 Progress Reports and the European Parliament's Serbia 2011, 2012, 2013 and 2014 Progress Resolutions, as well as other relevant international authorities (Council of Europe, UN Committees). The latest EC Serbia 2015 Report reiterates that „*no concrete steps have been taken to address the serious weaknesses in the witness protection system.*“<sup>7</sup> Despite all of this, nothing has been done in Serbia regarding the reform of the witness protection mechanisms, which would provide a secure environment and encouragement for delivering information about the crimes committed. On the contrary, witnesses are being intimidated and deterred from testifying, and there is also an instance of a lawsuit filed against a former protected witness due to alleged threats he sent to the prosecutor for war crimes.<sup>8</sup> The lack of support coming from the institutions, which are responsible for the prosecution of war crimes and the lack of adequate protection by respective bodies, send a message to other potential witnesses that the information they possess is not welcome.

Victims' support during court proceedings is limited to procedural protection and it does not involve expert psychological support. Victims of sexual violence have not been recognized as a particularly vulnerable group and they are often deprived of the support, which is deemed necessary, prior, during and after testifying.

### **3. Regional Cooperation in War Crimes Prosecution**

Bearing in mind the regional nature of the armed conflicts in the former Yugoslavia, cooperation between the institutions responsible for the prosecution of war crimes represents a prerequisite for establishing justice for crimes committed during 1990's. Victims and perpetrators are in different states today and the prosecution is thus impossible without cooperation - transfer of documents, exchange of information, and joint investigations. The proof of this is the operation in which suspected perpetrators of the kidnapping in Štrpci were arrested and which was preceded by cooperation between the prosecutions and police authorities of B&H and Serbia.<sup>9</sup> In order to make regional cooperation in the prosecution of war crimes fruitful, it is necessary to have it improved by amending the existing cooperation agreements in order to establish joint investigation

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6 Ibid.

7 Ibid.

8 Radio Free Europe, “Former protected witness accused”, November 26<sup>th</sup> 2015, available [here](#) (in Serbian language only).

9 Balkan Insight, “Serbia, Bosnia Arrest 15 in War Crimes Swoop”, article, December 5<sup>th</sup> 2014, available [here](#).



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teams and provide information regarding the proceedings initiated against the citizens of the other state and enforcement of the agreements signed. The European Commission emphasizes the importance of the regional cooperation in its Serbia 2015 Report by saying: *„In the area of domestic processing of war crimes, cooperation between the special prosecutors of Serbia and Bosnia and Herzegovina continued on an upward course. ... Cooperation and exchange of information with Croatia and EULEX continued but needs to be stepped up. It is important that these regional cooperation efforts continue to be strengthened.“*<sup>10</sup>

Relevant international organizations, including the UN Human Rights Committee,<sup>11</sup> UN Committee against Torture,<sup>12</sup> UN Committee on Enforced Disappearances,<sup>13</sup> and Council of Europe<sup>14</sup> also point to the problems in the prosecution of war crimes in Serbia and establishing an atmosphere of impunity.

#### **4. Providing the victims and their families with the right to reparations**

The status of civilian victims of war has not been improved in previous year. The rights of victims of human rights violations during the nineties in Serbia are still below the minimum international standards. Retrograde and discriminative Law on Civilian Invalids of War, dating from 1996, is still in force.<sup>15</sup> 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 the psychological consequences of the 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. By explicitly excluding from the circle of potential beneficiaries all victims who suffered violence or were injured by formations that the Republic of Serbia does not consider as an enemy, such as the Yugoslav National Army (JNA), the Yugoslav Army (VJ), the Ministry of the Interior (MUP), or the Republic of Srpska Army (VRS) and their subordinate formations, this law prevents thousands of Serbian citizens, especially ethnic minorities who were targeted by Serbian forces during the 90's, from obtaining any kind of social support from the State.

A recent development in this area particularly reveals the unwillingness of Serbia to tackle this issue. Namely, in December 2014, the Ministry of Labour, Employment, Veteran and

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10 EC Serbia 2015 Report, November 2015, p. 19

11 UN Human Rights Committee, Report of the Human Rights Committee A/66/40 (Vol. I), p. 56, available [here](#)

12 United Nations Committee against Torture, "Concluding observations on the second periodic report of Serbia", June 3<sup>rd</sup> 2015, available [here](#).

13 United Nations Committee on Enforced Disappearances, "Concluding observations on the report submitted by Serbia under article 29, paragraph 1, of the Convention", March 16<sup>th</sup> 2015, available [here](#).

14 Council of Europe Commissioner for Human Rights, Report by Nils Muižnieks, following his visit to Serbia from 16 to 20 March 2015, July 8<sup>th</sup> 2015, available [here](#).

15 Law on Civilian Invalids of War ("Republic of Serbia Official Gazette" no. 52/96), Article 2, available [here](#).



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Social Policy prepared a Bill on the Rights of War Veterans, Disabled War Veterans, Civilian Victims of War and their Family Members. The Bill was prepared without any consultation with victims' associations or other relevant stakeholders. The Bill itself retains the majority of discriminatory provisions from the existing Law and it does not improve the protection of civilian victims of war in any sense.<sup>16</sup> The Ministry has refused to provide the public with the text of the Bill as well as the composition of the working group which participated in its preparation.<sup>17</sup> The text, which was subject to public debate, is in contrast with the obligations that Serbia undertook by Chapter 23 Action Plan, which envisages the harmonization of domestic legal provisions with the notion of a victim in international human rights protection agreements.

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. These cases are governed by the general rules of civil procedure, in which the victim is in the position of a prosecutor who must bear the burden of proof entirely. 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 the 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.

The deficiency of this system has been recognized in the EC Serbia 2015 Report: "as regards the right to seek compensation, there are neither clear rules for compensation in cases of wrongdoing, nor available data on implementation of court cases,"<sup>18</sup> while the EC's report for 2014 finds that "the system of awarding compensation to victims of crime through criminal or civil proceedings is not functional."<sup>19</sup>

The legal framework for victims' right to compensation, as well as the Law on Civilian Invalids of War, has been criticized by the UN Human Rights Committee,<sup>20</sup> the Committee

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16 Humanitarian Law Center, "To Withdraw Discriminatory Bill on Rights of Civilian Victims of War", press release, December 2015, available [here](#).

17 Humanitarian Law Center, "Bill on Rights of Civilian Victims of War Still Hidden from Public Eye", press release, December 2015, available [here](#).

18 EC Serbia 2015 Report, November 2015, p. 10

19 EC Serbia 2014 Progress Report, October 2014, p.42.

20 Report of the Human Rights Committee A/66/40 (Vol. I), p. 56.



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for the Prevention of Torture<sup>21</sup>, the Committee on Enforced Disappearances<sup>22</sup> and the Commissioner for Human Rights of the Council of Europe.<sup>23</sup> Furthermore, the inconsistency with the EU *Acquis* in this area has also been pointed out by the EC Serbia 2015 Report. The report states that "only a few victims of war crime have access to effective compensation under the current legal framework", the same finding as in previous report for 2014.<sup>24</sup>

## 5. Establishing the fate of missing persons

Over 900 bodies of missing Kosovo Albanians have been exhumed from four mass graves found on the territory of the Republic of Serbia. These people were killed during the armed conflict in Kosovo and their bodies were transferred and buried in secret locations in Serbia, in order to conceal evidence of crimes. No one in Serbia has been charged for the concealment of bodies of Kosovo Albanians in the period 1999-2002, while the ICTY has convicted nearly the entire political, military and police leadership of the Republic of Serbia for the concealment of bodies. The ICTY has determined that the Serbian army and police were responsible for the collection of bodies in Kosovo, and that the police were responsible for their concealment.<sup>25</sup>

The laws on the military and military courts (in force during the 90's), as well as official military orders, required that all cases of crimes, discovery of bodies and their treatment be documented by special organs within the military. Irrefutable evidence exists that these cases were indeed documented.<sup>26</sup> Therefore, the archives of the Serbian army and police represent one of the key sources of information about the circumstances relating to the disappearance of civilians in Kosovo, the locations of the remaining mass graves in Serbia and other sites containing mortal remains of victims. These archives have remained secret to date and responsible institutions have been actively opposing all efforts to make them accessible to the public as well as all initiatives directed at the establishing of responsibility of members of the army and police for crimes committed during the armed conflicts in the former Yugoslavia.<sup>27</sup>

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21 United Nations Committee against Torture, "Concluding observations on the second periodic report of Serbia", June 3rd 2015

22 United Nations Committee on Enforced Disappearances, "Concluding observations on the report submitted by Serbia under article 29, paragraph 1, of the Convention", March 16<sup>th</sup> 2015

23 Council of Europe Commissioner for Human Rights, Report by Nils Muižnieks, following his visit to Serbia from 16 to 20 March 2015, July 8th 2015

24 EC Serbia 2015 Report, November 2015, p. 19

25 See ICTY Trial Chamber Judgment in the case of *Vlastimir Djordjevic* (23 February 2011), paras. 553, 985, 988, 2118, 2119 and 2121; ICTY Trial Chamber Judgment in the case of *Sainovic et al* (13 September 2010) paras. 1356 and 1357

26 See ICTY Exhibit No. P1011, Report of the Commission for the collection of materials, on the battlefield sanitization performed on the territory of Kosovo and Metohija 1998-1999, *Sainovic et al Case*

27 Humanitarian Law Center, "Minister of Defence Declared Documents on Activities of the 37th Motorized Brigade of the Yugoslav Army in Kosovo Top Secret", press release, June 2015, available [here](#).



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In addition, Serbia has still not adopted a law on missing persons, despite the constant demands of associations of families of the missing and examples from neighboring countries where such a law has been adopted (Bosnia and Herzegovina, Kosovo).

## 6. Vetting of public officials

Institutional reforms in the form of lustration and vetting have not been carried out in Serbia. As a result, many members and officers of the Serbian police and military who had an important role in organizing, conducting and concealing war crimes committed in Croatia, and Bosnia-Herzegovina, still hold positions in the institutions and actively obstruct investigations into war crimes, undermining the efforts to re-establish the rule of law.

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 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 at present require removal from service of a person against whom criminal proceedings are taking place.<sup>28</sup>

The Law on Lustration, which was supposed to carry out an assessment of the eligibility of state officials to hold top government positions, expired in 2013, without ever having been applied.<sup>29</sup>

Although progress reports on Serbia do not include lustration and vetting as separate categories, 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 – e.g. “no concrete steps have been taken to address the serious weaknesses in the witness protection system”<sup>30</sup> “law enforcement authorities have been reluctant fully to investigate [witness intimidation] allegations within their own ranks,”<sup>31</sup> “the lack of openness and transparency of recruitment procedures and career development within the police remain matters of concern.”<sup>32</sup> Reports from other relevant international institutions point out to this problem explicitly: “the Committee recommends that the State party adopt explicit legal provisions that expressly establish: (a) the suspension, for the duration of the investigation, of any State agents, civilian or military, suspected of having committed an offence of enforced disappearance; and (b) a mechanism

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28 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)

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

30 EC Serbia 2015 Report, November 2015, p. 19

31 EC Serbia 2009 Progress Report, October 2009, p. 20

32 EC Serbia 2010 Progress Report, November 2010, p. 52



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that ensures that law enforcement or security forces, whether civilian or military, whose members are suspected of having committed an enforced disappearance do not take part in the investigation.”<sup>33</sup>

## **7. Concrete steps towards establishment of RECOM**

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 Yugoslavia in the period 1991-2001. The RECOM Initiative has gained the support of more than 2,000 organizations and individuals from all the successor states of the former Yugoslavia, gathered in the Coalition for RECOM. The RECOM Initiative has also been supported by the presidents of Serbia, Croatia, Kosovo, Montenegro and members of the Presidency of Bosnia and Herzegovina. In 2013 the President of the Republic of Serbia Tomislav Nikolić appointed a judge of the Court of Appeals in Belgrade Siniša Važić as his representative to the Regional Expert Group for RECOM. In July 2015 the Serbian Government officially supported the establishment of RECOM<sup>34</sup>. The final phase of the RECOM Initiative is the ratification of its Statute by all post-Yugoslav countries.

The Coalition for RECOM insists on the Presidents and Presidency members in the successor countries of the former Yugoslavia, who have given declaratory statements of support to the establishing of RECOM, to take concrete measures directed at the establishing of this body.

Considering Serbia’s crucial role during the wars of the 90’s, as well as its publicly declared standpoints that it will continue to pursue reconciliation in the Western Balkans region,<sup>35</sup> Serbia should effectuate this standpoint by taking the lead in ratifying the RECOM Statute.

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 five years, in the section dedicated to the issues of regional cooperation and good-neighborly relations.<sup>36</sup>

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33 UN Committee on Enforced Disappearances, “Concluding observations on the report submitted by Serbia under article 29, paragraph 1, of the Convention”, March 16th 2015, p.3.

34 Government of the Republic of Serbia, “Government backs initiative to establish facts on war crimes”, press release, July 6<sup>th</sup> 2015, available at: <http://www.srbija.gov.rs/vesti/vest.php?id=109929>

35 Government of the Republic of Serbia, “Policy of reconciliation to be continued despite attack in Srebrenica”, July 13<sup>th</sup> 2015, <http://www.srbija.gov.rs/vesti/vest.php?id=110126>

36 EC Serbia 2015 Report, November 2015; EC Serbia 2014 Progress Report, October 2014; EC Serbia 2013 Progress Report, October 2013; EC Serbia 2012 Progress Report, October 2012; Analytical Report - accompanying the document Commission Opinion on Serbia's application for membership of the European Union, October 2011.