



Humanitarian Law Center

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Comments of the Humanitarian Law Center (HLC) on the first draft of the Revised Action Plan for Chapter 23



N° of activity	ACTIVITIES Envisaged by the first draft of the Revised Action Plan for Chapter 23	COMMENT / HLC RECOMMENDATION
<p>Deleted activity</p> <p>1.3.9.2.</p>	<p>Establishing clear rules governing the anonymisation of judicial decisions prior to their publication, relying on the rules of the European Court of Human Rights.</p>	<p>The Belgrade Court of Appeal is the only court that has the Rulebook on Minimum Anonymisation of Court Decisions (Rulebook), while the Belgrade High Court still does not have such a Rulebook that would regulate the area of anonymisation of court decisions.</p> <p>As the Rulebook on Minimum Anonymisation of Court Decisions of the Court of Appeal provides that the names, surnames and nicknames of the defendants in the proceedings for crimes against humanity and other goods protected by international law are not to be anonymised, since the public's interest in knowing their identity is a priority compared to the protection of the right to privacy, it is necessary to amend the Rulebook in such a way that anonymisation also of the names and surnames of the victims of crimes against humanity or other goods protected by international law is not carried out. In the case of the names and surnames of the victims of these crimes, the same principle as in the case of the defendants should be applied - that the public's interest in knowing their identity should prevail over protecting their right to privacy.</p> <p>It is also necessary for the High Court in Belgrade to adopt the Rulebook on Minimum Anonymisation of Court Decisions, by which the names, surnames and nicknames of the offenders, but also the names and surnames of victims of crimes against international law, will not be anonymised.</p>
<p>1.4.1.1./1.4.3.1.</p>	<p>Monitoring the implementation of the National Strategy for War Crimes Investigation and</p>	<p>The Working Group established by the Government of the Republic of Serbia, whose members are representatives of the</p>



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	Prosecution.	institutions that have jurisdiction in the area of war crimes, should remain the body responsible for monitoring the implementation of the National Strategy for War Crimes Prosecution. In addition to the above-mentioned members, it is necessary to involve the representatives of civil society in the work of the Working Group.
The HLC's proposal of activities 1.4.1.2.	Inclusion of representatives of civil society organisations into the work of the Working Group in charge of monitoring the implementation of the National War Crimes Prosecution Strategy.	The Working Group, in charge of monitoring the implementation of the National War Crimes Prosecution Strategy, will organise public meetings every six months, where representatives of civil society organisations and the media will be allowed to attend.
Deleted activity 1.4.1.4.	Discussion about the Prosecutorial Strategy at an expert meeting attended by domestic judges, police officers, lawyers involved in war crimes proceedings and representatives of the International Criminal Tribunal for the former Yugoslavia and the Mechanism for the International Criminal Tribunal, the International Criminal Tribunal, regional prosecution offices and non-governmental organisations. Adoption and commencement of the implementation of the Prosecutorial Strategy, with its final text in line with the relevant suggestions made at the expert meeting. (The same activity 1.4.3.3.)	Bearing in mind that the Prosecutorial Strategy for Investigation and Prosecution of War Crimes was adopted on April 4, 2018, it is necessary to define an activity that will be related to monitoring the implementation of the Prosecutorial Strategy. The Working Group for monitoring the implementation of the National Strategy for War Crimes Prosecution, established by the Government of the Republic of Serbia, whose members are representatives of the institutions that have jurisdiction in the area of war crimes, should be responsible for executing the activities for monitoring the implementation of the Prosecutorial Strategy. The monitoring of the Prosecutorial Strategy should include quarterly reporting on the implementation of the Prosecutorial Strategy, in the form of reports that will be available to the public.
Deleted activity 1.4.1.7.	Preparation of the analysis (report) of the legal and factual situation and the needs of the War Crimes Investigation Service (WCIS) within the Ministry of Internal Affairs (MoIA), in order to determine the needs for the reform of the Service.	It is necessary to formulate amendments to the Rulebook on internal organisation and systematization of positions in the Ministry of Internal Affairs, which would introduce special criteria for employment in the WCIS, and thereby ensure that persons who in any capacity participated in the armed conflicts do not work in this Service.



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	<p>Particular attention is paid to the disputed issues:</p> <ul style="list-style-type: none"> - whether the Service should be placed under the Police Directorate; - whether the recruitment process should be reformed, bearing in mind the potential impact of the former involvement of candidates in the conflicts in the former Yugoslavia; - whether incentives should be introduced in order to attract professional staff; - whether the Service has a sufficient number of investigators and analysts, and if it applies an appropriate methodology; - establishment of joint investigative teams and working procedures between the Office of the War Crimes Prosecutor (OWCP) and the War Crimes Investigation Service. 	<p>See HLC's Model Strategy for the Prosecution of War Crimes Committed during and in relation to the Armed Conflicts in the Former Yugoslavia.</p>
<p>Deleted activity</p> <p>1.4.1.8.</p>	<p>Application of measures in order to improve the position and the capacities of the War Crimes Investigation Service within the Ministry of Internal Affairs, in accordance with the results of the analysis (report) from activity 1.4.1.7.</p>	<p>Measures to improve the position and capacity of a war crimes investigation service within the Ministry of Internal Affairs should include the mechanisms for vetting candidates for employment at the WCIS regarding their engagement during armed conflicts.</p>
<p>Deleted activity</p> <p>1.4.1.9. / now activity 1.4.1.4.</p>	<p>Improvement of the War Crimes Prosecution's website in order to enable the public to monitor when and what activities the Office of the War Crimes Prosecutor conducts in relation to specific criminal charges.</p>	<p>The War Crimes Prosecution website should be continuously upgraded, including all the sections currently on the website, and in particular the following:</p> <ul style="list-style-type: none"> - Cases/Statistics - Cases/Cases - Cases/Indictments - Cases/Closing Arguments - Cases/Complaints - News and announcements/Announcements



		<ul style="list-style-type: none"> - News and Announcements/Press Clipping - News and Announcements/Web Clipping - About us /Biographies <p>These sections should be regularly updated, and the information contained therein should be informative, in order to ensure the public's right to know about the course of the war crimes proceedings.</p>
<p>Deleted activity 1.4.1.10. / now activity 1.4.1.5.</p>	<p>Preparation of a report by the Office of the War Crimes Prosecutor, which will be made available to the public, and which represents what has been done in relation to all criminal charges since 2005, in order to examine and present whether all war crimes charges have been adequately investigated.</p>	<p>The Office of the War Crimes Prosecutor shall publish the reports on its work once a year, which shall be available to the public, and which shall represent what has been done in relation to all criminal charges in the reporting period, in order to examine and present whether all war crimes charges have been adequately investigated.</p> <p>The Reports of the Office of the War Crimes Prosecutor should be presented at media conferences, which should be held at least once every six months.</p>
<p>1.4.2.1.</p>	<p>Monitoring the implementation of the conclusions from the Conference on the topic “Types and severity of sentences and the establishment of the criteria applied in war crimes cases before the International Criminal Tribunal for the Former Yugoslavia and the national judicial systems in Serbia, Croatia, and Bosnia and Herzegovina”.</p>	<p>Bearing in mind the activity in the Action Plan for Chapter 23 number 1.4.2.2., which reads as follows: “Publication of conclusions from the Conference and the monitoring of their implementation” has not been implemented, as reported in the last available Report on the Implementation of the Action Plan for Chapter 23, No. 2/2018 of July 2018, it is not clear how the proposed executor of the activity (the Office of the War Crimes Prosecutor) will monitor the implementation of the conclusions from the above-mentioned conference.</p> <p>In this sense, the activity should be preceded by a conclusions procedure, which shall also be based on the written suggestions of the participants at the conference.</p>
<p>Deleted activity 1.4.2.2.</p>	<p>Publication of the conclusions</p>	<p>It is necessary to publish the conclusions from the Conference on “Types and severity of sentences and the establishment of the criteria applied in war crimes cases before the International</p>



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	from the Conference and the monitoring of their implementation.	<p>Criminal Tribunal for the Former Yugoslavia and the national judicial systems in Serbia, Croatia, and Bosnia and Herzegovina”.</p> <p>These conclusions should be made available to the public on the website of the Ministry of Justice.</p>
1.4.3.1./1.4.1.1.	Monitoring of the implementation of the National Strategy for War Crimes Investigation and Prosecution.	Refer to the HLC recommendations in relation to activity number 1.4.1.1.
Deleted activity 1.4.3.2.	<p>Drafting a working paper on the Prosecutorial Strategy for the Investigation and Prosecution of War Crimes in Serbia, while bearing in mind the Completion Strategy of the International Criminal Tribunal for the Former Yugoslavia and the working text of the National Strategy for War Crimes Prosecution, with the participation and support of the International Criminal Tribunal for the former Yugoslavia and the Mechanism for International Criminal Tribunals, The International Criminal Tribunal, regional prosecution offices and non-governmental organisations, creating priority lists and a list of important war crimes cases that must be prosecuted in order to fulfil the obligation that all allegations be investigated, and that all priority and important cases be investigated and prosecuted.</p> <p>The Strategy should be based on the following principles:</p> <ul style="list-style-type: none"> - maintaining the independence of the Office of the War Crimes Prosecutor, by providing, inter alia, adequate administrative capacity; - focused investigations and prosecutions; 	<p>An Action Plan for the implementation of the Prosecutorial Strategy for War Crimes Investigation and Prosecution in Serbia should be developed, that will include the criteria for prioritisation of cases, bearing in mind the following:</p> <ul style="list-style-type: none"> - the severity of the consequences (manner of execution) and the extent of the crime (the number of victims, the extent of destruction of property and cultural and religious objects); - the role of the accused (formal and de facto position in the military/paramilitary/police/political hierarchies); - the availability of suspect(s); - the availability and quality of evidence; - cruelty and recklessness exhibited during commission of crime; - the need to prosecute rape and sexual violence during armed conflicts. <p>See HLC’s Comments to the Draft Prosecutorial Strategy for Investigation and Prosecution of War Crimes in the Republic of Serbia in the period 2018 to 2023.</p> <p>The Action Plan for the Implementation of the Prosecutorial Strategy for Investigation and Prosecution of War Crimes in the Republic of Serbia should be presented at an expert meeting attended by domestic judges, police officers, lawyers involved in war crimes proceedings, and representatives of the Mechanism for International Criminal</p>



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	<ul style="list-style-type: none"> - investigation and prosecution of the war crimes perpetrators most responsible, regardless of their rank; - putting the victim in focus during the investigations and proceedings; - paying particular attention to the protection of witnesses; - strengthening cooperation between different institutions; - the prerequisites for drafting the Strategy, which are, to determine: <ol style="list-style-type: none"> 1) what charges have been investigated by the Office of the War Crimes Prosecutor in accordance with international standards; 2) which investigations are still pending before the Office of the War Crimes Prosecutor; 3) which investigations are still pending before the police; 4) which investigations should have priority over others, in line with criteria (categories of cases 1-3); 5) what deadline is foreseen for the investigation and prosecution of all cases within the categories of cases 1-3. <p>(support received from the International Criminal Tribunal for the Former Yugoslavia and the Mechanism for International Criminal Tribunals).</p> <p>(The same activity 1.4.1.3.)</p> 	<p>Tribunals, the International Criminal Tribunal, regional prosecution offices and non-governmental organisations dealing with war crimes.</p> <p>Relevant comments from the above-mentioned expert meeting should be implemented in the final text of the Action Plan for the Implementation of the Prosecutorial Strategy for Investigation and Prosecution of War Crimes in Serbia.</p> <p>The Action Plan for the Implementation of the Prosecutorial Strategy for War Crimes Investigation and Prosecution in Serbia should contain precisely prescribed deadlines, specifically designated executors of the activities to be implemented, as well as indicators to assess the implementation of the envisaged measures and activities.</p> <p>The Action Plan for the Implementation of the Prosecutorial Strategy for the Investigation and Prosecution of War Crimes in Serbia should be publicly available.</p>
<p>Deleted activity</p>	<p>Preparation of a report that will be made available to the public by the</p>	



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<p>1.4.3.5.</p>	<p>Office of the War Crimes Prosecutor regarding what has been done in respect of all criminal charges since 2005, in order to determine and indicate whether all war crimes allegations have been adequately investigated.</p> <p>(The same activity 1.4.1.10.)</p>	<p>See the HLC recommendations in relation to activity number 1.4.1.10.</p>
<p>Deleted activity</p> <p>1.4.4.1.</p>	<p>Analysis of the previous practice in the application of Article 102, paragraph 5 of the Code of Criminal Procedure, in order to examine the existing needs for changing the article and better protection of witnesses.</p>	<p>It is necessary to formulate amendments to Article 102, paragraph 5 of the CCP, in order to introduce the obligation of the prosecutor and the court to seek protection from the MoIA for witnesses who suffer threats during the proceedings, as well as the obligation to notify the participants in the procedure on the measures undertaken.</p> <p>It is necessary to draft a Protocol on the actions necessary in cases of threats to witnesses in war crimes procedures.</p> <p>It is also necessary to consider further amendments to the CCP and other regulations in order to strengthen this witness protection component.</p> <p>See HLC's Model Strategy for the Prosecution of War Crimes Committed during and in relation to the Armed Conflicts in the Former Yugoslavia.</p>
<p>1.4.4.3.</p> <p>(Deleted activity 1.4.4.2.)</p>	<p>Improve the administrative capacities of the Protection Unit for Participants in the Criminal Procedure of the Ministry of Internal Affairs through training.</p> <p>Linked activity Chapter 24. The activity 6.11.2.5.</p> <p>Conduct an independent and impartial assessment of the conduct and operation of the Protection Unit for Participants in the Criminal Procedure of the Ministry of Internal Affairs (Unit), with a view to defining the possible needs of the Unit's reform, as well as corrective</p>	<p>Draft amendments to the Law on the Programme of Protection of Participants in Criminal Proceedings which will:</p> <ul style="list-style-type: none"> - Establish a mechanism for conducting investigations regarding complaints of persons under protection, which will be implemented by a body composed of the representatives of the Unit, the OWCP and the Head of the Internal Control Department of the Ministry of Internal Affairs; - specify the content and procedure for the fulfilment of the obligation of the Protection Unit toward persons in the Protection Programme with regard to social, economic, legal and psychological



	<p>measures, and particularly as regards the following issues:</p> <ul style="list-style-type: none"> - whether the recruitment process should be improved (whether any participation in war conflicts on the territory of the former Yugoslavia should be an obstacle in the selection process). 	<p>assistance prescribed by the Law on the Programme of Protection of Participants in Criminal Proceedings, and establish a mechanism for controlling the fulfilment of those obligations;</p> <ul style="list-style-type: none"> - strengthen the mechanism for monitoring the work of the Commission and the Unit by the competent committees of the National Assembly, by introducing a mandatory review and evaluation of the report of the Commission and the Unit on the implementation of the Programme, by the parliamentary committees responsible for justice and security; - introduce special criteria for employment at the Protection Unit, which will ensure that persons who have in any capacity participated in armed conflicts in the former Yugoslavia do not work in this Unit.
<p>Added activity</p> <p>1.4.4.4.</p>	<p>On the basis of the previously conducted analysis, to amend the Rulebook on internal organisation and job classification in the Ministry of Internal Affairs regarding the jobs and organisation of the Unit for the Protection of Participants in Criminal Proceedings, and implement measures in accordance with the amended Rulebook.</p> <p>Related Activity Chapter 24, Activity 6.2.11.3.</p>	<p>In the Rulebook on internal organisation and job classification in the Ministry of Internal Affairs (Rulebook), which refers to the jobs and organisation of the Unit for the Protection of Participants in Criminal Procedure, it is necessary to introduce specific criteria for employment in the Protection Unit, which will ensure that in this Unit persons who in any capacity participated in armed conflicts in the former Yugoslavia are not employed.</p> <p>In line with these amendments to the Rulebook, measures should be implemented to ensure that at the Unit for the Protection of Participants in Criminal Procedure persons who in any capacity participated in armed conflicts in the former Yugoslavia are not employed.</p>
<p>Deleted activity</p> <p>1.4.4.4.</p>	<p>Modification of the systematisation of the work of the Office of the War Crimes Prosecutor and the employment of psychologists who will work with victims and witnesses when there is a need for that (in accordance with the Prosecutorial Strategy).</p>	<p>It is necessary for the Office of the War Crimes Prosecution to employ psychologists who will work with victims and witnesses when there is a need for that.</p> <p>See HLC's Analysis of the Prosecution of War Crimes in Serbia in the period 2004-2013 and HLC's Model Strategy for the</p>



		Prosecution of War Crimes Committed during and in relation to the Armed Conflicts in the Former Yugoslavia.
Added activity 1.4.4.5.	Adoption of the National Strategy for the Advancement of Rights of Victims and Witnesses with the accompanying Action Plan.	<p>When preparing the National Strategy for the Advancement of Rights of Victims and Witnesses with the accompanying Action Plan, the need for stronger procedural guarantees of victims and witnesses in war crimes proceedings should be taken into account.</p> <p>See HLC's Analysis of the Prosecution of War Crimes in Serbia in the period 2004-2013 and HLC's Model Strategy for the Prosecution of War Crimes Committed during and in relation to the Armed Conflicts in the Former Yugoslavia.</p>
The HLC's proposal of activities 1.4.4.6.	Full implementation of stronger procedural guarantees for war crimes victims. Activity linked with the adoption of the National Strategy for the Advancement of Rights of Victims and Witnesses with the accompanying Action Plan.	<p>Within the promotion of the rights of victims and witnesses in war crimes proceedings, guidelines for deciding on a property claim in the course of criminal proceedings for war crimes should be drawn up, instead of referring victims to civil proceedings, in accordance with Article 16. Directive 2012/29/EU.</p> <p>It is also necessary to formulate changes and additions to the CCP, which introduce special rules for providing of evidence and protection of victims in cases of sexual offences:</p> <ul style="list-style-type: none"> - prohibition of the acceptance of earlier sexual behaviour of the victim as evidence in the proceedings; - the rule of proof, by which it is not necessary to substantiate testimony with other evidence in order to prove rape; - the rule that the victim's consent is not a basis for exemption from liability, if consent is given out of fear for oneself or a close person, in accordance with the Rules on Procedure and Evidence of the International Criminal Tribunal for the former Yugoslavia, and Articles 18 and 23 of the Directive 2012/29/EU.
The HLC's proposal of activities	Conduct training of judges, prosecutors and police officers on the application of minimum standards regarding the rights,	Provide training for all actors who come in contact with victims in war crimes proceedings, including the court watchdog, as well as defence attorneys.



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<p>1.4.4.7.</p>	<p>support and protection of victims in accordance with Article 25 of the Directive 2012/29/EU.</p>	<p>See HLC's Model Strategy for the Prosecution of War Crimes Committed during and in relation to the Armed Conflicts in the Former Yugoslavia.</p>
<p>The HLC's proposal of activities</p> <p>1.4.4.8.</p>	<p>Amendments of the Court's Rules of Procedure of the High Court in Belgrade.</p>	<p>Amendments of the Court's Rules of Procedure of the High Court in Belgrade, by which a psychologist employed by the Victim and Witness Assistance and Support Service:</p> <ul style="list-style-type: none"> - can be present in the courtroom during the hearing; - will be granted the obligation to warn the president of the trial chamber if the psychological state of the injured party or witnesses deteriorates; - will be granted the right to propose to the court that the status of a particularly sensitive witness be determined.
<p>The HLC's proposal of activities</p> <p>1.4.4.9.</p>	<p>Signing of a regional protocol on cooperation in supporting witnesses and victims with Croatia, Bosnia and Herzegovina, Kosovo and Montenegro.</p>	<p>The regional protocol on cooperation in supporting witnesses and victims with Croatia, Bosnia and Herzegovina, Kosovo and Montenegro should define procedures for contacting witnesses and victims, organising travel, providing protection, and informing about procedural and other issues, in cases of witnesses or victims residing in the territory of one signatory party needing to appear before the court of another signatory party.</p> <p>See HLC's Model Strategy for the Prosecution of War Crimes Committed during and in relation to the Armed Conflicts in the Former Yugoslavia.</p>