



Humanitarian Law Center

# Fourth Report

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

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ISBN 978-86-7932-103-9





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## On the Implementation of the National Strategy for the Prosecution of War Crimes

Belgrade,  
June 2019



This project was supported by the European Union. The views herein expressed are solely those of the author and do not necessarily reflect the official position of the European Union.



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## Acronyms and Abbreviations

<b>Action Plan</b>	Action Plan for Chapter 23 in the framework of Serbia's accession negotiations with the European Union
<b>BiH</b>	Bosnia and Herzegovina
<b>Commission on Missing Persons</b>	The Commission on Missing Persons of the Government of the Republic of Serbia
<b>CPC</b>	Criminal Procedure Code (Official Gazette of the Republic of Serbia nos. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013 and 55/2014)
<b>Deputy Prosecutor</b>	Deputy War Crimes Prosecutor of the Republic of Serbia
<b>DORH</b>	State Attorney's Office of the Republic of Croatia
<b>Draft</b>	First draft of the Revised Action Plan for Chapter 23
<b>EU</b>	European Union
<b>EULEX</b>	European Union Rule of Law Mission in Kosovo
<b>Government</b>	Government of the Republic of Serbia
<b>HJC</b>	The High Judicial Council
<b>HLC</b>	Humanitarian Law Center
<b>ICMP</b>	International Commission on Missing Persons
<b>ICRC</b>	International Committee of the Red Cross
<b>ICTY</b>	United Nations International Criminal Tribunal for the Former Yugoslavia
<b>IRMCT</b>	United Nations International Residual Mechanism for Criminal Tribunals
<b>LFAIPI</b>	Law on Free Access to Information of Public Importance (Official Gazette of the Republic of Serbia, nos.120/2004, 54/2007, 104/2009 and 36/2010)
<b>LFLA</b>	Law on Free Legal Aid (Official Gazette of the Republic of Serbia no. 87/2019)
<b>LPDP</b>	Law on Personal Data Protection (Official Gazette of the Republic of Serbia, nos.97/2008, 104/2009 - other law, 68/2012- CC decision and 107/2012)
<b>MoI</b>	Ministry of the Interior of the Republic of Serbia
<b>MoJ</b>	Ministry of Justice of the Republic of Serbia
<b>MPG</b>	The Missing Persons Group of the International Commission on Missing Persons
<b>National Strategy</b>	National Strategy for the Prosecution of War Crimes
<b>OEBS</b>	Organization for Security and Co-operation in Europe
<b>OWCP</b>	Office of the War Crimes Prosecutor of the Republic of Serbia
<b>Prosecutorial Strategy</b>	Prosecutorial Strategy for Investigation and Prosecution of War Crimes 2018 – 2023
<b>Prosecutor</b>	War Crimes Prosecutor of the Republic of Serbia
<b>RPP</b>	Republic Public Prosecutor
<b>SPC</b>	State Prosecutorial Council
<b>SRS</b>	Serbian Radical Party
<b>U.N.</b>	United Nations Organisation
<b>UNDP</b>	United Nations Development Programme
<b>UNMIK</b>	United Nations Interim Administration Mission in Kosovo
<b>VJ</b>	Yugoslav Army
<b>WCIS</b>	War Crimes Investigation Service of the Ministry of the Interior of the Republic of Serbia
<b>Working Body</b>	Working Body Responsible for Monitoring Implementation of the National Strategy for the Prosecution of War Crimes
<b>WPU</b>	Witness Protection Unit



## Preface

The Humanitarian Law Center (HLC) has been monitoring and providing support to war crimes trials ever since the first war crimes proceedings conducted in Serbia in 2002. The HLC is the only organization that has been continuously monitoring and analysing war crimes trials in Serbia and informing the public at home and abroad about them. HLC has been filing criminal complaints against suspected perpetrators and sharing its documentation on war crimes with the Office of the War Crimes Prosecutors (OWCP). Also, the HLC has been identifying witnesses and victims and encouraging them to give evidence in court and thus contribute to achieving justice for past crimes.

The National Strategy for the Prosecution of War Crimes (hereinafter: the National Strategy) was adopted in February 2016. The HLC is the only non-governmental organisation that monitors and reports on its implementation with a view to assisting in a qualitative and quantitative assessment of the state of implementation of the measures and activities set forth in the National Strategy.

This is the fourth HLC report on the implementation of the National Strategy. A comprehensive assessment of the state implementation of the National Strategy in the preceding period is provided in the HLC's Initial Report on the Implementation of the National Strategy for the Prosecution of War Crimes, the Second Report on the Implementation of the National Strategy for the Prosecution of War Crimes and the Third Report on the Implementation of the National Strategy for the Prosecution of War Crimes, which were released and presented in 2017 and 2018.<sup>1</sup>

As shown by the findings below, no progress has been made in war crimes prosecutions in the forty months since the adoption of the National Strategy. 18 of the 21 of the indictments that have been filed since the adoption of the National Strategy were not the

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1 *Initial Report on the Implementation of the National Strategy for the Prosecution of War Crimes*, HLC, December 2017, available on the HLC website at: [http://www.hlc-rdc.org/wp-content/uploads/2017/12/Izvestaj\\_Strategija\\_1\\_eng.pdf](http://www.hlc-rdc.org/wp-content/uploads/2017/12/Izvestaj_Strategija_1_eng.pdf); *Second Report on the Implementation of the National Strategy for the Prosecution of War Crimes*, HLC, June 2018, available on the HLC website at: [http://www.hlc-rdc.org/wp-content/uploads/2018/07/Izvestaj\\_Strategija\\_2\\_ENG-ff.pdf](http://www.hlc-rdc.org/wp-content/uploads/2018/07/Izvestaj_Strategija_2_ENG-ff.pdf); *Third Report on the Implementation of the National Strategy for the Prosecution of War Crimes*, HLC, December 2018, available on the HLC website at: [http://www.hlc-rdc.org/wp-content/uploads/2018/12/Third\\_Report\\_on\\_the\\_Implementation\\_of\\_the\\_National\\_Strategy\\_for\\_the\\_Prosecution\\_of\\_War\\_Crimes.pdf](http://www.hlc-rdc.org/wp-content/uploads/2018/12/Third_Report_on_the_Implementation_of_the_National_Strategy_for_the_Prosecution_of_War_Crimes.pdf). All sources accessed on: 8 May 2019.



result of the OWCP's own investigation but transferred to the OWCP from BiH.<sup>2</sup> War crimes trials continue to be unreasonably protracted, the procedural rights of victims have not been strengthened, the number of missing persons is decreasing slower than expected, and cooperation with the International Residual Mechanism for International Criminal Tribunals (IRMCT) has been marked by the IRMCT's decision to try Serbian Radical Party (SRS) members Vjerica Radeta and Petar Jojić, charged with contempt of court, in The Hague rather than in Serbia, after the witnesses in this case said they would be concerned for their safety if the trial was held in Serbia.<sup>3</sup>

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- 2 The indictments raised since the adoption of the National War Crimes Prosecution Strategy on 20 February 2016: *Doboj, Ključ – Šljivari, Bratunac, Bosanska Krupa, \*Ključ – Kamičak, \*Ključ – Kamičak II, Srebrenica – Kravica, Sanski Most – Lušci Palanka, Caparde, Bosanska Krupa II, Ključ – Rejzovići, Bogdanovci, Kožuhe – Doboj, Brčko, Brčko II*, the indictment against Branko Branković, *Bratunac II, Brčko II, Ključ Velagići, Gornje Nerodimlje, Sarajevo-Hrasnica* and the indictment against Dalibor Maksimović. *\*Ključ – Kamičak* and *Ključ – Kamičak II* have been merged.
- 3 *Decision re-examining the referral of a case to the Republic of Serbia*, pp. 2-3, 5, available on the official website of the IRMCT at: <http://www.irmct.org/sites/default/files/casedocuments/mict-17-111/single-judge-decisions/en/190513-decision-re-examining-referral-case-rs-jojic-radeta.pdf>, accessed on: 19 June 2019.



## Introduction

On 20 February 2016, the Government of the Republic of Serbia adopted the National Strategy for the Prosecution of War Crimes 2016-2020, which detailed a set of activities to help achieve the common objective of improving the prosecution of war crimes in Serbia.<sup>4</sup>

Determining individual criminal responsibility for war crimes committed during the 1990s is one of the formal conditions that Serbia has to meet to join the EU. As a direct response to the recommendations made by the European Commission in its Screening Report on Chapter 23, Serbia has adopted the Action Plan for Chapter 23,<sup>5</sup> relating to judicial reform and fundamental rights, and also to war crimes.<sup>6</sup> The Action Plan in section 1.4. War Crimes, foresees a set of activities for all those authorities responsible for war crimes prosecution.

### Revision of the Action Plan for Chapter 23

During the reporting period the Ministry of Justice of the Republic of Serbia began the process of revision of the *Action Plan for Chapter 23*. So far, a round-table meeting to discuss the first draft of the Revised Action Plan for Chapter 23 (Draft) has been held, and civil society organisations and other stakeholders have delivered their written comments and suggestions on the first draft.<sup>7</sup> After the European Commission delivers its opinion on the draft of the revised Action Plan for Chapter 23, the Ministry of Justice is expected to take further steps towards its revision.<sup>8</sup>

As regards the announced revision, the HLC is concerned by the fact that the Council for the Implementation of the Action Plan for Chapter 23 suggested that a large number

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4 Full text of the *National Strategy for the Prosecution of War Crimes* is 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), accessed on: 08 May 2019.

5 *Action Plan for Chapter 23* is available at the Ministry of Justice official website: <https://mpravde.gov.rs/files/Action%20plan%20Ch%2023.pdf>, accessed on: 08 May 2019.

6 *Report on the degree of alignment of Serbian legislation with the EU acquis (Screening Report)* is available on the official website of the Serbian Ministry of Justice at: <http://www.mpravde.gov.rs/tekst/7073/izvestaj-o-skriningu.php>, accessed on: 8 May 2019.

7 See: *Revised AP23 Judiciary*, official website of the Ministry of Justice, at: <https://www.mpravde.gov.rs/tekst/24658/prvi-nacrt-revidiranog-ap-pg23-izmenjen-na-osnovu-komentara-organizacija-civilnog-drustva-phi>, accessed on: 8 May 2019.

8 Ministry of Justice's reply 25-F137604 of 24.04.2019 to HLC's request for information of public importance.



of activities be deleted.<sup>9</sup> Some of them were considered “fully implemented” and as such planned to be deleted from the Action Plan. According to the HLC findings, such an assessment of the level of implementation of certain activities is the result of the fact that the indicators used to assess their impact are often not measurable, leaving room for over-general and imprecise assessments. For example, an activity relating to discussing the prosecutorial strategy for investigation and prosecution of war crimes (Prosecutorial Strategy), its adoption and beginning of implementation, has been deleted.<sup>10</sup> While it is true that the Prosecutorial Strategy was adopted in 2018, this activity, instead of being altogether deleted, should have been re-defined to allow for the monitoring of its implementation, bearing in mind that from the Strategy itself it is not quite clear how its implementation will be monitored.<sup>11</sup>

Another activity that has been deleted in the first draft of the revised Action Plan concerns changing job classification within the Office of the War Crimes Prosecutor to allow for hiring a psychologist to provide counselling for victims and witnesses.<sup>12</sup>

Although described as not implemented in the latest available report on the state of implementation of the Action Plan, in the first draft this activity is planned to be deleted.<sup>13</sup>

The HLC notes that the draft envisages the transfer of the function of monitoring the implementation of the National Strategy for the Prosecution of War Crimes from the Working Body for Monitoring and Reporting on the Implementation of the National Strategy for the Prosecution of War Crimes (Working Body), to the OWCP.<sup>14</sup> In its comments delivered to the Ministry of Justice, the HLC pointed out that as the OWCP is one of the bodies responsible for its implementation, the monitoring function should remain within the authority of the Working Body as an independent body. This enables the

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9 The following activities related directly or indirectly to war crimes prosecution are planned to be deleted under the first draft of the revised Action Plan for Chapter 23 (*Revised AP23 Judiciary*): 1.3.9.2.; 1.4.1.2.; 1.4.1.3.; 1.4.1.4.; 1.4.1.7.; 1.4.1.8.; 1.4.2.2.; 1.4.3.2.; 1.4.3.3.; 1.4.3.4.; 1.4.3.5.; 1.4.4.1.; 1.4.4.2.; 1.4.4.4.; 1.4.4.5.; 1.4.4.6.; 1.4.4.7. The first draft is available on the official website of the Ministry of Justice as *Revised AP23 Judiciary*, available at: <https://www.mpravde.gov.rs/tekst/24658/prvi-nacrt-revidiranog-ap-pg23-izmenjen-na-osnovu-komentara-organizacija-civilnog-drustva-.php>, accessed on: 3 June 2019.

10 *First Draft of the Revised Action Plan for Chapter 23, (Revised AP23 Judiciary)*, Activity 1.4.1.4.; p. 9.

11 *Commentaries of the Humanitarian Law Center on the First Draft of the Revised Action Plan for Chapter 23*, (HLCIndexOut: 25-F136701), 8 February 2019, p. 3.

12 *First Draft of the Revised Action Plan for Chapter 23*, document *Revised AP23 Judiciary*, Activity 1.4.4.4.; p. 31.

13 *Action plan for Chapter 23 with implementation status on 31st December 2019, Negotiating Group for Chapter 23*, Activity 1.4.4.4, pp. 247-248, available on the official website of the Ministry of Justice at: <https://www.mpravde.gov.rs/tekst/22364/polugodisnji-izvestaj-pregovaracke-grupe-za-poglavlje-23-za-treci-i-cetvrti-kvartal-2018-godine.php>, accessed on: 3 June 2019.

14 *First draft of the revised Action Plan for Chapter 23*, document *Revised AP23 Judiciary*, Activity 1.4.1.1.; p. 4.



monitoring of the realisation of the activities for which the OWCP is responsible, and at the same time frees the OWCP from the responsibility for coordinating the implementation of the National Strategy and overseeing the work of other state authorities. Should the proposed change be accepted, the OWCP would be responsible for overseeing activities whose implementation lies within the responsibility of, *inter alia*, the Ministry of Justice (MoJ), the High Court in Belgrade, the Unit for Protection of Participants in the Criminal Procedure (Unit) and the War Crimes Investigation Service (WCIS).<sup>15</sup>

However, it should be noted that the ongoing revision of the Action Plan for Chapter 23 does not affect the implementation of the activities and measures set out in the National Strategy. Following the guidance provided in the Action Plan, the National Strategy has set down the activities that should improve the efficiency of war crimes prosecutions.

In parallel with the Working Body for Monitoring and Reporting on the Implementation of the National Strategy, the HLC also monitors the implementation of the National Strategy, with a view to producing a shadow report which will offer independent findings and an assessment of the state of implementation of the National Strategy.<sup>16</sup>

This report is the fourth report to be published by the HLC on monitoring the implementation of the National Strategy. It discusses the current state of play and covers the period from 1 December 2018 to 1 June 2019.

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## Methodology

The information used in preparing this report was drawn from three main sources. The first source comprised the reports of governmental and international bodies, including the reports of the Working Body and the reports of the Chief Prosecutor and the President of the United Nations International Residual Mechanism for Criminal Tribunals (hereinafter: the IRMCT) submitted to the U.N. Security Council.<sup>17</sup> The second source included the information gathered through requests for access to information of public importance from the authorities identified in the National Strategy as responsible

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15 *Comments of the Humanitarian Law Center on the first draft of the revised Action Plan for Chapter 23*, (HLCIndexOut: 25-F136701), 8 February 2019, pp. 2-3; “Comments of the Humanitarian Law Center on the first draft of the revised Action Plan for Chapter 23”, press release, HLC, 14 February 2019, available at: <http://www.hlc-rdc.org/?p=36354&lang=de>, accessed on: 6 June 2019.

16 *Decision of the Government of Serbia establishing a Working Body for monitoring the implementation of the National Strategy for the Prosecution of War Crimes* (Official Gazette of the Republic of Serbia no. 80 of 29 August 2017).

17 The reports of the Prosecutor and President of the International Residual Mechanism for Criminal Tribunals (IRMCT) to the UN Security Council are available at: <http://www.irmct.org/en/basic-documents/reports>, accessed on: 6 June 2019.



for implementation of the activities envisaged in the National Strategy. And finally, since the HLC monitors all war crimes trials conducted by the Higher Court in Belgrade and the Court of Appeals in Belgrade, the HLC's reports on war crimes trials were the third source of information for the present report.<sup>18</sup>

### **Obstacles encountered in the process of compiling the HLC's Report on the Implementation of the National Strategy for the Prosecution of War Crimes**

One obstacle to the process of gathering information was the fact that the Working Body mandated to monitor and report on National Strategy implementation was only established in August 2017, a year and a half later than planned, as a result of which, their official reports had fallen well behind schedule. By the time the HLC had finalised its work on this report, the Working Body had released six reports, which, in combination, cover the period from 20 February 2016 to 31 March 2019.<sup>19</sup>

The Working Body reports, besides arriving late, have, for the most part, contained insufficient information and failed to cover the activities set forth in the National Strategy it refers to. Consequently, they are difficult to read and understand, even for the professional community closely following domestic war crimes. Furthermore, the Working Body's evaluation of the implementation of planned activities is often perfunctory and illogical.

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In the Working Body's *Report No. 6 on the Implementation of the National Strategy for the Prosecution of War Crimes*, for instance, the activity concerning the "improvement of cooperation between the judicial authorities of the Republic of Serbia - and of the War Crimes Investigation Service in particular - with the Provisional Institutions of

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18 See section *Publications*, on the HLC official website: <http://www.hlc-rdc.org/?cat=223&lang=de>, and section *List of Cases*: <http://www.hlc-rdc.org/?cat=234&lang=de>. See section *Publications* on the HLC website at: <http://www.hlc-rdc.org/?cat=223>. All sources accessed on: 7 May 2019.

19 The National Strategy stipulates that the Working Body will formulate conclusions and recommendations regarding its implementation and submit them to the competent authorities, and inform the Council for the Implementation of the Action Plan for Chapter 23 and the Serbian Government on a quarterly basis as regards implementation results. *Report No. 1 on the Implementation of the National Strategy for the Prosecution of War Crimes* was adopted at the second meeting of the Working Body on 22 January 2018; *Report No. 2 on the Implementation of the National Strategy for the Prosecution of War Crimes* was adopted on 29 May 2018; *Report No. 3 on the Implementation of the National Strategy for the Prosecution of War Crimes* was adopted on 13 September 2018; *Report No. 4 on the Implementation of the National Strategy for the Prosecution of War Crimes* was adopted on 21 November 2018; *Report No. 5 on the Implementation of the National Strategy for the Prosecution of War Crimes* was adopted on 28 March 2019; *Report No. 6 on the Implementation of the National Strategy for the Prosecution of War Crimes* was adopted on 19 June 2019. All reports are available on the official website of the Ministry of Justice at: <https://www.mpravde.gov.rs/tekst/17978/izvestaj-o-sprovođenju-nacionalne-strategije-za-procesuiranje-ratnih-zlocina.php>, accessed on: 08 July 2019.



Self-Government in Priština”<sup>20</sup> is described as “being successfully implemented.”<sup>21</sup> This contradicts the information provided in the preceding reports submitted by the Working Body, which state, with respect to the said activity, that the situation has not changed,<sup>22</sup> and that in June 2018 the War Crimes Prosecutor held consultations with the competent Assistant Justice Minister on the Provisional Institutions of Self-Government in Priština’s “failure [...] to respond to the OWCP requests.”<sup>23</sup> Furthermore, the report of March 2018 stated that “despite two urgent pleas – the provisional self-government authorities in Priština failed to respond to the OWCP request for mutual legal assistance.”<sup>24</sup> All this goes to show that the assessment of the state of implementation of this activity in Report No. 6 is utterly inconsistent with the information provided in the Working Body’s reports.<sup>25</sup>

This report differs from the previous ones in that the quarterly reports on implementation of the Action Plan for Chapter 23 have not been consulted during its preparation. The last quarterly report was published in July 2018. Since then no regular quarterly reports have been published,<sup>26</sup> only the semi-annual report of the Negotiating Group for Chapter 23 covering the third and fourth quarters of 2018.<sup>27</sup>

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- 20 The activity reads as follows: “Improving cooperation between the judicial authorities of the Republic of Serbia and of the War Crimes Investigation Service with the Provisional Institutions of Self-Government in Pristina, in full accordance with Resolution of the Government of the Republic of Serbia 05 No 018-1862/2013-1 of 07.03.2013, through which the text Procedure of Mutual Legal Assistance was adopted.”, *National War Crimes Prosecution Strategy*, p. 33.
- 21 *Report No. 6 on the Implementation of the National Strategy for the Prosecution of War Crimes*, June 2019, p. 122.
- 22 *Report No. 4 on the Implementation of the National Strategy for the Prosecution of War*, November 2018, pp. 91-92; *Report No. 5 on the Implementation of the National Strategy for the Prosecution of War Crimes*, March 2019, pp. 108-110; *Report No. 6 on the Implementation of the National Strategy for the Prosecution of War Crimes*, June 2019, p. 122.
- 23 *Report No. 3 on the Implementation of the National Strategy for the Prosecution of War*, November 2018, p. 75.
- 24 *Report No. 2 on the Implementation of the National Strategy for the Prosecution of War Crimes*, May 2018, p. 60.
- 25 *Ibid*; *Report No. 3 on the Implementation of the National Strategy for the Prosecution of War Crimes*, September 2018, pp. 75-76; *Report No. 4 on the Implementation of the National Strategy for the Prosecution of War Crimes*, November 2018, pp. 91-92; *Report No. 5 on the Implementation of the National Strategy for the Prosecution of War Crimes*, March 2019, pp. 108-110; *Report No. 6 on the Implementation of the National Strategy for the Prosecution of War Crimes*, June 2019, pp. 122-123.
- 26 *Report No. 2/2018 on implementation of the Action Plan for Chapter 23*, July 2018, is available on the official website of the Ministry of Justice at: <https://www.mpravde.gov.rs/tekst/20416/izvestaj-br-22018-o-sprovođenju-akcionog-plana-za-poglavlje-23.php>, accessed on: 3 June 2019.
- 27 **Note:** The semi-annual report of the Negotiating Group for Chapter 23 (third and fourth quarters of 2018) is available in the English language only (Ministry of Justice’s reply 25-F137604, of 24 April 2019, to an HLC request for information of public importance).



## I. Case prioritisation based on the criteria laid down in the Prosecutorial Strategy

The Prosecutorial Strategy for Investigation and Prosecution of War Crimes 2018-2023, (Prosecutorial Strategy) was adopted on 4 April 2018.<sup>28</sup>

Because of its most glaring flaw - the absence of clear criteria for the OWCP to apply in prioritising war crimes cases for prosecution -<sup>29</sup> it is not possible to monitor the process of implementation of the Prosecutorial Strategy or assess whether case prosecution meets any criteria laid down.

By looking at the indictments filed during the reporting period, the HLC can only repeat its finding from previous reports, that the OWCP is continuing the practice of prosecuting only the less complex cases. Namely, all four indictments filed and confirmed between 1 December 2018 and 1 June 2019 concern cases involving only one low-ranking perpetrator.<sup>30</sup>

## II. Increase in the number of indictments in relation to the number of investigations

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Between 1 December 2018 and 1 June 2019, **the OWCP brought four new indictments** for war crimes, against four individuals.<sup>31</sup>

**During the reporting period, the OWCP issued one order to conduct an investigation.**<sup>32</sup> A total of 2,581 cases were subject to preliminary investigation, and

28 *The Prosecutorial Strategy for Investigation and Prosecution of the War Crimes in the Republic of Serbia (2018-2023)* is available at the official website of the Office of the War Crimes Prosecutor at: [http://www.tuzilastvorz.org.rs/upload/HomeDocument/Document\\_en/2018-05/strategija\\_trz\\_eng.pdf](http://www.tuzilastvorz.org.rs/upload/HomeDocument/Document_en/2018-05/strategija_trz_eng.pdf), accessed on: 20 November 2018.

29 *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* are 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); *Serbia 2019 Report*, p. 19, available on the official website of the Ministry of European Integration at: [http://www.mei.gov.rs/upload/documents/eu\\_dokumenta/godisnji\\_izvestaji\\_ek\\_o\\_napretku/Serbia\\_2019\\_Report.pdf](http://www.mei.gov.rs/upload/documents/eu_dokumenta/godisnji_izvestaji_ek_o_napretku/Serbia_2019_Report.pdf). Both sources accessed: on 6 June 2019.

30 *Bogdanovci, Gornje Nerodimlje, Sarajevo-Hrasnica* and the indictment against Dalibor Maksimović.

31 See the section *Indictments* (under the section *Cases*) on the official website of the Office of the War Crimes Prosecutor: <http://www.tuzilastvorz.org.rs/en/cases/indictments>, accessed on: 5 June 2019.

32 OWCP's reply (PI.br. 12/19, of 7 June 2019) to an HLC request for information of public importance. **Note:** the reply states that the above information concerns the period 1 December 2018 – 5 June 2019.



**15 to full investigation.**<sup>33</sup> The OWCP decided to work on 2,032 cases from the total it had taken over from the prosecutors' offices of general jurisdiction.<sup>34</sup>

Given such a high number of cases at investigation and preliminary investigation stages, and bearing in mind that over the last six months only four indictments have been filed, **no increase in the number of indictments in relation to the number of investigations can be reported for the last six months.**

### **OWCP Report in relation to sub-sections 1.4.1.10. and 1.4.3.5. of the Action Plan for Chapter 23**

On 24 December 2018, the Office of the War Crimes Prosecutor posted on its website the *Report in relation to sub-sections 1.4.1.10. and 1.4.3.5. of the Action Plan for Chapter 23*, which was meant to show what actions the OWCP has taken with regard to all criminal complaints that have been filed with it since 2005, and thus enable assessment of whether or not all war crimes charges have been adequately investigated.<sup>35</sup> Preparing and releasing this Report in the second quarter of 2016 was one of the OWCP's obligations under the Action Plan for Chapter 23.<sup>36</sup>

In terms of content, the Report was supposed to focus on cases involving "high-ranking officers".<sup>37</sup>

However, aside from some statistical data, the Report failed to state what concrete actions the OWCP has taken to probe all the criminal complaints filed between 2003 and 2018.<sup>38</sup> Instead, it offered quantitative data regarding the number of criminal complaints and requests for conducting investigation received by year, the number of investigations that have been dropped or discontinued, the number of indictments raised, the number of cases transferred to the prosecutor's offices of general jurisdiction, etc. Also, the Report

33 *Ibid.*

34 OWCP's reply (Pl.br. 12/19, of 7 June 2019) to HLC's request for information of public importance; The latest report of the Working Body states that all war crimes cases were taken over from general prosecution services and duly registered, see: *Report No. 6 on the Implementation of the National Strategy for the Prosecution of War Crimes*, June 2019, p. 6.

35 *Izveštaj na osnovu tačaka 1.4.1.10. i 1.4.3.5. Akcionog plana za Poglavlje 23 [Report in relation to sub-sections 1.4.1.10. and 1.4.3.5. of the Action Plan for Chapter 23]* is available (in Serbian) on the official website of the Office of the War Crimes Prosecutor at: [http://www.tuzilastvorz.org.rs/upload/HomeDocument/Document\\_sr/2018-12/izvestaj\\_latnica.pdf](http://www.tuzilastvorz.org.rs/upload/HomeDocument/Document_sr/2018-12/izvestaj_latnica.pdf), accessed on: 4 June 2019.

36 *Action Plan for Chapter 23*, Activities 1.4.1.10. and 1.4.3.5., pp. 115, 120-121.

37 *Ibid.* See the rubric: *Impact Indicator* for both activities.

38 Although the relevant activity in the Action Plan for Chapter 23 envisages that the Report should cover criminal complaints filed after 2005, it actually covers the entire period from the establishment of the OWCP in 2003 until 2018. *Report in relation to sub-sections 1.4.1.10. and 1.4.3.5. of the Action Plan for Chapter 23*, December 2018, p. 2.



features the classification of criminal offences into which investigations were ordered on the basis of reasonable grounds to suspect they had been committed. The second part of the Report details the stages of all the proceedings that resulted from the indictments raised from 2003 to 2018.<sup>39</sup>

In the HLC's view, the qualitative presentation of information and achievements the Report focuses on is unsuitable for any content analysis and therefore cannot answer the question whether all criminal complaints have been adequately investigated, as is required in the Action Plan for Chapter 23. Moreover, the whole purpose of the Report was to inform the public about what the OWCP has done in respect of all criminal complaints filed over the last 15 years. In this regard, the Report has not fulfilled its purpose, but just formally met the requirement to have such a report.

The statistical information it provides can in no way contribute to the effort to improve society's attitude towards war crimes trials and make the OWCP's work more transparent, which was the primary purpose of the Report, as stated in its opening remarks.<sup>40</sup> In the HLC's view, society's attitude towards the issue of war crimes trials cannot be changed or improved with documents made in the form of a statistical overview. A recent opinion survey has found that an alarming 85 percent of citizens surveyed cannot name even a single war crime that has been or is being tried domestically, as much as 79 percent cannot name a single judicial institution handling war crimes, and 59 percent say they are poorly informed about domestic war crimes trials.<sup>41</sup>

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That being so, the HLC believes keeping citizens systematically informed about war crimes trials is the only way to change these woeful statistics. Some of the mechanisms that could contribute to achieving this goal include outreach to citizens, media appearances of the war crimes prosecutor and deputy war crimes prosecutors, securing access to documents pertaining to war crimes (without excessive anonymisation of indictments and judgments), allowing video-recordings of trials for the purpose of public broadcasting, etc.

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39 *Report in relation to sub-sections 1.4.1.10. and 1.4.3.5. of the Action Plan for Chapter 23*, December 2018, p. 5.

40 *Ibid*, p. 1.

41 Public opinion survey commissioned by the Serbian daily newspaper *Danas* (published by "Dan Graf" LLC), Belgrade, August 2017, "Awareness of citizens of Serbia about the wars of the '90s, war crimes and trials of war crimes indictees", pp. 7-8, 46-47, available at: <http://www.hlc-rdc.org/?p=34642>, accessed on: 19 June 2019.



### III. Increase in the number of proceedings resulting in a final judgement in relation to the number of indictments

During the reporting period, trials in 23 cases were held.<sup>42</sup> As stated above, the OWCP raised four indictments during the same period.<sup>43</sup> The War Crimes Department of the Higher Court in Belgrade handed down three first-instance judgements,<sup>44</sup> and a judgement confirming the plea agreement in the case of *Gornje Nerodimlje*.<sup>45</sup> Also, the War Crimes Department of the Higher Court in Belgrade dismissed the indictment in one case.<sup>46</sup> The War Crimes Department of the Court of Appeal in Belgrade handed down one war crime judgement.<sup>47</sup>

It should be reiterated here that the increase in the number of indictments resulting in final judgements indicator does not provide an accurate picture of the efficiency of the work of the authorities responsible for war crimes prosecution.

### IV. Shorter average duration of war crimes proceedings

**There have been 54 trial days** for all ongoing war crimes cases at the War Crimes Department of the Higher Court in Belgrade **during the reporting period**, with **19 trial**

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42 *Lovas, Trnje, Čuška, Bratunac, Srebrenica – Kravica, Bosanski Petrovac – Gaj, Štrpci, Ključ – Šljivari, Bosanska Krupa, Ključ Kamičak, Sanski Most – Lušci Palanka, Ključ – Rejzovići, Bosanska Krupa II, Bratunac II, Doboj-Kožuhe, Brčko, Brčko II, Ključ Velagići, Gornje Nerodimlje, Sarajevo-Hrasnica, Bogdanovci, Branko Branković and Skočić*. See: List of war crimes cases that have been prosecuted or are being prosecuted before domestic courts at: <http://www.hlc-rdc.org/?cat=234>, accessed on: 5 June 2019.

43 See: *Announcements* section on the official website of the Office of the War Crimes Prosecutor at: <http://www.tuzilastvorz.org.rs/en/news-and-announcements/announcements>; see also: List of war crimes cases that have been prosecuted or are being prosecuted before domestic courts at: <http://www.hlc-rdc.org/?cat=234>. Both sources accessed on 22 November 2018.

44 In the cases of *Ključ-Kamičak, Bosanski Petrovac - Gaj and Trnje*; "On the verdict of the Higher Court in Belgrade in the Trnje war crime trial", press release, HLC, 17 April 2019, available at: <http://www.hlc-rdc.org/?p=36548&lang=de>, accessed on: 5 June 2019.

45 The judgment was handed down on 19 March 2019. It is available (in Serbian) at: [http://www.hlc-rdc.org/wp-content/uploads/2019/05/Ramadan\\_Maljoku\\_-\\_SPK.pdf](http://www.hlc-rdc.org/wp-content/uploads/2019/05/Ramadan_Maljoku_-_SPK.pdf), accessed on: 5 June 2019.

46 Decision K.Po2 no. 6/18 on the dismissal of the indictment by the Cantonal Prosecutor's Office of the Una-Sana Kanton in Bihać no. T01 o KTRZ 0026860 from 11.3.2017. OWCP's reply (PI.br. 08/19 of 25 April 2019) to an HLC request for information of public importance.

47 Court of Appeal in Belgrade, judgment in *Skočić* Case (Kž3 Po2 1/18 of 13 February 2019), available (in Serbian) at: [http://www.hlc-rdc.org/wp-content/uploads/2019/06/Trecestepena\\_presuda\\_13.02.2019..pdf](http://www.hlc-rdc.org/wp-content/uploads/2019/06/Trecestepena_presuda_13.02.2019..pdf); "Sentences for rape of Roma women from Skočić too mild", press release, HLC, 11 March 2019, available at: <http://www.hlc-rdc.org/?p=36418&lang=de>. Both sources accessed on: 5 June 2019.



**days pushed back for various reasons.**<sup>48</sup> Hearings in cases have been scheduled about 30 days apart. Given a total of 20 pending cases, the average number of trial days held per case has been just three.

**When it comes to this indicator,** the findings presented in this report show that **no results have been achieved that would indicate any improvement of these statistics.**

## V. Positive evaluation by the European Commission on the alignment of the system of protection of and support to victims and witnesses in the Republic of Serbia with European Union standards

The latest available report of the European Commission on Serbia's Progress (the 2019 Report of May 2019) notes that "concerning procedural rights, the legal framework remains only partially aligned with the *acquis*."<sup>49</sup>

The report further states that "with respect to the support provided to and the protection of witnesses, there is a delay in adopting amendments related to the implementation of urgent measures for witness protection", and that "there is a further delay in implementing most of the recommendations of the analysis of the Witness Protection Unit carried out in 2016".<sup>50</sup> "Steps already taken to increase the capacity of the Witness Protection Unit within the Ministry of the Interior, along with new rules and procedure for selecting staff, are expected to improve its work", the report concludes.

The report also notes that a new Law on Free Legal Aid was adopted in November 2018 to be implemented as of October 2019,<sup>51</sup> and that the accessibility of free legal aid to the most vulnerable groups should be monitored.

As regards the National Strategy on the Rights of Victims and Witnesses of Crime, the report notes that it is in preparation.<sup>52</sup>

48 A chronological list of trials in 2018 is available at the HLC's website: <http://www.hlc-rdc.org/?cat=234&lang=de>, accessed on: 11 June 2019.

49 *Serbia 2019 Report*, p. 32.

50 *Ibid.*

51 *Law on Free Legal Aid* (Official Gazette of the Republic of Serbia no. 87/2019), available (in Serbian) at: <https://www.paragraf.rs/propisi/zakon-o-besplatnoj-pravnoj-pomoci.html>, accessed on: 13 June 2019.

52 The *Draft National Strategy on the Rights of Victims and Witnesses of Crime* is available at: <https://www.mpravde.gov.rs/files/Working%20Document%20-%20NATIONAL%20STRATEGY%20ON%20THE%20RIGHTS%20OF%20VICTIMS%20AND%20WITNESSES%20OF%20CRIME.pdf>, accessed on: 11 July 2019.



## VI. Decrease in the number of missing persons whose fate has not been clarified

According to the International Committee of the Red Cross (ICRC), as of June 2019, 10,179 of the individuals who went missing from the armed conflicts in Croatia, BiH and Kosovo are still unaccounted for.<sup>53</sup> In November 2018 their number stood at 10,261, according to the same source.<sup>54</sup>

From the speed at which the numbers of missing persons are decreasing, it can be concluded that **the National Strategy has not had much impact when it comes to efficiency in the tracing of missing persons.**

In its previous reports, the HLC has already pinpointed the causes of the ineffectiveness of the search for missing persons, namely: the lack of a firm political will to make the search for missing persons more effective; the inadequate capacity for the search; and the lack of action on the part of the prosecuting authorities in the search for missing persons and in the prosecution of those responsible for their disappearance.<sup>55</sup>

## VII. Increase in the number of cases initiated and finally resolved as a result of regional cooperation

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Nearly all the cases that have been opened since the adoption of the National Strategy have resulted from regional cooperation. Namely, 18 of the 21 indictments that have been issued since the adoption of the National Strategy have not been the result of the OWCP's own investigation but transferred to the OWCP from BiH.<sup>56</sup>

53 International Committee of the Red Cross data, HlcIndexIn: 25-F138246, 9 July 2019.

54 International Committee of the Red Cross data, HlcIndexIn: 25-F135764, 4 December 2018.

55 See: *Policy Paper: Accounting for Missing Persons from the Armed Conflicts of the 1990s in the Former Yugoslavia*, HLC, June 2018, available at: [http://www.hlc-rdc.org/wp-content/uploads/2018/07/Predlog\\_prakticne\\_politike\\_Potruga\\_za\\_nestalima\\_ENG\\_stampano\\_ff\\_15.07.2018.pdf](http://www.hlc-rdc.org/wp-content/uploads/2018/07/Predlog_prakticne_politike_Potruga_za_nestalima_ENG_stampano_ff_15.07.2018.pdf), accessed on: 15 June 2019.

56 The indictments brought after the adoption of the National War Crimes Prosecution Strategy: *Doboj, Ključ – Šljivari, Bratunac, Bosanska Krupa, \*Ključ – Kamičak, \*Ključ – Kamičak II, Srebrenica – Kravica, Sanski Most – Lušci, Caparde, Bosanska Krupa II, Ključ – Režovići, Bogdanovci, Kožuhe – Doboj, Brčko*, the indictment against Branko Branković, *Bratunac II, Brčko II, Ključ – Velagići* and the indictment against Dalibora Maksimovića. \*The cases of *Ključ – Kamičak* and *Ključ – Kamičak II* have been merged. The cases in which the indictments were not transferred from BiH are: *Bogdanovci, Gornje Nerodimlje and Sarajevo – Hrasnica*.



The OWCP has continued to prosecute only the less complex cases during the reporting period, as evidenced by its latest four indictments, which charge only four alleged perpetrators.

It is true that the past several years have seen an exchange of information and evidence between prosecutor's offices in the region, and also the transfer of cases for prosecution and the subsequent prosecution of transferred cases. But it is also true that there is still a lot of room for improvement in regional cooperation, given the huge number of war crimes awaiting prosecution. Moreover, the absence of exchange of cases against high-ranking suspects suggests there is a lack of trust between prosecutor's offices in the region.

Therefore the HLC believes that this indicator is not capable of reflecting the quality of the cases transferred or of the regional cooperation itself.

(For more information about regional cooperation, see section "Regional and International Cooperation" below.)

### **VIII. Reports of the Chief Prosecutor and President of the ICTY to the U.N. Security Council<sup>57</sup>**

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In his December address to the U.N. Security Council, Prosecutor Serge Brammertz said: "[...] my Office deeply regrets the continued glorification of war criminals and denial of crimes, including the Srebrenica genocide. While my Office has repeatedly called for urgent attention to this issue, developments [...] have again demonstrated that the challenge is severe."<sup>58</sup> Brammertz also underlined that positive steps "are undermined by irresponsible comments from other officials denying what has been established beyond reasonable doubt by international courts and portraying as heroes men who committed the most serious violations of international law."<sup>59</sup>

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57 After the closure of the ICTY on 31 December 2017, the International Residual Mechanism for Criminal Tribunals (IRMCT) assumed a number of its functions, including: conducting and finalising all appeals proceedings, review proceedings, retrials, trials for contempt and false testimony, protection of victims and witnesses, supervision of enforcement of sentences, assistance to national judiciaries, monitoring of cases referred by the ICTY to national courts, and preservation and management of archives. For more information on the mandate of the IRMCT see the official website of the IRMCT at: <http://www.irmct.org/en/about/functions>, accessed on: 13 June 2019.

58 *IRMCT Prosecutor Brammertz's address to the UN Security Council*, New York, 11 December 2018, p. 3, available on the official website of the IRMCT at: <http://www.irmct.org/en/news/prosecutor-serge-brammertz-addresses-unt-security-council-3>, accessed on: 13 June 2019.

59 *Ibid.*



Brammertz stressed in his address that “regional judicial cooperation in war crimes matters between the countries of the former Yugoslavia is at its lowest level in years and continues heading in the wrong direction.”<sup>60</sup>

## IX. Positive reports from other relevant governmental and non-governmental organisations

*Human Rights Watch* (HRW) in its 2019 World Report notes that war crimes prosecutions in Serbia are hampered due to a lack of political will, inadequate resources, and weak witness support mechanisms.<sup>61</sup> The Report specifically mentions the report of IRMCT Chief Prosecutor Serge Brammertz, in which Serbia is urged to officially acknowledge the crimes committed in Srebrenica as genocide.<sup>62</sup>

Just as it did in previous years, the U.S Department of State in its latest *Human Rights Report* again drew attention to the *Bytyqi* Case,<sup>63</sup> observing that the case has been discussed publicly and that the authorities stated that the case is being investigated, but noting that no significant progress has been made towards providing justice for the victims.<sup>64</sup>

The Report discusses also the continuation of the trial in the *Srebrenica–Kravica* Case, noting that criminal proceedings in this case were made possible thanks to judicial cooperation between Serbia and Bosnia and Herzegovina under a protocol<sup>65</sup> signed between the Serbian Office of the War Crimes Prosecutor and the BiH Prosecutor’s Office.<sup>66</sup>

The European Commission’s *Serbia 2019 Report* underlines that a mechanism for overseeing the implementation of the National War Crimes Prosecution Strategy is in place and has issued five reports, but notes that the strategy has continued being

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60 *Ibid.*

61 *World Report 2019 (Events of 2018)*, pp. 506-507. The report is available on the official website of *Human Rights Watch* at: [https://www.hrw.org/sites/default/files/world\\_report\\_download/hrw\\_world\\_report\\_2019.pdf](https://www.hrw.org/sites/default/files/world_report_download/hrw_world_report_2019.pdf), accessed on: 11 February 2019.

62 *Ibid.*, p. 506.

63 For more details on the *Bytyqi* Case see: <http://www.hlc-rdc.org/Transkripti/bitici.html>, accessed on 17 June 2019.

64 *Serbia 2018 Human Rights Report*, U.S. Department of State, pp. 1-2. The report is available on the official website of the Department of State at: <https://www.state.gov/wp-content/uploads/2019/03/SERBIA-2018-HUMAN-RIGHTS-REPORT.pdf>, accessed on: 17 June 2019.

65 *Protocol on Cooperation in the Prosecution of Perpetrators of War Crimes, Crimes against Humanity and Genocide* of 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), accessed on: 18 June 2019.

66 *Serbia 2018 Human Rights Report*, U.S. Department of State, pp. 1-2.



implemented at too slow a pace. Regarding the Prosecutorial Strategy, the Report states that it does not include clear criteria for prioritising war crimes cases as envisaged in the Serbian Action Plan for Chapter 23.<sup>67</sup>

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

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

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

In the following pages, the current situation in each of the above-listed areas will be discussed and key shortcomings identified.

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<sup>67</sup> *Serbia 2019 Report*, p. 20.



## INCREASING EFFICIENCY OF THE WAR CRIMES PROCEEDINGS

### 1. INVESTIGATION AND INDICTMENTS

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

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

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

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

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

As regards the measures aimed at improving the efficiency of the OWCP, this Prosecutor's Office concluded one plea agreement during the reporting period.<sup>68</sup> The capacity of the OWCP was also strengthened through the appointments of additional deputy war crimes prosecutors,<sup>69</sup> and trainings in international humanitarian law for deputy prosecutors and prosecutorial assistants.<sup>70</sup>

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68 *Report No. 6 on the Implementation of the National Strategy for the Prosecution of War Crimes*, June 2019, pp. 7-8.

69 *Report No. 5 on the Implementation of the National Strategy for the Prosecution of War Crimes*, March 2019, pp. 11-12.

70 **Author's remark:** There were trainings for deputy prosecutors and prosecutorial assistants at the OWCP in the previous years as well. This finding concerns the trainings delivered as part of the activities set out in the National War Crimes Prosecution Strategy. See the section on strengthening the capacity of the OWCP on p. 23 of this report; *Report No. 5 on the Implementation of the National Strategy for the Prosecution of War Crimes*, March 2019, pp. 13-15, 38-41; *Report No. 6 on the Implementation of the National Strategy for the Prosecution of War Crimes*, June 2019, pp. 15-16, 41-42; OWCP's reply (PI.br. 12/19, of 7 June 2019) to an HLC request for access to information of public importance.



## Implementation of the Prosecutorial Strategy for the Investigation and Prosecution of War Crimes

As the HLC has already pointed out in its *Comments on the Draft Prosecutorial Strategy*,<sup>71</sup> and in its *Second* and *Third Report on the Implementation of the National Strategy*,<sup>72</sup> the Prosecutorial Strategy has certain methodological flaws.<sup>73</sup> As from the text of the Prosecutorial Strategy it is impossible to precisely identify which activities the OWCP has to carry out, and the time limits within which they must be completed, **it is not possible to access whether or not case prosecution fulfils the criteria laid down in the strategy.**

The latest report of the European Commission on Serbia's progress (the 2019 report) also notes that the Prosecutorial Strategy failed to include clear criteria for prioritising war crimes cases as envisaged in the Serbian Action Plan for Chapter 23.<sup>74</sup>

Also pointed out in the HLC's previous reports was the fact that **monitoring and evaluation of the implementation of the Prosecutorial Strategy are impeded** due to the absence of key performance indicators – both quantitative (e.g. number of convictions, number of indictments raised against high-ranking suspects, number of indictments in cases involving a higher number of victims), and qualitative (e.g. enhanced regional judicial cooperation) - by which to measure the progress achieved in the prosecution of war crimes. Judging by the indictments raised in the reporting period, it may be concluded that the OWCP has continued its practice of bringing indictments only in less complex cases.<sup>75</sup>

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71 *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.*

72 *Second Report on the Implementation of the National Strategy for the Prosecution of War Crimes*, HLC, June 2018, pp. 21-24; *Third Report on the Implementation of the National Strategy for the Prosecution of War Crimes*, HLC, December 2018, p. 23.

73 *Prosecutorial Strategy for Investigation and Prosecution on War Crimes in the Republic of Serbia (2018–2023).*

74 *Serbia 2019 Progress Report*, p. 19.

75 See the section dealing with case prosecution based on the criteria laid down in the Prosecutorial Strategy indicator.



On the positive side, **certain activities envisaged in the Prosecutorial Strategy have been implemented, such as a training course on prosecuting crimes of sexual violence** (see the section on continuous training below) and **a regional conference of war crimes prosecutors in Belgrade** hosted by the OWCP (see the section on regional judicial cooperation).<sup>76</sup>

### **Keeping records of acts that may qualify as war crimes and records of unresolved cases**

At the time of this writing, the only publicly available information as regards the current state of implementation of this activity was that provided in the Working Body reports on the implementation of the National Strategy.<sup>77</sup> According to these reports, the WCIS has delivered to the OWCP the material/records on individual and mass crimes committed during the armed conflicts in the territory of the former Yugoslavia, and the updating of the material continues.<sup>78</sup>

### **Taking measures to improve the efficiency of the Office of the War Crimes Prosecutor**

The first measure envisaged in the National Strategy that is expected to improve the efficiency of the Office of the War Crimes Prosecutor stipulates that the OWCP should use its existing capacity in line with the priorities defined in the Prosecutorial Strategy.<sup>79</sup> But as the Prosecutorial Strategy does not establish clear criteria that would guide the OWCP in prioritising war crimes cases for prosecution in the coming period, it is not possible to monitor the increase in the efficiency of the OWCP's work against this parameter.<sup>80</sup>

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76 *Prosecutorial Strategy for Investigation and Prosecution on War Crimes in the Republic of Serbia (2018–2023)*, pp. 37, 42. Judicial Academy's reply (no. 157 of 18 April 2019) to an HLC request for access to information of public importance; "Prosecuting crimes of sexual violence within the jurisdiction of the ICTY", news, 8 April 2019, available online on the official website of the Judicial Academy at: <https://www.pars.rs/en/aktuelno-eng/aktuelno-eng/889-bg-prosecuting-crimes-of-sexual-violence-within-the-jurisdiction-of-the-icty?layout=post>. The OWCP's reply (PI.no. 12/19, of 7 June 2019) to an HLC request for access to information of public importance; "OWCP hosts regional prosecutors' conference in Belgrade", news, 20 May 2019, available on the official website of the OWCP at: <https://www.tuzilastvorz.org.rs/en/news-and-announcements/announcements/owcp-hosts-regional-prosecutors-conference-in-belgrade>. Both sources accessed on 24 June 2019.

77 See the section discussing the obstacles faced in preparing the HLC's Report on the Implementation of the National Strategy, pp. 10-12.

78 *Report No. 6 on the Implementation of the National Strategy for the Prosecution of War Crimes*, June 2019, pp. 3-4.

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

80 See: *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*, pp. 7-9.



As regards other measures envisaged in the National Strategy,<sup>81</sup> **the Office of the War Crimes Prosecutors concluded one plea agreement** in the reporting period, in the case of *Gornje Nerodimlje*.<sup>82</sup>

### **Strengthening the capacity of the Office of the War Crimes Prosecutor**

After Ljubica Veselinović and Ognjen Đukić, Deputy Higher Prosecutors in Belgrade, were reassigned to the OWCP (pursuant to a decision of the Republic Public Prosecutor of 28 September 2018),<sup>83</sup> the State Prosecutorial Council (SPC) appointed them Deputy War Crimes Prosecutors on 4 December 2018. Veselinović and Đukić took up their posts on 24 December 2018.<sup>84</sup>

Snežana Pavlović Pejić was appointed Deputy War Crimes Prosecutor on 4 December 2018 and took up the post on 28 December 2018.<sup>85</sup> With her appointment, **the number of deputy war crimes prosecutors rose to nine**.<sup>86</sup> Also, **a total of eight prosecutorial assistants have been employed at the OWCP for indefinite terms**.<sup>87</sup>

### **Continuous trainings**

**During the reporting period, deputy war crimes prosecutors and prosecutorial assistants attended training courses in international humanitarian law organised by the Judicial Academy and the OSCE Mission to Serbia**.<sup>88</sup> Some of the courses were organised in cooperation with the IRMCT.<sup>89</sup>

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81 *National Strategy for the Prosecution of War Crimes*, pp. 22-23.

82 *Report No. 6 on the Implementation of the National Strategy for the Prosecution of War Crimes*, June 2019, p. 8. The judgment, delivered on 19 March 2019, is available online (in Serbian) at: [http://www.hlc-rdc.org/wp-content/uploads/2019/05/Ramadan\\_Maljoku\\_-\\_SPK.pdf](http://www.hlc-rdc.org/wp-content/uploads/2019/05/Ramadan_Maljoku_-_SPK.pdf), accessed on: 5 June 2019.

83 *Report No. 4 on the Implementation of the National Strategy for the Prosecution of War Crimes*, November 2018, p. 10; RPP's reply (PI.br. 91/18, of 1 November 2018) to an HLC request for access to information of public importance.

84 *Report No. 5 on the Implementation of the National Strategy for the Prosecution of War Crimes*, March 2019, pp. 11-12.

85 *Ibid.*

86 See the list of deputy war crimes prosecutors, available online (in Serbian) on the official website of the OWCP at: <http://www.tuzilastvorz.org.rs/sr/o-nama/biografije>, accessed on: 20 June 2019.

87 OWCP's reply (PI.br. 12/19, of 7 June 2019) to an HLC request for access to information of public importance, p. 3.

88 *Report No. 5 on the Implementation of the National Strategy for the Prosecution of War Crimes*, March 2019, pp. 13-16, 34-35; *Report No. 6 on the Implementation of the National Strategy for the Prosecution of War Crimes*, June 2019, pp. 15-16; Judicial Academy's reply (no. 157 of 18 April 2019) to an HLC request for access to information of public importance.

89 Judicial Academy's reply (no. 157 of 18 April 2019) to an HLC request for access to information of public importance; "Prosecuting crimes of sexual violence within the jurisdiction of the ICTY" news, 8 April 2019, available on the official website of the Judicial Academy.



A roundtable on two topics, namely, crime against humanity as an offence and command responsibility as a form of criminal liability and their application in war crimes cases in Serbia, and co-perpetration in war crimes cases, was organised jointly by the Judicial Academy and the OSCE Mission to Serbia on 14 and 15 December 2018. The speakers were Ivan Jovanović, legal expert, and Ljiljana Mijović, professor at the Law School in Banja Luka and formerly Judge at the European Court of Human Rights.<sup>90</sup> The roundtable was attended by judges and judicial assistants from the war crimes departments of the Higher Court and Court of Appeal in Belgrade, and deputy war crimes prosecutors and prosecutorial assistants from the OWCP.<sup>91</sup>

Speaking of crimes against humanity and command responsibility, the HLC notes that **the OWCP has never charged anyone with a crime against humanity.**<sup>92</sup> It dismissed all criminal complaints filed by the HLC by 1 June 2019 relating to crimes against humanity. The Republic Public Prosecutor (RPP), for its part, dismissed all grievances filed by the HLC challenging the OWCP's rulings to dismiss the criminal complaints.<sup>93</sup> The view of the OWCP, which was upheld by the the RPP, is that crimes against humanity cannot be prosecuted before Serbian courts because their prosecution would breach the principle of legality, which requires that no one can be held guilty of an act which did not constitute a criminal offence under domestic law at the time it was committed and in respect of which no criminal sanction was provided for under domestic law.<sup>94</sup>

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Several objections can be made to this argument of the OWCP. First and foremost, according to the International Covenant on Civil and Political Rights<sup>95</sup> and the European

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90 Judicial Academy's reply (no. 157 of 18 April 2019) to an HLC request for access to information of public importance; "Okrugli sto iz oblasti međunarodnog humanitarnog prava" [Roundtable in international humanitarian law], news, 15 December 2018, available (in Serbian) on the official website of the Judicial Academy: <https://www.pars.rs/sr/aktuelno/aktuelno/416-bg-okrugli-sto-iz-oblasti-medjunarodnog-humanitarnog-prava>, accessed on: 20 June 2019.

91 "Okrugli sto iz oblasti međunarodnog humanitarnog prava" [Roundtable in international humanitarian law], news, 15 December 2018, available (in Serbian) on the official website of the Judicial Academy.

92 "Criminal charge for the missing brothers Abjanović dismissed", press release, HLC, 13 March 2019, available online at: <http://www.hlc-rdc.org/?p=36434&lang=de>, accessed on: 20 June 2019.

93 *Ibid*; "Criminal charges for the murder of Matijević family in April 1992", press release, HLC, 16 October 2019, available online at: <http://www.hlc-rdc.org/?p=35719&lang=de>, accessed on: 20 June 2019; OWCP decision KT no. 6/17 of 22 March 2018 and ORPP decision KTPO. no. 41/18 of 20 April 2018; OWCP decision Ktn. 1587/18 of 14 November 2018 and ORPP decision KTPO. no. 100/18 of 07 December 2018; OWCP decision KTN no. 1/19 of 28 February 2019 and ORPP decision KTPO. no. 8/19 of 21 March 2019.

94 The principle of *Nullum crimen, nulla poena sine lege*.

95 *Law on Ratification of the International Covenant on Civil and Political Rights* (Official Gazette of the SFRY no. 7/1971), Article 15. The Law is available online at: <https://ljudskaprava.gov.rs/sh/node/19968>, accessed on: 21 June 2019.



Convention for the Protection of Human Rights and Fundamental Freedoms,<sup>96</sup> the principle of legality cannot be breached if an act constituted a criminal offence under domestic or international law.<sup>97</sup> Besides, the HLC recalls that in 2008 the OWCP sought the investigation of Peter Egner for an act of genocide he allegedly committed during World War II, even though the crime of genocide was not established as a criminal offence in domestic law at the time.<sup>98</sup> The then District Court confirmed the decision of the investigating judge and allowed investigation into the case, holding that such an action would not constitute a breach of the principle of legality, since the provisions of the International Covenant on Civil and Political Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms, stipulate that **the principle of legality is not breached if an act constituted a criminal offence under international law and according to the general principles of law recognised by civilised nations.**<sup>99</sup>

Given the above line of argument and the previous practice in this respect, and in the light of the roundtable on prosecuting crimes against humanity, **the HLC considers that both the OWCP and the RPP should rethink their position on prosecuting crimes against humanity committed during the armed conflicts in the territory of the former Yugoslavia.**

In April 2019, a training seminar was held for deputy war crimes prosecutors and prosecutorial assistants at the OWCP, on the topic “Prosecuting crimes of sexual violence that fall within the jurisdiction of the ICTY”, and organized by the Judicial Academy and the IRMCT Prosecutor’s Office.<sup>100</sup> The training seminar focused on the theme of bringing charges of sexual violence, investigation and prosecution of crimes of sexual violence,

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96 *Law on Ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms amended by Protocol 11* (Official Gazette of Serbia and Montenegro – International Treaties”, nos. 9/2003, 5/2005, and 7/2005), Article 7. The European Convention is available online at: <https://www.echr.coe.int/Pages/home.aspx?c=&p=basictexts>, accessed on: 21 June 2019.

97 Crimes against humanity were for the first time established as criminal offences by the Charter of the International Military Tribunal of 1946. In 1968, the U.N. General Assembly adopted the *Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity*, which the Socialist Federative Republic of Yugoslavia (SFRY) ratified in 1970. Article 1 of the Convention states, *inter alia*, that no statutory limitation shall apply to crimes against humanity (as they are defined in the Charter of the International Military Tribunal), even if such acts do not constitute a violation of the domestic law of the country in which they were committed. The Serbian version of the *Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity* is available on the official website of the OWCP at: [http://www.tuzilastvorz.org.rs/upload/Regulation/Document\\_sr/2016-05/konvencija\\_nezastarevanje\\_lat.pdf](http://www.tuzilastvorz.org.rs/upload/Regulation/Document_sr/2016-05/konvencija_nezastarevanje_lat.pdf), accessed on: 21 June 2019.

98 See: *Analysis of War Crimes Prosecution 2004-2013*, p. 55, available online 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 on: 24 June 2019.

99 *Ibid.*

100 Judicial Academy’s reply (no. 157 of April 2019) to an HLC request for access to information of public importance; “Prosecuting crimes of sexual violence within the jurisdiction of the ICTY”, news, 8 April 2019, official website of the Judicial Academy.



overcoming challenges in the courtroom and protection of victims and witnesses.<sup>101</sup> The lecturers were Laurel Baig, Kevin Hughes, Najwa Nabti and Douglas Stringer.<sup>102</sup>

As of 2003, crimes of sexual violence have been processed in 11 out of the 73 cases that have been or are being tried by the War Crimes Department of the Higher Court in Belgrade.<sup>103</sup> In the Prosecutorial Strategy, the OWCP practically announced that in the coming period it will bring more charges of sexual violence as a form of war crime.<sup>104</sup> Bearing in mind the specific nature of sexual violence and the fact that survivors of sexual violence often face social stigma, because of which many of these crimes often go unreported, and bearing in mind the challenges involved in prosecuting and proving these crimes (lack of medical and other records, lack of witnesses), **the HLC considers that the efficient and effective prosecution of sensitive forms of war crimes such as sexual violence requires a special approach by the OWCP.**<sup>105</sup>

During the reporting period, a roundtable discussion on deciding upon injured parties' compensation claims as part of judgments in war crimes cases was organized by the Judicial Academy and the OSCE Mission to Serbia.<sup>106</sup> The lecturers were Mira Smajlović, Judge at the Court of BiH, and Milanko Kajganić, Prosecutor at the Prosecutor's Office of BiH.<sup>107</sup>

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101 *Ibid.*

102 "Praktična obuka o istraživanju i krivičnom gonjenju seksualnog nasilja vezanog za sukobe kao međunarodnog zločina" [Hands-on training in investigation and prosecution of conflict-related sexual violence as a crime under international law], news, 15 April 2019, available (in Serbian) on the official website of the Judicial Academy at: <https://www.pars.rs/sr/aktuelno/aktuelno/904-prakticna-obuka-o-istrazivanju-i-krivicnom-gonjenju-seksualnog-nasilja-vezanog-za-sukobe-kao-medjunarodnog-zlocina>, accessed on: 20 June 2019; Judicial Academy's reply (no. 157 of 18 April 2019) to an HLC request for access to information of public importance; OWCP's reply (PI.no. 12/19 of 7 June 2019) to an HLC request for access to information of public importance, p. 3.

103 Specifically, the cases of *Lekaj*, *Skočić*, *Čuška*, *Bratunac*, *Bijeljina I*, *Bijeljina II*, *Zvornik III*, *Zvornik IV*, *Gnjilane Group*, *Brčko I* and *Brčko II*. See the List of Cases at: <http://www.hlc-rdc.org/?cat=234&lang=de>, accessed on: 21 June 2019.

104 *Prosecutorial Strategy for Investigation and Prosecution of War Crimes in the Republic of Serbia 2018-2023*, p. 36.

105 See, e.g. *ICC Policy Paper on Sexual and Gender-Based Crimes* at: <https://www.icc-cpi.int/iccdocs/otp/otp-policy-paper-on-sexual-and-gender-based-crimes--june-2014.pdf>; Referred to according to: *Gender dimension of war crimes: Sexual violence against women*, Milica Kostić, Belgrade Center for Security Policy, Belgrade, 2017, pp. 6-7, available online (in Serbian) at: [http://www.bezbednost.org/upload/document/rodna\\_dimenzija\\_ratnih\\_zloina\\_-\\_bcbp.pdf](http://www.bezbednost.org/upload/document/rodna_dimenzija_ratnih_zloina_-_bcbp.pdf). Both sources accessed on: 21 June 2019.

106 "Deciding upon injured party's compensation claim as part of a judgment in war crime cases", news, 31 May 2019, available on the official website of the Judicial Academy at: <https://www.pars.rs/en/aktuelno-eng/aktuelno-eng/1164-bg-deciding-on-injured-partys-property-rights-request-within-judgements-in-war-crime-cases?layout=post>, accessed on: 21 June 2019.

107 *Ibid.*



It is worth recalling here that, even though the law allows filing compensation claims in the course of criminal proceedings, **injured parties in criminal proceedings, including for war crimes, have invariably been instructed by courts to seek compensation through civil litigation,<sup>108</sup> after the completion of criminal proceedings.** Organising a roundtable discussion on this long-standing vexed issue in war crimes proceedings is a first positive step towards ending this practice. Therefore, the **HLC calls on the OWCP to uphold compensation claims that legal representatives of victims file in the course of criminal proceedings and calls on the judges at the War Crimes Department of the Higher Court in Belgrade to decide upon these claims in the context of criminal proceedings.**

Since the organisation of the above-mentioned training seminars for deputy prosecutors and prosecutorial assistants at the OWCP is an activity that, according to the National Strategy, should be organised continuously, **it is necessary to continue with the organisation of such events in the following period,** particularly for new war crimes prosecutors who have been appointed over the past year, and who have not dealt with war crimes cases so far.<sup>109</sup>

#### **Improving the position and efficiency of the War Crimes Investigation Service**

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In the last report of the Working Body, the information was provided that regular meetings and consultations between members of the WCIS and the OWCP had been held.<sup>110</sup> The previous reports stated that joint operating procedures and joint investigation teams had been established between the WCIS and the OWCP.<sup>111</sup>

As regards improvement of working conditions, the Working Group reports state that five new vehicles were provided to the WCIS in the previous period.<sup>112</sup>

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108 *Analysis of War Crimes Prosecution in Serbia (2004-2013)*, FHP, Beograd, 2014, pp. 80-82; *Victims' Right to Reparation in Serbia and the European Court of Human Rights Standards, 2014/2015 Report*, HLC, Belgrade 2016, pp. 34-36, available online at: [http://www.hlc-rcd.org/wp-content/uploads/2016/01/Izvestaj\\_o\\_reparacijama\\_2014\\_eng\\_FF.pdf](http://www.hlc-rcd.org/wp-content/uploads/2016/01/Izvestaj_o_reparacijama_2014_eng_FF.pdf), accessed on: 21 June 2019.

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

110 *Report No. 6 on the Implementation of the National Strategy for the Prosecution of War Crimes*, June 2019, p. 19.

111 *Report No. 5 on the Implementation of the National Strategy for the Prosecution of War Crimes*, March 2019, pp. 17, 30-32.

112 *Ibid*, p. 23.



As with the Initial, Second and Third Reports on the Implementation of the National Strategy<sup>113</sup>, **the only information available to the HLC regarding the work of the WCIS was that provided by the Working Group in its reports on the implementation of the National Strategy.**<sup>114</sup> While preparing this report, the HLC on three occasions requested an interview with the head of the WCIS, but all three requests went unanswered.<sup>115</sup> The HLC therefore reiterates its earlier remark that **lack of transparency is a major shortcoming in the reform process in the field of war crimes prosecution.**

## 2. TRIALS

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

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

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

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

Over the past six months, training has been provided for judges and judicial assistants from the War Crimes Departments of the Higher Court and the Court of Appeals in Belgrade as envisaged in the National Strategy.<sup>116</sup> There have not been any changes in the composition of trial and appellate chambers during the same period.<sup>117</sup>

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<sup>113</sup> *Initial Report on the Implementation of the National Strategy for the Prosecution of War Crimes*, HLC, December 2017, pp. 25-26; *Second Report on the Implementation of the National Strategy for the Prosecution of War Crimes*, HLC, June 2018, pp. 27-28; *Third Report on the Implementation of the National Strategy for the Prosecution of War Crimes*, HLC, December 2018, pp. 26-28.

<sup>114</sup> *Report No. 6 on the Implementation of the National Strategy for the Prosecution of War Crimes*, June 2019, pp. 18-37.

<sup>115</sup> Requests for a meeting were submitted to Momčilo Stefanović, Head of the WCIS, on 24 August 2017 (HLCIndexOut: 65- F131355), 22 May 2018 (HLCIndexOut: 65-F13399) and 6 November 2018 (HLCIndexOut: 25-F135526).

<sup>116</sup> **Author's remark:** There were trainings for deputy prosecutors and prosecutorial assistants at the OWCP in the previous years as well. This finding concerns the trainings delivered as part of the activities set out in the National War Crimes Prosecution Strategy.

<sup>117</sup> See the *List of cases* at: <http://www.hlc-rdc.org/?cat=234&lang=de>, accessed on: 15 June 2019.



### Improved efficiency of trials for war crimes, by ensuring continuity in the composition of the judicial chambers

Since the National Strategy was adopted, there were no instances of judges being transferred between departments before the expiry of their six-year term. In view of the fact that such transfers did take place in previous years,<sup>118</sup> the continuity in the composition of judicial chambers is a positive development.

### Harmonisation of case law among all Courts and War Crimes Departments in former Yugoslavia through the establishment of a regional database

As stated in the fourth report of the Working Group, during regional consultations within the project “Enhancing Regional Cooperation in the Processing of War Crimes and the Search for Missing Persons (2017-2019)”, implemented with the support of the UNDP, Serbia’s War Crimes Prosecutor initiated the establishment of a common regional database of war crimes cases that have been opened as a result of regional judicial cooperation.<sup>119</sup>

The Sixth Report of the Working Body states that a regional prosecutorial conference is planned in May and that “the OWCP will renew its request to the relevant stakeholders to support the creation of a unified database of all war crimes trials before regional courts.”<sup>120</sup> Although at the time of writing this report, a regional conference has already been held, no further information is available on possible steps that the OWCP will undertake to form the said regional database.<sup>121</sup> The HLC therefore points out that **the vague reports on activities envisaged in the National Strategy make monitoring and evaluation of their implementation rather difficult.**

In order to enable the efficient monitoring of the impact of regional cooperation, the OWCP should actively push for the establishment of a single, integrated database of all war

118 See: *Report on War Crimes Trials in Serbia during 2014 and 2015*, HLC, 2016, pp. 18-21, available online at: [http://www.hlc-rdc.org/wp-content/uploads/2016/03/Report\\_on\\_war\\_crimes\\_trials\\_in\\_Serbia\\_during\\_2014\\_and\\_2015.pdf](http://www.hlc-rdc.org/wp-content/uploads/2016/03/Report_on_war_crimes_trials_in_Serbia_during_2014_and_2015.pdf), accessed on: 24 June 2019.

119 OWCP’s reply (PI.br. 25/18, of 5 November 2018) to an HLC request for access to information of public importance; *Report No. 4 on the Implementation of the National Strategy for the Prosecution of War Crimes*, November 2018, pp. 31-32.

120 *Report No. 6 on the Implementation of the National Strategy for the Prosecution of War Crimes, June 2019*, pp. 38-39.

121 **Note:** At the time of this writing, the Working Body’s last report available from the official website of the Ministry of Justice was the *Report No. 6 on the Implementation of the National Strategy for the Prosecution of War Crimes*, of June 2019. See: “Usvojen šesti izveštaj o sprovođenju Nacionalne strategije za procesuiranje ratnih zločina” [Sixth Report on Implementation of National War Prosecution Strategy adopted], news, 19 June 2019, available (in Serbian) on the official website of the Ministry of Justice at: <https://www.mpravde.gov.rs/vest/24794/usvojen-šesti-izvestaj-o-sprovodjenju-nacionalne-strategije-za-procesuiranje-ratnih-zlocina.php>, accessed on: 8 July 2019.



crimes cases in the region. **In the context of war crimes prosecution, harmonisation of war crimes case law should be coupled with a comparative analysis of how certain legal doctrines and practices relevant for war crimes trials are interpreted in the countries in the region.**

**Continuous improvement of expertise of judicial office holders and staff engaged in war crimes cases**

As has been noted above, in the section dealing with continuous training for deputy war crimes prosecutors, during the reporting period judges and judicial assistants from the War Crimes Departments of the Higher Court and the Court of Appeals in Belgrade attended training seminars organised by the Judicial Academy and the OSCE Mission to Serbia.<sup>122</sup>

**PROTECTION OF WITNESSES AND VICTIMS**

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

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

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

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

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Reforms in the area of victim and witness protection are characterised by lack of transparency.<sup>123</sup> As a result, it is practically impossible to monitor the reforms and assess their impact on institutional capacities for witness protection.

122 Judicial Academy's reply (no. 157 of 18 April 2019) to an HLC request for access to information of public importance; "Roundtable in international humanitarian law", news, 15 December 2018, available on the official website of the Judicial Academy; "Deciding upon an injured party's compensation claim as part of a judgment in war crimes cases", 31 May 2019, available on the official website of the Judicial Academy.

123 See: *Initial Report on the Implementation of the National Strategy for the Prosecution of War Crimes*, HLC, December 2017, pp. 40-43; *Second Report on the Implementation of the National Strategy for the Prosecution of War Crimes*, HLC, June 2018, p. 32; *Third Report on the Implementation of the National Strategy for the Prosecution of War Crimes*, HLC, December 2018, pp. 32-35.



The recommendations of the Analysis of the Position and Needs of the Witness Protection Unit, which was carried out back in 2016,<sup>124</sup> have not been publicised. Also, it is not possible to evaluate the level of cooperation among the state authorities that are part of the witness protection system.<sup>125</sup>

Activities involving the consistent application of the provisions of the CPC<sup>126</sup> regulating the sanctioning of participants in proceedings who violate the procedural rules, are carried out continuously.<sup>127</sup>

### **Procedural measures for witness protection**

Protection measures applied during criminal proceedings encompass measures to protect the integrity of witnesses, including highly vulnerable witnesses and witnesses who face risks as a result of their giving evidence in court.<sup>128</sup>

The National Strategy requires the criminal chambers to apply consistently the provisions of the CPC regulating the sanctioning of participants in proceedings who violate the courtroom conduct rules, particularly if they attack the integrity of witnesses or victims.<sup>129</sup>

During the reporting period, one defendant in a case tried by the War Crimes Department of the Higher Court in Belgrade was fined 50,000 RSD (about 425 EUR) for misbehaving in the courtroom.<sup>130</sup>

In addition to the above incident, the HLC trial monitors witnessed a defence attorney making inappropriate comments at the trial of the *Srebrenica-Kravica* Case, held on 26 February 2019.<sup>131</sup> The attorney for one of the defendants, while examining a witness, said

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124 *Initial Report on the Implementation of the National Strategy for the Prosecution of War Crimes*, HLC, December 2017, pp. 41-42.

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

126 *Criminal Procedure Code* (Official Gazette of the Republic of Serbia nos. 46/06, 47/09 and 122/08), Articles 102 and 369-374.

127 Higher Court in Belgrade's letter Su II 17a no. 301/19, of 19 June 2019, in response to an HLC request for information of public importance.

128 *Criminal Procedure Code* (Official Gazette of the Republic of Serbia nos. 46/06, 47/09 and 122/08), Articles 102-111; *Analysis of War Crimes Prosecution in Serbia (2004-2013)*, FHP, Beograd, 2014, pp. 65-69.

129 *National Strategy for the Prosecution of War Crimes*, p. 28; *Criminal Procedure Code* (Official Gazette of the Republic of Serbia nos. 46/06, 47/09 and 122/08), Articles 102-111.

130 *Criminal Procedure Code* (Official Gazette of the Republic of Serbia nos. 46/06, 47/09 and 122/08), Article 370, paragraph 1; Higher Court in Belgrade's letter Su II 17a no. 301/19, of 19 June 2019, in response to an HLC request for information of public importance.

131 See: *Third Report on the Implementation of the National Strategy for the Prosecution of War Crimes*, HLC, December 2018, pp. 33-35.



that “supposedly some killings took place in that area ...”<sup>132</sup> The Chair of the Chamber rebuked him, saying that it was common knowledge that killings had taken place there, and that such language was inappropriate because of the victims and their family members present in the courtroom.<sup>133</sup>

Although it was only an informal warning, **the HLC believes that the Chair of the Chamber’s prompt and adequate response is of particular importance in such situations. Such a response in all similar situations is essential, not only for preserving order in court proceedings but also to spare the family members of victims attending the proceedings from statements that could be distressing to them.**

### **Non-procedural measures for witness protection**

The only information available to the public concerning non-procedural protection measures or implementation of the protection programmes is that presented in the reports of the Working Body for monitoring the implementation of the National Strategy.<sup>134</sup>

The latest European Commission Progress Report on Serbia notes that there is a delay in adopting amendments related to the implementation of urgent measures for witness protection.<sup>135</sup> The report also notes that there is a further delay in implementing most of the recommendations of the analysis of the Witness Protection Unit (WPU) carried out in 2016.<sup>136</sup>

The HLC did not have access to the Analysis, because it is a highly confidential document.<sup>137</sup> In that context, the remark from the European Commission about the delay in implementing most of its recommendations is a rare opportunity for the public to learn something about the impact of the Analysis. **As the HLC pointed out earlier, it would be reasonable for the Unit to keep the legal community informed about what**

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132 This statement concerns the killings in the immediate vicinity of a farm shed on a farm in the village of Kravice (Bratunac, BiH). The defendants in the *Srebrenica - Kravica* case are charged with killing at least 1,313 Bosniak civilians from Srebrenica inside, in front of and in the immediate vicinity of the farm shed (*author’s remark*).

133 The *Srebrenica – Kravica* Case trial report of 26 February 2019 is available online (in Serbian) at: [http://www.hlc-rdc.org/wp-content/uploads/2019/03/28.Srebrenica - Izvestaj sa sudjenja 26.02.2019..pdf](http://www.hlc-rdc.org/wp-content/uploads/2019/03/28.Srebrenica_-_Izvestaj_sa_sudjenja_26.02.2019..pdf); Transcript of the audio recording of the trial held on 26 February 2019 (Posl.br. K-Po2 3/2017), pp. 70-71, available at: <http://www.hlc-rdc.org/wp-content/uploads/2019/05/16-26.02.2019..pdf>. Both sources accessed on: 26 June 2019.

134 *Report No. 6 on the Implementation of the National Strategy for the Prosecution of War Crimes*, June 2019, pp. 47-60.

135 *2019 Serbia Progress Report*, p. 30.

136 *Ibid.*

137 *Initial Report on the Implementation of the National Strategy for the Prosecution of War Crimes*, HLC, December 2017, pp. 40-42.



is being done to improve its performance, and in particular what measures have been taken to address the problems from the past.<sup>138</sup> As stated in the European Commission report, “steps already taken to increase the capacity of the Witness Protection Unit within the Ministry of the Interior, along with new rules and procedures for selecting staff, are expected to improve its work”.<sup>139</sup>

#### SUPPORT TO VICTIMS AND WITNESSES

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

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

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

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

Since the beginning of the implementation of the National Strategy, the Ministry of Justice has conducted an analysis of the degree of alignment with the normative framework (governing the position of witnesses and victims of crime), while the Working Group for drafting the National Strategy on the Rights of Victims and Witnesses of Crime has

138 *Ibid*, pp. 40-42; *Model Strategy for the Prosecution of War Crimes Committed during and in relation to the Armed Conflicts in the former Yugoslavia 2015-2025*, HLC, 2015, pp. 22-24. The Model Strategy is available on the HLC website at: [http://www.hlc-rdc.org/wp-content/uploads/2015/04/Model-Strategy-for-the-Prosecution-of-War-Crimes-Committed-during-and-in-relation-to-the-Armed-Conflicts-in-the-Former-Yugoslavia\\_za-web.pdf](http://www.hlc-rdc.org/wp-content/uploads/2015/04/Model-Strategy-for-the-Prosecution-of-War-Crimes-Committed-during-and-in-relation-to-the-Armed-Conflicts-in-the-Former-Yugoslavia_za-web.pdf), accessed on: 26 June 2019.

139 *2019 Serbia Progress Report*, p. 30.



completed and launched a first draft of the Strategy.<sup>140</sup> In February this year, a training seminar was organised on dealing with witnesses and injured parties in war crimes cases.<sup>141</sup> At the same time, however, the capacities of the bodies providing support to war crimes witnesses have not improved.<sup>142</sup>

### **Improving the normative framework governing the position of witnesses and victims**

The latest available European Commission report on Serbia's progress notes that the legal framework that governs the procedural rights of victims of crimes remains only partially aligned with the *acquis*.<sup>143</sup> Following the *Analysis of victims' rights and services in Serbia and their alignment with EU Directive 2012/29/EU*,<sup>144</sup> the Ministry of Justice set up a working group to draft amendments to the relevant laws and regulations, with the view to bringing the definition of the term "victim" into conformity with the definitions provided in international human rights treaties<sup>145</sup> and Directive 2012/29/ EU.<sup>146</sup>

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140 "Predstavlanje radnog teksta nacionalne strategije za ostvarivanje prava žrtava i svedoka krivičnih dela" [Presentation of the working draft of the National Strategy for the Realisation of the Rights of Victims and Witnesses of Crime], news, 21 February 2019, available (in Serbian) on the official website of the Ministry of Justice at: <https://www.mpravde.gov.rs/vest/22495/najava-predstavlanje-radnog-teksta-nacionalne-strategije-za-ostvarivanje-prava-zrtava-i-svedoka-krivicnih-dela-php>; "Victims' protection is a duty of state and society", news, 22 February 2019, available on the official website of the Ministry of Justice at: <https://www.mpravde.gov.rs/en/vest/23171/victims-protection-is-a-duty-of-state-and-of-the-society.php>. Both sources accessed on: 30 June 2019. In March 2019 the HLC submitted to the Ministry of Justice its comments on the first draft of the National Strategy for the Realisation of the Rights of Victims and Witnesses of Crime 2019-2025.

141 *Report No. 6 on the Implementation of the National Strategy for the Prosecution of War Crimes*, June 2019, pp. 70-71.

142 *Report No. 6 on the Implementation of the National Strategy for the Prosecution of War Crimes*, June 2019, pp. 12-14, 68-79; Higher Court in Belgrade's letter Su II 17a no. 293/19, of 27 May 2019, in response to an HLC request for information of public importance; p. 3 of OWCP's reply PI.no. 12/19 of 7 June 2019 in response to an HLC request for information of public importance.

143 *Serbia 2019 Progress Report*, p. 30.

144 *Analysis of victims' rights and services in Serbia and their alignment with EU Directive 2012/29/EU* is available online at: <http://www.mdtfss.org.rs/archive/file/VSS%20-%20Final%20Report%20-%2008%2008%202016.pdf>, accessed on: 30 June 2019.

145 Ministry of Justice's reply no. 7-00- 156/2018-30 of 14 May 2018 to an HLC request for access to information of public importance; the *Report No. 2 on the Implementation of the National Strategy for the Prosecution of War Crimes*, May 2018, pp. 34-35, states that the Working Group for drafting amendments to the Criminal Procedure Code was set up by Ministry of Justice's decision no. 119-01-00016/2018-06 of 17 April 2018, pursuant to the *Action Plan for Chapter 23*. The report further states that the Working Group for drafting a working draft of the Law Amending the Criminal Code was set up by the Ministry of Justice's decision no. 119-01-00017/2018-06 of 8 March 2018. According to the report, the amendments will provide further alignment of the Criminal Code with *Directive 2012/29/EU*, which establishes minimum standards on the rights, support and protection of victims of crime.

146 *DIRECTIVE 2012/29/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA*. The Directive is available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32012L0029&from=EN>, accessed on: 30 June 2019.



According to the time limits set out in the National Strategy for the Prosecution of War Crimes, the amendments should have been prepared by the second quarter of 2016.<sup>147</sup> However, even though the working group has been established, the previous official reports on the Implementation of the National Strategy stated that the relevant articles of the Criminal Code and the Criminal Procedure Code will not be amended until the National Strategy on the Rights of Victims and Witnesses of Crime has been adopted.<sup>148</sup>

**The National Strategy also envisages that the Ministry of Justice will adopt a bylaw whereby provision of information to victims of crime on all aspects of criminal procedure that are of interest to them will be made mandatory, as stipulated by Article 6 of Directive 2012/29/EU.<sup>149</sup> The bylaw has not been adopted, although it was planned for the second quarter of 2016.<sup>150</sup>**

### Law on Free Legal Aid

The law on Free Legal Aid (LFLA) was adopted in mid-November 2018 and its implementation will begin in October 2019.<sup>151</sup> In December 2018, the HLC filed a petition with the Constitutional Court seeking a review of the constitutionality and legality of the LFLA and of its compliance with the generally accepted rules of international law and international treaties ratified by Serbia.<sup>152</sup>

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Namely, the HLC considers that the legal solutions foreseen in the LFLA deny equal access to justice for citizens by, on the one hand, excluding from the law a wide circle of potential beneficiaries of free legal aid, whilst, on the other hand, narrowing down the circle of legal aid providers, thus leaving a large number of Serbian citizens without adequate legal protection.<sup>153</sup>

In the view of the HLC, one of the most controversial provisions of the said law is Article 9, which provides that free legal aid may be offered solely by lawyers, local self-

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

148 *Report No. 4 on the Implementation of the National Strategy for the Prosecution of War Crimes*, November 2018, pp. 50-51.

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

150 *Report No. 6 on the Implementation of the National Strategy for the Prosecution of War Crimes*, June 2019, pp. 65-66.

151 *Law on Free Legal Aid* (Official Gazette of the Republic of Serbia no. 87/2019).

152 *Initiative for the review of the constitutionality and legality of the Law on Free Legal Aid* (Official Gazette of the Republic of Serbia no. 87/2019 of 13 November 2018) is available online (in Serbian) at: [http://www.hlc-rdc.org/wp-content/uploads/2019/01/anonimizovana\\_Redacted1.pdf](http://www.hlc-rdc.org/wp-content/uploads/2019/01/anonimizovana_Redacted1.pdf), accessed on: 3 July 2019.

153 "Initiative for Assessment of the Constitutionality of the Law on Free Legal Aid", press release, HLC, 14 January 2019, available at: <http://www.hlc-rdc.org/?p=36014&lang=de>, accessed on: 3 July 2019.



government units, and associations providing legal aid in the areas of protection against discrimination and asylum.<sup>154</sup> According to the law, associations working in fields other than protection against discrimination and asylum cannot provide free legal aid but only free legal support in the form of helping with legal documents (filling in forms, etc.).

The HLC considers that these legal solutions make the achievement of their purpose impossible for all those organisations which have existed for many years and which, thanks to funds received through donations and projects, have been successful in providing free legal assistance to citizens who otherwise could not exercise their rights.

Finally, the HLC considers that the narrowing-down of the circle of legal aid providers without any reasonable justification restricts the constitutionally-guaranteed right of citizens to receive adequate legal aid from associations with extensive expertise in certain legal matters, which certain groups of legal aid beneficiaries trust most.

### **Enhancing the Capacity of Bodies Providing Support to the Witnesses of War Crimes**

#### **The hiring of a psychologist**

The National Strategy has recognised the need to hire trained professionals for the provision of psycho-social support to witnesses and victims.<sup>155</sup> **However, neither the Victim and Witness Assistance and Support Service at the Higher Court in Belgrade<sup>156</sup>, nor the Victim and Witness Information and Support Service of the**

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154 Article 9 of the LFLA reads as follows:

Free legal aid shall be provided by attorneys-at-law and legal aid services established in local self-government units.

Free legal aid may be provided by associations only in matters covered by the Law on Asylum and the Law on the Prohibition of Discrimination.

Attorneys-at-law shall provide free legal aid on behalf of associations.

Free legal aid in legal aid services in local self-government units or on behalf of associations may be provided by Bachelors of Laws with Honours only within the framework of the four powers accorded to Bachelors of Laws with Honours under the law which regulates the relevant procedure.

Providers of free legal aid and associations, in line with the purpose for which they are established, may provide general legal information and fill in forms as forms of free legal aid.

A local self-government unit may establish a joint free legal aid service with another legal aid provider, in line with the powers accorded to that provider herein, but cannot fully transfer the provision of free legal aid to it.

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

156 *Report No. 1 on the Implementation of the National Strategy for the Prosecution of War Crimes*, Januar 2018, p. 28, states that psychologist Ljubinka Marković, who is employed for an indefinite term by the Higher Court in Belgrade, can also work for the Witness and Victim Support Service at the War Crimes Department of the Higher Court in Belgrade, subject to the approval or decision of a competent body.



**OWCP, has hired a psychologist during the reporting period.**<sup>157</sup> The National Strategy also foresees that the Protection Unit's staffing plan needs to be changed to create new positions to be filled by trained professionals who will provide psycho-social support to witnesses and victims.<sup>158</sup> According to the information available by the time this report was completed, **the Protection Unit has not hired a psychologist either.**<sup>159</sup>

Apart from hiring a psychologist, the National Strategy provides for infrastructural and technical improvement of the Victim and Witness Assistance and Support Service.<sup>160</sup> However, the infrastructure and technical capacities of the Service have not been improved in the period following the adoption of the National Strategy.<sup>161</sup>

### Continuous training

**During the reporting period, the Judicial Academy, in collaboration with the OSCE Mission to Serbia, organised the training course "Dealing with Witnesses and Injured Parties in War Crimes Cases".** The lecturers were Dr Aleksandar Faladžić and Alma Taso Deljković of the Witness Support Department of the Court of BiH, Mioljub Vitorović, Deputy War Crimes Prosecutor and representative of the Victim and Witness Information and Support Service of the OWCP, and Slavica Peković, representative of the Victim and Witness Assistance and Support Service at the Higher Court in Belgrade.<sup>162</sup>

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The training course was intended for judges and judicial assistants at the war crimes departments of the Higher Court and the Court of Appeals in Belgrade, and deputy war crimes prosecutors and prosecutorial assistants at the OWCP.<sup>163</sup>

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157 *Report No. 6 on the Implementation of the National Strategy for the Prosecution of War Crimes*, June 2019, pp. 12-13, 68; Higher Court in Belgrade's reply Su II 17a no. 293/19 of 27 May 2019 to an HLC request for access to information of public importance; OWCP's reply PI.no. 12/19 of 7 June 2019, p. 3, to an HLC request for access to information of public importance.

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

159 *Report No. 6 on the Implementation of the National Strategy for the Prosecution of War Crimes*, June 2019, pp. 70-71.

160 *National Strategy for the Prosecution of War Crimes*, p. 31.

161 *Report No. 6 on the Implementation of the National Strategy for the Prosecution of War Crimes*, June 2019, pp. 70-76.

162 *Report No. 6 on the Implementation of the National Strategy for the Prosecution of War Crimes*, June 2019, pp. 70-71; Judicial Academy's reply 157 of 18 April 2019 to an HLC request for access to information of public importance; Higher Court in Belgrade's reply Su II 17a no. 293/19 of 27 May 2019 to an HLC request for access to information of public importance; OWCP's reply PI.no. 12/19 of 7 June 2019, p. 2, to an HLC request for access to information of public importance. "Podrška praćenju sudjenja za ratne zločine (faza 2)" [Support for war crimes trials (phase II)], news, 21 February 2019, available (in Serbian) on the official website of the Judicial Academy at: <https://www.pars.rs/sr/aktuelno/aktuelno/518-bg-podrška-praćenju-domacih-sudjenja-za-ratne-zlocine-faza-dva>, accessed on: 3 July 2019.

163 *Ibid.*



**The HLC notes that the activities directly aimed at improving the victim support system**, which encompass the passing of a bylaw regulating the provision of information to victims, the hiring of a psychologist at the Victim and Witness Assistance and Support Service at the Higher Court in Belgrade, the Victim and Witness Information and Support Service of the OWCP, and the Protection Unit, as well as improving the infrastructure and technical capacities of the Victim and Witness Assistance and Support Service, **were not implemented** in the period covered by this report.

#### **DEFENCE OF THE ACCUSED**

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

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

The National Strategy identified the insufficient competence of defence lawyers in the fields of international criminal law and international humanitarian law, and the financing of defence representation, as some of the chronic problems in the area of defence representation.<sup>164</sup>

In the last six months of the implementation of the National Strategy, a one-day training was organised for lawyers. According to the information available to the HLC, the Rulebook on remuneration for court-appointed attorneys in war crimes cases was not amended in the said period.<sup>165</sup>

#### **Improving the skills of court-appointed and retained attorneys**

As has been mentioned in the section dealing with trainings held for deputy prosecutors and prosecutorial assistants from the OWCP and judges and judicial assistants from the War Crimes Department of the Court of Appeals in Belgrade, attorneys representing victims/injured parties in war crimes cases also participated in the roundtable on deciding upon compensation claims filed by injured parties in the course of criminal

<sup>164</sup> *National Strategy for the Prosecution of War Crimes*, pp. 32-33.

<sup>165</sup> *Report No. 6 on the Implementation of the National Strategy for the Prosecution of War Crimes*, June 2019, p. 82.



proceedings.<sup>166</sup> The roundtable speakers were Mira Smajlović, Judge at the Court of BiH, and Milanko Kajganić, Prosecutor at the Prosecutor's Office of BiH.<sup>167</sup>

### **Financing Defence Representation**

The National Strategy has envisaged conducting a review of the provisions and results of the application of the Rulebook on remuneration for court-appointed attorneys in war crimes cases (the Rulebook).<sup>168</sup>

The Sixth Report of the Working Body describes this activity as fully implemented.<sup>169</sup> The Ministry of Justice has set up a Working Group tasked with reviewing the provisions of the Rulebook.<sup>170</sup> In response to an HLC enquiry about this matter from May 2018, the Ministry of Justice said that the Working Body had arrived at the conclusion that the Rulebook need not be changed.<sup>171</sup>

The Serbian Bar Association for its part has failed to respond to an HLC request for information regarding this activity.<sup>172</sup> According to the information available to the HLC, **the Bar was not represented in the Working Group.**<sup>173</sup>

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166 "Deciding upon an injured party's compensation claim as part of a judgment in war crime cases", news, 31 May 2019, available on the official website of the Judicial Academy at: <https://www.pars.rs/en/aktuelno-eng/aktuelno-eng/1164-bg-deciding-on-injured-partys-property-rights-request-within-judgements-in-war-crime-cases?layout=post>, accessed on: 21 June 2019.

167 *Ibid.*

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

169 *Report No. 6 on the Implementation of the National Strategy for the Prosecution of War Crimes*, June 2019, p. 82.

170 *Ibid.*; Ministry of Justice's letter 7-00-162/2018-32 of 18 May 2018 in response to an HLC's request for information of public importance.

171 *Ibid.*

172 Request for access to information of public importance HlcIndexOut: F170-F135437, of 25 October 2018; Request for access to information of public importance, HlcIndexOut: F170-F137823, of 22 May 2019.

173 Ministry of Justice's letter 7-00-162/2018-32 of 18 May 2018 in response to an HLC request for information of public importance.



## WAR CRIMES TRIALS AND THE ISSUE OF MISSING PERSONS

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

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

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

According to the information in possession of the HLC, no improvement was made in the reporting period to the normative framework regulating the search for missing persons, but the analysis of the organizational structure and position of the professional service (persons permanently engaged in the Commission's work) was carried out.<sup>174</sup>

The process of identification of Serbian victims who died as a result of Operations "Flash" and "Storm" in 1995, and whose families live in the Republic of Serbia, continued in the reporting period.<sup>175</sup>

### Normative and institutional frameworks

- **Improving the legislative framework**

Serbia does not have a law on missing persons which would specifically regulate the status and rights of missing persons' families.<sup>176</sup> The Commission on Missing Persons has earlier stated its willingness to contribute to the drafting of a law.<sup>177</sup> According to the information available to the HLC, which was used in preparing this report, no progress can be reported in the past six months when it comes to drafting the said law.

174 *Report No. 6 on the Implementation of the National Strategy for the Prosecution of War Crimes*, June 2019, pp. 98-99.

175 "U Zagrebu obavljena identifikacija posmrtnih ostataka jedanaest žrtava srpske nacionalnosti stradali u toku oružanih sukoba na prostoru bivše Jugoslavije" [Mortal remains of 11 Serbian victims who lost their lives as a result of the armed conflicts in the former Yugoslavia identified in Zagreb], press release, official website of the Commission on Missing Persons of the Government of Serbia, available (in Serbian) at: <http://www.kznl.gov.rs/aktuelno.php>, accessed on: 28 June 2019.

176 *Second Report on the Implementation of the National Strategy for the Prosecution of War Crimes*, HLC, June 2018, pp. 38-39; *Third Report on the Implementation of the National Strategy for the Prosecution of War Crimes*, HLC, December 2018, pp. 41-42.

177 *Ibid.*



- **Analysis of the Organizational Structure and Position of the Professional Service of the Commission for Missing Persons of the Government of the Republic of Serbia**

In the reporting period, the analysis of the organizational structure and the position of the professional service (persons permanently engaged in the work of the Commission for Missing Persons of the Government of the Republic of Serbia) was carried out.<sup>178</sup>

According to the latest report of the Working Body, in accordance with the Rulebook on Internal Job Organisation and Systematization of Jobs (which entered into force on April 10<sup>th</sup>, 2019), instead of the Missing Persons Division, which was part of Sector for acceptance, care, readmission and permanent solutions, a Department for Missing Persons has been formed.<sup>179</sup> This Department has two indoor units: the Group for Missing Persons on the territory of Kosovo and Metohija and Group for Missing Persons on the territory of former Yugoslavia.<sup>180</sup> The Department should employ nine executives, after funds are ensured.<sup>181</sup>

- **Mortal remains identification**

In mid-December 2018, identification of the mortal remains of nine victims who died in 1995 in Croatia was carried out at the Forensics and Criminology Institute in Zagreb.<sup>182</sup>

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Bearing in mind the months-long interruptions of exhumations over the past few years,<sup>183</sup> the securing the continuation of the exhumation and identification of victims is of particular importance for missing persons' families looking for information on the whereabouts of their missing loved ones.<sup>184</sup>

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178 *Report No. 6 on the Implementation of the National Strategy for the Prosecution of War Crimes*, June 2019, pp. 98-99.

179 *Ibid.*

180 *Ibid.*

181 *Ibid.*

182 "Nastavljen proces ekshumacija posmrtnih ostataka žrtava 'Oluje'" [Exhumation of mortal remains of victims of "Storm" continues], press release, 9 October 2018, official website of the Commission on Missing Persons of the Government of the Republic of Serbia, available (in Serbian) at: <http://www.kznl.gov.rs/arhiva-aktuelno-2018.php>, accessed on: 28 June 2019; *Report No. 5 on the Implementation of the National Strategy for the Prosecution of War Crimes*, March 2019, pp. 78-79.

183 *Ibid.*

184 *Report No. 5 on the Implementation of the National Strategy for the Prosecution of War Crimes*, March 2019, p. 79.



## **Regional cooperation in accounting for missing persons - Regional Missing Persons Group of the International Commission on Missing Persons (ICMP)**

The Missing Persons Group (MPG) of the ICMP has been set up under the regional Framework Plan to Address the Issue of Persons Missing from the Conflicts on the Territory of the former Yugoslavia (the Framework Plan). The Framework Plan was signed by representatives of domestic institutions responsible for the search and identification of missing persons from Bosnia and Herzegovina, Croatia, Kosovo, Montenegro and Serbia in November 2018 in The Hague. The MPG should oversee the implementation of activities laid down in the Framework Plan.<sup>185</sup>

The MPG met twice in the reporting period and adopted its work rules and procedures and a framework plan for the next two years.<sup>186</sup> Also, the MPG agreed to set up two operational working groups, one which will focus on addressing the issue of unidentified mortal remains in mortuaries across the region, and the other which will deal with the Database of active missing persons cases from the conflicts on the territory of the former Yugoslavia.<sup>187</sup>

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185 "Potpisan Okvirni plan za rešavanje pitanja nestalih lica iz sukoba na području bivše Jugoslavije" [Framework Plan to Address the Issue of Persons Missing from the Conflicts on the Territory of the former Yugoslavia signed], press release, 6 November 2018, available (in Serbian) on the official website of the Commission on Missing Persons of the Government of the Republic of Serbia at: <http://www.kznl.gov.rs/aktuelno.php#a45>, accessed on: 28 June 2019.

186 *Report No. 6 on the Implementation of the National Strategy for the Prosecution of War Crimes*, June 2019, pp. 82-89; "Održan prvi sastanak grupe za nestala lica" [First meeting of the Missing Persons Group takes place], press release, 4 December 2018, available (in Serbian) on the official website of the Commission on Missing Persons of the Government of the Republic of Serbia at: <http://www.kznl.gov.rs/arhiva-aktuelno-2018.php>; "Održan drugi sastanak grupe za nestala lica" [Second meeting of the Missing Persons Group takes place], press release, 17 April 2019, available on the official website of the Commission on Missing Persons of the Government of the Republic of Serbia at: <http://www.kznl.gov.rs/aktuelno.php#a45>. Both sources accessed on 28 June 2019.

187 *Report No. 5 on the Implementation of the National Strategy for the Prosecution of War Crimes*, March 2019, p. 78.



## Operational Groups

The Operational Group for the database of active missing persons cases from the conflicts on the territory of the former Yugoslavia held its first meeting in February 2019.<sup>188</sup> The topics discussed were: removing duplicate records, closing cases where DNA matches were reported, differences between entered data about cases which have same territory of missing, and the like.<sup>189</sup>

The first and second meetings of the Operational Group for solving unidentified cases took place in March and April 2019 respectively.<sup>190</sup> They discussed the current situation regarding NN cases, the next steps that should be taken to develop a 'pilot project' to address the cases of unidentified mortal remains in mortuaries in the region, etc.<sup>191</sup>

Bearing in mind the compelling need for stepping up regional cooperation in resolving the fate of missing persons, the HLC is of the opinion that making use of all existing cooperation mechanisms and creating new ones can certainly enhance this cooperation. That said, the establishment of numerous working bodies, and operational and expert groups, can often be just a box-ticking exercise, while in reality their impact is rather modest, as evidenced by the pace at which missing persons numbers are decreasing (see the section of the report: *Decrease in the number of missing persons whose fate has not been clarified*). It is therefore necessary to closely monitor the work dynamics and accomplishments of the Missing Persons Group and other operational groups.

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188 *Report No. 6 on the Implementation of the National Strategy for the Prosecution of War Crimes*, June 2019, p. 82; "Održan prvi sastanak grupe za nestala lica" [First meeting of the Missing Persons Group takes place], press release, 4 December 2018, available (in Serbian) on the official website of the Commission on Missing Persons of the Government of the Republic of Serbia.

189 "Održan prvi sastanak operativne grupe za bazu podataka aktivnih slučajeva lica nestalih u sukobima na području bivše Jugoslavije" [First meeting of the Operational Group for the Database of active missing persons cases from conflicts on the territory of the former Yugoslavia takes place], press release, 21 February 2019, available (in Serbian) on the official website of the Commission on Missing Persons of the Government of the Republic of Serbia at: <http://www.kznl.gov.rs/aktuelno.php#a45>, accessed on: 28 June 2019.

190 *Report No. 6 on the Implementation of the National Strategy for the Prosecution of War Crimes*, June 2019, p. 83; "U cilju sprovođenja odredbi Okvirnog plana za rešavanje pitanja nestalih lica u sukobima na području bivše Jugoslavije održan je prvi sastanak Operativne grupe za rešavanje neidentifikovanih slučajeva" [First meeting of the Operational Group for addressing the cases of unidentified bodies takes place under the Framework Plan to Address the Issue of Persons Missing from the Conflicts on the territory of the former Yugoslavia], press release, 14 March 2019, available (in Serbian) on the official website of the Commission on Missing Persons of the Government of the Republic of Serbia at: <http://www.kznl.gov.rs/aktuelno.php#a45>; "U Zagrebu održan drugi sastanak operativne grupe za rešavanje neidentifikovanih slučajeva" [Operational Group for unidentified cases held second meeting in Zagreb], press release, 16 February 2019, available (in Serbian) on the official website of the Commission on Missing Persons of the Government of the Republic of Serbia at: <http://www.kznl.gov.rs/aktuelno.php#a45>. Both sources accessed on: 28 June 2019.

191 *Ibid.*



## Cooperation of the state bodies involved in the process of determining the fate of missing persons

- **Working Group for Compilation of Facts and Evidence of Crimes against Persons of Serbian Nationality and Other National Communities in Kosovo and Metohija**

In November 2015, the Committee for Kosovo and Metohija of the National Assembly of the Republic of Serbia brought in the decision about forming the Working Group for Compilation of Facts and Evidence of Crimes against Persons of Serbian Nationality and Other National Communities in Kosovo and Metohija.<sup>192</sup> According to the information available in the latest Report of the Working Body on the implementation of the National Strategy, this Working Group held sessions on 16 January and 6 March 2019.<sup>193</sup>

The analytical team, formed on the initiative of the Working Group, held three meetings in the first quarter of 2019.<sup>194</sup> Except for the dates of sessions and meetings, no other information is available on the activities of the Working Group.

At this point, the HLC reminds that, according to the Law on Organization and Competences of Government Authorities in War Crimes Proceedings, the Office of the War Crimes Prosecutor is responsible for war crimes cases.<sup>195</sup> This law also provides for the War Crimes Investigation Service, which together with the OWCP should collect facts and evidence in order to clarify war crimes.<sup>196</sup> **Bearing in mind that the said law has regulated the institutional framework for the investigation and prosecution of war crimes, the HLC considers that it is inappropriate to transfer this competence**

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192 *Report No. 1 on the Implementation of the National Strategy for the Prosecution of War Crimes*, Januar 2018, p. 37, states that the Working Group is composed of the chairperson, members and deputy members of the Committee for Kosovo and Metohija, as well as of representatives of the government bodies (OWCP, WCIS, Commission on Missing Persons, Group for Judiciary, Human Rights and Property and Legal Issues at the Office for Kosovo and Metohija). The task of the Working Group is to intensively gather the facts and evidence, which may assist in clearing up the crimes against the Serbs and other national communities. Within the Working Group is set up an expert intelligence team with the aim to integrate and systemize the types of crimes by zones of responsibility of the KLA, and to integrate the data bases held by the OWCP, WCIS, Commission on Missing Persons, Security Intelligence Agency, Military-Security Agency and Military Intelligence Agency. Referred to according to the *Report No. 1 on the Implementation of the National Strategy for the Prosecution of War Crimes*, Januar 2018, p. 37.

193 *Report No. 6 on the Implementation of the National Strategy for the Prosecution of War Crimes*, June 2019, p. 25.

194 *Ibid*, p. 25.

195 *Law on Organization and Competences of Government Authorities in War Crimes Proceedings* ("Official Gazette" of the Republic of Serbia, No. 67/2003, 135/2004, 61/2005, 101/2007, 104/2009, 101/2011 et al. and 6/2015), Article 4, par. 1.

196 *Ibid*, Art. 8.



to working groups formed on the basis of the decisions of Parliamentary assembly committees.<sup>197</sup>

- **Special fund to support the competent government bodies in collecting all available information on gravesites locations**

In order to enhance regional and international cooperation in accounting for missing persons, the National Strategy envisages the establishment of a special fund to support the competent government bodies in collecting all available information on the location of graves that may hold the bodies of missing persons.<sup>198</sup> This activity has yet to be implemented.<sup>199</sup>

#### **COOPERATION WITH THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA**

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

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According to the Working Body's reports released so far on the implementation of the National Strategy, the OWCP continues to cooperate intensively with the IRMCT,<sup>200</sup> through regular meetings between prosecutors and through its liaison officer at the IRMCT. Also, during the reporting period Serbian deputy war crimes prosecutors attended training seminars organised in collaboration with the IRMCT Prosecutor's Office.<sup>201</sup>

The importance of Serbia's cooperation with the IRMCT is underscored also in the latest European Commission's report on Serbia, which states that Serbia needs to fully cooperate with the IRMCT, including by fully accepting and implementing its rulings and decisions.<sup>202</sup> The report further notes that there have been public and repeated challenges of the judgments of the ICTY, including from the highest levels.<sup>203</sup>

197 *Third Report on the Implementation of the National Strategy for the Prosecution of War Crimes*, HLC, December 2018, pp. 44-45.

198 *National Strategy for the Prosecution of War Crimes*, p. 34.

199 *Report No. 6 on the Implementation of the National Strategy for the Prosecution of War Crimes*, June 2019, pp. 104-105.

200 *Ibid.*

201 OWCP's letter PI.no. 12/19 of 7 June 2019. p. 3 in response to an HLC request for information of public importance; "Prosecuting crimes of sexual violence that fall within the jurisdiction of the ICTY", news, 8 April 2019, available on the official website of the Judicial Academy. More information on delivered trainings can be found in the section dealing with continuous training.

202 *2019 Serbia Progress Report*, p. 19.

203 *Ibid.*



## **OWCP Liaison Officer to the IRMCT**

The OWCP has had its liaison officer at the ICTY/IRMCT since 2009.<sup>204</sup> His responsibilities include searching the electronic database of the Office of the ICTY/IRMCT Prosecutor, and holding consultations and meetings with IRMCT prosecutors for the purpose of obtaining evidence to be used in the cases prosecuted by the OWCP.<sup>205</sup> As stated in the OWCP's response to an HLC enquiry on this matter, the OWCP liaison officer was present at the IRMCT throughout the reporting period.<sup>206</sup> It is not known, however, in how many war crime cases that have been tried or are being tried by domestic courts the evidence collected by the OWCP liaison officer at the IRMCT has been used.

## **Failure to Comply with the Arrest Warrant for Contempt of Court**

In January 2015, the International Criminal Tribunal for the former Yugoslavia issued a request for the arrest and handover of three officials of the Serbian Radical Party - Petar Jojić, Jovo Ostojić and Vjerica Radeta. The three were charged with threatening, intimidating, offering bribes to, and otherwise interfering with witnesses who were to give evidence against Vojislav Šešelj, in an attempt to dissuade them from testifying.<sup>207</sup>

Jovo Ostojić died in mid-2017, and Serbia refused to hand over to the ICTY the remaining two indictees.<sup>208</sup> In June 2018, the IRMCT decided to transfer the case against Radeta and Jojić to Serbia.<sup>209</sup> After the *Amicus Curiae* Prosecutor appealed against the decision,<sup>210</sup> the

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204 OWCP's letter A.no.78/17 of 28. April 2017 in response to an HLC request for information of public importance; *Third Report on the Implementation of the National Strategy for the Prosecution of War Crimes*, HLC, December 2018, pp. 48-49.

205 Cited from the official website of the Office of the War Crimes Prosecution: <http://www.tuzilastvorz.org.rs/sr/saradnja/me%C4%91unarodna-saradnja>, accessed on: 30 June 2019.

206 **Author's note:** After the closure of the ICTY on 31 December 2017, the OWCP liaison officers are situated at the International Mechanism for Criminal Tribunals (p. 3 of OWCP's reply PI.no. 12/19 of 7 June 2019 in response to an HLC request for information of public importance).

207 See the case of *Jojić et al.* (IT-03-67-R77.5); case documentation is available on the official website of the IRMCT at: [http://jrad.unmict.org/webdrawer/webdrawer.dll/webdrawer/search/rec&sm\\_recnbr&sm\\_ncontents=mict-17-111&sm\\_created&sm\\_fulltext&sort1=rs\\_datecreated&count&template=reclist&rows=25#](http://jrad.unmict.org/webdrawer/webdrawer.dll/webdrawer/search/rec&sm_recnbr&sm_ncontents=mict-17-111&sm_created&sm_fulltext&sort1=rs_datecreated&count&template=reclist&rows=25#), accessed on: 30 June 2019.

208 War Crimes Department of the Higher Court in Belgrade, decision Pom Ik2 Po2 48/2016, Kv Po2 16/2016 of 18 May 2016 confirming the decision of the Pre-Trial Judge that the legal conditions had not been met for the arrest and extradition of the accused, available online (in Serbian) at: [http://www.hlc-rdc.org/wp-content/uploads/2016/05/2st\\_presuda\\_Jojic\\_Radeta\\_i\\_Ostojic.pdf](http://www.hlc-rdc.org/wp-content/uploads/2016/05/2st_presuda_Jojic_Radeta_i_Ostojic.pdf), accessed on: 30 June 2019.

209 *Public redacted version of the 12 June 2018 order referring a case to the Republic of Serbia*, MICT-17-111—R90, D205-D191, p. 5. In it, the IRMCT ordered that Radeta and Jović be immediately arrested and extradited to Serbia if found on the territory of any EU Member State.

210 *Notice of appeal against the order referring a case to the Republic of Serbia*, MICT-17-111—R90; D220-D-214, 26 June 2018; "The Hague court pleased with Serbia's cooperation", news, Ministry of Justice, 19 November 2018, available online at: <https://www.mpravde.gov.rs/en/vest/21679/the-hague-court-pleased-with-serbias-cooperation->, accessed on: 30 June 2019.



IRMCT in May this year revoked it and ordered Serbia to hand over the accused to the IRMCT without delay.<sup>211</sup>

Explaining the rationale behind this decision, the IRMCT has stated that witness statements have been put to the court which demonstrate that the witnesses are “categorically unwilling” to be witnesses if proceedings are transferred to Serbia, owing to fears for their safety and the safety of their family members, including fear of being killed or seriously harmed physically.<sup>212</sup> The explanation further states that the witnesses wish to continue to cooperate with the IRMCT to ensure that the evidence they can provide is considered.<sup>213</sup>

The Republic of Serbia filed a submission against the decision, arguing that the arguments advanced by the *Amicus Curie* are “unfounded”, “erroneous”, and “arbitrary”, and that there is no valid reason prohibiting the conduct of the trial in Serbia, as the legal framework on witness protection in Serbia can adequately address any security concerns by the witnesses.<sup>214</sup>

The IRMCT nonetheless decided that Jojić and Radeta are to be tried before the Mechanism. Its decision is based on the information received from the witnesses, which have raised serious concern as to the possible impact a trial in Serbia might have on the safety, privacy, and wellbeing of the witnesses and their families, for which reasons the witnesses are only willing to testify if the proceedings are continued before the IRMCT.<sup>215</sup> The fact that two of the witnesses are the sole source of direct evidence supporting two counts of the indictment was the main reason behind the IRMCT’s decision.<sup>216</sup>

Serbian Justice Minister Nela Kuburović has announced that Serbia will appeal against the IRMCT extradition decision.<sup>217</sup>

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211 *Jojic & Radeta – Decision re-examining the referral of a case to the Republic of Serbia* (MICT-17-111-0052/3), 13 May 2019, available online on the official website of the IRMCT at: <https://jrad.irmct.org/view.htm?r=245231&s=>, accessed on: 30 June 2019.

212 *Ibid.*, p. 2.

213 *Ibid.*

214 *Ibid.*, p. 3.

215 *Ibid.*

216 *Ibid.*, p. 4.

217 “Kuburović najavila žalbu na odluku Suda u Hagu o izručenju dvoje radikala” [Kuburović announces appeal against the Hague court extradition order for two Radicals], news, daily newspaper *Danas*, 24 May 2019, available online (in Serbian) at: <https://www.danas.rs/drustvo/kuburovic-najavila-zalbu-na-odluku-suda-u-hagu-o-izrucenju-dvoje-radikala/>; *Order assigning judges to a bench of the Appeals Chamber*, 18 June 2019, available online at: <https://jrad.irmct.org/view.htm?r=245384&s=>. Both sources accessed on 30 June 2018.



The HLC finds that the fear for their safety if the proceedings were transferred to Serbia expressed by the witnesses, upon which the IRMCT decision is based, is particularly worrisome. The decision taken by the court shows that this international mechanism has assessed the risk faced by the witnesses as real.

As for Serbia's non-compliance with the arrest warrants for Radeta and Jojić, the HLC points out that Serbia cannot call upon its domestic legislation to justify its failure to meet its international obligations, including full cooperation with the IRMCT. It should be noted that in at least three other contempt-of-court cases, no legal obstacles were found to prevent the arrest and transfer of the accused to the ICTY. Namely, when Jelena Rašić,<sup>218</sup> and then Dragomir Pećanac and Ljubiša Petković, were wanted by the ICTY for the same criminal act, the court found that the legal conditions for their extradition had been met and had them arrested and handed over to the ICTY for trial.<sup>219</sup>

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218 "Nova optužnica zbog podmićivanja svedoka" [New charges for offering bribes to witnesses] news, 21 September 2010, Sense News Agency available (in Serbian) at: [http://www.sense-agency.com/tribunal\\_\(mksj\)/nova-optuznica-zbog-podmicivanja-svedoka.25.html?news\\_id=1191](http://www.sense-agency.com/tribunal_(mksj)/nova-optuznica-zbog-podmicivanja-svedoka.25.html?news_id=1191); "Major Pećanac refuses to testify against General Tolimir", news, Sense News Agency, 10 October 2011, available at: [http://www.sense-agency.com/icty/major-pecanac-refuses-to-testify-against-general-tolimir.29.html?cat\\_id=1&news\\_id=13270](http://www.sense-agency.com/icty/major-pecanac-refuses-to-testify-against-general-tolimir.29.html?cat_id=1&news_id=13270); "Ljubiša Petković se izjasnio da nije kriv" [Ljubiša Petković pleads not guilty] news, Sense News Agency, 29 May 2008, available (in Serbian) at: [http://www.sense-agency.com/tribunal\\_\(mksj\)/ljubisa-petkovic-se-izjasnio-da-nije-kriv.25.html?cat\\_id=1&news\\_id=713](http://www.sense-agency.com/tribunal_(mksj)/ljubisa-petkovic-se-izjasnio-da-nije-kriv.25.html?cat_id=1&news_id=713). All sources accessed on: 30 June 2019.

219 *Initial Report on the Implementation of the National Strategy for the Prosecution of War Crimes*, HLC, December 2017, p. 65.



## REGIONAL AND INTERNATIONAL COOPERATION

### 1. Regional Cooperation

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

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

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

### 2. International Cooperation

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

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The National Strategy recognises the importance of enhancing regional judicial cooperation as the key to increasing efficiency of war crimes prosecutions.<sup>220</sup> The activities that are expected to help achieve this goal include organisation of regional conferences, establishment of joint regional records of war crimes cases, setting-up of joint cross-border investigation teams between the countries of the region, and improving cooperation with Kosovo institutions.<sup>221</sup>

During the reporting period, a regional conference of war crimes prosecutors was held in Belgrade, and the Prosecutor's Office of BiH handed one war crime case to the OWCP, but not a single piece of evidence was exchanged between the OWCP and the Office of the State Attorney of Croatia (DORH) or EULEX.<sup>222</sup>

<sup>220</sup> *National Strategy for the Prosecution of War Crimes*, pp. 8, 15-18, 36-39.

<sup>221</sup> *Ibid*, pp. 31-34.

<sup>222</sup> *Report No. 5 on the Implementation of the National Strategy for the Prosecution of War Crimes*, March 2019, pp. 106-111; *Report No. 6 on the Implementation of the National Strategy for the Prosecution of War Crimes*, June 2019, pp. 110-124; OWCP's reply (Pl.no. 12/19 of 7 June 2019) to an HLC request for information of public importance; "OWCP hosts regional prosecutors' conference in Belgrade", news, 20 May 2019, available on the official website of the OWCP.



## **Regional conference and regional meetings**

The National Strategy stipulates that the Ministry of Justice is to organise regional conferences, which should improve regional cooperation in war crimes prosecutions and address certain outstanding issues that have been hampering the progress of regional cooperation.<sup>223</sup>

**One regional conference was held in the reporting period**, namely the Regional Conference of War Crimes Prosecutors, which took place from 20 to 22 May in Belgrade.<sup>224</sup> The participants included delegations of the Prosecutor's Office of Bosnia and Herzegovina, the Prosecutor's Office of the BiH Federation, the Prosecutor's Office of Brčko District, the Cantonal Prosecutor's Office of Una-Sana Canton in BiH, the State Attorney's Office and specialised county prosecutor's offices of Croatia, the Special Prosecutor's Office of Montenegro, the OWCP, and the IRMCT.<sup>225</sup> Following the conference, the participants issued a joint statement on the main conclusions of the conference and commitments undertaken.

According to the joint statement, the participants agreed that more prosecutions are still needed for war crimes,<sup>226</sup> and that cooperation between their offices is critical to achieving this. It was further agreed that, currently, cooperation faces many challenges which need to be addressed.<sup>227</sup> To improve cooperation, the participants agreed to identify specific cases suitable for transfer between their offices.<sup>228</sup> To this end, the IRMCT Office of the Prosecutor will as needed help prosecutor's offices in the region work on transferred cases.<sup>229</sup> The Prosecutor's Office of Bosnia and Herzegovina offered to convene a subsequent conference.

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223 The regional conferences, as envisaged in the National Strategy, should discuss the following topics: improving regional cooperation in the provision of support to victims and witnesses, p. 27; achieving an intergovernmental agreement which would establish regional rules on the division of jurisdiction for proceeding in war crimes cases, enhance regional cooperation with regard to proceeding upon letters of request in war crimes cases, set up a facilitated procedure for obtaining evidence in the territory of another state by defence attorneys in war crimes cases, and establish a uniform proceeding of states in the region with regard to resolving the fate of missing persons, p. 31.

224 OWCP's letter PI.no. 12/19 of 7 June 2019 in response to an HLC request for information of public importance; "OWCP hosts regional prosecutors' conference in Belgrade", news, 20 May 2019, available on the official website of the OWCP.

225 "Joint Statement by National War Crimes Prosecutor's Offices and Mechanism Chief Prosecutor following Regional Conference", news, 24 May 2019, available on the official website of the OWCP at: <http://www.tuzilastvorz.org.rs/sr/vesti-i-saop%C5%A1tenja/saop%C5%A1tenja/zajedni%C4%8Dka-izjava-naciona> <https://www.tuzilastvorz.org.rs/en/news-and-announcements/announcements/joint-statement-by-national-war-crimes-prosecutors-offices-and-mechanism-chief-prosecutor-following-regional-conference>, accessed on: 26 June 2019.

226 *Ibid.*

227 *Ibid.*

228 *Ibid.*

229 *Ibid.*



The fact that this conference took place is encouraging, bearing in mind that the good practice of the Serbian War Crimes Prosecutor and his/her deputies participating in regular war crimes prosecutors' conferences under the Palić<sup>230</sup> and Brijuni Processes<sup>231</sup>, was discontinued a few years ago.

The HLC recalls that, in consequence of the cross-border nature of the armed conflicts in the former Yugoslavia, victims, witnesses, perpetrators and evidence are for the most part not located within the territory of a single state and do not fall within the competence of a single national judiciary. Additionally, due to the fact that almost all former Yugoslavia successor states ban extradition of their citizens for trials in other countries, prosecution of war crimes committed on the territory of the former Yugoslavia is simply impossible without effective judicial cooperation among the countries in the region.<sup>232</sup> Therefore, **cooperation among the prosecutor's offices in the region must be intensified, including through regular meetings and thematic conferences.**

In addition to the conference, the representatives of the regional prosecutor's offices also met within the project "Enhancing Regional Cooperation in Processing of War Crimes and the Search for Missing Persons (2017-2019)", which is being implemented with the support of UNDP. Regional consultations, attended by representatives of the OWCP, the Prosecutor's Office of BiH and the Prosecutor's Office of the Republic of Croatia were held in February in Zagreb.<sup>233</sup>

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230 The first regional meeting to discuss interstate cooperation in war crimes prosecutions (including concrete forms of cooperation in war crimes cases, such as enhancing existing mechanisms of cross-border cooperation, access to witnesses and other evidence etc.) took place in November 2004 under the auspices of the OCSE Mission. This cooperation mechanism in the meantime became known as the "Palić Process". The next regional conference was held on the Brijuni Islands, Croatia, in June 2005. Referred to according to the *National Strategy for the Prosecution of War Crimes*, p. 18., and the relevant information provided on the official website of the OWCP, in section *Cooperation/International Cooperation/Organization for Security and Co-operation in Europe European Security (OSCE)*, available at: <https://www.tuzilastvorz.org.rs/en/co-operation/international-co-operation>, accessed on: 28 June 2019; *National Strategy for the Prosecution of War Crimes*, p. 37.

231 *Consequences of Political Tensions on Prosecution of War Crimes: For the first time, Serbia does not participate in the regional conference of war crimes prosecutors*, press release, HLC, 7 September 2016, available at: <http://www.hlc-rdc.org/?p=32698&lang=de>, accessed on: 27 June 2019.

232 *Ibid.*

233 *Report No. 6 on the Implementation of the National Strategy for the Prosecution of War Crimes*, June 2019, p. 113.



One bilateral meeting – also in the framework of the UNDP-facilitated project “Enhancing Regional Cooperation in Processing of War Crimes and the Search for Missing Persons (2017-2019)” – between representatives of the OWCP and BH Prosecutor’s Office was held in April in Sarajevo.<sup>234</sup>

### **Cooperation among prosecutor’s offices in the region**

During the reporting period the Prosecutor’s Office of BiH handed one more war crime case to the OWCP.<sup>235</sup> Since the adoption of the National Strategy in February 2016, 18 indictments have been transferred from BiH, constituting 85% percent of all indictments that the OWCP has since filed.<sup>236</sup> Such a high percentage demonstrates the importance of a good and cooperative relationship between the two prosecutor’s offices.

That said, account also has to be taken of the fact that no cases against high-ranking perpetrators have been transferred so far. All indictments transferred to date concern direct perpetrators only, which indicates that efforts should be made to further raise the level of mutual trust among the prosecutor’s offices in the region.<sup>237</sup>

As regards cooperation between the OWCP and the Kosovo institutions, it was completely absent during the reporting period. This was confirmed by the OWCP’s response to an HLC enquiry on this matter: no evidence was exchanged with the EULEX Mission between 1 December 2018 and 1 June 2019.<sup>238</sup> The Kosovo institutions did not comply with the OWCP’s requests for legal assistance submitted under the Procedures for mutual legal assistance, as reported by the latest available report from the Working Body.<sup>239</sup>

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234 *Ibid*; “Serbian Prosecutor Snežana Stanojković meets BH Chief Prosecutor Gordana Tadić”, news, 18 April 2019, official website of the OWCP, available at: <http://www.tuzilastvorz.org.rs/en/news-and-announcements/announcements/serbian-prosecutor-sne%C5%BEana-stanojkovi%C4%87-meets-bh-chief-prosecutor-gordana-tadi%C4%87>, accessed on: 9 July 2019.

235 OWCP’s letter PI.no. 14/19 of 18 June 2019 in response to an HLC request for information of public importance.

236 The following are the cases in which the indictments have been transferred to the OWCP from BiH since the adoption of the *National Strategy for the Prosecution of War Crimes* on 20 February 2016: *Doboj, Ključ – Šljivari, Bratunac, Bosanska Krupa, \*Ključ – Kamičak, \*Ključ – Kamičak II, Sanski Most – Lušci Palanka, Caparde, Bosanska Krupa II, Ključ – Režovići, Kožuhe – Doboj, Brčko, Brčko II*, indictment against Branko Branković, *Bratunac II, Brčko II, Ključ Velagići* and the indictment against Dalibor Maksimović. \* *Ključ – Kamičak* and *Ključ – Kamičak II* have been merged into one.

237 See: *Regional Judicial Cooperation in the Prosecution of War Crimes*, HLC, Belgrade, December 2018, p. 7, available online at: [http://www.hlc-rdc.org/wp-content/uploads/2018/12/Regional\\_Judicial\\_Cooperation\\_in\\_the\\_Prosecution\\_of\\_War\\_Crimes\\_Analysis\\_and\\_Improvement\\_Recommendations.pdf](http://www.hlc-rdc.org/wp-content/uploads/2018/12/Regional_Judicial_Cooperation_in_the_Prosecution_of_War_Crimes_Analysis_and_Improvement_Recommendations.pdf), accessed on: 27 June 2019.

238 OWCP’s letter PI.no. 12/19 of 7 June 2019 in response to an HLC request for information of public importance.

239 *Report No. 6 on the Implementation of the National Strategy for the Prosecution of War Crimes*, June 2019, pp. 122-123.



This information should be viewed in light of the fact that in June 2018 the mandate of the EULEX Mission was changed. According to the relevant EU Council decision,<sup>240</sup> EULEX's mandate now includes monitoring and advising the Kosovo judiciary and Kosovo Correctional Service, supporting the Kosovo Specialist Chambers and the implementation of EU-facilitated dialogue agreements on normalisation of relations between Kosovo and Serbia.<sup>241</sup> In early April 2019, the Serbian media reported that Kosovo courts have taken over war crimes cases from EULEX.<sup>242</sup>

The OWCP collaborated first with UNMIK and then with EULEX. Since 2013, cooperation between Serbian and Kosovo judicial authorities has been regulated by the Procedures for mutual legal assistance, which the Government of the Republic of Serbia adopted on 7 March 2013.<sup>243</sup> Given the changed circumstances and the fact that EULEX's mandate has been reduced to monitoring and advising, the HLC considers it necessary to put in place a mechanism which will enable direct communication and cooperation between the OWCP and the Kosovo Prosecutor's Office.

When it comes to cooperation between the OWCP and the DORH, no evidence was exchanged between them in the reporting period.<sup>244</sup> Serbian-Croatian cooperation in war crimes cases was discussed between Serbian and Croatian justice ministers.<sup>245</sup> At a

240 *Council decision CFSP 2018/856 of 8 June 2018 amending Joint Action 2008/124/CFSP on the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO*, Article 2, paragraph 5, available online at: <https://www.eulex-kosovo.eu/eul/repository/docs/CouncilDecision-203336.pdf>, accessed on: 28 June 2019.

241 "Brnabić: Ništa dobro od najava kosovskih suđenja za ratne zločine" [Brnabić: Nothing good can come from announced Kosovo takeover of war crimes cases] news, Radio Free Europe, 1 April 2019, available online (in Serbian) at: <https://www.slobodnaevropa.org/a/29854626.html>; "EULEX Kosovo: new role for the EU rule of law mission", press release, Council of the EU, 8 June 2018, available online at: <https://www.consilium.europa.eu/en/press/press-releases/2018/06/08/eulex-kosovo-new-role-for-the-eu-rule-of-law-mission/>, accessed on: 28 June 2019.

242 "Kosovski sudovi preuzeli slučajeve ratnih zločina od Euleksa" [Kosovo courts take over war crimes cases from EULEX], news, Insajder, 1 April 2019, available online (in Serbian) at: <https://insajder.net/sr/sajt/vazno/13967/>; "Kosovski sudovi preuzeli slučajeve ratnih zločina od Euleksa" [Kosovo courts take over war crimes cases from EULEX], news, *Večernje novosti*, 1 April 2019, available online (in Serbian) at: <http://www.novosti.rs/vesti/naslovna/dosije/aktuelno.292.html:786389-Kosovski-sudovi-preuzeli-slucajeve-ratnih-zlocina-od-Euleksa>; "Kosovski sudovi preuzeli slučajeve ratnih zločina od Euleksa" [Kosovo courts take over war crimes cases from EULEX], news, RTS1, April 2019, available online (in Serbian) at: <http://www.rts.rs/page/stories/sr/story/9/politika/3473774/kosovski-sudovi-preuzeli-slucajeve-ratnih-zlocina-od-euleksa.html>. All sources accessed on: 28 June 2019.

243 Official website of the OWCP, section "International Cooperation", available at: <http://www.tuzilastvorz.org.rs/en/co-operation/international-co-operation>, accessed on: 27 June 2018.

244 OWCP's letter PI.no. 12/19 of 7 June 2019 in response to an HLC request for information of public importance.

245 "Serbia's and Croatia's shared commitment to judicial cooperation", news, 13 February 2019, official website of the Ministry of Justice, available at: <https://www.mpravde.gov.rs/en/vest/23173/serbias-and-croatias-shared-commitment-to-judicial-cooperation.php>, accessed on: 28 June 2019.



meeting held in Zagreb in mid-February, the two ministers rediscussed the work of the joint Serbian-Croatian Commission tasked with drafting an agreement on prosecuting war crimes perpetrators (the Agreement) to be signed between the two countries. According to the information posted on the Serbian Ministry of Justice website, it was agreed at the meeting to intensify efforts to define the remaining aspects of the Agreement “by this coming summer”.<sup>246</sup> It was also agreed that another joint commission, the one for the exchange of lists of persons accused or convicted of war crimes, should continue its work and include representatives of the Prosecutor’s office as well.<sup>247</sup>

In the process of preparing this report, the HLC sought from the Ministry of Justice additional information concerning the work of the two commissions. The request for information was sent on 23 May 2019, but no reply had been received by the time this report was completed.<sup>248</sup> The information available from the official website of the Ministry of Justice or from press reports does not offer enough details about the commissions’ mandates, how they were established, their composition, and when they are expected to complete their work.<sup>249</sup>

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246 *Ibid.*

247 *Ibid.*

248 Request for access to information of public importance, HlcIndexOut: F170-F137832, 23 May 2019.

249 See: “Kuburović i Bošnjaković: Ažurirati spiskove optuženih i osuđenih za ratne zločine” [Kuburović and Bošnjaković: Lists of individuals accused and convicted of war crimes to be updated], news, 13 February 2019, *Večernje novosti*, available online (in Serbian) at: <http://www.novosti.rs/vesti/naslovna/dosije/aktuelno.292.html:777227-Kuburovic-i-Bosnjakovic-Azurirati-spiskove-optuzenih-i-osudjenih-za-ratne-zlocine>; “Srbija i Hrvatska prijateljski o procesuiranju optuženih za ratne zločine i spiskovima” [Serbia and Croatia amicably on war crimes prosecution and lists], news, 13 February 2019, *Glas Amerike [Voice of America]*, available online (in Serbian) at: <https://www.glasamerike.net/a/srbija-i-hrvatska-prijateljski-o-procesuiranju-optu%C5%BEenih-za-ratne-zlo%C4%8Dine-i-spiskovima/4785535.html>; “Kuburović: Ostvaren napredak u saradnji sa hrvatskim pravosuđem” [Kuburović: Progress made in Serbia- Croatia judicial cooperation], news, 13 February 2019, daily newspaper *Danas*, available (in Serbian) at: <https://www.danas.rs/politika/kuburovic-ostvaren-napredak-u-saradnji-sa-hrvatskim-pravosuđem/>. All sources accessed on: 28 June 2019.



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

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

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

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

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

56 No progress was made in the reporting period towards improving the public attitude towards war crimes or war crimes trials. On the contrary, like the previous reporting periods, this one was also marked by the promotion and public rehabilitation of convicted war criminals.<sup>250</sup>

Access to information on war crimes trials, instead of being facilitated, was hindered by the Rules on the anonymisation of personal data in OWCP indictments adopted by this prosecutor's office.

### **Public promotion of convicted war criminals**

#### **The "Warrior" series published by the Ministry of Defence**

The promotion of the "Warrior" series by the Ministry of Defence continued in the reporting period.<sup>251</sup> The Central Military Club hosted a book event in April to promote the following books of the "Warrior" series: *The Third Army in the Merciful Angel's*

250 See: *Initial Report on the Implementation of the National Strategy for the Prosecution of War Crimes*, HLC, December 2017, pp. 80-82; *Second Report on the Implementation of the National Strategy for the Prosecution of War Crimes*, HLC, June 2018, pp. 56-57; *Third Report on the Implementation of the National Strategy for the Prosecution of War Crimes*, HLC, December 2018, pp. 55-58.

251 "Edition "Warrior" promoted at the Central Military Club", news, 10 April 2019, available on the official website of the Ministry of Defence at: <http://www.mod.gov.rs/eng/13814/edicija-ratnik-promovisana-u-domu-vojske-13814>, accessed on: 4 July 2019.



*Embrace for 78 Days – War Diary of the Commander of the Third Army of Yugoslavia* (in four volumes) by Nebojša Pavković, *The Priština Corps 1998-1999 – Testimonies of Wartime Commanders*, *The Battle of Košare – Memories of Participants*, 1999, and *The Battle for Mount Paštrik - Memories of Participants*, 1999.<sup>252</sup>

Nebojša Pavković addressed the audience via a video recording from Finland, where he is serving his prison sentence.<sup>253</sup> Since, according to the website of the Ministry of Defence, Pavković “was detained pursuant to the ICTY ruling because he successfully defended his country from the NATO aggression,”<sup>254</sup> the HLC recalls that Nebojša Pavković, a retired general of the Yugoslav Army (VJ), was finally convicted, together with Nikola Šainović, former Vice-President of the Government of the FRY, Sreten Lukić, Chief of MUP Staff in Kosovo, and Vladimir Lazarević, also retired a general of the VJ, on all five counts of the ICTY indictment, including forcible transfer, deportation, killings and persecution of the Albanian population of Kosovo.<sup>255</sup>

As stated on the Ministry of Defence’s website, “the reason for launching the edition “Warrior” is the effort to preserve the experience of our war commanders during NATO aggression in 1999, their war skills, the decision-making process, the disposition of units..., everything by which they made us proud at that time, defending the country – as a contribution to the culture of memory”. At the same time, the organisers of the promotion totally ignored the fact that the commanders’ “war skills” led to thousands of civilians being killed, thousands of houses being burnt down and several thousand Albanians being expelled from Kosovo.

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### **Commemoration of the Day of Victory over Fascism**

The Day of Victory over Fascism (Victory Day) is celebrated in Serbia on 9 May each year to commemorate the end of the Second World War and the victory over nazism and fascism. Instead of promoting the values of anti-fascism, this year’s celebration descended into a promotion of convicted war criminals. In Niš, a march of the so-called “Immortal Regiment”, organised to commemorate Victory Day, was headed by retired VJ General Vladimir Lazarević.<sup>256</sup> The HLC reminds that Lazarević was finally

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252 *Ibid.*

253 *Ibid.*

254 *Ibid.*

255 See the case of *Šainović et al.* (IT-05-87), on the official website of the ICTY at: <http://www.icty.org/en/case/milutinovic/4>, accessed on: 5 July 2019.

256 “Osuđeni general Lazarević predvodio ‘Besmrtni puk’ u Nišu: Na Dan pobjede nad fašizmom, Srbija promovise ratne zločince” [Convicted General Lazarević leads “Immortal Regiment” march in Niš: Serbia promotes war criminals on Victory Day], Portal Insajder.net, 9 May 2019, available (in Serbian) at: <https://insajder.net/sr/sajt/vazno/14379/>, accessed on: 4 July 2019.



sentenced by the ICTY to 14 years in prison for crimes against humanity during the war in Kosovo.<sup>257</sup>

### **Access to information on war crimes trials - OWCP's Rules on Anonymisation**

In March 2019, the Office of the War Crimes Prosecutor adopted the Rules on the anonymisation of personal information contained in the OWCP indictments (the Rules).<sup>258</sup> The Rules regulate the anonymisation of the indictments that are meant to be published or otherwise made available to the public, in accordance with the personal data processing law.<sup>259</sup>

After the Rules were adopted, all indictments posted on the OWCP website were anonymised.<sup>260</sup> Names and second names of all persons listed in the OWCP indictments were replaced by two capital letters, in alphabetical order.<sup>261</sup> Anonymisation of numerical and other data was secured by replacing numbers with three dots (...).<sup>262</sup> In the same manner, the more detailed information regarding the course of proceedings provided on the "Cases" section of the OWCP website was also anonymised.<sup>263</sup> The sections containing prosecutors' closing arguments, appeals filed by the OWCP, and case statistics are currently empty, containing only the information "updating in progress".<sup>264</sup>

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<sup>257</sup> See the case of *Šainović et al.* (IT-05-87), on the official website of the ICTY at: <http://www.icty.org/en/case/milutinovic/4>, accessed on: 5 July 2019.

<sup>258</sup> *Rules on the anonymisation of personal data from indictments in the Office of the War Crimes Prosecutor* (A. no. 82/19 of 20 March 2019). The Rules are available online (in Serbian) on the official website of the OWCP at: [https://www.tuzilastvorz.org.rs/upload/HomeDocument/Document\\_sr/2019-05/%D0%9F%D1%80%D0%B0%D0%B2%D0%B8%D0%BB%D0%BD%D0%B8%D0%BA\\_%D0%9B%D0%B0%D1%82.pdf](https://www.tuzilastvorz.org.rs/upload/HomeDocument/Document_sr/2019-05/%D0%9F%D1%80%D0%B0%D0%B2%D0%B8%D0%BB%D0%BD%D0%B8%D0%BA_%D0%9B%D0%B0%D1%82.pdf); "Announcement - Information about the cases and indictments handled by the Office of the War Crimes Prosecutor (OWCP) is currently unavailable on its website. The format of these documents is being updated and processed in line with the Personal Data Protection Act and with the Rules of the anonymisation of personal data in OWCP indictments, passed on 20 March 2019", announcement, 22 March 2019, available on the official website of the OWCP at: <https://www.tuzilastvorz.org.rs/en/news-and-announcements/announcements/official-statement-information-about-the-cases-and-indictments-handled-by-the-office-of-the-war-crimes-prosecutor-owcp-is-currently-unavailable-on-its-website-the-format-of-these-documents-is-being-up>. Both sources accessed 4 July 2019.

<sup>259</sup> *Rules on the anonymisation of personal data in the Office of the War Crimes Prosecutors' indictments* (A. no. 82/19), Article 1.

<sup>260</sup> See "Indictments" in the "Cases" section of the official website of the OWCP at: <http://www.tuzilastvorz.org.rs/sr/predmeti/optu%C5%BE> accessed on: 04.07.2019.

<sup>261</sup> *Rules on the anonymisation of personal data from indictments in the Office of the War Crimes Prosecutor* (A. no. 82/19), Article 7 (3).

<sup>262</sup> *Ibid.*, Article 7 (4).

<sup>263</sup> See section "Cases" on the official website of the OWCP at: <http://www.tuzilastvorz.org.rs/en/cases/cases-> accessed on 4 July 2019.

<sup>264</sup> See section "Cases" on the official website of the OWCP, sub-section "Closing Arguments" at: <http://www.tuzilastvorz.org.rs/en/cases/closing-arguments>, "Appeals" at: <http://www.tuzilastvorz.org.rs/en/cases/complaints>, and "Statistics" at: <http://www.tuzilastvorz.org.rs/en/cases/statistics>. All sources accessed on: 4 July 2019.



Before these changes, the OWCP website was a rare example of a well-designed, easy-to-navigate-and-read, content-rich website of a government body, offering plenty of information to the interested public, including documents pertaining to cases that had been prosecuted or were still being prosecuted. Now, however, instead of various sections of the website being updated with new information in a timely manner, with some of them all the contents have been removed. As regards the indictments, after being anonymised, they have effectively become unreadable and unusable for any legal analysis. The announcements that are published are brief and reduced to providing only basic information.<sup>265</sup> In the view of the HLC, the said changes interfere with the public's right to know about the domestic war crimes trials.<sup>266</sup> The HLC therefore addressed the Constitutional Court of Serbia seeking review of the constitutionality and legality of the Rules.<sup>267</sup>

The HLC challenges Articles 1, 5 and 8 of the Rules, pointing out that they contravene Articles 42, 46 and 51 of the Constitution of the Republic of Serbia,<sup>268</sup> the European Convention for the Protection of Human Rights and Fundamental Freedoms,<sup>269</sup> Opinion 4/2007 on the Concept of Personal Data (01248/07/EN) of the Data Protection Working Party,<sup>270</sup> the Global Principles on National Security and the Right to Information (*Tshwane Principles*)<sup>271</sup>, as well as the Serbian Law on Personal Data Protection (LPDP) and the Serbian Law on Free Access to Information of Public Importance (LFAIPI).<sup>272</sup>

The Rules stipulate that “items of information that could lead to identification of the accused, injured parties, their legal representatives, witnesses, their relatives and individuals closely connected to them, neighbours and the like shall be consistently replaced or removed.”<sup>273</sup>

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265 See “Announcements” section on the official website of the Office of the War Crimes Prosecutor at: <http://www.tuzilastvorz.org.rs/en/news-and-announcements/announcements>, accessed on: 4 July 2019.

266 “The Public’s Right to Know about War Crimes Trials in Serbia at risk”, press release, HLC, 22 March 2019, available at: <http://www.hlc-rdc.org/?p=36470&lang=de>, accessed on: 4 July 2019.

267 *Petition for review of constitutionality and legality of the Rules on anonymisation of personal data in OWCP indictments no. A - 82/2019 of 20 March 2019.*

268 *Constitution of the Republic of Serbia* (Official Gazette of the Republic of Serbia no. 98/2006).

269 *Law Ratifying the European Convention for the Protection of Human Rights and Fundamental Freedoms* (Official Gazette of Serbia and Montenegro – International Treaties, no. 9/2003-16).

270 *Opinion 4/2007 on the concept of personal data (01248/07/EN) of the Data Protection Working Party* is available at: <https://www.clinicalstudydatarequest.com/Documents/Privacy-European-guidance.pdf>, accessed on: 4 July 2019.

271 *The Global Principles on National Security and the Right to Information (Tshwane Principles)*, 2013, available online at: <https://www.justiceinitiative.org/uploads/bd50b729-d427-4fbb-8da2-1943ef2a3423/global-principles-national-security-10232013.pdf>, accessed on: 04 July 2019.

272 *Law on Personal Data Protection* (Official Gazette of the Republic of Serbia, nos.97/2008, 104/2009 – other law, 68/2012 – CC decision and 107/2012); *Law on Free Acces to Information of Public Importance* (Official Gazette of the Republic of Serbia, nos.120/2004, 54/2007, 104/2009 and 36/2010).

273 *Rules on the anonymisation of personal data from indictments in the Office of the War Crimes Prosecutor* (A. no. 82/19 of 20 March 2019), Article 1 (3).



The HLC recalls that the right of access to indictments, judgments and the like is regulated by the LFAIPI, which defines Information of Public Importance as “information held by a public authority body, created during or relating to the operation of a public authority body”.<sup>274</sup> Clearly, the OWCP indictments fall within this definition. The LFAIPI provides for the public’s right to know and the justified public interest in knowing. This right may be subject to certain restrictions, but only if such restrictions are necessary in a democratic society to prevent a serious violation of an overriding interest based on the Constitution or the Law.<sup>275</sup>

As for the Law on Personal Data Protection, this law sets out rules on personal data collection and processing, and regulates the rights and protection of the rights of data subjects, as well as the limitations to personal data protection.<sup>276</sup> When it comes to the work of the OWCP, its indictments and other documents created during its operation without doubt contain personal data whose collection and processing are regulated by the LPDP. Bearing in mind the mentioned laws (as the lowest legal acts that the Rules do not comply with), the HLC considers that the Rules do not strike the right balance between the two laws but rather provide for excessive anonymisation.<sup>277</sup>

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As regards the anonymisation of the names of war crimes victims, **the HLC thinks that knowing the identity of war crimes victims is in the public interest. And a systematic violation of human rights and international humanitarian law is not only an event or occurrence of public interest, but also something that the public has the right to know about, including the circumstances surrounding it, the motives behind it and its consequences.** Disclosure of the names of victims and mentioning their full names in the public provides some sort of satisfaction to them, and is a prerequisite for recognition of the suffering they experienced largely on account of their identity.

In the light of the above, **the HLC cannot but make the observation that informing the public about domestic war crimes trials continues to be a serious challenge for the judicial authorities responsible for handling these crimes.** Namely, an alarming 85 percent of respondents of a recent survey could not indicate even a single war crime that has been or is being tried before a Serbian court, and 79 percent could not name a single judicial institution responsible for handling war crimes, while 59 percent said they were poorly informed about war crimes trials. Current trends identified in this report suggest that these percentages are unlikely to go down in the coming period.

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274 *Law on Free Access to Information of Public Importance* (Official Gazette of the Republic of Serbia, nos.120/2004, 54/2007, 104/2009 and 36/2010), article 2, para. 1.

275 *Ibid*, article 4; article 8, para. 1.

276 *Law on Personal Data Protection* (Official Gazette of the Republic of Serbia, nos.97/2008, 104/2009 - other law, 68/2012 - CC decision and 107/2012).

277 Petition for review of constitutionality and legality of the *Rules on anonymisation of personal data in OWCP indictments* no. A - 82/2019 od 20 March 2019.



## Implementation of Activities

<b>1. INCREASING EFFICENCY OF THE WAR CRIMES PROCEEDINGS BEFORE THE REPUBLIC OF SERBIA BODIES</b>		
<b>1.1. Investigations and Indictments</b>		
<b>Activity</b>	<b>Time Limit</b>	<b>Implementation Status</b>
The OWCP will draft and adopt the Prosecutorial Strategy for Investigation and Prosecution of War Crimes.	Quarter 1 of 2016	Implemented
The WCIS will prepare a database on mass crimes committed during the armed conflicts in former Yugoslavia.	Quarter 4 of 2016	Partly implemented
The OWCP shall endeavor to register and take over all the war crimes cases still pending before the domestic courts of general jurisdiction.	Quarter 4 of 2016	Implemented



<p>With the aim of increasing working efficiency, the OWCP should undertake the following activities:</p> <ul style="list-style-type: none"> <li>• Use the existing capacity in line with the prosecutorial strategy;</li> <li>• Apply, whenever appropriate, the legal institution of plea agreement referred to in Articles 313-320 of the CPC;</li> <li>• Ensure full confidentiality of the investigation process;</li> <li>• Examine during the investigation whether the suspect holds any assets acquired through war crime and if yes, to submit to the court the relevant procedural request in that regard pursuant to the Law on Criminal Asset Recovery.</li> </ul>	Continuous	Implementation in progress
<p>The number of deputy prosecutors and other staff of the OWCP will increase in line with the time frame envisaged in the Action Plan for Chapter 23.</p>	Continuous	Implemented
<p>Continuing training on international humanitarian, international criminal law and investigative techniques will be provided to the present and newly employed / newly appointed staff and deputy public prosecutors in the OWCP, as well as appropriate training relating to the approach to victims and witnesses to avoid the risk of secondary victimization.</p>	Continuous	Implementation in progress



<p>The defining of specific measures to be undertaken for the purpose of improving the status and operations of the WCIS requires that the MoI prepares an analysis (report) on the legal and factual situation and needs of the WCIS within the MoI, aimed at determining the need for the Service reform.</p>	<p>Quarter 1 of 2016</p>	<p>Implemented</p>
<p>On the basis of the above analysis, the MoI will urgently undertake measures to ensure the optimal status and capacity of the WCIS.</p>	<p>Continuous, commencing from Quarter 2 of 2016</p>	<p>No information</p>
<p>Adoption of joint internal operating rules of the OWCP and the WCIS, at the initiative of the War Crime Prosecutor.</p>	<p>Quarter 2 of 2016</p>	<p>Implemented</p>
<p>Improving cooperation between the OWCP and the WCIS through:</p> <ul style="list-style-type: none"> <li>• Organization of joint trainings;</li> <li>• Establishment of a joint strategic team to define guidelines and directions of acting in matters of common concern;</li> <li>• Formation of joint operational teams;</li> <li>• Periodic mutual organization of round tables.</li> </ul>	<p>Continuous</p>	<p>Partly implemented</p>



<b>1.2. Trials</b>		
<b>Activity</b>	<b>Time Limit</b>	<b>Implementation Status</b>
<p>Consistent application of Articles 10 and 10a of the Law on the Organization and Jurisdiction of Government Authorities in War Crimes Proceedings, in respect of the period for which judges are assigned to the War Crimes Chamber.</p> <p>Determination of additional judges in cases in which there is a reasonable fear that due to the expiry of the term of the presiding judge instructed to the department for war crimes, the trial had to start over again.</p>	Continuous	Partly implemented
<p>The War Crimes Prosecutor should start negotiations with his counterparts in neighboring states on the establishment of a regional database of war crimes case trials which would considerably contribute to harmonization of jurisprudence.</p>	Continuous, commencing from Quarter 1 of 2016	Implementation in progress
<p>The Ministry of Justice shall endeavor, on the proposal of the HJC, to provide adequate technical equipment for the courtrooms in which war crimes trials are held.</p> <p>Pursuant to Article 354 of the CPC, presidents of the Higher and Appellate Court in Belgrade will strive to ensure the maintenance of hearings in adequate courtrooms in other courts through cooperation with the HJC.</p>	Continuous, commencing from Quarter 1 of 2016	Partly implemented



<p>At the initiative of the OWCP, Higher and Appellate Court in Belgrade, and in cooperation with the HJC, the SPC and the Judicial Academy, a system of training and additional education will be established for judges, prosecutors, assistants, deputies and police investigators in the fields of international criminal and international humanitarian law.</p>	<p>Continuous, commencing from Quarter 1 of 2016</p>	<p>Partly implemented</p>
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## 2. PROTECTION OF WITNESSES AND VICTIMS

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



<p>Competent public prosecutors, the SPC and the competent bar association regularly notify the court about the measures undertaken with regard to the caution referred to in Article 374 of the CPC.</p>	<p>Continuous</p>	<p>Implementation in progress</p>
<p>Improvement of rules of procedure by the Commission for the Implementation of the Protection Program and the Protection Unit fully respecting the interests of the criminal proceedings in which the protected person is placed under protective measures.</p>	<p>Continuous</p>	<p>No information</p>
<p>Improvement of cooperation between the Protection Unit and the OWCP, through:</p> <ul style="list-style-type: none"> <li>• Organization of joint trainings;</li> <li>• Establishment of a joint strategic team to define guidelines and directions of acting in matters of common concern;</li> <li>• Formation of joint operational teams;</li> <li>• Periodic mutual organization of round tables.</li> </ul>	<p>Continuous</p>	<p>Partly implemented</p>



<b>3. SUPPORT TO VICTIMS AND WITNESSES</b>		
<b>Activity</b>	<b>Time Limit</b>	<b>Implementation Status</b>
The Ministry of Justice will perform an analysis of the level of harmonization of the normative framework Directive 2012/29/EU.	Quarter 1 of 2016	Implemented
The Minister of Justice will establish a working group to propose amendments to the normative framework with the aim of harmonization with the notion of victim in international human rights treaties, and of effective application of minimum standards on the rights, Directive 2012/29/EU.	Quarter 2 of 2016	Partly implemented
The Ministry of Justice will issue a bylaw regulating the mandatory provision of information to victims on all aspects of the criminal proceedings of interest to them in accordance with Article 6 of Directive 2012/29/EU.	Quarter 2 of 2016	Not implemented
The Ministry of Justice will create and distribute a brochure containing the information about victims' rights (legal aid, psychological support, protection, etc.) in accordance with Article 4 of the Directive 2012/29/ EU.	Quarter 3 of 2016	Partly implemented
The Service for Assistance and Support to Victims and Witnesses within the Higher Court in Belgrade will hire an expert for the provision of psycho-social support.	Quarter 4 of 2016	Not implemented



<p>The Protection Unit of the MoI through the changes in job classification act will enable the engagement of professional staff for the provision of psycho-social support.</p>	<p>Quarter 4 of 2016</p>	<p>Not implemented</p>
<p>To meet the needs of the Service for Assistance and Support to Victims and Witnesses staff, the Higher Court in Belgrade and the Judicial Academy, with the support of the HJC and the Ministry of Justice will occasionally organize additional training and encourage the participation in professional conferences.</p>	<p>Continuous, commencing from Quarter 2 of 2016</p>	<p>Implementation in progress</p>
<p>To meet the needs of the Protection Unit staff, the Training Centre of the MoI will occasionally organize additional training and encourage the participation in professional conferences.</p>	<p>Continuous, commencing from Quarter 2 of 2016</p>	<p>Not implemented</p>
<p>Improvement of infrastructural and technical capacity of the services for assistance and support to victims and witnesses.</p>	<p>Continuous, commencing from Quarter 2 of 2016</p>	<p>Not implemented</p>



<p>Establishment of a countrywide network of services for assistance and support to victims and witnesses during the investigation and all stages of the criminal proceedings:</p> <ul style="list-style-type: none"> <li>• normative aspect (current normative framework, best comparative solutions, international standards);</li> <li>• financial assessment (sustainable financing, adequacy of premises and staff, need training needs);</li> <li>• access to support services (network coverage, distance, mobile support teams).</li> </ul>	<p>For the analysis – Quarter 1 of 2016; for the network establishment - continuous commencing from 2018</p>	<p>Partly implemented</p>
<p>The Ministry of Justice will initiate a regional conference on the improvement of cooperation in the provision of support to victims and witnesses.</p>	<p>Continuous, commencing from Quarter 3 of 2016</p>	<p>Not implemented</p>



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



<b>5. WAR CRIMES TRIALS AND THE ISSUE OF MISSING PERSONS</b>		
<b>Activity</b>	<b>Time Limit</b>	<b>Implementation Status</b>
The Republic of Serbia will continuously work on fulfilling the recommendations of the Committee on Enforced Disappearances and notify the Committee on achieved results.	Continuous	Implementation in progress
Perform the analysis of the organizational structure and status of the support service with the aim of improving efficiency and sustainability in the context of volume and specificity of tasks within the Commission's purview.	Quarter 3 of 2016	Implemented
Improve mutual cooperation of the Commission on Missing Persons and other state bodies involved in the process of investigation and prosecution of war crimes, through periodically organized round tables.	Periodically (at least once per year)	Implemented
The Ministry of Foreign Affairs initiates the procedure for the signing and becoming party to the Agreement on the Establishment of the International Commission on Missing Persons (ICMP) granting the Commission the status of an international organization.	Quarter 4 of 2016	Implemented
The Government encourages the Commission on Missing Persons of the Republic of Serbia to establish a special cash fund for the support of competent state bodies in obtaining all available data on the location of gravesites of the persons still missing.	Continuous	Not implemented



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

Activity	Time Limit	Implementation Status
<ul style="list-style-type: none"> <li>• Fully access and examine the archive of the ICTY and the residual IRMCT, through appointed liaison officers.</li> <li>• Identify the materials and evidence of the International ICTY and the residual IRMCT relevant for the priority cases.</li> </ul>	<p>Continuous, commencing from Quarter 2 of 2016</p>	<p>Implementation in progress</p>
<p>The Republic of Serbia shall endeavor to maintain good practice of the transfer of knowledge and experience from the ICTY, to gain both general knowledge and specific knowledge about individual cases.</p>	<p>Continuous</p>	<p>Implementation in progress</p>
<p>The Republic of Serbia shall endeavor to maintain good practice of <i>ad hoc</i> presence of the advisors from the OWCP in the offices of the ICTY and the IRMCT.</p>	<p>Periodical</p>	<p>Implementation in progress</p>



## 7. REGIONAL AND BROADER INTERNATIONAL COOPERATION

### 7.1. Regional Cooperation

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



<p>The OWCP will initiate the establishment of joint records of war crimes cases at the regional level the resolving of which commenced through regional cooperation.</p>	<p>Continuous, commencing from Quarter 2 of 2016</p>	<p>Implementation in progress</p>
<p>The OWCP will promote the establishment of joint cross-border investigative prosecutorial teams with the countries of the region.</p>	<p>Continuous</p>	<p>No information</p>
<p>Improving cooperation between the judicial authorities of the Republic of Serbia and of the WCIS with the Provisional Institutions of Self-Government in Pristina.</p>	<p>Continuous</p>	<p>Not implemented</p>



<b>7.1. International Cooperation</b>		
<b>Activity</b>	<b>Time Limit</b>	<b>Implementation Status</b>
Active participation of judges and public prosecutors who handle war crimes cases in seminars on international humanitarian law and professional conferences.	Continuous, commencing from Quarter 1 of 2016	Partly implemented
The Ministry of Justice, in cooperation with the OWCP and HJC, will invest efforts to secure financial support of the project of translating domestic judgments into the English language, so that they can be included in the <i>Legal Tools Project</i> .	Continuous, commencing from Quarter 1 of 2016	Not implemented



<b>8. OUTREACH</b>		
<b>Activity</b>	<b>Time Limit</b>	<b>Implementation Status</b>
Increased frequency of acting by presidents of the competent courts in accordance with Article 16a of the Law on the Organization and Jurisdiction of Government Authorities in War Crimes Proceedings.	Continuous	Not implemented
Improvement of the web site of the High Court in Belgrade, where all the necessary information about the judgments in war crimes cases will be publicly available, with a gradual increase of the numbers of the actual decisions.	Continuous	Partly implemented
Regular publishing of substantive reports on the work of judicial institutions responsible for prosecuting war crimes.	Continuous	Not implemented
Regular publishing of reports on the implementation of all relevant strategic documents in the field of prosecuting war crimes (the Action Plan for Chapter 23, the National Strategy, the Strategy of the Office of War Crimes Prosecutor).	Continuous	Partly implemented



<p>With the support of the Council for the implementation of the Action Plan for Chapter 23 and the Negotiating Group for Chapter 23, the inclusion of representatives of the institutions responsible for the prosecution of war crimes in the mechanism of cooperation with civil society organizations through their participation in occasional meetings with the National Convent of the EU.</p>	<p>Continuous</p>	<p>Partly implemented</p>
<p>Periodical organization of courses, workshops and trainings for journalists reporting on war crimes trials, in cooperation with media organizations, judicial institutions and international organizations.</p>	<p>Continuous</p>	<p>Not implemented</p>
<p>The quality and content of the curriculum that tackles issues related to the history of the conflict in the former Yugoslavia and the crimes that were committed during those conflicts, is continuously monitored and upgraded.</p>	<p>Continuous</p>	<p>Not implemented</p>
<p>Publishing of the National Strategy text on the website of the Government of the Republic of Serbia, Ministry of Justice, the Office of War Crimes Prosecutor, the Higher Court and Court of Appeal in Belgrade.</p>	<p>Quarter 1 of 2016</p>	<p>Partly implemented</p>



<p>Following the adoption of this National Strategy, the highest State officials, led by the Prime Minister and the Minister of Justice, will publicly declare their support for the work of all domestic bodies dealing with the war crimes issues, for the fight against impunity and for the respect for the rule of law.</p>	<p>Quarter 1 of 2016</p>	<p>Not implemented</p>
<p>Members of the Government of the Republic of Serbia and MPs, in accordance with the provisions of the newly adopted Code of Conduct for members of the Government and MPs, refrain from unauthorized commentaries of the work of the judiciary.</p>	<p>Continuous</p>	<p>Not implemented</p>



**Fourt Report**  
on the Implementation of the National Strategy  
for the Prosecution of War Crimes

Publisher:  
Humanitarian Law Center  
Dečanska 12, Belgrade  
ww.hlc-rdc.org

Author: Višnja Šijačić  
Editor: Ivana Žanić  
Translation: Angelina Mišina  
Proof Editing: Jonathan Boulting  
Design: Milica Dervišević  
Print Run: 100  
Pinting: Instant System, Belgrade

ISBN 978-86-7932-103-9  
© Humanitarian Law Center

CIP - Каталогизација у публикацији  
Народна библиотека Србије, Београд

341.322.5:343.11(497.11)"2018/2019"(047)

ŠIJAČIĆ, Višnja, 1985-

Fourth Report On the Implementation of the National Strategy for the Prosecution of War Crimes  
/ [Višnja Šijačić] ; [translation Angelina Mišina]. - Belgrade : Humanitarian Law Center, 2019  
(Belgrade : Instant System). - 80 str. : table ; 24 cm

Izv. stv. nasl.: Četvrti izveštaj o sprovođenju Nacionalne strategije za procesuiranje ratnih zločina. -  
Podatak o autorki preuzet iz kolofona. - Tiraž 100. - Napomene i bibliografske reference uz tekst.

ISBN 978-86-7932-103-9

а) Ратни злочини -- Судски процеси -- Србија -- 2018-2019 -- Извештаји

COBISS.SR-ID 277936652



