



# through ACCESSION towards JUSTICE



Humanitarian Law Center

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

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On July 11 2017, the mortal remains of 71 identified victims were buried in the Srebrenica-Potočari Memorial center. The buried remains were those of Ševket Hasanović, Fadil Čerimović, Rešid Hasanović, Bećir Husejinović, Abdulah Osmanović, Rasim Šabanović, Sabahudin Beganović, Đemila Mahmutović, Munib Salkić, Bajro Harbaš, Adem Harbaš, Mirzet Salihović, Alija Salihović, Sinan Mehmedović, Šemso Osmanović, Damir Suljić, Kadrija Kadrić, Sejfo Rizvanović, Hajrudin Mujić, Fikret Jašarević, Amir Gabeljić, Selim Mehmedović, Sinan Osmanović, Kemal Salihović, Ibro Huremović, Ibrahim Malić, Rajif Riđić, Đemal Nukić, Sulejman Mehmedović, Neđib Memić, Behajja Cvrk, Hamed Hodžić, Hidajet Muhić, Sadik Agić, Muhamed Husić, Ramiz Suljić, Senajid Efendić, Vahid Mustafić, Jakub Mandžić, Zule Fejzić, Aziz Sulejmanović, Omer Smailović, Sead Alić, Smail Alić, Šehid Jusić, Bego Mujić, Enver Jahić, Mesud Selimović, Zaim Imamović, Zejad Imamović, Ejub Krdžić, Šefik Ademović, Hazim Mehmedović, Hasan Mehmedović, Džemail Gabeljić, Husein Hafizović, Hakija Bečić, Senahid Čerimović, Ramiz Muminović, Edo Skeledžić, Bajro Jusić, Osman Omerović, Sakib Mustafić, Šaban Malagić, Nedžib Turković, Abdulah Hasanović, Junuz Krdžić, Fehim Suljić, Omer Junuzović, and Đemal Ferhatović. The youngest victim at the time of murder was 15 years old, and the oldest 72.



Two articles published in this issue of the bulletin through ACCESSION towards JUSTICE were written by the participants at the 8th School of Transitional Justice, in memory of the 71 victims buried this year, as well as in memory of the 6504 victims buried so far, and those victims for whose mortal remains we are still looking, and in honour of the persistence of their families who have spent the last 22 years in grief and despair. The Bulletin also gives an overview of court procedures conducted before the courts in Serbia for crimes committed against Bosniak civilians during July 1995 in and around Srebrenica. Only three cases have been conducted to date, one of which ended in a guilty plea bargain; in the second, the indictment has recently been dismissed, and in the third case, the trial chamber, despite the evidence proving the opposite, avoided linking the crime which was subject to the indictment to the events happening at that time in and around Srebrenica. The Column titled “Current Events” presents the manner in which Serbia remembered victims of the Srebrenica genocide this year.



Photo: Konstantin Novaković

# [ current events ]

## Serbia on Srebrenica

No representative of the Serbian state attended the commemoration of the 22 years since the genocide in Srebrenica, that was held on July 11 2017 in Potočari Memorial Center.

At the end of June, the Prime Minister-designate of the Republic of Serbia, Ana Brnabić, said that the Government had yet to decide who would attend the commemoration. However, afterwards no representative of the government spoke about it. The Government of the Republic of Serbia did

not commemorate in any other way either the anniversary of the genocide in Srebrenica.

President of the Republic of Serbia Aleksandar Vučić said in early July that he “still did not know” whether he will attend the commemoration, but that he would certainly «express his reverence for the victims» on that day. However, it was already clear that he would not attend the commemoration this year, stating that the organizers «have their own conditions and requirements”. These conditions and requirements relate to the decision of the

Organizing Committee that anyone who denies that genocide was committed in Srebrenica in July 1995 is an undesirable presence at the commemoration of the Srebrenica genocide. In the end, there was no announced expression of reverence for the victims either, and the President of Serbia was on an official visit to Turkey on the day of the genocide commemoration.

The victims of the Srebrenica genocide were also not among the topics of the parliamentary debates in the National Assembly of the Republic of Serbia.



The Srebrenica commemoration was attended only by representatives of opposition parties, the Liberal Democratic Party leader Čedomir Jovanović, and Nenad Čanak, the leader of the League of Social Democrats of Vojvodina. Two days before the commemoration, the leader of the Movement of Free Citizens, Saša Janković, visited the Potočari Memorial Center. Immediately after honouring the victims of the genocide in Srebrenica, Janković visited the Memorial to fallen soldiers and civilian victims of the Defensive-Liberation War and the Serbian victims of World War II in the village of Kravice.

Public events  
inviting citizens to

commemorate and respect the victims of the Srebrenica genocide in Serbia were only organized by non-governmental organizations, among them the [Women in Black, Humanitarian Law Center](#) and [Youth Initiative for Human Rights](#).

To date, the Republic of Serbia has not adopted the [recommendation](#) of the European Parliament of 2009 to mark every July 11 as the Day of Remembrance of the Srebrenica genocide.

#### EU on Srebrenica

In a [joint statement](#), the EU High Representative for Foreign Affairs and Security Policy Federica Mogherini

and Commissioner for European Neighbourhood Policy & Enlargement Negotiations Johannes Hahn said that their hearts and minds were with the victims and families of victims of the genocide in Srebrenica.

They also reminded everyone concerned that the values that were violated during July of 1995 – respect for human dignity, freedom, democracy and equality – are today the core of European integration processes in B&H and all countries in the region, and that this process is precisely aimed at helping the region on its path to reconciliation, justice and cooperation.



## Punishing Persons Responsible for Genocide in Srebrenica before Courts in Serbia

When it comes to the prosecution of crimes committed in Srebrenica before domestic courts, there has been only one formally led and final completed proceeding (the *Srebrenica – Branjevo* Case). Until recently, another proceeding, the *Srebrenica – Kravice* Case, was underway. Besides these two cases, another case known as the *Škorpioni* Case was conducted and finalized before the courts in Serbia; however, the local judiciary does not link it to Srebrenica for political reasons.

### Srebrenica-Branjevo Case

In this case, the accused, Brano Gojković, concluded with the Office of the War Crimes Prosecutor (OWCP) a plea agreement. Gojković admitted that he, as a member of the 10th Sabotage Detachment of the Army of the Republic of Srpska, together with other members of this detachment, committed the murder of hundreds of Bosnian Muslim civilians, who were captured after the fall of Srebrenica. On July 16 1995, the captured civilians were brought in buses from the Cultural Centre in Pilica (Zvornik municipality, B&H) to Branjevo farm, where the defendant Gojković, together with other members of his detachment, led the civilians in

groups of 10 to the meadow next to the warehouse, where they were lined up and then murdered with shots that the army detachment members directed at them from automatic rifles. According to the plea agreement, Gojković was sentenced to 10 years in prison for this crime. On January 26 2016, the Higher Court in Belgrade delivered a judgment which accepted the plea agreement.

This case is characteristic because the Prosecutor's Office of Bosnia and Herzegovina issued an international arrest warrant for Gojković in 2010, and requested his extradition from Serbia, considering that he is a citizen of Bosnia and Herzegovina. Serbia however turned a deaf ear to that request, and the OWCP concluded the plea agreement with Gojković. Although Serbia did have legal grounds to conduct this proceeding, the transfer of this proceeding to the B&H Prosecutor's Office would have had a positive impact on the strengthening of regional cooperation, and it would have helped build trust with the victims. Also, the plea agreement foresaw a significantly more lenient sentence for the defendant than those that were given to other accomplices who were legally sentenced before the Court of B&H.



## Srebrenica – Kravice Case

Nedeljko Milidragović and seven other defendants were charged with the murder of at least 1,313 Bosnian Muslim civilians from Srebrenica on July 14 1995, inside, outside and in the immediate vicinity of

the warehouse of an agricultural cooperative in the village of Kravice (Bratunac, B&H). During the period in question, Milidragović and the other defendants were members of the „Jahorina“ Training Centre of the Special Police Brigade of the Ministry of Internal Affairs of the Republic of Srpska.

*In the early morning of 14 July 1995, Nedeljko Milidragović ordered Golijanin, Batinica, Dečević, Miletić, Parović and Vasić, as well as other member of his unit, to kill about one hundred civilians who were held captive in the warehouse in Kravica. Following the order, they formed a firing squad, took the civilians out of the warehouse, and made them sing Chetnik songs, after which they and Milidragović killed them with machine guns. Milidragović, Batinica, Petrović and Golijanin using single shots, then killed those who were still alive. On the same day, as the civilians were transported by buses and trucks to the warehouse in Kravica, Milidragović on multiple instances ordered Golijanin, Batinica, Dačević, Miletić, Petrović and Parović to kill them, whilst he himself also took part in the killings.*

*As a result, at least 1,313 civilians were killed. Their identities have been established after their mortal remains were found at the following mass-grave sites in BiH: Glogova, Ravnice, Hangar Kravica, Blječeva, Zeleni Jadar, Zalazje and Pusmulici.*

The OWCP filed an indictment in this case in September 2015; however, the Higher Court returned it twice to the OWCP for finishing, and thus the indictment was not confirmed until January 21 2016. The indictment doesn't qualify the crime in Srebrenica as an act of genocide, but as a war crime against a civilian population.

The trial in this case encountered numerous problems from the beginning. In fact, until the beginning of the trial, the court did not reveal the identity of the protected witnesses to the defendants and their counsel,

which, in accordance with the provisions of the Criminal Procedure Code, the court was required to do no later than 15 days before the start of the trial. Thereby the defendants' right to defense was violated. Because of that omission on the part of the court, the scheduled trial was delayed for almost two months, and the trial began in February 2017. However, the two subsequent trials were not held because the defendant Dragomir Parović cancelled the power of attorney for his defence counsel and the new defense counsel requested a reasonable time period to prepare

the defense. Two main trials have been held since then, in April and May 2017, while those scheduled for June were cancelled because one of the defendants did not attend due to illness.



Warehouse in Kravice  
Source: Al Jazeera Balkans

In late April 2017, counsel for one of the defendants suggested that the indictment in this case should be rejected because it was not submitted by an authorized prosecutor.

Specifically, at the time of filing the indictment in January 2016, the OWCP did not have a prosecutor because the Chief Prosecutor, Vladimir Vukčević, had retired and a new prosecutor was not elected, nor was an acting prosecutor appointed. The Law on Public Prosecution provides that if the Public Prosecutor's position is vacated, the Republic's Public Prosecutor should appoint an Acting Public Prosecutor until the new Public Prosecutor takes office. This, however, never occurred, and thus it inhibited the legitimate work of the OWCP, and also created conditions for jeopardizing the conduct of this case.

The trial chamber rejected the counsel's proposal. However, the

Court of Appeal upheld the counsel's appeal on this decision and [dismissed the indictment](#). Therefore, the proceedings in this case can start only after the issuance and confirmation of a new indictment, in accordance with the Law on Criminal Procedure.

## Škorpioni Case

In 2008 and 2009, Slobodan Medić and three other defendants were convicted to prison terms ranging from 5 to 20 years for war crimes against civilians. In July 1995, together with several unidentified members of the paramilitary group "Škorpioni", they shot 6 Bosnian Muslim civilians in the village of Godinjske bare, near Trnovo (B&H).

However, the Court omitted from the judgment the allegations that the murdered civilians were brought to the site of execution from Srebrenica, saying that during the trial there was insufficient evidence that would point to that. This was also pointed out by the Prosecutor in the appeal against the judgment, saying that the court had „wrongly established the facts because from the testimonies of all the injured parties (closest family members of the murdered victims) it was determined that the victims Fejzić Safet, Alispahić Azmir, Salkić Sidik, Ibrahimović Smail, Salihović Dino and Delić Jusa stayed in Srebrenica before the attack on this town, that due to this attack they tried to leave the town and were captured



in the vicinity of Srebrenica, as is also pointed out in the testimony of witness Amor Mašović, who said that the data collected indicated that the victims disappeared near the village

of Kravice, which, given the distance from Kravice to Srebrenica – around 20 km, means that those persons were captured in the vicinity of Srebrenica”.



To date, the OWCP has not brought charges against several high-ranking members of the former Army of the Republic of Srpska, against whom the HLC filed a criminal complaint back in August 2010 for the crime of genocide against more than 1800 Bosnian Muslims from Srebrenica in July 1995. The complaint named, among others, Petar Salapura, a former colonel in the Army of the Republic of Srpska and the Chief of Intelligence of the Main

Staff; Milorad Pelemiš, commander of the 10th Sabotage Detachment of the Main Staff of the Army of the Republic of Srpska; Dragomir Pećanac, a major in the Army of the Republic of Srpska and deputy commander of the military police of the Bratunac Light Brigade from the Drina Corps of the Army of the Republic of Srpska. They all live in Serbia and they are all available to the competent authorities.



# Where does Srebrenica fit in the programme of the new War Crimes Prosecutor?<sup>1</sup>

*Bojan Petković, PhD student, Faculty of Law, University of Belgrade and participant in the School of Transitional Justice of the Humanitarian Law Center*

The programme for the Organization and Improvement of the Work of the Office of the War Crimes Prosecutor (programme), presented on June 9 2016<sup>2</sup> by Snežana Stanojković, who was elected as the new War Crimes Prosecutor (Prosecutor) on May 15 2017, has been criticized by the legal profession primarily because it focuses on Serbian victims, and fails to mention victims of other nationalities/ethnicities. In her vision of regional institutional cooperation, the Prosecutor dedicated two pages of the programme to cooperation with the Croatian Prosecutor's Office, one page to cooperation with EULEX, and only one seven-lines paragraph, which mentions only crimes against Serbian civilians, to cooperation with the B&H Prosecutor's Office.

However, one should attempt to read between the lines of the programme to understand the unspoken attitude



*Bojan Petković*

that the new Prosecutor has towards non-Serb victims, especially those from Srebrenica, killed in July 1995, and her perception of the purpose of war crimes trials. Of help here is her previous programme<sup>3</sup>, presented during the unsuccessful procedure which ended on December 21 2015, when none of the candidates for the position of the War Crimes Prosecutor received a majority vote in the National Assembly of the Republic of Serbia. The programmes are quite similar, and the differences probably reveal more than what the Prosecutor would have wished.

- 1 The article was written within the framework of the School of Transitional Justice of the Humanitarian Law Center, held in Belgrade from June 5 until July 11 2017, in cooperation with Heinrich Böll Stiftung - Belgrade Office. The views and opinions expressed in this article are those of the author.
- 2 Programme of organization and improvement of work of the OWCP for the period 2016 – 2022, Snežana Stanojković, June 9 2016, pp. 179-193, available (in Serbian) [here](#), accessed on July 9 2017.

- 3 Programme of organization and improvement of work of the OWCP for the period 2016 – 2022, Snežana Stanojković, December 2015, available (in Serbian) [here](#), accessed on July 9 2017.



The programme from 2016 is, at least in tone, less “patriotic” than the previous one. Thus, it has been insufficiently observed that the only named place of crime in the region of the former Yugoslavia that can be found in the programme is precisely “the forbidden word” - Srebrenica (p. 7 of the programme), which was not mentioned in the previous programme. The problem, however, is that Prosecutor Stanojković mentions Srebrenica only as an example of the implementation of the agreement on the admission of the offense, and not as the largest massacre in Europe since World War II, or as a court determined genocide which should be given due attention. Prosecutor Stanojković is generally inclined towards plea agreements, boasting that she is the Deputy Prosecutor who has concluded the largest number of agreements (p.7). Prosecutor Stanojković is also prone to bragging, claiming that out of 36 indictments raised in the period from 2011 to May 2016, 16 are hers (p.14). That the statistics are “adjustable” is clear from the fact that the Parliament elected her (and) because of these agreements which she points to in her programme; whilst her former boss, Vladimir Vukčević, the previous War Crimes Prosecutor, assessed her work with a grade 3, because “she does not have a single case except the plea agreements” regarding the accomplices of Ratko Mladić<sup>4</sup>.

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4 „Vukčević: What happened in Srebrenica is a genocide, period.“, Danas, April 25 2017, available (in Serbian) [here](#), accessed on July 9 2017.

In the concluding remarks of the two programmes we see the difference in priorities and perceptions of the new Prosecutor, which she may have reluctantly or clumsily expressed. In the 2015 programme it is stated that during her 2016-2022 mandate she will primarily advocate “finding every missing person in the territories of the former Yugoslavia”. It is incomprehensible that this in essence forensic-criminal goal, however humane, is to be the main goal of the Office of the War Crimes Prosecutor, put before every other goal of postwar criminal justice, even before, as Prosecutor Stanojković bombastically states in a less important part of the new programme, “justice for the victims” and the fight against “the policy of impunity” (p. 11).

How does Prosecutor Stanojković perceive the purpose of war crimes trials? The last sentence from the 2015 programme probably reveals the essence of her position, which would not have changed in the 8 months that have passed between the two programmes: war crimes trials are an important task for all of us, “in order to progress and access the European Union”. Therefore, the reason given is the EU, not the internal needs of Serbian society. In contrast, the new programme concludes with the statement that the prosecution of war crimes is important for progress in negotiations with the EU, and “important for Serbia”. But in what way is this seen as important? “The greatest responsibility of the Office of the War Crimes Prosecutor”, says Prosecutor Stanojković at the end, refers to the

individualization of responsibility and the criminal prosecution of those who committed war crimes “in the name of this nation” (p. 15).

Considering what is mentioned above, it seems that the priority of the Office of the War Crimes Prosecutor (OWCP) will be the crimes committed by members of the Serbian forces. Whether Prosecutor Stanojković wishes in this way to protect the Serbian people from collective stigma, or the Serbian state from further legal or political consequences in case it was involved in crimes committed across the River Drina border, or whether it is an editorial hindsight, can only be guessed. It is difficult to say whether the new Prosecutor has psychologically or morally obliged herself to prioritize prosecution for crimes against non-Serbs in her future prosecutorial strategy for the investigation and prosecution of war crimes, following the criteria indicated by the National Strategy for the Prosecution of War Crimes<sup>5</sup>. If she changes her mind, Prosecutor Stanojković can always use the traditional European principle of the legality of criminal prosecution, according to which the Public Prosecutor is obliged to prosecute as soon as there are grounds for suspicion that a criminal act has been committed; which would mean that a Serbian prosecutor, unlike, for example, an American prosecutor who has unfettered discretion, cannot prioritize prosecution, because

<sup>5</sup> See: National Strategy for the Prosecution of War Crimes for the period 2016-2020, p. 17, available [here](#), accessed on July 3 2017.

processing the individual and mass war crimes is the same.

It should be noted that the prioritization of investigations that Prosecutor Stanojković, who will create the prosecutorial strategy, will decide upon, may not mean much if the Republic's Public Prosecutor does not have the same policy of prosecution, considering that the Republic's Prosecutor affects the OWCP prosecution by deciding on injured parties' complaints on any OWCP decisions dismissing criminal charges, and by issuing instructions to the OWCP, which is hierarchically a lower prosecutorial office, on the procedure in a specific case.

However, as the programme is markedly restrained in any explicit mentioning of non-Serb victims, it remains to be seen from the Prosecutor's actual actions what kind of agenda she will follow. For the time being there is no reason for optimism. Some of the first actions taken by Prosecutor Stanojković were to refuse to talk with reporters about what the Prosecutorial strategy will be, and the department for relations with the media in the Prosecutor's Office no longer exists.<sup>6</sup> Then, on July 5 2017, the Court of Appeal in Belgrade rejected the indictment against 7 members of the Special Brigade of the Ministry of Internal Affairs of the Republic of Srpska for the murder

<sup>6</sup> „Ambassador Scott has expressed US concerns about the case of the Bytyqi brothers to Prosecutor Stanojković“, Danas, July 11 2017, available (in Serbian) [here](#), accessed on July 17 2017.



of 1,313 Bosnian Muslim civilians in the *Srebrenica-Kravica* Case, on the grounds of its being submitted by an unauthorized prosecutor, considering that on January 21 2016, when it was submitted, there was no War Crimes Prosecutor (Vladimir Vukčević had retired), and the Republic Public Prosecutor had not elected an acting war crimes prosecutor.<sup>7</sup> What was the role of Prosecutor Stanojković in all this? Although the defense attorneys pointed out this illegality to the media in this past period, since May 31 2017, when the new prosecutor came into office, she has not attempted to “convalidate” with her “decision” both the indictment or the actions of the deputy prosecutor in other cases, as the Minister of Justice is now publicly instructing the Prosecutor to do, post festum and in an attempt to reassure the public.<sup>8</sup> This could possibly be done by new the War Crimes Prosecutor making a statement to the Court of Appeal that she accepts all the procedural steps taken by the war crimes prosecutor’s deputies. The Prosecutor’s “thunderous silence” builds upon this lack of action on her part, because neither she nor the Republic’s Public Prosecutor has issued any statements regarding the decision of the Court of Appeal. Only the Minister of Justice has made a statement, which is in itself a poignant reflection of the relations which exist within the judiciary, and leads one to

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7 „Dismissed indictment for crimes committed in Srebrenica”, *Danas*, July 13 2017, available (in Serbian) [here](#), accessed on July 15 2017.

8 „Kuburović: Just a formal absence”, *Danas*, July 14 2017, available (in Serbian) [here](#), accessed on July 15 2017.

wonder if the OWCP is independent in creating the agenda for the prosecution of war crimes.

For a more explicit and specific programme, at least when it comes to non-Serb victims, there was either no idea or courage, or there was no desire to irritate the parliamentary majority. This is in line with the old practice of treating domestic war crimes trials as a necessary inconvenience. The programme has apparently served as an election formality. When it comes to her attitude towards the Srebrenica victims, Prosecutor Stanojković has publicly legitimised herself with her programme without content and her prosecutorial passivity. The prospect is of her continuing the same practice. In the end, the question remains, how is it possible that an unimaginative, almost bureaucratic programme with undetermined value concepts, can lead to the election of its author to a position of prosecutor at republic level? The NGO sector, which has been rightly criticizing the process of the election of the new War Crimes Prosecutor, became involved late in the process. The appointment of judges and prosecutors in Serbia has been left for decades to uncontrolled arbitrariness, so the relevant Rules and Regulations of the State Prosecutorial Council, which do not provide any criteria as to when to grade a programme of a prospective prosecutor with a score of 1, and when it should be given a score of 20, represents an expected contribution to this legal (non)culture of arbitrariness.



# Anonymisation of victims' sufferings<sup>9</sup>

*Andreja Bošković, Trainee Attorney  
and participant in the School of Transitional Justice of the Humanitarian Law Center*

## Criminal judgment

In criminal proceedings, the judgment is the most important court decision. As a rule, the judgment decides on the main criminal matter, i.e. on the criminal motion of an authorized prosecutor, after an examination of its grounds. The announcement of the judgment is followed by its delivery or pronouncement. The delivery of the judgment is designed to inform the interested parties about its contents. When announced, the judgment ceases to be an internal matter of the court and becomes a judicial fact, with all its legal effects and legal consequences. The judgment is delivered through announcement and service. The announcement is public, not just for the parties involved, but for the general public as well. After being announced, and before being served, the judgment must also be produced in written form. A written judgment provides a testimony to its existence and its content, and allows for the control of its legality and



*Andreja Bošković*

regularity, because it takes the form of an official act and acquires the power of a public document.<sup>10</sup> Immediately after its leaving the courtroom, the criminal judgment becomes available to the readers.<sup>11</sup> The reader then becomes acquainted with the judgment. How can the reader understand a criminal judgment that is heavily anonymised?

## Anonymisation/pseudonymisation

The anonymisation of a judgment represents the complete removal of all

<sup>9</sup> The article was written within the framework of the School of Transitional Justice of the Humanitarian Law Center, held in Belgrade from June 5 until July 112017, in cooperation with Heinrich Böll Stiftung - Belgrade Office. The views and opinions expressed in this article are those of the author.

<sup>10</sup> Momčilo Grubač, „Krivično procesno pravo (Criminal Procedure Law)“, Projuris, Belgrade, 2016, pp.135-136.

<sup>11</sup> Miodrag Majić, „Veštine pisanja prvostepene krivične presude (Skills of writing a first-instance criminal judgment)“, Official Gazette, Belgrade, 2016, p.15.



personal data on persons mentioned in the judgment: perpetrators, witnesses and victims. In addition to the Law on Personal Data Protection, anonymisation is also based on EU Regulation 2016/679 of the European Parliament and Council of Europe of April 27th 2016, on the protection of natural persons in relation to the processing of personal data and free movement of such data (General Regulation on Data Protection).<sup>12</sup>

Article 4, paragraph 1, item 5 of the EU Regulation 2016/679 defines „pseudonymisation” as the processing of personal data in such a way that personal data can no longer be linked to the specific person that the data is related to without the use of additional information, provided that such additional information is stored separately, and that technical and organisational measures are applied to ensure that the personal data cannot be linked to the natural person whose identity is established or could be established.

### **Informing the public about war crimes**

The public’s right to know about war crimes encompasses the right of access to trials and documentation of cases (indictments, judgments, transcripts and audio/video recordings of trials), the right to record the trial, and the right to protection of court files. How can the public be informed of court

proceedings for war crimes and the facts established in those proceedings, if the documentation from the case is anonymised to the point of unreadability? In a situation in which „court proceedings are stalled”<sup>13</sup>, timely and full informing on the proceedings and victims becomes even more important. Instead, after a few years of trial, what we have in the end is a judgment that is anonymised in such a way that it becomes unreadable and unusable for legal analysis. One of the consequences of such excessive anonymisation is the invisibility of victims, because „introducing the victim to the public and public mention of the victim’s name is a form of redress for the victim, and a precondition for the recognition of the suffering that the victim has endured by virtue of their personal characteristics.”<sup>14</sup>

### **The work of the competent courts**

The courts refer to the Law on Personal Data Protection, which stipulates the conditions, methods and constraints in the collection and processing of personal data. Protection of personal data is done by anonymisation, but considering that the Republic of Serbia does not have any legislation on anonymisation of judicial and prosecutorial decisions, this area is regulated by the internal documents of the courts. Thus, the Ordinance on Anonymisation has so far been adopted by the Supreme

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12 Rules on replacing and omission (pseudonymisation and anonymisation) of data in judicial decisions, General Session of the Supreme Court of Cassation held on December 12<sup>th</sup> 2016

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13 Report on war crimes trials in 2016, Humanitarian Law Center, available [here](#), accessed on July 5<sup>th</sup> 2017.

14 Ibidem, p.13.

Court of Cassation and the Court of Appeal, while no such ordinance has been adopted by the Office of the War Crimes Prosecutor and the High Court in Belgrade. They base anonymisation on their own interpretation of the law, and the names of victims are excessively anonymised<sup>15</sup>, which is why the interested public is often forced to turn to the Commissioner for Information of Public Importance and Personal Data Protection to fill in the missing information.

### **The work of the Commissioner for Information of Public Importance**

The Law on Free Access to Information of Public Importance stipulates that everyone has the right to be informed as to whether a public authority holds specific information of public importance and to make such information of public importance accessible to the public. The law also stipulates that the information may be subjected exceptionally to limitations prescribed by law, if that is necessary to protect against serious violation of an overriding interest based on the Constitution and the law. At the same time, the Law prescribes that no provision of this Law can be construed in a manner that would lead to the revocation of any right conferred by this Law or to its limitation to a greater extent than provided for in the Law."<sup>16</sup>

15 Report on war crimes trials in 2016, Humanitarian Law Center, available [here](#), accessed on July 5<sup>th</sup> 2017.

16 The Law on Free Access to Information of Public Importance, Official Gazette of the Republic of Serbia, no. 120/2004, 54/2007, 104/2009 and 36/2010.

In terms of the anonymisation of judgments, the Commissioner for Information of Public Importance has taken the view that the names and surnames of persons accused of war crimes are not to be anonymised, because it is in the interest of the public to know such information. However, when it comes to names and surnames of the victims, the Commissioner considers that their disclosure would seriously jeopardize their right to privacy. This position is not in line with the interest of the public which is to know all the facts about war crimes, including those regarding the victims' identities. Moreover, this position continues to obstruct the victims' longstanding hope for recognition of what they were forced to suffer.

### **An example: Srebrenica-Branjevo Case**

On January 27<sup>th</sup> 2016, the War Crimes Department of the Higher Court in Belgrade brought a judgment in which it accepted the plea agreement of January 22<sup>nd</sup> 2016, for the crime Kto br. 1/16-Sk. br.1/16, concluded between the Office of the War Crimes Prosecutor and the defendant Brano Gojković. Gojković admitted to participating in the shooting of captured people from Srebrenica at the Branjevo farm on July 16<sup>th</sup> 1995. During the period in question, Gojković was a member of the 10<sup>th</sup> Sabotage Detachment of the Main Staff of the Army of Republika Srpska. In addition to the anonymisation of personal data of the defendant, the names and surnames of accomplices



као припадник 10. Диверзантског одреда ВРС, кршећи правила међународног права и то члан 3. ст. 1. тачка 1а IV Женевске конвенције о заштити грађанских лица за време рата од 12.08.1949. године, ратификоване од Народне скупштине ФНРЈ ("Сл. Лист ФНРЈ" бр. 24/50) и противно члану 4. став 1. и став 2. тачка а) и члану 13. II Допунског протокола уз ову Конвенцију,

Заједно са другим припадницима истог одреда, [REDACTED] осуђеним пред МКТЈ у Хагу, [REDACTED] и [REDACTED] против којих се због истог догађаја пред Судом Босне и Херцеговине води поступак по оптужници, [REDACTED] са којим је Тужилаштво БиХ у вези истог догађаја склопило Споразум о признању кривице и [REDACTED] против кога Тужилаштво БиХ води истрагу у вези истог догађаја, извршио убиство више стотина заробљених

were also anonymised. However, the names of the accomplices were publicly visible in the indictment, and the accomplices were convicted and their names listed in the judgments of the ICTY and the Court of Bosnia and Herzegovina, therefore the general public was already acquainted with these facts through the media. Also, these judgments can be found on the official websites of these two courts. In this way, the Higher Court in Belgrade has violated the Law on Personal Data Protection, because according to this Law, „the data that are available to anyone and published in the media are not covered by protection“. Why, then, are their names anonymised in the judgment?<sup>17</sup>

## Conclusion

July 11<sup>th</sup> is the Day of Commemoration in memory of the victims of the Srebrenica genocide. On that day, the mortal remains of

victims who have been identified over the past year are buried, and the public is informed in various ways about the facts established about the perpetrators and the victims. The Srebrenica massacre, which took place over the period from July 11<sup>th</sup> to August of 1995, still requires answers to questions about why it happened and who is responsible for it. Responsibility, after 22 years, is presented as an excessively anonymised judgment for the crime in Srebrenica, which hides the names of the convicted accomplices in this crime. Can bringing anonymised judgments be „the highest achievement of judicial work“<sup>18</sup>? What do the victims of Srebrenica, the public and the media get with excessive anonymisation? They get documents that are unreadable and that prevent learning the facts about war crimes, perpetrators and victims. Excessive anonymisation also violates the UN principles

<sup>17</sup> See court documents from the *Srebrenica – Branjevo* Case, available (in Serbian) [here](#), accessed on July 5<sup>th</sup> 2017.

<sup>18</sup> Miodrag Majić, „Veštine pisanja prvostepene krivične presude (Skills of writing first instance criminal judgment)“, Official Gazette, Belgrade, 2016, p.11

related to combating impunity that stipulate that “all people have the inalienable right to know the truth about the crimes committed and the circumstances that led to them.”<sup>19</sup> Let us not forget that Serbia is also a UN member state.

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<sup>19</sup> Report on war crimes trials in 2016, Humanitarian Law Center, available [here](#), accessed on July 5<sup>th</sup> 2017.

**Humanitarian Law Center**

12 Decanska St.  
Belgrade 11000, Serbia

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

e-mail: [office@hlc-rdc.org](mailto:office@hlc-rdc.org)  
[www.hlc-rdc.org](http://www.hlc-rdc.org)

Social networks:

 @FHPHLC #towardsJUSTICE

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