



Humanitarian Law Center

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Mr. Pablo de Greiff
Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-recurrence

Email: srtruth@ohchr.org

Belgrade, March 12, 2014

Dear Mr. de Greiff,

We are writing to you on behalf of the Humanitarian Law Center (HLC), a Belgrade (Serbia) based organization that supports post-Yugoslav societies in the promotion of the rule of law and acceptance of the legacy of mass human rights violations, and therefore in establishing the criminal responsibility of the perpetrators, serving justice, and preventing recurrence.

Although the process of transitional justice in the former Yugoslavia is widely considered to have been among the most successful, the region is still facing difficulties in the area of domestic prosecutions of war crimes, truth-seeking and truth-telling processes, and there has been a lack of substantive institutional reform and reparations. With regards to Serbia, since the democratic changes in 2000, the transitional justice process has progressed slowly and experienced many setbacks, from lack of will to fully and efficiently cooperate with the ICTY in arresting major war criminals, to a widely held understanding of transitional justice only as a useful tool to speed up the country's progress in European integration.

There are several important issues regarding transitional justice development that we would like to bring to your attention.

1) Significant political influence is still exerted over the prosecution of war crimes in Serbia. Some ten years after the establishment of specialized institutions for the prosecution of perpetrators of war crimes, a climate in which these institutions can work independently has yet to be established. There is a clear unwillingness to address the question of accountability of mid- or high-ranking officers of the armed forces and police. Additionally, the declining number of persons indicted each year, has been recognized by the European Commission as an obstacle to the process of establishing the rule of law. Prosecutorial focus on low-level perpetrators, a reluctance to investigate the command structures of the



Army and Police and a lack of any vetting procedures have serious consequences for the process of regaining trust in Serbian institutions. Officers implicated in war crimes, still hold positions of power and operate with impunity, without ever having been properly examined or vetted in regard to their activities during the armed conflicts. Additionally, institutions that played an active part in systematic abuse and human rights violations remain intact.

2) The ICTY is approaching the end of its work, but its legacy and long-term contribution towards justice and accountability in the region have been called into question in the last two years. The commitment of regional governments, and in particular the Serbian government, to draw on the vast documentary archive and the facts established by the ICTY in order to promote local and regional justice processes, is still questionable.

3) Mutually conflicting interpretations of crime and conflicts during the 1990s are seriously undermining the prospects for reconciliation in the Western Balkans. The region has become an arena where 'memory wars' and 'wars on memory' are waged on a daily basis. Even though all the affected communities from post-Yugoslav states interpret the crimes committed during the 1990s in a selective manner, Serbia is actively promoting narratives of its own victimhood in which there is no space for acknowledging the suffering of the 'other', despite the fact that the majority of crimes were committed by Serbian forces, instigated from Serbia or committed with the support of Serbia, in other countries.

The lack of a common understanding about what happened during the wars is being addressed by the regional initiative for the establishment of an inter-state Regional commission for truth (RECOM), that will have a mandate to establish the facts about war crimes and other serious violations of human rights during the armed conflicts. After gaining support from around 2,000 organizations and individuals around the region, the Initiative is now being transferred to an institutional level, with Presidential expert envoys currently examining the draft Statute of the future Commission, and specific terms and other matters concerning the legal and constitutional opportunities for the establishment of RECOM. Their opinion on the compliance of the Statute with the constitutions of post-Yugoslav states will be submitted to the Presidents of the states. However, the next step – establishing RECOM – is dependent on the political will of politicians in the region and their willingness to support the process in their respective countries.

4) Probably the most alarming situation is in the area of reparations for victims. Serbia has never taken any significant step towards recognizing the rights of victims to a just and appropriate remedy for their suffering. The legal framework that defines the rights of civilian victims is highly discriminatory, leaving whole groups of victims unable to seek recompense. Victims that survived sexual violence that did not result in serious bodily injury, citizens of Serbia from ethnic minorities groups that were victimized by Serbian forces, and the families of ethnic Serbs that were forcibly disappeared, have no access to possibility of redress, since these offenses fall outside of the categories recognized by Serbian law. In cases where victims have filed civil lawsuits against the Serbian state, the courts have denied their right to material compensation, invoking the statute of limitation or the absence of a criminal prosecution.



The situation with regard to reparations in Serbia has already caused several UN and international bodies (UN Committee against Torture, UN Committee for Human Rights, and Commissioner for Human Rights of the Council of Europe) to suggest that Serbia is violating victims' rights to reparations. The country has firmly chosen the path towards European integration, by beginning to resolve outstanding issues with its southern neighbor, Kosovo, and by signing the Brussels Agreement. The HLC considers that this is the crucial moment to open the question of creating a comprehensive strategy for transitional justice in Serbia. The process of negotiation over Chapters 23 and 24 (EU *acquis communautaire*), Judiciary and fundamental rights, and Justice, freedom and security, opens a window of opportunity for raising the profile of transitional justice issues in Serbia.

All this having been said, we would like to invite you to express your interest to the Government of Serbia in an official visit to the country. We believe that your visit, and any findings and recommendations on the process of transitional justice in Serbia that you might have would be instrumental in assisting the Government of Serbia to resolve difficult issues from the past, with its neighbors in the region. Also, we hope that your recommendations would offer a valuable guide to the countries of the EU, which will expect Serbia to be fully committed to the rule of law and have respect for human rights when they decide on Serbia's application for full membership of the EU. Finally, your visit would have symbolic resonance among many victims in Serbia and around the region, who are still waiting for the truth about crimes to be established and those responsible to be brought to justice, in order for their suffering to be finally acknowledged.

Sincerely,



Sandra Orlović

Letter was supported by Coalition for Access to Justice members:

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