



HUMANITARIAN LAW CENTER

# Regional Judicial Cooperation

in the Prosecution of War Crimes:  
Analysis and Improvement Recommendations





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## in the Prosecution of War Crimes: Analysis and Improvement Recommendations

Belgrade,  
December 2018



Kingdom of the Netherlands

The project is supported by the European Union and the Embassy of the Kingdom of the Netherlands. The views expressed herein are those of the author and do not necessarily represent the official position of the European Union or the Embassy of the Kingdom of the Netherlands.

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# Abstract

In consequence of the cross-border nature of the armed conflicts in the former Yugoslavia, victims, witnesses, perpetrators and evidence are not for the most part 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 the extradition of their own nationals to face trial in other countries, prosecution of war crimes is unthinkable without an effective cooperation among the countries in the region. Given the importance of the fight against impunity for war crimes, regional cooperation is among the key commitments that Serbia undertook as part of its European Union (EU) Accession negotiations. However, cooperation among judicial institutions in the region has never reached its full potential, and has even been stagnating over the past few years. The major barriers to effective regional cooperation are as follows: the issue of universal jurisdiction, trials in absentia, lack of cooperation between the Office of the War Crimes Prosecutor of Serbia with Kosovo justice institutions, and the lack of trust between judicial institutions in the countries of the region.

This paper analyses the existing normative framework for regional cooperation, cooperation mechanisms and challenges hindering effective cooperation, with a view to proposing a set of recommendations for its improvement.

# In Lieu of an Introduction: *The Case of Tuzla's Kapija*

Since October 2015, the War Crimes Department of the Higher Court in Belgrade has been conducting the proceedings for recognition and enforcement of the final judgment imposed on Novak Đukić by the Court of Bosnia and Herzegovina (BiH).<sup>1</sup> This court sentenced Đukić to 20 years' imprisonment for a war crime against the civilian population, namely, the attack on Kapija, Tuzla's central area, on 25 May 1995, which killed 71 people, most of whom were in their twenties, and wounded over 100.<sup>2</sup>

As Đukić failed to turn up to begin serving his sentence in BiH after his judgment became final, the Court of BiH issued an international warrant for his arrest.<sup>3</sup> Knowing that Đukić is a Serbian citizen and was residing in Serbia at the time, the court sent a formal mutual legal assistance request to Serbia for the recognition and enforcement of the final and binding judgment imposed on Đukić in order for him to serve his sentence in Serbia. Over the past three years, courts sessions in this case have been postponed ten times owing to Đukić's supposed ill health.<sup>4</sup>

Đukić's Defence Counsel moved that the letter of request be turned down, claiming that Đukić had an unfair trial at the Court of BiH, which was grounds for refusing the request under the Law on International Legal Assistance in Criminal Matters.<sup>5</sup> Đukić's Defence Counsel also requested that the court in Belgrade obtain Đukić's case file from the Court of BiH, claiming that "this is the only way for the court to find out the actual state of affairs and assess Đukić's trial".<sup>6</sup> The court did as requested.

In parallel with the proceedings, Đukić's Defence Counsel organised an experiment – a reconstruction of the crime scene in Tuzla's Kapija<sup>7</sup> – at the Army of Serbia's Technical Testing Centre in Nikinci during 2014, 2015 and 2016. From the results of this experiment it was concluded that the civilians could not have been killed from the blast of a shell fired from the Army of Republika Srpska (VRS) positions on 25

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1 *Crime in Tuzla's Kapija: Revision of the judicially established facts and putting regional cooperation to the test*, HLC, press release, 9 November 2016, available at: <http://www.hlc-rdc.org/?p=32940&lang=de>, last accessed: 13 November 2018.

2 Information on the *Novak Đukić* case (X-KRŽ-07/394) is available at the official website of the Court of Bosnia and Herzegovina: <http://www.sudbih.gov.ba/predmet/2472/show>, last accessed: 13 November 2018.

3 *Information on the Novak Đukić case*, news, available at the official website of the Court of Bosnia and Herzegovina: <http://www.sudbih.gov.ba/vijest/informacije-o-predmetu-novak-uki-19464>, last accessed: 13 November 2018.

4 *Serb General's Tuzla Massacre Case Delayed Again*, Balkan Insight, 8 September 2017, available at: <http://www.balkaninsight.com/rs/article/ponovo-odlo%C5%BEen-slu%C4%8Daj-novaka-%C4%91uki%C4%87a-09-08-2017>, last accessed: 13 November 2018; HLC data.

5 Law on International Legal Assistance in Criminal Matters, Article 63, paragraph 1, sub-paragraph 4 (Official Gazette of the RS no. 20/2009).

6 *Srpska granata nije ubila ljude u Tuzli [Serbian shell did not kill people in Tuzla]*, *Večernje Novosti*, 25 February 2016, available (in Serbian) at: <http://www.novosti.rs/vesti/naslovna/hronika/aktuelno.291.html:592567-Srpska-granata-nije-ubila-ljude-u-Tuzli>, last accessed: 13 November 2018.

7 General Staff of the Army of Serbia's letter in response to HLC's request for information of public importance HlcIndexIn: 25-F121623 of 15 April 2016.

May 1995, and that the facts established in the final judgment of the Court of BiH against Novak Đukić were hence untrue.<sup>8</sup>

According to the Law on International Legal Assistance in Criminal Matters, the Higher Court may grant or refuse a formal request for the recognition and enforcement of a foreign judgment, but in either case the court is bound by the factual description of the offence set out in the judgment of a foreign court – in this case, Court of BiH.<sup>9</sup> Hence in no case may the Belgrade Court open an evidentiary hearing in which it would assess the findings of the experiment at Nikinci.

This case can be regarded as illustrative, because it raises a few important issues. Firstly, it raises the issue of criminal prosecution and enforcement of criminal judgments against individuals who escape criminal responsibility by moving into the territory of another state, a state whose nationality they hold. Secondly, this example makes it clear that an effective regional cooperation requires a relationship of trust between judicial institutions in the region, a relation based on mutual respect and acceptance of facts established by another country's courts, as well as recognition and enforcement of their judgments.

Since the legal framework which allows for regional cooperation in war crimes prosecutions is rather well developed and there exist certain mechanisms which facilitate this cooperation in practice, it was reasonable to expect the number of cases resulting from regional cooperation to increase.

However, in recent years this cooperation has stagnated, and failed to deliver results and justice to those who committed war crimes.

## Socio-Political Context in which Regional Cooperation Takes Place

The armed conflicts that took place in the period from 1991 to 1999 continue, even today, to have a decisive bearing on Serbia's relations with the states formed following the dissolution of the SFR Yugoslavia. One of the consequences of the armed conflicts is the obligation for these states to prosecute war crimes committed in that period. With the closure of the International Criminal Tribunal for the Former Yugoslavia (ICTY) in late 2017, responsibility for further prosecution of war crimes now lies fully with the national judiciaries of the countries in the region.<sup>10</sup>

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<sup>8</sup> *Crime in Tuzla's Kapija: Revision of the judicially established facts and putting regional cooperation to the test*, HLC, press release, 9 November 2016, available at: <http://www.hlc-rdc.org/?p=32940&lang=de>, last accessed: 12 November 2018.

<sup>9</sup> Law on International Legal Assistance in Criminal Matters, Article 61, paragraph 4 (Official Gazette of the RS no. 20/2009).

<sup>10</sup> See the official website of the International Criminal Tribunal for the Former Yugoslavia: <http://www.icty.org/>, last accessed: 14 November 2018.

In addition, it is worth recalling that the strategic orientation of the countries of the region towards EU membership underscores the need for strengthening regional cooperation, so the process of joining the European Union can be viewed optimistically as an incentive for further improvement of that cooperation. Effective regional cooperation and good neighbourly relations in the investigation and prosecution of war crimes, including the avoidance of conflict of jurisdiction, is part of the formal conditions that Serbia has to meet in order to become a member of the European Union.<sup>11</sup> The EU has repeatedly underscored the importance of making noticeable progress in this area, in the interests of Serbia but also in the interests of regional reconciliation.

With that goal in mind and in fulfilment of the obligations arising from the Action Plan for Chapter 23 concerning reforms in the field of the rule of law, the National Strategy for the Prosecution of War Crimes (National Strategy) has been adopted. The National Strategy admits that the level of regional cooperation in war crimes investigation is unsatisfactory and leaves room for improvement.<sup>12</sup> It also specifies activities that need to be carried out to improve regional cooperation, including organising a regional conference to discuss signing of a multilateral agreement with Croatia, Bosnia and Herzegovina and Montenegro, which would regulate issues such as: establishing regional rules on the division of jurisdiction over war crimes cases; improving cooperation in the execution of requests for judicial assistance in war crimes cases; facilitating the gathering of war crimes evidence in other states in the region for defence lawyers; and achieving uniformity of actions by the states in the region in accounting for missing persons.<sup>13</sup> The National Strategy expressly stipulates the participation of representatives of the Office of the War Crimes Prosecutor of the Republic of Serbia (OWCP) in regional war crimes prosecutor's offices' conferences, and the OWCP's obligation to initiate "regular quarterly meetings between regional prosecutors to discuss specific transferred cases and issues arising in regional cooperation in relation to those cases".<sup>14</sup> Another of the OWCP's obligations, as stipulated in the National Strategy, is to initiate the establishment of joint records of the war crimes opened as a result of regional cooperation, and to promote the setting-up of joint cross-border investigation teams made up of prosecutors from the countries of the region.<sup>15</sup> However, a year and a half after the time limit within which this activity had to be carried out, the conference to reach an multilateral agreement on outstanding issues has not been held, and consequently no agreement has been signed, which significantly hinders resolving the sticking points in regional cooperation.<sup>16</sup>

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11 *Negotiation Positions for Chapter 23 – European Union common position on judiciary and fundamental rights*, p. 8, available at: [http://www.mei.gov.rs/upload/documents/pristupni\\_pregovori/pregovaracke\\_pozicije/Ch23%20EU%20Common%20Position.pdf](http://www.mei.gov.rs/upload/documents/pristupni_pregovori/pregovaracke_pozicije/Ch23%20EU%20Common%20Position.pdf), last accessed: 14 November 2018.

12 *National Strategy for the Prosecution of War Crimes*, pp. 8, 9, and 15-18, available at the OWCP official website: [http://www.tuzilastvorz.org.rs/upload/HomeDocument/Document\\_en/2016-05/p\\_nac\\_stragetija\\_eng.PDF](http://www.tuzilastvorz.org.rs/upload/HomeDocument/Document_en/2016-05/p_nac_stragetija_eng.PDF), last accessed: 14 November 2018.

13 *Ibid*, p. 36.

14 *Ibid*, p. 37.

15 *Ibid*, p. 37.

16 *Third Report on the Implementation of the National Strategy for the Prosecution of War Crimes*, HLC, September 2018, pp. 67-75.

Regional consultations between representatives of prosecutors' offices in the region (the Prosecutor's Office of BiH, the Special Prosecutor's Office of Montenegro, the State Attorney's Office of the Republic of Croatia and the OWCP) have been held under the UNDP's "Strengthening Regional Cooperation in Prosecution of War Crimes and the Search for Missing Persons (2017-2019)" regional project, with support from the UNDP.<sup>17</sup> While the participation of prosecutors from the region in the consultations is encouraging, the initiative to organize the meetings did not come from the OWCP or the Ministry of Justice, as required by the National Strategy,<sup>18</sup> but from the UNDP. In view of the fact that the UNDP's project aims at strengthening regional cooperation in war crimes prosecutions, representatives of prosecutor's offices from Kosovo should also be invited to participate in the consultations.

At the time of this writing, neither the joint regional records of war crimes cases opened through regional cooperation,<sup>19</sup> nor cross-border prosecutorial investigation teams have been set up.<sup>20</sup>

It is true that the past several years have seen sharing of information and evidence between prosecutor's offices in the region, and also the transfer of cases for prosecution, and subsequent prosecution of the transferred cases.<sup>21</sup> However, the huge number of war crimes awaiting prosecution suggest that there is plenty of room for improvement in regional cooperation.

Moreover, the absence of the exchange of cases against high-level accused suggests a lack of trust between the prosecutor's offices' in the region.

Despite the fact that the prosecutor's offices in Serbia, Bosnia and Herzegovina and Croatia have signed protocols on mutual cooperation in war crimes cases, which provide for unhindered exchange of documents and war crimes cases, regional cooperation has failed to reach its full potential. Besides cooperation from BiH and Croatia, the Office of the War Crimes Prosecutor of the Republic of Serbia also requires cooperation from the EULEX Mission in Kosovo and the competent Kosovo institutions in investigating and prosecuting war crimes. However, there is a breakdown in cooperation between the OWCP and Kosovo justice institutions, and prospects of its re-establishment seem rather uncertain at this point.<sup>22</sup>

The fact that the OWCP has not issued a single indictment for crimes committed in Kosovo in over four years gives grounds for particular concern.<sup>23</sup> As explained by the OWCP, the reason lies in the

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17 *Ibid*, pp. 69-70.

18 *National Strategy for the Prosecution of War Crimes*, pp. 32 and 36.

19 *National Strategy for the Prosecution of War Crimes*, p. 37; *Third Report on the Implementation of the National Strategy for the Prosecution of War Crimes*, September 2018, p. 72.

20 *Ibid*, pp. 73-74.

21 See, e.g., *Initial Report on the Implementation of the National Strategy for the Prosecution of War Crimes*, pp. 14-15, HLC, 2017, available at the website of the Humanitarian Law Center: [http://www.hlc-rdc.org/wp-content/uploads/2017/12/Izvestaj\\_Strategija\\_I\\_eng.pdf](http://www.hlc-rdc.org/wp-content/uploads/2017/12/Izvestaj_Strategija_I_eng.pdf), last accessed: 14 November 2018.

22 See: *EULEX participates in the BIRN "War Crimes Conference" in Sarajevo*, news, official website of the EULEX Mission, available at: <http://www.eulex-kosovo.eu/?page=2,11,866>, last accessed: 8 November 2018.

23 The last indictment for a crime in Kosovo was brought on 7 April 2014 in the *Ljubenić* Case. This case was subsequently merged with the *Čuška* Case, which at the time of this writing was still pending before the War Crimes Department of the

position of Kosovo's Ministry of Justice that the OWCP has no territorial jurisdiction to investigate crimes "assumed to have taken place in Kosovo".<sup>24</sup> If a mechanism for cooperation between the OWCP and Kosovo is not put in place, there is a risk that a large number of war crimes committed in Kosovo may go unprosecuted. Non-cooperation could have overarching consequences, bearing in mind that at least 13,535 persons died or disappeared during the conflict in Kosovo.<sup>25</sup>

## European Commission Progress Reports on Serbia and Resolutions on Serbia's Progress Reports

For a number of years, the European Commission, in its annual reports on Serbia's progress towards fulfilling the political, economic and administrative criteria for EU accession, has drawn attention to the issues relating to achieving justice for war crimes committed during the armed conflicts in the former Yugoslavia, including regional cooperation in prosecuting war crimes.<sup>26</sup> The reports underscore the importance of developing good neighbourly relations and regional cooperation, which "contribute to stability, reconciliation and a climate conducive to addressing open bilateral issues and the legacies of the past."<sup>27</sup>

Also, on a number of occasions over the past few years, the European Parliament, in its resolutions on Serbia's progress reports, has called on Serbia to "effectively investigate all war crimes cases, in particular those that are high profile, and to cooperate with its regional partners in these cases", to continue working towards improving regional cooperation in war crimes prosecutions, "to end impunity and bring justice to the victims of war crimes" and resolve all relevant outstanding issues.<sup>28</sup>

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Higher Court in Belgrade.

24 OWCP's response to HLC's letter (HLCIndexIn: 25-F126625 of 27 October 2016) urging the OWCP to take action on Case KTP no. 149/13.

25 The information on the number of dead and disappeared cited is according to *Koalicija za REKOM: preko 25 hiljada žrtava ratova na teritoriji bivše Jugoslavije utvrđen identitet* [Coalition for RECOM: Over 25,000 victims on the territory of former Yugoslavia have been identified], 16 December 2016, available at the official website of the Coalition for RECOM: <http://recom.link/sr/koalicija-rekom-za-preko-25-hiljada-zrtava-ratova-na-teritoriji-bivse-jugoslavije-utvrden-identitet/>, accessed: 27 November 2018.

26 See: 2015 European Commission Report on Serbia, pp. 19-21; 2016 European Commission Report on Serbia, pp. 22-23, 57; 2018 European Commission Report on Serbia, pp. 19-20; 50-52. The reports are available at the official website of the Ministry for European Integration: <http://www.mei.gov.rs/eng/documents/eu-documents/annual-progress-reports-of-the-european-commission-for-serbia>, last accessed: 10 November 2018.

27 Serbia 2018 Report, p. 54.

28 See: European Parliament resolution of 29 November 2018 on the 2018 Commission Report on Serbia (2018/2146(INI)), 2017), paragraph 25, available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2018-0478+0+DOC+XML+V0//EN&language=EN>; European Parliament resolution of 14 June on the 2016 Commission Report on Serbia (2016/2311(INI)), 2017), paragraph 31, available at: <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P8-TA-2017-0261&language=EN>; European Parliament resolution of 4 February 2016 on the 2015 Commission Report on Serbia (2015/2892(RSP)), 2016), paragraph 26, available at: <http://www.europarl.europa.eu/sides/getDoc.do?type=MOTION&reference=B8-2016-0166&language=EN>; European Parliament resolution of 11 March 2015 on

## Report on International Residual Mechanism for Criminal Tribunals (IRMCT) Progress Submitted to the United Nations Security Council

The latest report that the President of the IRMCT, Judge Theodor Meron, submitted to the U.N. Security Council, explicitly elaborates on the necessity of regional cooperation between the countries of the former Yugoslavia.<sup>29</sup> The report also calls attention to the negative trends in regional judicial cooperation, especially to the absence of cooperation between Serbia and Kosovo. In this regard, the report states that all requests for judicial assistance that the OWCP has submitted to Kosovo justice institutions through EULEX are refused on the grounds that the Serbian authorities do not have jurisdiction over crimes committed in Kosovo.<sup>30</sup> The report further states that the refusal of the authorities in Kosovo to provide judicial assistance to the OWCP has blocked indictments from being filed for war crimes committed during the conflict in Kosovo.<sup>31</sup>

As regards the cooperation between the OWCP and its BiH counterpart, Judge Meron's report sees it as productive, listing several cases that have been transferred to the OWCP by the Prosecutor's Office of Bosnia and Herzegovina, but admitting that all the cases concern low-level i.e. direct perpetrators.<sup>32</sup> The decision of the War Crimes Department of the Higher Court in Belgrade not to execute the Court of BiH's letter rogatory of October 2015 in the *Novak Đukić* Case was heavily criticised in the report. The request concerns enforcement of a final judgment imposed on Đukić, by which he was sentenced to 20 years in prison for the killing of civilians in Tuzla's Kapija area in 1995.<sup>33</sup>

The report concludes by stating that barriers to effective regional judicial cooperation unavoidably lead to impunity for war crimes.

## Joint Declaration on War Crimes in the Framework of the Berlin Process

The need for strengthening regional co-operation has been recognized in the Declaration signed at the Western Balkans Summit, which was held in London in July 2018 under the Berlin Process.<sup>34</sup> The Declaration emphasizes the importance of removing impediments to effective regional cooperation,

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*the 2014 Commission Report on Serbia* (2014/2949 (RSP)), 2015), paragraph 13, available at: <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P8-TA-2015-0065&language=EN>. All sources last accessed: 15 November 2018.

29 *Progress Report on the International Residual Mechanism for Criminal Tribunals*, submitted to the United Nations Security Council on 17 May 2018, pp. 32-37, available at: [http://www.irmct.org/sites/default/files/documents/180517\\_mechanism\\_progress\\_report\\_s2018\\_471\\_en.pdf](http://www.irmct.org/sites/default/files/documents/180517_mechanism_progress_report_s2018_471_en.pdf), last accessed: 8 November 2018.

30 *Ibid.*, p. 33.

31 *Ibid.*

32 *Ibid.*

33 *Ibid.*, pp. 36-37; *Crime in Tuzla's Kapija: Revision of the judicially established facts and putting regional cooperation to the test*, HLC, press release, 9 November 2016, available at: <http://www.hlc-rdc.org/?p=32940&lang=de>, last accessed: 8 November 2018.

34 For more details on the London Summit visit: <https://www.gov.uk/government/topical-events/western-balkans-summit-london-2018>, last accessed: 30 November 2018.

including through information exchange, cooperation between prosecutor's offices, expeditious mutual legal assistance and avoiding conflicts of jurisdiction.<sup>35</sup>

## Normative Framework Regulating Regional Cooperation in War Crimes Prosecutions

The cooperation between judicial institutions in the region responsible for war crimes prosecution is regulated by international conventions and agreements on mutual judicial assistance, bilateral agreements that the OWCP signed with its Croatian, Montenegrin and BiH counterparts, and the Procedures for mutual legal assistance, adopted by the Government of RS in 2013, mediated by EULEX Mission in Kosovo.<sup>36</sup>

Even though the legal basis for international judicial cooperation in criminal matters<sup>37</sup> had existed before the signing of subsequent bilateral agreements and protocols, the agreements and protocols have allowed for more direct and expeditious cooperation. The protocols were the result of long years of negotiations between representatives of judicial institutions in the region under the auspices of the international community, notably the OSCE and EU.<sup>38</sup>

In the following pages we will analyse the relevant legal framework regulating international judicial assistance in criminal matters. Particular attention will be paid to the bilateral agreements that Serbia has signed with the countries in the region, and the protocols and agreements allowing for direct cooperation between competent prosecutor's offices in the region.

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35 *Joint Declaration on War Crimes in the Framework of the Berlin Process*, London, 10 July 2018, p. 10, available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/724294/180710\\_WBS\\_Joint\\_Declarations.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/724294/180710_WBS_Joint_Declarations.pdf), last accessed: 30 November 2018.

36 Official website of the OWCP, section *International Cooperation*, available at: <http://www.tuzilastvorz.org.rs/en/co-operation/international-co-operation>, last accessed: 15 November 2018.

37 See: List of international conventions and protocol signed by the Republic of Serbia, available (in Serbian) at: <https://arhiva.mpravde.gov.rs/lt/articles/medjunarodne-aktivnosti-eu-integracije-i-projekti/medjunarodna-pravna-pomoc/multilateralni-ugovori.html>; International legal assistance, available (in Serbian) at: <https://arhiva.mpravde.gov.rs/lt/articles/medjunarodne-aktivnosti-eu-integracije-i-projekti/medjunarodna-pravna-pomoc/preuzimanje-potpisanih-ugovora.html>. All sources last accessed: 8 November 2018.

38 *Analysis of the prosecution of war crimes in Serbia 2004-2013*, HLC, Belgrade, 2014, p. 24, available at: [http://www.hlc-rdc.org/wp-content/uploads/2014/10/Analiza\\_2004-2013\\_eng.pdf](http://www.hlc-rdc.org/wp-content/uploads/2014/10/Analiza_2004-2013_eng.pdf), accessed: 14 November 2018.

## European Convention on Mutual Assistance in Criminal Matters

International legal assistance is the assistance provided in criminal matters by judicial and other institutions of the requested country to judicial and other institutions of the requesting country. The 1959 European Convention on Mutual Assistance in Criminal Matters of the Council of Europe, signed and ratified by all countries in the region, provides a solid legal base for exchange of evidence between the countries.<sup>39</sup>

The Convention lays down the procedure for the execution of requests for mutual assistance (“letters rogatory”), procuring evidence, and transmitting evidence, records or documents in criminal matters.<sup>40</sup> (For more information on letters rogatory and other mechanisms for the provision of international legal assistance, see the section dealing with regional cooperation mechanisms below). Also, it regulates the appearance in court of witnesses, experts and prosecuted persons, and transmission of writs and criminal records excerpts.

Especially important in this regard is Protocol II to the Convention, which Serbia ratified in 2006, because it provides for direct exchange of evidence between judicial authorities,<sup>41</sup> and the setting-up of a joint investigation team between parties to conduct an investigation in the territory of one or more of the parties who have set up the joint team.<sup>42</sup> The Protocol also regulates the situation where a party requests assistance in respect of a witness in need of protection, and arrangements concerning measures for the protection of the witness concerned.<sup>43</sup>

## Law on International Legal Assistance in Criminal Matters

The Law on International Legal Assistance in Criminal Matters, as its title suggests, regulates the provision of international legal assistance in criminal matters in cases not regulated by any international treaty or where no such treaties exist.<sup>44</sup> International legal assistance encompasses the extradition of

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<sup>39</sup> European Convention on Mutual Assistance in Criminal Matters of the Council of Europe (Official Gazette of the FRY – International Treaties, no. 10/2001), available at the official website of Council of Europe: <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/09000016800656ce>, last accessed: 11 November 2018.

<sup>40</sup> *Ibid*, Article 3, paragraph 1.

<sup>41</sup> When ratifying Protocol II, the then existing State Union of Serbia and Montenegro made a declaration that for the purposes of the Convention and Protocol, regular courts and public i.e. state prosecutors offices shall be considered as judiciary organs (Law on the Ratification of the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters of the Council of Europe – Official Gazette of Serbia and Montenegro - International Treaties, no. 2/2006, Article 3).

<sup>42</sup> Law on Ratification of the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters of the Council of Europe, Articles 4 and 20 (Official Gazette of Serbia and Montenegro - International Treaties, no. 2/2006).

<sup>43</sup> *Ibid*, Article 23.

<sup>44</sup> Law on International Legal Assistance in Criminal Matters of the Republic of Serbia, Article 1 (Official Gazette of the Republic of Serbia no. 20/09).

accused or convicted persons, the transfer and assumption of criminal prosecution, the enforcement of judgments passed in criminal cases and other forms of mutual legal assistance.<sup>45</sup>

The following provisions of the law are especially important from the perspective of war crimes investigation and prosecution: the provisions relating to situations where criminal proceedings are assumed by the prosecutor's office of the country in which the prosecuted person has permanent or temporary residence; also, the provisions governing the transfer of criminal proceedings concerning an act, suspect or accused that falls under the jurisdiction of a domestic court.<sup>46</sup>

The law also regulates enforcement of a foreign judgment in cases where: the judgment is imposed on a person who is a Serbian citizen or has permanent or temporary residence in Serbia; the person convicted is already serving a sentence in Serbia comprising deprivation of liberty.<sup>47</sup> Upon considering a mutual legal assistance request for the recognition and enforcement of a foreign judgment, a court may grant the request by a judgment or refuse it by a decision. A request may be refused on the following grounds: the legal requirements for the execution of a foreign judgment have not been fulfilled; it may be reasonably concluded that the person concerned has been convicted because of his/her race, religion, ethnicity or political views; judgment has been handed down in the absence of the convict; or, the requirements for a fair trial have not been respected. The law also regulates enforcement of domestic judgments in foreign countries.<sup>48</sup>

In the context of war crimes investigations, the fact that the law provides for joint investigation teams deserves to be underscored. (For more information on joint investigation teams as an additional mechanism for international legal assistance, please see the section discussing regional cooperation mechanisms below).<sup>49</sup> The provision banning the extradition of Serbian nationals is also important.<sup>50</sup>

## **Normative Framework Governing the Cooperation between the Republic of Serbia and the Federation of Bosnia and Herzegovina**

- **Serbia and Montenegro-Bosnia and Herzegovina Agreement on Mutual Legal Assistance in Civil and Criminal Matters**

Under this agreement, legal assistance encompasses the following: handing over of writs and undertaking of process actions (questioning of the accused, parties, witnesses and other persons, seizure of objects, temporary handover of objects to the requesting state, crime-scene investigation, obtaining an expert opinion etc.); provision of information regarding the regulations in the states parties to the agreement;

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<sup>45</sup> *Ibid*, Article 2.

<sup>46</sup> *Ibid*, Articles 42, 43, 49 and 51.

<sup>47</sup> *Ibid*, Articles 56-64.

<sup>48</sup> *Ibid*, Articles 62-63 and 70-76.

<sup>49</sup> *Ibid*, Article 96.

<sup>50</sup> *Ibid*, Article 16, paragraph 2.

recognition and enforcement of judicial and arbitration decisions.<sup>51</sup> According to the agreement, legal assistance is provided through the competent ministries. The agreement also regulates the transfer and assumption of criminal proceedings. A party may transfer criminal proceedings to the other party only after the injured parties have given their express consent to the transfer of the criminal proceedings to the other party.<sup>52</sup>

- **Serbia and Montenegro-Bosnia and Herzegovina Agreement on Mutual Enforcement of Judicial Decisions in Criminal Matters**

The agreement regulates mutual enforcement of final judicial decisions in criminal matters imposed by the courts of one party on citizens of the other party or on persons having permanent residence in that country.<sup>53</sup>

- **Protocol on Cooperation in Prosecution of Perpetrators of War Crimes, Crimes against Humanity and Genocide**

The Protocol was concluded between the Prosecutor's Office of Bosnia and Herzegovina and the OWCP in 2013. It stipulates exchange of information and evidence concerning crimes committed in the two states, in cases where suspects have citizenship or permanent residence in the other party, as well as keeping the other party informed on the status and stage of cases about which information and evidence has been shared.<sup>54</sup>

The Protocol also stipulates the obligation for each party to inform the other party, within three months from the signing of the agreement, of all pending cases against nationals of the other party. This provision was expected to put an end to parallel investigations.<sup>55</sup> However, the OWCP continued to conduct parallel investigations against BiH nationals in defiance of the signed protocol. One such investigation concerned Naser Orić, which the OWCP launched without informing the Prosecutor's Office of BiH. It was only after Orić was arrested in Switzerland, on the basis of an INTERPOL arrest

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51 *Agreement between Serbia&Montenegro and Bosnia and Herzegovina on Mutual Legal Assistance in Civil and Criminal Matters*, Article 3, available (in Serbian) at: [http://www.tuzilastvorz.org.rs/upload/Regulation/Document\\_sr/201605/ugovor\\_scg\\_bih\\_pravna\\_pomoc\\_lat.pdf](http://www.tuzilastvorz.org.rs/upload/Regulation/Document_sr/201605/ugovor_scg_bih_pravna_pomoc_lat.pdf), last accessed: 15 November 2018.

52 *Ibid*, Articles 39-40.

53 *Agreement between Serbia&Montenegro and Bosnia and Herzegovina on Mutual Enforcement of Judicial Decisions in Criminal Matters*, Article 1 (Official Gazette of Serbia and Montenegro - International Treaties, no. 6/2005).

54 *Protocol on Cooperation in Prosecution of Perpetrators of War Crimes, Crimes against Humanity and Genocide, signed between the Prosecutor's Office of Bosnia and Herzegovina and the Office of the War Crimes Prosecutor of the Republic of Serbia on 31 January 2013*, available (in Serbian) at: [http://www.tuzilastvorz.org.rs/upload/Cooperation/Documents/2016-05/s\\_protokol\\_trz\\_tbih\\_lat.pdf](http://www.tuzilastvorz.org.rs/upload/Cooperation/Documents/2016-05/s_protokol_trz_tbih_lat.pdf), last accessed: 15 November 2018.

55 *Ibid*, Article 3.

warrant issued by Serbia, that it came out that he was the subject of an OWCP investigation.<sup>56</sup> Following Orić's arrest, both Serbia and BiH requested his extradition. Applying the provisions of the European Convention on Extradition,<sup>57</sup> the Swiss authorities decided to surrender Orić to BiH, on the grounds that the acts he was charged with had been committed in BiH, the country whose citizenship he held. The decision provoked angry reactions from Serbian politicians, who saw the decision as "politically motivated and unfair", as a "fiasco of the fight against war crimes" and as "a message to Serbian victims that they do not matter".<sup>58</sup> Examples like this make it clear that the cooperation between prosecutor's offices in the region is highly dependent upon the current socio-political situation. Political statements certainly compromise regional cooperation and reveal improper political interference in the work of the judiciary.<sup>59</sup>

A provision of the Protocol enables injured parties to prevent delivery of evidence to foreign authorities by "expressly opposing it".<sup>60</sup> In other words injured parties are given the power to decide on the scope of cooperation between the prosecutors' offices, which can have an adverse effect on the efficiency of proceedings or even altogether hamper the conduct of the proceedings. The provision applies solely to the transfer of cases from the state in which the crime was committed. Nevertheless, the OWCP cited this provision even in cases concerning crimes that were not committed in Serbian territory.<sup>61</sup> As

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56 The INTERPOL National Central Bureau for Serbia issued an arrest warrant for Naser Orić and Hakija Meholjić in February 2014, at the request of the OWCP, which had put them under investigation on suspicion of war crimes against the Serbian population in the village of Zalazje in Donji Potočari, Srebrenica municipality, in 1992. Cited according to: *Transitional Justice in Serbia 2013-2015*, HLC, 2016, pp. 22-23, available at: [http://www.hlc-rdc.org/wp-content/uploads/2016/06/izvestaj\\_o\\_TP\\_2013-2015\\_eng.pdf](http://www.hlc-rdc.org/wp-content/uploads/2016/06/izvestaj_o_TP_2013-2015_eng.pdf), last accessed: 15 November 2018.

57 See: Law Ratifying the European Convention on Extradition and its Protocols, Article 17 (Official Gazette of the FRY - International Treaties, no. 10/2006 of 9 November 2001), available (in Serbian) at: [http://www.tuzilastvorz.org.rs/upload/Regulation/Document\\_sr/2016-05/evr\\_konvencija\\_ekstradicija\\_lat.pdf](http://www.tuzilastvorz.org.rs/upload/Regulation/Document_sr/2016-05/evr_konvencija_ekstradicija_lat.pdf), last accessed: 15 November 2018.

58 Vučić: *Ekstradicija Orića BiH politički motivisana* [Vučić: Orić's extradition to BiH is politically motivated], Radio Free Europe, 26 June 2015, available (in Serbian) at: <http://www.slobodnaevropa.org/content/aleksandar-vucic-ekstradicija-orica-bih-politicki-motivisana/27093663.html>; Dačić: *Slučaj Orića je poraz borbe protiv ratnih zločina*, [Dačić: Orić case marks fiasco of the fight against war crimes], N1, 26 June 2015, available (in Serbian) at: <http://rs.n1info.com/a72230/Vesti/Dacic-Slucaj-Orica-je-poraz-borbe-protiv-ratnih-zlocina.html>; Vulin: *Slučaj Orić poruka da srpske žrtve nisu bitne* [Vulin: Orić case sends a message that Serbian victims don't matter], RTS, 25 June 2015, available (in Serbian) at: <http://www.rts.rs/page/stories/sr/story/9/Politika/1959600/Vulin%3A+Slu%C4%8Daj+Ori%C4%87+poruka+da+srpske+%C5%BErtve+nisu+bitne.html>. All sources last accessed: 15 November 2018.

59 At the time of this writing, Naser Orić was being tried before the Court of BiH. Information on the Case of *Orić Naser et al.* (S1 1 K 014977 18 Krž 2) is available at the official website of the Court of Bosnia and Herzegovina: <http://www.sudbih.gov.ba/predmet/3473/show>, last accessed: 15 November 2018.

60 Protocol on Cooperation in Prosecution of Perpetrators of War Crimes, Crimes against Humanity and Genocide signed between the Prosecutor's Office of Bosnia and Herzegovina and the Office of the War Crimes Prosecutor of the Republic of Serbia, Article 10, paragraph 2.

61 See: *Komentar Vladimira Vukčevića na izjave Medžide Kreso u Mostu* [Vladimir Vukčević's comment on the statements of Medžida Kreso in Most], Radio Free Europe, 7 July 2015, available (in Serbian) at: <https://www.slobodnaevropa.org/a/komentar-vladimira-vukcevic-na-izjave-medzide-kreso-u-mostu-rse/27114439.html>, last accessed: 15 November 2018.

opposition from injured parties can hamper or even preclude prosecution of war crimes perpetrators, the prosecutor's offices should consider deleting this provision from the Protocol.

The Protocol regulates matters that had to some extent already been regulated by the bilateral Agreement on Mutual Legal Assistance in Civil and Criminal Matters.<sup>62</sup> Being a technical agreement, the Protocol provided for direct and speedier communication between the two prosecutor's offices, which would bypass the standard procedure for mutual legal assistance through justice ministries. In doing so, the Protocol improved the cooperation between the two countries, thus contributing to more efficient war crimes prosecutions.

There is another document regulating the cooperation between the Serbian and BiH's prosecutor's offices. It is the Memorandum of Understanding on Achievement and Improvement of Cooperation in the Fight against All Forms of Serious Crime, concluded between the Republic Public Prosecutor's Office of Serbia and the State Prosecutor's Office of Bosnia and Herzegovina.<sup>63</sup>

## **Normative Framework Governing the Cooperation between the Republic of Serbia and the Republic of Croatia**

### **Cooperation with the Office of the State Attorney of Croatia (DORH)**

- **Agreement on Mutual Legal Assistance in Civil and Criminal Matters Signed between the FRY and Croatia**

For the purpose of this agreement, legal assistance refers to delivery of court and non-court documents, undertaking of certain actions in the proceedings, such as questioning of witnesses and parties, obtaining expert opinion, crime-scene investigation, searches of premises and persons, seizure of objects and delivery of documents, writs and other objects pertinent to the criminal proceedings.<sup>64</sup> Legal assistance is provided on the basis of formal letters of request (letters rogatory) addressed to the competent ministries of the requested state.

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62 Law on the Ratification of the Serbia&Montenegro-Bosnia and Herzegovina Deal on Mutual Assistance in Civil and Criminal Matters (Official Gazette of Serbia and Montenegro - International Treaties, no. 6/2005 and Official Gazette of the Republic of Serbia - International Treaties, no. 13/2010 – other laws), available at: [http://www.tuzilastvorz.org.rs/upload/Regulation/Document\\_sr/201605/ugovor\\_scg\\_bih\\_pravna\\_pomoc\\_lat.pdf](http://www.tuzilastvorz.org.rs/upload/Regulation/Document_sr/201605/ugovor_scg_bih_pravna_pomoc_lat.pdf), last accessed: 14 November 2018.

63 *Memorandum of Understanding on Achievement and Improvement of Cooperation in the Fight against All Forms of Serious Crime concluded between the Republic's Public Prosecutor's Office of Serbia and the State Prosecutor's Office of Bosnia and Herzegovina*, available (in Serbian/Bosnian) at: [http://www.tuzilastvorz.org.rs/upload/Regulation/Document\\_sr/2016-05/memorandum\\_srb\\_bih\\_lat.pdf](http://www.tuzilastvorz.org.rs/upload/Regulation/Document_sr/2016-05/memorandum_srb_bih_lat.pdf), last accessed: 14 November 2018.

64 Law on Ratification of the Agreement between the Federal Republic of Yugoslavia and the Republic of Croatia on Mutual Legal Assistance in Civil and Criminal Matters, Article 1, paragraph 5; Article 23, paragraph 1 (Official Gazette of the FRY – International Treaties, no. 1/98).

The agreement also regulates the assumption of criminal prosecutions. If a person has committed an offence in the territory of a party of which he/she is not a national, the party in the territory of which the offence has been committed (the requesting state) may request the party of which the person is a national to assume the criminal proceedings against that person.<sup>65</sup>

However, it should be noted that under the Croatian Law on International Legal Assistance in Criminal Matters, Croatia cannot transfer criminal proceedings to another country if the crime the prosecution of which is requested from another country is punishable by over ten years in prison.<sup>66</sup> In practice, this means that Croatia does not transfer criminal proceedings in war crimes cases (the maximum sentence prescribed for war crimes committed during the wars of the 1990s is 20 years). Hence, unlike the cooperation between the Office of the State Prosecutor of BiH and the OWCP, the cooperation between the DORH and the OWCP is limited to exchange of evidence and information without including the transfer of confirmed indictments by the DORH.

- **Memorandum of Understanding on the Achievement and Improvement of Cooperation in the Fight against All Forms of Serious Crime**

In February 2005, the most senior prosecutors of Croatia and Serbia signed the Memorandum of Understanding on the Achievement and Improvement Cooperation in the Fight against All Forms of Serious Crime. The Memorandum improved cooperation in war crimes prosecution by allowing for the establishment of direct communication between the Croatian and Serbian prosecutor's offices in the exchange of information, reports and documents.<sup>67</sup> A concrete result of this was the productive cooperation in the prosecution of the war crime committed in the military port of "Lora", near Split (Croatia) in 1992.<sup>68</sup>

- **Agreement on Cooperation in Prosecuting Perpetrators of the Criminal Offences of War Crimes, Crimes against Humanity and Genocide**

This agreement was signed between the OWCP and the DORH with the view to providing for a more efficient investigation and punishment of all those who committed war crimes in Croatian territory.<sup>69</sup> It

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<sup>65</sup> *Ibid*, Article 28.

<sup>66</sup> Republic of Croatia, Law on International Legal Assistance in Criminal Matters, Article 65, paragraph 1 (Official Gazette no. 178/04). The Law is available (in Croatian) at: <https://www.zakon.hr/z/237/Zakon-o-me%C4%91unarnodnoj-pravnoj-pomo%C4%87i-u-kaznenim-stvarima>, accessed: 26 November 2018.

<sup>67</sup> *Ibid*, Article 2.

<sup>68</sup> See: Official website of the OWCP, section *Regional Cooperation* at (in Serbian): <http://www.tuzilastvorz.org.rs/sr/saradnja/regionalna-saradnja>; *Slučaj Lora: ponovljeno suđenje za ratni zločin pred Županijskim sudom u Splitu* [Lora Case: a new trial before the County Court in Split], HLC, press release, 8 November 2015, available (in Serbian) at: <http://www.hlc-rdc.org/?p=13535>. Both sources last accessed: 15 November 2018.

<sup>69</sup> *Agreement on Cooperation in Prosecuting Perpetrators of the Criminal Offences of War Crimes, Crimes against Humanity and Genocide, signed between the Office of the War Crimes Prosecutor and the Office of the State Attorney of the Republic*

stipulates exchange of evidence and cooperation in the further gathering of evidence, and imposes the obligation for Serbia and Croatia, as parties to the agreement, to promptly deliver to the other party all the information and evidence sought by the other party, and to keep the other party informed about the status of cases about which information was received. The agreement reaffirms that the Constitutions of Serbia and the Constitution of Croatia both ban the extradition of their respective citizens and that the transfer of criminal proceedings in war crimes cases is not an option.<sup>70</sup>

The most important change brought by the Agreement with respect to the Memorandum was the obligation laid down for each party to inform the other party on the proceedings it conducts against other party's nationals.<sup>71</sup>

### • Cooperation Between Justice Ministries of Serbia and Croatia

In a meeting held in March 2018, the Justice Ministers of the Republic of Serbia and the Republic of Croatia, Nela Kuburović and Dražen Bošnjaković, agreed to set up two joint commissions, one for the exchange of lists of persons accused or convicted of war crimes, and another for dealing with challenges to war crimes prosecutions.<sup>72</sup> As stated by Minister Nela Kuburović in her address to the U.N. Security Council, the first commission held a meeting on 26 April 2018, at which lists were exchanged and modalities of future cooperation agreed.<sup>73</sup> Under the Law on Free Access to Information of Public Importance, the HLC on two occasions sought from the Ministry of Justice the acts establishing these commissions and information about their composition. On both occasions the Ministry refused the request, tersely responding either that "there are no documents" or that "the document containing the information sought does not exist."<sup>74</sup> The official website of the Ministry of Justice and media reports do not contain sufficient information regarding the commissions' mandates, how they were established,

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of Croatia is available (in Serbian) at: [http://www.tuzilastvorz.org.rs/html\\_trz/SARADNJA/S\\_SPORAZUM\\_TRZ\\_DORH\\_CIR.PDF](http://www.tuzilastvorz.org.rs/html_trz/SARADNJA/S_SPORAZUM_TRZ_DORH_CIR.PDF), last accessed: 15 November 2018.

<sup>70</sup> *Ibid*, p. 1.

<sup>71</sup> *Ibid*, Article 3.

<sup>72</sup> Ministry of Justice's letter 7-00-156/2018-30 of 14 May 2018 in response to an HLC request for access to information of public importance; *Statement by H.E. MS. Nela Kuburović, Minister of Justice of the Republic of Serbia, Meeting of the Security Council*, 6 June 2018, p. 5, available at the official website of the Ministry of Justice: <https://www.mpravde.gov.rs/vest/19637/govor-ministarke-kuburovic-na-sednici-saveta-bezbednosti-un.php>; *Minister Kuburović and Minister Bošnjaković: Good will to resolve all open judiciary issues*, press release, Ministry of Justice, 23 March 2018, available at: <https://www.mpravde.gov.rs/en/vest/18822/minister-kuburovic-and-minister-bosnjakovic-good-will-to-resolve-all-open-judiciary-issues.php>. All sources last accessed: 14 November 2018.

<sup>73</sup> *Statement by H.E. MS. Nela Kuburović, Minister of Justice of the Republic of Serbia, Meeting of the Security Council*, 6 June 2018, p. 5.

<sup>74</sup> Ministry of Justice's letter: 7-00-162/2018-32 of 18 May 2018 in response to an HLC request for access to information of public importance; Ministry of Justice's letter 7-00-317/2018-32 of 24 October 2018 in response to an HLC request for access to information of public importance.

their composition and results, and when they are expected to complete their work.<sup>75</sup> Because of this, the HLC could not assess whether and how much these Commissions have contributed to improving regional cooperation.

## **Normative Framework Governing the Cooperation between the Republic of Serbia and the Republic of Montenegro**

- **Agreement on Mutual Legal Assistance in Civil and Criminal Matters Signed Between the Republic of Serbia and the Republic of Montenegro**

This agreement, which regulates the provision of legal assistance between Serbia and Montenegro, applies to delivery of writs, information and cases, undertaking of certain actions in proceedings (questioning of parties, witnesses, experts and other persons, temporary seizure or confiscation of objects, searches, crime-scene investigations, obtaining expert opinion, etc.), the recognition and enforcement of court decisions, and transfer and assumption of criminal prosecutions.<sup>76</sup> Setting up joint investigation teams is also provided for in the agreement.<sup>77</sup> According to the Agreement, international legal assistance is to be based on formal letters of requests for assistance submitted by courts or other competent state authorities.

- **Agreement on Cooperation in the Prosecution of Perpetrators of Crimes against Humanity and against other Legal Goods Protected under International Law**

The Agreement on Cooperation in the Prosecution of Perpetrators of Crimes against Humanity and against other Legal Goods Protected under International Law, signed in 2007, provides the legal base for

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<sup>75</sup> See: *Minister Kuburović and Minister Bošnjaković: Good will to resolve all open judiciary issues*, press release, Ministry of Justice, 23 March 2018, available at: <https://www.mpravde.gov.rs/en/vest/18822/minister-kuburovic-and-minister-bosnjakovic-good-will-to-resolve-all-open-judiciary-issues.php>; *Dogovoreno formiranje komisija za procesuiranje ratnih zločina* [Seating up of commissions for prosecution of war crimes agreed], daily newspaper *Danas*, 23 March 2018, available (in Serbian) at: <https://www.danas.rs/drustvo/dogovoreno-formiranje-komisija-za-procesuiranje-ratnih-zlocina/>; *Kuburović: Sud za zločine OVK ostaće mrtvo slovo na papiru* [Kuburović: Court for KLA crimes will remain dead letter], daily newspaper *Večernje novosti*, 15 April 2018, available (in Serbian) at: <http://www.novosti.rs/vesti/naslovna/politika/aktuelno.289.html:722182-Kuburovic-Sudza-zlocine-OVK-ostace-mrtvo-slovo-na-papiru>. All sources last accessed: 13 November 2018.

<sup>76</sup> *Agreement on Mutual Legal Assistance in Civil and Criminal Matters signed between the Republic of Serbia and the Republic of Montenegro* (Official Gazette of the Republic of Serbia - International Treaties, no. 1, 21 May 2010), Articles 3 and 33.

<sup>77</sup> *Ibid*, Article 33, paragraph 4; Article 38.

cooperation between Serbia and Montenegro.<sup>78</sup> It provides for exchange of information and evidence on war crimes committed against the citizens of the two countries on the territory of the former SFR Yugoslavia, where perpetrators of these crimes are citizens or permanent residents of Serbia and Montenegro. The Agreement reaffirms that under the Constitutions of both parties the extradition of nationals of one party to the other party, or the transference of criminal prosecutions between the parties, are not possible.<sup>79</sup>

## Cooperation between the Office of the War Crimes Prosecutor of Serbia and the EULEX Mission in Kosovo

As Serbia does not recognise Kosovan statehood, the legal framework for cooperation between Serbia and Kosovo in prosecuting war crimes is provided by the Procedures for mutual legal assistance, adopted by the Government of the Republic of Serbia in 2013. The cooperation between Serbia and Kosovo goes through the European Union Rule of Law Mission in Kosovo (EULEX).<sup>80</sup> The prosecutorial cooperation between Serbia and Kosovo has so far unfolded without direct communication between the OWCP and representatives of the Kosovo judiciary.

The EULEX Mission has provided assistance to Serbian prosecutors in locating and questioning witnesses in Kosovo and securing the attendance of several witnesses from Kosovo at trials held before the Higher Court in Belgrade.<sup>81</sup> The OWCP, for its part, has assisted EULEX in establishing contact with witnesses located in Serbia. According to the OWCP, EULEX has only transferred evidence in one case to the OWCP.<sup>82</sup>

However, as EULEX has not possessed the mandate to conduct investigations in war crimes cases since May 2014, when investigations were transferred to the competence of local prosecutors, the cooperation between Serbia and Kosovo in war crimes case has been at a *de facto* impasse ever since.<sup>83</sup> While cooperation through EULEX was slow, today it is virtually non-existent.

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78 *Agreement on Cooperation in Prosecution of Perpetrators of Crimes against Humanity and against other Legal Goods Protected under International Law*, signed between the Office of the Supreme State Prosecutor of the Republic of Montenegro and the Office of the War Crimes Prosecutor of the Republic of Serbia on 31 October 2007 is available (in Serbian) at: [http://www.tuzilastvorz.org.rs/html\\_trz/SARADNJA/S\\_SPORAZUM\\_TRZ\\_VDTRCG\\_CIR.PDF](http://www.tuzilastvorz.org.rs/html_trz/SARADNJA/S_SPORAZUM_TRZ_VDTRCG_CIR.PDF), last accessed: 15 November 2018.

79 *Ibid*, p. 1.

80 Official website of the OWCP, section *International Cooperation*, available at: <http://www.tuzilastvorz.org.rs/en/co-operation/international-co-operation>, last accessed: 11 November 2018.

81 *War Crimes Proceedings in Serbia 2003–2014 – An Analysis of the OSCE Mission to Serbia’s monitoring results*, pp. 36–37, OSCE Mission to Serbia, Belgrade, 2015, available at: <https://www.osce.org/serbia/194461?download=true>, accessed: 19 November 2018.

82 OWCP’s letter PI 24/18 of 1 November 2018 in response to an HLC request for access to information of public importance.

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

The absence of cooperation between the OWCP and Kosovan institutions is noticeable also when it comes to the OWCP's cooperation with the Kosovo Specialist Prosecutor's Office. The Kosovo Specialist Chambers and Specialist Prosecutor's Office were established in August 2015,<sup>84</sup> with the specific mandate to investigate and prosecute crimes against humanity, war crimes and other crimes occurring between 1 January 1998 and 31 December 2000, on the basis of the allegations contained in the 2011 Council of Europe Report.<sup>85</sup> Even though based in The Hague and staffed by international investigators, judges and prosecutors, the Specialist Chambers and Specialist Prosecutor's Office are part of the Kosovan judicial system.

According to the information presented in the reports on the status of the implementation of the National War Crimes Prosecution Strategy, the War Crimes Investigation Service (WCIS) has systematised and processed the materials pertaining to "war crimes committed by the Kosovo Liberation Army" which it has received through cooperation with the Coordination Directorate for Kosovo and Metohija and Police Directorates for Kosovo and Metohija, and delivered it to the OWCP.<sup>86</sup> The report also states that the materials, comprising operative information, criminal complaints filed so far, statements of potential witnesses and other evidence, has been systematised and processed chronologically under KLA zones of operations.<sup>87</sup> According to the reports, „all documentation with the available documents of the other state authorities (the Military Security Agency, the Security Information Agency, the Military Intelligence Agency, the Commission on Missing Persons of the Republic of Serbia) will be submitted to the Special Court for War Crimes in Kosovo and Metohija, through the War Crimes Prosecutor's Office, after the analytical processing is performed“.<sup>88</sup> But there remains uncertainty as to the form of cooperation on the basis of which the OWCP could hand over the documentation to the Kosovo Specialist Prosecutor's Office. When asked by the HLC to explain whether any legal basis existed for the cooperation between the OWCP and the Kosovo Specialist Chambers, the OWCP responded that it had not "signed any document (memorandum, protocol, or agreement) on handing over documents about war crimes committed on the territory of Kosovo and Metohija to the Kosovo Specialist Chambers."<sup>89</sup>

Clearly, the non-cooperation between the OWCP and Kosovo judicial institutions provides suitable conditions for evading accountability for war crimes. It is therefore necessary to put in place an appropriate mechanism which would enable direct, official judicial cooperation and communication between the OWCP and Kosovo prosecutor's offices. Such a mechanism would certainly increase the likelihood of war crimes being prosecuted. Initiating a formal agreement between the OWCP and Kosovo prosecutor's offices on the exchange of evidence and cooperation in war crimes prosecution,

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84 See: Official website of the Kosovo Specialist Chambers and Specialist Prosecutor's Office: <https://www.scp-ks.org/en>, last accessed: 26 November 2018.

85 *Inhumane treatment of people and illicit trafficking in human organs in Kosovo*, 7 January 2011, available at: <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=12608&lang=en>, last accessed: 26 November 2018.

86 *Report No. 3 on the Implementation of the National Strategy for the Prosecution of War Crimes*, September 2018, p. 5.

87 *Ibid.*

88 *Ibid.*

89 OWCP's letter PI 15/18 of 22 May 2018 in response to an HLC request for access to information of public importance.

similar to those signed earlier with the Prosecutor's Offices of BiH and Croatia, would be a first step towards that goal.

## Existing Regional Cooperation Mechanisms

### International Legal Assistance in Criminal Matters

#### Letters Rogatory

Requests for mutual assistance are submitted in the form of letters rogatory, which are addressed to a judicial body in a foreign country, through its ministry in charge of the judiciary. The bodies responsible for the provision of international legal assistance are courts and public prosecutor's offices. Some actions in the process are carried out by the ministry of justice, the ministry of foreign affairs and the ministry of the interior. The scarce information available to the general public on the dynamics of regional cooperation concerns the number of letters rogatory the OWCP submitted to or received from foreign prosecutor's offices.<sup>90</sup> While not revealing anything about the kind and quality of the information or evidence exchanged, the number of letters rogatory submitted and received suggests that the prosecutor's offices in the region maintain frequent communication with one another.

By looking at the cases that have resulted in indictments, it can be concluded that the indictments raised so far on the basis of the information and evidence exchanged mainly concern less challenging cases, i.e. cases involving either a small number of low-level defendants or just one defendant, who held no rank in the command structures and were only the direct perpetrators. The only two exceptions have been the indictments in the *Srebrenica-Kravica* and *Štrpci* Cases. The fruitful cooperation between the two prosecutors' offices in these two cases has created expectations that the cooperation will not only continue in the future but intensify as well.

However, from the cases being prosecuted it can be concluded that regional cooperation has not resulted in the prosecution of more complex cases involving high-level perpetrators.<sup>91</sup> One of the failings the OWCP has been most often criticised about is its non-prosecution of high-ranking perpetrators. This problem is also to be noted in the National War Crimes Prosecution Strategy.<sup>92</sup> Because of this,

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<sup>90</sup> See, e.g., *Report No. 3 on the Implementation of the National Strategy for the Prosecution of War Crimes*, May 2018, pp. 70-71, available at: <https://www.mpravde.gov.rs/tekst/17978/izvestaj-o-sprovođenju-nacionalne-strategije-za-procesuiranje-ratnih-zlocina.php>, last accessed: 15 November 2018.

<sup>91</sup> See: *Analysis of the Prosecution of War Crimes in Serbia 2004-2013*, HLC, Belgrade, 2014, pp. 20-21; *List of war crimes cases*: <http://www.hlc-rdc.org/?cat=234&lang=de>. Both sources last accessed: 26 November 2018.

<sup>92</sup> *National Strategy for the Prosecution of War Crimes*, p. 12.

additional effort is needed in order to improve the execution of letters rogatory. Also, making the most of this international legal assistance mechanism is necessary for creating conditions conducive to more effective investigations and the charging of high-level perpetrators.

## Exchange of information and evidence

It is with a view to stepping up technical cooperation and further facilitating the exchange of information and evidence in war crimes cases that the Office of the War Crimes Prosecutor has signed a number of cooperation protocols, agreements and memoranda with its counterparts in the region. As regards the types of information and evidence exchanged, they include witness statements and documents in some cases, or entire investigation files in others.<sup>93</sup>

The legal basis for the exchange of evidence are the Council of Europe's European Convention on Mutual Assistance in Criminal Matters and the Second Protocol Additional to the Convention, the latter providing for direct exchange of evidence among judicial authorities (including prosecutors).

The exchange of evidence is further regulated by the bilateral cooperation protocols that the OWCP has signed with the Prosecutor's Office of BiH, the DORH and the Prosecutor's Office of Montenegro (see sections discussing the normative framework governing regional judicial cooperation). According to an analysis of war crimes trials in Serbia carried out by the OSCE Mission to Serbia, these agreements have prompted more frequent meetings between war crimes prosecutors and the exchange of a greater quantity of evidence.<sup>94</sup>

## Extradition

The term "extradition" refers to a process whereby one state hands over to another state a person accused or convicted of a crime so that s/he can serve his/her sentence in that state. None of the countries of the former Yugoslavia allow the extradition of its own nationals.<sup>95</sup> As the majority of war-crime suspects do not now reside in the countries in which their crimes were committed but reside in the countries whose nationality they have, it is clear that the ban on extradition significantly

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93 *War Crimes Proceedings in Serbia 2003–2014 – An Analysis of the OSCE Mission to Serbia's monitoring results*, OSCE Mission, Belgrade, 2015, pp. 34-35.

94 *Ibid*, p. 34.

95 See, e.g.: Serbian Law on International Legal Assistance in Criminal Matters, Article 16 paragraph 1 (Official Gazette of the Republic of Serbia 20/09); Law on International Legal Assistance in Criminal Matters of BiH, Article 40 (Official Gazette of Bosnia and Herzegovina 53/09); Law Confirming the Extradition Agreement between the Republic of Serbia and the Republic of Bosnia and Herzegovina, Article 8, paragraph 3 (Official Gazette of the Republic of Serbia – International Treaties, 1/2015-9); Law on International Legal Assistance in Criminal Matters of the Republic of Croatia, Article 32, paragraph 1 (Official Gazette of the Republic of Croatia no. 178/04); Law on International Legal Assistance in Criminal Matters of Montenegro, Article 11, paragraph 2 (Official Gazette of Montenegro nos. 4/2008 and 36/2013).

undermines the efficiency of regional judicial cooperation. A still greater problem is the fact that many war-crime suspects evade criminal responsibility by crossing borders and moving to the country whose nationality they hold, well aware that that country will not extradite them to the country in which they are the subject of criminal proceedings.<sup>96</sup>

In situations where extradition is not an option, the prosecuting authorities of a state may decide to assist the prosecuting authorities of the state in which the accused resides by handing over to them the evidence they have collected in the case or by transferring criminal proceedings to them.<sup>97</sup>

Given the high number of cases awaiting prosecution, and the objective circumstance that most of the suspects are unavailable to the prosecuting authorities of the countries most interested in having them prosecuted, initiating negotiations for achieving a multilateral agreement which would regulate mutual extradition of suspects, based on reciprocity, would be most helpful.

## Joint investigation teams

Joint investigation teams are another cooperation mechanism in war crimes cases. The OWCP and its BiH counterparts have conducted joint investigations in several cases. An excellent example of a successful cooperation in the region was the joint action by the police forces of Serbia and Bosnia and Herzegovina in the *Štrpci* Case, which resulted in the synchronised arrest of 15 suspects in the two countries in 2014.<sup>98</sup> The only person convicted so far of the crime in *Štrpci* is Mićo Jovičić. He admitted to participating in the commission of the crime and entered a plea agreement with the Prosecutor's Office of BiH in 2016, on the basis of which he was sentenced to five years in prison.<sup>99</sup> At the end of October 2018, the Court of Appeal in Belgrade ruled to confirm the indictment filed over the crime in *Štrpci*. The War Crimes Department of the Higher Court in Belgrade is now expected to open proceedings in this case.<sup>100</sup>

Joint investigation teams set up between the prosecutor's offices of BiH and Serbia, whose work resulted in two indictments – one for the crime in the village of Kravica (Srebrenica), where several hundred Bosniak civilians were killed, and the other for the torture and murder of 20 rail passengers

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96 See, e.g., *Optuženi za ratne zločine u Vlasenici pobegao u Srbiju [Vlasenica war crime indictee escapes to Serbia]*, daily newspaper *Večernje novosti*, 19 October 2018, available (in Serbian) at: <http://www.novosti.rs/vesti/naslovna/dosije/aktuelno.292.html:755869-Optuzeni-za-ratne-zlocine-u-Vlasenici-pobegao-u-Srbiju>, last accessed: 12 November 2018.

97 *War Crimes Proceedings in Serbia 2003–2014 – An Analysis of the OSCE Mission to Serbia's monitoring results*, OSCE Mission, Belgrade, 2015, p. 33.

98 *National Strategy for the Prosecution of War Crimes*, p. 16.

99 Judgment of the Court of Bosnia and Herzegovina, Case no. S1 1 K 023594 16 Kri, 16 November 2016, available (in Serbian) at: [http://www.hlc-rdc.org/wp-content/uploads/2018/02/Presuda-Mico\\_Jovicic.pdf](http://www.hlc-rdc.org/wp-content/uploads/2018/02/Presuda-Mico_Jovicic.pdf), last accessed: 26 November 2018.

100 The OWCP indictment in *Štrpci* Case is available at the official website of the Office of the War Crimes Prosecutor: <http://www.tuzilastvorz.org.rs/en/cases/indictments>; *After three and a half years, the Belgrade Court of Appeal has confirmed the indictment for the crime committed in Štrpci*, press release, HLC, 29 October 2018, available at: <http://www.hlc-rdc.org/?p=35768&lang=de>. Both sources last accessed: 26 November 2018.

abducted from a train at Štrpci station – have shown the reach and capabilities of regional cooperation. The results of their joint work has formed the foundation for a future and more intense cooperation, through the creation of joint prosecutorial cross-border investigation teams between the countries in the region. When investigating war crimes in the future, prosecutor's offices in the region should set up joint investigation teams for each case in respect of which their joint action can contribute to uncovering and prosecuting war crimes.

## **Key sticking points**

### **Competing Jurisdictions**

So far, regional cooperation and the existing normative framework which regulates it, have not contributed to resolving the controversy regarding the division of jurisdiction over war crimes trials. The problem lies in the fact, that as a result of the dissolution of the common state, those who participated in the wars of the 1990s became nationals of more than one state. Since the national legislations of the countries in the region do not allow the extradition of their own nationals, most persons for whom arrest warrants were issued by Croatia, or, more often, by BiH, are unavailable to the authorities who issued the warrants. At this point, the problem of conflicts of jurisdiction may be alleviated by enhancing regional cooperation and building mutual trust between prosecutor's offices, which could be achieved by transferring criminal proceedings against nationals of other countries to the judicial institutions of their own countries, by informing the prosecutor's offices in the region about all proceedings instituted against nationals of other countries in the region, and by sharing with them the evidence collected in these cases.

However, the socio-political context in which the cooperation between the prosecutor's offices in the region takes place should not be overlooked. Because even when there exists good will and a proactive approach to resolving the contentious issues, prosecutorial cooperation needs unambiguous political support. Specifically, political support to the strengthening of regional cooperation should be expressed through signing a multilateral agreement (or several bilateral agreements) which would settle the issue of competing jurisdictions. Since the ministries in charge of the judiciary are the bodies authorised to propose and negotiate agreements, they should also engage in resolving this problem.

### **The Principle of Universal Jurisdiction**

Under the Law on War Crimes Proceedings, the authorities of the Republic of Serbia have jurisdiction to prosecute perpetrators of all "grave violations of international humanitarian law committed on the territory of the former Yugoslavia since 1 January 1991, regardless of the nationality of the alleged

perpetrator or victim."<sup>101</sup> This suggests that unlike other prosecutorial authorities in the region,<sup>102</sup> the OWCP has jurisdiction to prosecute all crimes committed during the wars in the former Yugoslavia, regardless of the nationality of the alleged perpetrator or victim, and regardless of where the alleged crime was committed. This definition of the OWCP's jurisdiction has provoked heavy criticism from the countries in the region, especially from Croatia and BiH, as well as calls on Serbia to amend this legal norm.<sup>103</sup>

The Case of Veljko Marić, which had long soured the relations between Serbia and Croatia and their respective prosecutor's offices, is a notable example showing the implications of such a broadly defined jurisdiction of the OWCP.<sup>104</sup> Veljko Marić, a Croatian national and former member of the Croatian armed forces, was arrested in Serbia in 2010. In March 2012, he was finally sentenced to 12 years in prison for a war crime against civilians,<sup>105</sup> after being found guilty of murdering a Croatian Serb, Petar Slijepčević, in the village of Rastovac, Croatia, in 1991. As both the accused and the victim were Croatian nationals, and the murder took place on Croatian territory, and also because this murder was being investigated in Croatia as part of another case, in April 2012 the Croatian Ministry of Justice sought Marić's extradition to Croatia.<sup>106</sup> The request was refused, on the grounds that Serbia was proceeding against Marić in respect of the same offence regarding which his extradition was requested.<sup>107</sup> Towards the end of 2015,

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101 Law on Organization and Jurisdiction of State Authorities in Prosecuting Perpetrators of War Crimes, Articles 2-3 (Official Gazette of the Republic of Serbia, No. 67/2003, 135/2004, 61/2005, 101/2007, 104/2009, 101/2011-other law and 6/2015).

102 Law on the Application of the Statute of the International Criminal Court and Prosecution of Crimes Under International Law of War and International Humanitarian Law, Article 10 (Official Gazette, no. 175/03); Criminal Code of Bosnia and Herzegovina, Articles 8-9 (Official Gazette of Bosnia and Herzegovina, nos. 3/03, 32/03, 37/03, 54/04, 61/04, 30/05, 53/06, 55/06, 32/07, 8/10, 47/14, 22/15, and 40/15).

103 *Milanović: Srbija sa takvim zakonom ne može u EU* [Milanović: Serbia could not possibly join the EU whilst having such a law], N1, 05 February 2015, available (in Serbian) at: <http://rs.n1info.com/Region/a32857/Milanovic-Srbija-treba-da-menja-zakonodavstvo.html>; *Ima li Srbija pravo da sudi državljanima BiH?* [Does Serbia have the right to try B-H nationals?], Most, Radio Free Europe, 28 June 2015, available (in Serbian) at: <http://www.slobodnaevropa.org/content/most-ima-li-srbija-pravo-da-sudi-drzavljanimabih/27096969.html>. All sources last accessed: 26 November 2018.

104 Cited from: *Transitional Justice in Serbia 2013-2015*, HLC, 2016, pp. 20-21.

105 See: the Case of *Rastovac*, available at the official website of the Office of the War Crimes Prosecutor: <http://www.tuzilastvorz.org.rs/en/cases/case-name-rastovac-mari%C4%87>; an overview of the proceedings in this case is available (in Serbian) at the Humanitarian Law Center website: <http://www.hlc-rdc.org/Transkripti/rastovac.html>. Both sources last accessed: 26 November 2018.

106 *Priopćenje za javnost - Veljko Marić* [Press release: Veljko Marić], Ministry of Justice of the Republic of Croatia, 3 April 2012, available (in Croatian) at: <https://pravosudje.gov.hr/vijesti/priopcenje-za-javnost-veljko-maric/98>, last accessed: 26 November 2018.

107 *Mariću odbijen zahtjev za odsluženje kazne u RH* [Marić's request to serve sentence in Croatia turned down], Croatian Radio-Television, 5 July 2012, available (in Croatian) at: <https://vijesti.hrt.hr/171318/maricu-odbijen-zahtjev-za-odsluzenje-kazne-u-rh>, last accessed: 26 November 2018.

the Court of Appeal in Belgrade nevertheless ruled that Veljko Marić be extradited to Croatia under the European Convention on Extradition, to serve his sentence there.<sup>108</sup>

It is important to note here that, according to the principle of universal jurisdiction, conducting investigations and filing charges against foreign nationals is, legally speaking, possible.<sup>109</sup> However, the practice of prosecuting nationals from other countries of the former Yugoslavia does deserve criticism, because such a practice runs contrary to the very foundations of regional cooperation - namely, mutual trust and respect and avoidance of legal uncertainties for nationals of the former Yugoslavia successor states. Also, it is worth recalling that trial in absentia is considered an exception to the general rule that trials may not be conducted without the presence of the accused.<sup>110</sup>

The application of the principle of universal jurisdiction reveals a lack of trust between the prosecutor's offices responsible for war crimes. It is, therefore, a question of striking a balance between two principles – the principle of punishment and the principle of fostering good neighbourly relations. The right balance of the two can lead to countries refraining from administering justice to nationals of countries which have legal systems based on democratic principles.<sup>111</sup> Doing otherwise, i.e. insisting on the principle of universal jurisdiction and disregarding the principles of regional cooperation, could create further problems in regional cooperation.

## **Trials in absentia**

As war crimes are not subject to any statute of limitations, prosecutor's offices unrightfully cite the statute of limitations as legitimate grounds for instituting trials in absentia. Defendants tried in their absence are deprived of the opportunity to present their defence, to question witnesses or propose evidence to be adduced. The absence of defendants during a trial certainly does not contribute to the fairness of any proceedings.<sup>112</sup> Moreover, persons convicted in absentia have the right to request a retrial if they return to the territory of the state in which they have been convicted. Trials in absentia are therefore a waste of already limited prosecutorial resources.<sup>113</sup> Prosecutor's offices and courts are unnecessarily burdening themselves with cases that would have to be retried should the defendants at some point become available to the judicial authorities who have convicted them in absentia. Therefore

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108 *Dozet: Apelacioni sud u maju odlučio o izručenju Marića*, *Blic*, 03.06.2015, available at: <http://www.blic.rs/vesti/politika/dozet-apelacioni-sud-u-maju-odlucio-o-izrucenju-marica/c99ez8z>, last accessed: 26 November 2018.

109 Criminal Procedure Code of the RS, Article 381 (Official Gazette of the Republic of Serbia, nos. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013 and 55/2014).

110 *Ibid*, Articles 377 and 380.

111 *Ima li Srbija pravo da sudi državljanima BiH? [Does Serbia have the right to try B-H nationals?]*, Radio Slobodna Evropa, 28 June 2015, available (in Serbian) at: <https://www.slobodnaevropa.org/a/most-ima-li-srbija-pravo-da-sudi-drzavljanima-bih/27096969.html>, last accessed: 16 November 2018.

112 *Legacy of War Crimes Hinders Balkan Reconciliation*, *Balkan Insight*, 10 December 2007, available at: <http://www.balkaninsight.com/en/article/legacy-of-war-crimes-hinders-balkan-reconciliation>, last accessed: 16 November 2018.

113 *Ibid*, Article 479.

the practice of holding trials in absentia should be abandoned, as it certainly does not improve the prosecution of war crimes.

It should also be borne in mind that trials in absentia run counter to the commitment to promoting good neighbourly relations, as defendants tried in absentia are, as a rule, nationals of other states in the region who are out of reach of the domestic judicial authorities of the state in which they are tried.<sup>114</sup> The fact that there exists the possibility of transferring criminal proceedings to another state in such instances makes trials in absentia even less justified.

The trial of the *Lovas* Case is a concrete example of one way to overcome the problems created by the ban on extradition of one's own nationals and in absentia trials.<sup>115</sup> The DORH filed an indictment for the war crimes committed in *Lovas*,<sup>116</sup> but the Croatian police was only able to arrest one of the indictees, as the others were mainly in Serbia.<sup>117</sup> In May 2007, seven other indictees were arrested in Serbia, on the basis of the evidence received from the Croatian prosecutor.<sup>118</sup> Under the OWCP-DORH agreement, the DORH handed over to the OWCP the records from the *Lovas* Case file for consideration, after which the OWCP filed an indictment in this case.<sup>119</sup> As mentioned above in respect of the cooperation between the OWCP and the Prosecutor's Office of BiH in the *Srebrenica-Kravica* and *Štrpci* Cases, the fruitful cooperation between the DORH and the OWCP in the *Lovas* Case should be an example to follow and an incentive for prosecutor's offices in the region to continue on the same path.

The agreement signed between the prosecutor's offices in the region allows for the transfer of evidence, documents and all other relevant information concerning suspects who are nationals of other countries. Instead of trials in absentia, the prosecutor's offices in the region should make use of other possibilities available to them from the well-developed normative framework, such as the exchange of evidence and information and the transfer/assumption of criminal prosecutions.

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114 *Comments of the Humanitarian Law Center (HLC) on the Draft Prosecutorial Strategy for Investigation and Prosecution of War Crimes in the Republic of Serbia for the period 2018-2023*, available at: [http://www.hlc-rdc.org/wp-content/uploads/2018/03/Comments\\_of\\_the\\_Humanitarian\\_Law\\_Center\\_on\\_the\\_Draft\\_Prosecutorial\\_Strategy\\_for\\_Investigation\\_and\\_Prosecution\\_of\\_War\\_Crimes.pdf](http://www.hlc-rdc.org/wp-content/uploads/2018/03/Comments_of_the_Humanitarian_Law_Center_on_the_Draft_Prosecutorial_Strategy_for_Investigation_and_Prosecution_of_War_Crimes.pdf), last accessed: 19 November 2018.

115 At the time of this writing, the *Lovas* Case was retried at the War Crimes Department of the Higher Court in Belgrade.

116 See: *Ratni zločini počinjeni na širem području Vukovara - ažurirano izvješće [War Crimes committed in the wider Vukovar area – an updated report]*, report, DORH, 14 November 2018, available (in Croatian) at: <http://www.dorh.hr/dorh14112018>, last accessed: 19 November 2018.

117 *Legacy of War Crimes Hinders Balkan Reconciliation*, Balkan Insight, 10 December 2007, available at: <http://www.balkaninsight.com/en/article/legacy-of-war-crimes-hinders-balkan-reconciliation>, last accessed: 16 November 2018.

118 *Tužilaštvo potvrdilo hapšenja za zločin u Lovasu [Prosecutor's Office confirms arrests over the crime in Lovas]* Deutsche Welle, 30 May 2007, available (in Serbian) at: <https://www.dw.com/sr/tu%C5%BEila%C5%A1tvo-potvrdilo-hap%C5%A1enja-za-zlo%C4%8Din-u-lovasu/a-2661378>, last accessed: 19 November 2018.

119 See: *Lovas Case (Ljuban Devetak et al.)*, overview of the proceedings, available (in Serbian) at the official website of the Humanitarian Law Center: <http://www.hlc-rdc.org/Transkripti/lovas.html>, last accessed: 19 November 2018.

## Conclusion

War crimes trials which take place before national courts require active mutual cooperation between prosecutors in the region in the collection and exchange of evidence. This cooperation should be aimed at promoting the fight against impunity for war crimes, and prosecutors should pull together to achieve this goal. The competent authorities and political elites need to give more vigorous support to efforts aimed at fostering cooperation between the countries of the former Yugoslavia in the process of war crimes prosecution, as this is a necessary step towards restoring trust and justice in the region.

Serbia, along the entire territory of the former Yugoslavia, is faced with a number of unresolved issues which are part of the legacy of past wars, and which profoundly undermine the foundations of stable regional cooperation and good neighborly relations. This is shown clearly by the fact that the bilateral relations of the countries in the region regress each and every time that issues stemming from the wars are put back on the political agenda. Given the high number of issues that remain unresolved between the countries of the former Yugoslavia, it is clear that without a proactive approach towards solving these issues, they will definitely continue to hamper good neighbourly relations and potentially block the progress of these countries on their path towards EU membership.

Regional cooperation is not just another obligation arising from the process of EU accession, but rather a question of the perspective of good neighbourly relations in the region. Efficient prosecution of war crimes depends directly on effective regional cooperation, and is all too often held hostage by unfavourable political circumstances. Regional cooperation in war crimes prosecutions often goes beyond the scope of international legal assistance, and becomes intertwined with politics. It is therefore imperative to improve the existing cooperation mechanisms in order to bring regional cooperation in war crimes prosecutions back into the framework of international legal cooperation.

Finally, we come to the question of transparency in regional cooperation. The cooperation mechanisms and the protocolary matters surrounding regional cooperation are kept out of the public eye, and investigations are kept secret, which all make it difficult to accurately assess the level of regional cooperation. Even so, certain conclusions regarding regional cooperation from the Serbian perspective can be made on the basis of the war crimes cases tried before the War Crimes Department of the Higher Court in Belgrade. It is clear that between 2003 and 2018, the OWCP and the Croatian judicial institutions cooperated with each other in at least 12 cases,<sup>120</sup> whilst the OWCP and the BIH judicial institutions cooperated in 26 cases.<sup>121</sup> Taking into account that during the said period a total of 67

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120 They are: *Slunj, Velika Peratovica, Banski Kovačevac, Medak, Stara Gradiška, Tenja, Vukovar, Beli Manastir, Lički Osik, Tenja II, Sotin, and Sremska Mitrovica*. For more information, see the documentation pertaining to these cases, which is available at the Humanitarian Law Center website: <http://www.hlc-rdc.org/?cat=234&lang=de>, last accessed: 10 November 2018.

121 *Ibid*; OWCP's letter PI 24/18 of 1 November 2018 in response to an HLC request for access to information of public importance. According to HLC's records, these are: *Prijedor, Stari Majdan, Bijeljina, Bosanski Petrovac, Bihać, Ključ, Sanski Most, Logor Luka, Bihać II, Gradiška, Sanski Most – Kijevo, Bijeljina II, Bosanski Petrovac – Gaj, Štrpci, Srebrenica - Kravica*,

cases have been or still are being prosecuted in Serbia, the importance of judicial regional cooperation cannot be overstated. At the same time, the fact that the last indictment for crimes in Kosovo was filed in 2014 indicates an alarming lack of cooperation between Belgrade and Priština.

Serbia is expected to demonstrate stronger commitment to the prosecution of war crimes in the coming period, and to encourage the creation of a climate conducive to fostering regional cooperation. At the same time, the Office of the War Crimes Prosecutor of the Republic of Serbia faces the challenge of earning the public trust in other countries in the region. It is therefore the responsibility of the OWCP to work more efficiently and proactively, and to indict also high-level perpetrators.

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*Doboj, Ključ – Šljivari, Bratunac, Bosanska Krupa, Ključ Kamičak, Ključ Kamičak II, Srebrenica, Sanski Most – Lušci, Caparde, Bosanska Krupa II and Ključ Rejzovići.*

**Regional Judicial Cooperation in the Prosecution of War Crimes:  
Analysis and Improvement Recommendations**

Publisher:

Humanitarian Law Center

Dečanska 12,

Belgrade

[www.hlc-rdc.org](http://www.hlc-rdc.org)

Author: Višnja Šijačić

Editor: Ivana Žanić

Translator: Angelina Mišina

Proof-reader: Jonathan Boulting

Graphic designer: Todor Cvetković

Print run: 120

Printed by: Format, Belgrade







