



Humanitarian Law Center

TRANSITIONAL JUSTICE IN SERBIA

in the period from 2013 to 2015



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Introduction

The aim of the report „Transitional Justice in Serbia in the period from 2013 to 2015“ is to inform the domestic and international publics on the progress of the process of establishing transitional justice in Serbia.¹

Transitional justice is focused on the identification and recognition of responsibility for human rights violations in the past, care for victims and the conducting of comprehensive reforms which will guarantee non-repetition of crimes. Mechanisms for establishing transitional justice cover the following aims: to determine criminal responsibility; to acknowledge victims by providing material reparations and symbolic gestures which will help preserve memories and restore dignity to victims; to determine and publicly state the facts about human rights violations; and to conduct reforms of institutions which are responsible for human rights violations, including checking the wartime engagements of state officials (*vetting*) and instituting a lustration process.

The multiannual monitoring of progress in establishing transitional justice shows that Serbia is making very slow progress in applying transitional justice mechanisms regarding the human rights violations during the armed conflicts of the 1990s. The key obstacle is the lack of political will for a comprehensive, honest and institutionalized confrontation with the legacy of the 1990s war. In contradiction to the declared dedication of state representatives to the reconciliation processes in the region of former Yugoslavia, concrete measures in establishing transitional justice are mainly lacking or do not receive sufficient support from the political actors. Rarely applied mechanisms, like war crimes trials and searches for the missing persons, are the result of requests made by the international community, and are in practice under the strong influence of the political authorities and their ideologies. The real relationship of the representatives of the political elite towards the need to establish justice regarding the crimes of the 1990s is probably best illustrated by their public support to convicted war crimes perpetrators and individuals about whom there are serious indications of involvement in war crimes.

Transitional justice is an important element of the process of repairing and rebuilding war-damaged relationships between the successor states of former Yugoslavia. Apart from the evident progress in restoring political, economic and cultural bonds which started at the beginning of 2000 with the fall of Slobodan Milošević, opposing views of events from the 1990s and their legacy still remain the biggest burden to the reconciliation processes in former Yugoslavia. Especially burdensome are the issues of a humanitarian character – the large number of refugees and displaced persons, and the survivors and families of victims who are mostly without significant support from the institutions, as well as the 10,000 missing persons whose bodies are still being searched for. Processing of war crimes perpetrators before domestic institutions has also failed to meet the expectations of the regional public as regards efficiency and establishing justice for victims.

Finally, one of the important features of the post-conflict process of trust and reconciliation in the region are the high expectations entertained by war-affected communities in Bosnia and Herzegovina, Croatia and Kosovo as regards the institutions of Serbia, since Serbia was the most important player in the wars in former Yugoslavia, both in the number of armed conflicts it took part in and the extent of the crimes committed by the forces under its direct or indirect control. Therefore, the lack of political will of the elite in Serbia to open a broad social dialogue on the role of Serbian institutions in initiating the conflict and in the commission of crimes in former Yugoslavia is one of the key reasons for the slow process of reconciliation in the region.

¹ In cooperation with partner organizations, the HLC had previously published five periodical reports which gave comparative views of transitional justice in all successor states of former Yugoslavia for the period 1999-2013.

The integration process of countries from this region into the European Union is a new “strong boost” to the process of facing the legacy of the past in the region of former Yugoslavia. Although the European Union’s requests directed towards the post-Yugoslav countries do not cover some of the issues essential for addressing the legacy of crimes during the 1990s (reparations, vetting and so on), the reforms conducted by these countries on account of their aspirations to become members of the Union, have nevertheless ensured an important framework for the process of establishing transitional justice. Especially important are reforms in the field of the rule of law, contained in a separate negotiating chapter titled “Judiciary and Fundamental Rights” (Chapter 23).

After a thorough review of the compliance of Serbian legislation with the regulations of the European Union regarding Chapter 23 (*screening process*), the European Commission estimated that, regarding the establishment of criminal justice, Serbia has an adequate legal framework for the prosecution of war crimes, but that it is necessary to eliminate the “perception of impunity for war crimes”.

Recommendations for efficient prosecution of war crimes include the implementation of adequate investigation and war crimes prosecution, proportionality of sentences, equal treatment of all suspects regardless of their rank, improving witness support, secrecy of investigation, provision of adequate resources to the relevant institutions, as well as procedural protection of victims during criminal proceedings. Having released the findings and recommendations of the European Commission, the competent institutions in Serbia have prepared an action plan for their implementation. The Action Plan for Chapter 23 contains 35 measures to improve the prosecution of war crimes and the position of victims during these proceedings.

Findings and recommendations regarding other transitional justice mechanisms are lacking.

Summary

In the period 2013-2015, Serbia did not make any significant progress towards the establishment of transitional justice processes in relation to the crimes committed during the 1990s. Some modest, or rather, symbolic, progress was made with regard to certain transitional justice mechanisms (war crimes trials, search for missing persons), whilst the other mechanisms either remained off the government institutions' agenda, or produced adverse effects for victims and society as a whole.

War crimes trials were characterised by multiple, long-standing problems that have continued to hinder establishing criminal justice for crimes in the past. The Office of the War Crimes Prosecutor was highly inefficient. The downward trend in the number of indictments from previous years continued into the 2013-2015 period, with fewer indictees and prosecutions focusing solely on direct perpetrators. No charges were brought against any individuals who held high military, police or political office during the conflicts. No indictments were filed for crimes against humanity or for command responsibility. No discernible progress was made towards establishing the role in past crimes of individuals who currently hold high office in Serbia or have close ties with the government. The Office of the War Crimes Prosecutor continued to be understaffed and under-resourced. The Government of the Republic of Serbia prepared its Draft Strategy for the Prosecution of War Crimes in Serbia for the period 2016-2020.

For the first time ever, there were plea agreements in war crimes cases. Also, an agreement on collaboration with justice entered with a defendant resulted in the tracking down of a clandestine mass grave.

Regional cooperation with prosecutors' offices contributed to the opening of a significant number of cases by the Office of the War Crimes Prosecutor. But the persistent refusal by the Office of the War Crimes Prosecutor to transfer several cases against BiH and Croatian citizens to the prosecutors' offices in these two countries, in defiance of the signed agreements, had an adverse impact on regional cooperation.

War crimes trials have lasted long, largely because of numerous retrials and frequent transfers of judges between panels. The excessive length of proceedings has been the reason why victims and witnesses are increasingly refusing to take part in them. The war crimes departments' policy of handing down too light sentences without giving reasons for such judgments has been criticised by the legal community. Several war crimes proceedings are still being conducted by the courts of general jurisdiction, despite being plagued by numerous problems which raise questions about their fairness.

Witness protection in domestic war crimes cases has remained one of the greatest challenges for the Serbian judiciary. No effort has been made to address the long-standing problems in the implementation of the Witness Protection Programme. The provision of support and protection to victims and witnesses in war crimes cases has been confined to a limited time during testimony, and has consisted of partial measures only, which cannot meet the needs of the victims and witnesses.

War crimes prosecution has continued to lack political support, and the institutions responsible for the prosecution of war crimes have been subjected to pressure and received threats from the highest levels of government.

Information concerning domestic war crimes trials have rarely reached the general public. The reasons can be found in the lack of interest by media outlets to report on the trials, the fact that courts lack a systematic approach to circulating information among the general public, and restricted public access to courts and court records.

On a positive note, the first ever National Strategy for the Prosecution of War crimes has been a step forward, and its implementation can remedy most of the above problems and enhance the efficiency of trials.

Numerous legal and institutional barriers have impeded victims' effective access to **material reparations**. Serbian institutions have not been committed to fulfilling their obligation to make reparations to victims in accordance with international standards. The "Program for the return of refugees and displaced Bosniaks from the municipality of Priboj in the period 1991-1999" has been a notable exception. Court proceedings for damages have been lengthy and characterised by courts' efforts to downplay the state's responsibility for past crimes. Administrative proceedings for the realization of the right to reparations have been regulated by the retrograde and discriminatory Law on the Rights of Civilian Invalids of War, which deprives a large number of victims of the right to seek reparation. The relevant ministry has initiated the drafting of a new law on civilian victims of war, but has not taken into account the views and comments provided by victims' associations and non-governmental organisations in the drafting process. As a result, the draft version of the new law falls short of the required basic standards in this area, and of meeting Serbia's international victim-protection commitments.

Serbia continues to be a country hosting a large number of **refugees and displaced persons**. 560 of them, mostly internally displaced persons from Kosovo, still live in collective centres. Solving the housing needs of several hundred of the most vulnerable refugees and displaced persons has been made possible by Serbia's participation in the Regional Housing Programme. A new strategic framework aimed at addressing the problems of refugees and displaced persons that Serbia adopted in the reporting period is not, according to refugees association, comprehensive enough, as it disregards certain categories of this population.

When it comes to **symbolic reparations**, ethnically biased commemorations of events from the 1990s have prevailed, as well as denial of crimes and the absence of efforts to build and nurture a culture of remembrance for the victims. Civil society organisations have continued to preserve actively the memory of the sufferings of victims belonging to other ethnic communities.

Most of the initiatives and activities aimed at **truth-seeking and truth-telling** about past human rights violations have come from non-governmental organisations, including an initiative for the creation of a comprehensive register of human losses. A significant number of state officials from the countries that once comprised Yugoslavia have backed the Initiative for establishing RECOM, but no concrete steps towards its establishment have been taken.

The search for missing persons is progressing slowly, owing to the absence of an adequate legal framework and the inaction by the competent authority. A law which would have laid down the legal status of the families of missing persons was not passed, so they continue to be one of the most vulnerable categories in society.

The military and police **archives**, which contain materials that can assist in determining the facts about the armed conflicts of the 1990s and identifying the locations of grave sites, were inaccessible to interested individuals, non-governmental organisations and the general public. The competent institutions have often hindered access to the documents pertaining to the armed conflicts in the former Yugoslavia.

Thus far, Serbia has not undertaken the **institutional reforms** which would introduce a policy of screening the wartime backgrounds of candidates for security sector jobs and political office (vetting), and removing from public office persons who were involved in human rights violations during the armed conflicts (lustration). Only one case is known of a government official having been suspended from office on account of being under investigation for war crimes in Kosovo.

Transitional justice themes are now included into higher education curricula, although to a less than significant degree, but are altogether absent from the **teaching/learning materials** designed for secondary and primary school pupils. The education for youth on transitional justice mechanisms and judicial truth about war crimes in the former Yugoslavia is, for the most part, provided by non-governmental organisations, through courses and lectures of various formats.

1. Criminal justice

In the period 2013-2015, the process of ensuring criminal justice for war crimes committed during the 1990s was sluggish and beset by serious problems which significantly hampered the efforts to attain justice for past wrongs. The institutions responsible for processing war crimes lacked adequate social and political support in Serbia, and were subjected to political pressure and threats from government at various levels. The Office of The War Crimes Prosecutor continued to perform inefficiently. The main characteristic of judicial proceedings against those accused of war crimes was their long duration and the repetition of proceedings. Also, despite continuing criticism from international and domestic institutions, witness protection mechanisms did not function at all well.

1.1. Findings of international bodies

Several international organisations and institutions have agreed that the key impediment to the implementation of criminal justice for past war crimes is the lack of efficiency in the prosecution of war crimes.

The United Nations (UN) Committee Against Torture has urged Serbia to ensure that all persons suspected of having committed war crimes and crimes against humanity, including senior and mid-level officials, are prosecuted, that allegations of crimes are promptly, efficiently and impartially investigated, that witnesses and their families are protected in line with the highest standards of witness protection, and

that the human and material resources of the Office of the War Crimes Prosecutor (OWCP) are strengthened.²

The UN Committee on Enforced Disappearances has noted the complete impunity for the concealment of the bodies in mass graves in Serbia, and recommended that Serbia conduct urgent investigations into all cases of enforced disappearances involving agents of the state, and punish those found responsible in accordance with the gravity of their acts.³ The Committee has also recommended that allegations of intimidation against witnesses be promptly, thoroughly and impartially investigated and the alleged perpetrators punished.⁴

In a report following his visit to Serbia in March 2015, **the Commissioner for Human Rights of the Council of Europe** criticised the political pressures on and verbal threats against the OWCP, the lack of specialised training in international humanitarian law for members of the judiciary, and inadequate witness protection.⁵

The European Parliament (EP) resolutions on Serbia stressed the importance of strengthening domestic war crimes proceedings and regional cooperation in the processing of war crimes, securing an adequate legal framework, and the credibility and professionalism of and adequate resources for the witness protection programme.⁶ The resolution for 2014 calls on Serbia to “consider its Law on the Organisation and Jurisdiction of Government Authorities in War Crimes Proceedings”, and the Resolution for 2015 reiterated the call. This was the EP response to the

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- 2 UN Committee against Torture, Concluding observations on the second periodic report of Serbia, 3 June 2015, paragraphs 10, 11 and 13, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fSRB%2fCO%2f2&Lang=en, accessed 5 February 2016.
 - 3 UN Committee on Enforced Disappearances, Concluding observations on the report of Serbia, submitted in accordance with Article 29, para. 1 of the Convention, 12 February 2015, paragraphs 13 and 14, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CED%2fC%2fSRB%2fCO%2f1&Lang=en, accessed 5 February 2016.
 - 4 Ibid, paragraph 18.
 - 5 Report by Nils Muižnieks, Council of Europe Commissioner for Human Rights, following his visit to Serbia, from 16 to 20 March 2015, paragraphs 17, 19, 23 and 24, available at: http://www.coe.int/en/web/commissioner/country-report/serbia/-/asset_publisher/mLRlkOZweIs0/content/serbia-impunity-for-war-crimes-discrimination-and-lack-of-media-freedom-hamper-human-rights-progress?_101_INSTANCE_mLRlkOZweIs0_languageId=sr_ME, accessed 5 February 2016.
 - 6 European Parliament resolution of 16 January 2014 on the 2013 progress report on Serbia (2013/2880(RSP)), paragraph 17, available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2014-0039+0+DOC+XML+V0//EN>, European Parliament resolution of 11 March 2015 on the 2014 Progress Report on Serbia (2014/2949(RSP)), paragraphs 17 and 36, available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2015-0065+0+DOC+XML+V0//EN>, European Parliament resolution of 4 February 2016 on the 2015 report on Serbia (2015/2892(RSP)), paragraphs 25 and 26, available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2016-0046+0+DOC+XML+V0//EN>, accessed 5 February 2016.

renewed controversy regarding the attempts of the Republic of Serbia, in accordance with the principle of universal jurisdiction for the prosecution of war crimes laid down in Article 3 of the said law, to prosecute suspected perpetrators who are unavailable to it.

The three latest **European Commission** (EC) reports on the progress made by Serbia towards meeting the criteria for accession to the European Union, identified the paucity of indictments, impunity of senior army and police officials, lenient penal policy and failure to address the serious problems in the witness protection system as the key challenges in the prosecution of war crimes in Serbia.⁷ The 2014 report made explicit mention of the practice of anonymising judgments in war crimes cases as a particular problem⁸, while the 2015 report mentions the cases of judges dealing with war crimes being reassigned to other cases during the proceedings and before their mandate has formally expired⁹. The 2015 progress report also recommends that Serbia should adopt and implement an overarching national strategy for domestic war crimes processing along with the corresponding prosecution strategy, and for the first time since 2008 has expressed concern over the political pressures directed against the OWCP.¹⁰

All the European Commission's reports highlight the importance of regional cooperation with Bosnia and Herzegovina, Croatia and Kosovo, calling on Serbia accelerate it.

Most of the foregoing problems were also recognised in one of the key documents for Serbia's accession negotiations, the **Screening Report on Chapter 23**¹¹, published in late July

2014. While stressing that Serbia has in place an adequate legal framework for processing war crimes and a good and effective cooperation with prosecutorial authorities in the region and the International Criminal Court for the Former Yugoslavia (ICTY), the report states that "the performance as regards war crimes' trials requires particular attention".¹² The report formulates five recommendations on how to ensure efficient war crimes processing.

In a report submitted to the UN Security Council in July 2015, the ICTY pointed out the slow pace and limited extent of war crimes processing in Serbia, especially as regards senior and mid-level military and police officials.¹³

1.2. Political pressure

Political discourses on war crimes prosecution have often descended into open threats to the members of the OWCP. Furthermore, representatives of government institutions often express public support for individuals suspected of being responsible for war crimes and gross human rights violations during the armed conflicts in the former Yugoslavia.

In January 2015, only a day after the publication of the allegations linking the Chief of General Staff of the Army of Serbia, Ljubiša Diković, with war crimes in Kosovo¹⁴, Serbian President Tomislav Nikolić received Diković and expressed support for him. A month later, the Serbian President awarded Diković with the Order of the White Eagle "for extraordinary merits in developing the defence system and commanding military units"¹⁵ At the same time, Nikolić warned the chief War Crimes Prosecutor, Vladimir

7 European Commission, 2013, 2014 and 2015 progress reports on Serbia, available at: http://ec.europa.eu/enlargement/news_corner/key_documents/index_en.htm?key_document=0801262488184a89.08012624887d384d, accessed 5 February 2016.

8 European Commission, Serbia Progress Report, October 2014, pp. 42-43. available at: http://ec.europa.eu/enlargement/pdf/key_documents/2014/20140108-serbia-progress-report_en.pdf, accessed 5 February 2016.

9 European Commission, Serbia 2015 Report, November 2015, p. 19, available at: http://ec.europa.eu/enlargement/pdf/key_documents/2015/20151110_report_serbia.pdf, accessed 5 February 2016.

10 Ibid.

11 European Commission, Screening Report Serbia, Chapter 23 – Judiciary and Fundamental Freedoms, 15 May 2014, available at: http://ec.europa.eu/enlargement/pdf/key_documents/2014/140729-screening-report-chapter-23-serbia.pdf, accessed 1 February 2016.

12 Ibid, p. 30.

13 Twenty-second annual report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, 31 July 2015, available at: http://www.icty.org/x/file/About/Reports%20and%20Publications/AnnualReports/annual_report_2015_en.pdf, accessed 20 March 2016.

14 HLC, Dossier "Rudnica", 29 January 2015, available at: <http://www.hlc-rdc.org/?p=28016&lang=de>.

15 Decree on the award on the occasion of the Statehood Day, 10 February 2015, available (in Serbian) at: <http://www.predsednik.rs/prescentar/saopstenja/ukazi-o-odlikovanju-povodom-dana-drzavnosti>, accessed 20 January 2016.

Vukčević, to “beware of what he digs up in Serbia”¹⁶, adding that Vukčević was “not an organ of the Hague Tribunal and was not appointed just to attack Serbia”¹⁷, and that he should “think over whether the accomplishment of a task given to him by someone else is worth all those lies he has been telling”.¹⁸

After the arrest of the suspects in the *Štrpci* case had been announced, Justice Minister Nikola Selaković said that it appeared that there was no justice for Serbian victims and that “citizens of Serbian ethnicity rightly expect to see even greater readiness to prosecute those suspected of committing war crimes against the Serbian population”.¹⁹

Milovan Drecun, the Chairman of the National Assembly Committee on Kosovo-Metohija, has gone on record as accusing Deputy War Crimes Prosecutor Bruno Vekarić of having been unlawfully appointed to the post.²⁰ In December 2014, he said that he and another nine members of parliament had filed a criminal complaint with the Office of the Organized Crime Prosecutor against the State Prosecutorial Council for appointing Vekarić as Deputy Prosecutor in 2009²¹. In late December 2014, the complaint was dismissed.²²

Another example of undue pressure from the executive branch on the OWCP was the initiative of the Ministry of

Justice for amending the Law on the Public Prosecution Service so as to cut short the term of office of the then War Crimes Prosecutor Vladimir Vukčević before the expiry of the six-year period for which he was appointed.²³ This attempt failed, presumably owing to pressure from the international community. Instead of removing Vukčević, amendments were made to the Law on the Organisation and Jurisdiction of State Authorities in War Crimes Proceedings to allow Vukčević to serve his full term of office.²⁴

1.3. Institutional framework

Institutions specialised in dealing with war crimes in Serbia were set up pursuant to the Law on the Organisation and Jurisdiction of Government Authorities in War Crimes Proceedings²⁵ (hereinafter referred to as the Law on War Crimes Proceedings), which was adopted in 2003. According to this law, these institutions include the Office of the War Crimes Prosecutor, the Department of War Crimes of the Higher Court in Belgrade, the Department of War Crimes of the Court of Appeal in Belgrade, the War Crimes Investigation Service within the Ministry of the Interior, the Witness Protection Unit within the Ministry of the Interior, the Service for the Support and Assistance to Victims and Witnesses of the Department of War Crimes of the Higher Court in Belgrade. There is also a special detention unit at the District Prison in Belgrade.

16 “Orkestar za rušenje Vučića odavno se uštimovalo” [Orchestra for overthrowing Vučić has been tuning up for a long time], *Politika*, 15 February 2015, available (in Serbian) at: <http://www.politika.rs/scc/clanak/319151/Orkestar-za-rusenje-Vucica-odavno-se-ustimovao>, accessed 20 January 2016.

17 “President again criticizes war crimes prosecutor”, *B92*, 3 March 2015, available at: http://www.b92.net/eng/news/politics.php?yyyy=2015&mm=03&dd=04&nav_id=93370, accessed 20 January 2016.

18 “Nikolić: Vekarić iznosi neistine o meni” [Nikolić: Vekarić is telling lies about me], *N1*, 3 April 2015, available (in Serbian) at: <http://rs.n1info.com/a48791/Vesti/Nikolic-o-Vekaricu-Seselju.html>, accessed 20 January 2016.

19 “Selaković: Sada i o srpskim žrtvama” [And now about the Serbian victims], *N1*, 5 December 2014, available (in Serbian) at: <http://rs.n1info.com/a17421/Vesti/Selakovic-Sada-i-o-srpskim-zrtvama.html>, accessed 20 January 2016.

20 “Vekarić nezakonito na funkciji” [Vekarić unlawfully elected], *B92*, 20 November 2014, available (in Serbian) at: http://www.b92.net/info/vesti/index.php?yyyy=2014&mm=11&dd=20&nav_id=926210, accessed 20 January 2016.

21 “Drecun: krivična prijava zbog izbora Vekarića” [Drecun: criminal complaint over Vekarić’s election], *Blic*, 18 December 2014, available (in Serbian) at: <http://www.blic.rs/vesti/politika/drecun-krivica-prijava-zbog-izbora-vekarica/54x0kq2>, accessed 20 January 2016.

22 Reply of the Office of the Prosecutor for Organised Crime to the HLC’s request for access to information of public importance PI 23/16 of 30 March 2016.

23 Law on Amendments to the Law on Public Prosecution Service, Official Gazette of the RS, Nos. 116/2008, 104/2009, 101/2010, 78/2011 – other law, 101/2011, 38/2012 - CC decision, 121/2012, 101/2013, 111/2014 - CC decision, 117/2014, Article 89, adopted on 29 October 2014.

24 “Vukčević ne ide u penziju, ostaje tužilac do kraja mandata” [Vukčević is not retiring, he remains in office until the expiry of his term], *Blic*, 21 January 2015, available (in Serbian) at <http://www.blic.rs/vesti/hronika/vukcevic-ne-ide-u-penziju-ostaje-tuzilac-do-kraja-mandata/lgflk4t>, accessed 19 March 2016; Law on Amendments to the Law on Organisation and Jurisdiction of Government Authorities in War Crimes Proceedings, Official Gazette of the RS, Nos. 67/03, 135/04, 61/05, 101/07, 104/09 and 101/11 other law, 6/15, Article 5, adopted on 21 January 2015.

1.3.1. Strategy for the prosecution of war crimes in Serbia

Over the last twelve years (2003-2015), the institutions specialised in the investigation, prosecution and adjudication of war crimes cases in Serbia have operated without any strategic framework, despite the complexity of the subject matter and the institutional framework, and despite the huge backlog of cases. It was only in 2015 that Serbia, spurred by the European Union (EU) and the Humanitarian Law Center (HLC), began to develop a national strategy for the prosecution of war crimes.

In April 2015, the HLC presented its Model Strategy for the Prosecution of War Crimes in Serbia,²⁶ which is based on a thorough analysis of the performance of all institutions responsible for dealing with war crimes cases and an inclusive consultation process which has involved members of the judiciary and relevant ministries²⁷, lawyers, victims' representatives in war crimes cases, legal experts and representatives of Serbian non-governmental organizations and international organisations operating in Serbia. Even though the HLC had been pushing for the adoption of a comprehensive national strategy from the very beginning of the drafting of the Action Plan for Chapter 23 (August 2014), the strategy was incorporated only in the third version of this document (April 2015).

Under the Action Plan, the Ministry of Justice in April 2015 set up a working group tasked with drafting the national strategy for the prosecution of war crimes²⁸,

which comprised representatives of the OWCP, Courts of Appeal in Belgrade and Novi Sad, Higher Court in Belgrade, Witness Protection Unit, War Crime Investigation Service, Ministry of Justice, Bar Association, Faculty of Law in Novi Sad, Embassy of the Republic of Serbia to the Netherlands and Institute for Criminological and Sociological Research of Belgrade.²⁹ In December 2015, the Ministry of Justice released the Draft National Strategy for the Prosecution of War Crimes for the period 2016-2020, and opened a public consultation which lasted until 31 December 2015.³⁰

According to the Draft, the national strategy is designed to provide a strategic framework for a "significant enhancement of the efficiency of war crimes investigation and prosecution in Serbia".³¹ The Draft Strategy sets out a number of specific activities aimed at increasing the efficiency of war crimes prosecutions in Serbia, including prioritisation of cases at the OWCP, improvements in the normative framework, strengthening the material and human resources of the institutions specialised in the investigation of war crimes, witness protection, victim support, etc.

At the same time, several participants in the public consultation highlighted some serious shortcomings of the Draft Strategy.³² In the view of the ICTY and HLC, two major shortcomings are that a very important element – the strengthening of the capacity of the OWCP (increase in the number of deputy prosecutors and assistant prosecutors) – has been left out of the Strategy and moved to the Action Plan for Chapter 23, and that the implementation of the Strategy has been linked to the austerity measures adopted by the

25 Law on the Organisation and Jurisdiction of Government Authorities in War Crimes Proceedings, Official Gazette of the RS, Nos. 67/2003, 135/2004, 61/2005, 101/2007, 104/2009, 101/2011 – other law, and 6/2015).

26 HLC, "Model Strategy for the Prosecution of War Crimes committed during and in relation to the Armed Conflicts in the Former Yugoslavia", 23 April 2015, available at <http://www.hlc-rdc.org/?p=28881&lang=de>.

27 The Serbian Ministry of Justice declined the HLC's invitation to take part in the drafting of the Model Strategy.

28 Bruno Vekarić, "Why is the Strategy for the Prosecution of War Crimes important for Serbia?", opinion piece, Bulletin *through ACCESSION towards JUSTICE*, HLC, December 2015, available at: http://www.hlc-rdc.org/wp-content/uploads/2015/12/Bilten-throughACCESSION_12_3.pdf.

29 Ministry of Justice of the Republic of Serbia, National Strategy for the Prosecution of War Crimes for 2016-2020, Draft, November 2015, available (in Serbian) at: <http://www.hlc-rdc.org/wp-content/uploads/2016/05/National-Strategy-for-the-Prosecution-of-War-Crimes-draft-November-2015.pdf>, accessed 20 March 2016.

30 Ibid.

31 Ibid, p. 8.

32 See the HLC's and ICTY's comments in the report of the Ministry of Justice following the public consultation: Detaljan pregled stepena i načina implementacije sugestija pristiglih u toku javne rasprave" [A detailed overview of the level and manner of implementation of the suggestions received during the public consultation], available (in Serbian) at: <http://www.mpravde.gov.rs/obavestenje/11776/nacrtnacionalne-strategije-za-procesuiranje-ratnih-zlocina-u-republici-srbiji-za-period-od-2016-2020.php>, accessed 15 February 2016.

Serbian Government.³³ Also, the Draft Strategy does not specify with sufficient precision how some of the activities will be implemented i.e. which institutions are responsible for their implementation and what indicators will be used to measure the success of their implementation.³⁴ In February 2016, the Government of Serbia adopted the final text of the National Strategy for the Prosecution of War Crimes in Serbia for the period 2016-2020.³⁵

1.4. Uncovering and investigation of war crimes

Investigation into war crimes is the responsibility of the OWCP and the War Crimes Investigation Service run by the Serbian Ministry of the Interior. The performance of the two institutions in the period 2013-2015 was marked by lack of efficiency, avoidance of cases involving high-ranking perpetrators and politically sensitive cases, and reluctance to apply the doctrine of command responsibility and charge persons with crimes against humanity.

As regards investigations into war crimes, the Screening Report for Serbia on Chapter 23 recommends the Government of Serbia to undertake the following steps: 1) ensure that all allegations are properly investigated and subsequently prosecuted and tried; 2) ensure equal treatment of suspects, including high-level officers; 3) ensure the confidentiality of the investigation, including witness and informant testimonies.³⁶

In order for these recommendations to be implemented, the Action Plan for Chapter 23 envisaged 13 activities³⁷ and set a deadline of 31 December 2015 for their completion. However, none of the recommendations were fully implemented within this deadline (see Appendix 1).

The abovementioned measures are aimed at contributing to the efficiency of the investigation of all high-priority cases defined as such in the prosecution strategy, and ensuring a full and strict compliance with the international standards relating to support and assistance for victims in war crimes cases³⁸, through “equal treatment of all suspects³⁹ and ensuring the confidentiality of investigations”⁴⁰.

1.4.1. Office of the War Crimes Prosecutor

In the 2013-15 period, the OWCP faced a significant lack of human and material resources. While the Action Plan for Chapter 23 was the first document ever to offer some specific activities for strengthening the OWCP’s capacity, these activities had not been implemented by the end of 2015.

Judging by the number of indictees and the nature of the cases opened, the OWCP was highly inefficient in the 2013-15 period. The cooperation with its counterparts in the region, however, despite certain problems encountered, has helped the OWCP to open several cases.

i. Jurisdiction

The OWCP has jurisdiction over war crimes committed in the former Yugoslavia since 1 January 1991, at both first instance and appellate levels. Crimes within its jurisdiction include genocide, crimes against humanity, war crimes against civilians, war crimes against the wounded and sick, war crimes against prisoners of war, planning and instigating genocide and war crimes, unlawful appropriation of personal property of the killed, destruction of cultural property, failure to prevent crimes against humanity and property protected under international law, and assistance to

33 “Ministarstvo pravde krije kritike iz Haga” [Ministry of Justice keeps The Hague’s criticism secret], Danas, 16 February 2016, available (in Serbian) at: http://www.danas.rs/danasrs/drustvo/ministarstvo_pravde_krije_kritike_iz_haga_.55.html?news_id=316069&, accessed 22 March 2016.

34 Ibid.

35 Government of the Republic of Serbia, National Strategy for the Prosecution of War Crimes for the period 2016-2020, 20 February 2016, available at: <http://www.mpravde.gov.rs/vest/12116/-nacionalna-strategija-za-procesuiranje-ratnih-zlocina-.php>, accessed 20 March 2016.

36 European Commission, Screening Report Serbia, Chapter 23 – Judiciary and Fundamental Freedoms (2014), p. 27.

37 Republic of Serbia, Negotiation Group for Chapter 23, Action Plan for chapter 23, draft, September 2015, activities 1.4.1, 1.4.3. and 1.4.5, available at: <http://www.mpravde.gov.rs/files/Action%20plan%20Ch%202023%20Third%20draft%20-%20final1.pdf>, accessed 1 February 2016.

38 Ibid: results expected from the implementation of Recommendation 1.4.1.

39 Ibid: results expected from the implementation of Recommendation 1.4.3.

40 Ibid: results expected from the implementation of Recommendation 1.4.5.

crimes as accessory after the fact.⁴¹ Since its establishment, the OWCP has been working without a prosecution strategy which would, against the background of a huge backlog of cases, set the criteria for prioritising cases for investigation and a more efficient use of internal resources. 2015 saw the drafting of a first-ever prosecution strategy aimed at enhancing the efficiency of the investigative and indictment processes.⁴² The prosecution strategy will define the criteria for selecting high-priority cases, focus on the investigation and prosecution of those who bear the greatest responsibility for past war crimes, irrespective of their rank, define measures to improve witness protection and victim assistance system, highlight the need for strengthening the OWCP capacity and for stepping up inter-institutional and regional cooperation.⁴³ The prosecution strategy is an internal document. The OWCP expects that it will be adopted in early 2016.⁴⁴

ii. Capacity

The War Crimes Prosecutor manages the work of the OWCP. According to the State Prosecutorial Council's decision on the number of deputy public prosecutors, each chief prosecutor should be assisted by eight deputy prosecutors.⁴⁵ The internal staffing plans of prosecutorial offices envisage that each deputy prosecutor should have an assistant prosecutor. However, the OWCP staff currently includes only six deputy prosecutors, four assistant prosecutors, two investigators and two advisors.⁴⁶ The OWCP considers the current number of deputy prosecutors to be inadequate for the jobs and tasks that fall within its remit and that complex

cases require two prosecutorial assistants. The Action Plan for Chapter 23 envisages that the number of OWCP staff should gradually increase by the end of 2018, until reaching the planned number of deputy prosecutors, assistant prosecutors and advisors. At the end of December 2015, the competitive procedure for recruiting two deputy War Crimes Prosecutors to fill the vacancies was underway.⁴⁷

When in 2012 the OWCP was given the additional role, under the Criminal Procedure Code, of conducting investigations, this was a further strain on its already limited resources.⁴⁸ Since taking over that role, the OWCP has begun to provide some form of support to witnesses and victims (maintaining contacts with them between hearings, spending time with witnesses when they come to give evidence, etc.),⁴⁹ as the Service for the Support and Assistance to Victims and Witnesses does not have the mandate for the pre-trial stage. The Action Plan for Chapter 23 provides for "hiring a psychologist to provide counselling for victims and witnesses"⁵⁰. Representatives of the OWCP have indicated that a similar measure is envisaged in the prosecution strategy as well⁵¹, so at least in this sector of activity the burden on the OWCP is expected to be eased.

The OWCP's work is funded from the state budget of the Republic of Serbia. Funds earmarked by the state budget for the operation of the OWCP amounted to RSD 119,640,000 in 2013⁵², RSD 125,011,000 in 2014⁵³ and RSD 125,239,000 in 2015⁵⁴. As in previous years, the largest amounts of funds were allocated for administrative expenses, which include salaries of employees and other remunerations, social

41 Law on Organisation and Jurisdiction of Government Authorities in the Prosecution of War Crimes, Official Gazette of the RS, Nos. 67/2003, 135/2004, 61/2005, 101/2007, 104/2009, 101/2011 – other law and 6/2015), Articles 2 and 3.

42 Bruno Vekarić, "Why is the Strategy for the Prosecution of War Crimes Important for Serbia?", opinion piece, bulletin *through ACCESSSION towards JUSTICE*, HLC (2015).

43 Republic of Serbia, Negotiation Group for Chapter 23, Action Plan for chapter 23, draft (2015), activity 1.4.1.3.

44 Interview with representatives of the OWCP, 24 December 2015.

45 Decision on the number of public prosecutors, State Prosecutorial Council, 2 December 2013, available (in Serbian) at: <http://www.dvt.jt.rs/doc/akti/Odluka%20o%20broju%20zamenika.pdf>, accessed 14 January 2016.

46 Interview with representatives of the OWCP, 24 December 2015; OWCP's answer in the HLC's questionnaire, 14 January 2016.

47 OWCP's answer in the HLC's questionnaire, 14 January 2016.

48 Criminal Procedure Code, Official Gazette of the RS, Nos. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013 and 55/2014.

49 Interview with representatives of the OWCP, 24 December 2015.

50 Republic of Serbia, Negotiation Group for Chapter 23, Action Plan for chapter 23, draft (2015), activity 1.4.4.4.

51 Interview with representatives of the OWCP, 24 December 2015.

52 Law on Amendments to the 2013 Budget Law of the Republic of Serbia, Official Gazette of the RS, No. 59/2013.

53 Law on Amendments to the 2014 Budget Law of the Republic of Serbia, Official Gazette of the RS, No. 116/2014.

54 2015 Budget Law of the Republic of Serbia, Official Gazette of the RS, No. 142/2014.

security benefits and contributions, and work material. The current budget of the OWCP does not suffice to cover its expenses, especially bearing in mind its responsibility for conducting investigations. Furthermore, since the Criminal Procedure Code handed over the responsibility for conducting investigations to the OWCP, its budget has not been increased accordingly. The lack of funding is reflected also in the level of technical equipment of the OWCP, whose employees often have to share vehicles or portable computers. The OWCP stressed in particular that their work would be made much easier if they had an electronic case database.⁵⁵

iii. Election of War Crimes Prosecutor

Chief War Crimes Prosecutor Vladimir Vukčević's term of office ended on 31 December 2015. In early September 2015, the State Prosecutorial Council (SPC) announced an open competition to recruit a new chief prosecutor. After interviewing the candidates and hearing their programmes, the SPC submitted to the Serbian Government a list of six short-listed candidates⁵⁶. The Government opted not to use its power to recommend one candidate from the list to the National Assembly⁵⁷. Instead, it simply forwarded the list to the National Assembly for debate. At a session held on 21 December 2015, the National Assembly held a debate about the candidates, but none of them received the required majority of 126 votes, so the procedure is to be repeated.⁵⁸ According to the Law on the Public Prosecution Service, if a prosecutor's term of office has expired and a new one is not appointed, the Republic's Public Prosecutor appoint an acting prosecutor for the period not exceeding one year⁵⁹.

This had not been done by the end of 2015.

The two top-ranked candidates, by number of points won from the SPC for their expertise and qualifications, were Snežana Stanojković and Dejan Terzić.⁶⁰ Yet, if one looks at their biographies and the programmes they have proposed, these candidates, in terms of their expertise and prior experience with war crimes cases, do not seem to deserve to be ranked so high in the SPC's ranking.⁶¹

iv. Efficiency

From the beginning of its work in 2003 until the end of 2015, 50 indictments for war crimes have been confirmed, against 166 individuals. By the end of 2015, 30 cases had resulted in final judgments and 46 individuals were convicted.

In the period covered by this report, the OWCP performed very inefficiently, especially where the number of persons indicted is concerned. Continuing the downward trend in the number of indictments from the previous three-year period, the 2013-2015 period saw an even sharper decline in the number of persons indicted. Namely, the OWCP issued 13 indictments against 42 individuals in 2010-2012,⁶² and 14 indictments against 21 individuals in the 2013-2015 period, as compared to 15 indictments against 54 individuals in the period 2007-2009.⁶³ Seven indictments (against 12 individuals) were confirmed in 2013, seven (against 9 individuals) in 2014, and none in 2015.

Two out of the 21 indictees in the 2013-15 period held mid-ranking positions in the Serbian military and police,⁶⁴ and

55 Interview with representatives of the OWCP, 24 December 2015.

56 State Prosecutorial Council, Decision on the drawing up of the list of public prosecutor candidates, 23 November 2015.

57 Law on the Public Prosecution Service, Official Gazette of the RS, Nos. 116/2008, 104/2009, 101/2010, 78/2011 – other law, 101/2011, 38/2012 - CC decision, 121/2012, 101/2013, 111/2014 - CC decision, 117/2014 and 106/2015), Article 74.

58 National Assembly of the Republic of Serbia, List of war crimes prosecutor candidates, voting report, 21 December 2015, available (in Serbian) at: <http://www.parlament.gov.rs/upload/archive/files/cir/doc/Listinzi/2015/2015.12.21%201.2.%20Lista%20kandidata%20za%20izbor%20Tuzioca%20za%20ratne%20zlocine.pdf>, accessed 10 February 2016.

59 Law on the Public Prosecution Service, Official Gazette of the RS, Nod. 116/2008, 104/2009, 101/2010, 78/2011 – other law, 101/2011, 38/2012 - CC decision, 121/2012, 101/2013, 111/2014 - CC decision, 117/2014 and 106/2015), Article 36.

60 State Prosecutorial Council, Final rankings of the candidates for the position of war crimes prosecutor, 23 November 2015, available (in Serbian) at: <http://www.dvt.it.rs/latinica/izbor-javnih-tuzilaca-konacna-rang-lista.html>, accessed 5 February 2016.

61 For more on the procedure for the election of a war crimes prosecutor, see in: HLC, "Report on War Crimes Trials in Serbia during 2014 and 2015", March 2016, pp. 23-25, available at: <http://www.hlc-rdc.org/?p=31330&lang=de>.

62 HLC's data.

63 Ibid.

64 Defendant Miroslav Milinković, Captain 1st Class, ex-commander of the Logistic Battalion of the JNA 80th Motorised Brigade, holding the rank of Captain 1st Class, *Sotin* Case; defendant Pavle Gavrilović, Captain 1st Class, ex-commander of the Logistics Battalion of the VJ 549th Motorised Brigade, *Ternje/Trnje* Case.

none held high-level positions in the military, police or political hierarchy.

The majority of cases prosecuted by the HLC (11) involved only one indictee⁶⁵, or cases resulting from regional cooperation (nine)⁶⁶ and cases against direct perpetrators.⁶⁷ According to the OWCP, the criteria for the selection of cases to be prosecuted has included the scale and gravity of crimes, relevancy and availability of evidence, and importance for the community.⁶⁸ The OWCP states inadequate human resources as being the key reason for the lack of efficiency, and expects that the prosecutorial strategy will help it to remedy this problem.⁶⁹

The current level of prosecutorial activity is far from being sufficient for addressing the large backlog of cases that has built up. According to OWCP data, 298 cases were in the preliminary investigation stage at the end of 2015.⁷⁰ Some previous OWCP data indicate that another 500 cases have been registered by this institution.⁷¹

Some progress has been made, compared to the previous period, with the investigations into two complex cases involving a large number of victims – the kidnapping of passengers at the train station in Štrpci and the mass execution of Bosnian Muslim civilians from Srebrenica in Kravica.⁷² However, the indictments issued in these two

cases had not been confirmed by the end of 2015.⁷³

Except in the *Srebrenica* and *Štrpci* cases, investigations and new indictments that had been repeatedly announced in previous years did not take place - namely, investigations into the cases involving the Serbian Volunteer Guard, media warmongering, mass killings of Kosovo Albanian civilians in Mejê/Meja, Korenicë/Korenica, Pusto Selo, Dubrava prison, etc.⁷⁴

In the 2013-15 period, Serbia saw the first two plea agreements in war crimes cases (*Sremska Mitrovica* and *Ključ*), and two agreements on collaboration with justice signed between the prosecution and defendants (in *Sotin* and *Qyshk/Čuška* cases).⁷⁵

For the first time ever, an agreement on collaboration with justice with a defendant resulted in the uncovering of a clandestine mass grave. The collaborator with justice in the *Sotin* case, Žarko Milošević, testified about the killings of civilians near Sotin in 1991 and the subsequent concealment of their bodies in a mass grave and their transfer to a secondary grave.⁷⁶ Milošević disclosed the location of the mass grave containing the bodies of killed civilians and thus helped the authorities to find it and clarify the fate of 13 missing persons.

65 Cases: *Bihać*, *Ključ*, *Sanski Most*, *Čelebići*, *Sremska Mitrovica*, *Logor Luka*, *Bihać II*, *Gradiška*, *Sanski Most-Kijevo*, *Bijeljina II*, *Bosanski Petrovac-Gaj*. Source: HLC, "Report on War Crimes Trials in Serbia during 2014 and 2015" (2016).

66 Cases: *Sotin*, *Bihać/Bihać II*, *Ključ*, *Sanski Most*, *Sremska Mitrovica*, *Logor Luka*, *Gradiška*, *Sanski Most-Kijevo*, *Bijeljina II*, *Bosanski Petrovac-Gaj*. Source: Ibid.

67 Out of 21 indictees in 2013-15, 20 were direct perpetrators and one was indicted on the basis of command responsibility (*Sotin* case).

68 Interview with members of the OWCP, 24 December 2015.

69 Ibid.

70 OWCP's answer in the HLC's questionnaire, 14 January 2016.

71 Additional information and clarifications (OWCP's answers in the HLC's questionnaire), A No. 162/13, 21 July 2013.

72 The indictment, however, does not qualify the act as genocide but as a war crime - see: Office of the War Crimes Prosecutor, "Prosecutor files an indictment for the July 1995 massacre of more than 1000 Muslim civilians in Kravica", available at: http://www.tuzilastvorz.org.rs/html/trz/VESTI_SAOPTENJA_2015/VS_2015_09_10_ENG.pdf, accessed 15 February 2016.

73 On the other hand, the Court of Bosnia and Herzegovina on 29 May 2015 confirmed the indictment against the same individuals, who, being available to the Court, are being prosecuted in BiH. See: Court of Bosnia and Herzegovina, "Indictment confirmed in the case of *Luka Dragičević et al.*", 29 May 2016, available (in Bosnian) at <http://www.sudbih.gov.ba/vijest/potvrena-optunica-u-predmetu-luka-dragievi-i-dr-19998>, accessed 19 January 2016.

74 "Predistraga o Arkanovim "tigrovima" [Preliminary investigation into Arkan's 'Tigers'], Radio Free Europe, 5 January 2016, available (in Serbian) at: <http://www.slobodnaevropa.org/content/predistraga-o-arkanovim-tigrovima/27469067.html>, accessed 20 March 2016; HLC, "Ten Years of War Crimes Prosecutions in Serbia – Contours of Justice, Analysis of the prosecution of war crimes in Serbia 2004-2013", October 2014, pp. 17-19, available at <http://www.hlc-rdc.org/?p=27457&lang=de>.

75 HLC, "Report on War Crimes Trials in Serbia in 2013", July 2014, available at <http://www.hlc-rdc.org/?p=27061&lang=de>; HLC, "Report on War Crimes Trials in Serbia during 2014 and 2015" (2016).

v. Command responsibility and crimes against humanity

One of the things the OWCP was most often criticised about was its focusing on direct perpetrators without directing sufficient attention on those who might be held criminally responsible on the basis of command responsibility. This approach of the OWCP is tantamount to granting a *de facto* amnesty to persons who held high military, police or political offices during the armed conflicts.⁷⁷ Such a practice continued throughout the reporting period.

In the 2013-2015 period, the OWCP did not charge anyone with command responsibility. In August 2014, however, the OWCP for the first time launched an investigation into an army general. The former commander of the VJ 125th Motorised Brigade, Dragan Živanović, has been under investigation, on the basis of command responsibility, over crimes committed against Kosovo Albanian civilians in the municipality of Peje/Peć in 1999.⁷⁸

So far, the OWCP has issued only one indictment based on command responsibility (*Zvornik II*). As regards the legal qualification of command responsibility, the OWCP in this case did not apply the qualification established and accepted in international law, but understood command responsibility as a form of accessory act envisaged by domestic law.⁷⁹

In several cases tried before the Department of War Crimes of the Higher Court in Belgrade, judges have pointed out that the evidence presented in these cases implicates some superior officers who were not included in the indictments.⁸⁰ Nevertheless, the OWCP has failed to amend the indictments or look into allegations of the involvement of those individuals in the crimes in question.⁸¹

During its 12 years of existence, the OWCP has filed no indictments for crimes against humanity. The reason given by the OWCP is that it would breach the principle of legality and prohibition of retroactive application of the laws, because the law that applies to war crimes trials does not contain provisions regarding the crime against humanity.⁸² Such a view of the OWCP is contrary to the views of numerous experts and the well-established practice of international courts and courts in the region of the former Yugoslavia.⁸³

vi. Politically sensitive cases

There has been no discernible progress in the 2013-15 period with respect to shedding light on a number of war crimes and uncovering the role of individuals who currently hold high offices in Serbia or have close ties with the government.

Since its establishment, the OWCP has been unsuccessfully trying to uncover the truth about the murder of the brothers Agron, Ylli and Mehmet **Bytyqi** in July 1999.⁸⁴ The case was

76 Transcript of Žarko Milošević's testimony, 6 February 2015, available (in Serbian) at: <http://www.hlc-rdc.org/wp-content/uploads/2015/03/04-06.02.2015.pdf>.

77 HLC, "Ten Years of War Crimes Prosecutions in Serbia – Contours of Justice, Analysis of the prosecution of war crimes in Serbia 2004-2013" (2014), p. 54-57; OSCE Mission to Serbia, "War Crimes Proceedings in Serbia 2003-2014", October 2015, p. 60, available at: <http://www.osce.org/serbia/194461?download=true>, accessed 20 March 2016.

78 Office of the War Crimes Prosecutor, "General Živanović to face investigation for Kosovo-Metohija war crimes", announcement, 5 august 2014, available at: http://www.tuzilastvorz.org.rs/html_trz/VESTI_SAOPSTENJA_2014/VS_2014_08_05_ENG.pdf, accessed 10 February 2016.

79 More on the application of the command responsibility doctrine in war crimes cases in Serbia in: HLC, "Ten Years of War Crimes Prosecutions in Serbia – Contours of Justice, Analysis of the prosecution of war crimes in Serbia 2004-2013" (2014).

80 The cases of *Lovas* and *Qyshk/Čuška*.

81 HLC, "Report on War Crimes Trials in Serbia in 2013" (2014), pp. 13 and 73.

82 Interview with representatives of the OWCP, 24 December 2015.

83 HLC, "Ten Years of War Crimes Prosecutions in Serbia – Contours of Justice, Analysis of the prosecution of war crimes in Serbia 2004-2013" (2014).

84 The Serbian MUP arrested the brothers Mehmet, Agron and Ylli Bytyqi on 26 June 1999 at the administrative border between Serbia and Kosovo. From there, they took them to the District Court in Prokuplje, which imposed on them a jail sentence for illegal border crossing. On leaving the prison after having served their sentence, on 8 July 1999 the brothers were arrested by MUP officers Miloš Stojanović and Sreten Popović and transported in police vehicles to the Special Police Units Training Centre in Petrovo Selo, where they were confined in a small room. The following day, unidentified members of the MUP took them to the location where a mass grave holding the bodies of killed Kosovo Albanian civilians who had been previously brought there from Kosovo was situated. Right next to the dug grave, blindfolded and with their hands bound by wire, the brothers were shot in the back of the head and thrown into the mass grave. Their mortal remains were found in the spring of 2001.

put back on the agenda in 2015, during the official visit of Serbian Prime Minister Aleksandar Vučić to the U.S., whose citizens the Bytyqi were. Besides being contradictory to one another, the statements given by representatives of Serbian institutions regarding this case showed the inability of the competent institutions to resolve it. Namely, two days before his visit to the U.S., Vučić announced that a special commission tasked with probing into the murder of the Bytyqi brothers would be set up, as a response to the failure of previous investigations.⁸⁵ Almost simultaneously with Vučić's announcement, Nebojša Stefanović, Serbian Interior Minister, spoke about the progress being made in the investigation and fresh evidence uncovered by the institutions dealing with the case.⁸⁶ War Crimes Prosecutor Vladimir Vukčević said that the OWCP had given priority to the Bytyqi Case, that some progress in the investigation had been made, despite obstructions, and that the case involved individuals who work for the government or are connected with it.⁸⁷

In its three dossiers published in the 2012-2015 period, which present the crimes that have gone unprosecuted, the HLC presented a great deal of relevant evidence which implicated the then high-ranking officials of the Yugoslav Army in war crimes committed in Kosovo during 1998 and 1999. Some of those officials currently hold prominent functions, such as **Ljubiša Diković**, the incumbent Chief of General Staff of the Army of Serbia,⁸⁸ and **Momir Stojanović**, who at the time of writing serves as the Chairman of the Serbian National Assembly Security Services Control Committee.⁸⁹ The OWCP has not yet shown a readiness to probe into the allegations against the said officials.

When in late February 2015 INTERPOL issued a notice for Stojanović⁹⁰ over the same crimes as those depicted in the HLC dossier, the War Crimes Prosecutor said that the information he had about the case did not point to Stojanović as a possible perpetrator.⁹¹

In October 2015, the OWCP informed the HLC that on the basis of the HLC's criminal complaint against Diković and another three members of his unit, the OWCP had launched a preliminary investigation into the crimes in Rezallë/Rezala.⁹²

Since December 2014, the European Court of Human Rights has been examining the application filed against the Republic of Serbia for the OWCP's failure to conduct an investigation into the war crimes committed in the **Šljivovica** and **Mitrovo Polje** camps in Serbia, between July 1995 and April 1996. Before the case was taken to the European Court, the Constitutional Court of Serbia had rejected the constitutional appeal lodged by the HLC on behalf of 78 former camp prisoners and their next of kin.⁹³

vii. Regional cooperation

The OWCP has signed agreements on cooperation in prosecuting perpetrators of war crimes with Bosnia and Herzegovina, Croatia and Montenegro. Also, the Serbian Ministry of the Interior and the EU Rule of Law Mission in Kosovo signed a protocol on cooperation in 2009.

These agreements provide a solid framework for cooperation. Thanks to the cooperation with other institutions in the region, the OWCP instituted nine proceedings before the Department of War Crimes of the Higher Court in Belgrade

85 "Veran Matić na čelu nove komisije u vezi ubistva Bitićija" [Veran Matić chairs new commission to probe into Bytyqi murder], *Politika*, 29 May 2015, available (in Serbian) at: <http://www.politika.rs/scc/clanak/328998/Veran-Matic-na-celu-nove-komisije-u-vezi-ubistva-Biticija>, accessed 18 January 2016.

86 "Stefanović: New evidence in Bytyqi case", B92, 1 June 2015, available at: http://www.b92.net/eng/news/crimes.php?yyyy=2015&mm=06&dd=02&nav_id=94302, accessed 18 January 2016.

87 "Rešićemo ubistvo braće Bitići" [We will solve the murder of Bytyqi brothers], *Danas*, 16 August 2015, available (in Serbian) at: http://www.danas.rs/danasrs/drustvo/resicemo_ubistvo_brace_bitici_55.html?news_id=306500, accessed 18 January 2016.

88 HLC, Dossier "Ljubiša Diković", January 2012, available at: <http://www.hlc-rdc.org/?p=17409&lang=de>; HLC, Dossier "Rudnica" (2015).

89 HLC, Dossier "Operation Reka", October 2015, available at: <http://www.hlc-rdc.org/?p=30521&lang=de>.

90 INTERPOL official website, <http://www.interpol.int/notice/search/wanted/2015-8413>, accessed 18 January 2015.

91 "Vladimir Vukčević: Nemamo dokaze protiv Stojanovića" [Vladimir Vukčević: We have no proof against Stojanović], *Večernje Novosti*, 5 March 2015, available (in Serbian) at: <http://www.novosti.rs/vesti/naslovna/dosije/aktuelno.292.html:536864-Vladimir-Vukcevic-Nemamo-dokazeprotiv-Stojanovica>, accessed 18 January 2016.

92 OWCP, communication Ktr No. 77/15, 12 October 2015.

93 HLC, "Constitutional Complaint because of Failure to Investigate Crimes against Bosniaks at the Šljivovica and Mitrovo Polje Camps", 11 April 2013, available at <http://www.hlc-rdc.org/?p=22841&lang=de>.

in the 2013-2015 period. However, some OWCP actions, based on the broad territorial jurisdiction vested in it by the Law on War Crimes Proceedings, adversely affected its cooperation with its counterparts in the region.

In April 2015, the State Prosecutor's Office of BiH, the Office of the State Prosecutor of Croatia, OWCP, and UN Development Programme (UNDP) in BiH signed Guidelines for Enhancing Regional Cooperation in War Crimes Processing, Search for Missing Persons and Establishment of Coordination Mechanism. The Guidelines are expected to improve cooperation and the joint analysis of cases whose processing requires inter-state cooperation in order to determine the status of these cases as regards the existence of evidence.⁹⁴ According to the signatories, the Guidelines also provide a foundation for exchange of evidence and information on missing persons and grave sites locations.⁹⁵ In late 2015, the prosecutor's offices defined the criteria for the selection of cases of regional importance, conditions for case prioritization and a communications strategy.⁹⁶

Territorial jurisdiction of the OWCP

According to the Law on War Crimes Proceedings, the authorities of the Republic of Serbia have jurisdiction to prosecute perpetrators of all "grave violations of international humanitarian law committed on the territory of the former Yugoslavia since 1 January 1991"⁹⁷ Hence, unlike other prosecutorial authorities in the region, the

OWCP has jurisdiction to prosecute all crimes committed during the wars in the former Yugoslavia, regardless of the nationality of the alleged perpetrator or victim and regardless of where the alleged crime was committed.⁹⁸

Since the beginning of its work (2003), the jurisdiction of the OWCP over all crimes committed anywhere within the territory of the former Yugoslavia has drawn wide criticism from the countries in the region, especially Croatia and BiH, and demands that this legal norm be changed.⁹⁹ Such a reaction was triggered by the indictments the OWCP filed against nationals of BiH and Croatia for crimes committed in these two states and its insistence that these individuals should be tried before a Serbian court, even though the charges brought against them by the Milošević regime were politically motivated (the cases of *Purda*, *Vesna Bosanac*, *Šeks*, *Ganić*, *Orić*, *Divjak*, etc.) and despite the fact that cooperation with the prosecutorial authorities in these countries had already been established.¹⁰⁰

Although the so-called universal jurisdiction for violations of international humanitarian law i.e. the obligation of states to prosecute gross violations of international humanitarian law,¹⁰¹ the said actions of the OWCP in the abovementioned period severely eroded the credibility and legitimacy of the application of universal jurisdiction where the region of the former Yugoslavia is concerned, particularly bearing in mind that the officially signed protocols on cooperation between the states are based on mutual trust and the need

94 "Guidelines for enhancing regional co-operation in war crimes processing, search for missing persons and establishment of coordination mechanism signed in Sarajevo", UNDP in Bosnia and Herzegovina, 20 April 2015, available at: http://www.ba.undp.org/content/bosnia_and_herzegovina/en/home/presscenter/articles/2015/04/20/guidelines-for-enhancing-regional-co-operation-in-war-crimes-processing-search-for-missing-persons-and-establishment-of-a-coordination-mechanism-signed-in-sarajevo/, accessed on 20 April 2016.

95 Ibid.

96 Reply to the request for additional information needed for the Report on Transitional Justice No. 140/16, TRZ, of 5. May 2016.

97 Law on the Organisation and Jurisdiction of Government Authorities in War Crime Proceedings, Article 2, para. 1, sub-paragraph 2, Official Gazette of the RS, Nos. 67/2003, 135/2004, 61/2005, 101/2007 and 104/2009.

98 Law on the Application of the International Criminal Court Statute and Prosecution of Crimes against International War and Humanitarian Law, Article 10, NN 175/03; Criminal Code of Bosnia and Herzegovina, Articles 8-9, Official Gazette of Bosnia and Herzegovina, Nos. 3/03, 32/03, 37/03, 54/04, 61/04, 30/05, 53/06, 55/06, 32/07, 8/10, 47/14, 22/15, 40/15.

99 "Milanović: Srbija sa takvim zakonom ne može u EU" [Milanović: With such a law Serbia cannot go to the EU], N1, 5 February 2015, available (in Serbian) at: <http://rs.n1info.com/a32857/Svet/Region/Milanovic-Srbija-treba-da-menja-zakonodavstvo.html>; "Ima li Srbija pravo da sudi državljanima BiH?" [Does Serbia have the right to try B-H nationals?], Most, Radio Free Europe, 28 June 2015, available (in Serbian) at: <http://www.slobodnaevropa.org/content/most-ima-li-srbija-pravo-da-sudi-drzavljanima-bih/27096969.html>, all sources accessed 28 March 2016.

100 HLC and others, "Transitional Justice in Post-Yugoslav countries – Report for 2010/2011", March 2013, pp. 66-67, available at: <http://www.hlc-rdc.org/?p=22665&lang=de>; HLC, "Report on War Crimes Trials in Serbia in 2013" (2014), pp. 38-41; HLC, "Ten Years of War Crimes Prosecutions in Serbia: Contours of Justice, Analysis of the Prosecution of War Crimes in Serbia 2004-2013" (2014), pp. 25-27; HLC, "Report on War Crimes Trials in Serbia During 2014 and 2015" (2016), pp. 130-136.

for each country to try perpetrators belonging to “its own” ethnic community.

In its Resolution on the 2014 Progress Report on Serbia, the European Parliament called on Serbia “in the spirit of reconciliation and good-neighbourly relations to consider its Law on the Organisation and Jurisdiction of State Authorities in War Crimes Proceedings in cooperation with its neighbours and with the Commission.”¹⁰² The call was reiterated in the Resolution for 2015, clearly pointing to the issue of Serbia’s war crimes jurisdiction.¹⁰³

Cooperation with the Office of the State Prosecutor of Croatia

The Agreement on Cooperation in Prosecuting Perpetrators of the Criminal Offences of War Crimes, Crimes against Humanity and Genocide¹⁰⁴ signed between Serbia and Croatia with the view to providing a more efficient investigation and punishment of all those who committed war crimes on Croatian territory¹⁰⁵, took effect in 2006. It provides for exchange of evidence and cooperation in the further gathering of evidence, and lays down the obligation for Serbia and Croatia, as parties to the agreement, to promptly deliver to the other party the information and evidence sought by it and to keep the other party informed about the status of cases about which information was received. Under this Agreement, the OWCP and the Office of the State Prosecutor of Croatia (DORH) exchanged 173 pieces of information/evidence and held 11 meetings during the reporting period.¹⁰⁶ On the basis of the evidence exchanged, one case involving war crimes committed during the 1991-1995 armed conflict in Croatia was opened

in Serbia during the reporting period.¹⁰⁷ The DORH does not keep track on all war crimes cases for which information was obtained from the OWCP. DORH representatives said that in the reporting period the OWCP delivered information to it on a small number of cases which involve unknown perpetrators.¹⁰⁸

According to OWCP representatives, one of the key challenges hindering the cooperation with Croatia is the Croatian Law Declaring Null and Void Certain Legal Acts Adopted by Judicial Bodies of the Former JPA, former SFRY, and the Republic of Serbia, which prevents the OWCP from taking actions in cases where suspects are located in the Republic of Croatia.¹⁰⁹ More specifically, this law does not allow Croatian judicial institutions to act upon Serbia’s request for legal assistance in criminal matters if such a request is considered to be contrary to the Croatian legal order¹¹⁰. The Law was passed in 2011 in response to the OWCP claiming jurisdiction to prosecute Croatian nationals for crimes against Serbs committed during the armed conflict in Croatia.¹¹¹

The case of Veljko Marić

The case of Veljko Marić, which had long burdened official relations between Croatia and Serbia and their respective prosecutor’s offices, was at last resolved in 2015. Veljko Marić, a Croatian national and former member of the Croatian armed forces, was arrested in Serbia in 2010. In March 2012, he was finally sentenced to twelve years’ imprisonment for a war crime against civilians, after being found guilty of murdering a Serb, Petar Slijepčević, in the village of Rastovac, Croatia, in 1991. Because both the

210

101 First Geneva Convention, Article 49; Second Geneva Convention, Article 50; Third Geneva Convention, Article 129; Fourth Geneva Convention, Article 146; Additional Protocol I, Article 85(1).

102 European Parliament resolution of 11 March 2015 on the 2014 Progress Report on Serbia (2015), paragraph 14.

103 European Parliament resolution of 4 February 2016 on the 2015 report on Serbia (2016), paragraph 26.

104 Agreement on Cooperation in Prosecuting Perpetrators War Crimes, Crimes against Humanity and Genocide, signed between the Office of the War Crimes Prosecutor of the Republic of Serbia and the Office of the State Prosecutor of the Republic of Croatia, of 13 October 2006, available (in Serbian) at: http://www.tuzilastvorz.org.rs/html_trz/SARADNJA/S_SPORAZUM_TRZ_DORH_CIR.PDF; accessed 15 January 2016.

105 Ibid, Preamble.

106 OWCP’s answer to a question in the HLC’s questionnaire, 14 January 2016.

107 OWCP’s answer to a question in the HLC’s questionnaire, 1 April 2016.

108 DORH’s reply to HLC’s inquiry No. A-163/2016 of 27 April 2016.

109 Ibid.

110 Law Declaring Null and Void Certain Legal Acts Adopted by Judicial Bodies of the Former JNA, former SFRY, and the Republic of Serbia, NN 124/11, Article 3.

111 HLC and others, “Transitional Justice in Post-Yugoslav countries – Report for 2010/2011” (2013).

accused and the victim were Croatian nationals, and the murder took place on Croatian territory, and also because this murder was being investigated in Croatia as part of another case, in April 2012 the Croatian Ministry of Justice requested that Serbia extradite Marić to Croatia.¹¹² The request was refused on the grounds that Serbia was proceeding against Marić in respect of the same offence for which his extradition was requested.¹¹³ Croatia made several subsequent requests for Marić to serve his prison term in Croatia, but the requests were either turned down or left unanswered.¹¹⁴ Towards the end of 2015, the Court of Appeal in Belgrade ruled that Veljko Marić be extradited to Croatia under the European Convention on Extradition.¹¹⁵

The War Crimes Prosecutor of the Republic of Serbia, Vladimir Vukčević, said that in the case of Veljko Marić the executive branch had interfered in the work of judicial bodies, and announced a request for a judicial review before the Supreme Court of Cassation, on the grounds of a serious procedural error and violation of the rights of victims of war crimes.¹¹⁶ Prior to that, the press had carried the statement of the then Croatian Prime Minister, Zoran Milanović, saying that before Marić's extradition he had had several telephone conversations with Aleksandar Vučić. Marić continued to serve his sentence in Croatia, in accordance with the final sentence of the Court of Appeal in Belgrade.

Cooperation with judicial institutions in Bosnia and Herzegovina

On 31 January 2013, Serbia and BiH signed the Protocol on Cooperation in Prosecuting Suspected Perpetrators of War Crimes, Crimes against Humanity and the Crime of Genocide, with the joint aim to “bring to justice those responsible for war crimes”.¹¹⁷ The Protocol envisages the exchange of information/evidence concerning crimes committed in both states where suspects are nationals or residents of the other party to the Protocol, unless witnesses-injured parties are expressly opposed to it¹¹⁸, and informing the other party about the status of a case following the exchange of information/evidence. The Protocol also obliges each party to inform the other party, within three months from the signing of the agreement, about all proceedings conducted against nationals of the other party, which is expected to finally put an end to the practice of conducting parallel proceedings.¹¹⁹

During the reporting period, the OWCP and its BiH counterparts¹²⁰ exchanged 57 pieces of information/evidence, and held 18 operational meetings.¹²¹ Additionally, the OWCP has established cooperation on the transfer of cases with the Cantonal Court in Bihać, District Court in Banja Luka and Basic Court of the Brčko District.¹²² On the

112 Press Release of the Ministry of Justice of the Republic of Croatia [Priopćenje za javnost - Veljko Marić, Ministarstvo pravosuđa Republike Hrvatske], available (in Croatian) at: <https://pravosudje.gov.hr/vijesti/priopcenje-za-javnost-veljko-maric/98>, accessed on 28 March 2016.

113 “Mariću odbijen zahtjev za odsluženje kazne u RH” [Marić's request to serve his sentence in Croatia declined], Hrvatska radio-televizija, 5 July 2012, available (in Croatian) at: <http://www.hrt.hr/171318/maricu-odbijen-zahtjev-za-odsluzenje-kazne-u-rh>, accessed on 15 January 2016.

114 “Hrvatska se bori za branitelja Veljka Marića” [Croatia fighting for its war veteran Marić], N1, 6 February 2015, available (in Croatian) at: <http://hr.n1info.com/a27428/Vijesti/Slucaj-Veljko-Maric-Vec-pet-godina-u-zatvoru.html>, accessed on 15 January 2016.

115 “Dozet: Apelacioni sud u maju odlučio o izručenju Marića” [Dozet: Court of Appeal ruled on Marić's extradition in May], *Blic*, 3 June 2015, available (in Serbian) at: <http://www.blic.rs/vesti/politika/dozet-apelacioni-sud-u-maju-odlucio-o-izrucenju-marica/c99ez8z>, accessed on 15 January 2016.

116 “Izručenje Marića rezultat pritiska” [Marić extradition is a result of pressure], B92, 3 June 2015, available (in Serbian) at: http://www.b92.net/info/vesti/index.php?yyyy=2015&mm=06&dd=03&nav_category=64&nav_id=1000278, accessed on 15 January 2016.

117 Protocol signed between the Prosecutor's Office of Bosnia and Herzegovina and the Office of the War Crimes Prosecutor of the Republic of Serbia on Cooperation in Prosecuting Suspected Perpetrators of War Crimes, Crimes Against Humanity and the Crime of Genocide, 31 March 2013, available (in Serbian) at: http://www.tuzilastvorz.org.rs/html_trz/SARADNJA/S_PROTOCOL_TRZ_TBIH_CIR.pdf, accessed on 15 January 2016.

118 *Ibid*, Article 10.

119 *Ibid*, Article 3.

120 Prosecutor's Office of B-H and Cantonal Prosecutor's Office in Bihać.

121 OWCP's answer to a question in the HLC's questionnaire, 14 January 2016.

122 HLC's data.

basis of the exchanged evidence, 12 proceedings concerning war crimes committed during the armed conflict in BiH in the 1992-1995 period were instituted in Serbia.¹²³

Towards the end of 2014, the OWCP and the Prosecutor's Office of BiH exchanged liaison officers, under the "Regional Liaison Officers" project funded by the UNDP office in BiH and the Embassy of The Netherlands to Serbia.¹²⁴ According to an initial plan, the liaison officers were to be based at the partner's prosecutor's office's premises, to facilitate direct and more efficient inter-institutional cooperation¹²⁵. This idea was later abandoned in order to spare resources; and so the liaison officers are sent to the partner prosecutor's office on a needs basis.¹²⁶ The role of a liaison officer entails organisation of joint meetings, exchange of documentation, acquisition of evidence and other jobs.¹²⁷

As a concrete result of the OWCP's cooperation with judicial institutions in BiH, seven cases were transferred from BiH to Serbia.¹²⁸ These were: *Sotin*, *Bihać/Bihać II*, *Ključ*, *Sanski Most*, *Logor Luka*, *Gradiška*, *Sanski Most-Kijevo* and *Bosanski Petrovac-Gaj*.¹²⁹

An example of the good cooperation between the two prosecutor's offices is the setting up of joint investigative teams for the *Srebrenica* and *Štrpci* cases. The joint investigation into these cases resulted in the arrest of some

suspects in BiH and Serbia and bringing charges against them.¹³⁰

Deviations from the protocols signed

In spite of the signed Protocol and the significantly improved cooperation with the Prosecutor's Office of BiH, the OWCP continued to conduct parallel investigations against nationals of BiH. One such investigation concerned the wartime commander of Bosniak forces in Srebrenica, Naser Orić. In December 2011, the OWCP launched an investigation against Orić,¹³¹ without informing the State Prosecutor's Office of BiH about it, even after signing the Protocol on cooperation in 2013, even though both parties became obliged under the Protocol to inform the other party of any proceedings conducted in relation to the armed conflict in BiH. It came out only in June 2015, when Orić was arrested in Switzerland on the basis of an INTERPOL warrant issued by Serbia, that the OWCP had brought charges against him.¹³²

Following Orić's arrest, both Serbia and BiH requested his extradition. Applying the provisions of the European Convention on Extradition, the Swiss authorities surrendered Orić to BiH, on the grounds that the acts he was charged with had been committed in that country, whose citizenship he held. That triggered an avalanche of

123 OWCP's answer to a question in the HLC's questionnaire, 1 April 2016.

124 OWCP's answer to a question in the HLC's questionnaire, 14 January 2016; "In the framework of Protocol on Cooperation, Vukčević and Salihović agree assignment of regional liaison officers", Joint Press Release of the Office of the War Crimes Prosecutor of the Republic of Serbia and the Prosecutor's Office of B-H, 11 September 2014, available at: http://www.tuzilastvorz.org.rs/html/trz/VESTI_SAOPTSTENJA_2014/VS_2014_09_11_ENG.pdf, accessed on 28 March 2016.

125 OWCP's answer to a question in the HLC's questionnaire, 14 January 2016.

126 Interview with representatives of the Office of the War Crimes Prosecutor, 24 December 2015.

127 Ibid.

128 HLC's data.

129 *Bihać* and *Bihać II* were presented as one single transferred case because they concerned the same act with which two persons were charged. As one of them was out of reach of the competent authorities at the time of the indictment, the two were tried in separate proceedings. The same goes for the case of *Bijeljina II*, which is left out of the list because the accused was out of reach of the judicial authorities at the time of the transfer of the *Bijeljina* case in 2011.

130 See p. 16.

131 OWCP, "Investigation against Orić and others pursued", Announcement, 29 January 2014, available at: http://www.tuzilastvorz.org.rs/html/trz/VESTI_SAOPTSTENJA_2014/VS_2014_01_29_ENG.pdf, accessed on 15 February 2016.

132 The INTERPOL National Central Bureau for Serbia issued an arrest warrant for Naser Orić and Hakija Mehuljić in February 2014, at the request of the OWCP, which has conducted an investigation against them on suspicion of war crimes against the Serbian population in the villages of Zalazje and Donji Potočari, Srebrenica municipality, in 1992.

statements by Serbian politicians who saw the decision of Swiss authorities as politically motivated and unfair¹³³, a failure of the struggle against war crimes¹³⁴ and a message to Serbian victims that they do not count¹³⁵.

Cooperation with the Prosecutor's Office of Montenegro

The legal basis for the cooperation between Serbia and Montenegro is the Agreement on Cooperation in the Criminal Prosecution of Perpetrators of Crimes against Humanity and other Values Protected under International Law, signed in 2007.¹³⁶ The Agreement envisages the exchange of information and evidence on war crimes committed against nationals of the two states on the territory of the former Yugoslavia where the perpetrators are either nationals or residents of Serbia or Montenegro. During the reporting period, 14 pieces of information and evidence have been exchanged with the competent prosecutor's office of Montenegro.¹³⁷ According to the OWCP, there were no problems in cooperation with the prosecutor's office of Montenegro.¹³⁸

In July 2015, retired Yugoslav People's Army (YPA) General Borislav Đukić, citizen of the Republic of Serbia, was arrested at Tivat airport, Montenegro, as a result of an arrest warrant issued by the INTERPOL Bureau in Croatia. The warrant for Đukić was issued in 1993, after an investigation had been launched against him and three other individuals (including Ratko Mladić) for a war crime against a civilian population. Following his arrest in Tivat, Đukić was

remanded in custody pending an extradition decision. Both Serbia and Croatia have requested his extradition. The High Court in Podgorica ruled that both countries fulfilled the conditions to have Đukić extradited to them, but by the end of 2015 he was still in custody in Montenegro.¹³⁹

Cooperation with European Union Rule of Law Mission in Kosovo

Because of the unresolved bilateral relations between Serbia and Kosovo, judicial cooperation in war crimes cases is in the administrative sense more complicated than the cooperation with other countries in the region.¹⁴⁰ Owing to Serbia's official stance of non-recognition of Kosovo, prosecutorial cooperation has continued without any formal agreement in place and without direct communication between the OWCP and the Kosovo judiciary. The OWCP gathers information through the European Union Rule of Law Mission in Kosovo (EULEX), on the basis of the Protocol on Cooperation signed between the Serbian Ministry of the Interior and EULEX in 2009. Another problem is the lack of the possibility to use the international legal assistance mechanism, because of the absence of such an agreement between Serbia and Kosovo.

The cooperation with EULEX, as with other countries in the region, includes exchange of information and evidence in war crimes cases.¹⁴¹ OWCP members said they had good cooperation and good professional relations with EULEX.¹⁴²

133 "Vučić: Ekstradicija Orića BiH politički motivisana" [Vučić: Orić's extradition to B-H politically motivated], Radio Free Europe, 26 June 2015, available (in Serbian) at: <http://www.slobodnaevropa.org/content/aleksandar-vucic-ekstradicija-orica-bih-politicki-motivisana/27093663.html>, accessed on 15 February 2016.

134 "Dačić: Slučaj Orića je poraz borbe protiv ratnih zločina" [Dačić: Orić case is a failure in the fight against war crimes], N1, 26 June 2015, available (in Serbian) at: <http://rs.n1info.com/a/72230/Vesti/Dacic-Slucaj-Orica-je-poraz-borbe-protiv-ratnih-zlocina.html>, accessed on 15 February 2016.

135 "Vulin: Slučaj Orić poruka da srpske žrtve nisu bitne" [Vulin: Orić case sends the message that Serbian victims do not count], RTS, 25 June 2015, available (in Serbian) at: <http://www.rts.rs/page/stories/sr/story/9/Politika/1959600/Vulin%3A+Slu%C4%8Daj+Ori%C4%87+poruka+da+srpske+%C5%Bertve+nisu+bitne.html>, accessed on 15 February 2016.

136 Agreement on Cooperation in the Criminal Prosecution of Perpetrators of Criminal Offences against Humanity and Other Values Protected under International Law, signed between the Supreme State Prosecutor of Montenegro and the Office of the War Crimes Prosecutor of the Republic of Serbia on 31 October 2007, available (in Serbian) at: http://www.tuzilastvorz.org.rs/html_trz/SARADNJA/S_SPORAZUM_TRZ_VDTRCG_CIR.PDF, accessed on 15 January 2016.

137 OWCP's answer to a question in the HLC's questionnaire, 14 January 2016.

138 Interview with representatives of the Office of the War Crimes Prosecutor, 24 December 2015.

139 "Zaboravili da je general u zatvoru" [They forgot about the general in jail], *Dan*, 20 January 2016, available (in Montenegrin) at: <http://www.dan.co.me/?nivo=3&rubrika=Hronika&clanak=529140&datum=2016-01-20&naslov=Zaboravili%20da%20je%20>, accessed on 25 March 2016.

140 OWCP's answer to a question in the HLC's questionnaire, 14 January 2016.

141 OSCE Mission to Serbia, "War Crimes Proceedings in Serbia 2003–2014" (2015), pp. 36-37.

In spite of the problems that burden this cooperation, it is with EULEX that the OWCP has exchanged the largest amount of information and evidence – 107 items, in the 2013-2015 period. Yet only two indictments were issued as a result of this cooperation (*Ternje/Trnje* and *Lubenić/Ljubenić*). According to the OWCP, many cases are still being investigated.¹⁴³

Cooperation with the International Criminal Tribunal for the Former Yugoslavia

The cooperation between the OWCP and the ICTY is regulated by the Law on Cooperation of Serbia and Montenegro with the ICTY¹⁴⁴, and it includes, among other things, the exchange of documentation and evidence and provision of legal assistance to the ICTY.¹⁴⁵ The cooperation is carried out through liaison officer who is situated at the ICTY.¹⁴⁶

OWCP representatives underline that they face difficulties when requesting evidence given by protected witnesses to the ICTY. According to the OWCP, none of the requests to change the protective measures that the OWCP has filed with the Tribunal have been granted.¹⁴⁷ Namely, there is a rule which requires the Tribunal to obtain, prior to disclosing such evidence, consent from the witness concerned for a change in the protective measures that were in place at the time of his/her testimony. The witnesses,

as a rule, refuse their consent.¹⁴⁸ If a case is of exceptional importance, the chamber may decide on its own initiative to rescind protective measures¹⁴⁹, but this has not happened so far.

The OWCP does not keep statistics on how much evidence obtained from the ICTY was used in domestic proceedings. In the *Srebrenica* Case, for instance, a large number of the ICTY's expert reports relating to exhumations, autopsies and identification of victims were used.¹⁵⁰

Cooperation with the Mechanism for International Criminal Tribunals

According to the ICTY's completion strategy, the Tribunal will complete its mandate by the end of 2017.¹⁵¹ After the closure of the ICTY, the Mechanism for International Criminal Tribunals (MICT), a body established by the UN Security Council in December 2010, will continue the ICTY's functions, jurisdiction, rights and obligations.¹⁵² The MICT branch which took over the jurisdiction and functions of the ICTY commenced its work on 1 July 2013.¹⁵³

In September 2014, the prosecutor of the MICT, Hassan Jallow, and Serbia's Chief War Crimes Prosecutor, Vladimir Vukčević, signed a Memorandum of Understanding which became effective immediately.¹⁵⁴ The Memorandum lays down the conditions and procedures for the delivery of

142 Interview with representatives of the Office of the War Crimes Prosecutor, 24 December 2015.

143 Ibid.

144 Law on Cooperation of Serbia and Montenegro with the International Criminal Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law. Committed in the Territory of the Former Yugoslavia since 1991, Official Journal of the FRY, No. 18/2002 and Official Journal of Serbia and Montenegro, No. 16/2003.

145 Ibid, Articles 9-33.

146 OWCP's answer to a question in the HLC's questionnaire, 14 January 2016.

147 Interview with representatives of the Office of the War Crimes Prosecutor, 24 December 2015.

148 ICTY, Rules on Procedure and Evidence, Rule 75, paras. G, H, I and J, IT/32/Rev. 50, 8 July 2015.

149 ICTY, Rules on Procedure and Evidence, Rule 75, para. J, IT/32/Rev. 50, 8 July 2015.

150 OWCP's answer to a question in the HLC's questionnaire, 14 January 2016.

151 "President Meron Presents Second Annual Report to the United Nations General Assembly", News, MICT, 14 October 2014, available at: <http://www.unmict.org/en/news/president-meron-presents-second-annual-report-united-nations-general-assembly>, accessed on 28 March 2016.

152 Resolution No. 1966 (2010) adopted by the Security Council at its 6463rd meeting on 22 December 2010, available at: http://www.unmict.org/sites/default/files/documents/101222_sc_res1966_statute_en.pdf, accessed on 28 March 2016.

153 Website of the Mechanism for International Criminal Tribunals, "About the Mechanism" section, <http://www.unmict.org/en/about>, accessed on 28 March 2016.

154 "Justice Jallow Confirms his Support for the Serbian Prosecutor", OWCP, 8 September 2014, available at: http://www.tuzilastvorz.org.rs/html_trz/VESTI_SAOPOSTENJA_2014/VS_2014_09_08_ENG.pdf, accessed on 28 March 2016.

information and evidence held by the OWCP to the MICT and its use in investigations or war crimes proceedings.¹⁵⁵ As the Resolution by which the MICT was established envisages that the agreement that regulated Serbia's cooperation with the ICTY will remain in force with respect to the MICT¹⁵⁶, the Memorandum of Understanding with the MICT constitutes a legal basis for the OWCP's access to the evidentiary material created during the ICTY's and MICT's operations, in the light of the closure of the ICTY and in accordance with the ICTY's Rules of Procedure and Evidence. The OWCP will have online access to documents of a non-confidential nature and to redacted versions of witness statements. Under certain conditions and subject to the approval of the witnesses concerned, the OWCP can also access non-redacted witness statements.

Cooperation with the EU Special Investigative Task Force

The OWCP exchanges information and evidence regarding war crimes committed in Kosovo in the period 1998-1999 with the EU Special Investigative Task Force (SITF).¹⁵⁷

According to the OWCP, the information regarding the amount of evidence delivered by the OWCP to the SITF is an official secret, because of the ongoing pre-investigation.¹⁵⁸

1.4.2. War Crime Investigation Service

The War Crimes Investigation Service (WCIS) is part of the Criminal Police Directorate of the Ministry of the Interior (MUP). It was founded under the Law on War Crimes Proceedings as a police unit specialized in the investigation of war crimes within the remit of the OWCP.¹⁵⁹ The WCIS has two departments – the Department for the Investigation of Crimes against Humanity and Search for Missing persons and the Department for Cooperation with the Hague Tribunal, Analytical and Intelligence Affairs and Documenting.¹⁶⁰ The WCIS employs a total of 50 staff.¹⁶¹

The WCIS acts upon OWCP requests.¹⁶² During the 2013-2015 period, the WCIS filed 19 criminal complaints¹⁶³ against 51 individuals suspected of committing crimes during the armed conflicts in BiH, Croatia or Kosovo¹⁶⁴. This has been a sharp drop compared with the previous three-

155 Memorandum of Understanding signed between the Office of the Prosecutor of the Mechanism for International Criminal Tribunals and the Office of the War Crimes Prosecutor of the Republic of Serbia on 8 September 2014, Articles 2-6, available (in Serbian) at: http://www.tuzilastvorz.org.rs/html_trz/VESTI_SAOPSTENJA_2014/VS_2014_09_08-M_CIR.pdf, accessed on 28 March 2016.

156 Resolution No. 1966 (2010) adopted by the Security Council at its 6463rd meeting on 22 December 2010, paragraph 4, available at: http://www.unmict.org/sites/default/files/documents/101222_sc_res1966_statute_en.pdf, accessed on 28 March 2016.

157 The Special Investigative Task Force was set up in 2011 to conduct an investigation into the allegations contained in the report entitled "Inhuman treatment of people and illicit trafficking in human organs in Kosovo" by Dick Marty, Special Rapporteur of the Council of Europe. In late 2014, the Chief Prosecutor of SITF presented the findings of a three-year investigation, saying that the SITF had found compelling evidence to file an indictment against certain former officials of the Kosovo Liberation Army (KLA) for criminal offences depicted in the CoE report. More on SITF investigative findings at: http://sitf.eu/images/Statement/Statement_of_the_Chief_Prosecutor_of_the_SITF_EN.pdf, accessed on 27 March 2016; OWCP, Vukčević and Williamson Meet in Brussels, press release, 1 February 2013, available at: http://www.tuzilastvorz.org.rs/html_trz/VESTI_SAOPSTENJA_2013/VS_2013_02_01_ENG.pdf; OWCP, Vukčević and Williamson Meet in Brussels, Discuss Abductions and Organ Trafficking, press release, 28 October 2013, available at: http://www.tuzilastvorz.org.rs/html_trz/VESTI_SAOPSTENJA_2013/VS_2013_10_28_ENG.pdf; accessed on 14 April 2016.

158 OWCP, Reply to the HLC's request for additional information needed for the Report on Transitional Justice No. 140/16, 5 May 2016.

159 Law on Organization and Jurisdiction of Government Authorities in War Crimes Proceedings, Official Gazette of the RS, Nos. 67/2003, 135/2004, 61/2005, 101/2007, 104/2009, 101/2011 – other law, and 6/2015, Article 8.

160 Key Facts about the Operations of the Ministry of the Interior of the Republic of Serbia, December 2013, available (in Serbian) at: <http://www.mup.gov.rs/cms/resursi.nsf/InformatorMUP-latinica.pdf>, accessed on 12 February 2016.

161 Information obtained from the WCIS in response to the HLC's request for information of public importance No. 050-125/16-1 of 11 February 2016.

162 Law on Organization and Jurisdiction of Government Authorities in War Crimes Proceedings, Official Gazette of the RS, Nos. 67/2003, 135/2004, 61/2005, 101/2007, 104/2009, 101/2011 – other law, and 6/2015, Article 8; Criminal Procedure Code, Official Gazette of the RS, Nos. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013 and 55/2014, Article 44.

163 Information provided by the WCIS in response to the HLC's request for information of public importance No. 050-125/16-1 of 11 February 2016; Interview with OWCP representatives, 24 December 2015.

164 OWCP's answer in the HLC's questionnaire No.156/16, of 1 April 2016.

year period, in which the WCIS filed a total of 33 criminal complaints with the OWCP.¹⁶⁵ The OWCP is satisfied with the performance of the WCIS, seeing it as adequate and professional.¹⁶⁶ As in previous years, the OWCP is not satisfied with the number of cases that the WCIS has investigated on its own initiative¹⁶⁷. On the other hand, WCIS representatives emphasise that they always prepare criminal complaints in consultations and cooperation with the OWCP.¹⁶⁸

The OWCP underlines that the WCIS rarely investigate war crimes cases which involve MUP members as suspects.¹⁶⁹ Possible reasons for the lack of efficiency of the WCIS may be the lack of interest among its members to investigate such cases or the obstruction of investigation of crimes where there is reasonable suspicion that they were committed by members of the Serbian police or military.

The insufficient training and lack of motivation of its members could also account for the WCIS's lack of efficiency.¹⁷⁰ Another reason could be the presence in this unit of those who took a direct part in the armed conflicts in the former Yugoslavia and are therefore unwilling to gather evidence against their fellow ex-combatants. This is the direct consequence of the absence of formal checks into the wartime engagement of the WCIS staff engaged in investigations.¹⁷¹ In fact, besides the regular security checks which are required as part of the hiring process, candidates for jobs in the MUP do not undergo any other checks that would include looking into their wartime past.¹⁷²

Some individuals engaged in the investigation and prosecution of war crimes agree that war crimes investigations would be more efficient if the OWCP's and WCIS's formal organization structures were different. According to one view, the most appropriate solution would be to move the WCIS from the Criminal Police Directorate to the Police Directorate¹⁷³; according to a second view, WCIS investigators should be assigned to the OWCP and work together with it on investigations;¹⁷⁴ according to a third view, the careers of WCIS members should be made dependent on the War Crimes Prosecutor, who should have a final say regarding the appointment and dismissal of heads of the WCIS, and the promotion, rewarding and dismissal of WCIS staff members.¹⁷⁵ Under the current organisation scheme, the OWCP approaches the MUP as an independent institution, and the WCIS investigators report to the MUP officers in charge of them, so the OWCP does not have effective control over their work.¹⁷⁶

The Action Plan for Chapter 23 envisages conducting an analysis of the operations of the WCIS to determine whether this Service needs to be reformed - specifically, whether there is a need to move it under the control of the Police Directorate. The analysis will also look at the hiring process and the possible impact of the previous participation of job candidates in the armed conflicts in the former Yugoslavia, incentives to attract competent staff, human resources of the WCIS, and the setting up of joint investigative teams between the OWCP and the WCIS.¹⁷⁷

165 The WCIS filed 10 criminal complaints with the OWCP in 2010, 13 in 2011 and 10 in 2012. See: HLC, "Ten Years of War Crimes Prosecutions in Serbia – Contours of Justice, Analysis of the prosecution of war crimes in Serbia 2004-2013" (2014), p. 33.

166 Interview with OWCP representatives, 24 December 2015.

167 Ibid.

168 HLC, "Ten Years of War Crimes Prosecutions in Serbia – Contours of Justice, Analysis of the prosecution of war crimes in Serbia 2004-2013" (2014), p. 33.

169 Interview with OWCP representatives, 24 December 2015.

170 HLC, "Ten Years of War Crimes Prosecutions in Serbia – Contours of Justice, Analysis of the prosecution of war crimes in Serbia 2004-2013" (2014), pp 31-33.

171 Ibid, p. 31.

172 Reply of the War Crimes Investigation Service to the HLC's request for information of public importance No. 050-125/16-1 of 11 February 2016.

173 View of the OSCE Mission to Serbia, "War Crimes Proceedings in Serbia 2003–2014(2015), p. 52.

174 View of the OWCP, Interview with OWCP representatives, 24 December 2015.

175 View of the Humanitarian Law Center, see: "Ten Years of War Crimes Prosecutions in Serbia – Contours of Justice, Analysis of the prosecution of war crimes in Serbia 2004-2013" (2014), p. 34.

176 Interview with OWCP representatives, 24 December 2015.

177 Republic of Serbia, Negotiation Group for Chapter 23, Action Plan for chapter 23, draft (2015), activity 1.4.1.7.

1.5. Performance of courts

In the 2013-2015 period, several negative characteristics of the special war crimes departments' work came to the fore. The cases have usually taken too long to complete, because of the repetition of first-instance proceedings in a large number of them. The practice of frequent changing of judges sitting on special departments' panels has also had an impact on the length of proceedings. The sentencing policy of the special departments of imposing lenient and unreasoned sentences was repeatedly criticised by the legal community. Several war crimes proceedings are still being conducted by the courts of general jurisdiction, despite being plagued by numerous problems which raise questions about their fairness.

As regards the courts' performance, the Screening Report for Chapter 23 recommends ensuring the proportionality of sentences, and the Action Plan for Chapter 23 contains three activities which should give effect to this recommendation (see Appendix II). The expected result of the three activities is that "the sentences imposed are proportional to the criminal offences in accordance with international standards."¹⁷⁸

1.5.1. Legal and institutional framework

War crimes cases are tried by the Department of War Crimes of the Higher Court in Belgrade as the first-instance court, and the Department of War Crimes of the Court of Appeal in Belgrade as the second-instance court. A certain number of cases have been heard by the courts of general jurisdiction in Niš, Požarevac and Prokuplje. The courts dealing with war crimes apply the Criminal Code of the Federal Republic of Yugoslavia, which was in force at the

time of the armed conflicts in the former Yugoslavia.¹⁷⁹ This law prescribes a prison sentence of five to 20 years for a war crime.¹⁸⁰

1.5.2. Statistics

In the 2013-2015 period, 29 war crimes proceedings were conducted.¹⁸¹

12 cases resulted in final judgments – four acquittals¹⁸² and eight convictions.¹⁸³ Two of the eight cases that resulted in conviction ended with a plea agreement¹⁸⁴. The prison sentences imposed in these eight cases total 130 years and six months.

At the end of 2015, 11 cases were at the trial stage of proceedings and six at the appellate stage.

1.5.3. Characteristics of trials

War crimes trials in this period were marked by a large number of **overturned judgments**. The Court of Appeal in Belgrade overturned judgments issued in eight cases and returned the cases to the lower court for retrial; the Court of Appeals in Niš overturned one judgment. While the reasons provided for overturning some of the judgments were questionable,¹⁸⁵ the justifiable overturning of some of the other judgments¹⁸⁶ raises the question of the quality of the indictments and first-instance proceedings and the differences in the interpretation of certain legal concepts and norms by first-instance and second-instance courts.¹⁸⁷

In a certain number of cases the first-instance courts conducted proceedings in a perfunctory manner, which resulted either in "an erroneous and incomplete

178 Ibid, results of the implementation of the recommendation 1.4.2.

179 The Criminal Code of the Federal Republic of Yugoslavia, Official Gazette of the SFRY, No. 44/76, 36/77, 56/77, 34/84, 37/84, 74/87, 57/89, 3/90, 38/90, 45/90, 54/90 and the Official Gazette of the FRY, No. 35/92, 37/93 and 24/94.

180 Ibid, Articles 142-144.

181 In the following cases: *Qyshk/Ćuška, Tenja II, Bihać, Sanski Most, Beli Manastir, Skočić, Prizren, Tuzla Convoy, Ovčara V, Čelebići, Ključ, Bijeljina, Lički Osik, Bosanski Petrovac, Gnjilane Group, Bytyqi, Lovas, Kushnin, Orahovac, Bosanski Petrovac – Gaj, Sanski Most – Kijevo, Bihać II, Ternje/Trnje, Luka Camp, Gradiška, Sotin, Bijeljina II, Ovčara and Sremska Mitrovica*.

182 *Gnjilane Group, Bytyqi, Prizren and Čelebići*.

183 *Bijeljina, Lički Osik, Sremska Mitrovica, Bihać, Ovčara V, Ključ, Orahovac and Miloš Lukić*.

184 *Sremska Mitrovica and Ključ*.

185 *Qyshk/Ćuška and Skočić*.

186 *Prizren, Bosanski Petrovac, Luka Camp and Bijeljina II*.

187 For more details on different applications of the concept of co-perpetration by first-instance and second-instance courts see: HLC, "Report on War Crimes Trials in Serbia During 2014 and 2015" (2016).

determination of the facts”¹⁸⁸ or violation of the right of defence.¹⁸⁹

In some cases, however, the Court of Appeal, by its interpretation of the concept of co-perpetration, imposed too high a standard of proof.¹⁹⁰ In the *Skočić* Case, for instance, the court insisted that co-perpetration can be proved only by precisely detailing all the acts committed by the accused.¹⁹¹ This argument was used to overturn the judgments in the *Lovas*, *Beli Manastir* and *Qyshk/Čuška* cases.¹⁹²

At the end of 2015, 10 cases were being retried.

Excessively long proceedings. On average, the trials before the special departments last more than three years and before the courts of general jurisdiction more than 12 years. The length of trial in more complex war crimes cases is more than five years. In the *Lovas* and *Qyshk/Čuška* cases, for instance, the indictments were raised in 2007 and 2010 respectively, and the cases are still at the trial stage. The lengthiest judicial proceedings were those conducted by the Higher Court in Prokuplje against Miloš Lukić. The trial commenced as far back as in June 1999, and the final judgment was issued more than 15 years later, in October 2014.¹⁹³

What happened in the *Ovčara* Case was without precedent. The case was finally adjudicated in 2010. However, after one of the persons convicted appealed against the judgment, the Constitutional Court in 2013 ruled that his right to have a fair trial had been violated. The Supreme Court of Cassation, on considering the request for the protection of legality filed by the defence attorneys of the defendants, quashed the final judgment of the Court of Appeal in 2014,

and returned the case to that court for a retrial. The retrial before the Court of Appeal commenced in June 2015.

The excessive length of proceedings affects the efficiency and credibility of trials. Both victims and witnesses more and more frequently refuse to take part in proceedings, especially after the overturning of first-instance judgments and at retrials. In the *Bijeljina II* Case, for instance, the witnesses refused to give evidence at the retrial because it had taken them too long a time to recover from the trauma caused by their testimony at the first trial.¹⁹⁴ In the *Lovas* Case, the victims and witnesses, annoyed by the long-drawn-out proceedings, refused to testify one more time.¹⁹⁵

1.5.4. Sentencing policy

The sentencing policy of the special departments has been frequently criticised by the legal community and victims alike. Even though the term of imprisonment for offences such as war crimes has been narrowed down to range between 5-20 years, it seems that the courts fail to give due consideration to all aspects of the war crimes cases at hand in the sentencing process. More specifically, they tend to ascribe far too much weight to the mitigating factors, as a result of which they impose punishments which are even lighter than the mandatory minimum penalty prescribed for the offences.¹⁹⁶ The mitigating factors most often found to be present by the courts include defendants’ “family circumstances”, their young age, the amount of time that has passed since the commission of the crime, and the lack of prior convictions. At the same time, the courts very rarely take into account the aggravating circumstances, although some of the cases involved numerous extremely cruel and inhumane acts.¹⁹⁷

188 *Bosanski Petrovac*, see: Ruling of the Court of Appeal in Belgrade concerning the first-instance ruling, 4 November 2013, available (in Serbian) at: http://www.hlc-rdc.org/wp-content/uploads/2014/01/bosanski_petrovac_drugostepena_odluka.pdf.

189 *Luka Camp* case, see: ruling of the Court of Appeal in Belgrade quashing the first-instance ruling of the Higher Court in Belgrade, 10 June 2015, available (in Serbian) at: http://www.hlc-rdc.org/wp-content/uploads/2015/10/Resenje_Apelacionog_suda_u_Beogradu.pdf.

190 HLC, “Report on War Crimes Trials in Serbia during 2014 and 2015” (2016), pp. 120-121.

191 *Ibid.*, pp. 116-124.

192 *Ibid.*, p. 120; HLC, “Report on War Crimes Trials in Serbia in 2013” (2014), pp. 22-28 and 71-82.

193 HLC, “Report on War Crimes Trials in Serbia in 2013” (2014), pp. 90-92; HLC, “Report on War Crimes Trials in Serbia during 2014 and 2015” (2016), pp. 178-182.

194 HLC, “Report on War Crimes Trials in Serbia during 2014 and 2015” (2016), pp. 106-107.

195 *Ibid.*, p. 72.

196 *Skočić, Ovčara V, Bijeljina, Lički Osik, Bosanski Petrovac, Logor Luka, Qyshk/Čuška*. See: HLC, “Report on War Crimes Trials in Serbia during 2014 and 2015” (2016).

197 *Bihać I*. *Ibid.*, pp 152-156.

A particular problem is the courts' failure to provide explanations concerning the mitigating circumstances, which makes their decisions rather incoherent.¹⁹⁸

1.5.5. Participation of injured parties in the proceedings

In many cases tried by the special departments, the injured parties (the survivors of the crime and the next of kin of the killed) have legal representatives who participate in the proceedings and are allowed to pose questions or propose evidence for presentation.¹⁹⁹

In 2015, it happened for the first time since the beginning of war crimes trials in Serbia that injured parties were deprived of the right to be represented in court by the lawyer of their own choosing. Namely, the presiding judge in the *Ternje/Trnje* Case challenged the right of Kosovo attorneys to represent the injured parties in the proceedings, on the grounds that they were not listed in the Serbian Bar Association's register of attorneys. She sought the opinion of the Serbian Bar Association on this matter, and decided not to issue her final decision on this matter until obtaining the requested opinion. According to some unofficial information, the court did this as a reciprocal measure after some attorneys from Serbia had been banned from representing clients in Kosovo courts.

1.5.6. Enforcement of sentences imposed on war crimes convicts

The Law on Enforcement of Criminal Sanctions recognises only good behaviour as a criterion for earning certain privileges during incarceration²⁰⁰, and does not distinguish between perpetrators of war crimes and less serious offenders. The privileges enjoyed by well-behaved prisoners under this law include the right to receive more parcels, more visits and more visitors, the right to receive unsupervised visits in special premises, the right to receive

visits outside the prison, more comfortable accommodation, permission to go out into a local town, permission to visit family and friends on weekends and holidays, the right to be rewarded with an annual leave of up to seven days and an extraordinary leave of up to seven days, and the right to spend their annual leave outside the institution.²⁰¹

The former commander of the "Scorpions" unit, Slobodan Medić, died in a car accident on the last day of December 2013 near Sremska Mitrovica while serving his 20-year prison sentence for the crime committed against civilians in Trnovo near Srebrenica²⁰². At the time of the accident, he was on a permitted weekend leave from prison.²⁰³

1.5.7. The bad practice of frequently changing judges at Higher Court and Court of Appeal departments

Using their discretionary powers in determining the annual work schedule, the presidents of the Higher Court and the Court of Appeal in Belgrade **transferred judges sitting on war crimes trial panels to other panels or departments**. Such transfers are contrary to the Law on War Crimes Proceedings, which prescribes that judges serve a six-year term. The presidents of the Higher Court and the Court of Appeal in Belgrade moved the judges dealing with war crimes to other departments before their term of office guaranteed by the said Law expired.

Judge Snežana Nikolić Garotić was transferred to the First-Instance Criminal Law Department of the Higher Court in Belgrade, a transfer effective as from 1 January 2015, while handling six war crimes cases²⁰⁴. Judge Bojan Mišić, the presiding judge in the *Lovas* Case, was also moved to the Criminal Law Department of the Higher Court in Belgrade, a transfer effective as from 1 January 2016. In February 2015, judges Olivera Anđelković and Tatjana Vuković filed a complaint with the High Judicial Council against the President of the Court of Appeal for not reassigning them

198 Ibid, pp 14-17.

199 Criminal Procedure Code, Official Gazette of the RS, Nos. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013 and 55/2014, Articles 395, 398 and 402.

200 Law on Enforcement of Criminal Sanctions, Official Gazette of the RS, Nos.85/2005, 72/2009 and 31/2011, Article 115.

201 Ibid.

202 Judgment of the Supreme Court of Serbia, Kž. I r.z. 2/07, 13 June 2008.

203 HLC, "Prison Regime for War Crimes in Serbia Represents Mockery of Victims' Suffering", 3 January 2013, available at: <http://www.hlc-rdc.org/?p=26036&lang=de>.

204 "Kako je sudija Garotić premeštena sa ratnih zločina" [How Judge Garotić was removed from war crimes cases], Radio Free Europe, 20 January 2015, available (in Serbian) at: <http://www.slobodnaevropa.org/content/kako-je-sudija-garotic-premestena-sa-ratnih-zlocina/26802313.html>, accessed on 20 January 2016.

to the Department of War Crimes of the Court of Appeal in Belgrade.²⁰⁵

Such a practise has numerous negative effects on trials. First of all, seasoned judges are removed from war crimes cases and replaced by judges with no experience or expertise in the field of international humanitarian law. This also further delays the proceedings, as new judges need some time to become familiar with the case they are assigned to.

1.5.8. Proceedings conducted by the courts of general jurisdiction

Before the specialised war crimes departments were established, war crimes proceedings had been conducted by the courts of general jurisdiction. The Law on War Crimes Proceedings of 2003 stipulates that the war crimes cases in which the indictment had been confirmed before the entry into force of this Law are to be completed before the courts which previously had jurisdiction over them. The proceedings conducted by the courts of general jurisdiction are lengthy and marked by lack of professionalism and expertise on the part of judges and prosecutors, lenient sentences for perpetrators and a complete lack of media and public attention.²⁰⁶ All these problems have nevertheless not prompted the competent institutions – the Republic's Public Prosecutor's Office in the first place – to transfer these cases to the OWCP.²⁰⁷

During the 2013-2015 period, the courts of general jurisdiction heard three cases. Two of them, *Orahovac* and *Miloš Lukić*, were concluded with a final judgment, and the third, *Kushnin*, is still being tried.

All three cases were tried for more than 10 years. During the reporting period, only two trial days were held in the *Miloš Lukić* and *Kushnin* cases. All parties to the proceedings, including the courts and prosecutor's offices, have contributed to the delay.²⁰⁸

The content of the indictments in these cases reveals not only lack of knowledge of international humanitarian law on the part of the prosecution, but also lack of knowledge even of the factual background of the cases themselves.²⁰⁹

The sentences imposed in the two completed cases were inappropriately low. In the *Orahovac* Case, the defendant was sentenced to five years' imprisonment for killing three Kosovo Albanian civilians in 1999 in Orahovac, Kosovo. Miloš Lukić also received the lowest possible sentence of five years in prison for murdering a Kosovo Albanian civilian during the armed conflict in Kosovo.²¹⁰

1.6. Protection and Support for Witnesses and Victims

Protection of witnesses in war crimes trials continues to be the most vulnerable element of war crimes trials in Serbia. Over the 2013-2015 period, no significant effort was made to address the long-standing problems in the implementation of the witness protection programme. Protection of victims and witnesses in war crimes trials is confined to a limited time during testimony, and includes only limited measures which do not meet all the needs of the victims and witnesses.

The existing mechanisms for the protection of witnesses have been criticised by many relevant international institutions²¹¹, including the European Union. The Screening Report on Chapter 23 recommends "stepping up security of witnesses and informants and improvement of witness and informant support services"²¹². The Action Plan for Chapter 23 sets out four activities that need to be conducted by the end of 2015 to give effect to the recommendations from the Screening Report (see Appendix 3).

1.6.1. Procedural Measures for Witness Protection

Procedural protective measures are applied during the investigation and trial, and encompass measures to protect

205 "Pritužbe na izbor sudija" [Objections against appointment of judges], *Blic*, 27 February 2015, available (in Serbian) at: <http://www.blic.rs/vesti/drustvo/pritužbe-na-izbor-sudija/yszccqg9>, accessed on 20 January 2016.

206 HLC, "Report on War Crimes Trials in Serbia in 2013" (2014); HLC, "Report on War Crimes Trials in Serbia during 2014 and 2015" (2016), pp 17-18.

207 HLC, "Report on War Crimes Trials in Serbia during 2014 and 2015" (2016).

208 HLC, "Report on War Crimes Trials in Serbia in 2013" (2014); HLC, "Report on War Crimes Trials in Serbia during 2014 and 2015" (2016).

209 HLC, "Report on War Crimes Trials in Serbia in 2013" (2014).

210 HLC, "Report on War Crimes Trials in Serbia during 2014 and 2015" (2016).

211 See the section 1.1. *Findings of International Bodies*.

212 Republic of Serbia, Negotiation Group for Chapter 23, Action Plan for chapter 23, draft (2015), recommendation 1.4.4.

the integrity of witnesses and highly vulnerable and endangered witnesses.

During the 2013-2015 period there were instances of witnesses being addressed in an inappropriate manner by defendants and their lawyers. In none of these instances did the court make use of the statutory measures, such as a formal reprimand or fine, to protect the integrity of witnesses²¹³. These witnesses were mostly ‘whistleblowers’, former members of Serbian security forces who decided to give evidence against their fellow ex-combatants. In the *Qyshk/Ćuška* Case, for example, the Presiding Judge just gave an informal warning to the accused who, while a former member of the ‘Jackals’ paramilitary unit, Zoran Rašković, was giving his testimony, said to him: “You’re no Serb, brother, no Serb at all!” hinting that Rašković’s testimony amounted to treachery.²¹⁴ An informal warning was also issued during the cross-examination of the collaborator with justice in the *Sotin* Case trial to the lawyer of one of the defendants, for raising his voice to a witness and addressing him without using the formal “you”,²¹⁵ and to the accused in the *Tenja II* case who hurled insults at the witnesses and injured parties.²¹⁶

The mechanism for protection of a particularly vulnerable witness was used only once, in the *Qyshk/Ćuška* Case, where the panel conducting the proceedings ordered that a sexual violence survivor be examined indirectly only, via the judicial panel.²¹⁷

Protection of Sexual Violence Survivors

The Criminal Procedure Code does not envisage any specific protective measures for sexual violence survivors, apart from the usual witness protection measures.²¹⁸ In

consequence, most sexual violence survivors did not receive any special treatment or adequate protection.

The rape victims in the *Skočić* Case were exposed to offensive and derisive comments by the accused.²¹⁹ The Presiding Judge, while showing a certain degree of sensitivity during their examination by warning the accused to behave in a civil manner, failed to reprimand them formally or fine them for inappropriate behaviour.²²⁰

The rape victim in the *Qyshk/Ćuška* Case was placed under protection measures too late.²²¹ Despite the existence of strong indications and expert opinions which in the earlier stages of the proceedings (during the investigation and immediately before her appearance in court for the main hearing) suggested that the victim was mentally vulnerable, the protective measure for particularly vulnerable witness was applied in her case only at the cross-examination stage.²²² The measure involved cross-examination indirectly only, via the judicial panel. During the examination of this victim, a defence lawyer, disobeying the rules on examination, posed questions to her directly instead of through the panel, for which he was reprimanded by the panel.²²³

In two cases, the injured parties refused to continue to take part in the proceedings owing to the trauma they had undergone and the absence of adequate support and protection.²²⁴

1.6.2. Non-procedural Protection Measures

Non-procedural witness protection measures are applied independently from procedural actions, and include placing witnesses under a special protection programme carried out by a specialised institution. Non-procedural protective

213 Criminal Procedure Code, Official Gazette of the RS, Nos. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013 and 55/2014, Article 102.

214 *Qyshk/Ćuška* Case, Transcript of the audio recording of the trial of 22 April 2013, p. 7, Higher Court in Belgrade, War Crimes Department, N. K-Po2 48/2010, available (in Serbian) at: <http://www.hlc-rdc.org/wp-content/uploads/2014/04/67a-22.04.2013.pdf>.

215 *Sotin* Case, Transcript of the audio recording of the trial held on 6 February 2015, pp. 26-32, Higher Court in Belgrade, K-Po2 No. 2/2014, available (in Serbian) at: <http://www.hlc-rdc.org/wp-content/uploads/2015/03/04-06.02.2015.pdf>.

216 HLC, “Report on War Crimes Trials in Serbia in 2013” (2014), p. 16.

217 *Ibid*, pp. 12-13.

218 HLC, “Ten Years of War Crimes Prosecutions in Serbia – Contours of Justice, Analysis of the prosecution of war crimes in Serbia 2004-2013” (2014), p. 69.

219 HLC, “Report on War Crimes Trials in Serbia in 2013” (2014), p. 33.

220 *Ibid*, pp. 28-34; HLC, “Report on War Crimes Trials in Serbia during 2014 and 2015” (2016), pp. 116-125.

221 HLC, “Report on War Crimes Trials in Serbia in 2013” (2014), pp. 9-13.

222 *Ibid*, pp. 12-13.

223 *Ibid*, p. 13.

224 An injured party in the *Bijeljina II* Case decided not to appear in court for the retrial. Protected witness “Gamma” (*Skočić* Case) refused to testify in the retrial. HLC, “Report on War Crimes Trials in Serbia during 2014 and 2015” (2016), pp. 106-107 and 120.

measures include measures to ensure the security of persons and their property, changes of place of residence, non-disclosure of witnesses' identities and information regarding the property they own, and changes of identity.²²⁵

The most serious and long-standing problems in the witness protection system in Serbia concern the application of the Protection Programme for Participants in Criminal Proceedings (Protection Programme). To address these problems, the Action Plan for Chapter 23 envisages a set of measures, including an evaluation of the performance of the Witness Protection Unit to determine whether it needs to be reformed, as well as what normative adjustments need to be made to enable the application of the measure of identity change (see Appendix 3).²²⁶

The Protection Programme was introduced pursuant to the Law on the Protection Programme for Participants in Criminal Proceedings. It encompasses "a set of measures [...] applied with a view to protecting the life, health, physical integrity, freedom or property of the protected person"²²⁷. Decisions concerning the activation, continuation and suspension of the programme are made by the Protection Programme Implementation Commission. The Protection Programme is operated by the Witness Protection Unit, a specialised unit within the Serbian MUP.²²⁸

During the 2013-2015 period, 9 individuals participating in war crimes proceedings entered the programme.²²⁹ The protective measures provided to them included the measures for ensuring the physical security of the person and his/her property, change of place of residence or transfer to another prison, and concealment of the identity and records regarding property owned by the witness.²³⁰ The identity change measure was not applied in the said period because of the absence of the secondary legislation necessary for its application.²³¹

In June 2014, the head of the Witness Protection Unit, Miloš Perović, was removed from office after the unit had been widely criticised by both domestic²³² and international organisations²³³ for irregularities found in its work and intimidation of witnesses. The MUP failed to explain its decision to remove Perović, so the reasons for the removal have remained unknown to the public. The press quoted an unnamed source from the MUP saying that the dismissal of Perović was "part of the effort made by the new Serbian Government to reform the police and get rid of problematic staff"²³⁴. Since the dismissal of Perović, Goran Živković has been serving as the head of the Witness Protection Unit.²³⁵

During Perović's tenure as the head of the Witness Protection Unit (2008-2014), the unit was accused of unlawful conduct

225 Law on the Protection Programme for Participants in Criminal Proceedings, Official Gazette of the RS, No. 85/2005, Article 14.

226 Republic of Serbia, Negotiation Group for Chapter 23, Action Plan for chapter 23, draft (2015), activities 1.4.4.1, 1.4.4.2. and 1.4.4.5.

227 Law on the Protection Programme for Participants in Criminal Proceedings, Official Gazette of the RS, No. 85/2005, Article 2.

228 Ibid, Articles 7 and 12.

229 Reply of the Unit for Protection of Participants in Criminal Proceedings to the HLC's request for access to information of public importance of 19 May 2016, No. 2-99/16.

230 Ibid.

231 HLC, "Ten Years of War Crimes Prosecutions in Serbia – Contours of Justice, Analysis of the prosecution of war crimes in Serbia 2004-2013" (2014), p. 72.

232 HLC, "Irregularities and Abuse of Power in War Crimes Proceedings in the Republic of Serbia - Case of the 37th Battalion of Special Police Units", November 2010, available at: <http://www.hlc-rdc.org/?p=13106&lang=de>; "Killings Highlight Flaws in Serbia's Witness Protection", BIRN, 6 July 2012, available at: <http://www.balkaninsight.com/en/article/killings-highlight-flaws-in-serbia-s-witness-protection>, accessed on 25 April 2016.

233 Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Serbia on 12-15 June 2011, September 2011, available at: https://wcd.coe.int/ViewDoc.jsp?p=&id=1834869&Site=CommDH&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLogged=FFC679&direct=true#P105_19556; Council of Europe, The Committee on Legal Affairs and Human Rights, "The protection of witnesses as a cornerstone for justice and reconciliation in the Balkans", report, 2011, available at: http://assembly.coe.int/CommitteeDocs/2010/20100622_ProtectionWitnesses_E.pdf; accessed 12 February 2016.

234 "Serbia Sacks Police Witness Protection Unit Chief", BIRN, 9 June 2014, available at: <http://www.balkaninsight.com/en/article/chief-of-witness-protection-unit-sacked>, accessed on 11 February 2016.

235 Ministry of the Interior of the Republic of Serbia, Information Booklet - Key Facts about the Ministry of the Interior, April 2016, p. 78, available (in Serbian) at: <http://www.mup.gov.rs/wps/wcm/connect/fd26626a-8adb-45f2-a716-a46d6003f697/INFORMATOR+O+RADU+april+2016.pdf?MOD=AJPERES&CVID=lfLRXXZ&CVID=I9Uou0s>, accessed on 26 April 2016.

and intimidating witnesses,²³⁶ because of which some witnesses decided to leave the programme.²³⁷ While similar incidents have not been reported since Perović's removal, the OWCP claims that nothing has actually changed.²³⁸ A former participant in the Protection Programme, for example, could not acquire the Serbian citizenship he was entitled to nor the personal documents, for quite a long time.²³⁹

Proceedings against a Former Protected Witness

Another indicator showing the bad situation in the Protection Programme is the judicial process against former protected witness Slobodan Stojanović, which originated from the criminal complaint filed by Chief War Crime Prosecutor Vladimir Vukčević and his deputy, Dragoljub Stanković, for the threats that Stojanović allegedly made against them.²⁴⁰ The process is the culmination of long-standing verbal conflicts because of the failure of the Protection Programme to protect Stojanović.²⁴¹

1.6.3. Victims Support

The Service for Support and Assistance to Victims and Witnesses at the Department of War Crimes of the Higher Court in Belgrade is responsible for providing assistance and support services to injured parties and witnesses during trials. The service makes travel arrangements for victims and witnesses who are required to appear in

court, informs them about their trials, reimburses their expenses and provides them with some kind of emotional support before testimony.²⁴² The provision of emotional support is limited to a short period of time before and after testimony, and includes informing witnesses/victims about the proceedings, encouraging them before their giving testimony and helping them to calm down afterwards.²⁴³ In some cases, the service staff provide support to witnesses/victims even after testimony, as a gesture of goodwill, not because that falls within their formal job description.²⁴⁴ Victims and witnesses in war crimes cases still do not receive psychological support, which is a basic support measure aimed at preventing retraumatization.²⁴⁵

Since the inception of prosecutorial investigation in criminal proceedings, the OWCP has managed the care of victims during the investigation of war crimes cases. However, as the OWCP does not have a special unit or individual able to provide expert support services to witnesses, this job has been done by deputy prosecutors and associates. The support include maintaining continuous contact with victims²⁴⁶ and keeping victims informed about all relevant aspects of the proceedings.²⁴⁷

The Action Plan for Chapter 23 sets out activities aimed at creating a nationwide assistance and support service for witnesses/injured parties. These activities are not planned to be implemented until 2016.²⁴⁸

236 HLC, "Irregularities and Abuse of Power in War Crimes Proceedings in the Republic of Serbia - Case of the 37th Battalion of Special Police Units" (2010).

237 HLC and others, "Transitional Justice in Post-Yugoslav countries – Report for 2010/2011" (2013), p. 61.

238 Interview with OWCP representatives, 24 December 2015.

239 Zoran Rašković, a witness in the *Qyshk/Ćuška* Case. See: HLC, "Report on War Crimes Trials in Serbia during 2014 and 2015" (2016), pp. 62-63.

240 "Bivši zaštićeni svedok na optuženičkoj klupi" [Ex-Protected Witness in the Dock], Radio Free Europe, 26. November 2015, available (in Serbian) at: <http://www.slobodnaevropa.org/content/bivsi-zasticeni-svedok-na-optuzenickoj-klupi/27389216.html>, accessed on 26 April 2016.

241 "Bivši zaštićeni svedok optužuje" [Ex-Protected Witness Accuses], Radio Free Europe, 12 November 2013, available (in Serbian) at: <http://www.slobodnaevropa.org/content/bivsi-zasticeni-svedok-optuzuje/25166118.html>, accessed on 20 January 2016; HLC, "Report on War Crimes Trials in Serbia during 2014 and 2015" (2016), pp. 28-30.

242 HLC, "Ten Years of War Crimes Prosecutions in Serbia – Contours of Justice, Analysis of the prosecution of war crimes in Serbia 2004-2013" (2014), p. 60.

243 Ibid, pp. 62-63.

244 Ibid.

245 Ibid, pp. 63-64.

246 Interview with OWCP representatives, 24 December 2015.

247 HLC, "Ten Years of War Crimes Prosecutions in Serbia – Contours of Justice, Analysis of the prosecution of war crimes in Serbia 2004-2013" (2014), p. 60.

248 Republic of Serbia, Negotiation Group for Chapter 23, Action Plan for chapter 23, draft (2015), activity 1.4.4.3.

1.7. Visibility of war crimes trials

Information concerning war crimes trials in Serbia rarely finds a way of attracting the public eye. Overall lack of interest in the subject by media outlets, and the absence of a systematic approach to informing the public about these cases, are just a few of the reasons for such a situation.²⁴⁹ The fact that the Department of War Crimes of the Higher Court in Belgrade, which handles war crimes cases at first instance which could be interesting for the public, imposes stringent restrictions with regard to public attendance at trials and public access to court documents, contributes to this situation.

The importance of a broader societal support for war crimes trials was underscored in the Draft National Strategy for the Prosecution of War Crimes in Serbia, which made “enhancing general public awareness of the need to prosecute war crimes” a priority.²⁵⁰ The goals that the relevant Serbian institutions are expected to achieve through implementing the strategy include: making information regarding war crimes trials publicly available, enhancing the capacity of journalists to report on war crimes trials, and the integration of the information concerning the armed conflicts in the former Yugoslavia into education programmes and curricula.²⁵¹ However, the activities set out in the Strategy through which these goals are to be attained are not comprehensive enough, as they are limited to the following activities: improving the website of the Higher Court in Belgrade, regularly publishing the performance reports of specialized institutions, training journalists periodically, analysing teaching materials, and

publishing the Strategy for the Prosecution of War Crimes, once it is adopted.²⁵²

1.7.1. Public access to court documents

Since 2012, the Higher Court in Belgrade has denied the HLC’s request²⁵³ for access to non-final judgments handed down in several war crimes cases, stating that it would hinder the judicial proceedings.²⁵⁴ This practice changed in late 2013 after the Commissioner for Information of Public Importance and Personal Data Protection (the Commissioner) had ordered the court to deliver the judgments requested²⁵⁵. However, prior to releasing the judgments and transcripts, the Higher Court anonymised them by completely blacking out text containing information regarding the accused, witnesses and victims.²⁵⁶ In some of the judgments, entire paragraphs were anonymised in this way in parts stating the reasons for the judgments, as a result of which the judgments were difficult to understand.²⁵⁷ The court explained that the anonymisation served to protect personal data in accordance with the Law on Personal Data Protection. In March 2014, the Commissioner declared the excessive anonymisation of judgments unlawful, saying that it constituted an undue processing of data.²⁵⁸

The Balkan Investigative Reporting Network (BIRN) was also denied access to public court documents. In October 2014, BIRN requested from the Higher Court in Belgrade access to the first instance verdict in the *Qyshk/Ćuška* Case. Despite complaints filed with the Commissioner and his decisions ordering the court to deliver the verdict sought, the Court has failed to do so, explaining that “this may endanger, obstruct or impede the trial”.²⁵⁹

249 HLC, “Analysis of media discourses on war crimes trials in Serbia 2003-2013”, November 2014, available (in Serbian) at: <http://www.hlc-rdc.org/?p=27672> with summary in English available at: <http://www.hlc-rdc.org/?p=27680&lang=de>; HLC, “Ten Years of War Crimes Prosecutions in Serbia – Contours of Justice, Analysis of the prosecution of war crimes in Serbia 2004-2013” (2014), p. 30.

250 Ministry of Justice of the Republic of Serbia, National Strategy for the Prosecution of War Crimes for 2016-2020, Draft (2015), p. 19.

251 Ibid, pp. 37-39.

252 Ibid.

253 The HLC is the only organization that systematically monitors war crimes trials in Serbia and informs the public about them.

254 HLC, “Report on War Crimes Trials in Serbia in 2012”, January 2013, p. 13-14, available at: <http://www.hlc-rdc.org/?p=22309&lang=de>. HLC, “Report on War Crimes Trials in Serbia during 2014 and 2015” (2016), p. 33.

255 Ibid.

256 HLC, “Report on War Crimes Trials in Serbia during 2014 and 2015” (2016), p. 33.

257 HLC, “Report on War Crimes Trials in Serbia in 2013” (2014), pp. 9.

258 HLC, “Report on War Crimes Trials in Serbia during 2014 and 2015” (2016), p. 33.

259 Email reply of a BIRN representative to the HLC’s inquiry of 9 May 2016; “Serbian ministries block public access to war files”, BIRN, 8 April 2016, available at: <http://www.balkaninsight.com/en/article/serbian-ministries-block-public-access-to-war-files-04-07-2016>, accessed on 9 May 2016.

The Court of Appeal in Belgrade has also anonymised court decisions rendered in war crimes cases, thereby breaking its own internal rules, which prohibit redacting court decisions in war crimes cases.²⁶⁰ The Higher Court in Belgrade has not yet adopted such rules.²⁶¹

A striking example of excessive anonymisation are the judgments in the *Beli Manastir* and *Gnjilane Group* cases, where not only the names of the accused were redacted but also the reasons for the judgments, which have made it completely impossible for a reader to obtain information about the case in question and the facts established by the court.²⁶²

1.7.2. Video Recording Banned during Trials

In addition to the excessive anonymisation, journalists, the legal community and broader public are not allowed to film trials. The Law on War Crimes Proceedings stipulates that the filming of a main hearing for the purpose of public broadcasting may be approved by the Court President after obtaining the opinion thereon from the parties. However, the Court Presidents for the most part deny requests for filming without any explanation. In May 2015, for instance, the President of the Higher Court in Belgrade turned down the HLC's request to film the pronouncement of the verdict in the *Beli Manastir* Case, without any explanation.²⁶³ Likewise, the Higher Court in Belgrade declined BIRN's

request to tape the judgment hearing in the *Qyshk/Čuška* Case in February 2014.²⁶⁴

The Department of War Crimes of the Higher Court in Belgrade and the Department of War Crimes of the Court of Appeal have not yet formed their own public relations offices to inform the public about the cases heard by the two departments, and about facts that have been established through judicial proceedings which can contribute to a better understanding of the recent conflicts. The two departments inform the public about their ongoing cases through the PR offices of their respective courts.

The courts have failed to improve the procedure for informing the public about important data concerning war crimes trials. In the case of the Department of War Crimes of the Higher Court in Belgrade, the provision of information is limited to brief and insufficiently informative press releases, which, as a rule, are published only on the occasion of the handing down of a verdict.²⁶⁵ They contain basic information on the verdict, convicts and sentences, and are sent to media outlets and posted on the court's website. For example, the press release announcing a judgment in the retrial of the *Bijeljina* Case presents the judgment and remedies available to the parties in two sentences only.²⁶⁶ Where guilty verdicts are passed, the information provided includes also the type and length of sentence.²⁶⁷ The court's website does not contain a separate section dedicated to war

260 HLC, "Ten Years of War Crimes Prosecutions in Serbia – Contours of Justice, Analysis of the prosecution of war crimes in Serbia 2004-2013" (2014), p. 47.

261 HLC, "Report on War Crimes Trials in Serbia during 2014 and 2015" (2016), p. 33.

262 See: Judgment of the War Crimes Department of the Higher Court in Belgrade K.Po2 No. 45/2010 of 19 June 2012, available (in Serbian) at: <http://www.hlc-rdc.org/wp-content/uploads/2013/12/Beli-Manastir-Prvostepena-presuda.pdf> Judgment of the War Crimes Department of the Higher Court in Belgrade K-Po2-18/11 of 19 September 2012, available (in Serbian) at: http://www.hlc-rdc.org/wp-content/uploads/2016/01/Presuda_K_Po2_18-11.pdf.

263 Reply of the Higher Court in Belgrade to the HLC's request to film the pronouncement of judgment in the *Beli Manastir* Case, Su VIII No. 42/15-9328 May 2015.

264 Email reply by a BIRN representative to an HLC inquiry of 9 May 2016.

265 See the website of the Higher Court in Belgrade, PR Office section, available (in Serbian) at: <http://www.bg.vi.sud.rs/lt/news/sluzba-za-odnose-sa-javnoscuvesti-i-saopstenja/>, accessed on 26 April 2016.

266 See: "Presuda u ponovnom postupku koji se vodi protiv okrivljenog Miodraga Živkovića (predmet „Bijeljina")" [Verdict in the repeated proceedings against Miodrag Živković (*Bijeljina* Case)], Higher Court in Belgrade PR Office, 24 November 2015, available (in Serbian) at: <http://www.bg.vi.sud.rs/lt/news/sluzba-za-odnose-sa-javnoscuvesti-i-saopstenja/presuda-u-ponovnom-postupku-koji-se-vodi-protiv-okrivljenog-miodraga-zivkovica-predmet-bijeljina.html>, accessed on 26 April 2016.

267 See: "Doneta i javno objavljena presuda u postupku koji se vodi protiv okrivljenog Zorana Vukšića i drugih (predmet „Beli Manastir")" [Judgment against Zoran Vukšić handed down and publicised] Higher Court in Belgrade PR Office, 1 June 2015, available (in Serbian) at: <http://www.bg.vi.sud.rs/lt/news/sluzba-za-odnose-sa-javnoscuvesti-i-saopstenja/doneta-i-javno-objavljena-presuda-u-postupku-koji-se-vodi-protiv-okrivljenog-zorana-vuksica-i-drugih-predmet-beli-manastir.html>, accessed on 26 April 2016.

crimes, so the information regarding war crimes is posted alongside information related to other criminal cases, the court's opinions regarding texts published in the press and job vacancies in the court.²⁶⁸

The Court of Appeal's Department does not issue press releases on the occasion of handing down a decision, but posts the information regarding the decisions handed down in war crimes cases on the section of its website dedicated to pending cases, including war crime cases.²⁶⁹ The posts about decisions handed down in war crimes cases are informative enough and, besides offering a summary of the Court of Appeal's decision itself, contain also a summary of the reasons for the decision and a summary of the trial court judgment in the case concerned.²⁷⁰ However, only information from the current year is made available, as the website does not offer an archive in which to look up decisions handed down in previous years.

2. Reparations

Numerous legal and institutional barriers seriously hinder access to material reparations for victims of war crimes and other human rights violations committed during the 1990s. Since the fall of Milošević's regime, the Serbian institutions, with the exception of the 2012 "Programme for the return of refugees and displaced Bosniaks from the municipality of Priboj in the period 1991-1999", have made little effort to provide reparations to victims in accordance with international standards. As regards symbolic reparations, ethnically biased commemorations of events from the 1990s prevail, as well as denial of crimes and absence of efforts to build and nurture a culture of remembrance for the victims.

2.1. Material Reparations

Victims of war crimes and other grave human rights violations committed during the 1990s can enforce their right to claim material reparations from Serbia through administrative or court proceedings. However, both mechanisms are plagued by serious and systemic problems that create unsurmountable obstacles for victims pursuing their right to reparation.

The Serbian Criminal Procedure Code provides for a third mechanism, namely, filling a restitution claim for material or non-pecuniary damage in the course of the criminal proceedings. However, this mechanism has not been used to date in proceedings for war crimes, and there are no data which show that it has been used in relation to other human rights violations committed in the context of the armed conflicts of the 1990s.²⁷¹

The Screening Report on Chapter 23 does not contain any recommendations concerning the right to reparation for victims of war crimes and human rights violations committed in the 1990s. In the early phase of the screening process,²⁷² Serbia was requested to align its legislation in this field with the Directive relating to compensation to crime victims,²⁷³ but the request was later abandoned without an explanation.²⁷⁴ The Directive lays down the obligation for Member States to provide compensation to crime victims and establish national compensation schemes for crime victims.

On the other hand, the European Commission in its 2014 Progress Report on Serbia underlined, for the first time, that

268 See the Higher Court in Belgrade's website, "Vesti i saopštenja" section, available (in Serbian) at: <http://www.bg.vi.sud.rs/lt/news/sluzba-za-odnose-sa-javnoscuvesti-i-saopstenja/>, accessed 26 April 2016.

269 See: website of the Court of Appeal in Belgrade/Sluzba za odnose sa javnoscuvAktuelni predmeti/Ratni zlocini, available (in Serbian) at: <http://www.bg.ap.sud.rs/cr/articles/sluzba-za-odnose-sa-javnoscuvAktuelni-predmeti/ratni-zlocini/rz-donete-odluke/>, accessed 26 April 2016.

270 See: website of the Court of Appeal in Belgrade/Sluzba za odnose sa javnoscuvAktuelni predmeti/Ratni zlocini/Donete odluke available (in Serbian) at: <http://www.bg.ap.sud.rs/cr/articles/sluzba-za-odnose-sa-javnoscuvAktuelni-predmeti/ratni-zlocini/rz-donete-odluke/>, accessed on 26 April 2016.

271 HLC, "Victims' Right to Reparation in Serbia and the European Court of Human Rights Standards, 2014-2015 Report", January 2016, p. 16, available at: <http://www.hlc-rdc.org/?p=31034&lang=de>.

272 European Commission, Explanatory Screening for Serbia, Agenda, Chapter 23 Judiciary and Fundamental Rights, 25-26 September 2013, p.7, available at: <http://www.hlc-rdc.org/wp-content/uploads/2016/03/EXP-Screening-Detailed-Agenda.pdf>.

273 Council Directive 2004/80/EC Relating to Compensation to Crime Victims.

274 European Commission, Screening Report Serbia, Chapter 23 – Judiciary and Fundamental Rights (2014).

275 European Commission, Serbia Progress Report 2014 (2014), p. 43.

“only a few victims of war crimes have access to effective compensation under the current legal framework.”²⁷⁵ The 2015 Progress Report on Serbia reiterates this observation.²⁷⁶ Resolutions of the European Parliament have also highlighted the urgent need to adopt comprehensive legislation which guarantees the right to compensation of victims and their families²⁷⁷, and to prepare a reparation scheme as a precondition for reconciliation.²⁷⁸

The numerous problems impeding the provision of material reparations in Serbia have been noted by other relevant international bodies and institutions as well. The UN Committee on Enforced Disappearances has found that the Serbian legal system does not guarantee the right to compensation and fair and adequate reparation for all victims of enforced disappearances, and has recommended the establishment of a comprehensive and gender-sensitive system of reparations, in order to ensure that all victims “may exercise their right to receive reparation, including medical and psychological rehabilitation”²⁷⁹. The UN Committee against Torture has called on Serbia to remove all the barriers that impede victims’ access to reparation, to compile data on all victims, including war crimes victims and forcibly mobilised refugees from Croatia, and to assess their needs, including the right to rehabilitation.²⁸⁰

The Commissioner for Human Rights of the Council of Europe has found that many victims of wartime crimes committed by Serbian forces remain without access to adequate and effective reparations.²⁸¹

Serious weaknesses of the legal framework governing the rights of civilian victims of war in Serbia were also criticised by a number of Serbian non-governmental organisations.²⁸²

2.1.1. Access to Material Reparations through Administrative Proceedings

States secure the fulfilment of the right to reparations by passing special laws and/or bylaws which lay down the reparation procedure and the type and the scope of victims’ rights.²⁸³ The legal framework regulating administrative reparations dates back to Slobodan Milošević’s regime. It is not consistent with international legal principles and standards in this area, as a result of which only a small percentage of those who, on the basis of their status, should otherwise have been entitled to receive reparations under the law, actually have access to them. In December 2014, the competent institutions initiated changes to the law, but the changes they proposed would make the legal regime even worse.

In 2012, the Government of Serbia issued a decree establishing the first ever and only reparation programme in Serbia, which is intended for one separate category of victims, namely Bosniaks from the Sandžak region. In the reporting period, the programme was implemented to a substantial degree.

i. Legal Framework²⁸⁴

The legal basis for administrative reparations is the 1996 Law on the Rights of Civilian Invalids of War.²⁸⁵ In addition to the Ministry of Labour, Employment and Social and Veteran Policy (hereinafter: the Ministry of Labour), the authorities responsible for its implementation include the local self-government units and the Secretariat for Health, Social Policy and Demographics of the Autonomous Province of Vojvodina, which perform this functions within the powers delegated to them.²⁸⁶

276 European Commission, Serbia Progress Report 2015 (2015), p. 19.

277 European Parliament Resolution of 11 March 2015 on the 2014 Progress Report on Serbia. (2015), paragraph 13.

278 European Parliament Resolution of 4 February 2016 on the 2015 Progress Report on Serbia (2016), paragraph 25.

279 UN Committee on Enforced Disappearances, Concluding observations on the report of Serbia, submitted in accordance with Article 29, para. 1 of the Convention (2015), paragraph 25.

280 UN Committee Against Torture, Concluding observations on the second periodic report of Serbia, CAT/C/SRB/CO/2 (2015), paragraph 13.

281 Report by Nils Muižnieks, Commissioner for Human Rights of the Council of Europe, following his visit to Serbia from 16 to 20 March 2015 (2015), p. 7.

282 See the HLC’s press release “A state that does not care for war victims“, 3 March 2014, available at: <http://www.hlc-rdc.org/?p=26328&lang=de>.

283 Pablo de Greiff, *The Handbook of Reparations*, article “Justice and Reparations”, translation, HLC, 2011, p. 450.

284 For a thorough analysis of the legal framework, see: HLC, “Victims’ Right to Reparation in Serbia and the European Court of Human Rights Standards, 2014-2015 Report” (2016).

285 Law on the Rights of Civilian Invalids of War, Official Gazette of the RS No. 52/96.

286 Ibid, Article 11.

The law recognises three categories of victims: civilian invalids of war, families of civilian invalids of war, and families of civilian victims of war (hereinafter: civilian victims of war).²⁸⁷ By acquiring one of these three statuses, victims become eligible to receive financial support (in the form of monthly cash benefits, personal disability benefits, and/or attendance allowances), health care, certain types of social welfare benefits and subsidised public transport passes.²⁸⁸

However, the law fails to recognise several categories of victims as civilian victims of war, including persons who sustained injuries or lost their life outside Serbian territory, persons living in Serbia who at the time of injury or death were not citizens of Serbia, family members of missing persons, persons who suffered violence at the hands of forces which operated under the control of the Serbian state, victims of wartime sexual violence, and persons suffering from psychological consequences caused by violence they endured. Furthermore, the Law imposes additional requirements that victims must meet in order to gain access to monthly cash benefits, such as financial insecurity, incapacity for work and a means test.²⁸⁹

Draft Law on the Rights of Veterans, Disabled Veterans, Civilian Invalids of War and their Family Members

In December 2014, the Ministry of Labour published the

Draft Law on the Rights of Veterans, Disabled Veterans, Civilian Invalids of War and their Family Members.²⁹⁰ By the end of 2015, the Draft Law had not yet been introduced in the parliament.²⁹¹

The working group that prepared the Draft Law was composed of representatives of the Ministry of Labour, Secretariat for Social Welfare of the Belgrade City Administration, Ministry of Health, Ministry of Defence, Serbian Health Insurance Fund, Administrative Court, Belgrade University Law School and Novi Sad University Law School.²⁹²

The Draft Law codifies all norms which regulate the procedure for acquiring the status of civilian or military (disabled war veterans and family members of fallen combatants) victim of war, and lays down the rights stemming from these statuses. As regards the norms applying to civilian victims of war, the proposed law is in effect identical to that passed in 1996, while at the same time it provides for more rights and entitlements for military victims than its predecessor, and a streamlined military victim status determination and recognition procedure.²⁹³

The drafting process of the Draft Law lacked transparency from its very onset. Associations of victims²⁹⁴ and some expert non-governmental organizations²⁹⁵ were not even informed about its drafting.

287 Ibid, Article 1.

288 Ibid, Article 4.

289 Law on the Rights of War Veterans, Disabled War Veterans, Civilian Victims of War and Their Family Members, Official Gazette of the FRY No. 54/89 and Official Gazette of the RS No. 137/2004, Articles 7–15.

290 Ministry of Labour, Employment, Social and Veteran Policy, Invitation to a public debate on the Draft Law on the Rights of War Veterans, Disabled War Veterans, War-Disabled Civilians and their Family Members, 4 December 2014, available (in Serbian) at: <http://www.minrzs.gov.rs/cir/aktuelno/item/1591-poziv-za-javnu-raspravu-nacr-zakona-o-pravima-boraca-vojnih-invalida,-civilnih-invalida-rata-i-clanova-njihovih-porodica>, accessed on 12 February 2016.

291 Republic Secretariat for Public Policies, the Draft Law on the Rights of War Veterans, Disabled War Veterans, War-Disabled Civilians and their Family Members, Journey of a Law, available (in Serbian) at: <http://www.rsip.gov.rs/m/Misljenje-na-AEP-Nacr-zakona-o-pravima-boraca-vojnih-invalida/1205>, accessed on 4 May 2016.

292 Reply of the Ministry of Labour, Employment, Social and Veteran Policy (Ministry of Labour) to HLC's request for access to information of public importance of 26 November 2015, No. 07-00-02150/2015-15.

293 Other official measures also testify to the unfavourable treatment of civilian war victims compared to war veterans, disabled war veterans and their families. In November 2015, the Ministry of Labour signed a Memorandum of Understanding with 32 faculties in Serbia, which allows the children of fallen combatants, disabled war veterans and war veterans to study for free at these faculties. See (in Serbian): <http://www.minrzs.gov.rs/cir/aktuelno/item/3904-besplatno-studiranje-za-decu-palih-boraca-na-32-fakulteta>, accessed on 12 February 2016.

294 „Nestale i njihove porodice država i dalje marginalizuje“ [The missing persons and their families are still marginalized by the state], The Association of Families of Victims from Kosovo and Metohija 1998 to 2000 “Kosmetki stradalnici”, 5 January 2015, available (in Serbian) at: <http://www.kosmetkistradalnici.org.rs/vesti/aktuelno/1449/nestale-i-njihove-porodice-drzava-i-dalje-marginalizuje>, accessed on 11 February 2016.

295 HLC, “Bill on Rights of Civilian Victims of War Still Hidden from Public Eye”, 10 December 2015, available at: <http://www.hlc-rdc.org/?p=30851&lang=de>.

Since the completion of the public consultation process and throughout 2015, the text of the Draft Law has been kept secret. In December 2015, the HLC requested from the Ministry of Labour access to the Draft Law under the Law on Free Access to Information of Public Importance. The Ministry of Labour declined the request, stating that the current text of the Draft Law is just an internal, work-in-progress version, and that it will be published only after it has become a Bill proper²⁹⁶. The Ministry also failed to publish a report on the public consultation process held, despite having announced it would do so in the documentation accompanying the call for public consultation, and despite being obliged by law to do so.²⁹⁷

The current legal framework governing the rights of civilian victims of war has been criticised by numerous relevant international bodies. In his report following his visit to Serbia, Nils Muižnieks, the Commissioner for Human Rights of the Council of Europe, underlined that it only applies to a limited group of war victims and excludes victims who sustained injuries or lost their life as a result of the action of Serbian state agents, as well as victims of enforced disappearance.²⁹⁸ The UN Committee on Enforced Disappearances has criticised Serbia because its administrative compensation system is not available to victims of enforced disappearance for as long as the disappeared person is not declared dead, and has recommended Serbia set up a legal framework which will ensure that all victims of enforced disappearance obtain reparations, “including restitution, rehabilitation, satisfaction and guarantees of non-repetition.”²⁹⁹ As mentioned above, a recent European Commission progress report on Serbia has also pointed out shortcomings in this area; and the European Parliament, in its latest resolution concerning Serbia’s progress, has urged Serbia to adopt

a new law on civilian victims of war without undue delay, because the existing law does not recognise several groups of victims.³⁰⁰

Model Law on the Rights of Civilian Victims

In April 2015, the Center for Advanced Legal Studies and the HLC published a Model Law on the Rights of Civilian Victims of Human Rights Violations Committed during and in connection with Armed Conflicts in the Period 1991-2001.³⁰¹ The Model Law is a proposal for a new law, which ensures that victims of human rights violations committed in the 1990s exercise their right to reparations in a fair manner and without discrimination, in accordance with international standards and good practices based on the experiences of other post-conflict societies. The Model Law was sent to the Ministry of Labour with a request for a meeting to discuss the prospects for implementing elements and principles contained in the Model Law.³⁰² By the end of 2015, the Ministry of Labour had not responded to the request.

ii. Number of Beneficiaries

According to the register of all beneficiaries who receive benefits under the Law on the Rights of Civilian Invalids of War maintained by the Ministry of Labour, the total number of such beneficiaries is 1554. In the reporting period, the Ministry of Labour did not keep a record of the number of people who have applied for civilian victim of war status, have been accorded this status or have lost it.³⁰³

In April 2013, the Ministry of Labour conducted an official review of the legality of the administrative decisions granting the status of civilian victim of war to victims of human

296 Ibid.

297 Rules of Procedure of the Government, Official Gazette of the RS No. 61 of 18 July 2006 – revised text, No. 69 of 18 July 2008, No. 88 of 28 October 2009, No. 33 of 18 May 2010, No. 69 of 24 September 2010, No. 20 of 25 March 2011, No. 37 of 31 May 2011, and No. 30 of 2 April 2013, Article 41.

298 Report by Nils Muižnieks, Commissioner for Human Rights of the Council of Europe, following his visit to Serbia from 16 to 20 March 2015 (2015), p. 7.

299 UN Committee on Enforced Disappearances, Concluding observations on the report of Serbia, submitted in accordance with Article 29, para. 1 of the Convention (2015), paragraph 26.

300 European Parliament Resolution of 4 February 2016 on the 2015 Report on Serbia (2016), paragraph 25.

301 Saša Gajin (ed.), “Model Law on the rights of civilian victims of human rights violations committed during and in connection with armed conflicts in the period 1991-2001”, Center for Advanced Legal Studies and HLC, April 2015, available at: <http://www.hlc-rdc.org/?p=28764&lang=de>.

302 HLC’s letter to the Ministry of Labour, Employment, Social and Veteran Policy (HlcIndexOut: 384-F110572), 18 May 2015.

303 Reply of the Ministry of Labour (No. 07-00-00088/2016-15) to HLC’s request for access to information of public importance of 3 February 2016.

rights violations committed outside Serbian territory or their family members.³⁰⁴ By the end of 2015, the Ministry of Labour had initiated the procedure for cancellation of the status in 14 cases; in eight cases the procedure had been completed, while the remaining five administrative actions are still underway. As a result, a total of 13 persons had their civilian victim of war status cancelled and lost rights and benefits based on that status.³⁰⁵ It should be noted that the Ministry of Labour initiated the official review process after the HLC had appealed the decision of a first-instance administrative body denying civilian victim of war status to the family members of the victims abducted in Sjeverin.³⁰⁶

iii. The Programme for the return of refugees and displaced Bosniaks from the municipality of Priboj

In March 2012, the Government of the Republic of Serbia adopted the “Programme for the return of refugees and displaced Bosniaks from the municipality of Priboj in the period 1991-1999”³⁰⁷. The primary aim of the Programme has been to facilitate the return of Bosniaks who had been expelled from their homes in the municipality of Priboj during the war in BiH by members of the Yugoslav Army. Before April 2014, the Office of the Republic of Serbia for Sustainable Development of Underdeveloped Areas had been responsible for its implementation. Under the Law on Ministries, adopted in 2014, the Ministry of Economy took over this responsibility.³⁰⁸

The Programme envisages the following measures for the sustainable return of returnees: the reconstruction of returnee’s homes which were destroyed in the critical period; the construction and reconstruction of infrastructure,

agricultural subsidies and incentives for boosting economic activities; the opening of a local community office, a school, an outpatient clinic, a police station and a fire station.³⁰⁹

The Programme also envisages setting up an inter-ministerial commission, composed of representatives of relevant ministries and the Office for Sustainable Development of Underdeveloped Areas, and tasked with drafting an action plan for Programme implementation and engaging expert institutions in the implementation process. However, instead of the inter-ministerial commission at the national level, a local fact-finding commission was set up by the Mayor of Priboj in early 2013.³¹⁰

The planned RSD 1.2 billion needed for the implementation of the Programme would be provided from the state budget and international funds. Of the estimated total amount, RSD 450 million was intended for the construction of roads, RSD 483 million for the reconstruction and construction of homes, and RSD 320 million for the construction of electrical substations, and electrical and water supply networks.³¹¹

Under the Programme, a total of RSD 41.5 million was paid out as financial assistance for the reconstruction of housing units and outbuildings, RSD 63.5 million was spent for the building of 22 pre-fabricated homes, and RSD 27 million was spent for preparing project documentation for the construction of roads.³¹²

However, a problem came up during the implementation of the Programme, due to which the returnees could not fully use their pre-fabricated homes. It turned out that the homes had been installed without a building permit,

304 Ministry of Labour, Employment, Social and Veteran Policy of the Republic of Serbia, Decision to reject an appeal (No. 580-02-01025/2012-11), 4 April 2013.

305 Reply of the Ministry of Labour (No. 07-00-00088/2016-15) to HLC’s request for access to information of public importance of 3 February 2016.

306 HLC, “Letter to Prime Minister Ivica Dačić”, 18 July 2013, available at: <http://www.hlc-rdc.org/?p=23628&lang=de>.

307 Government of Serbia, The Programme for the return of refugees and displaced Bosniaks from the municipality of Priboj in the period 1991-1999, Conclusion No. 019-2347/2012, 29 March 2012.

308 Law on Ministries, Official Gazette of the RS No. 44/14, Articles 37-38.

309 Government of Serbia, The Programme for the return of refugees and displaced Bosniaks from the municipality of Priboj in the period 1991-1999, pp. 2-3.

310 Reply of the Ministry of Economy (No. 3-00-19/2016-02) to HLC’s request for access to information of public importance of 14 March 2016.

311 Government of Serbia, The Programme for the return of refugees and displaced Bosniaks from the municipality of Priboj in the period 1991-1999, pp. 2-3.

312 Reply of the Ministry of Economy (No. 3-00-19/2016-02) to HLC’s request for access to information of public importance of 14 March 2016.

as a result of which they could not be connected to an electricity supply-source. In March 2015, the Association for the Protection of the Rights of Persons Expelled and Displaced from the Municipality of Priboj sent a letter to the Ministry of Economy about this problem.³¹³ The Ministry of Economy replied that the users of the pre-fabricated homes themselves needed to “make every effort” to obtain all the necessary permits and utility connections.³¹⁴

2.1.2. Pursuing Reparations Through Court Proceedings

Some victims of human rights violations committed during the conflicts in the former Yugoslavia initiate court proceedings before Serbian courts to enforce their right to claim financial (monetary) compensation from the Republic of Serbia. They include citizens of other post-Yugoslav countries who, being foreign citizens, cannot be recognised in Serbia as civilian victims of war, or Serbian citizens who cannot acquire this status owing to the discriminatory provisions of the Law on the Rights of Civilian Invalids of War.

These court proceedings are lengthy, with courts often being clearly biased against the victims.

i. Legal Framework

The Law on Contracts and Torts (LCT) provides a legal basis for filing a compensation lawsuit against the state, as the party responsible for human rights violations committed in the context of the armed conflicts in the former Yugoslavia. The LCT stipulates that “a legal entity shall be responsible for the damage its bodies have caused to a third person while performing their functions or for the damage caused to a

third party as a result of their performing their functions³¹⁵, and that “a state whose agencies were bound by existing regulations to prevent injury or loss, shall be liable for damage caused by the death, bodily injury, or damage to or destruction of the property of an individual as a result of acts of violence or terror[...]³¹⁶

Civil actions for compensation are heard by the First Basic Court in Belgrade and the Higher Court in Belgrade at first instance, and by the Court of Appeal in Belgrade at the second. The procedural law that applies to these proceedings is the Civil Procedure Code.³¹⁷

ii. Number of Cases

In Serbia there is no register in which all legal actions for compensation filed against the Republic of Serbia for its responsibility for wrongs committed in the 1990 are recorded. The courts hearing these cases either do not possess the data concerning the number of such legal actions and the outcome of the proceedings that victims initiate through their privately retained lawyers, or cannot determine accurately their number.³¹⁸ For its part, the HLC, which has been representing crime victims before Serbian courts since 2003, possesses only data concerning those cases in which it has provided legal assistance to the victims.

As regards the compensation proceedings in which victims have been represented by the HLC, 41 of them were pending at the end of 2015. They were initiated on behalf of the survivors and family members of victims of war crimes, torture, unlawful arrest, groundless detention, destruction of property and inhumane treatment.³¹⁹ The reporting period saw the completion of five cases. In two cases, the claims were finally and conclusively rejected,³²⁰ and in the

313 Letter of the Association for Safeguarding the Rights of expelled and displaced Residents of the Municipality of Priboj addressed to the Ministry of Economy of the Republic of Serbia, 9 March 2015 (HlcIndexIn: 25-F119751).

314 Reply of the Ministry of Economy (No. 3-00-19/2016-02) to HLC’s request for access to information of public importance of 14 March 2016.

315 Law on Contracts and Torts, Official Journal of the SFRY Nos. 29/78, 39/85, 45/89 – decision of the Constitutional Court of Yugoslavia, and 57/89, Official Journal of the FRY No. 31/93 and Official Journal of SMN No. 1/2003 – Constitutional Charter, Article 172.

316 Ibid, Article 180.

317 Civil Procedure Law, Official Gazette of the RS, Nos. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013 and 55/2014.

318 Reply of the First Basic Court in Belgrade (Posl.br.Su VIII 42-51/16) of 11 April 2016 to HLC’s request for access to information of public importance; Reply of the High Court in Belgrade (VIII Su.br. 42/16-90) of 14 April 2016 to HLC’s request for access to information of public importance.

319 HLC, “Victims’ Right to Reparation in Serbia and the European Court of Human Rights Standards, 2014-2015 Report” (2016), pp. 36-37.

320 Cases of *Gigollaj Asman, Haki, Gani, Nymetullah, Lumnije and Ryva*, the children and wife of Behram Gigollaj, who died after being brutally attacked by unknown persons on 24 March 1999 in Mataruška Banja, and *Šefket Hukić*, a victim of police torture in Novi Pazar in 1993.

remaining three claims were partially granted.³²¹ Also, the HLC, having exhausted all available domestic remedies, took eight cases to the European Court of Human Rights in the 2013-2015 period.

iii. Characteristics of Court Proceedings

Excessive length, the partiality of judges and their insensitivity to the suffering and needs of victims have been the main shortcomings of the compensation proceedings conducted in the reporting period.

In most cases, the court proceedings have lasted more than five years. For instance, the proceedings initiated by Šefćet Mehmedović against the Republic of Serbia (for police torture endured in 1994) have been going on since 2006.³²² In the Case of *Sjeverin*, the Constitutional Court in 2013 ruled that, as the proceedings had commenced as far back as 2007, the right of the claimants to have their case heard within a reasonable time had been violated.³²³

A large number of compensation claims were rejected because the courts found that the claimants' right to seek compensation had become time-barred. Namely, as in the previous years, the courts largely continued to interpret the limitation provisions set out in the LCT in a way unfavourable to the victims and, as a rule, failed to make use of the legal possibility to extend the time limit in these cases.³²⁴ By way of illustration, the compensation claim filed by survivors and family members of the victims of a war crime committed by members of the Serbian MUP in Podujevo in 1999 was dismissed, first by the High Court in Belgrade and later also by the Court of Appeal, as being time-barred, in spite of the fact that the courts, when delivering a guilty verdict against the perpetrators, instructed the

victims to enforce their right to compensation through civil lawsuits. The verdict was upheld by the Supreme Court of Cassation in 2011.³²⁵ However, in 2014 the Constitutional Court of Serbia granted an appeal filed by the defendants, and sent the case back to the lower court for retrial.³²⁶

It is obvious that the courts tend to give greater credence to the arguments and evidence put forward by the defendant – the Republic of Serbia – than to those put forward by the plaintiffs. At the same time, the courts often do not accept evidence presented by the plaintiffs, providing arbitrary explanations for so deciding, and most often to the detriment of the victims.³²⁷ In some cases this evidence has unarguably pointed to the state's responsibility for the harm inflicted upon the victims.³²⁸ In some other cases, the courts have refused to hear certain witnesses proposed by the plaintiffs (ex-prisoners of detention camps, for instance), but have heard all witnesses proposed by representatives of the state.³²⁹

The practice of awarding inadequate compensation to victims of human rights violations has also continued throughout the reporting period. The amounts of money paid by way of compensation range between RSD 70,000 and 380,000 (EUR 570-3100).³³⁰ For example, the Court of Appeal in Belgrade finally awarded Sulejman Bajgora and Qamil Kastrati each RSD 200,000 (approximately EUR 1,600), as compensation for the police torture they were subjected to while being kept in unlawful custody in 1999. A victim of police torture in Tutin in 2002, Murat Pepić, was awarded the sum of RSD 150,000 (approximately EUR 1,200). Former prisoners of the detention camps in Šljivovica, Enes Bogilović and Mušan Džebo, were each awarded RSD 300,000 (approximately EUR 2400).³³¹

321 Claims for compensation for police torture: the Case of *Murat Pepić*, victim of police torture in Tutin in 2002; the Cases of *Ekrem Nebihu and Sulejman Bajgora*, and *Ahmet Kukaj, Beqir Istogu, Beqir Gashi, Sabri Bekoli and Qamil Kastrati*, Kosovo Albanians who were kept in unlawful custody and subject to police torture in 1999.

322 HLC, "Victims' Right to Reparation in Serbia and the European Court of Human Rights Standards, 2014-2015 Report" (2016), pp. 64-68.

323 *Ibid*, pp. 38-46.

324 HLC, "Victims' Right to Reparation in Serbia and the European Court of Human Rights Standards, 2014-2015 Report", (2016), pp. 29-31.

325 *Ibid*, pp. 46-53.

326 *Ibid*.

327 *Ibid*, pp. 28-29.

328 *Sjeverin* Case, *Ibid*, 38-46.

329 The Cases of *Enes Bogilović* and *Mušan Džebo*. *Ibid*, pp. 80-84.

330 This information relates the finally adjudicated cases initiated by the HLC on behalf of the victims.

331 See the HLC's press release "The Court of Appeal in Belgrade: Serbia is responsible for the torture and inhumane treatment of Bosniaks in the Šljivovica concentration camp", 10 September 2014, available at: <http://www.hlc-rdc.org/?p=27376&lang=de>.

Such practice of the courts has been criticized by the UN Committee against Torture and the Commissioner for Human Rights of the Council of Europe, who noted that statute of limitation provisions are interpreted restrictively when it comes to compensation claims, that the standard of proof that applies to compensation claims is too high, that the damages awarded are too low, and that the country has no victim-rehabilitation programmes in place.³³²

iv. Redress Awarded to a Corporate Entity

In 2015, the Court of Appeal in Belgrade ruled to award the Kosovo-based company Bučaj the sum of RSD 32.47 million (EUR 260,900) as compensation for the goods the Yugoslav Army had taken away from it during the war in Kosovo. The ruling put an end to a nine-year long litigation process. The claim filed by Bučaj in 2004 was rejected by all court instances in Serbia. It was only in 2011, when the Constitutional Court of Serbia granted the company's constitutional complaint and ruled that the right to property guaranteed by the Constitution had been violated, that the case was retried.³³³

The company Bučaj sued the Serbian Ministry of Defence because the Yugoslav Army in June 1999 expropriated a large quantity of food products belonging to the company from its warehouse in Pristina. The company claimed that in this case the goods expropriated were "spoils of war", and that the violation of the right to property was targeted against one particular ethnic minority.³³⁴

2.1.3. Refugees and Internally Displaced Persons

Serbia is the country hosting the largest number of refugees

and internally displaced persons in the region of the former Yugoslavia. During the reporting period, hundreds of the most vulnerable refugees and IDPs were provided with housing under the Regional Housing Programme. However, Serbia has adopted a new strategic framework for addressing the problems of refugees and internally displaced persons, which, according to refugees and internally displaced persons, falls short of being comprehensive and all-embracing.

i. Statistics

According to the 2015 statistics, Serbia has 43,763 persons registered as refugees and 204,049 as internally displaced persons.³³⁵ The majority of the refugees are those from Croatia - a total of 32,371; the remainder, numbering 11,324, are from Bosnia and Herzegovina.³³⁶ Serbia has the largest number of refugees and internally displaced persons in the region of the former Yugoslavia, and the fourth largest number in Europe.³³⁷

In the 2013-2015 period, 11 collective centres were closed in Serbia.³³⁸ Nine are still operating, housing a total of 560 persons, of whom 185 are refugees and 375 internally displaced persons.³³⁹

Associations of refugees in Serbia perceive the process of the return of refugees to Croatia and BiH and the process of their local integration in Serbia as insufficiently comprehensive, owing to regulations in the countries of origin and the host country, which do not treat all refugees equally. The associations believe that improving the status and position of refugees requires political will, understanding on the part of the relevant institutions and improved regulations which

332 UN Committee against Torture, Concluding observations on the second periodic report of Serbia, CAT/C/SRB/CO/2 (2015), paragraph 13; Report by Nils Muižnieks, Commissioner for Human Rights of the Council of Europe, following his visit to Serbia from 16 to 20 March 2015 (2015), p. 7.

333 Constitutional Court of Serbia, Decision of admission, case Už446/2009, 10 March 2011.

334 "Vojska izgubila spor, mora da plati 32 miliona albanskoj firmi s Kosova" [Army loses court case, must pay 32 million to Kosovo Albanian company], Blic, 8 January 2015, available (in Serbian) at: <http://www.blic.rs/vesti/drustvo/saznajemo-vojska-izgubila-spor-mora-da-plati-32-miliona-albanskoj-firmi-s-kosova/6ys4b6h>, accessed on 12 February 2016.

335 Government of the Republic of Serbia, National Strategy for Resolving the Problems of Refugees and Internally Displaced Persons for the period 2015-2020, 10 July 2015, available (in Serbian) at: <http://slglasnik.info/sr/62-14-07-2015/29863-nacionalna-strategija-za-resavanje-pitanja-izbeglica-i-interno-raseljenih-lica-za-period-od-2015-do-2020-godine.html>, accessed on 1 March 2016.

336 Ibid.

337 According to the UNHCR statistics for 2014, Serbia (with Kosovo) hosts 271,246 refugees and IDPs, BiH 144,107, Montenegro 20,981, Croatia 19,593, Macedonia 3,259, and Slovenia 345. The statistics are available at: http://popstats.unhcr.org/en/overview#_ga=1.1766197.545343824.1464381183, accessed on 27 May 2016.

338 Six collective centres were closed in 2013, two in 2014, and three in 2015 - data obtained through the Serbian Commissariat for Refugees and Migration website: <http://www.kirs.gov.rs/articles/centers.php?lang=ENG>, accessed on 1 March 2016.

339 Ibid.

would adequately safeguard the rights of refugees.³⁴⁰

ii. Regional Housing Care Programme

Serbia participates in the Regional Housing Programme (RHP), which aims to provide housing for the most vulnerable refugees and displaced persons, as well as for returnees to BiH and Croatia who, following the armed conflicts in the former Yugoslavia, have lived in collective centres and/or have not achieved a durable housing solution in their countries of origin or host countries.³⁴¹ The RHP was jointly launched in 2011 by Bosnia and Herzegovina, Montenegro, Croatia and Serbia. It is aimed at the provision of a durable and sustainable solution for refugees and internally displaced person in the region. Its implementation began in 2013.³⁴²

The implementation of the RHP is funded through the Regional Housing Programme Fund that has been established for that purpose.³⁴³ In the 2013-2015 period, four projects submitted by Serbia under the RHP, worth a total of EUR 41,981,290, were approved³⁴⁴. The projects foresee provision of 475 construction material packages, 300 prefabricated homes, 696 housing units (for rent, with a possibility of buy-out, and for social housing), and 50 houses in rural areas.³⁴⁵

iii. Strategy for Resolving the Problems of Refugees and Internally Displaced Persons

In July 2015, the Government of Serbia adopted a new strategic framework for resolving the problems faced by refugees and displaced persons in Serbia – the National

Strategy for Resolving the Problems of Refugees and Internally Displaced Persons. The Strategy applies to persons who “as a result of the events of 1991-1998 and their aftermath, fled or were expelled from former Yugoslav republics and came to Serbia”³⁴⁶, and persons displaced from Kosovo following the 1998-1999 armed conflict.³⁴⁷ It is aimed at creating conditions conducive to the sustainable return of refugees to Croatia and BiH or their integration in Serbia, improving the living conditions of the most vulnerable categories of internally displaced persons and protecting their interests in the procedures for enforcing their rights in their places of origin. The Strategy covers the period 2015-2020.

In the view of the representatives of the refugees, the measures envisaged in the Strategy are not adequate for solving the problems encountered by refugees in Serbia, because they do not apply to the entire refugee population and have not been developed in consultation with them and their associations. Namely, some of the measures are insufficiently specific and apply only to certain categories of refugees. For example, the associations have pointed out that the Strategy insufficiently recognises the problems faced by refugees living in rented private accommodation and by those who are socially and economically vulnerable.³⁴⁸ The opinion of the Coalition of Associations of Persons Displaced from Kosovo and Metohija in relation to this Strategy and its measures is not known.³⁴⁹

iv. Initiative for Cessation of Refugee Status

In April 2014, the UN High Commissioner for Refugees

340 Reply of representatives of the Coalition of Associations of Refugees in the Republic of Serbia, 22 May 2016.

341 Joint Declaration on Ending Displacement and Ensuring Durable Solutions for Vulnerable Refugees and Internally Displaced Persons, 7 November 2011, available at: <http://www.unhcr.org/4ec22a979.html>; Website of the Serbian Commissariat for Refugees and Migration, „Regional Process“ section, available (in Serbian) at: <http://www.kirs.gov.rs/articles/oregprocesu.php?type1=67&lang=SER&date=0>; accessed on 1 March 2016.

342 Ibid.

343 UNHCR office in Serbia, Regional Housing Programme, leaflet, available (in Serbian) at: http://www.unhcr.rs/media/SRB_final.pdf, accessed on 1 March 2016.

344 Data taken from the Serbian Commissioner for Refugees and Migration’s website: www.kirs.gov.rs.

345 Ibid.

346 Government of the Republic of Serbia, National Strategy for Resolving the Problems of Refugees and Internally Displaced Persons for the period 2015-2020 (2015); Law Amending the Law on Refugees, Official Gazette of the Republic of Serbia No. 30/10, 7 May 2010, accessed on 2 March 2016.

347 Government of the Republic of Serbia, National Strategy for Resolving the Problems of Refugees and Internally Displaced Persons for the period 2015-2020 (2015).

348 Reply of a representative of the Coalition of Refugees Associations in the Republic of Serbia to the HLC’s inquiry, 22 May 2016.

349 Towards the end of 2015, a coalition of associations of displaced persons from Kosovo-Metohija was formed. It is based in the town of Paraćin. Coalition representatives did not reply to the HLC’s inquiry on these matters. The Coalition does not have a website.

(UNHCR) issued a recommendation to countries hosting the refugees displaced by the 1991-1995 armed conflicts in Croatia to declare refugee status cessation for these persons.³⁵⁰ The recommendation is based on the provisions of the Convention relating to the Status of Refugees, which stipulate that the Convention shall cease to apply to a person if the circumstances on the basis of which he has been recognised as refugee have changed, as a result of which the person “can no longer continue to refuse to avail himself of the protection of the country of his nationality”,³⁵¹ that is to say, “is able to return to the country of former habitual residence”³⁵². The UNHCR finds that peace has taken hold in the region, coupled with a visible economic and political progress, and that reforms undertaken by Croatia over the last two decades have addressed the human rights violations that caused displacement. Also, since a durable solution has been found for many refugees from Croatia who were displaced by the 1991-1995 armed conflicts, so that they now enjoy the effective protection of their host state or the state they have returned to, they are no longer in need of the protection provided by the international refugee protection instruments. Exempt from cessation will be only those who continue to have a well-founded fear of persecution.

The Serbian Ministry of Foreign Affairs expressed dissatisfaction with the recommendation, stating that Serbia would not accept it because it was adopted “without consultation and in defiance of the explicit disapproval of the Republic of Serbia as the country with the largest number of refugees from the Republic of Croatia.”³⁵³ The Republic of Serbia further stressed that no sustainable solutions had been envisaged with regard to the sustainable

return of refugees to Croatia, and that the UNHCR’s decision could therefore undermine the current initiatives aimed at implementing durable solutions for refugees, such as the RHP.

Associations of refugees responded in a similar way to the UNHCR’s recommendation, stating that the conditions had not yet been created in Croatia for many refugees living in Serbia to return there.³⁵⁴

v. Activities of Associations and Non-Governmental Organisations

The Ana and Vlade Divac Foundation provides assistance to refugees and displaced persons in Serbia, through projects focused on housing, employment, economic empowerment and social integration. As regards the housing projects, the Foundation provides houses in rural areas, and prefabricated houses, and funds the construction of flats for the most vulnerable categories of refugees.

The Coalition of Refugee Associations in Serbia implement activities aimed at improving the position of refugees in the process of their integration in Serbia, and helping them access their rights in their countries of origin. These activities are carried out in the form of campaigns, advocacy efforts, and commemorations of important dates and events. Coalition representatives said to the HLC that they had never been included in the drafting of any relevant regulation, owing to the lack of will on the part of government institutions to include them in the process.³⁵⁵

350 UN High Commissioner for Refugees (UNHCR), Implementation of the Durable Solutions Process (Sarajevo Process) for refugees from Croatia displaced by the 91-95 conflict, including cessation of refugee status, April 2014, available at: <http://www.refworld.org/docid/533d813f4.html>, accessed on 31 March 2016.

351 UNHCR, Convention relating to the Status of Refugees and the Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, with appendices, Article 1c (5), 28 July 1951, available at: <http://www.unhcr.org/1951-refugee-convention.html>, accessed on 20 March 2016.

352 Ibid, Article 1C (6).

353 „Statement by the Ministry of Foreign Affairs on status cessation for refugees from the Republic of Croatia”, 4 April 2014, available at: <http://www.mfa.gov.rs/en/statements-archive/statements-archive-2014/13014-statement-by-the-ministry-of-foreign-affairs-on-status-cessation-for-refugees-from-the-republic-of-croatia>, accessed on 1 March 2016.

354 Coalition of Refugee Associations in the Republic of Serbia, “Pismo Visokom komesaru Ujedinjenih Nacija za izbjeglice Antoniju Guteresu povodom preporuke UNHCR-a da se ukine izbjeglički status prognanim Srbima iz Hrvatske” [A letter to the UN High Commissioner for Refugees, Antonio Guterres, regarding the UNHCR recommendation concerning status cessation for Serbian refugees from Croatia], 4 April 2014, available (in Serbian) at: <http://koalicija.org.rs/pismo-visokom-komesaru-ujedinjenih-nacija-za-izbjeglice-antoniju-guteresu-povodom-preporuke-unhcr-a-da-se-ukine-izbjeglicki-status-prognanim-srbima-iz-hrvatske/>, accessed on 1 March 2016.

355 Reply of a representative of the Coalition of Refugee Associations in the Republic of Serbia, 22 May 2016.

The Coalition of Associations of Persons Displaced from Kosovo and Metohija³⁵⁶ has not provided information on its views on how to improve the situation of displaced persons in Serbia and on the associations comprising the coalition.³⁵⁷

In addition to the Coalition of Associations of Displaced Person from Kosovo-Metohija, there are several other organisations of internally displaced persons from Kosovo operating in Serbia, but their activities mainly focus on the search for information regarding the fates of missing persons. According to a representative of one such association, Serbia's institutions have never shown interest in addressing the problems of displaced Serbs from Kosovo and improving their situation. Their sporadic activities are directed mainly towards resolving the housing problems of person accommodated in collective centres, whereas the internally displaced persons living in private accommodations have remained outside their field of interest and attention. As regards their access to employment, social security and health care, displaced persons are not granted any privileges over other Serbian citizens.³⁵⁸

2.2. Symbolic Reparations

Symbolic reparations refer to measures and gestures aimed at restoring the dignity of victims and promoting their reintegration into society. They include acknowledgment of the truth about past crimes, acceptance of responsibility for past crimes, apologies to victims and their communities, marking anniversaries of war crimes, etc.³⁵⁹

The 2013-2015 period saw a significant number of symbolic reparations initiatives by government officials and civil society alike. The general public often doubted the sincerity of the gestures of the current or former government

officials, because they were often preceded or followed by actions or statements that relativized the crimes and denied the facts established through court proceedings. The Government organised or supported memorial events dedicated to Serbian victims of the wars in the former Yugoslavia, whereas the events honouring the victims killed by the Serbian side were staged almost exclusively by civil society members.

2.2.1. Apologies by Government Officials

In the television show *Interview 20*,³⁶⁰ aired by the BiH television station BTH1 in May 2013, Serbian President **Tomislav Nikolić** spoke about the “horror one feels at the mention of Srebrenica“, adding, “I do not need to be reminded by anyone of the scale of the crime committed there by members of my people”. Replying to the comment of the show's host that Srebrenica, because of the number of victims and the way in which they were killed, was a particularly deplorable crime, Nikolić said, “I am down on my knees seeking pardon for Serbia for the crime committed in Srebrenica... Members of my people did it, but my country was in no way involved in it.” Asked by the host whether he would offer an apology for all crimes committed by Serbs in BiH, Nikolić replied, “I will shoulder the burden that others have not wanted to assume (...). I can tell you in all sincerity, from the bottom of my heart, that I apologise, that I deplore and seek forgiveness for every wrong done by any member of the Serbian people or Serbian citizen“.

However, Nikolić stopped short of calling the crime in Srebrenica genocide, saying that “everything that happened during the wars in the former Yugoslavia has the characteristic of genocide.”³⁶¹

356 Formed in late 2015, see footnote 349.

357 Coalition representatives did not reply to the HLC's inquiry on these matters. The Coalition does not have its website.

358 Interview with a representative of the The Association of Families of Victims from Kosovo and Metohija 1998 to 2000 “Kosmetiski stradalnici”, 8 April 2016.

359 Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, Resolution adopted by the General Assembly on 16 December 2005, available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx>, accessed on 10 February 2016.

360 Speaking for the same talk show in late 2012, Nebojša Stefanović, the then speaker of the National Assembly of the Republic of Serbia, said the following: “I am truly sorry and strongly condemn any member of my people who committed any crime anywhere in the world, including, of course, in Bosnia and Herzegovina (...) I feel ashamed on account of the people because of whom the name of the Serbian people is associated with some of the most terrible crimes; it is something that simply should never have happened, and I am terribly sorry for that” - talk show *Interview 20*, full video available at: <https://www.youtube.com/watch?v=rU2V3soxB-M>, accessed on 12 February 2016.

361 Talk show *Interview 20*, full video available at <https://www.youtube.com/watch?v=WF6bIXrzStg>, accessed on 8 February 2016.

In an interview given to *Dnevni Avaz*, which was published in early August 2013, Serbian Prime Minister **Aleksandar Vučić** said, “The time has come for all of us who were in the wrong in the past not to be ashamed to admit our political mistakes”, adding, “Let me make it clear, I don’t want to hide behind anybody who, allegedly in the name of the people I belong to, committed that terrible crime. That terrible, heinous crime, so terrible that you feel ashamed that someone who took part in it is a member of your nation [...] Those responsible for those terrible crimes must be punished, and as for the rest of us, it will take us a long, long time to build mutual trust.”³⁶²

In July 2014 Serbian Foreign Affairs Minister **Ivica Dačić** condemned the YPA attack on Dubrovnik in 1991 and the bombardment of the city.³⁶³

During his official visit to Montenegro in June 2015, NATO Secretary-General **Jens Stoltenberg** expressed regret over the deaths of innocent civilians in the NATO bombardment and extended his condolences to their families. Stoltenberg underlined that the purpose of the intervention was to bring peace and stability, and that NATO made every possible effort to avoid the loss of innocent lives.³⁶⁴

2.2.2. Admission of Guilt

In January 2013, **Dragoljub Ojdanić**, an ICTY³⁶⁵ indictee

and the Chief of the Yugoslav Army General Staff during the armed conflict in Kosovo, filed a notice on the withdrawal of his appeal against the judgement of the Trial Chamber. „I fully accept all of the findings in the judgment“, wrote Ojdanić in the notice, expressing his “sincere regret to all of those who suffered as a result of the conduct for which one has been convicted.”³⁶⁶ In August of that same year, Ojdanić was granted provisional release after spending 11 years in prison. After returning to Belgrade, Ojdanić said that his conscience was clear and clean, and that he had not done “anything that could amount to a crime, let alone a war crime”,³⁶⁷ thus retracting his admission of guilt.

“I am deeply sorry for all the victims in Kosovo and the sufferings of their families. I apologise to the families of all Kosovo Albanian civilians who lost their lives and to those who were displaced”³⁶⁸, said **Vlastimir Đorđević**, who was Assistant Minister of the Serbian Ministry of Internal Affairs and Chief of the Public Security Department during the armed conflict in Kosovo,³⁶⁹ during an appeals hearing at the Hague Tribunal in May 2013. Đorđević acknowledged that crimes were committed in Kosovo, and admitted his involvement in concealing the bodies of Kosovo Albanians in mass graves in Serbia, but denied his involvement in the crimes and having known “when, where or how they were committed”.³⁷⁰ He also confessed that he had not opposed the cover-up of the crimes or taken steps to prosecute the perpetrators.³⁷¹

362 “Aleksandar Vučić: Nemam problem sa tim, za nas postoji država BiH!” [Aleksandar Vučić: I don’t have a problem with that, we recognise the state of BiH], Buka, 2 August 2013, available (in Serbian) at: <http://www.6yka.com/novost/41962/aleksandar-vucic-nemam-problem-sa-tim-za-nas-postoji-drzava-bih>, accessed on 8 February 2016.

363 “Dačić osudio napade na Dubrovnik” [Dačić has condemned the attacks on Dubrovnik], Al Jazeera Balkans, 12 July 2014, available (in Serbian) at: <http://balkans.aljazeera.net/vijesti/dacic-osudio-napade-na-dubrovnik>, accessed 28 May 2016.

364 Press Conference of Jens Stoltenberg and Milo Đukanović, 11 June 2015, video available at <https://www.youtube.com/watch?v=YXNQvPSGJG8>, accessed on 8 February 2016.

365 Ojdanić was found guilty of aiding and abetting and supporting the crimes of deportation and forcible displacement of the Albanian population from Kosovo, and sentenced to 15 years’ imprisonment. See: ICTY, Case Information Sheet *Šainović et al.* (IT-05-87), available at: http://www.icty.org/x/cases/milutinovic/cis/en/cis_sainovic_al_en.pdf, accessed on 10 February 2016.

366 Notice of withdrawal of Dragoljub Ojdanić’s appeal against the judgement of Trial Chamber III dated 26 February 2009, ICTY, IT-05-87-A, 28 January 2013.

367 “Dragoljub Ojdanić se vratio iz Haga” [Dragoljub Ojdanić is back from The Hague], RTS, 29 August 2013, available (in Serbian) at: <http://www.rts.rs/page/stories/sr/story/135/Hronika/1386268/Dragoljub+Ojdanić+se+vratio+iz+Haga.html>, accessed on 11 February 2016.

368 The Case of *Đorđević* (IT-05-87/1) “Kosovo”, appeal hearing, transcript, ICTY, 13 May 2013, pp. 154-156.

369 Vlastimir Đorđević was finally and conclusively sentenced to 18 years’ imprisonment over the deportation and forcible displacement of Kosovo Albanians, and killings and persecution in the course of the 1998-1999 war in Kosovo. See: ICTY, Appeal Judgment Summary in the Case of *The Prosecutor versus Vlastimir Đorđević* (IT-05-87/1), 27 January 2014, available at: <http://www.icty.org/x/cases/djordjevic/acjug/en/140127-summary.pdf>, accessed on 3 February 2016.

370 Ibid.

371 Ibid.

2.2.3. Commemorations

Serbian institutions' attitudes toward marking anniversaries of past crimes and events has differed depending on which ethnicity the victims of these crimes belonged to.

i. NATO Bombardment

Anniversaries of the beginning of the NATO bombardment were marked each year during the reporting period across Serbia, with commemorative gatherings which were attended by high government officials.

In March 2013, the then Serbian Prime Minister, Ivica Dačić, attended a commemoration ceremony held near the Monument to the Fallen Soldier at Straževica, near Belgrade, and Aleksandar Vučić, First Vice-President of the Government at the time, laid a wreath on the memorial dedicated to the fallen members of the Yugoslav Air Force and Anti-Air Defence in Zemun.³⁷² In 2014, Dačić joined a commemoration held near the monument at Straževica, and Serbian President Tomislav Nikolić attended a commemoration held in Varvarin.³⁷³

The commemorative gathering held in 2015 differed from the previous ones in terms of the number of high officials in attendance. It took place outside the ruins of the former Yugoslav Army Headquarters in Belgrade, with the participation of all members of the Government, representatives of the National Assembly and Serbian presidential envoys. The Prime Minister, Aleksandar Vučić,

gave a speech at the ceremony.³⁷⁴

The Minister of Labour, Employment and Veteran and Social Policy announced on that occasion that a memorial honouring the victims of the 1999 NATO bombardment of Serbia would be erected in 2016.³⁷⁵

The families of the victims of the NATO attack on the Radio Television of Serbia (RTS) headquarters, journalists, representatives of non-governmental organizations and other citizens have gathered each year on 23 April near the memorial stone inscribed with the question "Why?", which stands in Belgrade's Tašmajdan Park, to mark the anniversaries of the attack. The Serbian Minister of Culture, Ivan Tasovac, among others, attended the commemoration held in 2015.³⁷⁶

ii. Operations *Flash* and *Storm*

The anniversaries of Operation *Flash* and Operation *Storm* have been marked every year by a religious ceremony in St. Mark's Church in Belgrade. During the reporting period, the commemorations of Operation *Flash* were not attended by public officials, unlike those of Operation *Storm*, which were invariably attended by several high government officials.³⁷⁷

The twentieth anniversary of Operation *Storm* was marked in 2015 by a central state-sponsored memorial event, for which purpose an organising committee, chaired by a cabinet minister, Aleksandar Vulin, was formed³⁷⁸. The event was held on a bridge in Sremska Rača, Serbia, which

372 "Odata pošta žrtvama NATO bombardovanja" [Tribute paid to victims of NATO bombardment], Blic, 24 March 2013, available (in Serbian) at: <http://www.blic.rs/vesti/politika/odata-posta-zrtvama-nato-bombardovanja/n0xcn2y>, accessed on 14 February 2016.

373 "Sećanje na žrtve NATO bombardovanja" [Remembering victims of NATO bombardment], Novi Magazin, 24 March 2014, available (in Serbian) at: <http://www.novimagazin.rs/vesti/obelezavanje-godisnjice-nato-bombardovanja>, accessed on 14 February 2016.

374 Government of the Republic of Serbia, "Srbija ne zaboravlja žrtve NATO bombardovanja" [Serbia does not forget victims of NATO bombardment], 24 March 2015, available at: <http://www.srbija.gov.rs/vesti/vest.php?id=107830>, accessed on 14 February 2016.

375 "Spomenik žrtvama bombardovanja naredne godine" [Memorial to victims of NATO bombardment to be erected next year], Radio Television of Vojvodina, 24 March 2015, available (in Serbian) at: http://www.rtv.rs/sr_lat/drustvo/spomenik-zrtvama-bombardovanja-naredne-godine_581505.html, accessed on 1 March 2016.

376 "Sećanje na stradale radnike RTS-a" [Remembering dead RTS employees], RTS, 23 April 2015, available (in Serbian) at: <http://www.rts.rs/page/stories/sr/story/125/Dru%C5%A1tvo/1897562/Se%C4%87anje+na+stradale+radnike+RTS-a.html>, accessed on 14 February 2016.

377 The commemoration event held in 2013 was attended by the then First Vice-President of the Serbian Government, Aleksandar Vučić, and the Speaker of the National Assembly of Serbia, Nebojša Stefanović; Stefanović attended the commemoration event in 2014.

378 Government of the Republic of Serbia, Decision amending the decision on setting up an organising committee for the commemoration of the 5th of August as the Day of Remembrance of Serb victims and persecution of Serbs (No. 02-8014/2015), 23 July 2015, available (in Serbian) at: <http://www.slglasnik.info/sr/65-24-07-2015aaa/29969-odluka-o-izmeni-odluke-o-obrazovanju-organizacionog-odbora-za-obelezavanje-5-avgusta-dana-secanja-na-stradanje-i-progon-srba.html>, accessed on 14 February 2016.

the convoy of Croatian Serbs fleeing Croatia crossed to enter Serbia in August 1995. It was attended by members of the governments of both Serbia and Republika Srpska, as well as other officials from both countries.³⁷⁹

The Government of Serbia declared the 5th of August 2015 a national day of mourning in commemoration of the twentieth anniversary of the expulsion of Serbs from Croatia as a result of Operation *Storm*.³⁸⁰ The commemoration organising committee launched an initiative to establish also a Day of Remembrance of Serbs killed or expelled during the wars of the 1990s.³⁸¹

Immediately after the marking of the twentieth anniversary of Operation *Storm*, Serbia and Croatia exchanged diplomatic notes of protest. The Croatian Ministry of Foreign and European Affairs was first to hand a note of protest³⁸² - to the Serbian Chargé d'Affaires in Zagreb, over the burning of a Croatian flag by members of the Serbian Radical Party during a protest rally they staged in front of the Croatian Embassy in Belgrade on 5 August 2015.³⁸³ The

Serbian Ministry of Foreign Affairs reciprocated the same day by delivering a note of protest to the Croatian Chargé d'Affaires in Serbia, over “the unacceptable statements and behaviour of participants at this year’s commemorations of ‘Storm’”.³⁸⁴

In the first half of August 2015, the Coalition of Refugee Associations in Serbia organised an exhibition entitled “Storm – A Crime We Remember” (the Sufferings of Serbs in Croatia), which featured documents and photographs showing the sufferings of Serbs in Croatia and BiH during the 1990s’ wars.³⁸⁵

iii. Other Memorials to Serbian Victims

Representatives of state institutions organised commemorative events and visited memorials honouring the Serbian policemen who lost their lives during the armed conflict in Kosovo³⁸⁶ and members of the Serbian Army who died during the wars in Croatia and BiH.³⁸⁷

379 Government of the Republic of Serbia, “Oluja” jedan od najvećih pogroma srpskog naroda [“Storm”, one of the biggest pogroms against Serbs], 4 August 2015, available at: <http://www.srbija.gov.rs/vesti/vest.php?id=110567>, accessed on 14 February 2016.

380 Government of the Republic of Serbia, Decision on the declaration of the national day of mourning (06-8156/2015), 29 July 2015, available (in Serbian) at: <http://slglasnik.info/sr/67-29-07-2015/30039-odluka-o-proglasenju-dana-zalosti.html>, accessed on 14 February 2016.

381 “Održana sednica Organizacionog odbora za obeležavanje 5 Avgusta – Dana sećanja na stradanje i progon Srba” [Organising Committee for commemorating 5th of August – Day of Remembrance of victims and the program against Serbs, held a meeting], Ministry of Labour, Employment, Social and Veteran Policy, 28 July 2015, available (in Serbian) at: <http://www.minrzs.gov.rs/lat/aktuelno/item/3045-odrzana-sednica-organizacionog-odbora-za-obelezavanje-5-avgusta-%E2%80%93-dana-secanja-na-stradanje-i-progon-srba>, accessed on 14 February 2016.

382 Ministry of Foreign and European Affairs of the Republic of Croatia, “MFEA strongly condemns burning of Croatian flag and hate speech”, 6 August 2015, available at: <http://www.mvep.hr/en/info-servis/press-releases/25439.html>, accessed on 14 February 2016.

383 “Šešelj ponovo zapalio zastavu Hrvatske” [Šešelj burns Croatian flag again], N1, 5 August 2015, available (in Serbian) at: <http://rs.n1info.com/a82534/Vesti/Seselj-ponovo-zapalio-zastavu-Hrvatske.html>, accessed on 14 February 2016.

384 Ministry of Foreign Affairs of the Republic of Serbia, “Ministry of Foreign Affairs of the Republic of Serbia delivers a note of protest to the Ministry of Foreign and European Affairs of the Republic of Croatia”, 6 August 2015, available at: <http://www.mfa.gov.rs/en/statements-archive/statements-archive-2015?start=144>, accessed on 14 February 2016.

385 “Ministar Vulin: Nema tog cilja zbog kojeg bismo zaboravili prognane” [Minister Vulin: No goal could make us forget the expelled], Ministry of Labour, Employment, Social and Veteran Policy, 2 August 2015, available (in Serbian) at: <http://www.minrzs.gov.rs/cir/aktuelno/item/3101-ministar-vulin-nema-tog-cilja-zbog-kojeg-bismo-zaboravili-prognane>, accessed on 14 February 2016.

386 “Položeni vencu poginulim pripadnicima MUP-a” [Wreath-laying ceremony for fallen MUP members], Ministry of Labour, Employment, Social and Veteran Policy, 14 August 2015, available (in Serbian) at: <http://www.minrzs.gov.rs/lat/aktuelno/item/3199-polozeni-venci-poginulim-pripadnicima-mup-a>, accessed on 14 February 2016.

387 “U Priboju odata pošta poginulim borcima u ratovima od 1990. do 1999” [Priboj pays tribute to soldiers fallen in the 1990-1999 wars], Ministry of Labour, Employment, Social and Veteran Policy, 5 November 2015, available (in Serbian) at: <http://www.minrzs.gov.rs/lat/aktuelno/item/3897-u-priboju-odata-posta-poginulim-borcima-u-ratovima-od-1990-do-1999-godine>, accessed on 14 February 2016.

Associations of victims' families commemorated the deaths of Serbs in Orahovac³⁸⁸, Belačevac³⁸⁹, Goraždevac³⁹⁰, Miljevac Plateau³⁹¹, Ravni Kotar³⁹², Medački džep³⁹³, and other places.

iv. Memorialisation of Non-Serb Victims

Srebrenica Genocide

In the 2013-2015 period, as in previous years, Serbia did not mark the anniversary of the Srebrenica genocide with any official commemoration ceremonies. Serbia continues to ignore the recommendation the European Parliament made in its 2009 Resolution on Srebrenica to all the countries of the Western Balkans, to recognise 11 July as the day for the commemoration of the Srebrenica genocide.³⁹⁴

Serbian officials did not attend the memorial events in Srebrenica in 2013 and 2014. In 2015, Serbian Prime Minister Aleksandar Vučić attended the ceremony in Srebrenica marking the twentieth anniversary of the genocide. As he visited the Potočari Memorial Centre, a group of mourners jeered at him and pelted him with stones and other objects.

According to an opinion poll, 64% of Serbian citizens supported Vučić's decision to go to Srebrenica.³⁹⁵

The Serbian President, Tomislav Nikolić, declined to take part in the memorial ceremony in Srebrenica, because the BiH authorities failed to reply to his proposal also to visit the sites where Serbs had been killed.³⁹⁶

Vučić's visit to Srebrenica was preceded by Serbia's efforts to prevent the adoption by the UN Security Council of a resolution on Srebrenica drafted by the United Kingdom in June 2015. The resolution condemned all the crimes committed during the armed conflict in BiH and any denial of the crimes, extended sympathy to and expresses solidarity with all the victims, and called on national judiciaries to prosecute all those responsible, and to ensure that the victims have access to justice.³⁹⁷ The draft version of the resolution highlighted the importance of reconciliation based on dialogue, the acceptance of responsibility by all sides in the conflict and their mutual commitment to justice.³⁹⁸ Additionally, all UN members states were called upon to show a greater commitment towards preventing violations of international humanitarian law in the future by

388 Association of Families of Kidnapped and Missing Persons in Kosovo, Press Release, 15 July 2015, available (in Serbian) at: http://www.udruzenjeporodica.org.rs/pages/saopstenja/saopstenje_15072015..pdf, accessed on 10 May 2016.

389 "Masovno kidnapovanje Srba: Sudbina otetih rudara iz Belačevca još uvek je misterija [Mass abduction of Serbs: Fate of miners abducted from Belačevac still a mystery] *Telegraf*, 22 June 2015, available (in Serbian) at: <http://www.telegraf.rs/vesti/1624599-masovno-kidnapovanje-srba-sudbina-otetih-rudara-iz-belacevca-jos-uvek-je-misterija>, accessed on 10 May 2016.

390 "Udruženje porodica kosmetskih stradalnika obeležilo godišnjicu masakra u Goraždevcu" [Association of families of victims from Kosovo marked anniversary of massacre in Goraždevac], The Association of Families of Victims from Kosovo and Metohija 1998 to 2000 "Kosmetski stradalnici", 14 August 2015, available (in Serbian) at: <http://www.kosmetskistradalnici.org.rs/vesti/aktuelno/1618/udruzenje-porodica-kosmetskih-stradalnika-obelezilo-godisnjicu-masakra-u-gorazdevcu>, accessed on 10 May 2016.

391 Memorial service for the repose of persons killed on the Miljevac Plateau on the occasion of the 22nd anniversary of the event, Coalition of Associations of Families of Missing Persons from the Former Yugoslavia, June 2014, available (in Serbian) at: <http://koordinacija.rs/sr/saopstenje-za-javnost-povodom-susreta-prvih-ppb-srbije-i-hrvatske/>, accessed on 10 June 2016.

392 "Suza" Association of Families of the Missing and Killed, "Dvadeset tri godine od zločina u akciji Maslenica" [23 years since the crime committed during the Maslenica action], available (in Serbian) at: <http://www.afmpkr.org.rs/?q=node/93>, accessed on 10 May 2016.

393 "Parastos žrtvama Medačkog džepa" [Memorial Service for the victims killed at Medački džep], "Suza" Association of the Families of the Missing and Killed, available (in Serbian) at: <http://www.afmpkr.org.rs/?q=node/72>, accessed on 10 May 2016.

394 European Parliament Resolution on Srebrenica, 15 January 2009, paragraph 2, available at: <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P6-TA-2009-0028&language=EN>, accessed on 10 February 2016.

395 "Istraživanje: Vučić treba da ide u Srebrenicu" [Opinion poll: Vučić should go to Srebrenica], RTS, available (in Serbian) at: <http://www.rts.rs/page/stories/sr/story/9/Politika/1960058/Istra%C5%BEivanje%3A+Vu%C4%8Di%C4%87+treba+da+ide+u+Srebrenicu.html>, accessed on 11 February 2016.

396 "Nikolićev savjetnik: Predsjednik Srbije ne ide u Srebrenicu" [Nikolić's advisor: Serbian President is not going to Srebrenica], Radio Free Europe, 2 July 2015, available (in Serbian) at: <http://www.slobodnaevropa.org/archive/news/latest/500/500.html?id=27106093>, accessed on 11 February 2016.

397 UN Security Council, Jordan, Lithuania, Malaysia, New Zealand, United Kingdom of Great Britain and Northern Ireland and United States of America: draft resolution, 8 July 2015, sub-para. 1, 2, 3, 4 and 11, available at: http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2015/508, accessed on 4 May 2016.

398 Ibid, sub-para. 6.

setting up an early warning and prevention mechanism, and by educating young people about past crimes.³⁹⁹

Serbian officials considered the text unacceptable⁴⁰⁰, not fair to all the victims⁴⁰¹, “deepening the scars of the families of the killed, and hindering reconciliation in the region.”⁴⁰² Some officials even counted how many times the term “genocide” was mentioned in various draft versions of the resolution.⁴⁰³ In late June, the Government of Serbia held a meeting to debate and vote on the resolution. The meeting was declared “top secret.”⁴⁰⁴

Towards the end of June 2015, the Serbian Ministry of Foreign Affairs sent a letter to the permanent members of the UN Security Council asserting that the proposed resolution would cause destabilisation in the region rather than contribute to reconciliation, adding that Serbia “cannot

understand the meaning or the aim of the resolution.”⁴⁰⁵

After Russia had vetoed the resolution on Srebrenica, Prime Minister Aleksandar Vučić said that the resolution was “not conducive to reconciliation”⁴⁰⁶, and Serbian President Tomislav Nikolić said that a defamation of the entire Serbian nation had been prevented.⁴⁰⁷

A few victims associations from Serbia also condemned the proposed resolution on Srebrenica, saying that by singling out Bosnian victims, it did not contribute to reconciliation⁴⁰⁸, and that what happened in Srebrenica was not genocide⁴⁰⁹. Also, a group of Belgrade University students urged the Serbian President and Prime Minister not to go to Srebrenica, and to ask Russia to veto the proposed UN resolution.⁴¹⁰

399 Ibid, sub-paras. 9, 10, 12 and 13.

400 “Dačić: Neprihvatljiva i četvrta verzija rezolucije” [Dačić: Fourth version of resolution also unacceptable], N1, 3 July 2015, available (in Serbian) at: <http://rs.n1info.com/a74031/Vesti/Dacic-Neprihvatljiva-i-cetvrta-verzija-rezolucije.html>, accessed on 12 February 2016.

401 Četvrti nacrt rezolucije o Srebrenici stigao u Srbiju [Fourth version of resolution has arrived in Serbia], N1, 2 July 2015, available (in Serbian) at: <http://rs.n1info.com/a73695/Vesti/Treca-verzija-rezolucije-o-Srebrenici.html>, accessed on 11 February 2016.

402 “Reagovanje” [Reaction], Serbian President PR Office, 29 June 2015, available (in Serbian) at: <http://www.predsednik.rs/lat/pres-centar/saopštenja/reagovanje-29062015-godine>, accessed on 11 February 2016.

403 “Srbiji dostavljen Predlog rezolucije o Srebrenici” [Proposal for Resolution on Srebrenica delivered to Serbia], N1, 14 June 2016, available (in Serbian) at: <http://rs.n1info.com/a69010/Vesti/Srbiji-dostavljen-predlog-Rezolucije-o-Srebrenici.html>, accessed on 11 February 2016.

404 “Glasanje o rezoluciji državna tajna” [Resolution voting declared “top secret”] RTV, 25 June 2015, available (in Serbian) at: http://www.rtv.rs/sr_lat/politika/glasanje-o-rezoluciji-drzavna-tajna_613886.html, accessed on 11 February 2016.

405 “Srbija ne razume ni smisao ni cilj britanske Inicijative” [Serbia cannot understand meaning or aim of British-drafted resolution], Danas, 22 June 2015, available (in Serbian) at: http://www.danas.rs/danasrs/politika/srbija_ne_razume_ni_smisao_ni_cilj_britanske_inicijative.56.html?news_id=303651#sthash.ZXIlgqpk.dpuf, accessed on 11 February 2016.

406 “Vučić: Predstavljaju Srbiju u Srebrenici 11. jula” [Vučić: I will represent Serbia in Srebrenica], N1, 7 July 2015, available (in Serbian) at: <http://rs.n1info.com/a75203/Vesti/Vucic-ide-u-Srebrenicu-11.-jula.html>, accessed on 11 February 2016.

407 “Nikolić: Sprečeno bacanje ljage na ceo srpski narod” [Nikolić: Defamation of entire Serbian nation prevented], RTS, 8 July 2015, available (in Serbian) at: <http://www.rts.rs/page/stories/sr/story/9/Politika/1971552/Nikoli%C4%87%3A+Spre%C4%8Deno+bacanje+ljage+na+ceo+srpski+narod.html>, accessed on 11 February 2016.

408 Coalition of Refugees Associations, “Povodom nacrta Rezolucije Velike Britanije o Srebrenici kojim se osuđuje genocid u Srebrenici i svako poricanje ovog genocida i koju bi trebalo da usvoji Savjet Bezbednosti Ujedinjenih nacija početkom jula ove godine” [On the British-drafted Resolution on Srebrenica condemning the Srebrenica genocide and any denial of it, that was to be presented to the UN Security Council for adoption at the beginning of this coming July], press release, available (in Serbian) at: <http://koalicija.org.rs/povodom-nacrta-rezolucije-velike-britanije-o-srebrenici-kojim-se-osudjuje-genocid-u-srebrenici-i-svako-poricanje-ovog-genocida-i-koju-bi-trebalo-da-usvoji-savjet-bezbednosti-ujedinjenih-nacija-pocetko/>, accessed on 11 February 2016.

409 “U Srebrenici zločin, a u ‘Oluji’ genocid” [“Srebrenica” was a crime and “Storm” was genocide], B92, 22 June 2016, available (in Serbian) at: http://www.b92.net/info/vesti/index.php?yyyy=2015&mm=06&dd=22&nav_category=12&nav_id=1007213, accessed on 11 February 2016.

410 “Grupa studenata traži da Nikolić i Vučić ne idu u Srebrenicu” [Group of students urges Nikolić and Vučić not to go to Srebrenica], N1, 23 June 2016, available (in Serbian) at: <http://rs.n1info.com/a71350/Vesti/Studenti-traze-da-Vucic-i-Nikolic-ne-idu-u>, accessed on 11 February 2016.

Several representatives of civil society organisations⁴¹¹ and opposition parties⁴¹² publicly endorsed the resolution.

On 9 July 2015, the European Parliament adopted the Resolution on the Srebrenica Commemoration, which, content-wise, was nearly identical to that proposed by the United Kingdom.⁴¹³ Yet, this resolution had met with incomparably milder reactions by representatives of the Serbian authorities than the one proposed in the UN Security Council - only a few politicians reacted⁴¹⁴, along with a coalition of victims' associations.⁴¹⁵

In Early July 2015, the Assembly of the City of Novi Pazar passed a decision condemning the Srebrenica genocide and any denial of it, and established 11 July as the day of the commemoration of this crime in their city.⁴¹⁶

Parliamentary Activities and Debates Relating to Srebrenica

Anniversaries of the Srebrenica genocide were not, in general, debated in the National Assembly during the

reporting period. One exception to this state of affairs was the discussion initiated by an MP for the Sandžak Party for Democratic Action, Enis Imamović, during the July 2014 session of the National Assembly. Imamović denounced the Serbian institutions for ignoring the anniversary of the Srebrenica genocide and their lack of concern about the widespread relativization, denial or justification of this crime.⁴¹⁷

The twentieth anniversary of the crime in Srebrenica was referred to by a Serbian Renewal Movement MP, Aleksandar Jugović, during the July 2015 session. Jugović said: "On behalf of the vast majority of the citizens of the Republic of Serbia, I thank the Prime Minister, Mr Aleksandar Vučić, for his brave, heroic, and I would say, civilised and statesmanlike conduct in the face of the attack against him personally during the commemoration ceremony in Srebrenica on 11 July 2015".⁴¹⁸

On 11 July 2013, the National Assembly Collegium issued a press release in which it extended "its deepest reverence for the innocent Bosniak victims and condolences to their

- 411 See: "Rezolucija o Srebrenici - pomak u civilizacijskom smislu" [Resolution on Srebrenica is a major step forward], N1, 10 June 2016, available (in Serbian) at: <http://rs.n1info.com/a67910/Vesti/Natasa-Kandic-o-rezoluciji-o-Srebrenici.html>; "Stojanović: Srebrenica je svetsko, a ne lokalno pitanje" [Stojanović: Srebrenica is a global, not a local issue], N1, 15 June 2016, available (in Serbian) at: <http://rs.n1info.com/a69178/Vesti/Dubravka-Stojanovic-o-Srebrenici.html>; "Srpski je ćutati o srebreničkom genocidu" [Serbia remains silent about Srebrenica genocide], Radio Free Europe, 15 June 2016, available (in Serbian) at: <http://www.slobodnaevropa.org/content/beograd-o-srebrenici-poput-noja/27072734.html>; all sources accessed on 11 February 2016.
- 412 See: "Drašković: Vlada Srbije mora podići memorijal za Srebrenicu" [Drašković: Serbian Government must erect memorial for Srebrenica], N1, 16 April 2015, available (in Serbian) at: <http://rs.n1info.com/a52506/Vesti/Draskovic-u-Pressingu-Vlada-Srbije-mora-da-podigne-memorijal-za-Srebrenicu.html>; "Priznati greške iz prošlosti, zločin se ne sme relativizovati" [Let us acknowledge past mistakes - crime ought not be relativized], Liberal Democratic Party, 15 June 2015, available (in Serbian) at: <http://istina.ldap.rs/Vesti/18956/Priznati-greske-iz-proslosti-zlocin-se-ne-sme.shtml#sthash.2UmH0DdZ.u3kSQxcL.dpufhttp://istina.ldap.rs/Vesti/18956/Priznati-greske-iz-proslosti-zlocin-se-ne-sme.shtml>; all sources accessed on 11 February 2016.
- 413 European Parliament Resolution of 9 July 2015 on the Srebrenica Commemoration (2015/2747(RSP)), available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2015-0276+0+DOC+XML+V0//EN>, accessed on 4 May 2016.
- 414 See: „Palma: EP da donese rezoluciju i za Oluju“ [Palma: EP should pass resolution on "Storm" too], Infocentrala, 9 June 2015, available (in Serbian) at: <http://www.infocentrala.rs/palma-ep-da-donese-rezoluciju-i-za-oluju/>; "Vulin: Srbija ne može da prihvati reč genocid" [Vulin: Serbia cannot accept word "genocide"], Blic, 10 July 2015, available (in Serbian) at: <http://www.blic.rs/vesti/politika/vulin-srbija-ne-moze-da-prihvati-rec-genocid/s560z8x>; all sources accessed on 11 February 2016.
- 415 Coalition of Refugees Associations in Serbia, "Povodom činjenice da je Evropski parlament usvojio Rezoluciju o Srebrenici na inicijativu hrvatskog poslanika Ivana Jakovčića" [On the Resolution on Srebrenica adopted by the European Parliament at the initiative of Croatian MEP Ivan Jakovčić], press release, 10 July 2015, available (in Serbian) at: <http://koalicija.org.rs/povodom-cinjenice-da-je-evropski-parlament-usvojio-rezoluciju-o-srebrenici-na-inicijativu-hrvatskog-poslanika-ivana-jakovcica-koalicija-udruzenja-izbjeglica-izdaje-saopstenje-za-javnost/>, accessed on 11 February 2016.
- 416 "Novi Pazar: Skupština osudila genocid u Srebrenici" [Novi Pazar Assembly condemns Srebrenica genocide], B92, 6 July 2015, available (in Serbian) at: http://www.b92.net/info/vesti/index.php?yyyy=2015&mm=07&dd=06&nav_id=1012429, accessed on 11 February 2016.
- 417 Sixth extraordinary session of the National Assembly of Serbia in 2014, steno notes, 15 July 2014, available (in Serbian) at: <http://www.parlament.gov.rs/%C5%A0esto%20vanredno%20zasedanje%20Narodne%20skup%C5%A1tine%20Republike%20Srbije%20u%202014%20godini.21931.941.html>, accessed on 12 February 2016.
- 418 Thirteenth extraordinary session of the National Assembly of Serbia in 2015, provisional steno notes, 14 July 2015, available (in Serbian) at: <http://www.parlament.gov.rs/13.%20vanredno%20zasedanje%20Narodne%20skup%C5%A1tine%20Republike%20Srbije%20u%202015%20godini.26396.941.html>, accessed on 12 February 2016.

families on the anniversary of their ordeal in Srebrenica.”⁴¹⁹ In the same press release, the Collegium extended “its sympathy to the families of the innocent civilian victims of Serbian nationality in the conflicts in Bosnia and Herzegovina”, in the hope that “all the peoples living in Bosnia and Herzegovina and the other states of the former Yugoslavia will continue the process of reconciliation and strengthening the conditions conducive to a life together based on equality among the nations and full compliance with human and minority rights and liberties, so that these crimes may never be committed again.”⁴²⁰

In early July 2015, the Sandžak Party for Democratic Action, backed by the League of Social Democrats of Vojvodina and a Democratic Party MP, Aida Ćorović, submitted to the National Assembly a text with their proposal for a resolution on the Srebrenica genocide. The document condemned the genocide committed in Srebrenica and the denial of it, proposed that 11 July should be established as the day of commemoration of Srebrenica, expressed sympathy for all the victims of the armed conflicts in the former Yugoslavia, and proposed steps to be taken in order to prosecute those responsible. It also urged educational reform and the observance of all international regulations in this area.⁴²¹

At the same time, two MPs of the ruling Serbian Progressive Party, Krstimir Pantić and Marijan Ristićević, presented to the National Assembly their proposal for a Srebrenica resolution, which condemned the crimes committed in and around Srebrenica in the 1992-1995 period and their denial, proposed that 11 and 12 July be declared the days of remembrance of all the victims of war crimes committed on the territory of the former Yugoslavia, and condemned manipulations of the

number of war crimes victims and the “serious manipulation” of the number of Srebrenica victims.⁴²²

Neither of the proposals has been included in the sessions agenda for the National Assembly.

Activities of Civil Society Organisations

Several non-governmental organisations continued regularly to mark the anniversary of the genocide in Srebrenica, by writing open letters requesting that 11 July be declared the day of commemoration of the Srebrenica genocide, and by activist actions and press releases.

Each year in the reporting period, Women in Black organised a “peace bicycle ride” from Belgrade to Srebrenica, and staged street actions, debates and performances in memory of the victims of the Srebrenica genocide. The activities ended in Potočari, where the participants attended the memorial service and the burial of the mortal remains of the victims.⁴²³

In 2013, several human rights organisations marked the anniversary of the genocide in Srebrenica with a photo exhibition entitled “Labyrinth – Memory and Responsibility”, staged at the Belgrade Center for Cultural Decontamination.⁴²⁴

In July 2015, activists of the organisation PAOR from Zrenjanin travelled from Šabac to Srebrenica on foot to attend the memorial ceremony on 11 July.⁴²⁵ The Helsinki Committee for Human Rights in Serbia organised the exhibition “Srebrenica – Path of Hell”, by a well-known photojournalist from Bosnia and Herzegovina, Ahmet Bajrić.⁴²⁶

419 National Assembly of the Republic of Serbia, “Press release of the National Assembly Collegium”, 11 July 2013, available at: http://www.parlament.gov.rs/National_Assembly_Collegium_%E2%80%93_Press_Release.19198.537.html, accessed on 12 February 2016.

420 Ibid.

421 National Assembly of the Republic of Serbia, Predlog Rezolucije o genocidu u Srebrenici [Proposal for a resolution on Srebrenica], No. 02-1759/15, 2 July 2015, available (in Serbian) at: http://www.parlament.gov.rs/upload/archive/files/cir/pdf/akta_procedura/2015/1759-15.pdf, accessed on 12 February 2016.

422 National Assembly of the Republic of Serbia, Predlog rezolucije o zločinima u i oko Srebrenice od 1992. do 1995. godine [Proposal for a resolution on crimes in and around Srebrenica in the period 1992-1995], No. 02-1776/15, 8 July 2015, available (in Serbian) at: http://www.parlament.gov.rs/upload/archive/files/cir/pdf/akta_procedura/2015/07082015090149298.pdf, accessed on 12 February 2016.

423 See: Website of the organization Women in Black, available at: <http://zeneucrn.org/index.php?lang=en>, accessed on 12 February 2016.

424 Exhibition at the Human Rights House, 9 July 2013, available (in Serbian) at: <http://kucaljudskihprava.rs/izlozba-u-kuci-ljudskih-prava/>, accessed on 12 February 2016.

425 “Pošta žrtvama rata” [Tribute to war victims], Danas, 9 July 2015, available (in Serbian) at: http://www.danas.rs/danasrs/srbija/vojvodina/posta_zrtvama_rata_41.html?news_id=304608, accessed on 12 February 2016.

426 Center for Cultural Decontamination, “Srebrenički put pakla – izložba fotografija Ahmeta Bajrića Blička” [Srebrenica – Path of Hell – exhibition of photographs by Ahmet Bajrić Bličko], 8 July 2015, available (in Serbian) at: <http://www.czkd.org/srebrenicki-put-pakla-izlozba-fotografija-ahmeta-bajrica-blicka/>, accessed on 12 February 2016.

The initiative undertaken by journalist Dušan Mašić to stage a mass commemorative event in front of the National Assembly building in Belgrade on 11 July 2015 to honour the victims of the Srebrenica genocide was embraced by many individuals and non-governmental organisations. The idea of this action, dubbed #7000, was to gather several thousand citizens of Serbia on that day at 11 a.m. to show sympathy for and solidarity with the victims, and send a message that Serbian citizens do condemn the genocide in Srebrenica.⁴²⁷ The organisers invited all MPs and Government members to join the event, but only a Democratic Party MP, Borko Stefanović, unambiguously accepted the invitation.⁴²⁸ However, the day before the event was to take place, the Ministry of the Interior banned all public gatherings in front of the National Assembly building on 11 July, citing security concerns.⁴²⁹ So the citizens and organizations gathered around action #7000 marked the genocide anniversary by lighting candles outside the park near the Serbian presidential building instead. Some media outlets described the civil action #7000 as being more dangerous for Serbia than the Draft Resolution submitted to the UN Security Council, saying that its aim was to portray Serbs as a “genocidal nation.”⁴³⁰ In late July 2015, the Serbian MUP filed misdemeanour charges against the Director of the Youth Initiative for Human Rights in Serbia, Anita Mitić, claiming that she had violated the provisions of the Law on

Public Assemblies that prohibit calling citizens to a public gathering if the organisers of the event have not notified the authorities of the event planned to take place.⁴³¹ The MUP claimed that Mitić, “as the convenor of the event”, assembled citizens on the plateau outside the Serbian presidential building without having notified the MUP about the event, although she was told by the MUP that she was considered to be the organiser of the event because of her posts on her Facebook profile. The proceedings against Mitić had not been completed by the end of 2015.

In September 2015, the HLC and SENSE – Center for Transitional Justice in Pula (Croatia) - staged an audio-visual presentation of the key facts about the Srebrenica genocide as established by the ICTY, which form part of the core permanent exhibition of the SENSE Documentation Center in Potočari. The presentation ran for seven days at the Center for Cultural Decontamination in Belgrade, and was accompanied by several other events and debates dedicated to the memory of the victims of the Srebrenica genocide.⁴³²

On 4 July 2015, the Belgrade-based Museum of Genocide Victims organised a round table discussion, “Srebrenica 1995-2015: facts, dilemmas, propaganda”, which denied and relativized the genocide in Srebrenica, qualifying it as part of a plot planned in advance by certain countries.⁴³³

427 “Mašić: Akcija #sedamhiljada - da se zločin nikad ne ponovi” [Action #7000 – So it doesn’t happen again], N1, 12 June 2015, available (in Serbian) at: <http://rs.n1info.com/a68520/Vesti/Masic-o-akciji-sedam-hiljada.html>, accessed on 12 February 2016.

428 “Borko Stefanović jedini spreman da legne ispred Parlamenta” [Borko Stefanović only one ready to lie down in front of Parliament], Danas, 16 June 2015, available (in Serbian) at: http://www.danas.rs/danasrs/politika/borko_stefanovic_jedini_spreman_da_legne_ispred_parlamenta.56.html?news_id=303360, accessed on 13 February 2016.

429 Ministry of the Interior of Serbia, “10. 07. 2015. MUP doneo odluku o zabrani svih javnih skupova 11. jula” [10 July 2015: MUP decides to ban all public assemblies on 11 July], 10 July 2015, available (in Serbian) at: http://arhiva.mup.gov.rs/cms_cir/aktivnosti.nsf/100715-zabrana-skupova.h, accessed on 13 February 2016.

430 “Mašić iz Londona” [Mašić from London], *Novosti*, 3 July 2015, available (in Serbian) at: <http://www.novosti.rs/vesti/naslovna/politika/aktuelno.289.html:555895-Masic-iz-Londona>, accessed on 13 February 2016.

431 Youth Initiative for Human Rights, “Negiranje genocida, slobode i zdravog razuma” [Denial of genocide, freedom and common sense] YIHR, 21 January 2016, available (in Serbian) at: <http://www.yihr.rs/bhs/negiranje-genocida-slobode-i-zdravog-razuma/>, accessed on 10 May 2016.

432 “Presentation entitled ‘The ICTY’s investigation, reconstruction and prosecution of crimes committed in Srebrenica in July 1995’ has opened”, HLC, 18 September 2015, available at: <http://www.hlc-rdc.org/?p=30011&lang=de>.

433 “20-godišnjica od zbivanja u Srebrenici, Bosna i Hercegovina” [20 years since the events in Srebrenica, Bosnia and Herzegovina], Museum of Victims of Genocide, date unknown, available (in Serbian) at: <http://www.muzejgenocida.rs/новости-актуелно/85-новости/83-20-godina-srebrenic-2.html>; “Istina o Srebrenici tek treba da bude utvrđena” [Truth about Srebrenica has yet to be established], *Blic*, 4 July 2015, available (in Serbian) at: <http://www.blic.rs/vesti/politika/istina-o-srebrenici-tek-treba-da-bude-utvrđena/eqsxexc>; all sources accessed on 13 February 2016.

Other Crimes

On 27 February each year, a group of non-governmental organisations have gathered in front of the main entrance to Belgrade's Central Railway Station to mark the anniversary of the abduction of a group of passengers from the railway station in Štrpci in 1993 and their subsequent killing.⁴³⁴

The Bosniaks Cultural Community and the Bosniak National Council have on a yearly basis held a commemorative event, "Štrpci victims have no graves", which has been followed by a "silent procession" through the streets of Prijepolje to the memorial dedicated in that town to the victims of the crime in Štrpci.⁴³⁵ Over the past seven years, representatives of the Municipality of Prijepolje have received, on a yearly basis, family members of the nine Prijepolje residents who were

kidnapped and killed in Štrpci, awarded them a symbolic financial assistance, and visited with them the memorial to the victims.⁴³⁶

On 22 October each year, a group of non-governmental organisations have organized events in the centre of Belgrade to honour the victims of the abduction of passengers from a bus in the village of Mioče (BiH), and their representatives have attended commemorative events in Sjeverin.⁴³⁷

Representatives of the victims' families, local authorities, the Muslim community in Priboj, and non-governmental organisations have gathered each year during the reporting period at the place in Mioče where the abduction had taken place, and tossed flowers into the River Lim to honour the memory of the victims.⁴³⁸ The 22nd anniversary of the death

434 "Twentieth Anniversary of Crime in Štrpci Marked", HLC and others, 27 February 2013, available at: <http://www.hlc-rdc.org/?p=22577&lang=de>; HLC and others, "Štrpci – 21 years without justice and recognition", 27 February 2014, available at: <http://www.hlc-rdc.org/?p=26280&lang=de>; „Marking the anniversary of the crime committed in Štrpci“, HLC and others, 27 February 2015, available at: <http://www.hlc-rdc.org/?p=28375&lang=de>; all sources accessed on 15 February 2016.

435 "Komemorativna akademija "Štrpci bez mezara" sa reisulemom Kavazovićem" [Formal commemorative event "Štrpci victims have no graves", with Reis-ul-ulema Kavazović, *Sandžak Press*, 27 February 2013, available (in Bosnian) at: <http://sandzakpress.net/komemorativna-akademija-strpci-bez-mezara-sa-reisulemom-kavazovicem-foto>; "Muftija u Prijepolju: 'Na mržnju nismo odgovorili mržnjom, već se borimo za promjene'" [Mufti in Prijepolje: We have not returned hate for hate - we fight instead for changes], *Sandžak Press*, 28 February 2014, available (in Bosnian) at: <http://sandzakpress.net/jovanovic-na-obiljezavanju-strpca-moj-narod-je-pogrijesio>; "U Prijepolju obeleženo 22 godine od zločina u Štrpcima" [The 23 years since the crime in Štrpci are marked in Prijepolje], *Blic*, 27 February 2015, available (in Serbian) at: <http://www.blic.rs/vesti/hronika/u-prijepolju-obeleženo-22-godine-od-zlocina-u-strpcima/5t5v18q>, all sources accessed on 15 February 2016.

436 "Obeležene godišnjica zločina u Štrpcima" [Štrpci crime anniversary marked], *Politika*, 27 February 2013, available (in Serbian) at: <http://www.politika.rs/scc/clanak/250265/Obelezena-godisnjica-zlocina-u-Strpcima>; "Čedomir Jovanović u Prijepolju: Moj narod je pogriješio" [Čedomir Jovanović in Prijepolje: My people did a wrong thing], *Oslobođenje*, 27 February 2014, available [in Bosnian] at: <http://www.oslobodjenje.ba/vijesti/region/cedomir-jovanovic-u-prijepolju-moj-narod-je-pogrijesio>; "Obeleženo 22 godine od zločina u Štrpcima: Uskoro optužnica u predmetu "Štrpci" [22 years since the crime in Štrpci: Indictment for Štrpci soon], *Prijepolje Online Portal*, 27 February 2015, available (in Serbian) at: <https://prijepoljeonline.wordpress.com/2015/02/27/obeleženo-22-godine-od-zlocina-u-strpcima-uskoro-optuznica-u-predmetu-strpci/>; all sources accessed on 15 February 2016.

437 "Prošla je 21 godina od otmice i ubistva Bošnjaka iz Sjeverina" [21 years since the abduction and killing of Bosniaks in Sjeverin], *Klix Portal*, 22 October 2013, available (in Bosnian) at: <http://www.klix.ba/vijesti/bih/prosla-je-21-godina-od-otmice-i-ubistva-bosnjaka-iz-sjeverina/131022110>; "Da ne zaboravimo zločin u Sjeverinu!" [Sjeverin crime - Lest we forget], *Women in Black*, 22 October 2014, available (in Serbian) at: <http://www.hlc-rdc.org/?p=27551>; "Sećanje na žrtve zločina: Sjeverin je državno, a ne lokalno pitanje" [Remembering crime victims: Sjeverin is not a local but a state issue], *Radio Free Europe*, 22 October 2015, available (in Serbian) at: <http://www.slobodnaevropa.org/content/sjecanje-na-zrtve-sjeverina-ostala-samo-nada-da-nadju-smiraj/27319909.html>; all sources accessed on 15 February 2016.

438 "Sećanje na ubijene iz Sjeverina: Da se zločin nikada više ne ponovi" [Remembering the killed from Sjeverin so it doesn't happen again], *Radio Free Europe*, 22 October 2013, available (in Serbian) at: <http://www.slobodnaevropa.org/content/sjecanje-na-ubijene-iz-sjeverina/25144176.html>, accessed on 15 February 2016.

of the victims from Sjeverin was commemorated with a groundbreaking ceremony marking the start of the building of a memorial dedicated to the victims.⁴³⁹ The memorial was unveiled on the next anniversary, in 2015.⁴⁴⁰

On 18 November each year, a group of non-governmental organisations have gathered in the centre of Belgrade to commemorate the fall of the town of Vukovar in 1991.⁴⁴¹

To mark the 18th anniversary of the fall of the town of Žepa (BiH) to the Army of Republika Srpska, representatives of several non-governmental organisations and victims' associations visited on 24 July 2013 the former prison camp in Šljivovica (Serbia), where Bosniaks fleeing Žepa were detained for nine months during 1995-1996.⁴⁴²

In May 2015, activists of the Youth Initiative for Human Rights carried out a five-day action inviting Serbian citizens to enter their condolences for the civilians who lost their lives near Tuzla Gate on 25 May 1995 in a book of condolence. The book was then handed to the Mayor of Tuzla at a ceremony held there to honour the victims of this crime.⁴⁴³

International Day of the Disappeared

On 30 August each year, the Serbian Coalition of Associations of Families of Missing Persons marked the International Day of the Disappeared by urging government institutions to ascertain the fate of the missing and prosecute those responsible for their disappearance. During the reporting period, the Day of the Disappeared was marked with solemn ceremonies at Belgrade City Hall, and press conferences and wreath-laying ceremonies at the memorial dedicated to Serbian victims of the 1991-2000 wars in the former Yugoslavia in Belgrade's Tašmajdan Park.⁴⁴⁴

On 30 August 2015, the Association of Families of Victims from Kosovo and Metohija 1998 to 2000 "Kosmetiski stradalnici" mounted seven human silhouettes symbolizing missing persons, in the shape of the seven letters of the Serbian word for "the missing" ("nestali") in Belgrade's central Nikola Pašić Square.⁴⁴⁵

On 31 August 2015, representatives of families of Serbs and Kosovo Albanians who went missing or were killed in

439 "Spomen-obeležje za ubijene Sjeverince" [Memorial to victims from Sjeverin], Radio Free Europe, 22 October 2014, available at: <http://www.slobodnaevropa.org/content/spomen-za-ubijene-sjeverince/26650403.html>, accessed on 15 February 2016.

440 "Sjeverin: Otkriveno spomen obilježje za 17 otetih Bošnjaka za čijim se posmrtnim ostacima još traga" [Memorial unveiled honouring 17 abducted Bosniaks whose mortal remains are still being searched for], Klix Portal, 22 October 2015, available (in Bosnian) at: <http://www.klix.ba/vijesti/bih/sjeverin-otkriveno-spomen-obiljezje-za-17-otetih-bosnjaka-za-cijim-se-posmrtnim-ostacima-jos-traga/151022124>, accessed on 15 February 2016.

441 "Siege of Vukovar Remembered in Serbia", BIRN, 19 November 2013, available at: <http://www.balkaninsight.com/en/article/belgrade-women-remember-siege-of-vukovar>; "We will never forget crimes in Vukovar", Women in Black, 18 November 2014, available at: http://zeneucrnom.org/index.php?option=com_content&task=view&id=1061&lang=en; "Belgrade peace activists mark Anniversary of Vukovar", BIRN, 18 November 2015, available at: <http://www.balkaninsight.com/en/article/belgrade-marks-fall-of-vukovar-11-18-2015>; all sources accessed on 15 February 2016.

442 "Sećanje na stradanje Bošnjaka u logorima Šljivovica i Mitrovo Polje" [Commemorating the suffering of Bosniaks in the Šljivovica and Mitrovo Polje camps], HLC, 22 July 2013, available (in Serbian) at: <http://www.hlc-rdc.org/?p=23704>.

443 "Heroji dana: Aktivisti iz Srbije Tuzlacima uručili Knjigu žalosti" [Heroes of the day: Activists from Serbia have handed a book of condolence to the citizens of Tuzla], Tuzlanski.ba, 25 May 2015, available (in Bosnian) at: <http://tuzlanski.ba/carsija/heroji-dana-aktivisti-iz-srbije-tuzlacima-urucili-knjigu-zalosti-foto/>, accessed on 14 February 2016.

444 "Dan sećanja i nade koja ne umire" [A day dedicated to remembrance and to the hope that never dies], Coordination of Serbian Associations of Missing Persons' Families, available (in Serbian) at: <http://koordinacija.rs/sr/dan-secanja-i-nade-koja-ne-umire/>; "The International Day of the Disappeared is marked in Belgrade by an event organised by the Coordination of Serbian Associations", Association of Families of Victims from Kosovo 1998 to 2000 "Kosmetiski stradalnici", 2 September 2014, available (in Serbian) at: <http://www.kosmetiskistradalnici.org.rs/vesti/aktuelno/1384/u-organizaciji-srpske-koordinacije-u-beogradu-obezezen-medjunarodni-dan-nestalih>; Koordinacija srpskih udruženja u Beogradu tradicionalno obeležila Međunarodni dan nestalih [Coordination of Serbian Associations of Missing Persons' Families traditionally marked the International Day of the Disappeared], Association of Families of Victims from Kosovo 1998 to 2000 "Kosmetiski stradalnici", 1 September 2015, available (in Serbian) at: <http://www.kosmetiskistradalnici.org.rs/vesti/aktuelno/1657/koordinacija-srpskih-udruzenja-u-beogradu-tradicionalno-obelezila-medjunarodni-dan-nestalih>; all sources accessed on 10 May 2016.

445 Association of Families of Victims from Kosovo 1998 to 2000 "Kosmetiski stradalnici", "Siluete kao podsećanje na neresavanje pitanja nestalih" [Silhouettes as reminders of unresolved issue of missing persons], 24 September 2015, available (in Serbian) at: <http://www.kosmetiskistradalnici.org.rs/vesti/aktuelno/1696/siluete-kao-podsecanje-na-neresavanje-pitanja-nestalih>, accessed on 10 May 2016.

Kosovo, held two concurrent press conferences, in Belgrade and Pristina, entitled “There’s no more time for waiting”. Both conferences began at 12:16 p.m., the “16” symbolising the 16 years of their search for information about the fate of their loved ones.⁴⁴⁶ During the conferences, a joint request was made to both the Serbian and the Kosovo authorities to prosecute those responsible for the disappearances, to address the misidentification of mortal remains, to verify all potential locations of graves, and to address the issue of missing persons during the ongoing EU-facilitated dialogue on normalisation of relations between Serbia and Kosovo.⁴⁴⁷

2.2.4. Memorials

i. Legal framework

As Serbia has no national regulation governing the construction of monuments and memorials, this matter is left to local self-governments to decide.⁴⁴⁸ There are laws regulating the administration and maintenance of war veterans’ cemeteries⁴⁴⁹ and cemeteries for soldiers of foreign armies on the territory of Serbia⁴⁵⁰, which were all adopted back in the SFRY era. Construction of monuments and memorials at the local level is regulated by ordinances.

The initiative to enact national legislation in this field was launched in late 2014, when the Ministry of Labour opened a public debate on the Draft Law on Monuments

and Memorials. On 30 April 2014, the Government of the Republic of Serbia adopted the Draft Law⁴⁵¹ and submitted it to the National Assembly of the Republic of Serbia for consideration. The Draft Law only allows the building of monuments which are “in line with the tradition of the Serbian wars for national liberation”.⁴⁵² It is almost certain that the Draft Law will not allow memorialisation of the suffering of ethnic Albanians in Kosovo, as it prohibits putting up monuments which commemorate an “event that symbolises the loss of sovereignty, territorial integrity, independence or freedom of the Republic of Serbia”.⁴⁵³ The Draft Law contains numerous vague and arbitrary criteria which leave ample room for ideological interpretations of past events, such as the provision prohibiting erection of monuments/memorials which “do not reflect historical or actual facts, are an affront to public and state interests, national or religious sentiments, or public morals”.⁴⁵⁴ The Draft Law is still under consideration in the Parliament.⁴⁵⁵

ii. Built Memorials and Commemorative Initiatives

In July 2013, the City of Belgrade launched a design competition for a memorial commemorating RTS employees killed in the NATO bombardment. The designs received were exhibited in December the same year. In August 2015, representatives of the City Government announced that the project would entail conservation of the part of the RTS building that was bombed in 1999.⁴⁵⁶ By the end of 2015, the

446 “Vremena za čekanje više nema” [There’s no more time for waiting], Press Centar, 31 August 2015, available (in Serbian) at: <http://presscentar.uns.org.rs/previous-events/986/vremena-za-cekjanje-vise-nema.html>, accessed on 10 May 2016.

447 “Konferencija za novinare srpskih i albanskih porodica stradalih na Kosmetu povodom Međunarodnog dana nestalih” [Press conference of families of Serbian and Kosovo Albanian victims from Kosovo], The Association of Families of Victims from Kosovo and Metohija 1998 to 2000 “Kosmeti stradalnici”, 2 September 2015, available (in Serbian) at: <http://www.kosmetiskistradalnici.org.rs/vesti/aktuelno/1670/konferencija-za-novinare-srpskih-i-albanskih-porodica-stradalih-na-kosmetu-povodom-medjunarodnog-dana-nestalih>, accessed on 10 May 2016.

448 Analiza efekata Nacrta zakona o spomen obeležjima [An analysis of the effects of the Draft Law on Memorials and Monuments], Ministry of Labour, Employment, Social and Veteran Policy, available (in Serbian) at: <http://www.rsip.gov.rs/misljenja/981/ana/Analiza%20efekata%20sugestije%20RSIP%203.4.15.%20v.pdf>, accessed on 10 May 2016.

449 Law on Maintenance of War Veterans’ Cemeteries, Official Gazette of the FRY No. 22/94, 51/81 and 11/76.

450 Law on Marking and Maintenance of Cemeteries and Graves of Soldiers of the Allied Armies and Other Foreign Armies on the Territory of Yugoslavia, Official Gazette of the SFRY No. 60/75.

451 Ministry of Labour, Employment, Social and Veteran Policy, Bill on Memorials and Monuments, available (in Serbian) at: http://www.parlament.gov.rs/upload/archive/files/cir/pdf/predlozi_zakona/1225-15.pdf, accessed on 15 February 2016.

452 Ibid, Articles 20 and 22.

453 Ibid, Article 22.

454 Ibid.

455 National Assembly of the Republic of Serbia, Zakoni u proceduri [Bills currently before Parliament], available (in Serbian) at: <http://www.parlament.gov.rs/akti/zakoni-u-proceduri/zakoni-u-proceduri.1037.html>, accessed on 14 February 2016.

456 “Spomen-obeležje ispred RTS-a sa simboličnih 16 jedara” [Memorial with symbolic 15 sails to be erected in front of RTS headquarters], Beoinfo vesti, 19 August 2015, available (in Serbian) at: <http://www.beograd.rs/lat/beoinfo/1693368-spomen-obelezje-ispred-rt-s-a-sa-simbolicnih-16-jedara/>, accessed on 14 February 2016.

project had not been completed, because of the failure to obtain some permits required.⁴⁵⁷

In March 2014, the “Lest We Forget” Memorial Park was opened in Košutnjak (a park-forest in Belgrade) consisting of 16 trees which symbolise the 16 killed RTS employees.⁴⁵⁸ As in previous years, the RTS continued to organise the “Let’s Play for the 16” futsal tournament in remembrance of its dead employees.

In August 2013, the Association of Croatian Veterans of the 1991 Homeland War from Koprivnica sent a formal letter to the government of the City of Novi Sad requesting that it erect a monument to Croatian Homeland War Veterans killed during the 1991-1995 war in Croatia. City officials rejected the request as unrealistic and not contributing to good-neighbourly relations.⁴⁵⁹ The press saw this request as a response to an earlier request made by the Association of Participants in the Armed Conflicts in the Former Yugoslavia to the municipal authorities in Dvor, near Sisak, Croatia, for the erection of a monument to Serbs in a refugee column

fleeing Croatia who were killed in Operation *Storm* in that municipality.⁴⁶⁰ The municipality of Dvor never replied to the request.⁴⁶¹

In early August 2014, the Coalition of Refugees Associations in Serbia launched an initiative to build a memorial to “Serbian victims who died in the 1991-2000 wars”, which it was planned would be unveiled in 2015, on the twentieth anniversary of Operation *Storm*.⁴⁶² The Commission for Monuments and Names of Streets and Squares of the City of Belgrade endorsed the initiative in February 2015,⁴⁶³ and the Belgrade City Assembly was quick to pass a decision to build the monument and set up a committee responsible for it.⁴⁶⁴ According to this decision, the funds needed for its construction are to be provided from the city budget.⁴⁶⁵ The memorial complex in the Ušće Park near the “Eternal Flame” memorial was selected as the site for the memorial.⁴⁶⁶ A competition to design the memorial was launched in early May 2015. However, in late July 2015 the Belgrade City Government announced that the competition would be repeated in order to obtain a more appropriate design

457 “Uskoro izgradnja spomen-obeležja stradalim radnicima RTS-a” [Memorial to dead RTS employees soon], Beoinfo vesti, 17 August 2015, available (in Serbian) at: <http://www.beograd.rs/lat/beoinfo/1693058-uskoro-izgradnja-spomen-obelezja-stradalim-radnicima-rts-a/>, accessed on 14 February 2016.

458 “Otvoren spomen-park ‘Da se ne zaboravi’” [“Lest we forget” memorial park opened], Igrajmo za 16, 24 March 2014, available (in Serbian) at: <http://www.igrajmoza16.rs/vesti/2014/spomen-park-da-se-ne-zaboravi/>, accessed on 14 February 2016.

459 “Gradonačelnik Novog Sada odbio spomenik hrvatskim braniteljima” [Novi Sad Mayor has refused monument to Croatian war veterans], T Portal, 14 August 2013, available (in Croatian) at: <http://www.tportal.hr/vijesti/svijet/280266/Gradonacelnik-Novog-Sada-odbio-spomenik-hrvatskim-braniteljima.html>, accessed on 15 February 2016.

460 “Žirovac: Parastos žrtvama Oluje” [Žirovac: Memorial service for “Storm” victims], B92, 10 August 2013, available (in Serbian) at: http://www.b92.net/info/vesti/index.php?yyyy=2013&mm=08&dd=10&nav_id=741340, accessed on 15 February 2016.

461 Ibid.

462 Coalition of Refugees Associations in Serbia, “Povodom činjenice da 19 godina od završetka rata na području Hrvatske i Bosne i Hercegovine nije podignut spomenik srpskim žrtvama stradalim tokom devedesetih godina [On the fact that 19 years since the end of the wars in Croatia and Bosnia and Herzegovina no memorial has been erected to honour Serbian victims of the wars of the 1990s], available (in Serbian) at: <http://koalicija.org.rs/povodom-cinjenice-da-19-godina-od-zavrsetka-rata-na-podrucju-hrvatske-i-bosne-i-hercegovine-nije-podignut-spomenik-srpskim-zrtvama-stradalim-tokom-devedesetih-godina-predsjednik-koalicije-udruzenja-i/>, accessed on 15 February 2016.

463 “Spomenik srpskim žrtvama u oružanim sukobima na prostoru bivše Jugoslavije biće podignut u Beogradu” [Monument to Serbian victims of armed conflicts in former Yugoslavia will be erected in Belgrade], Beoinfo Vesti, 10 February 2015, available (in Serbian) at: <http://www.beograd.rs/lat/beoinfo/1650750-spomenik-srpskim-zrtvama-u-oruzanim-sukobima-na-prostoru-bivse-jugoslavije-bice-podignut-u-beogradu/>, accessed on 15 February 2016.

464 “Donete odluke o podizanju spomenika žrtvama stradalim u oružanim sukobima od 1991 i Mihajlu Pupinu” [Decisions passed to erect monuments to victims of 1991-2000 wars and to Mihajlo Pupin], Beoinfo Vesti, 25 February 2015, available (in Serbian) at: <http://www.beograd.rs/lat/beoinfo/1652960-donete-odluke-o-podizanju-spomenika-zrtvama-stradalim-u-oruzanim-sukobima-od-1991-godine-i-mihajlu-pupinu/>, accessed on 15 February 2016.

465 Ibid.

466 “Goran Vesić: Javni konkurs za izgled spomenika žrtvama rata” [Public competition to design memorial to war victims], Beoinfo Vesti, 9 March 2015, available (in Serbian) at: <http://www.beograd.rs/lat/beoinfo/1655181-goran-vesic-javni-konkurs-za-izgled-spomenika-zrtvama-rata-/>, accessed on 15 February 2016.

solution which will include a memorial inscribed with the names of all the victims.⁴⁶⁷ By the end of 2015, the memorial had not been erected.

On the 23rd anniversary of the abduction of 17 Bosniaks in Sjeverin, and after several years of announcements, a memorial commemorating the victims of this crime, funded by the municipality of Priboj, was unveiled in Sjeverin in 2015.⁴⁶⁸

Removal of monument in Preševo

In January 2013, the Serbian Gendarmerie removed the monument dedicated to the Liberation Army of Preševo, Medveđa and Bujanovac (LAPMB), which had been erected in November 2012 by the municipal authorities of Preševo in front of the Preševo municipality building. Before the removal, the Government of Serbia, finding the monument unacceptable because it honoured “those who were killing Serbian soldiers and policemen in southern Serbia”⁴⁶⁹ and claiming that it had been built illegally,⁴⁷⁰ had demanded that the Preševo municipal authorities remove it. The removal was preceded by negotiations between representatives of the Serbian Government and representatives of the municipalities of Preševo, Bujanovac and Medveđa, with

the participation of international organisations.⁴⁷¹ In April that same year, it was announced that a new memorial complex dedicated to fallen LAPMB fighters would be built in the village of Oraovica, near Preševo, but the works were suspended after several months.⁴⁷²

Following the removal of the monument in Preševo, representatives of the ethnic Albanian community in southern Serbia demanded that the monument to Serbian policemen killed in southern Serbia between 2000 and 2002, which stood in the village of Gropa, near Bujanovac, also be removed.⁴⁷³ In July 2015, the monument was relocated to the yard of St Jovan’s Church in Bujanovačka Banja, for “economic, safety and practical reasons”.⁴⁷⁴

2.2.5. Other Initiatives to Symbolically Commemorate Events related to the Wars of the 1990s

In February 2015, the Belgrade City Assembly awarded the title of Honorary Citizen of Belgrade to the Austrian writer Peter Handke. Handke is known for voicing support for the regime of Slobodan Milošević during the 1990s, including during the armed conflicts in Croatia, BiH, and Kosovo in 1998-1999.⁴⁷⁵

467 “Ponavlja se konkurs za prvu nagradu za spomenik žrtvama ratova” [Design competition for memorial to war victim will be repeated], RTS, 31 July 2015, available (in Serbian) at: <http://www.rts.rs/page/stories/sr/story/125/Dru%C5%A1tvo/1994004/Ponavlja+se+konkurs+za+prvu+nagradu+za+spomenik+%C5%BErtvama+ratova.html>, accessed on 15 February 2016.

468 “Obilježene 23 godine od otmiče 16 Bošnjaka iz Sjeverina” [23rd anniversary of abduction of 16 Bosniaks from Sjeverin marked], SanaPress, 22 October 2015, available (in Bosnian) at: <http://sanapress.info/?p=24734>, accessed on 15 February 2016.

469 “Posle postavljanja spomenika teroristima na jugu Srbije oglasio se premijer Dačić” [Dačić’s comments following the erection of a monument to terrorists in southern Serbia], Government of Serbia Coordination Body for the Municipalities of Preševo, Bujanovac and Medveđa (KT-PBM), 22 November 2012, available (in Serbian) at: <http://www.kt.gov.rs/sr/news/arhiva-vesti/posle-postavljanja-spomenika-teroristima-na-jugu-srbije-oglasio-se-premijer-dacic/>, accessed on 15 February 2016.

470 “Prijava inspekciji zbog spomenika u Preševu” [Complaint filed with inspection division over the monument in Preševo], KT-PBM, 26 November 2012, available (in Serbian) at: <http://www.kt.gov.rs/cr/news/arhiva-vesti/prijava-inspekciji-zbog-spomenika-u-presevu/>, accessed on 15 February 2016.

471 “Problem spomenika rešiti u skladu sa zakonom” [Rows over monument should be resolved in accordance with the law], KT-PBM, 9 January 2013, available at: <http://www.kt.gov.rs/cr/news/arhiva-vesti/problem-spomenika-resiti-u-skladu-sa-zakonom/>, accessed on 15 February 2016.

472 “Za spomenik planirali da potroše 100.000 evra” [Plan to spend 100,000 euros on monument], *Vranje Press*, 12 August 2013, available (in Serbian) at: <http://www.vranjepres.rs/sh/sajt/vesti/28769/Za-spomenik-planirali-da-potro%C5%A1e-100000-evra.htm>, accessed on 15 February 2016.

473 “Serbian Albanians rally against monument to police”, BIRN, 1 February 2013, available at: <http://www.balkaninsight.com/en/article/serbia-albanians-want-serbian-police-monument-removed>, accessed on 15 February 2016.

474 Serbian MUP press release No. 606/15 of 7 July 2015, available (in Serbian) at: http://arhiva.mup.gov.rs/cms_cir/saopstenja.nsf/arhiva-saopstenja-MUP-2015, accessed on 13 February 2016.

475 “Stand up if you support the Serbs”, *The Guardian*, 21 April 1999, available at: <http://www.theguardian.com/theguardian/1999/apr/21/features11.g28>, accessed on 5 May 2016.

In early 2013, a citizens' initiative was launched to name a street in Belgrade after Srđan Aleksić, who was killed in January 1993 by a soldier of the Army of Republika Srpska while defending a Bosniak fellow citizen.⁴⁷⁶ In October 2013, the Belgrade City Assembly passed a decision to rename a part of Ivana Ribara Street in New Belgrade after Srđan Aleksić.⁴⁷⁷ However, by the end of 2015, the decision had still not been implemented.

In early August 2015, Serbian Prime Minister Aleksandar Vučić announced that he would propose to the leaders of the former Yugoslavia successor states the establishment of a common regional day of remembrance for all the victims of the wars in the former Yugoslavia. According to Vučić, a regional day of remembrance would help people acknowledge that there were victims on all sides.⁴⁷⁸ However, the proposal has not been formalized.

3. Truth-Seeking and Truth-Telling

In the 2013-15 period, truth-seeking and truth-telling initiatives and activities relating to human rights violations committed during and in connection with the armed conflicts in the former Yugoslavia came mostly from non-governmental organisations. The most important of these - the Initiative for Establishing RECOM - originated with the civil society of the post-Yugoslav countries. Even though the Initiative obtained political support from the majority of these countries, it has not yet resulted in the establishment of

a regional truth-seeking and truth-telling commission. The process of ascertaining the fate of missing persons moves slowly, partly because of the absence of a legal framework regulating the search for missing persons. Furthermore, the legal status of families of missing persons has not been brought into conformity with relevant international standards.

3.1. Official Initiatives

In April 2015, the Committee on Kosovo-Metohija of the Serbian National Assembly adopted a proposal for a Conclusion on the investigation and prosecution of those responsible for crimes committed in Kosovo, "with a special focus on the crimes against members of the Serbian people and security forces".⁴⁷⁹ In line with the Conclusion, the Committee in October 2015 formed a working group tasked with collecting facts and evidence for the investigation of crimes committed against Serbs and other ethnic communities in Kosovo-Metohija.⁴⁸⁰ The working group comprises Committee members, members of the OWCP, the Department of War Crimes of the Higher Court in Belgrade, the Commission on Missing Persons and the Office for Kosovo-Metohija.⁴⁸¹ The facts and evidence collected by the working group will be delivered to the Special War Crimes Court for crimes committed in Kosovo⁴⁸², which was initiated by the European Union to try the perpetrators of crimes referred to in a Council of Europe Report of 2011⁴⁸³.

476 Ulica Srđana Aleksića u Beogradu [Petition for Srđan Aleksić Street in Belgrade], portal Peticije 24, available (in Serbian) at: http://www.peticije24.com/signatures/ulica_srdjana_aleksica_u_beogradu, accessed on 1 March 2016.

477 "Novi Beograd dobio ulicu Srđana Aleksića" [Street in Novi Beograd named after Srđan Aleksić], Beoinfo vesti, 15 October 2013, available (in Serbian) at: <http://www.beograd.rs/lat/beoinfo/1571604-novi-beograd-dobio-ulicu-srdjana-aleksica/>, accessed on 15 February 2016.

478 Government of the Republic of Serbia, „Proposal for joint day of remembrance for victims of conflict in former Yugoslavia”, 7 August 2015, available at: <http://www.srbija.gov.rs/vesti/vest.php?id=110650>, accessed on 15 February 2016.

479 National Assembly of the Republic of Serbia, Minutes of the seventh sitting of the Committee on Kosovo-Metohija held on 24 April 2015, No. 06-2/170-15, 28 April 2015, available at: http://www.parlament.gov.rs/Seventh_Sitting_of_the_Committee_on_Kosovo-Metohija.25176.537.html, accessed on 27 March 2016.

480 National Assembly of the Republic of Serbia, Committee on Kosovo-Metohija Decision No. 02-2679/15 of 19 October 2015 establishing the working group.

481 On behalf of the Committee on Kosovo-Metohija: Milovan Drecun (Chairman), Momir Stojanović, Miljana Nikolić, Zvonimir Stević and Goran Bogdanović (members). Representatives of other institutions include: Dragoljub Stanković, Deputy War Crimes Prosecutor (OWCP), Dejan Marinković, Head of the Special Court War Crimes Department, Veljko Odalović, Chairman of the Commission on Missing Persons, Vesna Bošković, Advisor at the Commission on Missing Persons, and Igor Popović, Head of the Judiciary, Human Rights and Property Issues Group at the Office for Kosovo-Metohija. *Ibid.*, Article 1.

482 *Ibid.*, Article 2.

483 Council of Europe, Committee on Legal Affairs and Human Rights, "Inhumane treatment of people and illicit trafficking in human organs in Kosovo", Report, Rapporteur: Mr Dick Marty, Switzerland, Alliance of Liberals and Democrats for Europe, 7 January 2011, available at: <http://www.sif.eu/images/110107CoEReport.pdf>, accessed on 28 March 2016.

By the end of 2015, the working group had held two meetings, at which it adopted its guidelines, work plan and methodology⁴⁸⁴, and held talks with representatives of the Serbian Security Intelligence Agency (BIA), Military Security Agency and Military Intelligence Agency with a view to obtaining their “expert assistance for collecting facts and evidence”⁴⁸⁵.

On the basis of the decision by which the working group was established and the statements given by its chairman, Milovan Drecun, it may be concluded that the working group will focus exclusively on crimes committed by the KLA, not on those committed by Serbian security forces.⁴⁸⁶

3.1.1. Establishing the fate of missing persons

Serbia does not have a legal framework which would regulate the process of searching for the missing persons and the legal status of the families of missing persons. The work of the Commission on Missing Persons is characterized by insufficient transparency and a reactive approach to its work. Families of missing persons who currently live in Serbia do not have their legal status harmonized with the International Convention for the Protection of All Persons from Enforced Disappearance.

i. Statistics

According to the data of the Commission on Missing Persons of the Republic of Serbia, at least 789 families of

missing persons who went missing during the conflicts in former Yugoslavia in the period from 1991 – 2000 are living in Serbia.⁴⁸⁷

According to the data of the International Committee of the Red Cross of March 2016, 10,698 persons are being searched for in the territory of former Yugoslavia, who went missing during the armed conflicts in Croatia, BiH and Kosovo. 1,665 persons are registered as missing in Kosovo, 2,111 in Croatia and 6,922 in BiH.⁴⁸⁸

ii. Institutional framework

In Serbia, the search for missing persons who went missing during the armed conflicts in former Yugoslavia is conducted by the Commission on Missing Persons of the Republic of Serbia, with the professional-administrative support of the Department for Missing Persons of the Commissariat for Refugees and Migration.⁴⁸⁹

The Commission on Missing Persons was founded in 2006 by the decision of the Government of Serbia, as an interagency body with the task “to monitor, study and determine proposals for solving the issues of missing persons in the territory of the Republic of Serbia who went missing during the armed conflicts in former Yugoslavia (...); to take part in executing obligations arising from international agreements which relate to the issue of missing persons; to coordinate the work of the competent bodies in searching for the missing, and their exhumation and identification (...)”.⁴⁹⁰ The

484 First meeting of the Working Group for collecting facts and evidence for the investigation of crimes committed against Serbian people and other ethnic communities in Kosovo-Metohija, 5 November 2015, available (in Serbian) at: http://www.parlament.gov.rs/Prva_sednica_Radne_grupe_za_prikupljanje_%C4%8Dinjenica_i_dokaza_u_rasvetljavanju_zlo%C4%8Dina_nad_pripadnicima_srpskog_naroda_i_ostalih_nacionalnih_zajednica.27546.941.html, accessed on 27 March 2016.

485 Second meeting of the Working Group tasked with collecting facts and evidence for the investigation of crimes committed against the Serbian people and other ethnic communities in Kosovo-Metohija, 12. November 2015., available (in Serbian) at: http://www.parlament.gov.rs/Drugi_sastanak_Radnog_grupa_za_prikupljanje_%C4%8Dinjenica_i_dokaza_u_rasvetljavanju_zlo%C4%8Dina_nad_pripadnicima_srpskog_naroda_i_ostalih_nacionalnih_zajednica.27655.941.html, accessed on 27 March 2016.

486 “Drecun: Contact us if you know something about crimes in Kosovo” [Drecun: Javite se ako znate nešto o zločinima na Kosovu], N1, 5 November 2015, available (in Serbian) at: <http://rs.n1info.com/a106603/Vesti/Drecun-o-zlocinima-na-Kosovu.html>; “Drecun: Prosecuting only crimes against Albanians is unacceptable” [Drecun: Neprihvatljivo da se procesuiraju samo zločini nad Albancima], *Novi Magazin*, 4 February 2016, available (in Serbian) at: <http://www.novimagazin.rs/vesti/drecun-neprihvatljivo-da-se-procesuiraju-samo-zlocini-nad-albancima>, accessed on 27 March 2016.

487 Data regarding the number of families of missing persons was presented at the session of the UN Committee on Enforced Disappearances on 5 February 2015. See: UN Committee on Enforced Disappearances, Committee on Enforced Disappearances examines report of Serbia, 5 February 2015, available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15547&LangID=E>, accessed 25 March 2016.

488 Reply of the Commission on Missing Persons, No. 021-01-02/2016-26, 4 May 2016.

489 Web page of Commissariat for Refugees and Migration of the Republic of Serbia, section “Missing – On the Commission”, available (in Serbian) at: <http://www.kirs.gov.rs/articles/komisijao.php?type1=37&lang=SER&date=0>, accessed 15 March 2016.

490 Decision on establishing Commission on Missing Persons, par. 2, Official Gazette of RS No. 49/06, 73/06, 116/06 and 53/10.

President is the Head of the Commission and the following representatives take part in its work: representatives from the Ministry of Foreign Affairs, Ministry of Defense, Ministry of the Interior, Ministry of Finance, Ministry of Justice, Ministry of Labour, Employment, Social and Veterans' Affairs, the Office for Kosovo and Metohija, the Office of the War Crimes Prosecution, the Commissariat for Refugees and the Red Cross of Serbia.⁴⁹¹

Veljko Odalović has performed the function of President of the Commission since it was founded in 2006. Moreover, Mr. Odalović has performed a series of other functions parallel with this function. From 2013-2015 he had at least eight other functions (Secretary-General of the Government of the Republic of Serbia⁴⁹², then Secretary-General of the Ministry of Foreign Affairs⁴⁹³, President of the Supervision Board of Public Corporation "Official Gazette",⁴⁹⁴ member of Council of Pristina University⁴⁹⁵, member of the Board

for Implementation of the Agreement between Belgrade and Pristina⁴⁹⁶, member of the Commission for Approval for New Employment and Additional Engagement in Public Funds Beneficiaries,⁴⁹⁷ President of the Joint Committee of Dipo Company⁴⁹⁸, a member of the Presidency and the Main Board of the Socialist Party of Serbia⁴⁹⁹, Deputy Secretary of the Republic Electoral Commission⁵⁰⁰, Assembly Member of the Partizan Football Club⁵⁰¹).

The Commission has not answered the HLC's question as to whether it has enough professional and financial capacities to function adequately.⁵⁰²

The associations of families of missing persons emphasize the importance of a professionalization of the Commission on Missing Persons, especially in relation to the managerial function. They point out that the key for an efficient search for missing persons lies in constant and focused managerial functioning, along with everyday cooperation

491 Government of the Republic of Serbia, Initial report of Republic of Serbia on the application of International Convention for the Protection of All Persons from Enforced Disappearance, September 2013, paragraph 20, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CED%2fC%2fSRB%2f1&Lang=en, accessed 15 March 2016.

492 Government of the Republic of Serbia, Decision on Appointment of Government Secretary General No. 119-4712/2012, dated 27 July 2012; Government of the Republic of Serbia, Decision on cessation of duty of Government Secretary-General No. 119-3496/2014, dated 1 May 2014.

493 Government of the Republic of Serbia, Decision on Appointment of Secretary-General of the Ministry of Foreign Affairs, No. 119-3520/2014, dated 1 May 2014.

494 Government of the Republic of Serbia, Decision on Appointment of President and members of Supervision Board of Public Corporation "Official Gazette", No. 119-4777/2013, dated 4 June 2013; The Anti-Corruption Agency, Register of assets and revenue of officials, available (in Serbian) at: <http://www.acas.rs/pretraga-registra>, accessed 27 March 2016.

495 Government of the Republic of Serbia, Decision on Appointment of members of Council of Pristina University, No: 119-4593/2013, dated 29 May 2013; web page of Pristine University, available at: <http://www.pr.ac.rs/en/university/university-bodies/14-university-bodies/54-university-council>, accessed 27 March 2016.

496 „Formiran odbor za primenu sporazuma” [A Board for Agreement application is formed], B92, 29 May 2016, available (in Serbian) at: http://www.b92.net/info/vesti/index.php?yyyy=2013&mm=05&dd=29&nav_category=11&nav_id=718027, accessed 27 March 2016.

497 Decision on forming a Commission for Approval for new employment and additional engagement in public funds beneficiaries, Official Gazette of the Republic of Serbia No. 113/2013 dated 20 December 2013; Government of the Republic of Serbia, Decision on dismissal and appointment of President and members of the Commission for approval for new employment and additional engagement in public funds beneficiaries No. 119-8968/2014, dated 14 August 2014.

498 Data from the registry of the Agency for Fight against Corruption on the assets and income of officials, available (in Serbian) at: <http://www.acas.rs/pretraga-registra>, accessed 27 March 2016.

499 See: Web page of Socialist Party of Serbia, section Organisation, available (in Serbian) at: <http://www.sps.org.rs/>, accessed 17 March 2016.

500 See: Web page of Republic Electoral Commission, section Commission members, available at: <http://www.rik.parlament.gov.rs/english/komisija-sastav.php>, accessed 17 March 2016.

501 "Polovina novih članova u Skupštini Partizana" [A half of new members in Partizan Assembly], SOS Kanal, 25 December 2014, available (in Serbian) at: <http://soskanal.net/fudbal-super-liga/polovina-novih-%C4%8Dlanova-u-skup%C5%A1tini-partizana>, accessed 27 March 2016.

502 Research for the report on transitional justice, questions for the Government of Serbia Commission on Missing Persons, HLC, HLCIndexOut: 170-F122555, 18 March 2016; Reply of Commission on Missing Persons of the Republic of Serbia, No. 021-01-02/2016-26, 4 May 2016.

with associations of victims' families. They evaluate the cooperation with the Commission on Missing Persons as positive, yet they point out it is not sufficient and often *ad hoc*.⁵⁰³

The work of the Commission on Missing Persons is not sufficiently visible to the expert and wider public. The Commission presents itself to the public through the internet presentation of the Commissariat for Refugees and Migration. The presentation lacks information, but presents data on the Commission's mandate, basic contact information and ways to initiate a procedure for searching for a missing person. However, the information regarding the process of searching for the missing persons and ways how to give information on potential grave locations or some other information which could be helpful in the search for missing persons, is lacking.⁵⁰⁴

The Department on Missing Persons performs professional and administrative jobs for the needs of the Commission on Missing Persons. The Department keeps records of missing persons and information on identified, exhumed and unidentified human remains, as well as the locations of mass graves, and individual graves too. The Department

performs other duties within the scope of the Commission on Missing Persons. It stores all the documents and archives of the Commission.⁵⁰⁵ The Department on Missing Persons employs five persons.⁵⁰⁶

The associations of victims' family members also take part in the search for missing persons by delivering information which could be helpful in finding the missing, as well as informing the families and wider public about the search for the missing persons.⁵⁰⁷

iii. Legal framework

Serbia has not brought in a law on missing persons which would regulate the special status and rights of the families of missing persons, although the adoption of such a law has been recommended by relevant international bodies⁵⁰⁸ and organizations⁵⁰⁹, as well as by associations of families of missing persons⁵¹⁰. The position of institutions regarding the adoption of this law is confusing. In the Initial report of Republic of Serbia on the application of International Convention for the Protection of All Persons from Enforced Disappearance, the lack of a legal framework is recognized as a problem which the families of missing persons are dealing with⁵¹¹. However, answering additional questions

503 Interview with Dragan Pjevač, President of the Coordination of the Serbian Associations of Families of Missing Persons from the territory of former Yugoslavia, 18 May 2016.

504 Directorate for Detained and Missing Persons of the Republic of Croatia, with whom the Commission on Missing Persons cooperates, has a more proactive approach in searching for missing persons. The Directorate has released an informative leaflet with the basic information on the process of searching for missing persons in the territory of the Republic of Croatia and an invitation to citizens to participate in the process. Croatia has also established a special anonymous number through which people can provide information about missing persons.

505 Government of the Republic of Serbia, Initial Report of the Republic of Serbia about the application of International Convention for the Protection of All Persons from Enforced Disappearances (2013), paragraph 30.

506 Commissariat for Refugees and Migration, Information Booklet, p. 17, December 2015, available (in Serbian) at: http://www.kirs.gov.rs/docs/informatori/informator_KIRS.pdf, accessed 15 March 2016.

507 Interview with Dragan Pjevač, 18 May 2016; Web site of the Association of Families of Missing and Killed Persons "Suza" (*Teardrop*) available (in Serbian) at: <http://www.afmpkr.org.rs/>, The Association of Families of Victims from Kosovo and Metohija 1998 to 2000 "Kosmetiski stradalnici", available at: <http://www.kosmetiskistradalnici.org.rs/>, Coordination of Serbian associations of families of missing persons in the former Yugoslavia, available at: <http://koordinacija.rs/sr/>, The Association of Families of Kidnapped and Missing Persons from Kosovo and Metohija, available at: <http://www.udruzenjeporodica.org.rs/index.html>, accessed 17 May 2016.

508 UN Committee on Enforced Disappearances, Concluding observations on the report of Serbia, submitted in accordance with Article 29, para. 1 of the Convention (2015), paragraph 30.

509 Amnesty International, "Serbia: Submission to the Committee on Enforced Disappearances", 20 January 2015, available at: <https://www.amnesty.org/en/documents/EUR70/001/2015/en/>, accessed on 27 March 2016.

510 „Nestale i njihove porodice država i dalje marginalizuje” [Missing persons and their families are still marginalized by the state], The Association of Families of victims from Kosovo and Metohija 1998 to 2000 "Kosmetiski stradalnici", 5 January 2015, available (in Serbian) at: <http://www.kosmetiskistradalnici.org.rs/vesti/aktuelno/1449/nestale-i-njihove-porodice-drzava-i-dalje-marginalizuje>, accessed 17 May 2016.

511 Government of the Republic of Serbia, Initial Report of the Republic of Serbia on the application of the International Convention for the Protection of All Persons from Enforced Disappearances (2013), paragraph 145.

of the UN Committee about the Initial Report regarding the intentions of Serbia to adopt a law on missing persons, an explicit answer is avoided⁵¹², while at the same time, the President of the Commission on Missing Persons, at the session of this Committee held on 12 February 2015, when asked a similar question, responded that “Serbia has never said it would not adopt such a law”, adding that Serbia “is preparing a comprehensive law which will include all the cases in Croatia, BiH and Kosovo”⁵¹³

In 2010, the Ministry of Labour, Employment, Social and Veterans’ Affairs, initiated the preparation of a document which would regulate the legal status of families of missing persons.⁵¹⁴ A working group was also formed to develop this document, and it included the associations of families of missing persons. However, the process was stopped after a couple of months without any results, and the harmonized proposal of documents was not discussed before the competent bodies.⁵¹⁵

In accordance with the current legal framework, family members of missing persons can exercise certain rights. However, family members of missing civilians are in an unequal position in relation to families of fallen soldiers. Namely, the Law on Basic Rights of Veterans, Disabled Veterans and Families of Fallen Soldiers allows a member of family of a fallen soldier to exercise rights to family disability allowance, medical care and benefits in

public transportation.⁵¹⁶ What is more, according to the interpretation of the Ministry of Labour, family members of missing persons can exercise certain rights stipulated by the Law on the Rights of Civilian Invalids of War.⁵¹⁷ However, while family members of a fallen soldier must first of all meet the property and age threshold,⁵¹⁸ the condition which is placed before a family of a missing civilian is to declare their missing family member dead.⁵¹⁹

The Draft Strategy for the prosecution of war crimes in Serbia stipulates measures for the promotion of a normative framework, “which is important for solving the destiny of missing persons”, of the institutional and administrative capacities of state bodies included in the search for missing persons, and of international cooperation in this field.⁵²⁰ One of the planned indicators of a successful implementation of the strategy is the “reduced number of missing persons whose fate has not been clarified.”⁵²¹

iv. Findings of the UN Committee on Enforced Disappearances

In its last report of February 2015, the UN Committee on Enforced Disappearances emphasized Serbia’s failure to assume the obligations from the International Convention for the Protection of All Persons from Enforced Disappearance (Convention on Enforced Disappearances).⁵²² Accordingly, the Committee sent Serbia a series of recommendations,

512 Government of the Republic of Serbia, Office for Human and Minority Rights, Answers to additional questions by the United Nations Committee on Enforced Disappearances relating to the Initial Report by the Republic of Serbia on the application of the International Convention for the Protection of All Persons from Enforced Disappearances, paragraph 23, January 2015, available at: http://tbinternet.ohchr.org/Treaties/CED/Shared%20Documents/SRB/INT_CED_RLI_SRB_19276_E.pdf, accessed 16 March 2016.

513 Committee on Enforced Disappearances examines report of Serbia, 5 February 2015, available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15547&LangID=E>, accessed 25 March 2016.

514 „Nestale i njihove porodice država i dalje marginalizuje” [Missing persons and their families are still marginalized by the state], The Association of Families of victims from Kosovo and Metohija 1998 to 2000 “Kosmetiski stradalnici”, 5 January 2015, available at: <http://www.kosmetiskistradalnici.org.rs/vesti/aktuelno/1449/nestale-i-njihove-porodice-drzava-i-dalje-marginalizuje>, accessed 17 May 2016.

515 Interview with Dragan Pjevač, 18 May 2016. At the beginning of the creation of this document, it was predicted to give it a form of a law, but later this option was dropped out and a decision was made that the document is given the form of a decree of the Republic of Serbia.

516 Law on Basic Rights of Veterans, Disabled Veterans and Families of Fallen Soldiers, Official Gazzette of FRY No. 24/98, 29/98 - cons. and 25/2000 – decision of FCC and Official Gazzette of RS No. 101/2005 – other law and 111/2009 - other law, Article 13 and 22.

517 Reply of the Ministry of Labour at the request of the HLC No. 07-00-00564/2015-15, 17 March 2015.

518 Law on Basic Rights of Veterans, Disabled Veterans and Families of Fallen Soldiers, Official Gazette of FRY No. 24/98, 29/98 - cons. and 25/2000 – decision of FCC Official Gazette of RS No. 101/2005 – other law and 111/2009 – other law, Article 30

519 Reply of the Ministry of Labour at the request of the HLC No. 07-00-00564/2015-15, 17 March 2015.

520 Ministry of Justice of the Republic of Serbia, National Strategy for the Prosecution of War Crimes for 2016-2020, Draft (2015) pp. 31-33.

521 Ibid, p. 10.

522 UN Committee on Enforced Disappearances, Concluding observations on the report submitted by Serbia under article 29, paragraph 1 of the Convention (2015), paragraph 9.

among them the following: (i) the application of the institute of responsibility of superiors for the criminal act of enforced disappearance; (ii) the conducting of a thorough and unbiased investigation into all cases of enforced disappearances which might have been committed by authorized persons or groups of persons that acted through their authorization, support or consent in the context of past armed conflicts; (iii) the punishment of the persons responsible, including commanders and high-level civilians; (iv) full access to relevant archives; (v) the provision of a sufficient amount of personnel, technical and financial resources for the OWCP and other competent bodies; (vi) the suspension of “state-authorized persons who are suspected of a “criminal act of enforced disappearance” and the exclusion from investigations of all persons who are suspected of committing an act of enforced disappearance, during the course of an investigation; (vii) the conducting of “a comprehensive and unbiased investigation of threats and witness intimidation in court proceedings for war crimes and enforced disappearances”; (viii) amendments to the law “in order to determine the definition of a “victim” in accordance with the Convention of Enforced Disappearances; (ix) guaranteeing the right to compensation to “any person who has experienced damage as a direct cause of enforced disappearance, regardless of the fact when the act was committed and whether the criminal proceeding has started or not (...) or whether the perpetrators are identified or not”; and (x) the legal regulation of the status of missing persons and members of their families.⁵²³

The Committee also stated that so far nobody has been held responsible for hiding the hundreds of bodies found in mass graves in Serbia.⁵²⁴ In relation to this issue, the delegation of Serbia, at the session where the Initial report of Republic of Serbia on the application of International Convention for the Protection of All Persons from Enforced Disappearance was presented, informed the parties present that the competent bodies were now looking for the perpetrators who had hidden the bodies of Kosovo Albanians in mass graves in Batajnica, since “the action had been conducted in

secrecy and with no written proof.”⁵²⁵

At this session, the delegation of Serbia informed the Committee that psychosocial support has been provided for 789 families of missing persons, adding that Serbia spends 13 million euros annually for the needs of families of missing persons.⁵²⁶ Responding to the HLC’s question about more precise data regarding the way of spending the above-mentioned funds, the Commission on Missing Persons replied that it is “a postulated amount”, based on the information which was delivered to the Commission by the Ministry of Labour.⁵²⁷ The HLC sent the same request to the Ministry of Labour, and the answer was that this is “a postulated amount”, which was obtained by multiplying the number of recorded missing persons in the Ministry (448) with the supposed number of 2.5 members of household and the amount of monthly compensation.⁵²⁸ In other words, the Ministry of Labour does not have the precise number of families of missing persons who are beneficiaries of help; yet this is the potential number of beneficiaries.

v. Findings of other international bodies

Commissioner for Human Rights of the Council of Europe evaluated that Serbia does not have a systematic and human-rights-based principle to determine the destiny of missing persons and protect the rights of their families. The problems which complicate the search for missing persons are the lack of information on mass graves locations, difficulties in identification of human remains and the lack of a legal framework which would deal with the rights and needs of family members of missing persons in a more efficient way. The Commissioner emphasized the importance of opening military and police archives which contain valuable information.⁵²⁹

The Reports of the European Commission on Serbia’s progress, published in the period 2013-2015, evaluate the problem of missing persons who went missing in armed conflicts in former Yugoslavia as a humanitarian issue⁵³⁰ of

523 Ibid, paragraphs 11, 13, 14, 16, 18, 24, 26, 30.

524 Ibid, paragraph 13.

525 Committee on Enforced Disappearances examines report of Serbia, 5 February 2015, available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15547&LangID=E>, accessed 25 March 2016.

526 Ibid.

527 Reply of the Commission on Missing Persons to HLC’s inquiry, No. 021-01-01/2015-01/11, 25 February 2015.

528 Reply of the Ministry of Labour to HLC’s inquiry, No. 07-00-00564/2015-15, 17 March 2015.

529 Report by Nils Muižnieks, Council of Europe Commissioner for Human Rights, following his visit to Serbia, from 16 to 20 March 2015 (2015).

530 European Commission, Serbia 2013 Progress Report (SWD(2013) final 412), October 2013, p. 12, available at: http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/sr_rapport_2013.pdf, accessed 5 February 2016.

great importance for reconciliation and regional stability.⁵³¹ The key problems that make the search for missing persons more difficult are the lack of strong and continuous political support,⁵³² insufficient information on potential mass graves and difficulties in the identification of exhumed human remains.⁵³³

In its last resolution on Serbia's progress, the European Parliament pointed out that solving the problem of missing persons was a prerequisite of reconciliation, and asked the competent institutions in Serbia to start conducting a comprehensive search of the archives of the former YPA, to put more effort into the search for missing persons and identification of human remains, to locate mass graves, to prepare a reparation scheme for families of missing persons and to establish and secure the right to know the destiny of those missing.⁵³⁴

vi. Finding mass graves

A mass grave was found in Serbia in December 2013 in an abandoned quarry of Rudnica near Raška, with the human remains of 53 persons. All the victims were civilians, Kosovo Albanians who were murdered by Serbian forces in April and May 1999 in Kosovo.⁵³⁵ This location had been searched before in 2007, 2010 and 2011; however, nothing was found.⁵³⁶ The mass grave was found alongside the main road and in the immediate vicinity of the Yugoslav Army barracks.⁵³⁷

The discovery of the existence of the mass grave in Rudnica is a result of the work of Kosovo institutions, which informed

the institutions in Serbia about this.⁵³⁸ The institutions of Serbia had a technical role in determining the micro-location of the grave and digging for it.⁵³⁹

According to the HLC's research, military and police authorities took part in the operation of hiding bodies in the Rudnica mass grave. This operation was documented in the official documents of institutions in the relevant period, and these documents are in official archives.⁵⁴⁰ The fact that the Commission on Missing Persons and other bodies competent to determine the circumstances on crimes have not reviewed these archives in 10 years or independently determined the existence of this mass grave, shows passivity and the reactive approach to this work - that is, it shows the lack of initiative when it comes to finding mass graves in Serbia.

In the 2013-2015 period, an additional six locations were searched in the territory of Serbia. These locations were marked by the Kosovo institutions as potential locations of mass graves. However, nothing was found (Medvedja, Brežuljak-Rudnica, Batajnica, Petrovo Selo, Novi Pazar, Kiževak).⁵⁴¹

vii. Regional cooperation

Cooperation with Croatia

In accordance with bilateral agreements on cooperation which were signed in 1995 and 1996, the cooperation between Serbia and Croatia in search for missing persons is conducted between the Republic of Serbia Commission on Missing Persons and Republic of Croatia Directorate for Detained and Missing Persons.⁵⁴²

531 European Commission, Serbia Progress Report (2014), p. 14

532 Ibid; European Commission, Serbia 2015 Report (2015), p. 20.

533 European Commission, 2013, 2014 and 2015 progress reports on Serbia.

534 European Parliament resolution of 16 January 2014 on the 2013 progress report on Serbia (2014), paragraph 10; European Parliament resolution of 11 March 2015 on the 2014 Progress Report on Serbia (2015), paragraphs 15-16; European Parliament resolution of 4 February 2016 on the 2015 report on Serbia (2016), paragraph 25.

535 HLC, Dossier "Rudnica" (2015), pp. 9-11.

536 Ibid.

537 Ibid.

538 Ibid.

539 „Sutra iskopavanja u Rudnici” [Digging in Rudnica set for tomorrow], Blic, 22 April 2014, available (in Serbian) at: <http://www.blic.rs/vesti/hronika/sutra-iskopavanja-u-rudnici/wffdh3>, accessed 17 May 2016.

540 HLC, Dossier "Rudnica" (2015), pp. 11-15.

541 Reply of the Commission on the Missing Persons to HLC's inquiry, No. 021-01-02/2016-26, 4 May 2016.

542 Agreement on Cooperation of Federal Republic of Yugoslavia and Republic of Croatia in searching for the missing persons, dated 17 November 1995; Protocol on cooperation between the Commission of the Federal Government of the Federal Republic of Yugoslavia for humanitarian issues and missing persons, and the Commission on Detained and Missing Persons of the Republic of Croatia, signed on 17 April 1996.

The competent institutions in Serbia keep records on Serbian citizens and Croatian citizens of Serbian nationality who went missing during the armed conflicts in Croatia in the period of 1991-1995. According to these records, Serbia is searching for its own 373 citizens and 728 Croatian citizens of Serbian nationality.⁵⁴³ Along with this, the Commission on Missing Persons runs the so-called operative list, which contains the names of 699 persons who are not registered according to the criteria of the International Committee of the Red Cross (ICRC) - that is, who have not been reported to the Red Cross of Croatia or the ICRC, but only to the Red Cross of Serbia. This list was handed to the Directorate for Detained and Missing Persons, with the mutual agreement that both bodies should continue with further checks regarding this list. According to the statements of the Commission on Missing Persons, the data on certain persons from the Commission's operative list are included in the last edition of "The Book of the missing persons in the territory of Croatia", published in November 2015.⁵⁴⁴

The identification of the human remains of eight members of the former YPA was carried out in Serbia in the period of 2013-2015. They were on Serbia's list of missing persons, and their human remains were exhumed in mass graves in Serbia and several locations in Croatia. Moreover, the exhumation of the human remains of another 26 persons from graves in Indija, Šid and Kovin was also performed, and these were on Croatia's search list. Through the Commission on Missing Persons, family members of missing persons were present at the identification of the human remains which were found in locations in Croatia.⁵⁴⁵

In 2014 the Commission on Missing Persons and the Directorate for Detained and Missing Persons mutually inspected the location of a potential mass grave in a place called Prvca (municipality of Nova Gradiška, Croatia) and a place called Petrovci, near Vukovar (municipality of Bogdanovci, Croatia), as well as the place of burial of a person in the village of Slakovci, near Vukovar. The search of the Petrovci location gave no results⁵⁴⁶, while the search results of the other two locations are not known.⁵⁴⁷

According to the opinion of representatives of the competent institutions in Croatia, the open questions between the two countries include the data on mass grave locations whose locations were moved in 1995, as well as the locations of mass graves that were created in 1991 and 1992, but whose location was not moved.⁵⁴⁸ On the other hand, representatives of Serbia's institutions think that the search for missing persons of Serbian nationality in Croatia has been neglected.⁵⁴⁹ Associations which gather together the families of missing persons point to the negligence in the search for the missing Serbs and their slow identification, as being the key problems.⁵⁵⁰ They also point out that many mass grave locations are known, yet the exhumation process is being unnecessarily prolonged.⁵⁵¹

According to the EC, the cooperation of Serbia and Croatia in search for missing persons is slow and needs stronger political commitment and resources;⁵⁵² and in 2015, this cooperation failed to show any visible progress.⁵⁵³ The EP also recognizes the lack of commitment in searching for missing persons as one of the bilateral problems in the relationship of the two countries.⁵⁵⁴

543 Reply of the Commission on Missing Persons to HLC's inquiry, No. 021-01-02/2016-26, 4 May 2016.

544 Ibid.

545 Ibid.

546 Ibid.

547 The Commission on Missing Persons did not act upon the Request to deliver information of public importance, sent by the HLC regarding this issue.

548 „Hrvatska-Srbija: Posve različiti podaci o nestalima u ratu“ [Croatia-Serbia: Totally different data on missing persons in war], Al Jazeera Balkans, 16 February 2015, available (in Bosnian) at: <http://balkans.aljazeera.net/vijesti/hrvatska-srbija-posve-razliciti-podaci-o-nestalima-u-ratu>, accessed 10 April 2016.

549 „Odalović: Hrvatsko društvo nije spremno da primi Srbe“ [Odalović: Croatian society is not ready to accept the Serbs], RTS, 5 August 2015, available (in Serbian) at: <http://www.rts.rs/page/stories/sr/story/125/Dru%C5%A1tvo/1997863/Odalovi%C4%87%3A+Hrvatsko+dru%C5%A1tvo+nije+spremno+da+primi+Srbe+.html?tts=yes>, accessed 10 April 2016.

550 „Orden za zločin“ [Medal for crime], Coordination of Serbian associations of families of missing persons from former Yugoslavia, 2 February 2014, available (in Serbian) at: <http://koordinacija.rs/sr/orden-za-zlocin-intervju-sa-d-pjevacem/>, accessed 10 May 2016.

551 Interview with Dragan Pjevač, 18 May 2016.

552 European Commission, Serbia 2013 Progress Report (2013), p. 12.

553 Ibid; European Commission, Serbia 2015 Report (2015), p. 20.

554 European Parliament resolution of 16 January 2014 on the 2013 progress report on Serbia (2014), paragraph 9.

Cooperation with BiH

The Republic of Serbia cooperates with the Institute for the Missing Persons of BiH in the search for persons who went missing during the armed conflicts in BiH. In November 2015, the Government of the Republic of Serbia and Council of Ministers of BiH signed a Protocol on Cooperation in searching for the missing persons. The Protocol obliged both parties to improve mutual cooperation in order to solve the cases of missing persons, exchange information and documents on the existence of graves, exhumations, identifications and hand-over of human remains. BiH ratified the Protocol at the end of March 2016.⁵⁵⁵ Serbia has not yet done so.⁵⁵⁶

Competent institutions in Serbia keep records on citizens of Serbia and BiH whose families have fled and permanently settled in Serbia. There are 97 Serbian citizens and 350 BiH citizens in these records.⁵⁵⁷

In the 2013-2015 period, Serbia took the human remains of two members of the former YPA from BiH in order to bury them in Serbia; and handed over to BiH the human remains of five persons who were buried in cemeteries in Serbia, as well as acting upon BiH's requests regarding the act of locating burial places from the search list of BiH.⁵⁵⁸

Cooperation with Kosovo

Within the search for persons who went missing during the armed conflict in Kosovo, the Commission on Missing Persons itself relies on the data of the ICRC. According to the data of March 2016, a total number of 1,125 Albanians was registered as missing, and 540 Serbs and other non-Albanians.⁵⁵⁹

Since 2004, the cooperation with Kosovo has been achieved through the Working Group for the Missing Persons, which consists of delegations from Serbia and Kosovo, with the ICRC as the mediator. As observers in the Working Group, the following bodies/persons participate: representatives of the International Commission on Missing Persons, the OSCE, diplomatic missions, NATO, the EU, and associations of families of missing persons. The delegation from Serbia is appointed by the Government and consists of the President of the Commission on Missing Persons, a representative of the Office of the President of Serbia, a representative of the Office for Kosovo and Metohija, and a forensic expert.⁵⁶⁰

In the period 2013-2015, the Commission received 12 requests from the Kosovo delegation to the Working Group, and acted upon seven of these.⁵⁶¹ As far as the other five requests are concerned, these were searches of locations which, according to the Commission on Missing Persons, could not be entirely searched because of their largeness (the locations of Banja, Novi Pazar, Jalovište, Raška and Jezero).⁵⁶²

During the searching of the location of the quarry of Rudnica in the municipality of Raška from October to December 2013, the remains of 53 victims were found. The searches of another six locations gave no results. These searches covered the locations of Svirce, the municipality of Medvedja (August 2013), Batajnica, the municipality of Zemun (October 2014), Petrovo Selo, the municipality of Kladovo (December 2014), the village of Kozarevo, the municipality of Novi Pazar (April 2015 and August 2015), and Kiževak, the municipality of Raška (November-December 2015 – in progress).

555 Parliamentary Assembly of Bosnia and Herzegovina, The decision on approval for ratification of the Protocol on cooperation in the search for missing persons between the Council of Ministers of Bosnia and Herzegovina and the Government of the Republic of Serbia, No. 01,02-05-2-541 / 16, 22 March 2016, available (in Bosnian) at: https://www.parlament.ba/sadrzaj/ostali_akti/ratificirani/default.aspx?id=63840&langTag=bs-BA&pril=b, accessed 18 May 2016.

556 Web site of the National Assembly of the Republic of Serbia, Section Passed Laws, available (in Serbian) at: <http://www.parlament.gov.rs/akti/doneti-zakoni/doneti-zakoni.1033.html>, accessed 18 May 2016.

557 Reply of the Commission on Missing Persons to HLC's inquiry, No. 021-01-02/2016-26, 4 May 2016.

558 Ibid.

559 Ibid.

560 The Commission on Missing Persons of the Government of Republic of Serbia, Report for 2013, p. 7; Reply of the Commission on Missing Persons to HLC's inquiry, No. 021-01-02/2016-26, 4 May 2016.

561 Reply of the Commission on Missing Persons to HLC's inquiry, No. 021-01-02/2016-26, 4 May 2016.

562 Ibid.

According to representatives of Serbia's institutions, the problems which prevent the efficient search for persons who went missing during the armed conflict in Kosovo are the following: not acting upon Serbia's requests, the reduced scope and slow dynamics of the activities, the stop to exhumation processes in Kosovo, and the slowness in the identification process.⁵⁶³ On the other hand, representatives of Kosovo institutions indicate the lack of Serbian will to open the archives and deliver all the relevant information regarding the locations of secret locations containing bodies of Albanians.⁵⁶⁴ Associations of families of missing persons think that the lack of political will in both Serbia and Kosovo impedes the efficient search for the missing persons, as is indicated by the ever-slower dynamics of the exhumation and identification of human remains, as well as of the finding of the locations with victims' remains.⁵⁶⁵

Kosovo insists that the issue of missing persons should be included in the dialogue on the normalization of relations between Serbia and Kosovo, which is being facilitated by the European External Action Service.⁵⁶⁶ This request is supported by associations of victims both from Serbia and

Kosovo,⁵⁶⁷ whilst the Serbian institutions have not taken a clear stance yet.⁵⁶⁸

The intensity of cooperation between Serbia and Kosovo in searching for missing persons is evaluated as being slow by the EC.⁵⁶⁹

Declaration on Missing Persons

In August 2014 representatives of Croatia, Serbia, BiH and Montenegro signed a Declaration on the role of the state in addressing the issue of persons missing as a consequence of armed conflict and human rights abuses (the Declaration on Missing Persons).⁵⁷⁰ The Declaration's aim is to emphasize "the primary responsibility of state authorities in solving the issues of missing persons" and "ensure permanent respect of the rights of family members of missing persons and ensure the possibility for the survivors and civil society to have access to information on the destiny of the missing persons, the places where they are and the circumstances of their disappearance."⁵⁷¹

563 According to information provided from the Commission on Missing Persons, Kosovo has not answered requests regarding the search of five locations in Kosovo. It also has not answered the request regarding the conversation with former detainees in Lapušnik camp. They also point to the many years' prolongation of the complete demining of the Košare location, which would enable the search of the terrain to find the bodies of seven members of the VJ. Source: Reply of Commission on Missing Persons to HLC's inquiry, No. 021-01-02/2016-26, 4 May 2016.

564 „Kosovo traži od Srbije da otvori vojnu arhivu” [Kosovo asks Serbia to open military archives], BIRN, 3 February 2016, available (in Serbian) at: <http://www.balkaninsight.com/rs/article/kosovo-tra%C5%BEi-od-srbije-da-otvori-vojni-arhivu-02-03-2016>; Prenk Gjetaj: “Serbia must reveal the grave of 1600 Albanians killed during the war”, *Gazeta Express*, 1 February 2016, available at: <http://www.gazetaexpress.com/en/news/prenk-gjetaj-serbia-must-tell-the-grave-of-1600-albanians-killed-during-the-164432/>; accessed 18 May 2016.

565 „Konferencija za novinare srpskih i albanskih porodica stradalih na Kosmetu, povodom Medunarodnog dana nestalih” [Press conference of Serbian and Albanian families killed in Kosmet, on the occasion of the International Day of the Disappeared], The Association of Families of victims from Kosovo and Metohija 1998 to 2000 “Kosmeti stradalnici”, 2 September 2015, available (in Serbian) at: <http://www.kosmetiskistradalnici.org.rs/vesti/aktuelno/1670/konferencija-za-novinare-srpskih-i-albanskih-porodica-stradalih-na-kosmetu-povodom-medjunarodnog-dana-nestalih>, accessed 18 May 2016.

566 „Nestali na Kosovu nemaju nacionalnu pripadnost” [The missing in Kosovo do not have a nationality], *Vesti Online*, 24 March 2014, available (in Serbian) at: <http://www.vesti-online.com/Vesti/Srbija/391299/Nestali-na-Kosovu-nemaju-nacionalnu-pripadnost>, accessed 5 May 2015.

567 Joint letter of Serbian and Albanian families of missing persons to the representatives of current authorities in Belgrade and Pristina, 31 August 2015, available (in Serbian) at: <http://www.kosmetiskistradalnici.org.rs/vesti/aktuelno/1670/konferencija-za-novinare-srpskih-i-albanskih-porodica-stradalih-na-kosmetu-povodom-medjunarodnog-dana-nestalih>, accessed 5 May 2016.

568 „Rasvetliti sudbine nestalih na KiM” [To solve the destiny of the missing persons in KiM], B92, 17 March 2015, available (in Serbian) at: http://www.b92.net/info/vesti/index.php?yyyy=2015&mm=03&dd=17&nav_category=640&nav_id=969762, accessed 5 May 2016.

569 European Commission, *Serbia Progress Report* (2014), p. 15.

570 “Declaration on the role of the state in addressing the issue of persons missing as a consequence of armed conflict and human rights abuses”, Mostar, BiH, 28 August 2014, available at: <http://www.icmp.int/wp-content/uploads/2014/08/signed-declaration-2.pdf>, accessed 30 March 2016.

571 The International Commission on Missing Persons, the Declaration on the role of the state in addressing the issue of persons missing as a consequence of armed conflict and human rights abuses, explanatory note, available at: <http://www.icmp.int/wp-content/uploads/2014/08/final-explanatory-note.pdf>, accessed 30 March 2016.

By signing the Declaration on Missing Persons, representatives of the four countries committed themselves to a serious search for missing persons and to respect for the rights of the families of the missing; also, they committed themselves to strengthening the capacity of the national institutions responsible for establishing the destiny of missing persons, exchanging information and enabling the access to information on potential locations containing the bodies of victims, as well as to effective regional and international cooperation, establishing the truth about the circumstances of the disappearances and supporting *all* processes aimed at preventing “permanent impunity,” including war crimes trials.⁵⁷²

After the Declaration on Missing Persons was signed, Serbian President Tomislav Nikolić said that Serbia will “ensure the full involvement of all its institutions in finding the missing and punishing those responsible”, adding that “it will do everything it can so that each individual case of disappearance is solved and the perpetrators punished”.⁵⁷³ A few months later, the topic of the meeting between Nikolić and representatives of the associations of families of missing persons was exclusively the search for missing Serbs;⁵⁷⁴ whilst he threatened the Prosecutor for War Crimes in Serbia during the public debate about the responsibility for the concealment of bodies of Kosovo Albanians in mass graves in Serbia.⁵⁷⁵

After the Declaration on Missing Persons was signed, the

destiny of 1,223 missing persons had been solved by March 2016.⁵⁷⁶

The importance of bilateral and regional cooperation in the search for missing persons was the focus of EU institutions too, which asked Serbia to intensify cooperation with states in the region, strengthen efforts in the search for the missing, completely share all the relevant data and open the archives of the YPA.⁵⁷⁷

Associations of families of victims have described the process of searching for missing persons across the region as stagnant, with the increasing neglect and politicization of victims. Families are very dissatisfied with the attitude of Serbian institutions to their problems, and they emphasize that victims are less and less visible for them.⁵⁷⁸

3.1.2. Access to Official Archives

Over the 2013-15 period, the military and police archives containing material that can help ascertain the truth about the armed conflicts of the 1990s for the most part remained inaccessible to interested individuals, non-governmental organisations and the general public. The Ministry of Defence and the Ministry of the Interior often thwarted attempts to gain access to the documents relating to the armed conflicts in the former Yugoslavia, despite being legally obliged to provide access to information that “the public has a justified interest to know”.⁵⁷⁹ In order to withhold information, these

572 „Pročitajte tekst Deklaracije o nestalim“ [Read the text of the Declaration on the Missing], *Nezavisne novine*, 29 August 2014, available (in Bosnian) at: <http://www.nezavisne.com/novosti/bih/Procitajte-tekst-Deklaracije-o-nestalim/260488>, accessed 30 March 2016.

573 Predsjednici zemalja regije potpisali Deklaraciju o rješavanju pitanja nestalih“ [Representatives of countries in the region have signed the Declaration on addressing the issues of missing persons], *Nova sloboda*, 29 August 2004, available (in Bosnian) at: <http://novasloboda.ba/predsjednici-zemalja-regije-potpisali-deklaraciju-o-rjesavanju-pitanja-nestalih/>, accessed 30 March 2016.

574 Office of the President of the Republic of Serbia, „Sistemski rešiti pitanje nestalih Srba“ [Systematically to solve the issue of missing Serbs], 10 December 2014, available (in Serbian) at: <http://www.predsednik.rs/lat/pres-centar/saopstenja/sistemski-resiti-pitanje-nestalih-srba>, accessed 30 March 2016.

575 „Orkestar za rušenje Vučića odavno se uštimoavao“ [Orchestra for overthrowing Vučić has been tuning up for a long time], *Politika*, 15 February 2015, available (in Serbian) at: <http://www.politika.rs/scc/clanak/319151/Orkestar-za-rusenje-Vucica-odavno-se-ustimovao>, accessed 20 January 2016.

576 Government of the Republic of Serbia, Initial report of Republic of Serbia on application of the International Convention on protection of all persons from enforced disappearances (2013), p. 7; Response of Commission on Missing Persons to HLC’s inquiry, No. 021-01-02/2016-26, 4 May 2016.

577 European Commission, 2013, 2014 and 2015 progress reports on Serbia; European Parliament resolutions on Serbia’s progress in 2013, 2014 and 2015.

578 Interview with Dragan Pjevač, 18 May 2016.

579 Law on Free Access to Information of Public Importance, Article 2, Official Gazette of the Republic of Serbia, Nos. 120/2004, 54/2007, 104/2009 and 36/2010.

two institutions violated the Law on Free Access to Information of Public Importance and disobeyed the decisions of the Commissioner for Access to Information of Public Importance underlining their obligation to grant access to the information sought.⁵⁸⁰

In an attempt to justify denying access to their archives, these institutions insisted that their archival material is classified as confidential. It should be noted, though, that some documents contained in the archives were declared confidential only after the public had shown interest in them. For instance, in early 2015, a decision was made public by which the then Defence Minister, Bratislav Gašić, declared the entire archive pertaining to the 37th Motorised Brigade of the Yugoslav Army “top secret” i.e. requiring the highest possible level of classification.⁵⁸¹ By doing so, the Minister made this archive publicly unavailable for the period of 30 years following its creation.⁵⁸² The decision came immediately after the HLC had requested access to several documents held by the Ministry of Defence that concern the activities of this brigade at the locations where crimes were committed in Kosovo in 1999 at the time of their commission. In June 2015, the HLC filed misdemeanour charges against Defence Minister Gašić for violating the Data Secrecy Law.⁵⁸³

Several domestic and international institutions⁵⁸⁴ and organisations⁵⁸⁵ have urged Serbia to open up the archives of the Yugoslav People’s Army. In its three resolutions on Serbia’s progress reports, the European Parliament has urged Serbia to open up the archives of the YPA⁵⁸⁶ and conduct a more thorough investigation into those archives⁵⁸⁷ in order to establish the truth of the armed conflicts in the former Yugoslavia.

3.2. Informal Initiatives

3.2.1. RECOM Process⁵⁸⁸

The Coalition for RECOM has continued to advocate the establishment of a Regional Commission tasked with establishing the facts about war crimes and other human rights violations committed during the wars in the former Yugoslavia (RECOM). In the 2013-15 period, political support for the process was obtained from the majority of post-Yugoslav countries, but no joint decision by representatives of these countries was made on the establishment of RECOM. The process was affected by political developments, such as elections, unstable regional relations and the fact that politicians have become less interested in addressing the legacy of the former Yugoslavia’s armed conflicts.⁵⁸⁹

580 HLC, “Access to Documents related to Crimes against International Law in the possession of Serbian Institutions: State Secret Prevails over Right to the Truth”, April 2016, available at: <http://www.hlc-rdc.org/?p=31572&lang=de>.

581 Data Secrecy Law, Articles 14 and 19, Official Gazette of the Republic of Serbia, No. 104/2009.

582 Decision of the Ministry of Defence rejecting a request for information of public importance, No. 553-6/14, 31 July 2014. “Gašić declared archive on 37th Motorised Brigade secret” [Gašić arhivu 37. motorizovane brigade proglasio tajnom], Radio Free Europe, 12 June 2015, available (in Serbian) at: <http://www.slobodnaevropa.org/content/fhp-gasic-arhivu-37-motorizovane-brigade-proglasio-tajnim/27068479.html>; accessed on 28 March 2016.

583 HLC, “Minister of Defence Declared Documents on Activities of the 37th Motorized Brigade of the Yugoslav Army in Kosovo Top Secret”, 12 June 2015, available at: <http://www.hlc-rdc.org/?p=29345&lang=de>.

584 European Parliament resolution of 16 January 2014 on the 2013 Progress Report on Serbia (2014), paragraph 10; European Parliament resolution of 11 March 2015 on the 2014 Progress Report on Serbia (2015), paragraph 15.

585 “Women in Black: Serbia must open YPA archives on missing in Vukovar” [Žene u crnom: Srbija mora otvoriti arhive JNA o nestalima u Vukovaru], Jutarnji list, 18 November 2014, available (in Croatian) at: www.jutarnji.hr/zene-u-crnom-trazi-da-srbijanska-vojska-otvori-arhive-o-vukovaru/1237487/; “Open the YPA archives on missing persons” [Otvorite arhive JNA o nestalima], B92, 5 June 2015, available (in Serbian) at: http://www.b92.net/info/vesti/index.php?yyyy=2015&mm=06&dd=05&nav_category=64&nav_id=1001126; all sources accessed on 28 March 2016.

586 European Parliament resolution of 11 March 2015 on the 2014 Progress Report on Serbia (2015), paragraph 15 and European Parliament resolution of 4 February 2016 on the 2015 report on Serbia (2016), paragraph 24.

587 European Parliament resolution of 16 January 2014 on the 2013 Progress Report on Serbia (2014), paragraph 10

588 For more on RECOM process, visit www.recom.link

589 “The states who must honour the victims” [Žrtvama priznanje moraju dati države], Impuls Portal, 5 March 2016, available (in Serbian) at: <http://www.impulsportal.net/index.php/razgovori/intervju/2989-intervju-natasa-kandic-zrtvama-priznanje-moraju-dati-drzave>, accessed on 27 March 2016.

In 2013, most presidents of the Yugoslavia's successor states appointed their personal envoys to the RECOM's Regional Expert Group for RECOM.⁵⁹⁰ On 30 June 2013, Serbian President Tomislav Nikolić appointed Judge of the Court of Appeal in Belgrade Siniša Važić his personal envoy to the Expert Group.

The Expert Group was tasked with reviewing the RECOM Statute Proposal⁵⁹¹ from the perspective of constitutional, legal and political conditions in each state for the establishment of RECOM. The expert group began its work in September 2013, and in October 2014 it submitted to the Coalition for RECOM its amendments to the RECOM Statute Proposal⁵⁹². The Seventh Assembly meeting of the Coalition for RECOM, held on 14 November 2014, backed the amendments proposed.⁵⁹³

In July 2015, the Government of Serbia reiterated its support for the establishment of RECOM.⁵⁹⁴

The European Parliament Resolutions on Serbia's progress for 2013, 2014 and 2015 reiterated its support for the establishment of RECOM expressed in previous years, and the Resolution for 2013 "strongly encourages the countries of the former Yugoslavia to set up an intergovernmental commission tasked with establishing the facts about the victims and missing persons of the 1991-2001 wars."⁵⁹⁵ The European Commission in its progress reports on Serbia produced

during 2013-15 noted that there was political support in Serbia for the establishment of RECOM.⁵⁹⁶

In their joint statement of 19 March 2013, members of the European Parliament and the National Assembly of the Republic of Serbia called on the countries of the former Yugoslavia to continue to support the Initiative for RECOM, an initiative which is an important mechanism for the reconciliation process for the countries of the former Yugoslavia, and called on the presidents of these countries to finalize the process of RECOM's formal establishment.⁵⁹⁷

The Coalition for RECOM brings together nearly 700 organisations and individuals from Serbia.⁵⁹⁸

3.2.2. Register of Human Losses

Since 2004, a group of four non-governmental organisations from Serbia, Croatia, BIH and Kosovo (the Humanitarian Law Center, Center for Dealing with the Past - Documenta, Research and Documentation Center and Humanitarian Law Center Kosovo, respectively) has been compiling a list of casualties of the armed conflicts in Slovenia, Croatia, BIH and Kosovo. The Research and Documentation Center in 2012 completed its research into the human losses in BIH. The research findings were incorporated in the "Bosnian Book of the Dead" which was published in early 2013.⁵⁹⁹

590 The President of Slovenia and the Serbian Member of the B-H Presidency have not yet appointed their respective envoys. The President of Macedonia has, but his envoy has not taken part in the work of the Regional Expert Group.

591 Coalition for RECOM, Statute Proposal, Regional Commission for Establishing the Facts about War Crimes and other Gross Human Rights Violations in the former Yugoslavia, 26 March 2011, available at: <http://www.recom.link/wp-content/uploads/2012/01/Proposed-Statute.pdf>, accessed on 15 March 2016.

592 Amendments to the Statute of the Regional Commission for Establishing the Facts about War Crimes and other Gross Human Rights Violations in the former Yugoslavia, as proposed by the B-H Presidency's envoy to RECOM, 28 October 2014, available at: <http://www.recom.link/wp-content/uploads/2015/01/Amendments-to-RECOM-Statute-14.11.2014-ff.pdf>, accessed on 15 March 2016.

593 "Coalition for RECOM supports Statute Changes", Coalition for RECOM, 14 November 2014, available at: <http://www.recom.link/coalition-for-recom-support-statute-changes/>, accessed on 15 March 2016.

594 Government of the Republic of Serbia, "Government support for the Initiative for Establishing the Facts about War Crimes", available at: <http://www.hlc-rdc.org/?p=29561&lang=de>, accessed on 21 February 2016.

595 European Parliament resolution of 16 January 2014 on the 2013 Progress Report on Serbia (2014), paragraph 35; European Parliament resolution of 11 March 2015 on the 2014 Progress Report on Serbia (2015), paragraph 13; European Parliament resolution of 4 February 2016 on the 2015 report on Serbia (2016), paragraph 25.

596 European Commission, 2013, 2014 and 2015 Progress Reports on Serbia.

597 Coalition for RECOM, "Delegations of EP and Committee for European Integration of Republic of Serbia supported RECOM", 20 March 2013, available at: <http://www.recom.link/delegations-of-ep-and-committee-for-european-integration-of-republic-of-serbia-supported-recom/>, accessed on 21 February 2016.

598 September 2015, source: Coalition for RECOM.

599 Mirsad Tokača, "The Bosnian Book of the Dead: Human Losses in Bosnia and Herzegovina 1991-1995", Sarajevo, Research and Documentation Center, October 2012.

In 2013, the HLC completed the register of human losses during the NATO bombardment from 24 March to 9 June 1999. According to this register, 758 individuals lost their lives in Serbia, Montenegro and Kosovo as a result of the NATO bombing: 453 civilians, 275 members of the Yugoslav Army and the Serbian MUP and 30 members of the Kosovo Liberation Army. The list with their names was made available to the public.⁶⁰⁰

In early February 2015, an international expert team composed of experts in databases and statistics presented its findings on the evaluation of the Kosovo Memory Book Database on human losses during and in connection with the armed conflict in Kosovo from 1998 until 2000.⁶⁰¹ The Kosovo Memory Book Database was found to be reliable and complete, as records on every victim were supported by records drawn from several sources, and all human losses in connection with the armed conflicts in Kosovo were documented.⁶⁰²

According to the Kosovo Memory Book Database, prepared by the HLC and the Humanitarian Law Center Kosovo, 13,554 persons lost their lives or disappeared in Kosovo in connection with the armed conflict, including 10,825 Albanians, 2,199 Serbs and 530 other non-Albanians (Roma, Bosniaks, and Montenegrins).⁶⁰³

3.2.3. Women's Court

In 2010, several non-governmental organisations launched an initiative Women's Court, as a feminist approach to transitional justice which would pursue justice from the perspective of women victims. Serbian organizations participating in the Women's Court include the Women's Studies Center and the Women in Black, who also coordinate the

activities of the organisations participating in the initiative. Public testimonies of women survivors of war crimes and other forms of violence are the core activities of the Women's Court.⁶⁰⁴

The first Women's Court was held in Sarajevo from 7th to 10th May 2015, and included a two-day rendering of testimonies by women survivors of war and violence. More than 30 women testified about ethnic, military, gender, sexual and other forms of violence during the armed conflicts, as well as about other forms of violence against women during peacetime, and about women's resistance.⁶⁰⁵ Following their testimonies, an International Judicial Council, comprising women activists, researchers and university professors from the region and beyond, formulated a set of recommendations in line with the feminist model of justice.⁶⁰⁶

4. Institutional Reform

In mid-2013, Serbia was left without a legal framework for inquiring into the responsibility of members of the civilian, military and police authorities for war crimes and human rights violations committed during the 1990s. Initiatives by some political parties for the adoption of new legislation remained fruitless. Only one case is known of a government official having been suspended from office on account of being under investigation for war crimes in Kosovo. Institutional reform is being demanded only by non-governmental organisations. Government institutions and the competent authorities for the most part ignore their demands.

Apart from in a few cases, topics pertaining to the field of transitional justice have not yet been incorporated into official educational curricula. So education about the

600 HLC, "Human Losses in NATO bombing of Serbia and Montenegro", 23 March 2014, available at: <http://www.hlc-rdc.org/?cat=282&lang=de>.

601 Jule Kruger and Patrick Ball, Evaluation of the Database of the Kosovo Memory Book, Human Rights Data Analysis Group, December 10, 2014, available at: http://www.kosovskaknjigapamcenja.org/wp-content/uploads/2015/01/Patrick_Ball_and_Jule_Kruger-Evaluation_of_the_Database_KMB.pdf; Michael Spagat, A Triumph of Remembering: Kosovo Memory Book, Department of Economics, Royal Holloway, University of London, December 10, 2014, available at: http://www.kosovskaknjigapamcenja.org/wp-content/uploads/2015/02/Michael-Spagat_Evaluation_of_the_Database_KMB_December_10_2014.pdf.

602 Ibid.

603 HLC's data.

604 About the Women's Court, see the Women's Court's website: <http://www.zenskisud.org/en/o-zenskom-sudu.html>, Accessed on 22 February 2016; Rules of the Women's Court, available (in BHS) at: http://www.zenskisud.org/pdf/Pravila_zenskog_suda_BHS.pdf.

605 Women's Court: feminist approach to justice, Factsheet, available (in BHS) at: http://www.zenskisud.org/pdf/zenski_sud_kratka_informacija.pdf.

606 Women's Court Judicial Council, Preliminary Decisions and Recommendations, Sarajevo 9 May 2015, available at: http://www.zenskisud.org/en/pdf/2015/Womens_Court_Preliminary_Decision_Judicial_Council_2015.pdf.

past and the facts established through court proceedings is provided to the youth mainly by non-governmental organisations.

4.1. Lustration

Since the beginning of the transition process in the Republic of Serbia (October 2000), government institutions have failed to introduce and implement procedures for official checks into the wartime backgrounds of their members or to suspend from duty all those found responsible for human rights violations. During the 2013-15 period, some opposition political parties urged that such procedures be put in place, but to no avail. Government officials, by contrast, have endorsed individuals confronted with the allegations of involvement in large-scale human rights violations committed during the wars of the 1990s in the former Yugoslavia made by some non-governmental organisations and other actors.

4.1.1. Legal Framework

The 2003 Law on the Responsibility for Human Rights Violations ceased to have effect in June 2013.⁶⁰⁷ During the ten years of its existence, this law was never applied.

The law provided for inquiries into the responsibility of holders of and candidates for the highest-ranking public and political offices⁶⁰⁸ with respect to human rights violations, as envisaged by the International Covenant on Civil and Political Rights, the 1974 Constitution of the SFRY, the 1992 Constitution of the FRY and the 1990 Constitution of Serbia, committed after the entry into force of the International Covenant on Civil and Political Rights in

1976. The procedure for inquiring into their responsibility was to be conducted by a special commission, whose members were to be elected by the National Assembly. However, the commission was never fully established.⁶⁰⁹ The measures set out in the law against those found responsible for human rights violations included the publication of the commission's findings, the removal from duty of those already in office and the disqualification of such people from being candidates for public office.

Towards the end of 2013, the League of Social Democrats of Vojvodina Parliamentary Group submitted to the National Assembly of Serbia a Bill on the Responsibility for Human Rights Violations. The Bill was endorsed by 85 MPs (of the Democratic Party, Liberal-Democratic Party, United Regions of Serbia and a couple of smaller parties).⁶¹⁰ It contained the same provisions as the previous Law on the Responsibility for Human Rights Breaches, the main difference being that the former had envisaged a longer application period (20 years). The Bill was never placed on the National Assembly agenda for debate. In June 2015, the League of Social Democrats of Vojvodina announced that it would submit a new Bill⁶¹¹, but by the end of 2015 the announced bill had not been placed on the National Assembly agenda.⁶¹²

4.2. Vetting

In preparation for the EU accession negotiations, the Serbian Government has incorporated into the Action Plan for Chapter 23 several activities which allow for checking the wartime past of members of two MUP units dealing with war crimes cases.⁶¹³ According to the Action Plan, the Ministry

607 Law on the Responsibility for Human Rights Violations, Official Gazette of the Republic of Serbia, Nos. 58/2003 and 61/2003.

608 Holders of most prominent public offices in central, provincial, municipal governments, judicial institutions, public utility companies and other public institutions; National Bank Governor, Tax Administration officials, senior officials and authorised persons in security agencies, directors and managers in prisons, heads of Serbian diplomatic missions to foreign countries and international organisations, Chief of General Staff and Chief of Counterintelligence Service. Law on the Responsibility for Human Rights Violations, Article 10.

609 "Lustration is off in the end" [Ipak ništa od lustracije], *Danas*, 31 May 2013, available (in Serbian) at: http://www.danas.rs/danasrs/drustvo/ipak_nista_od_lustracije_55.html?news_id=261755, accessed on 28 March 2016.

610 League of Social Democrats of Vojvodina Parliamentary Group, Bill on Responsibility for Human Rights Violations, 31 December 2013, available (in Serbian) at: http://www.parlament.gov.rs/upload/archive/files/cir/pdf/predlozi_zakona/011-5066_13_grupa%20od%2085%20narodnih%20poslanika%2031.12.2013..pdf, accessed on 2 March 2016.

611 "LSV submits new Bill on Lustration" [LSV podnosi novi Predlog zakona o lustraciji], League of Social Democrats of Vojvodina, press statement, 7 June 2015, available (in Serbian) at: <http://lsv.rs/vesti/saopstenja/lsv-podnosi-novi-predlog-zakona-o-lustraciji-13458/>, accessed on 3 March 2016.

612 Source: National Assembly of Serbia website, "Laws in Procedure" section, available (in Serbian) at: <http://www.parlament.gov.rs/akti/zakoni-u-proceduri/zakoni-u-proceduri.1037.html>, accessed on 3 March 2016.

613 These measures were proposed by the HLC during the drafting of the Action Plan for Chapter 23.

of the Interior and the Commission for the Implementation of the Protection Programme for Participants in Criminal Proceedings are to conduct an assessment of the work of the War Crimes Investigation Service⁶¹⁴ and the Witness Protection Unit,⁶¹⁵ including an assessment of the need for introducing a procedure for screening members of these units, to determine whether they took part in the armed conflicts on the territory of the former Yugoslavia.⁶¹⁶ An identical activity has been envisaged for the 2016-20 Draft National Strategy for the Prosecution of War Crimes.⁶¹⁷

During the reporting period, the Law on Police and the Law on Armed Forces were amended and supplemented, but the amendments did not include background screening of the holders of or candidates for positions at the MUP and Yugoslav Army.⁶¹⁸ Both laws provide for security checks on candidates for active-duty positions, but it remains unknown whether or to what extent these checks cover their engagements during the armed conflicts.⁶¹⁹

4.2.1. Temporary Suspension from Public Office

It is mainly the non-governmental organisations which insist on the need for removing from military, police and civil service those individuals who are suspected, on reasonable grounds, of being responsible for human rights violations during the armed conflicts in the former Yugoslavia.

In March 2014, the Commander of the Serbian Gendarmerie suspended Vladan Krstović, a member of this unit, after Krstović had been charged with war crimes committed in Kosovo in 1999⁶²⁰ - namely, the murder of at least 46 Kosovo Albanian civilians in the village of Lubeniq/Ljubenić. During the armed conflict in Kosovo, Krstović served in

the Yugoslav Army. He was suspended after the HLC, in December 2013, urged his suspension⁶²¹ under the Law on the Police, which provides for suspension of MUP members who are under investigation or charged with a criminal offence prosecutable ex officio.⁶²²

In November 2013, the HLC submitted the same request to the Chief of General Staff of the Army of Serbia, Ljubiša Diković, with respect to Rajko Kozlina and Pavle Gavrilović, members of the Army of Serbia charged with the killing of at least 27 Kosovo Albanian civilians in the village of Ternje/Trnje, Kosovo, in 1999.⁶²³ Before that, the HLC had requested the Ministry of Defence to provide it with information as to whether or not Kozlina and Gavrilović continued to work for the Army of Serbia after being indicted by the OWCP, and if they did, what positions they held. The Ministry refused the request.⁶²⁴

4.2.2. Allegations of Involvement of Public Office Holders in War Crimes of the 1990s

In the period 2013-15, the cases of two senior military officers drew high public attention after the emergence of strong indications of their involvement in violations of international humanitarian law in Kosovo. Namely, in January 2015 the HLC published the “Rudnica” Dossier, which revealed evidence regarding crimes committed by the 37th Motorised Brigade of the Yugoslav Army in Kosovo in 1999. The incumbent Chief of General Staff of the Army of Serbia, Ljubiša Diković, was the commander of this brigade. The Dossier also provided evidence regarding the concealment of the bodies of victims in a mass grave at Rudnica, near Raška, Serbia.⁶²⁵ Following the publication of the Dossier, Diković was publicly supported by the Serbian

614 Republic of Serbia, Negotiation Group for Chapter 23, Action Plan for chapter 23, draft (2015), activity 1.4.1.7.

615 Ibid, activity 1.4.4.2.

616 For the timeline for implementing these activities, see Appendix 1 and Appendix 3.

617 Ministry of Justice of the Republic of Serbia, National Strategy for the Prosecution of War Crimes for 2016-2020, Draft, (2015), pp. 23 and 26.

618 Law on Amendments and Addenda to the Law on Police, Official Gazette of the Republic of Serbia, No. 064/2015.

619 Law on Amendments and Addenda to the Law on the Serbian Armed Forces, Official Gazette of the RS, No. 010/2015.

620 Letter from the Gendarmerie addressed to the HLC, No. 4012/13-28, 21 March 2014.

621 HLC, “Persons Indicted for War Crimes in Police Uniform”, 9 December 2013, available at: <http://www.hlc-rdc.org/?p=25759&lang=de>.

622 Law on Police, Article 165, Official Gazette of the Republic of Serbia, Nos. 101/2005 and 63/2009.

623 HLC, “Officers Indicted of Crimes Against Civilians in *Ternje/Trnje* Should Be Suspended from Serbian Army”, 20 November 2013, available at <http://www.hlc-rdc.org/?p=25527&lang=de>.

624 HLC, “Access to Documents related to Crimes against International Law in the possession of Serbian Institutions: State Secret Prevails over Right to the Truth” (2016), pp. 55-56.

625 HLC, Dossier “Rudnica” (2015).

Prime Minister, the Defence Minister, the Foreign Minister and the President of Serbia, who awarded him with the Order of the White Eagle.⁶²⁶

In October 2015, the HLC published evidence which implicated the MP and Chairman of the Serbian National Assembly Security Services Control Committee, Momir Stojanović, in the killing of at least 350 Kosovo Albanian civilians in the village of Mejë/Meja in Kosovo.⁶²⁷ In early 2015, INTERPOL issued a notice on Stojanović concerning the same crime⁶²⁸. Apart from the War Crimes Prosecutor, who said that Stojanović was not under investigation in this case⁶²⁹, the competent authorities failed to respond to the allegations against Stojanović.

4.2.3. Recommendations of International Bodies

The UN Committee on Enforced Disappearances recommended that Serbia adopt a legal provision that establishes the suspension, for the duration of an investigation, of any state agents, civilian or military, suspected of having committed an offence of enforced disappearance, and to establish a mechanism that ensures that these individuals do not take part in an investigation.⁶³⁰

The UN Committee against Torture recommended the adoption of measures necessary to ensure that all public officials under criminal or disciplinary investigation be suspended from their duties for the duration of an investigation.⁶³¹

4.3. Education about the Past

While themes pertaining to the field of transitional justice are included, albeit marginally, in the formal teaching programmes of higher education institutions, they are altogether absent from teaching materials intended for secondary and primary school students. Education for young people about transitional justice mechanisms and the facts concerning war crimes in the former Yugoslavia that have been established through judicial proceedings, is primarily carried out by non-governmental organisations.

4.3.1. Formal Educational Programmes

i. Textbook Contents

The period of armed conflicts in the former Yugoslavia is addressed in history teaching materials for the eighth grade of primary school and the senior year of secondary school. Primary schools use textbooks published by seven publishers⁶³², and secondary schools use textbooks published by three⁶³³. The contents of these textbooks differ significantly from the judicial truth concerning past crimes and the character of the conflicts. The events occurred during the armed conflicts are depicted briefly, in a selective and biased manner, with an insistence primarily on the sufferings of the Serbian people.⁶³⁴

ii. Primary Schools

The textbooks published by Zavod za udžbenike (public

626 See Section 1. of this report (Criminal Justice).

627 HLC, Dossier "Operation Reka" (2015).

628 INTERPOL website: <http://www.interpol.int/notice/search/wanted/2015-8413>, accessed on 18 January 2015.

629 "Vukčević: We have no evidence against Stojanović" [Vukčević: Mi nemamo dokaze protiv Stojanovića], N1, 5 March 2015, available (in Serbian) at: <http://rs.n1info.com/a40339/Vesti/Vukcevic-Nemamo-dokaze-protiv-poslanika-SNS-Momira-Stojanovica.html>, accessed on 28 March 2016.

630 UN Committee on Enforced Disappearances, Concluding observations on the report submitted by Serbia under article 29, paragraph 1, of the Convention (2015), paragraph 16.

631 UN Committee against Torture, Concluding observations on the second periodic report of Serbia, (2015) paragraph 10.

632 Bigz školstvo, Zavod za udžbenike, Klett, Narodna knjiga-Alfa, Freska and Eduka. Source: Ministry of Education, government-approved textbooks per academic years, available (in Serbian) at: <http://www.mpn.gov.rs/udzbenici/>, accessed on 1 March 2016.

633 Zavod za udžbenike, Klett and Freska. Source: Ministry of Education, government-approved textbooks per academic years, available (in Serbian) at: <http://www.mpn.gov.rs/udzbenici/>, accessed on 1 March 2016.

634 HLC, "An Analysis of the Contents of History Textbooks in Serbia Regarding the Wars in the Former Yugoslavia in the Light of the Facts Established before the ICTY", presented on 24 April 2015, published in the magazine *Forum for Transitional Justice* #5, p. 97, December 2015, available at: http://www.hlc-rdc.org/wp-content/uploads/2016/03/Forum_5.pdf.

education publishing house) and Freska define the armed conflicts in Slovenia, Croatia and BiH as „civil wars“⁶³⁵ which marked the formal disintegration of Yugoslavia⁶³⁶. What caused the wars, according to the authors of these textbooks, were the decisions of these former Yugoslav republics to declare independence from Yugoslavia. The course of the conflicts is depicted in general terms, without mentioning the crimes committed by Serbian forces, apart from the Srebrenica “massive crime”⁶³⁷ or “massacre”⁶³⁸. Both textbooks illustrate the conflict in Croatia and BiH with a photograph showing “A Croatian nationalist on the streets of Split”⁶³⁹ pulling a Yugoslav People’s Army soldier out of a tank“, i.e. „Croatian extremists attacking members of the YPA in Split”⁶⁴⁰. Also, both textbooks call the armed conflict in Kosovo a “crisis” and reduce it to the NATO military intervention. The textbook published by Zavod za udžbenike offers quantitative data on casualties and material losses and a table showing the civilian death toll of the NATO bombardment.⁶⁴¹ The textbooks do not contain references to war crimes committed by Serbian military and police against Kosovo Albanians. The photographs illustrating the conflict in Kosovo show “Serbian refugees from Kosovo” and the “bombardment of Belgrade“.

In comparison with the two textbooks mentioned above, the textbook published by Eduka depicts the conflicts in the former Yugoslavia with very broad strokes. Its authors do not qualify the armed conflict but simply refer to it as the “armed conflict”⁶⁴². They make no mention of the Srebrenica

genocide; instead, they recommend students to find out more about the *Medački džep* and *Storm* Operations. The textbook does not have a unit on the victims of Serbian security forces in Kosovo, and illustrates the Kosovo conflict with a photograph showing the wreckage of a shot-down NATO aircraft.

iii. Secondary Schools

The textbooks for secondary school students call the armed conflicts in Slovenia, Croatia and BiH a “civil war”, and do not present the course of the armed conflicts.⁶⁴³ The textbook published by Klett lists the crimes committed in Pakrac, Gospić, Ovčara, Kravica, Skelane, Bratunac, Medački džep, Ahmići, Goražde and Srebrenica as examples of ethnic cleansing and the large-scale crimes committed during the war.⁶⁴⁴ The textbook features the testimony of a former resident of Drniš, Croatia, who fled to Serbia during Operation *Storm*.⁶⁴⁵ The textbook published by Zavod za udžbenike does not mention a single war crime but only the Operations *Flash* and *Storm*.⁶⁴⁶ The units dealing with the armed conflicts in the former Yugoslavia are illustrated with photographs of Vukovar in ruins with a caption reading “War in Croatia”, and photographs showing captured soldiers during Operation *Storm*, a demolished Orthodox church in Pakrac and clashes between the Yugoslav People’s Army and protesters at the 1991 rally in Split. The lessons about the armed conflict in Kosovo and crimes against Kosovo Albanians are altogether missing. The “Kosovo

635 “Radoš Ljušić and Ljubodrag Dimić, *Istorija za osmi razred osnovne škole sa čitankom i radnom sveskom* [Eighth Grade History Textbook with reading book and workbook], Freska: Belgrade, 2010, pp. 239-240; Đorđe Đurić and Momčilo Pavlović, *Istorija za osmi razred osnovne škole* [History for the eighth grade of primary school], Zavod za udžbenike, Belgrade, 2010, p. 184.

636 Đorđe Đurić and Momčilo Pavlović, p. 184.

637 Radoš Ljušić and Ljubodrag Dimić, p. 240.

638 Đorđe Đurić and Momčilo Pavlović, p. 185.

639 Ibid, p. 184.

640 Radoš Ljušić and Ljubodrag Dimić, p. 238.

641 Đorđe Đurić and Momčilo Pavlović, p. 187.

642 Dunja Svilar Dujković and Goran Dujković, *Istorija 8, udžbenik za osmi razred osnovne škole* [History 8, Textbook for the eighth grade of primary school], Eduka, Belgrade, 2013, p. 187.

643 Mira Radojević, *Istorija, udžbenik za treći razred gimnazije prirodno-matematičkog smera, četvrti razred gimnazije društveno-jezičkog smera i opšteg tipa i četvrti razred srednje stručne škole za obrazovne profile pravni tehničar i birotehničar* [History: Textbook for the third grade of science and mathematics grammar school, the fourth grade of humanities-linguistic grammar school and general grammar school, and the fourth grade of vocational school for legal technicians and bureau technicians], Klett, 2014, pp. 375-380; Kosta Nikolić, Nikola Žutić, Momčilo Pavlović, Zorica Špadijer, *Istorija 3/4 za III razred gimnazije prirodno-matematičkog smera i IV razred gimnazije društveno-jezičkog smera* [History ¾ for the third grade of science-mathematics grammar school and the fourth grade of humanities, linguistic and general grammar school], Zavod za udžbenike i nastavna sredstva, Belgrade, 2005, pp. 227-230.

644 Mira Radojević, 379.

645 Ibid, 380.

646 Kosta Nikolić, Nikola Žutić, Momčilo Pavlović, Zorica Špadijer, 229.

Crisis⁶⁴⁷ is presented in the context of the NATO bombing. The photographs which illustrate the lesson show a convoy of Serbian refugees from Kosovo in the aftermath of the NATO bombardment, and priests and congregation praying for the cessation of the NATO bombardment at the St. Sava Temple in Belgrade.

iv. Universities

Transitional justice has yet not been introduced into university curricula as an independent course or module. Some of its mechanisms have been taught as part of some modules or as a topic of some courses.

Students in their fourth semester in the “Political studies: the world, relations, communities” undergraduate programme at the Faculty of Media and Communications are offered a course entitled “Culture of remembrance and conflict studies”. The course seeks to introduce students to “the importance of the theoretical field of the culture of remembrance for conflict studies”, encourages “an understanding of the role of collective memory in scientific research and interdisciplinary conflict studies” and enables them to “become familiar with some basic ideas and concepts necessary for the analysis of the dynamic of collective and individual memory in conflict and post-conflict societies”.⁶⁴⁸

The concept and practices of the culture of remembrance are taught as part of an extra-curricular programme at the Faculty of Media and Communications Center for Comparative Conflict Studies. The Center focuses on the comparative analysis of conflicts, with a special focus on the armed conflicts in the former Yugoslavia and the Israeli-Palestinian conflict. Every year, the Center organises a comparative conflict studies summer school which includes transitional justice themes, mostly those related to memorialisation. The 2014 Summer School included a special course entitled “Rethinking transitional justice: lessons from the Balkans and beyond”.⁶⁴⁹

In 2015 the Faculty of Law of the Union University in Belgrade obtained accreditation for its Master’s Programme in Human Rights, which includes lectures on the concept and legal mechanisms of transitional justice and international humanitarian law.⁶⁵⁰

The Faculty of Political Sciences in Belgrade continues to offer a master’s module on international humanitarian law and human rights law, which includes courses in victim protection and the rules of war.⁶⁵¹

4.3.2. Informal Educational Initiatives

Several non-governmental organisations have provided informal trainings in transitional justice. The HLC has organised four regional transitional justice schools, the only training programme in Serbia that deals exclusively with transitional justice mechanisms and the judicially established facts about the war crimes committed during the wars in former Yugoslavia.

In 2015, **Civil Rights Defenders** held a seven-month long Human Rights Defenders School for university students, lawyers, journalists and NGO activists. Its training programme included a special module dedicated to transitional justice. The School was attended by 50 participants from Niš and Belgrade.⁶⁵² In October 2015, this organisation announced a call for applications for the Second Human Rights Defenders School, to be held in early 2016.

During 2013, the **OSCE Mission to Serbia** implemented a range of activities aimed at introducing young people to international humanitarian law, transitional justice and the facts concerning the armed conflicts in the former Yugoslavia. Two lectures on war crimes were held at Niš University Faculty of Law and the Union University Faculty of Law Students. A training seminar on international justice institutions and war crimes trials was organised for

647 Ibid.

648 Faculty of Media and Communications website, available at: <http://www.fmk.singidunum.ac.rs/smer-program/osnovne-studije/59-studije-politike-svet-odnosi-zajednice/4/571/>, accessed on 1 March 2016.

649 Center for Comparative Conflict Studies website, available at: <http://www.cfccs.org/>, accessed 1 March 2016.

650 Master Programme in Human Rights Law, Faculty of Law, Union University in Belgrade, available at: <http://www.pravnifakultet.rs/studije/master-human-rights-law.html>, accessed on 1 March 2016.

651 Graduate Academic Studies of Political Sciences, MA in International Humanitarian Law and Human Rights Law, Faculty of Political Sciences, University of Belgrade, available at: <http://www.fpn.bg.ac.rs/en/>, accessed on 1 March 2016.

652 Data obtained from a member of Civil Right Defenders via email on 11 March 2016.

the Faculty of Political Sciences students, as well as three training seminars on dealing with the past and transitional justice mechanisms for youth divisions of Serbian political parties, university students and NGO activists.⁶⁵³ Two study tours were organised for Serbian university students, during which they visited judicial institutions, non-governmental organisations, victims' associations and killing fields in BiH.⁶⁵⁴ About 150 individuals, including university students, activists, public servants and politicians took part in these events.⁶⁵⁵

In cooperation with the International Committee of the Red Cross, the OSCE Mission delivered three training seminars on international humanitarian law in 2013, which were attended by around 90 civic education teachers from Serbian secondary schools.⁶⁵⁶

In cooperation with the Belgrade University Faculty of Law, the OSCE Mission to Serbia in 2013 delivered an academic training course on international humanitarian law, which was attended by 30 students.⁶⁵⁷ The course was not part of the official study programme, so the students did not obtain any points for attending.

In September 2015, the OSCE Mission held a training

seminar on transitional justice mechanisms for 35 undergraduate and postgraduate students, youth divisions of political parties, young government employees, journalists and human rights activists.⁶⁵⁸

The Youth Initiative for Human Rights delivered six multi-day training courses for young people who wish to engage in human rights protection. The training included lectures on mechanisms for dealing with the past and was attended by around 100 participants.⁶⁵⁹

During the 2013-15 period, the **HLC** held four regional schools for transitional justice⁶⁶⁰ for 100 participants. The first three were attended by university students, members of political parties, activists of civil society organisations and young public administration professionals from the BiH, Serbia and Kosovo. The fourth school was attended also by participants from Croatia and Montenegro. The school is a ten-day programme aimed at introducing students to the judicial truth concerning war crimes committed in connection with the armed conflicts in the former Yugoslavia, extrajudicial mechanisms for establishing the truth about past crimes, victims' right to receive reparations, the role of archives and the media, and keeping the memory of victims' suffering alive.

653 Interview with a member of the OSCE Mission to Serbia on 28 March 2016.

654 Ibid.

655 Ibid.

656 Ibid.

657 Ibid.

658 OSCE, Call for Participation at Transitional Justice Seminar in Novi Pazar, available at: <http://www.osce.org/serbia/177731>, accessed on 3 March 2016.

659 Information provided by a member of the Youth Initiative for Human Rights via email on 11 March 2016.

660 First Regional School of Transitional Justice, January 2013; Second Regional School of Transitional Justice, November 2013; Third Regional School of Transitional Justice, November 2014; Fourth Regional School of Transitional Justice, October 2015. See HLC Homepage/Education/ Regional School of Transitional Justice, available at: <http://www.hlc-rdc.org/?cat=288&lang=de>.

Appendix 1

Recommendations from the Screening Report for Chapter 23 - Uncovering and investigation of war crimes

Recommendation 1.4.1: Ensure that all allegations are properly investigated and subsequently prosecuted and tried

1.4.1.1. 1.4.3.1.	
Activity	Adoption and effective implementation of the National Strategy for investigation and prosecution of war crimes.
Responsible Authority	Working group established by Minister of Justice, comprised of representatives of the institutions with jurisdiction in war crimes and academic community; experts and civil society; Government of the Republic of Serbia.
Deadline	IV quarter of 2015 (for adoption). Continuously, commencing from IV quarter of 2015 (for implementation).
Status	The National Strategy draft was published in November 2015; Public debate ended on 31 December of the same year.

1.4.1.2.	
Activity	Considering austerity measures and procedures prescribed by Government of the Republic of Serbia, as well as transfer of cases dynamics, gradually strengthening the capacities of the Office of the War Crimes Prosecutor through electing: deputy public prosecutor and hiring/transfer of prosecutorial assistants: - two deputies special prosecutor III quarter one assistant/advisor during III quarter of 2015.
Responsible Authority	State Prosecutorial Council; OWCP; Ministry of Justice.
Deadline	Continuously, commencing from III quarter 2015.
Status	At the end of December 2015, there was a competition for the election of two deputy prosecutors. ⁶⁶¹

1.4.1.3. 1.4.3.2.	
Activity	Developing the Draft Prosecutorial Strategy for investigation and prosecution of war crimes in Serbia in the light of the Completion Strategy of the ICTY and Draft National Strategy for investigation and prosecution of war crimes, with the involvement and support of the ICTY, MICT, ICC, Regional prosecutors and NGOs.
Responsible Authority	OWCP
Deadline	III quarter of 2015
Status	Activity is in progress. ⁶⁶²

⁶⁶¹ OWCP's answer to the HLC's questionnaire, 14 January 2016.

⁶⁶² Ibid.

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1.4.1.4. 1.4.3.3.	
Activity	Discussing the prosecutorial strategy on expert meeting with the participation of local judges, members of the police and lawyers involved in war crime proceedings and representatives of the ICTY, MICT, ICC, regional prosecutors and NGOs. Adoption and start of implementation of the Prosecutorial strategy, aligned with the relevant suggestions from the experts meeting.
Responsible Authority	OWCP
Deadline	Continuously, commencing from IV quarter of 2015
Status	Activity will follow upon the implementation of activity No. 1.4.1.3.

1.4.1.5.	
Activity	Complete insight and research of the ICTY and MICT archives, analysis of the discovered documents, identifying ICTY/MICT materials and evidence which are relevant to the cases identified as a priority under activity 1.4.1.3 and transfer of identified documents and evidence from the ICTY and MICT to the OWCP. Transferring the ICTY know-how through: - Cooperation of the OWCP with the ICTY/MICT on concrete cases in which the evidence was transferred in order to also obtain general and case specific knowledge, expertise and strategies from the ICTY and MICT investigators/prosecutors; - Cooperation of the OWCP with the ICTY/MICT on concrete cases in which the evidence was transferred in order to share the strategy and transfer knowledge and practice on jurisprudence relating to crimes and types of responsibility that will be used as allegation in concrete cases; - Presence of the OWCP advisor in the ICTY and MICT prosecutor's office on ad hoc basis related to concrete national cases, analyzing ICTY prosecutor's case files and developing a strategy for concrete cases that will be prosecuted by the OWCP before the Higher Court in Belgrade.
Responsible Authority	OWCP
Deadline	Continuously, commencing from IV quarter of 2015
Status	Activity is in progress. ⁶⁶³

1.4.1.6.	
Activity	Establishing a system of training and education in the field of international criminal law.
Responsible Authority	Judicial Academy; OWCP, Supreme Court of Cassation, Higher Court in Belgrade, Court of Appeal in Belgrade; High Judicial Council; State Prosecutorial Council.
Deadline	Continuously, commencing from IV quarter of 2015
Status	It is not known whether the activity has been implemented or not. Namely, the Judicial Academy did not act upon the Request to deliver information of public importance, sent by the HLC regarding this measure.

663 Interview with representatives of the OWCP, 24 December 2015.

1.4.1.7.	
Activity	Preparation of analysis (report) of legislative and factual status and needs of the War Crimes Investigation Service of the Ministry of Interior (WCIS) in order to determine needs for its reform. Special emphasis on issues: - whether the WCIS should be moved under the “General Police Directorate”; - whether the process of hiring staff should be changed, taking into account potential impact of possible previous participation of the candidates in armed conflict in former Yugoslavia); -whether the office has sufficient investigators and analysts and proper methodology; - establishment of joint investigative teams and working procedures between the OWCP and WCIS.
Responsible Authority	Ministry of Interior, OWCP; WCIS.
Deadline	III quarter of 2015.
Status	Activity is in progress. ⁶⁶⁴

1.4.1.8.	
Activity	Implementation of measures to improve the status and capacity of the WCIS in accordance with the results of the analysis (report) under 1.4.1.7.
Responsible Authority	Ministry of Interior; Ministry of Justice.
Deadline	Continuously, commencing from IV quarter of 2015.
Status	Activity will follow upon the implementation of activity No. 1.4.1.7.

1.4.1.9.	
Activity	Enhancement of the OWCP’s web-site to enable the public to monitor what activities and when have been performed by the WCP in relation to specific criminal charges.
Responsible Authority	OWCP; Ministry of Justice.
Deadline	Continuously, commencing from II quarter of 2015.
Status	Activity is in progress. ⁶⁶⁵

1.4.1.10 1.4.3.5.	
Activity	Preparation of a report by the OWCP, which will be available to the public indicating what has been done in respect of all criminal charges since 2005, to determine and to represent whether all allegations of war crimes are investigated appropriately.
Responsible Authority	OWCP
Deadline	III and IV quarter of 2015.
Status	Activity in the final stage. ⁶⁶⁶

664 Information obtained from the WCIS in response to the HLC’s request for information of public importance No. 050-125/16-1 of 11 February 2016.

665 Interview with representatives of the OWCP, 24 December 2015.

666 OWCP’s answer in the HLC’s questionnaire, 14 January 2016.

Recommendation 1.4.3: Ensure equal treatment of suspects, including in cases of high level officers allegedly involved in war crimes⁶⁶⁷

1.4.3.4.	
Activity	Cooperation on individual cases between the WCP and the ICTY and MICT on sharing the strategy in cases of high level officers and transferring the knowledge on judicial practice relevant for types of responsibility and crimes (command responsibility; crimes against humanity; specific direction of aiding and abetting).
Responsible Authority	OWCP; Ministry of Justice.
Deadline	Continuously commencing from II quarter of 2015.
Status	Activity has not been implemented. ⁶⁶⁸

Recommendation 1.4.5: Ensure confidentiality of the investigation including witness and informant testimony

1.4.5.1.	
Activity	Organizing round tables and lectures for the members of Ministry of Interior (WCISA and Witness protection Unit) on the subject of „Basic communication with media“,
Responsible Authority	OWCP; Ministry of the Interior.
Deadline	Continuously, commencing from II quarter of 2015.
Status	Activity has not been implemented. The implementation of the activity is planned for the first quarter of 2016. ⁶⁶⁹

1.4.5.2.	
Activity	In line with the provisions of the National Strategy (activity 1.4.1.1.) assess confidentiality rules and their respect within relevant institutions, amend them where needed and strengthen control over implementation.
Responsible Authority	OWCP
Deadline	III quarter of 2015
Status	The activity is connected to the OWCP strategy, which was not adopted by the end of 2015.

⁶⁶⁷ This recommendation also contains measures 1.4.3.1, 1.4.3.2, 1.4.3.3, 1.4.3.5, which have already been presented in relation to recommendation 1.4.1. (See Appendix 1, Recommendation 1.4.1).

⁶⁶⁸ Interview with representatives of the OWCP, 24 December 2015.

⁶⁶⁹ Email reply of a OWCP representative to the HLC's inquiry of 5 February 2016.

Appendix 2

Recommendations from the Screening Report for Chapter 23 – Performance of Courts

Recommendation 1.4.2: Ensure proportionality of sentences

1.4.2.1.	
Activity	Organizing the Expert meeting/Conference on the subject “Type and level of sentences and establishing the criteria applied in the war crime cases before the ICTY, and national jurisdictions in Croatia, Serbia and BiH, with the participation of judges, prosecutors and attorneys that are dealing with war crimes in Serbia.
Responsible Authority	Higher Court in Belgrade, Department of War Crimes; Court of Appeal in Belgrade; Supreme Court of Cassation, OWCP; Ministry of Justice.
Deadline	III quarter of 2015.
Status	<p>Implemented activity. On 11 December 2015, the Ministry of Justice held an expert meeting titled “Determining the amount of sentences and the criteria in war crimes cases applied so far”. The meeting was attended by representatives of judicial institutions of Serbia, lawyers and legal experts from Serbia and Croatia, representatives of the Hague Tribunal and NGOs, including the HLC. Topics of the meeting included the following: experience and practice of Croatia, BiH, Serbia and the ICTY regarding the sentencing in war crimes cases, the assessment of mitigating and aggravating circumstances and their impact on the duration of sentence, the uniformity of the sentences.</p> <p>One of the conclusions of the meeting was that there is no international standard for the imposition of sentences and establishing of mitigating and aggravating circumstances, which should be separately evaluated and explained in each case. It was also concluded that courts often do not explain the sentence imposed or the circumstances they assess as mitigating and aggravating, and therefore it is often unclear whether the sentence imposed is individualized and how it achieves the purpose of punishment.⁶⁷⁰</p>

1.4.2.2.	
Activity	Publishing and follow up the conclusions from the Conference.
Responsible Authority	Higher Court in Belgrade, Department of War Crimes; Court of Appeal in Belgrade; Supreme Court of Cassation; Ministry of Justice.
Deadline	Commencing from IV quarter of 2015
Status	<p>It is not known whether the activity has been implemented or not. The Ministry of Justice, as the competent institution, responded that it did not have any information on the implementation of this activity.⁶⁷¹</p> <p>The website of the Ministry of Justice, which is the highest competent organization for the realization of this measure, and which had also organized the expert meeting, did not publish any conclusions by the end of May 2016. The conclusions were not published on the websites of other competent institutions, either.</p>

670 “Ujednačavanje sudske prakse prioritet reforme pravosuđa” [The harmonization of court practice is a priority in the judicial reform process], Ministry of Justice of the Republic of Serbia, available (in Serbian) at: <http://www.mpravde.gov.rs/vest/11485/ujednacavanje-sudske-prakse-prioritet-reforme-pravosudja.php>, accessed, 15 February 2016; HLC’s data.

671 Information obtained from the Ministry of Justice in response to the HLC’s request for information of public importance No. 7-00-44/2016-32 of 23 February 2016.

1.4.2.3.	
Activity	Preparation, publication and distribution of Reports on the Higher, Appellate Court and Supreme Court of Cassation case law on sentencing policies in war crime proceedings for judges' prosecutors and lawyers.
Responsible Authority	Higher Court in Belgrade, Department of War Crimes; Court of Appeal in Belgrade; Supreme Court of Cassation; Ministry of Justice.
Deadline	IV quarter of 2015 and I quarter of 2016.
Status	<p>It is not known whether the activity has been implemented or not. The Ministry of Justice, as the competent institution, responded that it did not have any information on the implementation of this activity.⁶⁷²</p> <p>A section for the overview of judicial practice in war crimes cases on the website of the Higher Court in Belgrade was under construction by the end of May 2016.⁶⁷³ The website of the Court of Appeal in Belgrade contains the overview of judicial practice in war crimes cases.⁶⁷⁴ The website of the Supreme Court of Cassation provides an overview of judicial practice in war crimes cases, which can only be reached through search.⁶⁷⁵</p>

672 Ibid.

673 Web page of the Higher Court in Belgrade, section Overview of Judicial Practice/Criminal Department/War Crimes, available (in Serbian) at: <http://www.bg.vi.sud.rs/cr/articles/sudska-praksa/pregled-sudske-prakse/krivicno-odeljenje/ratni-zlocini/>, accessed 31 May 2016.

674 Web page of the Court of Appeal in Belgrade, section Overview of Judicial Practice/Criminal Department/War Crimes, available (in Serbian) at: <http://www.bg.ap.sud.rs/cr/articles/sudska-praksa/pregled-sudske-prakse-apelacionog-suda-u-beogradu/krivicno-odeljenje/ratni-zlocini/>, accessed 31 May 2016.

675 Web page of the Supreme Court of Cassation, section Database of Court's Judicial Practice/Criminal Cases, available (in Serbian) at: http://www.vk.sud.rs/sr/solr-search-page/results?court_type=vks&matter=33®istrant=none&subject_number=&date_from%5Bdate%5D=&date_to%5Bdate%5D=&keywords=&phrase=&sorting=by_date_down&redirected=216&referer=216&results=10, accessed 31 May 2016.

Appendix 3

Recommendations from the Screening Report for Chapter 23 – Witness Protection

Recommendation 1.4.4: Step up security of witnesses and informants and improve witness and informant support services

1.4.4.1.	
Activity	Analysis of current practice in the implementation of Article 102, paragraph 5 of the Criminal Procedure Code in order to identify existing needs for amending the Article and better protection of witnesses.
Responsible Authority	Working group, established by the Minister of Justice which encompass representatives of following institutions: Ministry of Justice, OWCP, Higher Court in Belgrade, Witness Protection Unit (WPU), Ministry of Interior.
Deadline	IV quarter 2015.
Status	It is not known whether the measure has been implemented or not. The Ministry of Justice, as the competent institution, responded that it did not have any information on the implementation of this activity. ⁶⁷⁶

1.4.4.2.	
Activity	<p>Conduct an independent and impartial assessment of conduct and work of the WPU in order to determine potential needs for Unit's reform, as well as corrective measures, particularly focusing on:</p> <ul style="list-style-type: none"> - whether the process of hiring staff should be improved (whether possible previous participation of the candidates in armed conflict in former Yugoslavia should be an obstacle in the selection process); - concrete working methodology, content and procedures in the WPU's work; - material-technical capacities; - establishment of joint working teams and procedures between the WCP and WPU.
Responsible Authority	Commission for implementation of witness protection Programme.
Deadline	Continuously, commencing from IV quarter of 2015.
Status	At the meeting held on 12 October 2015, the Commission for the implementation of the protection programme adopted a decision on the implementation of an independent and impartial assessment of the conduct and work of the Witness Protection Unit, which included all the questions listed in this measure. At the time of writing this Report, a meeting of the Commission was expected where the Report would be adopted, which would contain concrete measures aimed at improving the work of the Witness Protection Unit. ⁶⁷⁷

⁶⁷⁶ Information obtained from the Ministry of Justice in response to the HLC's request for information of public importance No. 7-00-44/2016-32 of 23 February 2016.

⁶⁷⁷ Information obtained from the Witness Protection Unit in response to the HLC's request for information of public importance No. 2-43/16 of 19 February 2016.

1.4.4.4.	
Activity	Changing the systematization of WCP, introducing employment of the psychologists that will deal with victims and witnesses (in line with prosecutorial strategy)
Responsible Authority	OWCP; Ministry of Justice.
Deadline	Continuously, commencing from IV quarter of 2015.
Status	The activity is connected to the OWCP strategy, which was not adopted by the end of 2015.

1.4.4.5.	
Activity	Adopt adequate implementing laws to effectively implement the change of identity as protective measure for witnesses and development of a Protocol on mandatory provision of information to victims about all aspects of the trial that are of interest to the victims, (decision, the release of the accused from detention, serving of sentence by a convicted, etc.) in accordance with Article 26 of the Directive 2012/29 / EU.
Responsible Authority	Ministry of Justice and all relevant state organs that have any jurisdiction over the issue – OWCP in cooperation with the Service for the support to victims and witnesses.
Deadline	IV quarter of 2015. (and IV quarter of 2016)
Status	It is not known whether the measure has been implemented or not. The Ministry of Justice, as the competent institution, responded that it did not have any information on the implementation of this activity. ⁶⁷⁸

⁶⁷⁸ Information obtained from the Ministry of Justice in response to the HLC's request for information of public importance No. 7-00-44/2016-32 of 23 February 2016.

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