



Humanitarian Law Center

Initial Report

on the Implementation of
the National Strategy for
the Prosecution of War Crimes

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Acronyms and Abbreviations

Action Plan	Action Plan for Chapter 23 in the framework of Serbia's accession negotiations with the European Union
Commission	The Commission on Missing Persons of the Government of Serbia
CPC	Criminal Procedure Code (Official Gazette of the Republic of Serbia, nos. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013 and 55/2014)
CPD	Criminal Police Directorate
Deputy Prosecutor	Deputy War Crimes Prosecutor
EU	European Union
Government	Government of the Republic of Serbia
HJC	The High Judicial Council
HLC	Humanitarian Law Center
ICTY	United Nations International Criminal Tribunal for the Former Yugoslavia
Law on War Crimes Proceedings	Law on Organization and Jurisdiction of Government Authorities in War Crimes Proceedings (Official Gazette of the Republic of Serbia, nos. 67/2003, 135/2004, 61/2005, 101/2007, 104/2009, 101/2011 and 6/2015)
MICT	United Nations Mechanism for International Criminal Tribunals
MoD	The Ministry of Defense of the Republic of Serbia
Model Strategy	Model Strategy for the Prosecution of War Crimes Committed during and in relation to the Armed Conflicts in the former Yugoslavia
MoI	The Ministry of the Interior of the Republic of Serbia
National Strategy	National Strategy for the Prosecution of War Crimes
OSCE	The Organization for Security and Co-operation in Europe
OWCP	Office of the War Crimes Prosecutor
Prosecutor	War Crimes Prosecutor
Request	Freedom of information request
RPP	Republic's Public Prosecutor
SPC	State Prosecutorial Council
UN	United Nations
Unit	Witness Protection Unit
U.N. Security Council	United Nations Security Council
VWISS	Victim and Witness Information and Support Service
WCIS	War Crimes Investigation Service
YA	Yugoslav Army



Preface

The Humanitarian Law Center (HLC) has been monitoring and providing support to war crimes trials since the first war crimes proceedings conducted in Serbia in 2002. The HLC is the only organization that has been continuously monitoring and analyzing war crimes trials in Serbia and informing the public at home and abroad about them. It has been representing victims in war crimes cases through an attorney, filing criminal complaints with the Office of the War Crimes Prosecutors (OWCP) against suspected perpetrators, and sharing its documentation on war crimes.

Relying on its intimate knowledge of the subject of war crimes prosecutions in Serbia, acquired over a number of years, during 2013 and 2014 the HLC carried out research into key aspects of the work of institutions specialized in the prosecution of war crimes and the problems in their work during the first ten years of their existence. The findings of the research were presented in the publication *“Analysis of the Prosecution of War Crimes in Serbia 2004-2013”*. On the basis of the Analysis and a series of consultative meetings with representatives of government authorities and other relevant stakeholders, the HLC in 2015 published a Model Strategy for the Prosecution of War Crimes Committed during and in relation to the Armed Conflicts in the former Yugoslavia.

The National Strategy for the Prosecution of War Crimes, a document that the Government of the Republic of Serbia adopted in February 2016, is based, among other things, on the Model Strategy developed by the HLC. Given the fifteen years of the HLC’s active engagement in monitoring war crimes, but also the HLC’s long-time advocacy for the adoption of a national strategy and addressing the key problems in the areas covered by it, the HLC has a unique capacity to monitor its implementation, and will exercise this capacity throughout the period of implementation, until 2020.

This is the first report on the implementation of the National Strategy. The HLC’s research and findings show that in the one and a half years since its adoption, no significant progress in war crimes prosecutions can be reported. Quite the reverse: the situation has, in some respects, worsened even further. Not only has implementation started with an enormous delay, but some key activities have not yet been implemented at all. The prosecutorial strategy has not been adopted, only eight indictments have been raised, war crimes trials continue to be unduly delayed, no progress has been made regarding victims’ procedural rights, the search for missing persons continues to be inefficient, cooperation with the ICTY has been discontinued, and the relevant international governmental and non-governmental organization have negative opinions about Serbia’s progress in the prosecution of war crimes.



The HLC thinks that Serbia's evident regression in war crimes prosecution and in dealing with the past clearly demonstrates that adopting a national strategy on its own is not enough to solve the numerous continuing problems in this area. Without genuine commitment and political will, all reforms are doomed to failure and the problems identified will remain unsolved. The HLC wishes to draw attention to the fact that unless some critical steps are taken immediately, the National Strategy will until its expiry in 2020 remain a mere dead letter.



Introduction

On 20 February 2016, the Government of the Republic of Serbia adopted the National Strategy for the Prosecution of War Crimes for the period 2016-2020 (hereinafter: *National Strategy*), which detailed the set of activities needed to improve the prosecution of war crimes in Serbia.¹

Determining individual criminal accountability for war crimes committed during the 1990s is one of the formal conditions that Serbia has to meet to join the EU. As a direct response to the recommendations made by the European Commission in its Screening Report on Chapter 23, Serbia has adopted the Action Plan for Chapter 23² relating to judicial reform, fundamental rights and also war crimes.³

The Action Plan in section “1.4. War Crimes”, foresees a set of activities for all authorities involved in war crimes processing. The task of the National Strategy, following the guidance provided in the Action Plan, was to set forth the activities that have to be performed to improve the efficiency of war crimes prosecutions.

The HLC has been monitoring the implementation of the National Strategy since it was adopted, in order to assist in evaluating the implementation of the activities in terms of quantity and quality, and whether they have delivered the desired results. Therefore, the aim of this report is to help verify the results achieved and to offer independent research findings and conclusions on the implementation of the National Strategy.

This report is the first report to be published on monitoring the implementation of the National Strategy. It features a brief overview of the current state of play, identifies some key problems in the implementation of the activities planned, and proposes recommendations on how to improve the implementation of the Strategy and monitoring and reporting on its implementation.

1 The National Strategy for the Prosecution of War Crimes is available on the official website of the Office of the War Crimes Prosecutor: http://www.tuzilastvorz.org.rs/upload/HomeDocument/Document_en/2016-05/p_nac_stragetija_eng.PDF, last accessed: 04 July 2017.

2 The Action Plan for Chapter 23 is available on the Ministry of Justice official website: <https://www.mpravde.gov.rs/files/Action%20plan%20Ch%2023.pdf>, last accessed: 04 July 2017.

3 Report on the degree of alignment of Serbian legislation with the EU *acquis* (*Screening Report*) is available on the Ministry of Justice official website: [https://www.mpravde.gov.rs/files/Screening-report-chapter-23-serbia%20Official%20\(3\).pdf](https://www.mpravde.gov.rs/files/Screening-report-chapter-23-serbia%20Official%20(3).pdf), last accessed: 04 July 2017.



Methodology

The information used in the report was drawn from three main sources. The first source comprised reports of national and international bodies, including: quarterly reports on the implementation of the Action Plan for Chapter 23;⁴ the European Commission's Serbia Progress Reports⁵ and Non-paper on the state of play regarding chapters 23 and 24 for Serbia;⁶ and the reports of the Chief Prosecutor and the President of the International Criminal Tribunal for the Former Yugoslavia (ICTY) submitted to the U.N. Security Council.⁷ The second source included information gathered from the actors identified in the National Strategy through requests for access to information of public importance. The third source comprised interviews that HLC researchers conducted with representatives of government authorities responsible for the implementation of the activities envisaged in the National Strategy.⁸

The process of collecting information needed for compiling this report met many obstacles. In some instances, the competent state authorities refused to provide information regarding the implementation of the activities set out in the National Strategy: the Ministry of Justice and the War Crimes Investigation Service did not respond at all to the HLC's requests for an interview; some other authorities either altogether ignored the HLC's requests for access to information of public importance or submitted incomplete information.⁹ An additional obstacle in the way was the fact that the National Strategy has not specified the entities responsible for implementing certain activities, the responsibilities of certain actors, or the indicators to be used to measure progress and

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4 Reports on the implementation of the Action Plan for Chapter 23 are available on the official website of the Ministry of Justice: <https://www.mpravde.gov.rs/tekst/17033/izvestaj-br-32017-o-sprovodjenju-akcionog-plana-za-poglavlje-23.php>, last accessed: 30 October 2017.

5 2016 Serbia Progress Report, p. 66, available on the official website of the Ministry for European Integration: [http://www.mei.gov.rs/upload/documents/eu_dokumenta/godisnji_izvestaji_ek_o_napretku/godisnji_izvestaj_16_eng\(1\).pdf](http://www.mei.gov.rs/upload/documents/eu_dokumenta/godisnji_izvestaji_ek_o_napretku/godisnji_izvestaj_16_eng(1).pdf), last accessed: 05 July 2017.

6 European Commission, *Non-paper on the state of play regarding chapters 23 and 24 for Serbia*, available at: http://www.mei.gov.rs/upload/documents/eu_dokumenta/non_paper_ch23_24_eng.pdf, last accessed: 05 July 2017.

7 The reports of the Chief Prosecutor and President of the International Criminal Tribunal for the Former Yugoslavia (ICTY) to the UN Security Council are available at: <http://www.icty.org/en/press>, last accessed: 30 October 2017.

8 By contributing their views and information, the interviewed representatives of the War Crimes Department of the Court of Appeal in Belgrade, Office of the War Crimes Prosecutor, Victim and Witness Assistance and Support Service, Witness Protection Unit of the MoI, Commission on Missing Persons of the Government of the Republic of Serbia, Judicial Academy, OSCE Mission to Serbia and attorney Tomislav Višnjić also helped in preparing this analysis.

9 HLC request HlcIndexOut: 170-F130435 of 07 June 2017; Ministry of Justice's reply no. 7-00-189/2017-32 of 05 July 2017; the Ministry of Justice failed to provide answers to the questions regarding regional conferences on war crimes prosecutions.



the expected outputs for some activities.¹⁰ Furthermore, the authorities responsible for reporting on the implementation of the National Strategy have either not reported at all on the activities implemented, or reported inaccurately and inconsistently. The Working Body tasked with supervising and reporting on the implementation of the National Strategy was only established in August 2017, a year and a half later than planned¹¹ and as a result no official report on how the implementation of the activities envisaged in the Strategy is progressing has been published so far.¹²

General Findings on the Implementation of the National Strategy Implementation

The National Strategy contains a set of general indicators for measuring the progress made in the prosecution of war crimes:

1. Case prosecution based on the priorities established in accordance with the criteria defined by the Prosecutorial strategy;
2. The increase in the number of indictments in relation to the number of investigations;
3. The increase in the number of finalized proceedings in relation to the number of indictments;
4. The shorter average duration of war crimes proceedings;
5. Positive evaluation by the European Commission on the alignment of the system of protection and support to victims and witnesses in the Republic of Serbia with the European Union standards;
6. Increased number of initiated and resolved cases due to regional cooperation;
7. Reduced number of missing persons whose fate has not been clarified;
8. Positive reports of the Chief Prosecutor and the President of the ICTY to the Security Council;
9. Positive reports from other relevant governmental and non-governmental organizations.

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The HLC has based its general findings on the implementation of the National Strategy so far on the above indicators.

10 See, e.g.: National Strategy for the Prosecution of War Crimes, Chapter 6: Cooperation with the International Criminal Tribunal for the Former Yugoslavia, pp. 33-34; Chapter 8: Improving society's attitude towards the issue of war crimes trials, pp. 37-39.

11 Decision of the Government of Serbia establishing a Working Body for monitoring the implementation of the National Strategy for the Prosecution of War Crimes (Official Gazette of the Republic of Serbia nos. 80 of 29 August 2017).

12 The National Strategy stipulates that the Working Body will formulate conclusions and recommendations and submit them to the competent authorities and inform the Council for the Implementation of the Action Plan for Chapter 23 and the Serbian Government on a quarterly basis on implementation results.



I. Case Prosecution Based on the Priorities Established in Accordance with the Criteria Defined by the Prosecutorial Strategy

An analysis of the number and characteristics of indictments filed shows that war crimes prosecutions have been steadily waning over the past few years. The majority of indictments filed concern cases involving a small number of victims and a small number of perpetrators holding low ranks in the former political, military and police hierarchies. The OWCP's decisions to indict often reveal the absence of clearly defined criteria for selecting cases for investigation and prosecution amongst the group of pending cases at the preliminary investigation stage. Legal professionals see some of the indictments raised by the OWCP as a waste of prosecutorial resources, given that there are many other cases which, despite the hard evidence gathered by the ICTY, have not yet been investigated by the OWCP.¹³ This tendency is partly a reflection of the lack of case prioritization strategy within the OWCP.

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In addressing this problem, the National Strategy sets as its first objective the adoption of a separate, prosecutorial strategy, which is expected to define the criteria for prioritizing war crimes cases for investigation and prosecution in the future.¹⁴ Taking into account the current shortcomings in the OWCP's performance, the National Strategy proposes the following criteria for the prioritization of war crimes cases: the gravity and impact of a crime, cases involving high-ranking suspects, availability and quality of evidence, and crimes involving extreme brutality. The development and adoption of the prosecutorial strategy should be put at the heart of the efforts to improve the efficiency and effectiveness of war crimes proceedings, since the OWCP is the body that institutes prosecutions and generates the activities of other bodies involved in war crimes prosecution.

Nevertheless, at the time of publication of this report, **the prosecutorial strategy had not been adopted.**

13 *Report on War Crimes Trials in Serbia during 2016*, HLC, 2017, pp. 15-19; *Ten years of war crimes prosecution in Serbia – Contours of Justice*, HLC, 2014, pp. 16-22; *Report on War Crimes Trials in Serbia during 2014 and 2015*, HLC, 2016, pp. 8-12; *War Crimes Proceedings in Serbia (2003-2014), An analysis of the OSCE Mission to Serbia's monitoring results*, OSCE Mission to Serbia, 2015, p. 38.

14 National Strategy for the Prosecution of War Crimes, pp. 9 and 20.



II. Increase in the Number of Indictments in Relation to the Number of Investigations

Since it began its work in 2003, the OWCP has charged 173 persons for war crimes in 60 war crimes proceedings.¹⁵ According to representatives of the OWCP, over 800 cases are still at the preliminary investigation stage.¹⁶

Another 763 cases that the OWCP has recently taken over from the courts and prosecutors' offices of general jurisdiction, the majority of which are also at the preliminary investigation stage, should be added to that group.¹⁷

Bearing in mind that the OWCP has nearly 1,500 cases at the investigation or preliminary investigation stage, and that **since the adoption of the National Strategy only eight indictments have been filed, against eight people**, and that even these eight indictments are not the result of the OWCP's independent work but have been transferred from B&H, the HLC finds that there has been **no increase whatsoever in the number of indictments since the National Strategy was adopted**, and that **the performance of the OWCP is at its lowest ebb since the beginning of its work**.

Particularly worrying is the fact that the OWCP has dropped the charges against Dragan Živanović, former Commander of the 125th VJ Motorized Brigade, and that it has done this after the National Strategy was adopted. What is more, Živanović was the only high-ranking officer to be put under OWCP investigation, with plenty of evidence presented before the ICTY implicating him in war crimes in Kosovo.¹⁸

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15 See: Chronological list of cases prosecuted before Serbian courts, available (in Serbian) at: <http://www.hlc-rdc.org/?cat=234>, last accessed: 09 October 2017.

16 See: *Analysis of the Prosecution of War Crimes in Serbia 2004-2013*, HLC, 2014, p. 17, available at: http://www.hlc-rdc.org/wp-content/uploads/2014/10/Analiza_2004-2013_eng.pdf, last accessed: 30 August 2017.

17 HLC interview with an OWCP representative, 07 September 2017.

18 „Tužilaštvo odustalo od istrage protiv generala Dragana Živanovića“ [Prosecutor's Office drops investigation into General Dragan Živanović], Jelena Diković, *Danas*, 27 October 2017, available (in Serbian) at: http://www.danas.rs/drustvo/suocavanje.1179.html?news_id=360444&title=Tu%C5%BEila%C5%A1tvo+odustalo+od+istrage+protiv+general+Dragana+%C5%BDivano-vi%C4%87a, last accessed: 30 October 2017.



Given the evident inefficiency of the OWCP in the preceding years and the fact that its investigations are secret, making it difficult for the interested public to evaluate its work, the OWCP's obligation under the Action Plan to prepare a report on its performance assumes a particular importance.¹⁹ The OWCP is late with the release of this report, more than one year.²⁰

III. Increase in the Number of Finalized Proceedings in Relation to the Number of Indictments

Since the adoption of the National Strategy trials in 25 cases have been held,²¹ eight indictments have been raised,²² three first-instance judgments have been handed down,²³ along with one judgment confirming a plea agreement.²⁴ The War Crimes Department of the Court of Appeal in Belgrade has handed down eight judgments.²⁵

Only by looking at the above statistics does it become clear that the increase in the number of indictments resulting in final judgments indicator does not give a realistic picture of the quality of the work of the authorities responsible for war crimes prosecution. Moreover, this quantity-based indicator cannot shed any light on or address the problem of acquittals due to manifestly unfounded charges.²⁶ By issuing as many indictments as possible no matter the outcome, the OWCP tries to make the war crimes judiciary look more productive than it is.

The mere ratio between pending and finally disposed cases can only be of value for indicating the problem of the excessive duration of war crimes cases (next indicator), as criminal cases are by nature such that each pending case must inevitably be completed. Therefore, the HLC believes that this indicator should be rephrased to state the "increase in the number of indictments *resulting in convictions*", because only thus will it be able to measure the quality of the OWCP's work.

19 Action Plan for Chapter 23, activity: 1.4.1.10, pp. 115-116.

20 Report 2/2017 on the implementation of the Action Plan for Chapter 23, p. 192, available on the official website of the Ministry of Justice: <https://www.mpravde.gov.rs/files/Report%20no.%202-201%207%20on%20implementation%20of%20Action%20plan%20for%20Chapter%2023.pdf>, last accessed: 12 October 2017.

21 In this period, only the *Kušnin/Kushnin* Case was tried before the court of general jurisdiction.

22 See: *Report on War Crimes Trials in Serbia during 2016*, HLC, 2017, pp. 38-89; List of cases available (in Serbian) at: <http://www.hlc-rdc.org/?cat=234>, last accessed: 12 October 2017.

23 In the cases of *Gradiška*, *Sanski Most – Kijevo* and *Bosanski Petrovac*.

24 *Srebrenica – Branjevo*.

25 "*Luka*" *Camp*, *Sanski Most*, *Beli Manastir*, *Bijeljina II*, *Sotin*, *Sanski Most – Kijevo*, *Bosanski Petrovac* and *Gradiška*.

26 See, e.g. „*Acquittal in Gradiška Case: New Instance of Omissions in Work of Prosecutor's Office and Court*”, HLC, press release, 14 October 2016, available at: <http://www.hlc-rdc.org/?p=32789&lang=de>, last accessed: 12 October 2017.



IV. Shorter Average Duration of War Crimes Proceedings

The repercussions of the excessive duration of court proceedings are far-reaching. As 25 years have passed since the outbreak of the armed conflicts, many cases will become impossible to prosecute, either because some defendants will have died (*Lovas* and *Ćuška* Cases), or witness-victims will refuse to testify in retrials (*Skočić*). A glaring example of **unduly prolonged proceedings** is the *Ovčara* Case, in which, four years after the final judgment was rendered, and 10 years after the indictment was raised, the judgment has been quashed and the case remanded to the War Crimes Department of the Court of Appeal for reconsideration on appeal. During the reporting period, over 13 years after the indictment, the case was still pending before the Court of Appeal. This is the longest of all war crimes trials conducted so far by the Serbian judiciary.²⁷

There have been only 95 trial days for all war crimes cases **since the adoption of the National Strategy, with 70 trial days having been postponed for all sorts of reasons.**²⁸ Hearings are scheduled over 40 days apart on average. As there has been a total of 25 ongoing cases, the average number of trial days held per case is just three.

By using this indicator to measure results, it can be concluded that no considerable results have been achieved.

In September 2017, the HLC objected on behalf of the victims to the excessive length of proceedings in the *Trnje* Case, requesting that the process be expedited.²⁹ The indictment in this case was issued in November 2013, with only nine out of 21 scheduled main hearings having been held before the objection was filed.³⁰

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27 See: *Report on War Crimes Trials in Serbia during 2016*, HLC, Belgrade, 2017, p. 8.

28 *Ibid*; Chronological list of trials in 2017, available (in Serbian) at: <http://www.hlc-rdc.org/?cat=234>, last accessed: 10 October 2017.

29 *Trnje* Case timeline is available (in Serbian) at: <http://www.hlc-rdc.org/Transkripti/trnje.html>, last accessed: 26 October 2017.

30 Indictment in the *Trnje* Case is available at: http://www.tuzilastvorz.org.rs/upload/Indictment/Documents_en/2016-05/o_2013_11_04_eng.pdf, last accessed: 26 October 2017.



V. Positive Evaluation by the European Commission on the Alignment of the System of Protection and Support to Victims and Witnesses in the Republic of Serbia with the European Union Standards

The latest, 2016 report of the European Commission on Serbia's progress clearly states that "no progress can be reported on procedural rights", adding that the support and protection offered to victims of crime is not in line with the EU *acquis*, and that "effective mechanisms for protecting victims' rights are lacking."³¹

Serious chronic weaknesses in this area, such as the lack of special protection measures for victims of sexual violence, inadequate application of existing mechanisms for protecting and supporting witnesses and victims, and financial burdens being imposed on victims and witnesses in war crimes cases, to name but a few, have not been addressed at all since the adoption of the Strategy.

The HLC has thoroughly analyzed these weaknesses in the section dealing with protection of witnesses and victims.

VI. Increased Number of Initiated and Resolved Cases due to Regional Cooperation

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Regional cooperation on war crimes cases is of immense importance, because it allows for the transfer of criminal proceedings and exchange of evidence, which enable prosecution of those suspects who would otherwise be inaccessible to the judicial authorities of any country other than their own. Since the war crimes judiciary was established in 2003, **35 cases** have been prosecuted in Serbia as a result of regional cooperation with prosecutors' offices in B&H and Croatia.³² Of these, **24 were finally adjudicated upon** by the time this report was finalized.³³

All cases that have been opened following the adoption of the National Strategy resulted from regional cooperation. The *Štrpce* and *Srebrenica-Kravica* Cases, for instance, are the

31 European Commission, *Serbia 2016 Progress Report*, p. 74, available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_serbia.pdf, last accessed: 27 October 2017.

32 Chronological list of cases tried before Serbian courts, available (in Serbian) at: <http://www.hlc-rdc.org/?cat=234>, last accessed: 23 October 2017.

33 *Ibid.*



product of collaboration between the OWCP and the Prosecutor's Office of B&H.³⁴ The remaining eight cases, in which the trials opened after the adoption of the Strategy, are the cases transferred to the OWCP after the indictments had already been confirmed by the Court of B&H.³⁵

As is the case with indicator 3 (the ratio between pending and finalized cases), this indicator cannot provide information on the quality of transferred cases or regional cooperation itself. Namely, apart from the *Srebrenica* and *Štrpci* Cases, the OWCP has so far prosecuted mainly less complex cases involving a small number of low-level defendants, and usually just one defendant, who held no rank in the command structures and were only the direct perpetrators.³⁶ If it were otherwise, and the OWCP were to look into politically sensitive cases or cases involving high-level perpetrators, such as the *Tuzla Convoy*, *Dobrovoljačka Street*, or *Tuzla's Kapija* Cases, regional cooperation would certainly be undermined or evaded.³⁷

The HLC considers that regional cooperation should be more intense and focus more on bigger and high-profile cases (in terms of the number of victims and perpetrators involved and the rank of the perpetrators), as many war crimes suspects have permanent residence in Serbia.

For more details, see the section on regional and international cooperation below.

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34 „Prosecutors indicts five for torture and killing of 20 Štrpci passengers”, OWCP press release, 10 March 2015, available at: <http://www.tuzilastvorz.org.rs/en/news-and-announcements/announcements/prosecutors-indicts-five-for-torture-and-killing-of-20-%C5%A1trpci-passengers>; „Prosecutor brings charges for a July 1995 massacre of more than 1000 Muslim civilians in Kravica”, OWCP, press release, 10 September 2015, available at: <http://www.tuzilastvorz.org.rs/en/news-and-announcements/announcements/prosecutor-brings-charges-for-a-july-1995-massacre-of-more-than-1000-muslim-civilians-in-kravica>. Both sources last accessed: 30 October 2017.

35 See the Cases of *Doboj*, *Ključ*, *Bratunac*, *Bosanska Krupa*, *Ključ – Kamičak* (*Dragan Bajić*), *Ključ – Kamičak* (*Marko Pauković*), *Srebrenica - Branjevo* and *Sanski Most – Lušci Palanka*.

36 See, e.g., the Cases of *Bihać*, *Bihać II*, *Gradiška*, *Sanski Most*, *Bosanski Petrovac*, *Bosanski Petrovac – Gaj*, *Bijeljina II*, “Luka” Camp.

37 See: *Report on War Crimes Trials in Serbia during 2016*, HLC, 2017, pp. 17-18, available at: http://www.hlc-rdc.org/wp-content/uploads/2017/05/Izvestaj_o_sudjenjima_za_2016_eng.pdf, last accessed: 27 October 2017.



VII. Reduced Number of Missing Persons Whose Fate Has Not Been Clarified

According to the figures of the International Committee of the Red Cross (ICRC), from **September 2017, 10,390** persons were still listed missing following the armed conflicts in Croatia, B&H and Kosovo³⁸ (compared to 10,698 in May 2016³⁹ and 12,544 in November 2012).⁴⁰

Since the adoption of the National Strategy, the number of missing persons from the conflicts in the former Yugoslavia has been reduced, but the number of persons whose mortal remains have been found in that period was nearly identical to the average number of persons found in the previous years. This suggests that in that particular aspect the National Strategy has not helped make the search process any more efficient. In view of the fact more than **one third of missing persons have not yet been found** even though twenty years have passed since the wars, it is safe to conclude that the current pace of resolving the fate of missing persons is not an adequate response to the humanitarian dimension of the problem.

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In the HLC's view, inefficiency in the search for missing persons can be explained by a lack of political will, which is reflected in the insufficient commitment of the competent Serbian authorities to the search for missing persons who belong to other ethnicities, their insufficient capacity for the search, the lack of action and engagement on the part of the prosecuting authorities in the search for missing persons and in the prosecution of those responsible, the prevention of access to official archives relevant to the search for missing persons, etc.

These problems are thoroughly analyzed in the section dealing with war crimes trials in the context of resolving the fate of missing persons.

38 International Committee of the Red Cross, 25 September 2017.

39 Reply of the Commission on Missing Persons no. 021-01-01/2016-26, 04 May 2016.

40 International Committee of the Red Cross, Western Balkans, available at: <https://www.icrc.org/eng/resources/documents/field-newsletter/2013/04-02-western-balkans-newsletter.htm>, last accessed: 23 October 2017.



VIII. Reports of the Chief Prosecutor and the President of the ICTY to the Security Council

In the last three semi-annual reports (of June 2016,⁴¹ December 2016⁴² and June 2017⁴³) that the Chief ICTY Prosecutor and the President of the ICTY submitted to the U.N. Security Council after the adoption of the National Strategy, **Serbia was severely criticized.**

In his reports of 2016, the President of the ICTY criticized Serbia for failure to hand over to the tribunal three persons charged with contempt of court, for whom an arrest warrant was issued on 19 January 2015. Namely, Petar Jojić, Jovo Ostojić and Vjerica Radeta, officials of the Serbian Radical Party (SRS), are wanted by the ICTY to stand trial on the contempt of court charges, for threatening two witnesses who were to give evidence against Vojislav Šešelj.⁴⁴ Contrary to his previous practice in exactly the same

41 ICTY Prosecutor Brammertz's address before the U.N. Security Council, New York, 08 June 2016, available on the ICTY official website: http://www.icty.org/x/file/Press/Statements%20and%20Speeches/Prosecutor/160608_prosecutor_brammertz_un_sc_en.pdf; ICTY President Judge Carmel Agius' address before the U.N. Security Council, New York, 08 June 2016, available on the ICTY official website: http://www.icty.org/x/file/Press/Statements%20and%20Speeches/President/160608_president_agius_un_sc_en.pdf. All sources last accessed: 25 July 2017.

42 ICTY Prosecutor Brammertz's address before the U.N. Security Council, New York, 08 December 2016, available on the ICTY official website: http://www.icty.org/x/file/Press/Statements%20and%20Speeches/Prosecutor/161208_prosecutor_brammertz_un_sc_en.pdf; ICTY's President Carmel Agius' address to the U.N. Security Council, 08 December 2016, New York, available on the ICTY official website: http://www.icty.org/x/file/Press/Statements%20and%20Speeches/President/161208_president_agius_un_sc_en.pdf. All sources last accessed: 25 July 2017.

43 ICTY Prosecutor Serge Brammertz's address before the U.N. Security Council, New York, 07 June 2017, available on the ICTY official website: http://www.icty.org/x/file/Press/Statements%20and%20Speeches/Prosecutor/170607_prosecutor_brammertz_un_sc_en.pdf; ICTY President Judge Carmel Agius' address before the U.N. Security Council, New York, 07 June 2017, available on the ICTY official website: http://www.icty.org/x/file/Press/Statements%20and%20Speeches/President/170607_president_agius_un_sc_en.pdf. All sources last accessed: 25 July 2017.

44 Order to schedule a hearing, The Hague, 03 February 2016, available on the ICTY official website: http://www.icty.org/x/cases/contempt_seselj4/tord/en/160203.pdf, last accessed: 25 July 2017.



cases,⁴⁵ the pre-trial judge at the Higher Court in Belgrade, Milan Dilparić ruled that the Law on Cooperation with the ICTY does not allow for the three to be handed over to the ICTY on “contempt of court” charges. At the time of this writing, Serbia had yet to comply with the arrest warrant for the three indictees. One of them, Jovo Ostojić, had died in the meantime.⁴⁶

In his reports to the U.N. Security Council, the Chief Prosecutor of the ICTY, Serge Brammertz, also criticized Serbia not only for failure to execute the arrest warrant for the three Serbian Radical Party officials, but also for failure to appoint a new War Crimes Prosecutor on time and to enforce the final judgment passed by the Court of B&H on Đukić.⁴⁷

In his latest address to the U.N. Security Council in June 2017, Prosecutor Serge Brammertz expressed particular concern over **the growing denial of judicially established facts and historical revisionism** in Serbia.

In his 2016 report, the ICTY Prosecutor underlined that “war crimes prosecutions in Serbia are at a crucial crossroads”.⁴⁸

45 Judge Milan Dilparić, while serving as an investigative judge at the District Court in Belgrade, acted differently in the past when ruling on ICTY arrest warrants for contempt of court. Thus, in 2008 he gave a ruling that found that the legal conditions had been met for the extradition of Ljubiša Petković, charged with contempt of court in the case against Vojislav Šešelj. Furthermore, no obstacles were found to exist to the arrest and transfer to The Hague of Jelena Rašić, in 2010, who was also charged for contempt of court for offering bribes to three witnesses who were called to testify against Milan Lukić. In the case of Dragomir Pećanac, who was also charged with contempt of court for refusing to testify against Zdravko Tolimir despite being summoned, the court also ruled, in 2011, that the legal requirements for his extradition had been met. See: „*Isti sud, isti sudija, isto delo – odluka različita*“ [Same court, same judge – different ruling], Insajder, 30 November 2016, available (in Serbian) at: <https://insajder.net/sr/sajt/tema/2213/Isti-sud-isti-sudija-isto-del---odluka-razlicita.htm>; „*Ljubiša Petković se izjasnio da nije kriv*“, [Ljubiša Petković pleads not guilty], Sense Tribunal, 29 May 2008, available (in Serbian) at: [http://www.sense-agency.com/tribunal_\(mksj\)/ljubisa-petkovic-se-izjasnio-da-nije-kriv.25.html?cat_id=1&news_id=713](http://www.sense-agency.com/tribunal_(mksj)/ljubisa-petkovic-se-izjasnio-da-nije-kriv.25.html?cat_id=1&news_id=713); „*Nova optužnica zbog podmićivanja svedoka*“ [New indictment for offering bribes to witnesses], Sense Tribunal, 21 September 2010, available (in Serbian) at: [http://www.sense-agency.com/tribunal_\(mksj\)/nova-optuznica-zbog-podmicivanja-svedoka.25.html?news_id=11917](http://www.sense-agency.com/tribunal_(mksj)/nova-optuznica-zbog-podmicivanja-svedoka.25.html?news_id=11917); „*Major Pećanac refuses to testify against General Tolimir*“, Sense Tribunal, 10 October 2011, available at: http://www.sense-agency.com/icty/major-pecanac-refuses-to-testify-against-general-tolimir.29.html?cat_id=1&news_id=13270. All sources last accessed: 27 October 2017.

46 „*Premينو poslanik radikala Jovo Ostojić*“ [Radical MP Jovo Ostojić died], N1, news of 30 June 2017, available (in Serbian) at: <http://rs.n1info.com/a279812/Vesti/Vesti/Premينو-Jovo-Ostojic.html>, last accessed: 25 July 2017.

47 „*Crime in Tuzla's Kapija: Revision of the judicially established facts and putting regional cooperation to the test*“, HLC, press release, 09 November 2016, available at: <http://www.hlc-rdc.org/?p=32940&lang=de>, last accessed: 26 July 2017.

48 Report of Serge Brammertz, Prosecutor of the International Tribunal for the Former Yugoslavia, provided to the U.N. Security Council, New York, 17 May 2016, para 43, available at: http://www.icty.org/sites/icty.org/files/documents/160517_icty_progress_report_en.pdf, last accessed: 26 July 2017.



IX. Positive Reports from Other Relevant Governmental and Non-governmental Organizations

Since the adoption of the National Strategy, several relevant government and non-governmental organizations have made quite a few negative comments regarding war crimes prosecutions in Serbia.

In its 2016 report, Amnesty International stated that prosecutions of war crimes and crimes against humanity remained stalled and noted with concern that the position of chief war crimes prosecutor remained vacant throughout 2016.⁴⁹ The report also stated that Vojislav Šešelj, who had been indicted by the ICTY for war crimes and crimes against humanity and whose case is still on appeal before the ICTY, was elected to the Serbian National Assembly.

Human Rights Watch noted in its annual report for 2016 that war crimes prosecutions progressed slowly primarily due to a lack of political support, inadequate resources or staff at the Office of the War Crimes Prosecutor, and inadequate witness support, adding that few high-ranking officials were prosecuted in Serbian courts in 2016.⁵⁰

The U.S. Department of State in its Serbia 2016 Human Rights Report underscored the fact that despite numerous claims made by senior Serbian officials that new evidence had been found in the *Bytyqi* Case, no significant progress was made towards delivering justice in this case. The report further stated that “regional cooperation on war crimes prosecutions remained a problem“, and that for the first time in 10 years, Serbia did not send a delegation to the annual regional conference aimed at improving regional cooperation in the prosecution of war crimes.⁵¹

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49 *Amnesty International Report 2016/2017*, p. 318, available on the Amnesty International official website: <https://www.amnesty.org/en/latest/research/2017/02/amnesty-international-annual-report-201617/>, last accessed: 07 August 2017.

50 *Serbia/Kosovo Events of 2016*, available on the Human Rights Watch official website: https://www.hrw.org/sites/default/files/world_report_download/wr2017-web.pdf, last accessed: 07 August 2017.

51 *Serbia 2016 Human Rights Report, U.S. Department of State*, pp. 2-3, available at: <https://www.state.gov/documents/organization/265682.pdf>, last accessed: 09 October 2017.



Areas Covered by the National Strategy for the Prosecution of War Crimes

The National Strategy for the Prosecution of War Crimes is organized around eight areas of intervention. For the objectives in each area, the activities that need to be carried out and the time frames for their implementation are defined. The eight areas are as follows:

1. Increasing efficiency of the war crimes proceedings before the Republic of Serbia bodies;
2. Protection of witnesses and victims;
3. Support to witnesses and victims;
4. Defense of the accused;
5. War Crimes and the issue of missing persons;
6. Cooperation with the International Criminal Tribunal for the former Yugoslavia;
7. Regional and international cooperation;
8. Improvement in societal attitudes towards the issue of war crimes trials.

In the following pages we will discuss the current situation and identify key shortcomings in each of the above-listed areas.

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INCREASING EFFICIENCY OF THE WAR CRIMES PROCEEDINGS

1. INVESTIGATION AND INDICTMENTS

Objective 1: The Office of War Crimes Prosecutor has adopted and implements Prosecutorial Strategy for Investigation and Prosecution of War Crimes (hereinafter: Prosecutorial Strategy).

Objective 2: The Office of War Crimes Prosecutor will have accurate records of the events that may be qualified as war crimes, and records on unresolved cases, to be used, on the basis of clearly defined criteria, for the prioritization of cases pending and development of a five-year plan for case processing.

Objective 3: The Office of War Crimes Prosecutor applies the measures to increase its working efficiency.

Objective 4: Enhanced capacity of the Office of War Crimes Prosecutor.

Objective 5: Improved status and efficiency of the War Crimes Investigation Service.



Election of the War Crimes Prosecutor

The post of the War Crimes Prosecutor was vacant for as long as one and a half years – from the expiry of the term of office of the former War Crimes Prosecutor, Vladimir Vukčević, on 31 December 2015, until 31 May 2017,⁵² when Snežana Stanojković⁵³ took the office as the War Crimes Prosecutor. In the meantime, Deputy Prosecutor Milan Petrović served as the acting Head of the Office.

The procedure by which the State Prosecutorial Council (SPC) evaluated the programs for improving the OWCP organization and efficiency that the candidates presented,⁵⁴ and the ranking process of the candidates, were not transparent.⁵⁵ Also, the process of election of a new War Crimes Prosecutor at the National Assembly did not include a proper parliamentary debate based on arguments for and against her election. One of the reasons for the lack of proper debate is that MPs were not delivered the candidates' programs.⁵⁶ So it is completely unclear on which criteria the MPs' voting was based.

Delay in the election of the War Crimes Prosecutor put the brakes on the implementation of a number of activities set forth in the National Strategy, including: the adoption of the prosecutorial strategy for prosecuting war crimes, and the drawing up of a report in which the OWCP would present the actions it has taken with regard to all criminal complaints that have been filed since 2005, which was to show whether all war crimes charges have been adequately investigated.

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52 „Snežana Stanojković takes office as Serbian War Crimes Prosecutor“, press release, 31 May 2017, available at the official website of the OWCP: <http://www.tuzilastvorz.org.rs/en/news-and-announcements/announcements/sne%C5%BEana-stanojkovi%C4%87-takes-office-as-serbian-war-crimes-prosecutor>, accessed: 21 July 2017.

53 Stenographic notes of the Third sitting of the First Regular Session of the National Assembly of Serbia in 2017, available (in Serbian) at: http://www.parlament.gov.rs/%D0%A2%D1%80%D0%B5%D1%9B%D0%B0_%D1%81%D0%B5%D0%B4%D0%BD%D0%B8%D1%86%D0%B0_%D0%9F%D1%80%D0%B2%D0%BE%D0%B3_%D1%80%D0%B5%D0%B4%D0%BE%D0%B2%D0%BD%D0%BE%D0%B3.31421.43.html, last accessed: 21 July 2017. Decision on the election of Snežana Stanojković as the War Crimes Prosecutor was published in the Official Gazette of the Republic of Serbia, no. 47/17.

54 „Programi kandidata za izbor za Tužioca za ratne zločine“ [Programmes of the candidates for war crimes prosecutor], HLC, 25 November 2015, available (in Serbian) on the HLC website: <http://www.hlc-rdc.org/?p=30935>, last accessed: 21 July 2017.

55 „Election of Politically Suitable Prosecutors Undermines Rule of Law“, HLC, press release, 23.12.2015, available on the HLC website: <http://www.hlc-rdc.org/?p=30911&lang=de>, last accessed: 21 July 2017.

56 Obraćanje poslanika Marka Đurišića u Narodnoj skupštini Republike Srbije, prilikom izbora novog tužioca za ratne zločine [MP Marko Đurišić's address to the National Assembly of the Republic of Serbia on the occasion of the election of a new war crimes prosecutor], stenographic notes, Third sitting of the first regular session of the National Assembly of the Republic of Serbia in 2017, p. 97, available (in Serbian) at: http://www.parlament.gov.rs/%D0%A2%D1%80%D0%B5%D1%9B%D0%B0_%D1%81%D0%B5%D0%B4%D0%BD%D0%B8%D1%86%D0%B0_%D0%9F%D1%80%D0%B2%D0%BE%D0%B3_%D1%80%D0%B5%D0%B4%D0%BE%D0%B2%D0%BD%D0%BE%D0%B3.31421.43.html, last accessed: 05 September 2017.



In parallel with the non-election of the War Crimes Prosecutor, the Republic Public Prosecutor, Zagorka Dolovac, failed to act in accordance with the Law on the Public Prosecution and appoint an acting War Crimes Prosecutor,⁵⁷ and in this way put the ongoing war crimes trials in jeopardy. For example, the Court of Appeal in Belgrade ruled to reject the indictment in the *Srebrenica*⁵⁸ Case on 5 July 2017, 18 months after it was filed, on the grounds that it was not filed by an authorized prosecutor. By way of an analogy with this decision, the legality of the OWCP's work in this period in all other war crimes cases could also be challenged, as defense lawyers in the *Lovas* and *Ćuška* Cases already have.⁵⁹ Following this, the Court of Appeal in Belgrade rejected the indictment in the *Štrpci* Case,⁶⁰ and the Higher Court in Belgrade rejected the indictments in the following cases: *Ključ-Kamičak*,⁶¹ *Bosanska Krupa*,⁶² *Sanski Most-Lušci Palanka*⁶³ and *Bratunac*.⁶⁴

Prosecutorial Strategy for War Crimes Investigation and Prosecution

The Office of the War Crimes Prosecutor is process-wise the most active subject in war crimes cases. Therefore, its strategic orientation is crucial to increasing the efficiency in dealing with these cases. For a number of years now, the OWCP has been criticized

57 Law on the Public Prosecution (Official Gazette of the Republic of Serbia, nos. 116/2008, 104/2009, 101/2010, 78/2011 – other law, 101/2011, 38/2012 – decision of the Constitutional Court (CC), 121/2012, 101/2013, 111/2014 – CC decision, 117/2014, 106/2015 and 63/2016 – CC decision), Article 36.

58 Rešenje o odbacivanju optužnice KŽ 2 PO2 7/17, Apelacioni sud u Beogradu, Odeljenje za ratne zločine, 05 July 2017. [Decision dismissing indictment KŽ 2 PO2 7/17, Court of Appeal in Belgrade, War Crimes Department, 05 July 2017], available (in Serbian) at: http://www.hlc-rdc.org/wp-content/uploads/2017/07/Resenje_o_odbacivanju_optuznice.pdf. See also: *Srebrenica-Kravica* Case chronology (in Serbian) on the HLC website: <http://www.hlc-rdc.org/Transkripti/srebrenica.html>. All sources last accessed: 27 July 2017.

59 Report on the main hearing, 17 July 2017, available (in Serbian) on the HLC website at: http://www.hlc-rdc.org/wp-content/uploads/2017/07/29_Lovas_-_Izvestaj_sa_sudjenja_17.07.2017.pdf, last accessed: 08 August 2017.

60 „Odbačena optužnica za zločin u Štrpcima” [Indictment for Štrpci crime rejected], Insajder, 06 October 2017, available (in Serbian) at: <https://insajder.net/sr/sajt/vazno/7396/Odba%C4%8Dena-optu%C5%BEnica-za-zlo%C4%8Din-u-%C5%A0trpcima.htm>, last accessed: 30 October 2017.

61 Report on the main hearing, 13 October 2017, available (in Serbian) on the HLC website at: http://www.hlc-rdc.org/wp-content/uploads/2017/10/7_Kljuc_Kamicak_Izvestaj_sa_sudjenja_13.10.2017..pdf, last accessed: 30 October 2017.

62 Report on the main hearing, 09 October 2017 available (in Serbian) on the HLC website at: http://www.hlc-rdc.org/wp-content/uploads/2017/10/Bosanska_Krupa_-_Izvestaj_sa_sudjenja_09.10.2017..pdf, last accessed: 30 October 2017.

63 Report on the main hearing, 27 October 2017, available (in Serbian) on the HLC website at: http://www.hlc-rdc.org/wp-content/uploads/2017/11/Sanski_Most_-_Lusci_Palanka_-_Izvestaj_sa_sudjenja_27.10.2017..pdf, last accessed: 30 October 2017.

64 Report on the main hearing, 01 November 2017, available (in Serbian) on the HLC website at: http://www.hlc-rdc.org/wp-content/uploads/2017/11/Bratunac_-_Izvestaj_sa_sudjenja_01.11.2017..pdf, last accessed: 30 October 2017.



for its policy of prosecuting less demanding cases involving fewer victims, cases involving isolated and less serious incidents, and not prosecuting cases against high-level perpetrators.⁶⁵ Bearing in mind that there are at least 800 war crimes cases which are still at the preliminary investigation stage,⁶⁶ and that more than two decades have passed since the beginning of the armed conflicts, the planning of OWCP's material and human resources should be given top priority if Serbia wants to prosecute war crimes cases more efficiently.

The OWCP's strategy should clearly define the criteria for selecting war crimes cases that should be prosecuted and draw up a list of cases which will be given priority in prosecution. The selection criteria should be set by the OWCP itself, independently, and should include, among others, presence of high-ranking suspects, severity of crime (e.g. number of victims), evidence availability etc.⁶⁷

By the time of the publication of this report **the prosecutorial strategy had not been adopted.**⁶⁸

Transfer of War Crimes Cases from Courts of General Jurisdiction

Until the passing of the Law on Organization and Jurisdiction of Government Authorities in War Crimes Proceedings in 2003, trials of war crimes cases were conducted by the

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65 See: *War Crimes Proceedings in Serbia (2003-2014), An analysis of the OSCE Mission to Serbia's monitoring results*, OSCE Mission to Serbia, 2015, pp. 12-14; *Serbia 2016 Progress Report*, p. 67; *Ten years of war crimes prosecution in Serbia – Contours of Justice*, HLC, 2014, p. 12; *Model Strategy for the Prosecution of War Crimes Committed during and in relation to the Armed Conflicts in the Former Yugoslavia, Period 2015-2025*, HLC, pp. 12-14; *Transitional Justice in Serbia 2013-2015*, HLC, 2016, p. 15.

66 *Model Strategy for the Prosecution of War Crimes Committed during and in relation to the Armed Conflicts in the Former Yugoslavia, Period 2015-2025*, HLC, p. 11. The Model Strategy is available on the HLC website: http://www.hlc-rdc.org/wp-content/uploads/2015/04/Model-Strategy-for-the-Prosecution-of-War-Crimes-Committed-during-and-in-relation-to-the-Armed-Conflicts-in-the-Former-Yugoslavia_za-web.pdf, last accessed: 06 September 2017.

67 *National Strategy for the Prosecution of War Crimes*, p. 20; *Model Strategy for the Prosecution of War Crimes Committed during and in relation to the Armed Conflicts in the Former Yugoslavia, Period 2015-2025*, HLC, pp. 12-14. The Model Strategy is available on the HLC website: http://www.hlc-rdc.org/wp-content/uploads/2015/04/Model-Strategy-for-the-Prosecution-of-War-Crimes-Committed-during-and-in-relation-to-the-Armed-Conflicts-in-the-Former-Yugoslavia_za-web.pdf, last accessed: 06 September 2017.

68 OWCP's reply no. A 149/17, of 27 June 2017 to an HLC's request for information of public importance. OWCP's reply no. A.no. 78/17 of 28 April 2017 to an HLC's request for information of public importance. *Action plan for Chapter 23, with implementation status on 28 July 2017*, pp. 166-167. The report is available on the Ministry of Justice official website: <https://www.mpravde.gov.rs/files/Action%20plan%20for%20Chapter%2023%20with%20implementation%20status%20on%2028%20July%202017.pdf>, last accessed: 21 September 2017.



courts of general jurisdiction.⁶⁹ This law stipulates that the war crimes proceedings in which an indictment has been confirmed before the coming into force of the law will be completed by the courts which until that moment had jurisdiction over these cases.⁷⁰ According to the HLC data, at least ten war crimes cases or acts with elements of a war crime⁷¹ were heard by the courts of general jurisdiction after the establishment of the specialized court for war crimes, after being wrongly classified as some other type of criminal offences.⁷²

The war crimes trials conducted by the courts of general jurisdiction were characterized by excessive length of proceedings, lenient penalties for the perpetrators, and incompetence of judges and prosecutors in matters of international humanitarian law.⁷³ In addressing this, the National Strategy envisages that the OWCP is to register and take over all the war crimes cases which are still pending before the domestic courts of general jurisdiction in order to create accurate records of unsolved cases and acts that may qualify as war crimes.⁷⁴

According to the OWCP,⁷⁵ this office has taken over all the war crimes cases that were pending before the domestic courts and prosecutor's offices of general jurisdiction,⁷⁶ a total of 763 cases, which are currently being processed by the OWCP.⁷⁷ The OWCP stated that certainly not all of these cases would result in indictments.⁷⁸ The criteria used to search through and take over these cases are not known.

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69 Law on Organization and Jurisdiction of Government Authorities in War Crimes Proceedings (Official Gazette of the Republic of Serbia, nos. 67/2003, 135/2004, 61/2005, 101/2007, 104/2009, 101/2011 and 6/2015).

70 *Ibid*, Article 21.

71 These are the following Cases: *Kušnin* (District Court/Higher Court in Niš); *Orahovac* (District Court/Higher Court in Požarevac); *Oto Palinkaš et al.* (District Court/Higher Court in Kraljevo); *Sjeverin* (District Court in Belgrade); *Emini* (District Court/Higher Court in Niš); *Miloš Lukić* (District Court/Higher Court in Prokuplje); *Podujevo I* (District Court in Belgrade); *Pakšec* (District Court in Novi Sad); *Drago Stojiljković* (Higher Court in Vranje); *Nenad Bulatović* (District Court in Kraljevo).

72 See: *Report on War Crimes Trials in Serbia in 2013*, HLC, 2014; *Report on War Crimes Trials in Serbia During 2014 and 2015*, HLC, 2016.

73 *Ibid*.

74 *National Strategy for the Prosecution of War Crimes*, pp. 17-18.

75 *First Bi-Annual Report on Implementation of Action Plan for Chapter 23, as of 31 December 2016*, p. 5, available on the official website of the Ministry of Justice: <https://www.mpravde.gov.rs/files/Bi-annual%20Report%20on%20implementation%20of%20the%20Action%20plan%20for%20Chapter%2023%20as%20....pdf>, last accessed: 18 July 2017.

76 OWCP's reply no. A. 78/17 of 28 April 2017 to an HLC freedom of information request.

77 HLC interview with an OWCP representative, 07 September 2017.

78 *Ibid*.



Strengthening OWCP Capacity

One problem besetting the OWCP ever since its establishment is the insufficient number of deputy prosecutors, expert advisors and investigators.⁷⁹ All actors engaged in the monitoring of war crimes trials have pointed out the problem of the limited number of staff at the OWCP.⁸⁰

The Action Plan for Chapter 23, referenced in the National Strategy, foresees a gradual strengthening of the OWCP's capacity through the hiring of additional staff including seven deputy prosecutors and seven assistant prosecutors in the period 2015-2018, and the potential hiring of military experts.⁸¹ However, **the OWCP's capacity has not been strengthened since the adoption of the National Strategy**. Moreover, at the time of this writing, the OWCP had only five Deputy War Crimes Prosecutors, instead of eight as envisaged in its staffing plan.⁸²

After the adoption of the National Strategy, three Deputy War Crimes Prosecutor vacancies have been advertised.⁸³ As is the case with most other OWCP related activities that have not been implemented, the reason given so far was the significant delay in the

79 See: *Ten years of war crimes prosecution in Serbia – Contours of Justice*, HLC, 2014, pp. 13-14; *Model Strategy for the Prosecution of War Crimes Committed During and in Relation to the Armed Conflicts in the Former Yugoslavia, Period 2015-2025*, HLC, pp. 14-15.

80 See: *War Crimes Proceedings in Serbia (2003-2014), An analysis of the OSCE Mission to Serbia's monitoring results*, OSCE Mission to Serbia, 2015, pp. 47-48; *Serbia 2016 Progress Report*, p. 67; *Ten years of war crimes prosecution in Serbia – Contours of Justice*, HLC 2014, pp. 12-14; *Model Strategy for the Prosecution of War Crimes Committed During and in Relation to the Armed Conflicts in the Former Yugoslavia, Period 2015-2025*, HLC, pp. 14-15; *Transitional Justice in Serbia in the Period 2013-2015*, HLC, 2016, p. 14.

81 *Action Plan for Chapter 23*, pp. 107-108, Activity 1.4.1.2, available on the official website of the Ministry of Justice: <https://www.mpravde.gov.rs/files/Action%20plan%20Ch%2023.pdf>, last accessed: 05 September 2017.

82 Decision on the number of deputy public prosecutors (Official Gazette of the Republic of Serbia no. 106 of 05 December 2013, no. 94 of 17 November 2015, no. 114 of 31 December 2015, and no. 80 of 30 September 2016). The decision is available (in Serbian) at: <http://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/reg/viewAct/1d7bf745-079f-49bd-b824-27385230ba95>; see also: List of Deputy War Crimes Prosecutors (in Serbian) at: <http://www.tuzilastvorz.org.rs/sr/o-nama/biografije>. All sources last accessed: 11 July 2017.

83 *Report 3/2017 on implementation of the Action Plan for Chapter 23*, pp. 214-215. The report is available on the official website of the Ministry of Justice: <https://www.mpravde.gov.rs/files/Report%20no.%203-2017%20on%20implementation%20of%20Action%20plan%20for%20Chapter%2023.pdf>, last accessed: 09 November 2017. godine.



appointment of a new War Crimes Prosecutor.⁸⁴ Given all these factors, the observation contained in the report on implementation of the Action Plan for Chapter 23, that the activity relating to strengthening the OWCP's capacity is being implemented successfully, as the State Prosecutorial Council has drawn up a list of candidates for the positions of War Crimes Prosecutor and his/her deputies, sounds preposterous.⁸⁵

Bearing in mind that in the next six months two deputy war crimes prosecutors will become eligible for old-age retirement, the announced appointment of three deputy prosecutors will in fact not constitute a measure of capacity strengthening, but the mere filling of vacant posts. Moreover, even with the hiring of another three deputy prosecutors, the capacity of the OWCP will still be below the level envisaged in its staffing plan.

Improving the Position and Efficiency of the War Crimes Investigation Service

The War Crimes Investigation Service (WCIS), an organizational unit which is part of the Criminal Police Directorate (CPD) of the Serbian Ministry of the Interior (MoI), is responsible for uncovering and investigating war crimes committed on the territory of the former Yugoslavia.⁸⁶

Some of the challenges faced by the WCIS so far include: an inadequate framework for cooperation between this unit and the OWCP; the obstruction of investigations due to unwillingness on the part of police officers at the WCIS to investigate crimes committed by members of the Serbian police and military; and the lack of experienced staff.⁸⁷

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84 Obračanje ministarke pravde, Nele Kuburović u Narodnoj skupštini Republike Srbije, prilikom izbora novog tužioca za ratne zločine, stenografske beleške, Treća sednica prvog redovnog zasjedanja Narodne skupštine Republike Srbije u 2017. godini [Justice Minister Nela Kuburović's address to the National Assembly of the Republic of Serbia on the occasion of the election of a new War Crimes Prosecutor, stenographic notes, Third sitting of the first regular session of the National Assembly of the Republic of Serbia in 2017], p. 82, available (in Serbian) at: <http://www.parlament.gov.rs/%D0%A2%D1%80%D0%B5%D1%9B%D0%B0%D1%81%D0%B5%D0%B4%D0%BD%D0%B8%D1%86%D0%B0%D0%9F%D1%80%D0%B2%D0%BE%D0%B3%D1%80%D0%B5%D0%B4%D0%BE%D0%B2%D0%BD%D0%BE%D0%B3.31421.43.html>; *Report 1/2017 on implementation of Action Plan for Chapter 23*, p. 142-143. The report is available on the official website of the Ministry of Justice: <https://www.mpravde.gov.rs/files/Report%20no%20201-2017%20on%20implementation%20of%20Action%20plan%20for%20Chapter%2023.pdf>. All sources last accessed: 05 September 2017.

85 Report 4/2016 on implementation of the Action Plan for Chapter 23, p. 101.

86 Law on Organization and Jurisdiction of Government Authorities in War Crimes Proceedings (Official Gazette of the Republic of Serbia, nos. 67/2003, 135/2004, 61/2005, 101/2007, 104/2009, 101/2011 and 6/2015), Article 8.

87 See: *Ten years of war crimes prosecution in Serbia – Contours of Justice*, HLC 2014, pp. 31-36.



In addressing these problems and to improve the position and operation of this unit, the National Strategy⁸⁸ and Action Plan⁸⁹ envisaged **conducting an analysis of the legal and factual position and needs of the War Crimes Investigation Service**. According to the reports on implementation of the Action Plan for Chapter 23,⁹⁰ the analysis has been completed. However, **its findings have not been publicized**.

The HLC sees this lack of transparency as one of the key deficiencies in the reforms in the field of war crimes prosecution. Namely, the analysis of the situation and needs of the WCIS, upon which the reforms in this unit are supposed to be based, has not even partially been made public. While it is clear that the work of these bodies is of such a nature that it cannot and should not be fully transparent, this does not mean that members of the public and the legal community in particular should not be given at least partial information about the reforms taking place in the unit, especially if these reforms are envisaged in the Action Plan. In the HLC's view, **the sudden replacement of the Head of the War Crimes Investigation Service**, Dejan Marinković,⁹¹ epitomizes this non-transparency and wrong implementation of the Action Plan. Marinković was removed from office in August 2016, right after the final report on the analysis of the legal and factual situation in the WCIS and its needs had been completed. As his dismissal was not publicly announced, it was not possible to find out whether the reasons for it had anything to do with the analysis and solutions envisaged by the law.

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88 *National Strategy for the Prosecution of War Crimes*, p. 23.

89 *Action Plan for Chapter 23*, pp. 113-114, Activity 1.4.1.7. The Action Plan is available on the official website of the Ministry of Justice: <https://www.mpravde.gov.rs/files/Action%20plan%20Ch%2023.pdf>, last accessed: 06 September 2017.

90 See: *Report 1-2/2016 on implementation of the Action Plan for Chapter 23*, pp. 75-76. The report is on the official website of the Ministry of Justice: <https://www.mpravde.gov.rs/files/Report%20no.%201-2-2016%20on%20Implementation%20of%20Action%20plan%20for%20Chapter%2023.pdf>; *Report 3/2016 on implementation of the Action Plan for Chapter 23*, pp. 85-86. The report is available at: <https://www.mpravde.gov.rs/files/Report%20No%20%203-2016%20on%20implementation%20of%20Action%20plan%20for%20Chapter%2023.pdf>; *Report 4/2016 on implementation of the Action Plan for Chapter 23*, p. 106-107. The report is available at: <https://www.mpravde.gov.rs/files/Report%20no.%204-2016%20on%20implementation%20of%20Acti%20on%20plan%20for%20Chapter%2023.pdf>; *Report 1/2017 on implementation of the Action Plan for Chapter 23*, pp. 147-149. The report is available at: <https://www.mpravde.gov.rs/files/Report%20no.%20%201-2017%20on%20implementation%20of%20Action%20plan%20for%20Chapter%2023.pdf>; *Report 2/2017 on implementation of the Action Plan for Chapter 23*, pp. 185-189. The report is available at: <https://www.mpravde.gov.rs/files/Report%20no.%202-2017%20on%20implementation%20of%20Action%20plan%20for%20Chapter%2023.pdf>. All sources last accessed: 30 October 2017.

91 As of August 2016 Momčilo Stevanović is the Head of the War Crimes Investigation Service. MoI's reply no. 1346/16/3 of 06 January 2017.



- **Framework for Cooperation Between the WCIS and the OWCP**

Following commencement of the implementation of the new CPC in 2012, the OWCP was given wider powers to direct and control the police during preliminary investigations. These changes in procedure exposed the weaknesses in the cooperation between the OWCP and WCIS. The OWCP stressed that the WCIS does not respond to its requests promptly, while the WCIS reproached the OWCP for conducting investigations without its knowledge.⁹²

Some of the proposed solutions to the problems in the cooperation between the OWCP and WCIS included ensuring the formal subordination of the WCIS to the OWCP, by moving this service out of the MoI structure. According to another view, the WCIS should be moved under the control of the OWCP or the Ministry of Justice.⁹³

As stipulated in the Action Plan for Chapter 23, the analysis of the legal and factual position and the needs of the WCIS should pay special attention to changing the position of the WCIS within the MoI. However, the Action Plan does not envisage the possibility of moving the WCIS under the jurisdiction of institutions other than the Police Directorate.

As stated in Report 2/2017, the analysis has found that the WCIS should not be removed from the Criminal Police Directorate it is part of under the current organizational scheme. However, the analysis has not provided adequate reasons for such a finding, or explained how it would solve the problems in cooperation between the WCIS and OWCP which prompted the analysis in the first place.⁹⁴ An additional problem is that MoI conducted the analysis on its own, without consultations with other relevant bodies. OWCP was not included in the process,⁹⁵ although the Action Plan for Chapter 23⁹⁶ specifically indicates the OWCP, in addition to the MoI, is responsible for conducting the analysis.⁹⁷

The OWCP responded that after reading the analysis of the legal and factual situation and needs of the WCIS, they will start implementing activities aimed at improving cooperation.⁹⁸ According to the OWCP, they now hold meetings with the WCIS more frequently - once a week. Also, joint investigative teams between the OWCP and the WCIS are being established for each case, at the preliminary investigation stage.⁹⁹

92 See: *Ten years of war crimes prosecution in Serbia – Contours of Justice*, HLC 2014, pp. 34-35.

93 *Ibid*, p. 34.

94 *Ibid*, pp. 34-35.

95 HLC interview with an OWCP representative, 07 September 2017.

96 *Action Plan for Chapter 23*, pp. 113-114, Activity 1.4.1.7.

97 OWCP's reply no. A.no. 149/17 of 27 June 2017 to an HLC's request for information of public importance.

98 OWCP's reply no. A.no. 149/17 of 27 June 2017 to an HLC's request for information of public importance.

99 OWCP's reply no. A.no. 149/17 of 27 June 2017 to an HLC request for information of public importance; HLC interview with an OWCP representative, 07 September 2017.



- **Vetting – Checking the Wartime Past of WCIS Members**

As far back as 2009, the European Commission pointed out that “law enforcement authorities have been reluctant to investigate [war crimes] allegations within their own ranks fully.”¹⁰⁰ The most plausible reason for their reluctance may be the fact that some members of the WCIS took part in the armed conflicts in the former Yugoslavia.¹⁰¹ The HLC does not have information as to whether the officers who participated in the conflicts are still employed by the WCIS.

In addressing this serious and longstanding problem, the Action Plan and the National Strategy foresee that the analysis of the legal and factual situation of the WCIS should pay special attention to the issue of reforming the hiring process in order to prevent the hiring of people who were involved in the armed conflicts.¹⁰²

The second report on implementation of the Action Plan for 2017 states that **rules preventing hiring ex-combatants at the WCIS have been adopted**.¹⁰³ The report also states that none of the persons currently working for the WCIS participated in the armed conflicts in the former Yugoslavia.¹⁰⁴

However, by looking at the rulebooks it cannot be concluded that the prescribed procedures for selecting new candidates can really prevent hiring those candidates who have participated in the armed conflicts. Namely, the rulebooks’ provisions prescribe how vacancies are to be announced internally, the application process, the selection process, verification and evaluation of candidates etc., but **do not envisage mandatory checks into candidates’ wartime backgrounds**.¹⁰⁵ The rulebooks should contain a provision expressly forbidding the hiring of participants in war operations and establish the procedure by which to achieve this goal.

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100 European Commission, *2009 Progress Report on Serbia*, p. 21, 14 October 2009.

101 *Ten years of war crimes prosecution in Serbia – Contours of Justice*, HLC, 2014, pp. 31-32.

102 *Action Plan for Chapter 23*, pp. 107-108, Activity 1.4.1.7. The Action Plan is available on the official website of the Ministry of Justice: <https://www.mpravde.gov.rs/files/Action%20plan%20Ch%2023.pdf>, last accessed: 05 September 2017.

103 *Ibid.* In this respect the Report 2/2017 states as follows: “Rulebook on internal job postings at MoI” (Official Gazette of the Republic of Serbia no. 73/2016), “Rulebook on competencies of MoI employees” (Official Gazette of the Republic of Serbia no. 52/2016); and Law on Police (Official Gazette of the Republic of Serbia no. 6/16).

104 *Ibid.*

105 *Rulebook on internal job postings at MoI* (Official Gazette of the Republic of Serbia no. 73/2016), Articles 6-16.



- **Capacity of the War Crimes Investigation Service**

Poor technical capacities, including outdated computers and ageing and decrepit vehicles are some of the problems faced by the WCIS.¹⁰⁶

The National Strategy foresees that on the basis of the analysis of the legal and factual situation of the WCIS, the MoI will undertake urgent measures to secure the optimal status and capacity for the service.¹⁰⁷ This activity was mentioned in the second and the third report on implementation of the Action Plan in 2017, where it was described as “implemented successfully”.¹⁰⁸ Mentioned reports contain very little information about the steps that have been undertaken, which mostly concern some technological and material improvements.¹⁰⁹

2. TRIALS

Objective 1: Improved efficiency of trials for war crimes, by ensuring continuity in the composition of the judicial chambers.

Objective 2: Harmonized jurisprudence of all war crimes courts and chambers in former Yugoslavia, through the establishment of a regional database.

Objective 3: Improved conditions in courtrooms where war crimes trials are conducted.

Objective 4: Continuous improvement of expertise of the holders of judicial office and staff engaged in war crimes cases.

Improved Efficiency of War Crimes Trials Through Securing Continuity in the Composition of War Crimes Chambers

The War Crimes Department of the Higher Court in Belgrade has six judges sitting in two chambers and one judge serving as a pre-trial judge.¹¹⁰ Between 2012 and the end of

106 See: *Ten years of war crimes prosecution in Serbia – Contours of Justice*, HLC 2014, pp. 32-33.

107 *National Strategy for the Prosecution of War Crimes*, p. 19.

108 *Report 2/2017 on implementation of Action Plan for Chapter 23*, pp. 189-192. The report is available on the official website of the Ministry of Justice: <https://www.mpravde.gov.rs/files/Action%20plan%20for%20Chapter%2023%20with%20implementation%20status%20on%2028%20July%202017.pdf>; *Report 3/2017 on implementation of Action Plan for Chapter 23*, str. 225-229, the report is available at: <https://www.mpravde.gov.rs/files/Report%20no.%203-2017%20on%20implementation%20of%20Action%20plan%20for%20Chapter%2023.pdf>. All sources last accessed: 09 November 2017.

109 *Ibid.*

110 Roster of judges, Higher Court in Belgrade, available (in Serbian) on the official website of the court: <http://www.bg.vi.sud.rs/lt/articles/o-visem-sudu-uredjenje/sudije/>, last accessed: 05 September 2017.



2015, five judges were removed from the War Crimes Department in Belgrade.¹¹¹ Given the total number of judges in this department, frequent changes of judges not only cause delays in proceedings, as new judges need some time to become familiar with the case they are assigned to, but also affect the quality of the trials.

Thus, for example, Judges Snežana Nikolić Garotić and Bojan Mišić were transferred from the War Crimes Department to another department by a decision of the President of the Higher Court before the expiry of their six-year term prescribed by the Law on War Crimes. As at the time of transfer, Judges Nikolić Garotić¹¹² and Bojan Mišić¹¹³ were each handling five war crimes cases, this led to significant delays in these proceedings.

Since the adoption of the National Strategy no judge has been removed from the war crimes chambers, which doubtless is a positive development. Yet, the HLC is of the opinion that appropriate measures are needed to prevent once and for all such changes from taking place in the future. The Court Rules of Procedure give ample discretion to the President of the Higher Court to transfer and reassign judges by giving him only vague guidelines, such as “to ensure the legal, orderly and uniform performance of tasks”.¹¹⁴ The HLC believes that giving such broad discretionary powers in a process which is, by its very nature, non-transparent, leaves space for motives other than legal ones to come into play. The European Commission’s recommendation to Serbia to “establish and implement a fair and transparent merit-based recruitment system and career management to better guarantee the operational independence of the justice system” could be understood along these lines.¹¹⁵

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Greater Uniformity of Jurisprudence in all Courts and War Crimes Departments in the Region of the Former Yugoslavia Through the Creation of a Regional Database

The National Strategy envisages that the War Crimes Prosecutor should start talks with his counterparts in the states in the region on the establishment of a consolidated regional database of all war crimes case trials, which would be electronically accessible

111 Judges Olivera Anđelković, Tatjana Vuković, Rastko Popović, Snežana Nikolić Garotić and Bojan Mišić.

112 Judge Snežana Nikolić Garotić heard the following cases: *Gradiška, Ljubenić, Bosanski Petrovac - Gaj, Sotin and Bijeljina II*. See: *Report on War Crimes Trials in Serbia During 2014 and 2015*, HLC, 2016, pp. 18-20.

113 *Ibid.* Judge Bojan Mišić heard the following cases: *Lovas, Bihać II, Sanski Most - Kijevo, Trnje and Bosanski Petrovac*.

114 *Courts' Rules of Procedure* (Official Gazette of the Republic of Serbia nos. 110/09, 70/11, 19/12 and 89/13), Article 48.

115 *2015 Progress Report on Serbia*, p. 11, available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2015/20151110_report_serbia.pdf, last accessed: 14 September 2017.



to all courts and parties to proceedings.¹¹⁶ The regional database, which would aim to improve the uniformity of practice of all courts in the region, was not established at the time of completion of this report.¹¹⁷

Continuous Upgrading of Expertise of Judicial Office Holders and Staff Engaged in War Crimes Cases

According to the Law on Organization and Jurisdiction of Government Authorities in War Crimes Proceedings, in the placement of judges in the War Crimes Department of the Higher Court preference should be given to judges who possess the required expertise and experience in the field of international humanitarian law and human rights law.¹¹⁸ This provision was echoed in the National Strategy. Nonetheless, **in the preceding period no trainings for judicial office holders have been delivered.**¹¹⁹

This activity takes on particular importance given that almost all of the judges who were initially placed in the War Crimes Department and trained were later removed (see the finding above) to be replaced by judges with no experience in the complex field of war crimes.

According to the information obtained from the Judicial Academy, the institution tasked with the implementation of this activity, **no specialized trainings in the field of humanitarian law have been provided to judicial office holders and staff engaged in war crimes cases** as part of their training programs.¹²⁰ The interviewed representative of the OWCP confirmed that no training courses have been organized in cooperation with the Judicial Academy.¹²¹ However, since the OWCP's Victim and Witness Information and Support Service become operational in April 2017, its staff has received training in witnesses support.¹²²

Improved Conditions in Courtrooms Used for War Crimes Trials

War crimes trials take place in the Higher Court building in Belgrade, at 29 Ustanička Street, which houses the War Crimes Department. There are four courtrooms available for war crimes trials, which are also used for organized crime trials. Although war crimes

116 *National Strategy for the Prosecution of War Crimes*, p. 24.

117 HLC interview with an OWCP representative, 07 September 2017.

118 Law on Organization and Jurisdiction of Government Authorities in War Crimes Proceedings (Official Gazette of the Republic of Serbia, nos. 67/2003, 135/2004, 61/2005, 101/2007, 104/2009, 101/2011 and 6/2015), Article 10, para. 6.

119 Reply of the High Court Council no. 7-00-00089/2017-01 of 30 June 2017 to an HLC's freedom of information request.

120 HLC interview with a representative of the Judicial Academy, 30 August 2017.

121 HLC interview with an OWCP representative, 07 September 2017.

122 *Ibid.*



and organized crime trials take place in both the morning and afternoon, the inadequacy of the premises makes it impossible to hold hearings at a faster pace.¹²³ This is why the Strategy envisions holding hearings in the appropriate courtrooms of other courts as well.¹²⁴ Better technology equipment for courtrooms is also envisaged, although the kind of equipment to be provided is not specified.

In this regard, the Ministry of Justice has said that investment in the infrastructure of the judicial network will be based on a mid-term assessment of the state of the judicial network.¹²⁵ However, the information presented in the report on implementation of the Action Plan does not make clear whether this would also include ensuring resources for equipping the courtrooms used for war crimes trials.

- **Simultaneous Interpretation**

Improving conditions in the courtrooms should in the coming period also include **providing conditions for unhindered simultaneous interpretation during hearings**. Two of the four courtrooms used for war crimes trials currently do not have simultaneous interpretation booths. As a consequence, it has happened on several occasions that victims have not been provided with simultaneous interpretation, contrary to the CPC, which clearly prescribes that parties are entitled to interpretation and translation if the proceedings are conducted in a language they do not understand.¹²⁶

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In the *Trnje* Case, for instance, an injured party whose mother and four sisters were killed in a crime regularly attends the trial without ever missing a hearing. Although aware of his regular attendance at the hearings, the presiding judge nonetheless on several occasions scheduled hearings in courtrooms that were not equipped for simultaneous interpretation. Because of that, the interpreters had to sit next to him and translate what was being said into his ear. The defense lawyers reacted vehemently, saying that the interpreter was too loud and therefore disrupting the proceedings. All this made the injured party feel uncomfortable and effectively prevented him from exercising his right to follow the proceedings in a language that he understood.¹²⁷

123 See: *Ten years of war crimes prosecution in Serbia – Contours of Justice*, HLC 2014, p. 37.

124 *National Strategy for the Prosecution of War Crimes*, p. 21.

125 Reply no. 7-00-142/2017-32 of 27 April 2017 of the Ministry of Justice to an HLC freedom of information request. *Report 1/2017 on implementation of the Action Plan for Chapter 23*, pp. 65-68, available at: <https://www.mpravde.gov.rs/files/Report%20no%20201-2017%20on%20implementa-tion%20of%20Action%20plan%20for%20Chapter%2023.pdf>, last accessed: 12 July 2017.

126 Criminal Procedure Code (Official Gazette of the Republic of Serbia, nos. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013 and 55/2014), Article 11, para. 3.

127 Transcript of the main hearing of 07 June 2017, p. 6, available (in Serbian) at: <http://www.hlc-rdc.org/wp-content/uploads/2016/06/22-07.06.2016..pdf>, last accessed: 12 September 2017.



- **Video Recordings of Main Hearings**

Technology upgrades in courtrooms should also enable **video recordings in war crimes cases**, in accordance with the CPC.¹²⁸ Although all four courtrooms of the War Crimes Department have the necessary video equipment,¹²⁹ it has **never been used to make video records of main hearings**.¹³⁰

The HLC has been trying for years, without success, to find out why this is so. If hearings are not recorded owing to the lack of financial resources to cover the accompanying costs related to maintenance of the equipment, engagement of additional technical staff, etc., then **additional funds should be provided for these purposes**.

PROTECTION OF WITNESSES AND VICTIMS

Objective 1: Improved normative framework for effective functioning of the witness protection system in war crimes proceedings in Serbia.

Objective 2: Enhanced institutional capacity for witness protection in war crimes proceedings.

Objective 3: Improved position of witnesses and victims during the criminal proceedings through consistent application of procedural disciplinary measures.

Objective 4: Enhanced cooperation of state bodies involved in the witness protection system.

The most important and also most widely used evidence in war crimes trials are witness testimonies. Effective witness protection measures are therefore necessary to ensure that more witnesses cooperate safely in war crimes prosecution. The current witness protection system is controversial and widely criticized.¹³¹

128 Criminal Procedure Code (Official Gazette of the Republic of Serbia, nos. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013 and 55/2014), Article 236.

129 Reply no. Su 42/15-110 of 13 July 2015 of the Higher Court in Belgrade to an HLC freedom of information request.

130 Milica Kostić, „Public’s Right to Know of War Crimes Trials in Serbia”, Analysis of Current Issues in War Crimes Proceedings, Collection of Papers, Belgrade Center for Human Rights, Belgrade, 2016, pp. 21-22.

131 Report by Nils Muižnieks, Council of Europe Commissioner for Human Rights, following his visit to Serbia, from 16 to 20 March 2015, available at: <http://www.coe.int/en/web/commissioner/-/serbia-impunity-for-war-crimes-discrimination-and-lack-of-media-freedom-hamper-human-rights-progress>; Serbia Progress Reports 2013 (p. 12), 2014 (pp. 72-73), 2015 (p. 22), and 2016 (p. 67), European Commission, available at: <http://www.mei.gov.rs/src/dokumenta/eu-dokumenta/godisnji-izvestaji-ek.S>. All sources last accessed: 13 September 2017.



When it comes to procedural protective measures, judges have been severely criticized for not issuing formal warnings to or imposing fines on the accused or their defense counsel who address witnesses in an inappropriate manner or even openly insult them.¹³²

The most serious problems in the witness protection system in Serbia concern the application of extra-procedural protection measures, namely the Protection Program for Participants in Criminal Proceedings.¹³³ In that context, the performance of the Witness Protection Unit and the ineffective extra-procedural protection of “insider” witnesses (former and current active-duty members of the armed forces of the Republic of Serbia) has drawn particularly harsh criticism.¹³⁴

Procedural Measures for Witness Protection

The CPC provides for special procedural measures for witness protection to be used during criminal proceedings.¹³⁵ Procedural protective measures encompass measures to protect the integrity of witnesses, highly vulnerable witnesses and witnesses who face risks as a result of their giving evidence in court.¹³⁶

- **Protection of the Integrity of Witnesses**

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In the war crimes trials held so far, there have been instances of defendants and defense lawyers addressing witnesses in disparaging and offensive terms at the main hearings without being adequately punished for inappropriate behavior. Instead, judges for the most part would give them only informal cautions, never making use of the punishments available under the CPC.¹³⁷ In the *Čuška* Case, for instance, the Presiding Judge just gave an informal caution to the defendants who were laughing and shouting remarks during

132 *Transitional Justice in Serbia in the Period 2013-2015*, HLC, 2016, pp. 30-31; *Ten years of war crimes prosecution in Serbia – Contours of Justice*, HLC, 2014, pp. 65-67.

133 *Transitional Justice in Serbia in the Period 2013-2015*, HLC, 2016, pp. 30-31.

134 *War Crimes Proceedings in Serbia (2003-2014), An analysis of the OSCE Mission to Serbia's monitoring results*, OSCE Mission to Serbia, 2015, pp. 85-86; *Ten years of war crimes prosecution in Serbia – Contours of Justice*, HLC, 2014, p. 66; *Model Strategy for the Prosecution of War Crimes Committed during and in relation to the Armed Conflicts in the Former Yugoslavia, Period 2015-2025*, HLC, pp. 21-22.

135 Criminal Procedure Code (Official Gazette of the Republic of Serbia, nos. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013 and 55/2014), Art. 102-111.

136 *Ten years of war crimes prosecution in Serbia – Contours of Justice*, HLC, 2014, p. 67.

137 Criminal Procedure Code (Official Gazette of the Republic of Serbia, nos. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013 and 55/2014), Article 102. See the examples which illustrate this in: *Ten years of war crimes prosecution in Serbia – Contours of Justice*, HLC, 2014, pp. 66-68.



the testimony of witness Fazila Hiseni, asking them to show some respect to Fazila, a mother whose child had been killed and who still did not know the whereabouts of the child's mortal remains.¹³⁸

Although the CPC provides for formal cautions and fines of up to 150,000 dinars (around 1,000 euros) for defendants or defense lawyers who insult an injured party or witness, or threaten him/her or threaten his/her safety, judges have so far mostly cautioned defendants or their lawyers only informally.¹³⁹

The National Strategy requires criminal chambers to apply consistently the provisions of the CPC regulating the sanctioning of participants in proceedings who violate the courtroom order, particularly if they attack the integrity of witnesses and victims.¹⁴⁰ When asked about this matter, the Higher Court in Belgrade responded that since the adoption of the National Strategy the chambers of its War Crimes Department have not faced situations which would require the application of the CPC provisions regarding the sanctioning of participants when disrupting the courtroom order in violation of the CPC.¹⁴¹

The system for procedural protection of witnesses has proved ineffective so far, not least because certain protection mechanisms have never been used in practice. Therefore, the application of the CPC provisions on sanctioning attacks on the integrity of witnesses needs to be monitored from now on, to see if any progress is going to be made in this area.

- **Protection of Victims of Sexual Violence**

Special protective measures should be put in place for victims of sexual violence as highly vulnerable witnesses. Internationally, special standards have been set and obligations imposed on institutions dealing with sexual violence survivors during trials.¹⁴² They include measures such as excluding the public from hearings at which a sexual violence victim is giving evidence, giving testimony through one-way closed circuit television, and special rules regarding the evaluation of evidence (the victim's testimony does not have to be corroborated by other evidence, consent of the victim cannot be used as grounds for

138 *Čuška Case* (K-Po2 48/2010), examination of witness Fazila Hiseni at the main hearing of 06 June 2013, p. 53, available (in Serbian) at: <http://www.hlc-rdc.org/wp-content/uploads/2014/04/71-06.06.2013.pdf>, last accessed: 13 September 2017. For more examples see: *Ten years of war crimes prosecution in Serbia – Contours of Justice*, HLC, 2014, pp. 63-66.

139 *Ten years of war crimes prosecution in Serbia – Contours of Justice*, HLC, 2014, p. 67.

140 *National Strategy for the Prosecution of War Crimes*, p. 26.

141 Reply Su II 17/a no. 93/17 of 18 May 2017 of the Higher Court in Belgrade in response to an HLC request for information of public importance.

142 Milica Kostić, „*The Gender Dimension of War Crimes: Sexual Violence against Women*”, Belgrade Centre for Security Policy, Belgrade, 2017, pp. 9-10.



acquittal if the victim was subjected to violence or intimidation or if she feared for her life or for her loved ones, and evidence of victim's prior sexual behavior is not admissible).¹⁴³

None of the above-mentioned rules were introduced into the national legislation. Furthermore, the rule on inadmissibility of evidence on the prior sexual behavior of a victim was even excluded from the new CPC (the CPC in force until 2009 contained this rule).¹⁴⁴

National laws do not provide for any special protective measures for sexual violence victims. But the real problem lies in the fact that courts do not consistently apply even the existing protective measures available under the law.¹⁴⁵ In the *Lekaj* Case, for example, the court did not even order the exclusion of the public from court during the testimony of S. T., who survived rape at the age of 14.¹⁴⁶

Survivors of sexual violence have been declared protected witnesses in only three cases so far – *Skočić*,¹⁴⁷ *Gnjilanska grupa [Gnjilane Group]*¹⁴⁸ and *Bratunac*.¹⁴⁹

Although the shortcomings in the witness protection system were identified a while ago,¹⁵⁰ neither the National Strategy nor the Action Plan¹⁵¹ envisages any activities to improve protection of this category of witnesses. One such activity could be aligning the domestic system with international standards.¹⁵²

143 See: ICTY, Rules of Procedure and Evidence, Articles 75 and 96; *UN Convention against Transnational Organized Crime* (Official Gazette of the FRY – International Treaties, no. 6/2001), Article 24; and Council of Europe Resolution 1212 on Rape in Armed Conflicts (2000), para. 6.

144 Criminal Procedure Code (Official Gazette of the Republic of Serbia, nos. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013 and 55/2014), Article 107.

145 *Model Strategy for the Prosecution of War Crimes Committed during and in relation to the Armed Conflicts in the Former Yugoslavia, Period 2015-2025*, HLC, p. 21.

146 *Lekaj* Case, District Court in Belgrade, case no. K.V. no. 4/05; witness S.T. testified on 20 December 2005.

147 *Skočić* Case, Higher Court in Belgrade, case no. K-Po2 11/2014.

148 *Gnjilanska grupa [Gnjilane Group]* Case, Higher Court in Belgrade, case no. K-Po2 33/2010.

149 *Bratunac* Case, Higher Court in Belgrade, case no. K-Po2 5/2016.

150 *Ten years of war crimes prosecution in Serbia – Contours of Justice*, HLC, 2014, pp. 68-69.

151 *National Strategy for the Prosecution of War Crimes*, pp. 17-18 and 25-27; *Action Plan for Chapter 23*, pp. 121-125, Activity 1.4.4.

152 *Model Strategy for the Prosecution of War Crimes Committed during and in relation to the Armed Conflicts in the Former Yugoslavia, Period 2015-2025*, HLC, p. 22.



Non-procedural Witness Protection

This type of protection refers to ordinary witness protection measures stipulated by the CPC and a special witness protection program provided for in the Law on the Protection Program for Participants in Criminal Proceedings.¹⁵³

• Application of Article 102 of the Criminal Procedure Code

The problem with the CPC provision regulating the protection of witnesses lies in the wording of Article 102, paragraph 5 of this article.¹⁵⁴ Namely, this paragraph states that the prosecutor or court *may* request that the police undertake measures to protect an injured party or a witness, where the word “may” does not imply an *obligation* for a prosecutor or a court to require police protection for a witness.

On several occasions, while giving evidence at main hearings, former or current members of Serbian armed forces mentioned threats they had received outside of the courtroom. Only in one of these cases has the chamber informed the public that it reported the threats to the police.¹⁵⁵ In other cases, however, it was not possible to find out whether the court has complied with its obligations under the CPC, because no records are being kept of actions undertaken in accordance with Article 102, paragraph 5.¹⁵⁶

153 Criminal Procedure Code (Official Gazette of the Republic of Serbia, nos. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013 and 55/2014), Article 102; Law on the Protection Programme for Participants in Criminal Proceedings (Official Gazette of the Republic of Serbia no. 85/2005).

154 Article 102 of the CPC reads as follows:

The authority conducting proceedings is required to protect an injured party or witness from an insult, threat and any other attack.

The public prosecutor or the court will caution a participant in proceedings or other person, who before the authority conducting the proceedings insults an injured party or a witness, threatens him or endangers his safety, and the court may also fine him with up to 150,000 dinars.

An appeal against a ruling pronouncing a fine is decided on by the chamber. The appeal does not stay the execution of the ruling.

Upon receiving notification from the police or the court or upon learning about violence or a serious threat directed at an injured party or a witness, the public prosecutor will undertake criminal prosecution or notify the competent public prosecutor thereof.

The public prosecutor or the court may request that the police undertake measures to protect an injured party or a witness in accordance with the law.

155 *Ćuška* Case, transcript of the main hearing of 26 January 2012, p. 79, available (in Serbian) at: <http://www.hlc-rdc.org/wp-content/uploads/2012/02/36-26.01.2012.pdf>, last accessed: 14 September 2017.

156 *Report 1/2017 on implementation of Action Plan for Chapter 23*, p. 151. The report is available on the official website of the Ministry of Justice at: <https://www.mpravde.gov.rs/files/Report%20no%20%201-2017%20on%20implementation%20of%20Action%20plan%20for%20Chapter%2023.pdf>, last accessed: 13 September 2017.



As regards enhancing the normative framework governing the witness protection system, both the National Strategy¹⁵⁷ and the Action Plan¹⁵⁸ envisage conducting an analysis of the courts' application of Article 102 of the CPC. Report 2/2017 on implementation of the Action Plan¹⁵⁹ states that the analysis was conducted as part of a comprehensive analysis of the level of alignment of the Serbian normative and institutional framework with the relevant EU law in the area of witness and victim support. The Ministry of Justice delivered the text of the analysis to the HLC after the HLC requested access to this document under the freedom of information law.¹⁶⁰

The text delivered contains a finding that the phrasing of paragraph 5 of Article 102 is adequate and “enables a public prosecutor or a court to assess whether or not the objective circumstances in a given case provide grounds for requesting police protection.” Among the problems in the application of this provision, the text cites inconsistencies in the way courts act upon injured parties' or witnesses' complaints that their safety has been threatened.

These two findings are clearly contradictory, because if the phrasing of the provision is adequate and enables assessment on the basis of objective circumstances, how come that courts act inconsistently. If this provision were changed in order to make it obligatory, instead of optional, for prosecutors and courts to request police protection for a threatened witness, the practice of courts in this respect would likely become more consistent.

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With a view to improving the implementation of this provision, the analysis foresees provision of specialized trainings to judges, public prosecutors and lawyers dealing with war crimes cases. However, a mere analysis without defining concrete measures to improve witness protection is not an adequate response to the serious problems encountered so far.

If the wording of paragraph 5 of Article 102 is left unchanged, making it optional, not obligatory, for prosecutors and courts to request police protection for witnesses who report being threatened, these witnesses will continue to be inadequately protected.¹⁶¹

157 *National Strategy for the Prosecution of War Crimes*, pp. 25-26.

158 *Action Plan for Chapter 23*, p. 121-122, Activity 1.4.4.1.

159 *Action Plan for Chapter 23, with implementation status on 28th July 2017*, pp. 178-179: <https://www.mpravde.gov.rs/files/Action%20plan%20for%20Chapter%2023%20with%20implementation%20status%20on%2028%20July%202017.pdf>, last accessed 13 September 2017.

160 Ministry of Justice's reply no. 7-00-189/2017-32 of 05 July 2017 to an HLC request for information of public importance.

161 *Ten years of war crimes prosecution in Serbia – Contours of Justice*, HLC, 2014, p. 70.



Another thing that remains unclear from the text is the composition of the working group which drafted the analysis, and whether it included members of the OWCP, War Crimes Departments of the Higher Court and the Court of Appeal and Witness Protection Unit, as foreseen in the Action Plan.¹⁶²

- **Analysis of the Implementation of the Law on the Protection Program for Participants in Criminal Proceedings**

The Protection Program for Witnesses in War Crimes Proceedings as an extra-procedural protection mechanism¹⁶³ has been implemented pursuant to the Law on the Protection Program for Participants in Criminal Proceedings.¹⁶⁴ The program is implemented by the Witness Protection Unit (hereinafter: Unit), a specialized organizational unit within the Ministry of the Interior.¹⁶⁵

The work of the Witness Protection Unit, which has been described as “improper behavior,”¹⁶⁶ unlawful and unprofessional,¹⁶⁷ is an indictment of the system of extra-procedural witness protection.

The biggest problem when it comes to the Witness Protection Unit has been the protection of witnesses who were members of Serbian armed forces, as members of the unit have often shown overt resentment towards them.¹⁶⁸ Threats, insults and humiliating treatment by members of the Witness Protection Unit have been reported by witnesses in the *Leskovac group*¹⁶⁹ and *Čuška*¹⁷⁰ Cases.

As regards enhancing institutional capacity for protection of witnesses in war crimes proceedings, the Action Plan and the National Strategy envisage conducting an assessment

162 *Action Plan for Chapter 23*, pp. 121-122, Activity 1.4.4.1.

163 Law on the Programme for Protection of Participants in Criminal Proceedings (Official Gazette of the Republic of Serbia no. 85/2005).

164 *Ten years of war crimes prosecution in Serbia – Contours of Justice*, HLC, 2014, p. 66.

165 Law on the Protection Programme for Participants in Criminal Proceedings (Official Gazette of the Republic of Serbia no. 85/2005).

166 *War Crimes Proceedings in Serbia (2003-2014), An analysis of the OSCE Mission to Serbia’s monitoring results*, OSCE Mission to Serbia, 2015, p. 85.

167 *Ten years of war crimes prosecution in Serbia – Contours of Justice*, HLC, 2014, p. 71.

168 *War Crimes Proceedings in Serbia (2003-2014), An analysis of the OSCE Mission to Serbia’s monitoring results*, OSCE Mission to Serbia, 2015, pp. 85-86; *Ten years of war crimes prosecution in Serbia – Contours of Justice*, HLC, 2014, pp. 69-71; *Model Strategy for the Prosecution of War Crimes Committed during and in relation to the Armed Conflicts in the Former Yugoslavia, Period 2015-2025*, HLC, pp. 22-23.

169 *Ten years of war crimes prosecution in Serbia – Contours of Justice*, HLC, 2014, p. 75.

170 *Čuška Case*, trial transcript, 25 January 2012, available (in Serbian) at: <http://www.hlc-rdc.org/wp-content/uploads/2012/02/35-25.01.2012.pdf>, last accessed: 14 September 2017.



of the position and needs of the Unit (hereinafter: Assessment).¹⁷¹ The Assessment should first and foremost determine whether there is a need for „corrective measures“ in the process of hiring staff - that is to say, whether the participation of an applicant in the armed conflicts in former Yugoslavia should constitute grounds for disqualifying such an applicant from the process.¹⁷²

In February 2016, a report containing the results of the assessment of the current position of the Unit and recommendations on how to improve its performance was produced by the Commission responsible for the implementation of the Program for the Protection of Witnesses in Criminal Proceedings.¹⁷³

As for the position of the Unit organizationally, the Unit's representatives consider that the best legal solution for the Unit would be for it to continue to be part of the MoI, adding that preserving its independence is of crucial importance.¹⁷⁴ By this, they mean that in order to alleviate pressures on the Unit, it should be made directly answerable to the Director of Police and the Minister of the Interior.¹⁷⁵

According to the National Strategy, the Assessment has to pay particular attention to the process of hiring staff and the issue of the potential impact of the previous participation of job candidates in the armed conflicts in former Yugoslavia.¹⁷⁶

The Unit states that, at this time, no members of the Department who are responsible for dealing with persons testifying in war crimes proceedings and who are in direct contact with protected persons, participated in armed conflicts.¹⁷⁷ They also stated that the Assessment Report provides for a mandatory background check mechanism, in the form of a background check questionnaire that all prospective employees will be required to complete.¹⁷⁸ Aside from this, no other check mechanism is stipulated by any specific regulation.¹⁷⁹

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171 National Strategy for the Prosecution of War Crimes, p. 27; Action Plan for Chapter 23, p. 122, Activity 1.4.4.2.

172 Action Plan for Chapter 23, p. 122, Activity 1.4.4.2.

173 *Action Plan for Chapter 23 with implementation status on 28th July 2017*, p. 179: <https://www.mpravde.gov.rs/files/Action%20plan%20for%20Chapter%2023%20with%20implementation%20status%20on%2028%20July%202017.pdf>, last accessed: 14 September 2017. HLC interview with a representative of the Witness Protection Unit in the Serbian MoI, 25 October 2017.

174 *Ibid.*

175 *Ibid.*

176 National Strategy for the Prosecution of War Crimes, pp. 27-28.

177 HLC interview with a representative of the Witness Protection Unit in the Serbian MoI, 25 October 2017.

178 *Ibid.*

179 *Ibid.*



As outlined above, the Unit often came under criticism for the unprofessional conduct of its members, especially in protecting witnesses who were former members of the Serbian armed forces.¹⁸⁰ The situation was further complicated by the fact that the Law on the Program for Protection of Witnesses in Criminal Proceedings failed to provide for a mechanism for handling complaints filed by persons in the witness protection program.¹⁸¹ Following the adoption of the Assessment Report, a new article is to be added to the agreement on entering the witness protection program to be signed between a person entering the program and the Unit, which will lay down the procedure for handling complaints filed by persons under the protection program against members of the Unit.¹⁸² The article stipulates that a person under the protection program may address his complaint to the MoI Internal Control Division, Head of the Unit, War Crimes Prosecutor or Deputy War Crimes Prosecutor, Chairperson of the Commission or any other authorized member of the Commission.¹⁸³ As further stated by the Unit's representatives, persons under the witness protection program meet at least once a week with the Deputy War Crimes Prosecutor and speak with him outside the presence of any Unit member.¹⁸⁴ The Unit's representatives see these confidential conversations with the Deputy War Crimes Prosecutor as an opportunity for a person under protection to raise his complaints against Unit members.¹⁸⁵

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The HLC did not have access to the Assessment report, for it is a highly confidential document.¹⁸⁶ But, as was the case with the assessment of the work and reform of the WCIS, lack of transparency is seen by the HLC as one of the main weaknesses in the process of the Unit's reform. Of course, the very nature of the Unit is such that its work cannot be made fully transparent; nevertheless, a mechanism should be put in place to ensure at least the legal community is informed about the recommendations made and steps taken to improve its performance. This has become especially important after information leaked out about some serious problems in the witness protection program

180 *War Crimes Proceedings in Serbia (2003-2014), An analysis of the OSCE Mission to Serbia's monitoring results*, OSCE Mission to Serbia, 2015, pp. 85-86; *Ten years of war crimes prosecution in Serbia – Contours of Justice*, HLC, 2014, pp. 74-75; *Model Strategy for the Prosecution of War Crimes Committed during and in relation to the Armed Conflicts in the Former Yugoslavia, Period 2015-2025*, HLC, 2015, pp. 22-23.

181 *Ten years of war crimes prosecution in Serbia – Contours of Justice*, HLC, 2014, pp. 74-75; Law on the Programme for Protection of Participants in Criminal Proceedings (Official Gazette of the Republic of Serbia no. 85/2005).

182 HLC interview with a representative of the Witness Protection Unit in the Serbian MoI, 25 October 2017.

183 *Ibid.*

184 *Ibid.*

185 *Ibid.*

186 *Ibid.*



in the past, which jeopardized the entire witness protection system anyhow.¹⁸⁷ Therefore it would be justifiable for the Unit to keep the legal community informed about what is being done to improve its performance, and in particular address the problems from the past.

Cooperation between the OWCP and the Witness Protection Unit

In the context of improving witness protection, the National Strategy envisages also stepping-up cooperation between the OWCP and Witness Protection Unit.¹⁸⁸

In order to achieve this goal, a protocol on cooperation between the OWCP and Witness Protection Unit was signed on 6 July 2017.¹⁸⁹ It regulates cooperation between the OWCP and the Witness Protection Unit where urgent protection measures need to be applied with respect to participants in criminal proceedings and persons close to them, in the implementation of the protection program as laid down in the Law on the Protection Program for Participants in Criminal Proceedings.¹⁹⁰

In this regard, it should be added that the OWCP and the Witness Protection Unit hold regular monthly joint meetings and organize *ad hoc* joint teams for each witness, similar to the joint teams set up between the OWCP and the WCIS.¹⁹¹

Representatives of the Unit assessed the Unit's cooperation with the OWCP over the past several years as good and professional. Commenting on some earlier problems in the cooperation, they said they were purely personal and concerned the relationship between the former heads of the OWCP and the Unit.¹⁹²

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187 *Ten years of war crimes prosecution in Serbia – Contours of Justice*, HLC, 2014, pp. 74-75.

188 *National Strategy for the Prosecution of War Crimes*, pp. 28-29.

189 HLC interview with an OWCP representative, 07 September 2017; HLC interview with a representative of the Witness Protection Unit in the Serbian MoI, 25 October 2017.

190 „OWCP signs Protocol on Cooperation with MoI Protection Unit”, press release, 06 July 2017, available at the official website of the OWCP: www.tuzilastvorz.org.rs/en/news-and-announcements/press-clippingr.rs/en/news-and-announcements/announcements/ow-cp-signs-protocol-of-cooperation-with-moi-protection-unit, last accessed: 03. August 2017.

191 HLC interview with an OWCP representative, 07 September 2017; HLC interview with a representative of the Witness Protection Unit in the Serbian MoI, 25 October 2017.

192 HLC interview with a representative of the Witness Protection Unit in the Serbian MoI, 25 October 2017.



SUPPORT TO VICTIMS AND WITNESSES

Objective 1: Improvement of the normative framework regulating the status of victim and witness.

Objective 2: Enhancing the capacity of the bodies providing support to the witnesses of war crimes during all phases of the criminal proceedings, such as: the Service for Assistance and Support to Victims and Witnesses within the Higher Court in Belgrade, the Office of War Crimes Prosecutor and the Ministry of the Interior Protection Unit.

Objective 3: Establishment of the national network of services for assistance and support to victims and witnesses and integration of the Service for Assistance and Support to Victims and Witnesses of the Higher Court in Belgrade, taking into consideration the specificities of war crimes proceedings and the need for the witnesses for the defense to receive the same treatment by the Service for Assistance and Support to Victims and Witnesses as the witnesses for the prosecution

Objective 4: Improved regional cooperation in the field of providing support to victims and witnesses.

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The role of witnesses in war crimes proceedings is crucial because their testimonies are often the only evidence available, and therefore the success of the proceedings often depends entirely on them. As giving evidence in court can be a traumatic experience (especially for victim-witnesses), the success of a war crime trial largely depends on the effectiveness of witness and victim support measures. The lack of an adequate system for informing victims about the course of the proceedings, their rights and the support measures available to them, the poor capacity and too narrowly defined scope of the responsibilities of the Victim and Witness Assistance and Support Service at the Higher Court in Belgrade (Service), and the absence of psychological support are the major shortcomings in the witness and victim support system.¹⁹³

Since its establishment in 2006 until today, the support provided to witnesses and victims in war crimes trials by the Service has been limited to logistic and emotional support.¹⁹⁴ The transfer of the competence over investigations to the OWCP in January 2012 weakened the protection system, because the Service, as a body of the court, no longer had the mandate to provide protection to witness and victims during investigations.¹⁹⁵

193 *Ten years of war crimes prosecution in Serbia – Contours of Justice*, HLC, 2014, pp. 57-66; *Model Strategy for the Prosecution of War Crimes Committed during and in relation to the Armed Conflicts in the Former Yugoslavia, Period 2015-2025*, HLC, pp. 24-27.

194 Law on Organization and Jurisdiction of Government Authorities in War Crimes Proceedings (Official Gazette of the Republic of Serbia, nos. 67/2003, 135/2004, 61/2005, 101/2007, 104/2009, 101/2011 and 6/2015), Article 11.

195 *Ten years of war crimes prosecution in Serbia – Contours of Justice*, HLC, 2014, p. 60.



Normative Framework Regulating the Position of Witnesses and Victims

As part of its EU Accession negotiations, the Republic of Serbia has undertaken to align its national normative framework regulating the position of witnesses and victims with the relevant EU law in this area.¹⁹⁶ Its commitment to improving standards on the rights, support and protection of victims of crime was set out in the Screening Report for Chapter 23,¹⁹⁷ the Action Plan for Chapter 23¹⁹⁸ and the National Strategy.¹⁹⁹

According to Report 2/2017 on the Implementation of the Action Plan,²⁰⁰ an analysis of the level of alignment of the national normative framework with the EU *acquis* has been completed but it is not yet available to the public in Serbian language.²⁰¹ Also, the amendment of the normative framework which was to follow the analysis has not been carried out.²⁰²

As stipulated in the National Strategy, the Minister of Justice is to set up a working group to propose amendments to the relevant regulations with a view to bringing the concept of “victim” into line with the standards enshrined in international human rights treaties.²⁰³ However, the Ministry has told the HLC that it has not set up the working group.²⁰⁴

Deterioration in the Treatment of Witnesses and Victims

Undoubtedly one of the most important measures to facilitate witness participation in criminal proceedings is simplifying as far as possible the rules regulating reimbursement of expenses incurred in relation to participation in judicial proceedings. But sadly, some new rules introduced during the reporting period, rather than making reimbursement for witnesses easier, have actually achieved the opposite.

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196 *The Legal and Institutional Framework in Serbia Regarding the Rights and Needs of Civilian Victims of War*, HLC, 2017, pp. 55-58.

197 *Serbia Screening Report, Chapter 23 – Judiciary and Fundamental Rights*, p. 50.

198 *Action Plan for Chapter 23, Activity 1.4.4.5*, p. 124.

199 *National Strategy for the Prosecution of War Crimes*, pp. 29-30.

200 *Action Plan for Chapter 23 with implementation status on 28th July 2017*, pp. 434-435. The report is available on the official website of the Ministry of Justice: <https://www.mpravde.gov.rs/files/Action%20plan%20for%20Chapter%2023%20with%20implementation%20status%20on%2028%20July%202017.pdf>, last accessed: 15 September 2017.

201 *Ibid.*

202 *Ibid.*

203 *National Strategy for the Prosecution of War Crimes*, pp. 29-30.

204 Ministry of Justice's reply 7-00-142/2017-32 of 27 April 2017 to HLC's request for information of public interest.



Namely, under the Rules on Reimbursement of Expenses in Judicial Proceedings, participants in judicial proceedings are entitled to reimbursement of costs related to travel, meals, lodging and lost earnings.²⁰⁵

Until 1 January 2016, all persons appearing in court to give evidence in war crimes cases were reimbursed by the court in cash immediately after giving evidence. Since that practice was abandoned, **reimbursements of expenses related to giving evidence are now being made solely via witnesses' bank accounts.**

As a result of this change, witnesses who lodge a claim for expenses associated with giving evidence in court must submit their bank account number if they come from Serbia, or submit a foreign currency account number, including instructions for foreign payment, if they come from abroad. The Treasury of the National Bank of Serbia makes payments to witnesses' accounts, and the process may take as long as several weeks.

The said procedure has significantly complicated matters for witnesses who go to court to testify, and has consequently resulted in a negative impact on war crimes proceedings. The costs linked to giving testimony in court can be rather high, especially for witnesses from abroad and those coming from small towns and villages without a direct transport connection to Belgrade. The financial situation of most witnesses, especially victim-witnesses, is rather poor, so they often need to borrow money to go to court. For elderly witnesses, some of whom are sick or illiterate, opening a foreign currency account is a tricky task and creates an additional encumbrance. Most of the witnesses who testify in war crimes proceedings, vulnerable witnesses in particular, find this new procedure distressing.

Thus, a procedure that may seem unexceptionable can jeopardize the efficient conduct of court proceedings. Namely, it is **precisely because of witnesses' inability to finance their appearance in court that a significant number of hearings have been adjourned** during the reporting period.²⁰⁶ This has added one more item to the already long list of reasons why victims refuse to give evidence before the War Crimes Department in Belgrade.

205 Rulebook on reimbursement of expenses related to court proceedings (Official Gazette of the RS nos. 9/2016 and 62/2016), Article 5.

206 See, e.g.: *Trnje* Case, main hearing of 20 May 2016, p. 110, available (in Serbian) at: <http://www.hlc-rdc.org/wp-content/uploads/2016/06/19-20.05.2016..pdf>; *Bosanski Petrovac – Gaj* Case trial report of 23 May 2016, available (in Serbian) at: http://www.hlc-rdc.org/wp-content/uploads/2016/05/Bosanski_Petrovac_-_Gaj_-_Izvestaj_sa_sudjenja_23.05.2016.pdf, last accessed: 16 March 2017.



For witnesses from Serbia who cannot afford to finance their appearance in court, failure to show up when summoned can even result in a fine, which further deteriorates their financial situation, or result in the police bringing them to court, which means being treated as criminals and further humiliated.²⁰⁷

The Victim and Witness Assistance and Support Service sees this reimbursement procedure as a serious problem discouraging witnesses from coming to court, citing numerous instances of witnesses being forced to borrow money to finance their coming to court. The HLC thinks that the above described reimbursement rules should be changed without delay. The Victim and Witness Assistance and Support Service should make all necessary arrangements for witnesses to come to court, so that they do not have to pay any upfront expenses out of their own pockets or go through cumbersome administrative procedures.

Capacities of the Victim and Witness Assistance and Support Service at the Higher Court in Belgrade

The Victim and Witness Assistance and Support Service was formed in 2006 pursuant to the Law on the organization and jurisdiction of state authorities in war crimes proceedings.²⁰⁸ The Service provides logistic and the so-called emotional support to witnesses and victims (which includes devoting attention and care, and offering encouragement and respect to a witness or victim).²⁰⁹ From 2010, the Service employed three persons – an associate and two clerks.²¹⁰ However, although the scope of responsibilities of the Service has been expanded to include witnesses and victims in organized crime cases too, its **staff was reduced just before the National Strategy was adopted**, so that today it has only two employees – an associate and a clerk.²¹¹ The Service staff told the HLC that, given the large number of witnesses they are dealing with, at least one additional person should be hired.²¹²

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207 Criminal Procedure Code (Official Gazette of the Republic of Serbia, nos. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013 and 55/2014), Article 384.

208 Law on Organization and Jurisdiction of Government Authorities in War Crimes Proceedings, (Official Gazette of the Republic of Serbia, nos. 67/2003, 135/2004, 61/2005, 101/2007, 104/2009, 101/2011 and 6/2015), Article 11.

209 *Ten years of war crimes prosecution in Serbia – Contours of Justice*, HLC, 2014, p. 57.

210 *Ibid.*

211 Reply of the Higher Court in Belgrade Su II 17/a no. 93/17 of 18 May 2017 to an HLC request for information of public importance; HLC interview with a representative of the Victim and Witness Assistance and Support Service at the Higher Court in Belgrade, 04 September 2017.

212 HLC interview with a representative of the Victim and Witness Assistance and Support Service at the Higher Court in Belgrade, 04 September 2017.



The National Strategy also envisages the organization of occasional trainings for the Service staff, which the Service staff sees as paramount to maintaining and improving the quality of their work.²¹³ As the Higher Court has listed extensively the many international and regional conferences and technical seminars that the Service staffs have attended so far, it can be concluded that they are undergoing a continuous professional training.²¹⁴ In reply to an HLC request for information, the Higher Court said that in terms of infrastructure and IT and other technology, the Service is adequately equipped for its work,²¹⁵ which the Service staff confirmed,²¹⁶ adding that having an extra room would make their day-to-day work easier, as currently they have only two rooms in which to receive witnesses and victims.²¹⁷

Victim and Witness Information and Support Service at the Office of the War Crimes Prosecutor

On 3 April 2017, the Victim and Witness Information and Support Service (VWISS) was established at the OWCP as part of the process of establishing a nationwide network of victim and witness information and support services at public prosecutor's offices. The Service has two staff members and a coordinator, all of whom already worked for the OWCP.²¹⁸ Since its establishment until September 2017, the Service has provided support to 17 witnesses.²¹⁹

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The network of victim and witness information and support services at public prosecutor's offices exists alongside similar services previously established at the courts, in order to provide support to victims at all stages of proceedings, including preliminary investigation, investigation and trial.²²⁰

Prior to the establishment of the network of victim and witness information and support services at public prosecutor's offices, the Republic's Public Prosecutor's Office on 5

213 *Ibid.*

214 Reply of the Higher Court in Belgrade Su II 17/a no. 93/17, of 18 May 2017 to an HLC request for information of public importance.

215 *Ibid.*

216 *Ibid.*

217 HLC interview with a representative of the Victim and Witness Assistance and Support Service at the Higher Court in Belgrade, 04 September 2017.

218 Information on the Victims and Witness Information and Support Service is available (in Serbian) on the Office of the War Crimes Prosecutor website: http://www.tuzilastvorz.org.rs/upload/HomeDocument/Document_sr/2017-08/latinica.pdf, last accessed: 18 September 2017.

219 HLC interview with an OWCP representative, 07 September 2017.

220 *Action Plan for Chapter 23 with implementation status on 28th July 2017*, p. 180. The report is available on the official website of the Ministry of Justice: <https://www.mpravde.gov.rs/files/Action%20plan%20for%20Chapter%2023%20with%20implementation%20status%20on%2028%20July%202017.pdf>, last accessed 15 September 2017.



December 2016 issued General binding instructions regarding the conduct of victim and witness information and support services at public prosecutor's offices.²²¹ In addition, a brochure on the victim and witness information and support services containing basic information about all the services and their contact details was prepared jointly by the Republic's Public Prosecutor's Office, the State Prosecutorial Council and the OSCE Mission to Serbia. The Republic's Public Prosecutor's Office also participated in the drafting process of a communication manual for public prosecutor's offices on how to communicate with witnesses and victims.²²²

As part of this activity, first trainings on victim and witness information and support were delivered to the VWISS and deputy public prosecutors. Since the adoption of the National Strategy, several training courses and seminars on dealing with victims and witnesses have been organized in cooperation with the OSCE Mission to Serbia and civil society organization ASTRA.²²³

Enhancing the Capacity of Bodies Supporting the Witnesses of War Crimes – the Hiring of a Psychologist

As stated above, victim and witness information and support services primarily provide logistical and emotional, but not psychological support. The National Strategy has noted that certain state authorities do not have the professional staff that could adequately provide this kind of support.²²⁴ The Action Plan for Chapter 23 explicitly states that a psychologist should be hired by the OWCP to deal with witnesses and victims.²²⁵ However, neither the Victim and Witness Assistance and Support Service at the Higher Court in Belgrade nor the Victim and Witness Information and Support Service of the OWCP, hired a psychologist during the reporting period.²²⁶

The National Strategy foresees that the Protection Unit's staffing plan needs to be modified to permit the hiring of trained professionals for the provision of psycho-social support.²²⁷

221 In reply to an HLC request for information, the Republic Public Prosecutor's Office stated: "*The General binding instruction on conduct of victim and witness information and support services at public prosecutor's offices*", O.no. 2/16 of 05 December 2016; reply PI. no. 33/17, of 20 June 2017 to an HLC request for information of public importance.

222 In reply to an HLC request for information, the Republic Public Prosecutor's Office stated: „*Communication Manual for the Public Prosecutor's Office of Communication with Witnesses and Victims*“; reply PI. no. 33/17, of 20 June 2017 to an HLC request for information of public importance.

223 Reply: PI. no. 33/17, of 20 June 2017 to an HLC request for information of public importance.

224 National Strategy for the Prosecution of War Crimes, p. 11.

225 *Action Plan for Chapter 23*, Activity 1.4.4.4, p. 123.

226 HLC interview with a representative of the Victims and Witness Assistance and Support Service at the Higher Court in Belgrade, 04 September 2017; HLC interview with an OWCP representative, 07 September 2017.

227 National Strategy for the Prosecution of War Crimes, p. 30.



The Unit plans to hire a psychologist, a social worker and an IT professional, as well to increase the number of operatives.²²⁸ At the time of this writing, an IT professional was selected, and the hiring of a psychologist and a social worker was approved, although the positions were not advertised.²²⁹

According to the Unit, the psychologist and social worker will provide psycho-social support to both Unit staff and persons under protection.²³⁰ While the Unit did not have a trained psychologist on its staff, witnesses under protection obtained psychological support from the psychologist at the Military Medical Academy (VMA), the Clinical Centre of Serbia and other medical institutions.²³¹

Improving Regional Cooperation in the Area of Witness and Victim Support

One of the key aspects of the logistical support the Service provides to victims and witnesses is making travel arrangements for witnesses coming from the countries in the region. To be able to do that, the Assistance and Support Service works together with its counterparts in the region. However, this cooperation is as a rule informal and based on the sense of collegiality among them. With some countries there is no cooperation at all on this matter, as a result of which witnesses coming from there do not receive adequate support.²³²

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In addressing this issue, the National Strategy envisages for the Ministry of Justice to propose, towards the end of 2016, a regional conference on witness and victim support, which would discuss current cooperation in this area and ways to improve it, including through appropriate bilateral agreements.²³³ However, the Ministry of Justice, when asked by the HLC about this matter, responded that it has not proposed such a conference, without giving any explanation.²³⁴

228 *Action Plan for Chapter 23 with implementation status on 28th July 2017*, p. 237. The report is available on the official website of the Ministry of Justice: <https://www.mpravde.gov.rs/files/Action%20plan%20for%20Chapter%2023%20with%20implementation%20status%20on%2028%20July%202017.pdf>, last accessed: 30 October 2017; HLC interview with a representative of the Witness Protection Unit in the Serbian MoI, 25 October 2017.

229 *Ibid.*

230 *Ibid.*

231 *Ibid.*

232 *Ten years of war crimes prosecution in Serbia – Contours of Justice*, HLC, 2014, pp.61-63; *Model Strategy for the Prosecution of War Crimes Committed during and in relation to the Armed Conflicts in the Former Yugoslavia, Period 2015-2025*, HLC, pp. 24-25.

233 *National Strategy for the Prosecution of War Crimes*, pp. 31-32.

234 Ministry of Justice reply no.7-00-142/2017-32 of 27 April 2017 to an HLC request for information of public importance.



DEFENSE OF THE ACCUSED

Objective 1: Increasing the quality of (court) appointed and selected defense attorneys in war crimes proceedings.

Objective 2: Improved system of financing the costs of the (court) appointed defense attorneys in war crimes cases.

The defendant's right to have an effective and competent lawyer's defense is an essential precondition for fair criminal proceedings. However, several chronic problems have been identified in this area, such as the insufficient competence of defense lawyers (especially court-appointed defense lawyers) in the field of international humanitarian law, problems with financing defense representation, and the difficulties in collecting evidence abroad faced by defense lawyers.²³⁵

Competency of Defense Lawyers

The great complexity of war crimes requires the defense lawyers to be familiar with international humanitarian law and international criminal law. Where this type of competence is concerned, at least two problems may be identified. First, there is very little opportunity for organizing continuous training in this field, because international humanitarian and criminal law are in general not studied as a required but only as an elective course at law schools.²³⁶ Acquiring knowledge in this field presupposes individual initiative and enthusiasm.²³⁷ Second, apart from those who have cut their teeth at the ICTY, before 2003, defense lawyers in Serbia had no opportunity to acquire the practical skills needed for war crimes trials.²³⁸

That is why the National Strategy envisages implementation of continuous training in the fields of international humanitarian and international criminal law for lawyers representing defendants in war crimes cases, through cooperation between the Serbian Bar Association and the Judicial Academy.²³⁹ However, according to the representatives of the Judicial Academy, **these two institutions have not taken any steps towards**

235 *Ten years of war crimes prosecution in Serbia – Contours of Justice*, HLC, 2014, pp. 77-80; *Model Strategy for the Prosecution of War Crimes Committed during and in relation to the Armed Conflicts in the Former Yugoslavia, Period 2015-2025*, HLC, pp. 27-29.

236 HLC interview with attorney Tomislav Višnjić, 07 September 2017.

237 *Ten years of war crimes prosecution in Serbia – Contours of Justice*, HLC, 2014, pp. 77-78.

238 HLC interview with attorney Tomislav Višnjić, 07 September 2017.

239 *National Strategy for the Prosecution of War Crimes*, p. 32.



implementing this activity.²⁴⁰ The Serbian Bar Association for its part has failed to respond to an HLC request for information regarding this matter.²⁴¹

- **List of Court Appointed Attorneys**

The defendants in war crime cases are entitled to choose a lawyer to represent them in accordance with the provisions of the CPC.²⁴² Where the defense lawyers appointed by the court or prosecutor are concerned, the Law on the Organization and Jurisdiction of State Authorities in Prosecuting Perpetrators of War Crimes imposes more stringent criteria for their appointment.²⁴³ According to this law, a defense lawyer appointed by the court or prosecutor is required to have at least ten years of professional experience in criminal law and the necessary knowledge and experience in the fields of international humanitarian law and human rights.²⁴⁴

In accordance with these criteria, the Bar Association compiles a list of lawyers it considers fulfil the prescribed criteria and the court or prosecutor is required to appoint lawyers from that list. Examining the biographies of the lawyers on the list, the HLC has found that **less than half of the lawyers on the list cumulatively meet the competence requirements** regarding familiarity with international humanitarian law and ten years of relevant experience in criminal law.²⁴⁵ Furthermore, over 10 per cent of the lawyers on the list do not even meet the 10-year experience in criminal law requirement.²⁴⁶

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From the above observation, it is quite clear that the **Belgrade Bar Association did not make the selection of court/prosecutor-appointed defense lawyers in accordance with the Law** on the Organization and Jurisdiction of State Authorities in War Crimes Proceedings.

240 HLC interview with a representative of the Judicial Academy, 30 August 2017.

241 The request was sent on 20 July 2017, request number: HlcIndexOut: 170-F131103.

242 Criminal Procedure Code (Official Gazette of the Republic of Serbia, nos. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013 and 55/2014), Articles 74-76.

243 Law on Organization and Jurisdiction of Government Authorities in War Crimes Proceedings (Official Gazette of the Republic of Serbia nos. 67/2003, 135/2004, 61/2005, 101/2007, 104/2009, 101/2011 and 6/2015), Article 14.

244 *Ibid.*

245 Reply of the Belgrade Bar Association no. 3380-1/2016 of 01 August 2016 to an HLC request for information of public importance.

246 **Note:** The findings in this report refer to the competencies of defense lawyers as they are stated in their work biographies delivered to the HLC by the Belgrade Bar Association on 01 August 2016.



Financing Defense Representation

Defense in war crimes cases is one of the most expensive defenses. This is because war crimes carry very severe sentences,²⁴⁷ but also because of the complexity of this criminal matter. In consequence, it often happens that the defendants cannot afford to pay the costs of defense representation or terminate representation agreements with the lawyers they had hired.²⁴⁸ In such cases, the defendants have a lawyer appointed for them by the court. Owing to the limited financial resources available to the courts, it often happens that court-appointed lawyers are not paid for their services when their work is completed, but several months later.²⁴⁹

An additional problem, caused by the inadequate transition from the concept of judicial to the concept of prosecutorial investigation, is that the costs of investigative actions performed by defense lawyers are not recognized and reimbursed.²⁵⁰

The National Strategy has recognized the problems with financing defense in war crimes cases and therefore envisaged conducting an analysis of the provisions and results of the application of the Rulebook on remuneration for court-appointed attorneys in war crimes cases.²⁵¹ However, in response to an HLC inquiry on this issue, **the Ministry of Justice said that it had not set up a working group nor performed the analysis of the Rulebook** on remuneration of court-appointed lawyers in war crimes cases.²⁵² As for the Serbian Bar Association, it did not answer the HLC's questions regarding improving the system of financing the costs of defense representation in war crimes cases.²⁵³

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Access to Evidence Located in Foreign Countries

Owing to the absence of appropriate intergovernmental agreements in this area, defense lawyers are at a disadvantage compared with prosecutors when it comes to collecting evidence in the territory of foreign states.²⁵⁴ While the OWCP has agreements on direct

247 Tarifa o nagradama i naknadama troškova za rad advokata [Attorney remuneration (fees and expenses) schedule], adopted by the Board of Directors of the Serbian Bar Association and published in the Official Gazette of the Republic of Serbia, no. 12/2012, available (in Serbian) at: <https://www.akb.org.rs/advokatska-tarifa>, last accessed: 31 August 2017.

248 *Ten years of war crimes prosecution in Serbia – Contours of Justice, HLC, 2014, p. 75.*

249 *Ibid.*

250 Criminal Procedure Code (Official Gazette of the Republic of Serbia, nos. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013 and 55/2014), Chapter XIII; Interview with attorney Tomislav Višnjić, 07 September 2017.

251 *National Strategy for the Prosecution of War Crimes* p. 33.

252 Ministry of Justice's reply no 7-00-142/2017-32 of 27 April 2017 to an HLC request for information of public importance.

253 The request was sent on 20 July 2017, request number: HlcIndexOut: 170-F131103.

254 *Ten years of war crimes prosecution in Serbia – Contours of Justice, HLC, 2014, p. 80*; HLC interview with attorney Tomislav Višnjić, 07 September 2017.



cooperation with its counterparts in the region, defense lawyers are forced to go through the lengthy international legal assistance procedure or collect evidence on their own.

To address this problem, the National Strategy envisages that the Ministry of Justice will initiate a regional conference to discuss signing of intergovernmental agreements with Croatia, Bosnia and Herzegovina, and Montenegro in order to facilitate access to evidence located in the territory of foreign states for defense lawyers.²⁵⁵ Although this activity was slated for the first quarter of 2017,²⁵⁶ **the Ministry of Justice has yet to initiate the conference.**²⁵⁷

WAR CRIMES TRIALS AND THE ISSUE OF MISSING PERSONS

Objective 1: Improved normative framework of relevance for determining the fate of missing persons.

Objective 2: Enhanced institutional and administrative capacities of the state bodies involved in the process of determining the fate of missing persons, and their mutual cooperation.

Objective 3: Enhancement of regional and broader international cooperation in the field of determining the fate of missing persons

54 According to the International Committee of the Red Cross (ICRC), 10,390 persons who went missing as a result of the armed conflicts in Croatia, B&H and Kosovo are still unaccounted for:

1,658 in Kosovo, 2,057 in Croatia, and 6,675 in B&H.²⁵⁸

Serbia does not have an adequate legal framework in place which would fully regulate the search for missing persons.²⁵⁹ In other words, Serbia has not passed a separate

²⁵⁵ *National Strategy for the Prosecution of War Crimes*, p. 36.

²⁵⁶ *Ibid.*

²⁵⁷ Ministry of Justice's reply no. 7-00-142/2017-32, of 27 April 2017 to an HLC's request for access to information of public importance.

²⁵⁸ ICRC figures as of 25 September 2017. The ICRC's lists of names of the persons gone missing as a result of the conflicts in Kosovo are available at: <https://familylinks.icrc.org/kosovo/en/Pages/search-persons.aspx>; the ICRC's lists of names of the persons gone missing as a result of the conflicts in BiH are available at: <https://familylinks.icrc.org/bosnia/en/Pages/search-persons.aspx>; the ICRC's lists of names of the persons gone missing as a result of the conflicts in Croatia are available at: <https://familylinks.icrc.org/croatia/en/Pages/search-persons.aspx>. All sources last accessed: 25 October 2017.

²⁵⁹ HLC interview with the President of the Commission on Missing Persons of the Government of the Republic of Serbia, 11 October 2017; *Transitional Justice in Serbia 2013-2015*, HLC, 2016, pp. 61-66.



law regulating the search process or the rights of the families of missing persons.²⁶⁰ Furthermore, the judicial mechanism protecting the right to compensation for the families of missing persons is ineffective.²⁶¹

The National Strategy envisages that the domestic normative framework regarding the search for missing persons should be adjusted according to the recommendations of the Committee on Enforced Disappearances.²⁶² The Strategy also envisages strengthening the institutional and administrative capacities of state authorities involved in the process of ascertaining the fate of missing persons, as well as strengthening regional and international cooperation in this field.²⁶³

Normative and Institutional Frameworks

The Commission on Missing Persons of the Government of Serbia, established in 2006, is the authority responsible for dealing with the issue of persons missing from the armed conflicts on the territory of the former Yugoslavia.²⁶⁴ Its main task is to address the issue of persons gone missing during the armed conflicts who were Serbian nationals or whose families have permanent residence in Serbia. The Commission is also responsible for fulfilling Serbia's obligations under international treaties and agreements relating to the issue of missing persons, and to coordinate the work of the competent bodies in the process of the search for missing persons, and their exhumation and identification.²⁶⁵

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Serbia does not have any separate law on missing persons regulating the status and rights of missing persons' family members. The existing laws – the Law on the Basic Rights of Veterans, Disabled War Veterans and the Families of Fallen Combatants²⁶⁶ and the Law

260 *The Legal and Institutional Framework in Serbia Regarding the Rights and Needs of Civilian Victims of War*, HLC, 2017, p. 11-12, available at: <http://www.hlc-rdc.org/wp-content/uploads/2017/08/The-legal-and-institutional-framework-in-Serbia-regarding-the-rights-and-needs-of-civilian-victims-of-war.pdf>, last accessed: 25 September 2017.

261 *Fulfilling the Right of Victims of Human Rights Abuses to seek Reparation before Serbian Courts - Serving Justice or Trivializing Crimes?*, HLC, 2013, pp. 7-16, available at: <http://www.hlc-rdc.org/wp-content/uploads/2013/06/Fulfilling-the-Right-for-Victims-of-Human-Rights-Abuses-to-seek-Reparation-before-the-Serbian-Courts.pdf>, last accessed: 25 September 2017.

262 National Strategy for the Prosecution of War Crimes, p. 33.

263 *Ibid*, p. 34.

264 Decision establishing the Commission (Official Gazette of the Republic of Serbia, nos. 49/2006, 73/2006, 116/2006, 53/2010 and 108/2012).

265 The work of the Missing Persons Commission lacks public visibility. Some basic information about the Commission is available (in Serbian) on the official website of the Serbian Commissariat for Refugees at: <http://www.kirs.gov.rs/articles/komisijao.php?type1=37&date=0&lang=ENG>, last accessed: 26 September 2017.

266 Law on Basic Rights of Veterans, Disabled War Veterans and the Families of Fallen Combatants (Official Journal of the FRY, nos. 24/98, 29/98 - corr. and 25/2000 – decision of the FCC, and Official Gazette of the Republic of Serbia, nos. 101/2005 – other law, and 111/2009 – other law), Articles 13 and 22.



on the Rights of Civilian Invalids of War²⁶⁷ – provide for certain benefits for the family members of missing persons. However, they put the family members of missing civilians in an unfavorable position in relation to the family members of fallen combatants by requiring them, contrary to the relevant international conventions, to have declared their family members dead, before being able to qualify for the benefits provided for in the laws.²⁶⁸

In 2010, the Ministry of Labor, Employment, Veteran and Social Policy initiated the production of a draft bill on missing persons, and set up a working group to develop it.²⁶⁹ However, several months later the process was cut short before it had produced any results and before the document drafted had been discussed before the competent bodies.²⁷⁰ The Commission on Missing Persons is of the opinion that adoption of a separate law dealing with missing persons is “a complex matter for Serbia,” but it is nonetheless absolutely necessary to adopt it.²⁷¹

- **International Convention for the Protection of All Persons from Enforced Disappearance**

The National Strategy envisages that the Republic of Serbia will continuously work to give effect to the recommendations of the Committee on Enforced Disappearances.²⁷² The last of the Committee’s reports on the application of the Convention for the Protection of All Persons from Enforced Disappearances in Serbia was released in February 2015.²⁷³

In its concluding observations, the Committee recommends that Serbia should ensure that all cases of enforced disappearances committed in the context of past armed conflicts are investigated thoroughly, and provide guarantees for full access to the relevant archives; and also ensure that those found responsible for enforced disappearances, including commanders and civilian superiors, are punished in accordance with the gravity of their

267 Law on the Rights of Civilian Invalids of War (Official Gazette of the Republic of Serbia no. 52/96), Article 3.

268 Law on the Ratification of the International Convention for the Protection of All Persons from Enforced Disappearance (Official Gazette of the Republic of Serbia - International Treaties, no. 1/2011), Article 24 (6). See: *The Legal and Institutional Framework in Serbia Regarding the Rights and Needs of Civilian Victims of War*, HLC, 2017, pp. 11-12.

269 *Transitional Justice in Serbia 2013-2015*, HLC, 2016, p. 64.

270 *Ibid.*

271 HLC interview with the President of the Commission on Missing Persons of the Government of the Republic of Serbia, 11 October 2017.

272 National Strategy for the Prosecution of War Crimes, p. 33.

273 Committee on Enforced Disappearances, *Concluding observations on the report submitted by Serbia under Article 29, paragraph 1, of the Convention* are available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/051/09/PDF/G1505109.pdf?OpenElement>, last accessed: 31 August 2017.



acts.²⁷⁴ The Committee notes with concern that no one has yet been held responsible in Serbia for the concealment of the hundreds of bodies found in the mass graves in Batajnica, Petrovo Selo, Lake Perućac and Rudnica.²⁷⁵

As regards the problems that hinder the progress of investigations, the Committee recommends that Serbia should ensure that the Office of the War Crimes Prosecutor has sufficient personnel and technical and financial resources, and that any individuals, civilian or military, suspected of having committed an offence of enforced disappearance be suspended.²⁷⁶ The Committee also called on Serbia to investigate all allegations of threats or intimidation against witnesses in war crimes cases, and to strengthen the Witness Protection Unit with a view to guaranteeing the highest possible standards of witness protection.²⁷⁷

Furthermore, the Committee emphasizes the obligation of Serbia to guarantee the rights of the family members of missing persons and recommends that Serbia should establish a comprehensive, gender-sensitive reparation scheme and provide medical and psychological rehabilitation for all persons who have suffered direct harm as a result of an enforced disappearance. Serbia is also called upon to ensure that the rights of family members of the victims gone missing are addressed in the draft of the Bill on the Rights of War Veterans, Disabled War Veterans, Civilian Victims of War and their Family Members.²⁷⁸

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The conclusions and recommendations of the UN Commission on Human Rights of March 2017²⁷⁹ and the Council of Europe Commissioner for Human Rights of February 2017²⁸⁰ are nearly identical to those of the Committee.

Nonetheless, at the time of publication of this report, Serbia has yet to undertake the first concrete steps to give effect to the recommendations of the Committee on Enforced Disappearances and other international monitoring bodies. The competent

274 *Concluding observations adopted on the 135th meeting of 12 February 2015, on the report submitted by Serbia under Article 29, paragraph 1, of the Convention*, para 14, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/051/09/PDF/G1505109.pdf?OpenElement>, last accessed: 26 September 2017.

275 *Ibid*, para. 13.

276 *Ibid*, para. 16.

277 *Ibid*, para. 17.

278 *Ibid*, para. 26, b.

279 *Concluding observations on the report submitted by Serbia*, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/051/09/PDF/G1505109.pdf?OpenElement>, last accessed: 26 September 2017.

280 Report *Missing persons and victims of enforced disappearance in Europe*, available at: <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2962270&SecMode=1&DocId=2397560&Usage=2>, last accessed: 26 September 2017.



authorities continue persistently to deny access to archives that could assist in finding missing people, no one has been found criminally responsible or prosecuted over the mass graves found in Serbia, and access to reparation is made virtually impossible for the families of missing persons.

Cooperation Between State Authorities Responsible for Resolving the Fate of Missing Persons

• State Archives and War Crimes Trials

Documents contained in the police and military archives hold records and information that are essential for the search for persons missing from the armed conflicts of the 1990s. Especially valuable in that respect are the documents held in the archives of the Ministry of Defense (MoD) and Ministry of the Interior (MoI), which concern the activities of members of the two ministries in the concealment of the bodies of victims. It is safe to conclude, not only on the basis of their bureaucratic nature and adherence to strict lines of hierarchy, but also on the basis of a number of documents used in trials at the ICTY, that the MoD and MoI documented the measures and procedures they followed to remove and conceal victims' bodies.²⁸¹ The ICTY database contains documents on the establishment and responsibilities of the so-called clean-up departments,²⁸² reports of military and police commissions on clean-up operations,²⁸³ MoI records on crime scene investigations and forensic examinations,²⁸⁴ etc.

The fact that these documents were used by the Yugoslav Army (YA) and MoI investigative bodies and that it was on the basis of such documents that a MoI working group in 2001 uncovered the mass graves in Batajnica, Perućac and Petrovo Selo containing the bodies of Kosovo Albanians, shows that the MoD and MoI possess in their archives the documentation pertaining to the victims who are today referred to as missing

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281 See: *Access to Documents Related to Crimes Against International Law in the Possession of Serbian Institutions: State Secret Prevails over Right to the Truth*, HLC, 2016, p. 13.

282 See, e.g., Order to clean up the battlefield PrK, 31 March 1999, Ex. no. 5D00352, *Šainović et al.*; Order to clean up the battlefield PrK – supplement, 08 April 1999, Ex. no. 5D00179, *Šainović et al.*; Order to clean up the battlefield issued by the Command of the VJ 125th Motorized Brigade, 04 April 1999, Ex. no. P01246, *Šainović et al.*; Order to clean up the battlefield issued by the Command of the VJ 37th Motorized Brigade, 05 April 1999, Ex. no. 5D01028, *Šainović et al.*

283 See, e.g., Application on the rules of international law in armed conflicts, p. 95, Ex. no. br. P01011, *Šainović et al.*; Working Group information, 25 May 2001, p. 3, Ex. no. P00567, *Šainović et al.*

284 MoI's list of registered criminal offences and measures taken in Kosovo and Metohija from 01 July 1998 to 20 June 1999, p. 17, Ex. no. 6D00614; MoI report on forensic examination of the crime scene in Izbica, 02 June 1999, Ex. no. 6D116; MoI, Note on the visit to the crime scene in Izbica, 27 May 1999, Ex. no. 6D115, *Šainović et al.*



persons.²⁸⁵ Despite this, both the MoD and MoI have refused to supply the HLC with the documentation created by their investigative bodies.²⁸⁶

Apart from the documentation held in the official archives, which are clearly essential for the search for missing persons, there are many other documents as well that could serve that purpose. They include records on the use of heavy duty mechanical equipment, such as bulldozers, excavators and trenchers, fuel disbursement and consumption logs, travel orders or orders for the utilization of trucks, and similar documents used by the ICTY to locate the sites of mass graves.²⁸⁷

For the past few years, the MoI and MoD have been unlawfully obstructing access to information and documents of public interest that are essential for reconstructing past events, including the facts about crimes and victims of enforced disappearance. These two ministries have invariably refused to provide the HLC with access to the information and documents sought, especially where the documents concern crimes regarding which there are strong indications that they were committed by members of the police or military.²⁸⁸ In 2014, for example, Bratislav Gašić, Serbia's Defense Minister at the time declared the entire archives pertaining to the YA 37th Motorized Brigade to be "Top Secret", immediately after the HLC had begun looking into the responsibility of members of the brigade for the mass grave in Rudnica.²⁸⁹

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Some of the requests for access to information made by the war crimes judiciary have received similar treatment by the two ministries. The OWCP publicly said that the ministries lied when stating that the documents requested by the OWCP had been destroyed as a result of the NATO bombardment.²⁹⁰ What happened in the *Trnje* Case, conducted against former members of the YA 549th Motorized Brigade who are now active-duty members of the Army of Serbia, is just the latest example of denied access to

285 For more information about these investigative bodies see the HLC's *Rudnica Dossier*, pp. 13-14, available at: http://www.hlc-rdc.org/wp-content/uploads/2015/01/Dosije_Rudnica_eng.pdf, last accessed: 15 September 2017.

286 MoD Decisions 1148-5/14 and 1146-5/14 of 12 February 2015.

287 See, e.g., ICTY Trial Judgment in *Krstić* case (IT-98-33-T), pp. 97-98, available at: <http://www.icty.org/x/cases/krstic/acjug/en/krs-aj040419e.pdf>, last accessed: 30 October 2017.

288 See: *Access to Documents Related to Crimes Against International Law in the Possession of Serbian Institutions: State Secret Prevails over Right to the Truth*, HLC, 2016, p. 7.

289 *Minister of Defense Declared Documents on Activities of the 37th Motorized Brigade of the Yugoslav Army in Kosovo Top Secret*, 12 June 2015, HLC, press release, available at: <http://www.hlc-rdc.org/?p=29345&lang=de>.

290 Omer Karabeg, "Da li su Diković i Guri nedodirljivi?" [Omer Karabeg: Are Diković and Guri untouchable?], Radio Free Europe, 14 September 2014, available (in Serbian) at: <http://www.slobodnaevropa.org/content/da-li-su-dikovic-i-guri-nedodirljiviji/26581902.html>, last accessed: 26 October 2017.



information of public interest. When during the main hearing in this case the Presiding Judge said that the Serbian Army General Staff had refused to deliver to the court the documentation pertaining to the 549th Motorized Brigade, claiming they did not possess it, the former commander of the brigade said that the documentation did exist, as it was permanently preserved.²⁹¹

During the reporting period no progress was made towards opening the official archives for the purpose of searching for missing persons. As the Chairman of the Commission on Missing Persons of the Serbian Government put it, “we are not in a position to rummage through their [MoI’s and MoD’s] archives.”²⁹²

- **Ascertaining the Fate of Missing Persons and Prosecution of War Crimes Before the Serbian Judiciary**

According to the National Strategy for the Prosecution of War Crimes, the reduced number of persons whose fate and whereabouts remain unknown will be one of the indicators of a successful implementation of the strategy.²⁹³ Nevertheless, at the time of publication of this report, no progress had been made in the search for missing persons through war crimes trials, with *Sotin* remaining the only case resulting in the finding of missing persons.²⁹⁴ As stated in the Ombudsman’s Annual Report for 2016, “establishing the facts about the fate of missing persons is not seen as a priority in the process of revealing and prosecuting war crimes before the Justice Authorities in Serbia.”²⁹⁵

Yet, the “2016-2022 Program for the Organization and Improvement of the Performance of the Office of the War Crimes Prosecutor” presented by the new Chief War Crimes Prosecutor, Snežana Stanojković, says that the OWCP will “endeavor to find every single

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291 See the transcript of the main hearing in the *Trnje* Case, 13 January 2017, p. 44, available (in Serbian) at: <http://www.hlc-rdc.org/wp-content/uploads/2017/02/27-13.01.2017..pdf>, last accessed: 26 October 2017.

292 HLC interview with the President of the Commission on Missing Persons of the Government of the Republic of Serbia, 11 October 2017.

293 National Strategy for the Prosecution of War Crimes, p. 10.

294 HLC interview with the President of the Commission on Missing Persons of the Government of the Republic of Serbia, 11 October 2017; *Sotin* Case trial reports and documents are available (in Serbian) at: <http://www.hlc-rdc.org/Transkripti/sotin.html>, last accessed: 24 May 2017.

295 *Regular Annual Report of the Protector of Citizens for 2016*, Belgrade, 2017, p. 30, available at: http://www.ombudsman.org.rs/attachments/article/134/Introduction_2016%20Annual%20Report.pdf, last accessed: 11 September 2017.



person missing from the territory of the former Yugoslavia²⁹⁶. So the HLC logically expects that the search for missing persons will be defined as a criterion for the prioritization of war crimes cases in the impending prosecutorial strategy.

- **Search for and Exhumation of Mass Graves**

The Commission on Missing Persons has not been proactive in the search for mass graves located on Serbian territory.²⁹⁷ Since its establishment, just one mass grave – that in Rudnica – has been discovered, but only after Kosovo institutions had provided information on its whereabouts.²⁹⁸

Until 2017, Serbian authorities searched Medveđa, Brežuljak-Rudnica, Novi Pazar, and Kiževak,²⁹⁹ indicated by Kosovo institutions as potential mass grave sites. The searches were fruitless.³⁰⁰

Their failure to take a proactive approach to uncovering mass graves on their own shows that the Commission on Missing Persons and other government bodies responsible for resolving the fate of the missing are lacking in the initiative and ability to perform this task.³⁰¹

Stepping up Regional and International Cooperation in Resolving the Fate of Missing Persons

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Only two activities are envisaged in the National Strategy in relation to this field. Neither of them has advanced the search for people missing from the wars in the former Yugoslavia.

296 „Program organizacije i unapređenja rada Tužilaštva za ratne zločine za period 2016-2022 – Snežana Stanojković” [Programme for Organization and Improvement of OWCP Performance for the Period 2016-2022], Section IX, para. 5, (HlcIndexIn: 120-F117692, 22 December 2015), available (in Serbian) at: http://www.hlc-rdc.org/wp-content/uploads/2015/12/Program_organizacije_i_unapredjenja_rada_tuzilastva_za_ratne_zlocine_za_period_od_2016-2022godine-Snezana_Stanojkovic.pdf, last accessed: 25 September 2017.

297 In the spring of 2001, three mass graves containing the bodies of 889 Kosovo Albanians were discovered in Serbia. The first one was located at the police training centre in the Belgrade suburb of Batajnica, the second in Petrovo Selo, Eastern Serbia, near the MoI counter-terrorist units’ training grounds, and the third by Lake Perućac near Bajina Bašta, Western Serbia. See: “Batajnica Memorial Initiative”: <http://www.batajnicamemorialinitiative.org/en/grobnice>, last accessed: 29 September 2017; *Dossier: Rudnica*, HLC, 2015, Belgrade, pp. 7-11.

298 Data taken from: *Transitional Justice in Serbia 2013-2015*, HLC, 2016, p. 70, available at: http://www.hlc-rdc.org/wp-content/uploads/2016/06/izvestaj_o_TP_2013-2015_eng.pdf, last accessed: 26 September 2017.

299 *Ibid*; HLC interview with the President of the Commission on Missing Persons of the Government of the Republic of Serbia, 11 October 2017.

300 *Ibid*.

301 *Ibid*.



The first activity which was implemented was Serbia's accession to the agreement establishing the International Commission on Missing Persons (ICMP) as an international organization. The agreement entered into force in August 2017, and Serbia became its signatory in December 2015, before the National Strategy had been adopted.³⁰² Under the agreement, the ICMP became an international organization in its own right, tasked with securing the cooperation of governments and other authorities in locating missing persons.³⁰³ However, the HLC has no information as to whether any concrete activities relating to the search for missing persons have been undertaken so far in cooperation with the ICMP.

The second activity stipulated by the National Strategy concerns the establishment of a cash fund to support the competent state bodies in obtaining all available information on the location of gravesites containing the bodies of persons still listed as missing.³⁰⁴ The activity has yet to be implemented.³⁰⁵

The importance of regional cooperation in the search for missing persons from the wars in the former Yugoslavia cannot be overstated, as the information on gravesite locations and the gravesites themselves are often located in different countries in the region. Because of that, the HLC believes that the two aforementioned activities are absolutely inadequate, and that the issue of cross-border cooperation between the institutions responsible for missing persons in the region must be addressed. A recent incident which occurred at a meeting where the exhumation and identification of the mortal remains of persons who went missing in Croatia were discussed clearly showed how important regional cooperation is. The Chairman of the Commission on Missing Persons of the Government of Serbia walked out of the meeting after the Assistant Minister at the Croatian Ministry of Veteran Affairs had spoken about the "Greater-Serbian Aggression against Croatia."³⁰⁶

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302 Zakon o potvrđivanju sporazuma o uspostavljanju međunarodne komisija za nestala lica [Law on Ratification of the Agreement on the Status and Functions of the International Commission on Missing Persons], is available (in Serbian) on the official website of the National Assembly of the Republic of Serbia: <http://www.parlament.gov.rs/upload/archive/files/cir/pdf/zakoni/2017/65-17.pdf>, last accessed: 31 August 2017.

303 Law on Ratification of the Agreement on the Status and Functions of the International Commission on Missing Persons (Official Gazette of the Republic of Serbia - International Treaties no. 4/17), Article 2.

304 National Strategy for the Prosecution of War Crimes, str. 34.

305 HLC interview with the President of the Commission on Missing Persons of the Government of the Republic of Serbia, 11 October 2017.

306 „Odalović napustio skup zbog rečenice da zlo dolazi iz Srbije“ [Odalović left the meeting because of the sentence that evil comes from Serbia], N1, 28 August 2017, available (in Serbian) at: <http://rs.n1info.com/a313864/Vesti/Vesti/Odalovic-napustio-skup-zbog-recenice-da-zlo-dolazi-iz-Srbije.html>, last accessed: 31 August 2017.



COOPERATION WITH THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA

Objective 1: Intensifying of cooperation with the ICTY and the MICT so that evidence on committed war crimes is transferred to the national judiciary and priority cases opened on the basis of such evidence.

The Law on the Cooperation of Serbia and Montenegro with the International Criminal Tribunal for the former Yugoslavia (ICTY) of 2002 established the legal framework for cooperation with the ICTY.³⁰⁷ The law, among other things, governs the establishment of the National Council for Cooperation with the ICTY, the ICTY's authority to undertake investigative actions in the territory of the Republic of Serbia, referral of criminal cases conducted before national courts to the ICTY, the procedure for handing over ICTY defendants to the ICTY, the provision of legal assistance to the ICTY, enforcement of ICTY sentences and other important matters.³⁰⁸

The Law on the Organization and Jurisdiction of State Authorities in War Crimes Proceedings is another law providing the framework for cooperation with the ICTY, as it lays down the conditions under which the ICTY may transfer cases to the Serbian judiciary, as well as the conditions under which the evidence presented before the ICTY may be used in domestic war crimes proceedings.³⁰⁹

The adoption of Resolution 1503 by the United Nations Security Council in 2003 announced the expiry of the ICTY's mandate.³¹⁰ With the expiry of its mandate approaching, the nature of Serbia's cooperation with the tribunal has also been changing. As part of the ICTY's "completion strategy", the International Residual Mechanism for International Criminal Tribunals (MICT) provides assistance to the national judiciary by referring cases and evidence to it. It is also important to note that, according to the MICT's statute, this mechanism has competence to conduct proceedings against persons accused of contempt of the ICTY or the MICT.³¹¹

307 Law on Cooperation of Serbia and Montenegro with 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 (Official Gazette of the FRY no. 18/2002, and Official Gazette of Serbia and Montenegro, no. 16/2003).

308 *Ibid.*

309 Law on the Organization and Jurisdiction of State Authorities in Prosecuting Perpetrators of War Crimes (Official Gazette of the Republic of Serbia, nos. 67/2003, 135/2004, 61/2005, 101/2007, 104/2009, 101/2011 and 6/2015), Article 14a.

310 The text of Resolution is available at: <http://www.un.org/press/en/2003/sc7858.doc.htm>, last accessed: 01 September 2017.

311 Statute of the International Residual Mechanism for Criminal Tribunals, Article 4 (1), available at: http://www.unmict.org/sites/default/files/documents/101222_sc_res1966_statute_en.pdf; Rules on Procedure and Evidence, Rule 90, available at: <http://www.unmict.org/sites/default/files/documents/160926-rules-rev2-en.pdf>. All sources last accessed: 21 September 2017.



Although the ICTY's mandate is nearing its end, full cooperation with the ICTY remains an essential condition for Serbia's EU membership, as was explicitly stated in the Stabilization and Association Agreement.³¹²

When it comes to Serbia's cooperation with the Tribunal, the National Strategy envisages examination of the ICTY archives and an analysis of the material and evidence relevant for the OWCP's top priority cases (to be determined in the prosecutorial strategy).³¹³

OWCP Liaison Officer at the ICTY

The OWCP has had its liaison officer at the ICTY since 15 June 2009.³¹⁴ His job entails searching the electronic database of the Office of the ICTY Prosecutor, and holding consultations and meetings with ICTY prosecutors for the purpose of obtaining evidence to be used in the cases prosecuted by the OWCP.³¹⁵ In this way, the OWCP obtains information and facts that could be used as a starting-point from which to direct its investigations.³¹⁶ The work of the liaison officer is made possible thanks to a program funded by the European Commission. The OWCP described this program as very useful for their work.³¹⁷

On its official website, the OWCP has listed some of the cases which have resulted from its cooperation with the ICTY: referral of a case at the investigation stage (*Zvornik Case*),³¹⁸ referral of a case after the indictment was confirmed (*Vladimir Kovačević – Rambo Case*),³¹⁹ concerning the shelling of Dubrovnik in 1991), cooperation on requests for assistance, and the agreement on providing OWCP access to the ICTY electronic database.³²⁰ It is on the basis of evidence supplied by the ICTY that the investigation in the *Ovčara I Case* has been conducted,³²¹ the first case ever prosecuted by the national judiciary.

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312 *Stabilisation and Association Agreement*, p. 8, Articles 2 and 8, available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/serbia/key_document/saa_en.pdf, last accessed: 20 September 2017.

313 *National Strategy for the Prosecution of War Crimes*, p. 35.

314 OWCP's reply no. A.br. 78/17 of 28 April 2017 to an HLC request for information of public importance.

315 Cited from the official website of the Office of the War Crimes Prosecutor (in Serbian): <http://www.tuzilastvorz.org.rs/sr/saradnja/me%C4%91unarodna-saradnja>, last accessed: 21 September 2017.

316 HLC interview with an OWCP representative, 07 September 2017.

317 *Ibid.*

318 Information about *Zvornik I Case (KTRZ 17/04)* are available (in Serbian) at: <http://www.tuzilastvorz.org.rs/sr/predmeti/zvornik-i-slavkovi%C4%87-i-ostali>, last accessed: 03 August 2017.

319 Information about *Dubrovnik Case (KTRZ – 5/07)* are available (in Serbian) at: <http://www.tuzilastvorz.org.rs/sr/predmeti/dubrovnik>, last accessed: 03.08.2017.

320 Cited from the official website of the Office of the War Crimes Prosecutor: <http://www.tuzilastvorz.org.rs/sr/saradnja/me%C4%91unarodna-saradnja>, last accessed: 03 August 2017.

321 Information about *Ovčara I Case (KTRZ – 3/03)* are available (in Serbian) at: <http://www.tuzilastvorz.org.rs/sr/predmeti/ov%C4%8Dara-i-vujovi%C4%87-i-ostali>, last accessed 01 September 2017.



Failure to Comply with the Arrest Warrant for Contempt of Court

Serbia's cooperation with the ICTY in the reporting period was nevertheless attended by sharp criticism. The European Commission's Serbia 2016 Progress Report cites the opinion of ICTY Prosecutor Serge Brammertz that while Serbia's technical cooperation on requests for assistance remained satisfactory, Serbia had turned away from the path of full cooperation with the ICTY.³²² This opinion is mainly based on the fact that Serbia failed to comply with the ICTY's request for the arrest and handing over of three senior officials of the Serbian Radical Party, namely Petar Jojić, Vjerica Radeta and Jovo Ostojić, charged with contempt of court – a request issued in January 2015.³²³ The three were charged by the ICTY with threatening, intimidating, offering bribes to, and harassing two witnesses who were to testify in the proceedings against Vojislav Šešelj, President of the Serbian Radical Party (SRS).³²⁴

The Higher Court in Belgrade, the court competent to act upon ICTY arrest warrants, found that the legal requirements for their surrender laid down by the Law on Cooperation with the ICTY had not been met in the case of the three Radical Party officials. The court's decision refusing the ICTY's request states that the law does not provide for the surrender of persons charged with contempt of court, but only those charged with war crimes, crimes against humanity, and the crime of genocide.³²⁵

However, Serbia has acted differently in exactly the same situations in the past, and extradited persons wanted by the ICTY for contempt of court without hesitation. Thus for example, when Jelena Rašić,³²⁶ Dragomir Pećanac³²⁷ and Ljubiša Petković³²⁸ were charged with the same act, the competent authorities of the Republic of Serbia, applying the same law as in the case of the three Radicals, found that the legal conditions for extradition had been met and had them arrested and handed over to the ICTY.

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322 2016 Serbia Progress report, pp. 66-67.

323 *Ibid.*

324 Order to schedule a hearing, The Hague, 03 February 2016, available on the official ICTY website: http://www.icty.org/x/cases/contempt_seselj4/tord/en/160203.pdf, last accessed: 21 September 2017.

325 See: *Court's Decision to Refuse Extradition of Three Members of Serbian Radical Party a Result of Political Calculations of Government of Serbia*, HLC, press release, 25 May 2016, available at: <http://www.hlc-rdc.org/?p=32029&lang=de>, last accessed; 28 February 2017.

326 „Jelena Rašić pleads not guilty to bribing witness”, Sense News Agency, 22 September 2010, available at: http://www.sense-agency.com/icty/jelena-rasic-pleads-not-guilty-to-bribing-witness.29.html?cat_id=1&news_id=11956, last accessed: 30 September 2017.

327 „Major Pecanac refuses to testify against General Tolimir”, Sense News Agency, 10 October 2011, available at: http://www.sense-agency.com/icty/major-pecanac-refuses-to-testify-against-general-tolimir.29.html?cat_id=1&news_id=13270, last accessed: 30 September 2017.

328 „Petković on trial for contempt”, Sense News Agency, 31 October 2008, available at: http://www.sense-agency.com/icty/petkovic-on-trial-for-contempt.29.html?cat_id=1&news_id=10906, last accessed: 30 September 2017.



In the meantime, the ICTY has requested access to the transcripts and audio recordings of the hearing of the three SRS members, but the Higher Court has been refusing for over two months to deliver these documents.³²⁹

By the time this report was completed, Serbia had not complied with the arrest warrants on the three ICTY indictees. One of them, Jovo Ostojić, passed away in the meantime.³³⁰

REGIONAL AND INTERNATIONAL COOPERATION

1. Regional Cooperation

Objective 1: The Republic of Serbia shall invest efforts to develop normative regulation of the issues of regional cooperation in regard to prosecuting war crimes, as well as other related issues.

Objective 2: Proceeding upon letters of request of the Republic of Serbia sent to the states in the region is improved through joint action of the Office of War Crimes Prosecutor and the Ministry of Justice, and the number of cases in which the evidence is exchanged between prosecutors' offices through regional cooperation is increased.

Objective 3: Enhanced cooperation with the judicial bodies of the provisional institutions of Kosovo and Metohija.

2. International Cooperation

Objective 1: Enhanced international cooperation through the presentation of work of the national judicial bodies.

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In consequence of the cross-border nature of the armed conflicts in the former Yugoslavia, victims, witnesses, perpetrators and evidence are for the most part not located within the territory of a single state and do not fall within the competence of a single national judiciary. Additionally, due to the fact that almost all former Yugoslavia successor states ban extradition of their citizens for trials in other countries, prosecution of war crimes committed on the territory of the former Yugoslavia is simply impossible without effective

329 „U Hag više ne izručujemo ni papire” [We are no longer delivering even documents to The Hague], Danas, 08 August 2017, available (in Serbian) at: http://www.danas.rs/drustvo/suocavanje.1179.htm?news_id=353213&title=U+Hag+vi%C5%A1e+ne+izru%C4%8Dujemo+ni+papire, last accessed: 21 September 2017.

330 „Trial Chamber I issues Revised Order in Lieu of Indictment in Jojić et al. contempt case”, ICTY, press release, 18 August 2017, available at: <http://www.icty.org/en/press/trial-chamber-i-issues-revised-order-in-lieu-of-indictment-in-joji%C4%87-et-al-contempt-case>, last accessed 31 October 2017.



judicial cooperation among the countries in the region.³³¹ The fact that 35 of the 60 cases that have been prosecuted by the Serbian judiciary since 2003 resulted from regional cooperation clearly indicates the importance of this form of cooperation.³³²

Normative Framework

The OWCP's cooperation with its counterparts in the region in the investigation of war crimes is regulated by memoranda, agreements and protocols on cooperation on the investigation of war crimes, transfer of cases and exchange of evidence.³³³ The OWCP has signed a number of bilateral cooperation agreements, including those signed with the State Attorney's Office of Croatia (DORH), Prosecutor's Office of Montenegro and Prosecutor's Office of B&H.³³⁴ The memoranda signed with Croatia and B&H have to some extent improved the cooperation between the OWCP and its Croatian and Bosnian counterparts, by providing for their direct communication in the exchange of evidence, information and news, instead of communication through international legal assistance, as was the practice previously.³³⁵

Nevertheless, some of the problems encountered in practice were left unaddressed in the cooperation agreements, which is why the National Strategy stipulates entering into new agreements on some "open issues". One of these issues is the competing jurisdictions of the prosecutor's offices in the region, which as a rule have undermined political relations between the states.³³⁶ Namely, because of its "parallel investigations" (in *Tuzla Convoy*,³³⁷

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331 *Ten years of war crimes prosecution in Serbia – Contours of Justice*, HLC, 2014, HLC, 2014, p. 24; *Model Strategy for the Prosecution of War Crimes Committed during and in relation to the Armed Conflicts in the Former Yugoslavia, Period 2015-2025*, HLC, pp. 16-17.

332 The chronology of war crimes trials before Serbian courts are available at: <http://www.hlc-rdc.org/?-cat=234&lang=de>, last accessed: 23 October 2017.

333 Normative framework governing regional cooperation is available (in Serbian) on the official website of the Office of the War Crimes Prosecutor: <http://www.tuzilastvorz.org.rs/sr/saradnja/regional-na-saradnja>, last accessed: 23 October 2017.

334 *Ibid.*

335 *Ten years of war crimes prosecution in Serbia – Contours of Justice*, HLC, 2014, p. 27.

336 „Srbija ne odustaje od nadležnosti za ratne zločine“ [Serbia does not relinquish jurisdiction for war crime], Al Jazeera Balkans, 14 July 2016, available (in Serbian) at: <http://balkans.aljazeera.net/vijesti/srbija-ne-odustaje-od-nadleznosti-za-ratne-zlocine>, last accessed: 22 September 2017.

337 *Tuzla Convoy Case* (KTRZ 5/04), is available (in Serbian) at: <http://www.tuzilastvorz.org.rs/en/cases/cases-/case-name-tuzla-convoy-juri%C5%A1i%C4%87>, last accessed: 22 September 2017.



*Dobrovoljačka Street*³³⁸ and *Naser Orić*³³⁹ Cases) and its prosecution of citizens of other states in the region, especially some high-ranking suspects, the OWCP often came into collision with its counterparts in the region.³⁴⁰ To prevent these problems from recurring, the National Strategy stipulates improving the normative frameworks with Croatia, B&H and Montenegro, and signing an inter-governmental agreement which would set regional rules on division of jurisdiction in prosecuting war crimes. Additionally, the Strategy stipulates the signing of agreements to improve the execution of letters of request for judicial assistance, facilitate gathering evidence located on the territory of another state in the region for defense lawyers, and achieve uniformity of actions by the states in the region in clarifying the fate of missing persons.³⁴¹

At the time of this writing, **Serbia had not signed any new intergovernmental agreement** regulating these issues.³⁴²

• Regional Conferences

The National Strategy stipulates a series of regional conferences aimed at strengthening regional cooperation.³⁴³ Specifically, the Ministry of Justice is to initiate a regional conference on strengthening cooperation in victim and witness support,³⁴⁴ and regional conferences to negotiate an intergovernmental agreement aimed at improving different aspects of war crimes prosecution and the search for missing persons.³⁴⁵ At the time of

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338 „Za slučaj ‘Dobrovoljačka’ je nadležan sud BiH“ [Court of BiH has jurisdiction over *Dobrovoljačka* Case], Radio Free Europe, 13 March 2010, available at: <https://www.slobodnaevropa.org/a/most-dobrovoljacka/1982682.html>, last accessed: 22 September 2017.

339 „Orić investigation gains momentum“, Official website of the Office of the War Crimes Prosecutor, 29 January 2014, available at: <http://www.tuzilastvorz.org.rs/en/news-and-announcements/announcements/ori%C4%87-investigation-gains-momentum>; „Slučaj Naser Orić: Čeka se zahtev Beograda“ [Naser Orić Case awaiting request from Belgrade], available (in Serbian) at: <http://www.novosti.rs/vesti/naslovna/dosije/aktuelno.292.html:552583-Slucaj-Naser-Oric-Ceka-se-zahtev-Beograda>. All sources last accessed: 22 September 2017.

340 Proceedings against former Member of BiH Presidency during the war Ejup Ganić, Army of BiH General Jovan Divjak, former Deputy Speaker of Croatian Parliament Vladimir Šeks, commander of Army of BiH forces in Srebrenica Naser Orić, etc. See in: *Report on War Crimes Trials in Serbia during 2016*, HLC, 2017, pp. 16-17; Svetlana Božić Krainčanić, Branka Mihajlović, “Srpsko tužilaštvo ne treba da se bavi politikom” [Serbian prosecutor’s office should not engage in politics], Radio Free Europe, 28 July 2010, available (in Serbian) at: <https://www.slobodnaevropa.org/a/tokaca-kandic-ganic/2111831.html>. All sources last accessed: 22 September 2017.

341 National Strategy for the Prosecution of War Crimes, p. 36.

342 Source: Ministry of Justice’s reply no. 7-00-142/2017-32 of 27 April 2017 to an HLC request for information of public importance.

343 National Strategy for the Prosecution of War Crimes, chapters “*Support to witnesses and victims*”, p. 29, and “*Regional and broader international cooperation*”, p. 36.

344 National Strategy for the Prosecution of War Crimes, chapter “*Support to witnesses and victims*”, p. 29.

345 National Strategy for the Prosecution of War Crimes, chapter “*Regional and broader international cooperation*”, p. 36.



this writing, not one of the regional conferences stipulated in the National Strategy has actually taken place.³⁴⁶

Given the importance of regional conferences as mechanisms for achieving many of the objectives from the Strategy, Serbia's decision not to send OWCP representatives to the annual regional conference of war crimes prosecutors held on the Brijuni Islands in Croatia in September 2016 is most worrying. This was **the first time in 12 years that the OWCP did not participate in a regional conference of war crimes prosecutors from the region.**³⁴⁷

At the same time, prosecutors from Serbia did participate in the consultative meeting on strengthening regional cooperation in the prosecution of war crimes and search for missing persons held in Budva, Montenegro, in April 2017. The meeting brought together prosecutors from Montenegro, B&H, and Croatia, representatives of the Commission on Missing Persons of the Republic of Serbia, the Missing Persons Institute from B&H and the Croatian Directorate for Detained and Missing Persons. According to the information available on the OWCP website, the last regional conference of Chief Prosecutors was held on 27 October 2017 in Belgrade. The website does not provide information regarding the conclusions of the meeting.³⁴⁸

Although the participation of the OWCP in the meetings is encouraging, it should be noted that the initiative to organize them did not come from the OWCP or the Ministry of Justice, as required by the National Strategy, but from the UNDP, as part of their regional project "Strengthening Regional Cooperation in Prosecution of War Crimes and the Search for Missing Persons".

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346 Ministry of Justice's reply no. 7-00-142/2017-32 of 27 April 2017 to an HLC request for information of public importance.

347 „Consequences of Political Tensions on Prosecution of War Crimes: For the first time, Serbia does not participate in the Regional Conference of War Crimes Prosecutors”, HLC, press release, 07 September 2016, available at: <http://www.hlc-rdc.org/?p=32698&lang=de>, last accessed: 01 September 2017.

348 „A regional consultation meeting was held in Belgrade on enhancing regional cooperation in processing war crimes”, OWCP press release, 27 October 2017, available at: <http://www.tuzilastvorz.org.rs/en/news-and-announcements/announcements/regional-consultation-meeting-was-held-in-belgrade-on-enhancing-regional-cooperation-in-processing-war-crimes>; „Acting Chief Prosecutor of the Prosecutor's Office of BiH, Gordana Tadić, at a regional conference of Chief Prosecutors in Belgrade”, news, official website of the Prosecutor's Office of Bosnia and Herzegovina, 27 October 2017, available at: <http://www.tuzilastvobih.gov.ba/index.php?id=3651&jezik=e>. All sources last accessed on: 30 October 2017.



Cooperation with the Kosovo Judiciary

As Serbia does not recognize Kosovo's independence, the legal framework for cooperation between Serbia and Kosovo in prosecuting war crimes is the Procedures for mutual legal assistance by the Government of RS adopted in 2013, mediated by EULEX.³⁴⁹ But as EULEX no longer has the mandate to undertake investigations, since May 2014 when investigations were transferred to the competence of local prosecutors,³⁵⁰ cooperation in war crimes cases **between Serbia and Kosovo is effectively stalled.**³⁵¹

In more than three years, the OWCP has not issued a single indictment for crimes committed in Kosovo.³⁵² When urged by the HLC to take action on the criminal complaints lodged for crimes in Kosovo, the OWCP replied that they are unable to investigate the crimes committed in Kosovo, because according to Kosovo's Ministry of Justice, the OWCP has no territorial jurisdiction to investigate acts "assumed to have taken place in Kosovo."³⁵³

In January 2016, the HLC lodged an appeal with the Constitutional Court against the OWCP because this office failed to conduct an adequate and effective investigation into the *Landovica* Case.³⁵⁴ The HLC has stated the Republic of Serbia has the right not to recognize Kosovo as an independent state, but it cannot let this political decision interfere with its legal obligation to prosecute war crimes within its jurisdiction.³⁵⁵

International Cooperation

The National Strategy stipulates that the Government of Serbia should support international cooperation between all domestic judicial bodies dealing with the issue of war crimes.³⁵⁶ In spite of that, international cooperation in this area has been compromised

349 Official website of the OWCP, section International cooperation, available at: <http://www.tuzilastvorz.org.rs/en/co-operation/international-co-operation>, last accessed on: 30 October 2017.

350 OWCP's response to HLC's request (HlcIndexIn: 25-F126625 of 27 October 2016) to take action on case KTP no. 149/13.

351 *Report on War Crimes Trials in Serbia during 2016*, HLC, 2017, pp. 16-17.

352 The HLC has filed nine criminal complaints since 2014 for crimes committed in Kosovo, namely the crimes in Peć/Pejë, Mala Kruša/Krushë e Vogël, Savine Vode, Vučitrn/Vushtrri, Goden, Kraljane/Kralan, Landovica/Landovicë, Poklek, and Rezala/Rezallë. None of these crimes have been investigated so far.

353 OWCP's response to HLC's request (HlcIndexIn: 25-F126625 of 27 October 2016) to take action on case KTP no. 149/13.

354 „*Blokada sudenja za ratne zločine počinjene na Kosovu*” [Trials of war crimes committed in Kosovo are blocked], *Danas*, 21 April 2017, available (in Serbian) at: http://www.danas.rs/drustvo/suocavanje.1179.html?news_id=344036&title=Blokada+su%C4%91enja+za+ratne+zlo%C4%8Dine+po%C4%8Dinjene+na+Kosovu, last accessed: 25 September 2017.

355 *Ibid.*

356 National Strategy for the Prosecution of War Crimes, str. 38.



by the public statements of Serbian high state officials, which have shown that there is undue executive interference with the judiciary and that the Government is not genuinely committed to the fight against impunity.

- **Request for Haradinaj's Extradition**

In April 2017, a court in France ruled to turn down a Serbian request for extradition of Ramush Haradinaj, a former KLA commander.³⁵⁷ All similar requests for extradition of high-ranking non-Serb suspects made by Serbia have been invariably turned down.³⁵⁸

The French court found that Haradinaj's extradition could have dire consequences for him. The finding was based, among other things, on the fact that Ramush Haradinaj is "depicted by Serbian government officials as having committed some of the most heinous crimes since World War II, and a man involved in torture, murders and rapes."³⁵⁹ And indeed, from his arrest in January 2017 until the court's final decision to reject his extradition, the most senior Serb officials took every opportunity to publicly assert Haradinaj's criminal responsibility.³⁶⁰

- **Medal of Honour Awarded to an International Criminal Court Indictee**

In the very same month in which the National Strategy was adopted, the then President of Serbia, Tomislav Nikolić, awarded a medal³⁶¹ to the President of Sudan Omar al-Bashir, who at the time had been wanted for seven years by the International Criminal

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357 „Slučaj „Haradinaj“: Kako srpska vlast ne shvata šta je pravna država“ [Haradinaj case: Serbian authorities' poor understanding of the rule of law], portal Radio Free Europe, 01 May 2017, available (in Serbian) at: <https://www.slobodnaevropa.org/a/kako-srpska-vlast-shvata-pravnu-drzavu/28461839.html>, last accessed: 25 September 2017.

358 „Zašto niko ne izručuje Srbiji optužene za ratne zločine?“ [Why war crimes suspects are never extradited to Serbia?], N1, 29 April 2017, available (in Serbian) at: <http://rs.n1info.com/a245522/Vesti/Vesti/Zasto-niko-ne-izrucuje-Srbiji-optuzene-za-ratne-zlocine.html>, last accessed: 25 September 2017.

359 Ruling of the Appellate Court in Kolmar, 27 April 2017, p. 25.

360 „Francuski sud: Haradinaj u pritvoru do zahteva Srbije za izručenjem“ [French court: Haradinaj in custody pending Serbia's extradition request], portal Radio Free Europe, 05 January 2017, available (in Serbian) at: <https://www.slobodnaevropa.org/a/kosovo-srbija-haradinaj/28215386.html>; „Da li će Haradinaj biti izručen Srbiji?“, [Will Haradinaj be extradited to Serbia?], N1, 06 January 2017, available (in Serbian) at: <http://rs.n1info.com/a219507/Vesti/Vesti/Zahtev-Srbije-za-izrucenje-Haradinaja-jos-nije-spreman.html>; „Haradinaj – zločinac između oslobođenja i izručenja“ [Haradinaj – criminal between release and extradition], Politika, 10 January 2017, available (in Serbian) at: <http://www.politika.rs/scc/clanak/371781/0>; „Slučaj „Haradinaj“: Kako srpska vlast ne shvata šta je pravna država“ [Haradinaj Case: Serbian authorities' poor understanding of the rule of law], portal Radio Free Europe, 01 May 2017, available (in Serbian) at: <https://www.slobodnaevropa.org/a/kako-srpska-vlast-shvata-pravnu-drzavu/28461839.html>. All sources last accessed on: 25 September 2017.

361 Decree on medal awarding signed by President of the Republic of Serbia Tomislav Nikolić, available (in Serbian) at: <http://predsednik.rs/predsednik/ukazi-o-odlikovanjima>, last accessed: 26 October 2017.



Court (ICC) on charges of war crimes, crimes against humanity and genocide in Darfur, Sudan.³⁶²

In this way, Serbia departed from its declared resolution “to guarantee lasting respect for and enforcement of international justice” as a State Party to the ICC Statute,³⁶³ and discredited itself internationally.

- **International Jurisprudence**

While Serbian officials were bringing Serbia into bad repute internationally, the National Strategy stipulated two activities which are to improve Serbia’s international reputation in the field of war crimes prosecution: (1) participation of members of Serbian judiciary in international conferences; and (2) translating domestic judgments into English so that they can be included in the ICC electronic database.³⁶⁴

These activities are not only peripheral and incapable of addressing the serious challenges faced by the domestic judiciary in the international arena, they also cannot serve their intended purpose and are even absurd. The idea of strengthening international cooperation by means of translating Serbian judgments into the English language in a situation where the majority of judicial office holders are unable to consult the relevant international jurisprudence for lack of foreign language skills,³⁶⁵ indicates that the authors of the Strategy were either ignorant of the actual state of affairs in the area of war crimes processing or simply not interested in addressing the real problems.

The two activities have not been implemented.³⁶⁶

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362 See: *al-Bashir Case, The Prosecutor v. Omar Hassan Ahmad al-Bashir* (ICC-02/05-01/09), available at: <https://www.icc-cpi.int/darfur/albashir>; *Letter by the Coalition for the ICC addressed to the President of the Republic of Serbia on the occasion of awarding the President of Sudan with Medal of Honour*, 06 April 2017, available at: <http://www.hlc-rdc.org/?p=31580&lang=de>. All sources last accessed: 26.10.2017.

363 Law on Confirming the Rome Statute of the International Criminal Court (Official Gazette of the FRY – International Treaties, no. 5/2001), Article 2.

364 More on “Legal Tools Project” available at: <https://www.legal-tools.org/>, last accessed: 25 September 2017.

365 *Ten years of war crimes prosecution in Serbia – Contours of Justice*, HLC, 2014, pp. 15 and 37.

366 OWCP’s reply A.no. 100/17 of 15 May 2017 to an HLC request for information of public importance; Ministry of Justice’s reply no. 7-00-142/2017-32 of 27 April 2017 an HLC request for information of public importance.



IMPROVING THE SOCIETY'S ATTITUDE TOWARDS THE ISSUE OF WAR CRIMES TRIALS

Objective 1: Easier access to information on war crimes trials.

Objective 2: Enhancement of capacity of media professionals for appropriate reporting on war crimes proceedings.

Objective 3: Improvement of the curricula in the manner that allows the students to obtain a sufficient quantity of relevant information on the conflicts in the former Yugoslavia, war crimes committed during that time, and norms of the international humanitarian law.

Objective 4: Public presentation of the National Strategy as the tool to express firm and unequivocal commitment of the Republic of Serbia to undertake measures preventing impunity of war crimes.

In the context of dealing with the recent past, it is important to secure mechanisms which would enable objective and timely informing of the general public about judicially established facts. The mechanisms should allow for members of the public to exercise their right to know the facts about past crimes. According to the UN principles to combat impunity, "Every people has the inalienable right to know the truth about past events [...] and about the circumstances and reasons that led [...] to the perpetration of those crimes."³⁶⁷

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However, informing the public on war crimes trials continues to be a serious challenge for the judicial authorities responsible for handling these crimes. Some of the problems in this area include: absence of special programs for informing the public (so-called *outreach*)³⁶⁸, difficulty of public access to the documents pertaining to war crimes cases (judgments are not publicized and are excessively anonymized) and the impossibility of recording war crimes trials for the purpose of public broadcasting.

These problems have largely contributed to the poor visibility of war crimes trials in Serbia. The latest opinion survey revealed that an alarming 85 percent of people surveyed

367 Principle 2, The Inalienable Right to the Truth, *Updated Set of principles for the protection and promotion of human rights through action to combat impunity* (E/CN.4/2005/102/Add.1), 08 February 2005, available at: <http://www.refworld.org/docid/42d66e780.html>, last accessed: 02 October 2017.

368 *Ten years of war crimes prosecution in Serbia – Contours of Justice*, HLC, 2014, pp. 46-47; *Model Strategy for the Prosecution of War Crimes Committed during and in relation to the Armed Conflicts in the Former Yugoslavia, Period 2015-2025*, HLC, p. 29; *Transitional Justice in Serbia in the period from 2013 to 2015*, HLC, 2016, pp. 34-35; Milica Kostić, „Public's Right to Know of War Crimes Trials in Serbia”, *Analysis of Current Issues in War Crimes Proceedings*, Collection of Papers, Belgrade Center for Human Rights, Belgrade, 2016, pp. 21-22.



cannot name even a single war crime that has been or is being tried before a Serbian court, 79 percent cannot name a single judicial institution responsible for handling war crimes, and 50 percent saying they are ill-informed on war crimes trials.³⁶⁹

The National Strategy sets “a raised level of awareness and an improved public attitude toward the need for war crimes trials” as one of its priorities.³⁷⁰ The activities to achieve this goal include presidents of competent courts acting consistently when granting permissions for recording main hearings, improving the website of the Higher Court in Belgrade, regular publication of reports on the work of the institutions responsible for handling war crimes, and on implementation of the strategic documents governing war crimes prosecution, inclusion of representatives of government institutions in the mechanisms for cooperation with civil society organizations, periodical trainings for journalists, an analysis of teaching/learning materials and publication of the Strategy.³⁷¹

The Strategy also stipulates that the highest state authorities, led by the Prime Minister and the Minister of Justice, will publicly declare their support for the work of all domestic bodies processing war crimes in the fight against impunity and for respect for the rule of law. Also, members of the Government and Assembly are expected to refrain from making inappropriate comments on the work of the judiciary in their public statements.³⁷²

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Access to Information and Documents Pertaining to War Crimes Cases

- **Public Relation Offices and Official Websites**

The Office of the War Crimes Prosecutor has been the only body that has developed a program for informing the public on its work and on war crimes trials, through its Public Relations Office. However, this office has ceased operations.³⁷³ Despite that, the OWCP website was improved in 2016, offering the main hearing schedules for the current month and case statistics. The OWCP has also published indictments, closing arguments and appeals on its website, but the sections containing this information are not updated

369 Public opinion survey commissioned by the Serbian daily *Danas* (published by “Dan Graf” LLC), Belgrade, August 2017, „Awareness of citizens of Serbia about the wars of the ‘90s, war crimes and trials for war crimes indictees”.

370 *National Strategy for the Prosecution of War Crimes, 3. Priorities and Objectives in War Crimes Trials*, pp. 19-20.

371 *Ibid.*, 39-41.

372 *Ibid.*, 40.

373 Informator o radu Tužilaštva za ratne zločine [Fact sheet about the work of the Office of the War Crimes Prosecutor], available (in Serbian) on the official OWCP website: http://www.tuzilastvorz.org.rs/upload/HomeDocument/Document_sr/2017-09/informator_lat_sep_2017~0.pdf, last accessed: 29 September 2017.



regularly.³⁷⁴ The new OWCP website is well-organized and easy to read and navigate, but the information it contains is presented in insufficient detail and not posted regularly.

The Department of War Crimes of the Higher Court in Belgrade and the Department of War Crimes of the Court of Appeal do not have their own public relations offices but use the PR offices of their respective courts.³⁷⁵ The PR office of the Higher Court in Belgrade informs the public about its work through brief press releases issued on the occasion of confirming an indictment or handing down a judgment.³⁷⁶

Only the Court of Appeal publishes its rulings in war crimes cases on its website. The Higher Court in Belgrade does not do this, despite the fact that first-instance judgments are the main source of facts regarding the events that are the subject of war crimes trials.³⁷⁷ Although improving the Higher Court website was an activity envisaged in the National Strategy, **the Higher Court website has not been improved in the reporting period.** Namely, apart from information that there exists a war crimes department at the court, the website offers no other information on war crimes trials, not even a hearing schedule.

- **Anonymization of Judgments**

Although OWCP and the Court of Appeal publish their indictments/judgments on their respective websites, these are, as a rule, anonymized (with parts of the text redacted, or blacked out). The Higher Court also only delivers redacted versions of its judgments when requested to deliver information of public importance. In several instances, the court has even redacted the names of the accused and their lawyers, judges, witnesses and expert witnesses, and even entire passages in their judgments, in defiance of the decisions of the Commissioner for Information of Public Importance.³⁷⁸ As a result, **its judgments are rendered entirely unreadable and unusable for legal analysis, victims are denied**

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374 OWCP official website: <http://www.tuzilastvorz.org.rs/en/>, last accessed: 29 September 2017.

375 *Transitional Justice in Serbia in the period from 2013 to 2015*, HLC, 2016, p. 35; PR office of the Higher Court in Belgrade: <http://www.bg.vi.sud.rs/lt/articles/sluzba-za-odnose-sa-javnoscju/>; PR Office of the Court of Appeal in Belgrade: <http://www.bg.ap.sud.rs/cr/articles/sluzba-za-odnose-sa-javnoscju/>. All sources last accessed: 29 September 2017.

376 Reply of the Higher Court in Belgrade no. Su II 17/a br. 93/17 of 18 May 2017 to an HLC request for information of public importance; *Ten years of war crimes prosecution in Serbia – Contours of Justice*, HLC, 2014, p. 46.

377 PR office of the Higher Court in Belgrade: <http://www.bg.vi.sud.rs/lt/articles/sluzba-za-odnose-sa-javnoscju/>, last accessed: 29 September 2017. Court of Appeal's rulings in war crimes cases published (in Serbian) on the court official website: <http://www.bg.ap.sud.rs/cr/articles/sudska-praksa/pre-gled-sudske-prakse-apelacionog-suda-u-beogradu/krivicno-odeljenje/ratni-zlocini>, last accessed: 02 October 2017.

378 See, e.g., Decision of the Commissioner for Information of Public Importance and Personal Data Protection no. 07-00-00337/2014-03 of 17 March 2014.



a symbolic recognition of their suffering, and the general public is denied the right to know the truth about past crimes.³⁷⁹

When refusing requests for access to non-anonymized judgments, courts invariably cite the provisions of the Law on Personal Data Protection as grounds for refusal.

This law, however, does not provide for protection of personal data if these data are already accessible to the general public,³⁸⁰ if such data are requested with a view to “protecting rights and freedoms and other public interest”,³⁸¹ or relate to a person, event or occurrence of public interest.³⁸² The first exemption mentioned above deserves to be more particularly emphasized when it comes to war crimes trials. Notably, war crimes trials are public (except in a few justifiable cases), which means that all personal information made public at main hearings, such as the names of victims and witnesses, become “publicly available” and therefore cannot be considered protected information. The sheer absurdity of the anonymization of information made public at open court proceedings becomes patently clear if one bears in mind that journalists are allowed to attend trials and report freely on every piece of information they have learned at trials.

The anonymization of victims’ names in judgments handed down in war crimes cases is giving cause for deep concern,³⁸³ as it makes victims invisible to the public, and thus denies the right to truth not only to victims, but also to their families and society as a whole. The HLC sees this practice as utterly wrong, as it is only when their identity is revealed that the victims cease to be mere numbers in the statistics and become known to the public as real persons who, only by virtue of their ethnicity or religion, fell victims to a crime. Furthermore, making their names known and announcing them in public brings some sort of satisfaction to victims, and is a prerequisite for recognition of the suffering they endured solely because of their identity.

The Republic of Serbia does not have specific legislation concerning the anonymization of prosecutorial and court decisions. This matter is in part regulated by the internal rules and regulations of courts and prosecutors’ offices, namely their rules on anonymization. The

379 „Anonymization of judgments in war crimes cases contrary to national and international regulations”, HLC, press release, 14 January 2014, available at: <http://www.hlc-rdc.org/?p=26065&lang=de>, last accessed: 16 October 2017.

380 Law on Personal Data Protection (Official Gazette of the Republic of Serbia nos. 97/2008, 104/2009 - other law, 68/2012 - Constitutional Court decision and 107/2012), Article 5, paragraph 1, sub-paragraph 1.

381 *Ibid*, Article 13.

382 *Ibid*, Article 14.

383 See, e.g., The ruling of the Court of Appeal in Belgrade in *Beli Manastir* Case, available (in Serbian) at: http://www.hlc-rdc.org/wp-content/uploads/2016/05/Drugostepena_presuda_12.02.2016.pdf, last accessed: 16 October 2017.



OWCP and the Higher Court in Belgrade do not have such rules in place. The Supreme Court of Cassation and the Court of Appeal in Belgrade have adopted their own rules on anonymization,³⁸⁴ which stipulate that the identity and other information concerning individuals accused and convicted of war crimes are not to be anonymized.

The National Strategy has not addressed specifically the issue of anonymization of court documents in war crimes cases. However, the Action Plan stipulates “setting clear rules governing the anonymization of judicial decisions in various areas of law prior to their publication, relying on the rules of the European Court of Human Rights.”³⁸⁵ The Working Group responsible for the implementation of this activity has prepared draft rules on anonymization **which apply only to the decisions of the Supreme Court of Cassation.**³⁸⁶ Not only is this contrary to the obligations assumed under the Action Plan, it is also pointless, because the Supreme Court of Cassation already had its rules on anonymization: rules which have not brought about standardization or uniformity in the practices of Serbian courts.

- **Recording Trials**

Unlike with organized crime trials, the media have never aired recordings from war crimes trials.³⁸⁷ Notwithstanding the legal framework which allows the recording and broadcast of war crimes trials,³⁸⁸ in the almost 15 years of domestic war crimes prosecution the general public in Serbia has never had a chance to see a single testimony of a victim, perpetrator or witness participating in the trials, or a court delivering a judgment in a war crime case. Since television is by far the most preferred source of information for

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384 Court of Appeal in Belgrade, *Pravilnik o izmenama pravilnika o minimumu anonimizacije sudskih odluka* [Rulebook on amendments to the Rulebook on the minimum anonymization of court decisions], (Su. br. I -2 84/12), 26 April 2012, p. 178, available (in Serbian) at: http://www.bg.ap.sud.rs/images/INFORMATOR_7_2013_LAT.pdf, last accessed: 16 October 2017; Supreme Court of Cassation, *Pravilnik o zameni i izostavljanju (anonimizaciji) podataka u sudskim odlukama* [Rulebook on the anonymization and redacting of data in court decisions], (I Su 303/10-1), 27 May 2010, available (in Serbian) at: <http://www.vk.sud.rs/sites/default/files/PravilnikOAnonimizaciji.pdf>. All sources last accessed: 16 October 2017.

385 *Action Plan for Chapter 23*, Activity 1.3.9.2., available at: <https://www.mpravde.gov.rs/files/Action%20plan%20Ch%2023.pdf>, last accessed: 16 October 2017.

386 Report 4/2016 on implementation of Action Plan for Chapter 23, December 2016, p. 89-90, available at: <https://www.mpravde.gov.rs/files/Report%20no.%204-2016%20on%20implementation%20of%20Acti%20on%20plan%20for%20Chapter%2023.pdf>, last accessed: 16 October 2017.

387 *Model Strategy for the Prosecution of War Crimes Committed during and in relation to the Armed Conflicts in the Former Yugoslavia, Period 2015-2025*, HLC, p. 30.

388 Law on Organization and Jurisdiction of Government Authorities in War Crimes Proceedings (Official Gazette of the Republic of Serbia, nos. 67/2003, 135/2004, 61/2005, 101/2007, 104/2009, 101/2011 and 6/2015), Article 16a.



Serbian citizens,³⁸⁹ and 72 percent of respondents said in the latest opinion poll that they most often use television as a source of information about the recent wars and war crimes trials,³⁹⁰ “a raised level of awareness of and improved public attitude toward war crimes trials,”³⁹¹ an objective stated in the National Strategy, cannot be achieved without TV reports from war crimes trials.

According to the latest opinion survey, 54 percent of Serbian citizens think that Radio Television of Serbia (RTS), as the public broadcaster with national coverage, should transmit war crimes trials or at least show highlights from the trials, such as victims’ testimonies and delivery of judgments (36 percent).

Although the Law Regulating the Organization and Jurisdiction of State Authorities in War Crimes Proceedings allows for the recording of trials,³⁹² what happens in practice is that the president of the Higher Court in Belgrade decides about the requests to record trials.³⁹³ Requests are regularly denied, mostly without any explanation.³⁹⁴

The National Strategy touched upon this issue by stipulating that “presidents of the competent courts will act consistently and in accordance with the Law on the Organization and Jurisdiction of State Authorities in War Crimes Proceedings.”³⁹⁵ Nevertheless, since the Strategy does not envisage any mechanism for controlling the implementation of this activity, so it is not surprising that **since the adoption of the National Strategy the President of the Higher Court has denied all requests for recording main hearings.**³⁹⁶

389 See, e.g., Istraživanje integriteta medija u Srbiji [Survey of the integrity of the media in Serbia], conducted by Bureau for Social Research, available (in Serbian) at: <http://www.birodi.rs/barometar-integriteta-medija-bim/>, last accessed: 02 February 2017.

390 Public opinion survey commissioned by the Serbian daily *Danas* (published by “Dan Graf” LLC), Belgrade, August 2017, „Awareness of citizens of Serbia about the wars of the ‘90s, war crimes and trials for war crimes indictees”.

391 National Strategy for the Prosecution of War Crimes, pp. 39–41.

392 Law on Organization and Jurisdiction of Government Authorities in War Crimes Proceedings (Official Gazette of the Republic of Serbia, nos. 67/2003, 135/2004, 61/2005, 101/2007, 104/2009, 101/2011 and 6/2015), Article 16a.

393 Judicial Rules of Procedure (Official Gazette of the Republic of Serbia nos. 110/2009, 70/2011, 19/2012, 89/2013, 96/2015, 104/2015, 113/2015 - Ex., 39/2016, 56/2016 and 77 / 2016), Article 59 and Article 60.

394 *Transitional Justice in Serbia 2013-2015*, HLC, 2016, p. 35; *Report on War Crimes Trials in Serbia in 2016*, HLC, 2017, p. 15.

395 National Strategy for the Prosecution of War Crimes, p. 39.

396 Higher Court in Belgrade’s reply Su II 17/a br. 93/17, of 18 May 2017 to an HLC request for information of public importance. See also: *Report on War Crimes Trials in Serbia in 2016*, HLC, 2017, p. 15.



Improving History Curricula Dealing with Armed Conflicts in the Former Yugoslavia

The period of armed conflicts in the 1990s is presented in Serbian history textbooks in a largely biased and selective manner. The large amount of judicially established facts about mass crimes committed in the former Yugoslavia are not included in the history curricula.

In a content analysis of the history textbooks in Serbia in the light of the facts established by the ICTY, which the HLC conducted in 2015, several tendencies were identified in history textbooks where dealing with the subject of the dissolution of Yugoslavia and the armed conflicts that took place from 1991 to 1999 was concerned.³⁹⁷ In almost all the textbooks, a distanced attitude towards the events in question and their presentation without sufficient elaboration are evident. In some textbooks, the subject of the wars and war-related crimes and their consequences are addressed with merely a few sentences. Another tendency present is the lack of objectivity in presenting the events related to the wars in the former Yugoslavia, especially in the presentation of the war crimes and the victims who died as a result of those crimes. The partiality is evident above all in the selective choice of information and concealment of the facts that could show the role of the Serbian people and state in a bad light.³⁹⁸

The disregard for judicially established facts about the wars in the former Yugoslavia opens the way for manipulations and interpretations of past events which best suit the prevalent political purposes. In this way, the possibility for new generations to engage in the process of rebuilding trust with neighboring nations becomes significantly reduced.

No changes have been made to the history textbooks since the adoption of the National Strategy.³⁹⁹

Lack of Political Support

- **Failure to Publicly Present the National Strategy for Prosecuting War Crimes**

As envisaged in the National Strategy, the highest state authorities, led by the Prime Minister and the Minister of Justice, shall publicly declare their support for the work of

397 „History textbooks in post-conflict societies: Education for reconciliation?“, Forum for Transitional Justice, HLC, Belgrade, 2015, p. 103, available at: http://www.hlc-rdc.org/wp-content/uploads/2016/03/Forum_5.pdf, last accessed: 17 October 2017.

398 *Ibid.*

399 *Ibid.*



all domestic bodies dealing with war crimes in the fight against impunity and for respect for the rule of law.⁴⁰⁰ At the time of the publication of this report, this has not happened.

The fact that this activity has not been implemented at all betrays the true attitude of Serbian authorities towards war crimes prosecutions. A significant number of other activities set forth in the Strategy have not been implemented either. But some objective reasons, such as non-election of a war crimes prosecutor⁴⁰¹ or lack of funding,⁴⁰² have been cited as excuses for failure to implement them. As regards the absence of a publicly stated support for the fight against impunity, there are no excusable reasons that can possibly justify this, because all it takes is political will, which is apparently absent.

• **Glorification of War Criminals**

The glorification of convicted war criminals, which began in 2015, has continued even after the adoption of the Strategy, with the official government-organized welcome for General Vladimir Lazarević, who was coming back to Serbia after serving the sentence passed on him by the ICTY for crimes against Kosovo Albanians.⁴⁰³

Veselin Šljivančanin,⁴⁰⁴ another convicted war criminal, went on a tour of Serbia during 2015 and 2016 to promote his book, including in Bački Gračac,⁴⁰⁵ Omoljica,⁴⁰⁶ Starčevo and Opovo.⁴⁰⁷ Some of the promotion events were staged by the ruling Serbian Progressive Party (SNS), including the event in Beška,⁴⁰⁸ where Youth Initiative for Human Rights

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400 National Strategy for the Prosecution of War Crimes, 3. *Priorities and Objectives in War Crimes Trials*, pp. 19-20.

401 See the section: „Improving efficiency of war crimes proceedings before the bodies of the Republic of Serbia”.

402 HLC interview with the President of the Commission on Missing Persons of the Government of the Republic of Serbia, 11 October 2017.

403 „Victims Mocked by Government Reception for Lazarević”, HLC, press release, 04 December 2015, available at: <http://www.hlc-rdc.org/?p=30815&lang=de>, last accessed: 31 March 2017.

404 Case *The Vukovar Troika* for which Veselin Šljivančanin was tried: *Mrkšić et al. (IT-95-13/1)*, available on the official ICTY website: <http://www.icty.org/en/case/mrksic/4#pressrel>, last accessed: 07 August 2017.

405 „Veselin Šljivančanin sa tribine u Bačkom Gračacu pružio podršku listi SNS” [Veselin Šljivančanin supports SNS list at public discussion in Bački Gračac], Radio Odžaci, 06 April 2016, available (in Serbian) at: <http://www.ico.rs/veselin-sljivancanin-sa-tribine-u-b-gracacu-uputio-podrsku-listi-sns/>, last accessed: 07 August 2017.

406 „Šljivančanin u Omoljici: U SNS su čestiti ljudi i patriote” [Šljivančanin in Omoljica: SNS are honorable people and patriots], RTV Pančevo, 13 April 2016, available (in Serbian) at: <http://rtvpancevo.rs/Vesti/Politika/sljivancanin-u-omoljici-u-sns-su-estiti-ljudi-i-patriote.html>, last accessed: 16 October 2017.

407 „Književno veče Šljivančanina u Starčevu i Opovu” [Literary evening with Šljivančanin in Starčevo and Opovo], RTV Pančevo, 02 February 2017, available (in Serbian) at: <http://rtvpancevo.rs/Vesti/Kultura/knjizevno-vece-sljivancanina-u-starcevu-i-opovu.html>, last accessed: 16 October 2017.

408 „Pretučeni aktivisti Inicijative mladih” [Youth Initiative activists beaten up], Danas, 17 January 2017, available (in Serbian) at: http://www.danas.rs/drustvo.55.html?news_id=336638, last accessed: 07 August 2017.



activists were physically assaulted while protesting against the event. In June 2017, Šljivančanin promoted his book in Belgrade, in the museum House of King Petar I.⁴⁰⁹

Momčilo Krajišnik, Speaker of the Bosnian Serb Assembly during the war in B&H, who had been convicted by the ICTY for extermination, murders, persecution on political, racial and religious grounds, deportation and inhumane treatment of non-Serbs during the war in B&H,⁴¹⁰ in April 2016 promoted his book at the Belgrade Youth Centre, a cultural and educational institution founded by the City of Belgrade.⁴¹¹ Thus, the City of Belgrade made it possible for Krajišnik to promote his book “How Republika Srpska was Born – Notes from the Hague Prison”, in which he denies the crimes of which he was convicted. The promotion took place despite protests by civil society organizations.⁴¹² In January 2017, Krajišnik was received by the then President of Serbia, Tomislav Nikolić, in the Serbian Presidential Building.⁴¹³

In October 2017, a reunion of ex-commanders of the Third Army who fought in the war in Kosovo was held under the slogan, “Lest we forget.”⁴¹⁴ Among the attendees were General Vladimir Lazarević, the former commander of the YA Pristina Corps, and Nikola Šainović, the former Vice-President of the Government of the Federal Republic of Yugoslavia, both convicted by the ICTY of war crimes and crimes against humanity committed during the war in Kosovo.⁴¹⁵ The reunion was also attended, on behalf of the government, by Defense Minister Aleksandar Vulin and Nikola Selaković, Secretary-General of the Serbian President, who gave speeches honoring the ex-commanders present. The Defense Minister said in his speech that “the time of shame has passed, it is

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409 „Predstavljena Šljivančaninova knjiga ‘U službi otadžbine’ [Šljivančanin’s book „In the service of the Fatherland” presented], Tanjug, 26 June 2016, available (in Serbian) at: <http://www.tanjug.rs/full-view.aspx?izb=339361>, last accessed: 07 August 2017.

410 ICTY, Momčilo Krajišnik, Case Information Sheet, available at: http://www.icty.org/x/cases/krajišnik/cis/en/cis_krajišnik_en.pdf, last accessed 31 March 2017.

411 Dom omladine [Belgrade Youth Center], web page, “About us”, available (in Serbian) at: <http://www.domomladine.org/o-nama/>, last accessed: 31 March 2017.

412 „NVO: Dom omladine da ne promovise knjigu Momčila Krajišnika” [NGOs: Belgrade Youth Center should not promote Momčilo Krajišnik’s book], N1, 15 April 2016, available (in Serbian) at: <http://rs.n1info.com/a152138/Vesti/Vesti/NVO-Dom-omladine-da-ne-promovise-knjigu-Momcila-Krajišnika.html>, last accessed: 31 March 2017.

413 „War Criminal in Presidency of Republic of Serbia”, HLC, press release, 11 January 2017, available at: <http://www.hlc-rdc.org/?p=33219&lang=de>, last accessed: 07 August 2017.

414 „Vulin: Prošlo je vreme stida, ovo je vreme tihog ponosa” [Vulin: The time of shame is a thing of the past, it is now time for quiet pride], RTS, 7 October 2017, available (in Serbian) at: <http://www.rts.rs/page/stories/sr/story/9/politika/2896858/vulin-proslo-je-vreme-stida-ovo-je-vreme-tihog-ponosa.html>, last accessed: 17 October 2017.

415 On the trial of Vladimir Lazarević and Nikola Šainović see: Šainović et al. (IT-05-87), available on the ICTY official website: <http://www.icty.org/cases/party/741/4>, last accessed: 17 October 2017.



now time for us to be quietly proud⁴¹⁶, adding that “the way we treat these people should reflect our self-respect⁴¹⁷”.

- **Denial of war crimes made legal**

Towards the end of 2016, the National Assembly of the Republic of Serbia passed the amendments to the Criminal Code which ban public approval or denial of the crime of genocide, crimes against humanity and war crimes, **but only if those offences have been established by the final judgments of a court in Serbia or the International Criminal Court**.⁴¹⁸ The ban does not apply to the denial of the facts established by the International Court of Justice and International Criminal Tribunal for the former Yugoslavia, including those concerning the Srebrenica genocide, the crime at Ovčara, mass crimes committed in Prijedor, at Markale, in Meja and Korenica, Izbica and other places during the wars in the former Yugoslavia.⁴¹⁹ With these amendments, Parliament has opened the way for the revision of judicially established facts, especially those pointing to Serb perpetrators.

In the HLC’s view, the fact that the amendments to the Criminal Code were adopted in the same year as the National Strategy, which emphasizes “general public awareness of the importance of punishment for war crimes perpetrators”,⁴²⁰ best illustrates how inconsistent the state authorities of the Republic of Serbia are when it comes to respect for the rule of law.

416 „Vulin: Prošlo je vreme stida, ovo je vreme tihog ponosa” [Vulin: The time of shame has passed, it is now time for us to be quietly proud], RTS, 07 October 2017, available (in Serbian) at: <http://www.rts.rs/page/stories/sr/story/9/politika/2896858/vulin-proslo-je-vreme-stida-ovo-je-vreme-tihog-ponosa.html>, last accessed: 17 October 2017.

417 „Vulin: Prošlo je vreme kada smo se stideli onih koji su branili zemlju od NATO” [The time when we were ashamed of those who defended the country from Nato is over], Blic, 07 October 2017, available (in Serbian) at: <http://www.blic.rs/vesti/politika/vulin-proslo-je-vreme-kada-smo-se-stideli-onih-koji-su-branili-zemlju-od-nato/xrejf4w>, last accessed: 17 October 2017.

418 Criminal Code (Official Gazette of the Republic of Serbia, Nos. 85/2005, 88/2005 – corr. 107/2005 – corr. 72/2009, 111/2009, 121/2012, 104/2013, 108/2014 and 94/2016), Article 387.

419 „Legal protection for the denial of genocide in Srebrenica”, HLC, press release, 17 November 2016, available at: <http://www.hlc-rdc.org/?p=32958&lang=de>, last accessed: 02 October 2017.

420 National Strategy for the Prosecution of War Crimes, 3. *Priorities and objectives in War Crimes Prosecution*, pp. 19-20.



Overview of the Implementation of Activities

1. INCREASING EFFICIENCY OF THE WAR CRIMES PROCEEDINGS BEFORE THE REPUBLIC OF SERBIA BODIES		
1.1. Investigations and Indictments		
Activity	Time Limit	Implementation Status
The OWCP will draft and adopt the Prosecutorial Strategy for Investigation and Prosecution of War Crimes.	Quarter 1 of 2016	Not implemented
The WCIS will prepare a database on mass crimes committed during the armed conflicts in former Yugoslavia.	Quarter 4 of 2016	Not implemented
The OWCP shall endeavor to register and take over all the war crimes cases still pending before the domestic courts of general jurisdiction.	Quarter 4 of 2016	Implemented
<p>With the aim of increasing working efficiency, the OWCP should undertake the following activities:</p> <ul style="list-style-type: none"> • Use the existing capacity in line with the prosecutorial strategy; • Apply, whenever appropriate, the legal institution of plea agreement referred to in Articles 313-320 of the CPC; • Ensure full confidentiality of the investigation process; • Examine during the investigation whether the suspect holds any assets acquired through war crime and if yes, to submit to the court the relevant procedural request in that regard pursuant to the Law on Criminal Asset Recovery. 	Continuous	Partly implemented
The number of deputy prosecutors and other staff of the OWCP will increase in line with the time frame envisaged in the Action Plan for Chapter 23.	Continuous	Not implemented



<p>Continuing training on international humanitarian, international criminal law and investigative techniques will be provided to the present and newly employed / newly appointed staff and deputy public prosecutors in the OWCP, as well as appropriate training relating to the approach to victims and witnesses to avoid the risk of secondary victimization.</p>	<p>Continuous</p>	<p>Not implemented</p>
<p>The defining of specific measures to be undertaken for the purpose of improving the status and operations of the WCIS requires that the MoI prepares an analysis (report) on the legal and factual situation and needs of the WCIS within the MoI, aimed at determining the need for the Service reform.</p>	<p>Quarter 1 of 2016</p>	<p>Implemented</p>
<p>On the basis of the above analysis, the MoI will urgently undertake measures to ensure the optimal status and capacity of the WCIS.</p>	<p>Continuous, commencing from Quarter 2 of 2016</p>	<p>No information</p>
<p>Adoption of joint internal operating rules of the OWCP and the WCIS, at the initiative of the War Crime Prosecutor.</p>	<p>Quarter 2 of 2016</p>	<p>No information</p>
<p>Improving cooperation between the OWCP and the WCIS through:</p> <ul style="list-style-type: none"> • Organization of joint trainings; • Establishment of a joint strategic team to define guidelines and directions of acting in matters of common concern; • Formation of joint operational teams; • Periodic mutual organization of round tables. 	<p>Continuous</p>	<p>Partly implemented</p>



1.2. Trials		
Activity	Time Limit	Implementation Status
<p>Consistent application of Articles 10 and 10a of the Law on the Organization and Jurisdiction of Government Authorities in War Crimes Proceedings, in respect of the period for which judges are assigned to the War Crimes Chamber.</p> <p>Determination of additional judges in cases in which there is a reasonable fear that due to the expiry of the term of the presiding judge instructed to the department for war crimes, the trial had to start over again.</p>	Continuous	Partly implemented
<p>The War Crimes Prosecutor should start negotiations with his counterparts in neighboring states on the establishment of a regional database of war crimes case trials which would considerably contribute to harmonization of jurisprudence.</p>	Continuous, commencing from Quarter 1 of 2016	Not implemented
<p>The Ministry of Justice shall endeavor, on the proposal of the HJC, to provide adequate technical equipment for the courtrooms in which war crimes trials are held.</p> <p>Pursuant to Article 354 of the CPC, presidents of the Higher and Appellate Court in Belgrade will strive to ensure the maintenance of hearings in adequate courtrooms in other courts through cooperation with the HJC.</p>	Continuous, commencing from Quarter 1 of 2016	Not implemented
<p>At the initiative of the OWCP, Higher and Appellate Court in Belgrade, and in cooperation with the HJC, the SPC and the Judicial Academy, a system of training and additional education will be established for judges, prosecutors, assistants, deputies and police investigators in the fields of international criminal and international humanitarian law.</p>	Continuous, commencing from Quarter 1 of 2016	Not implemented



2. PROTECTION OF WITNESSES AND VICTIMS

Activity	Time Limit	Implementation Status
Inter-sectorial Working group of the Ministry of Justice will prepare an analysis of court practice in the implementation of Article 102 of the CPC as well as the analysis of the provisions and results of the implementation of the Law on the Program of Protection of Participants in Criminal Proceedings and formulate conclusions and recommendations on the needs of any amendment to this law or the accompanying bylaws in order to improve witness and victim protection system.	Quarter 1 - 4 of 2016	Implemented
The MoI will initiate and, in cooperation with the Commission for the Implementation of the Protection Program for Participants in Criminal Proceedings, prepare the analysis of the status and needs of the Protection Unit.	Quarter 1 of 2016	Implemented
On the basis of the above analysis, the MoI will urgently undertake measures to ensure the optimal status and capacity of the Protection Unit.	Commencing from Quarter 2 of 2016	No information
Criminal law chambers consistently apply the provisions of the CPC regulating the sanctioning of participants in the procedure who violate procedural discipline, particularly if they attack the integrity of the witnesses or victims.	Continuous	No information
Competent public prosecutors, the SPC and the competent bar association regularly notify the court about the measures undertaken with regard to the caution referred to in Article 374 of the CPC.	Continuous	No information



<p>Improvement of rules of procedure by the Commission for the Implementation of the Protection Program and the Protection Unit fully respecting the interests of the criminal proceedings in which the protected person is placed under protective measures.</p>	<p>Continuous</p>	<p>Implemented</p>
<p>Improvement of cooperation between the Protection Unit and the OWCP, through:</p> <ul style="list-style-type: none"> • Organization of joint trainings; • Establishment of a joint strategic team to define guidelines and directions of acting in matters of common concern; • Formation of joint operational teams; • Periodic mutual organization of round tables. 	<p>Continuous</p>	<p>Partly implemented</p>



3. SUPPORT TO VICTIMS AND WITNESSES

Activity	Time Limit	Implementation Status
The Ministry of Justice will perform an analysis of the level of harmonization of the normative framework Directive 2012/29/EU.	Quarter 1 of 2016	Implemented
The Minister of Justice will establish a working group to propose amendments to the normative framework with the aim of harmonization with the notion of victim in international human rights treaties, and of effective application of minimum standards on the rights, Directive 2012/29/EU.	Quarter 2 of 2016	Not implemented
The Ministry of Justice will issue a bylaw regulating the mandatory provision of information to victims on all aspects of the criminal proceedings of interest to them in accordance with Article 6 of Directive 2012/29/EU.	Quarter 2 of 2016	No information
The Ministry of Justice will create and distribute a brochure containing the information about victims' rights (legal aid, psychological support, protection, etc.) in accordance with Article 4 of the Directive 2012/29/ EU.	Quarter 3 of 2016	Implemented by the Republic Public Prosecutor's Office
The Service for Assistance and Support to Victims and Witnesses within the Higher Court in Belgrade will hire an expert for the provision of psycho-social support.	Quarter 4 of 2016	Not implemented
The Protection Unit of the MoI through the changes in job classification act will enable the engagement of professional staff for the provision of psycho-social support.	Quarter 4 of 2016	Partly implemented



<p>To meet the needs of the Service for Assistance and Support to Victims and Witnesses staff, the Higher Court in Belgrade and the Judicial Academy, with the support of the HJC and the Ministry of Justice will occasionally organize additional training and encourage the participation in professional conferences.</p>	<p>Continuous, commencing from Quarter 2 of 2016</p>	<p>Implementation in progress</p>
<p>To meet the needs of the Protection Unit staff, the Training Centre of the MoI will occasionally organize additional training and encourage the participation in professional conferences.</p>	<p>Continuous, commencing from Quarter 2 of 2016</p>	<p>Implementation in progress</p>
<p>Improvement of infrastructural and technical capacity of the services for assistance and support to victims and witnesses</p>	<p>Continuous, commencing from Quarter 2 of 2016</p>	<p>Not implemented</p>
<p>Establishment of a countrywide network of services for assistance and support to victims and witnesses during the investigation and all stages of the criminal proceedings:</p> <ul style="list-style-type: none"> • normative aspect (current normative framework, best comparative solutions, international standards); • financial assessment (sustainable financing, adequacy of premises and staff, need training needs); • access to support services (network coverage, distance, mobile support teams). 	<p>For the analysis – Quarter 1 of 2016; for the network establishment - continuous commencing from 2018</p>	<p>Implemented</p>
<p>The Ministry of Justice will initiate a regional conference on the improvement of cooperation in the provision of support to victims and witnesses.</p>	<p>Continuous, commencing from Quarter 3 of 2016</p>	<p>Not implemented</p>



4. DEFENSE OF THE ACCUSED

Activity	Time Limit	Implementation Status
Developing a program of initial and continuous training in international humanitarian and international criminal law for the lawyers representing defendants in war crimes cases.	Quarter 3 of 2016	Not implemented
Implementation of the continuous training in the fields of international humanitarian and international criminal law for the lawyers representing defendants in war crimes cases	Continuous, commencing from Quarter 4 of 2016	Not implemented
The working group established by the Minister of Justice will prepare an analysis of the provisions and results of the application of the Rulebook on the Remuneration for (Court) Appointed Attorneys in war crimes cases.	Quarter 3 of 2016	Not implemented



5. WAR CRIMES TRIALS AND THE ISSUE OF MISSING PERSONS

Activity	Time Limit	Implementation Status
The Republic of Serbia will continuously work on fulfilling the recommendations of the Committee on Enforced Disappearances and notify the Committee on achieved results.	Continuous	Not implemented
Perform the analysis of the organizational structure and status of the support service with the aim of improving efficiency and sustainability in the context of volume and specificity of tasks within the Commission's purview.	Quarter 3 of 2016	Implemented
Improve mutual cooperation of the Commission on Missing Persons and other state bodies involved in the process of investigation and prosecution of war crimes, through periodically organized round tables.	Periodically (at least once per year)	No information
The Ministry of Foreign Affairs initiates the procedure for the signing and becoming party to the Agreement on the Establishment of the International Commission on Missing Persons (ICMP) granting the Commission the status of an international organization.	Quarter 4 of 2016	Implemented
The Government encourages the Commission on Missing Persons of the Republic of Serbia to establish a special cash fund for the support of competent state bodies in obtaining all available data on the location of gravesites of the persons still missing.	Continuous	Not implemented



6. COOPERATION WITH THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA

Activity	Time Limit	Implementation Status
<p>Fully access and examine the archive of the ICTY and the residual MICT, through appointed liaison officers.</p> <p>Identify the materials and evidence of the International ICTY and the residual MICT relevant for the priority cases.</p>	<p>Continuous, commencing from Quarter 2 of 2016</p>	<p>Implementation in progress</p>
<p>The Republic of Serbia shall endeavor to maintain good practice of the transfer of knowledge and experience from the ICTY, to gain both general knowledge and specific knowledge about individual cases.</p>	<p>Continuous</p>	<p>Implementation in progress</p>
<p>The Republic of Serbia shall endeavor to maintain good practice of <i>ad hoc</i> presence of the advisors from the OWCP in the offices of the ICTY and the.</p>	<p>Periodical</p>	<p>Implementation in progress</p>



7. REGIONAL AND BROADER INTERNATIONAL COOPERATION

7.1. Regional Cooperation

Activity	Time Limit	Implementation Status
<p>The Ministry of Justice will initiate a regional conference to achieve an intergovernmental agreement with the Republic of Croatia, B&H, and Montenegro on the following open issues:</p> <ol style="list-style-type: none"> 1) establishing regional rules on the division of jurisdiction for proceeding in war crimes cases; 2) enhancement of regional cooperation with regard to proceeding upon letters of request in war crimes cases; 3) setting up a facilitated procedure for obtaining evidence in the territory of another state by defense attorneys in war crimes cases; 4) uniform proceeding of states in the region with regard to determining the fate of missing persons. 	<p>Quarter 1 of 2017</p>	<p>Not implemented</p>
<p>The Ministry of Justice will establish a working group to prepare proposals of topics and normative issues for the Regional Conference.</p>	<p>Quarter 2 of 2016</p>	<p>Not implemented</p>
<p>The OWCP will initiate the continuation of the „Palić Process“ with the presence of international observers, as well as regular quarterly meetings between regional prosecutors.</p>	<p>Continuous, commencing from Quarter 1 of 2016</p>	<p>Not implemented</p>
<p>The OWCP will initiate the establishment of joint records of war crimes cases at the regional level the resolving of which commenced through regional cooperation.</p>	<p>Continuous, commencing from Quarter 2 of 2016</p>	<p>Not implemented</p>



The OWCP will promote the establishment of joint cross-border investigative prosecutorial teams with the countries of the region.	Continuous	Not implemented
Improving cooperation between the judicial authorities of the Republic of Serbia and of the WCIS with the Provisional Institutions of Self-Government in Pristina.	Continuous	Not implemented



7.2. International Cooperation

Activity	Time Limit	Implementation Status
Active participation of judges and public prosecutors who handle war crimes cases in seminars on international humanitarian law and professional conferences.	Continuous, commencing from Quarter 1 of 2016	No information
The Ministry of Justice, in cooperation with the OWCP and HJC, will invest efforts to secure financial support of the project of translating domestic judgments into the English language, so that they can be included in the <i>Legal Tools Project</i> .	Continuous, commencing from Quarter 1 of 2016	Not implemented



8. OUTREACH		
Activity	Time Limit	Implementation Status
Increased frequency of acting by presidents of the competent courts in accordance with Article 16a of the Law on the Organization and Jurisdiction of Government Authorities in War Crimes Proceedings.	Continuous	Not implemented
Improvement of the web site of the High Court in Belgrade, where all the necessary information about the judgments in war crimes cases will be publicly available, with a gradual increase of the numbers of the actual decisions.	Continuous	Not implemented
Regular publishing of substantive reports on the work of judicial institutions responsible for prosecuting war crimes.	Continuous	Not implemented
Regular publishing of reports on the implementation of all relevant strategic documents in the field of prosecuting war crimes (the Action Plan for Chapter 23, the National Strategy, the Strategy of the Office of War Crimes Prosecutor).	Continuous	Partly implemented (Only reports on the implementation of the Action Plan for Chapter 23 are published)
With the support of the Council for the implementation of the Action Plan for Chapter 23 and the Negotiating Group for Chapter 23, the inclusion of representatives of the institutions responsible for the prosecution of war crimes in the mechanism of cooperation with civil society organizations through their participation in occasional meetings with the National Convent of the EU.	Continuous	No information



Periodical organization of courses, workshops and trainings for journalists reporting on war crimes trials, in cooperation with media organizations, judicial institutions and international organizations.	Continuous	Not implemented
The quality and content of the curriculum that tackles issues related to the history of the conflict in the former Yugoslavia and the crimes that were committed during those conflicts, is continuously monitored and upgraded.	Continuous	Not implemented
Publishing of the National Strategy text on the website of the Government of the Republic of Serbia, Ministry of Justice, the Office of War Crimes Prosecutor, the Higher Court and Court of Appeal in Belgrade.	Quarter 1 of 2016	Partly implemented
Following the adoption of this National Strategy, the highest State officials, led by the Prime Minister and the Minister of Justice, will publicly declare their support for the work of all domestic bodies dealing with the war crimes issues, for the fight against impunity and for the respect for the rule of law.	Quarter 1 of 2016	Not implemented
Members of the Government of the Republic of Serbia and MPs, in accordance with the provisions of the newly adopted Code of Conduct for members of the Government and MPs, refrain from unauthorized commentaries of the work of the judiciary.	Continuous	Not implemented



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