

# through ACCESSION towards JUSTICE



Humanitarian Law Center

The newsletter **through ACCESSION towards JUSTICE** will address the theme of obstacles to and solutions for establishing the rule of law and accountability for the crimes committed in our recent past. Also, it will seek to affirm, in the context of the EU accession talks, individual and societal needs arising from that experience.

4/2014



## Knowing and understanding the recent past: diverted attention and (not yet) lost opportunities

*Eric Gordy, Professor, School of Slavonic & East European Studies, University College London*

The regime led by Slobodan Milošević formally relinquished power in October 2000, with a democratic regime following on the death of Franjo Tuđman in Croatia several months earlier. At the time, expectations were high not only for Serbia to integrate into international institutions, a process that was expected to be crowned by eventual membership in the European Union, but also for a nightmare decade marked by large-scale violence to be followed by reinvigoration of democracy and meaningful social change. Justice for the crime of the wars of the 1990s was meant to be an important part of the equation. So was a process



of learning about and understanding the violence of the recent past, and of



opening a dialogue that would lead to reconciliation between neighbouring states and societies.

Ambitions were high at the moment of the change of regime. One spokesperson for the student movement *Otpor!* articulated the goal of political change as to “eliminate the last possibility that some new Milošević may appear in Serbia.” The incoming prime minister Zoran Đinđić similarly saw the process of understanding the past as involving interrogation of the society on a grand scale, reasoning that “We have to reconstruct our own past through this legal process, because not only is Milošević a part of our past, but so are we, and because Milošević would not have become what he is without us.” Early on it was expected that legal trials would establish an unassailable documentary record of events, that these events would catalyse questioning and dialogue, and that from this process would emerge a society at peace with itself and its neighbours, ready to participate as a full partner in the future of Europe and the region.

Fourteen years later it would be difficult to say that this has been the outcome, and yet it would also be difficult to say that nothing meaningful has happened. An International Criminal Tribunal for the former Yugoslavia has left behind it a large, if mixed record, and has been instrumental in developing the capacities of local courts and law enforcement to deal with cases that will not reach the tribunal. At the same time, however, the achievements of criminal justice, limited as they are, have only been weakly absorbed into the social environment. An impressive documentary record has been produced, but the knowledge, understanding and dialogue that were expected to accompany it have been long in coming.

Why has this happened? Of course it would be possible to be critical of the work

of the International Criminal Tribunal for the Former Yugoslavia, and many people are. I would be among those who argue that, on balance, the Tribunal's accomplishments generally outweigh its shortcomings. Rather, I would suggest that the cause of the shortended process has more to do with the limited engagement of institutions that communicate directly with the public and that enjoy high levels of public trust. It is not only political leaders (who for the most part receive low levels of trust) who have to explain their goals and motivations to people. This is also the job of cultural, religious, educational and intellectual institutions. For the most part they have not done it.

Shortly after the change of regime, in March 2001 the Strategic Marketing agency conducted a survey for the Belgrade Centre for Human Rights. At the time the survey results received extensive attention, partly because of what it showed about perceptions of particular violations that occurred during the wars (most people had heard of major incidents, but many did not believe that they heard was true), and partly because of what it showed about orientation and blame (major criminals were perceived as “defenders of the Serbs,” and there was a pronounced tendency, for every incident, to project responsibility onto faraway parties).

But there was another set of findings from the survey that got less attention, and that would turn out to be more important as time went by. When people were asked whether they felt well informed about the wars, an overwhelming majority responded negatively. They responded the same way when asked whether they thought that other people around them were well informed. Not feeling well informed did not, however, prevent people from holding opinions or from doubting, again overwhelmingly, that new information could change their minds. So this is in a sense where the story begins:

with a public that does not know, does not think other people know, and does not want to know.

But there is something more suggestive in the survey. When people were asked what sources they used to get information, they named Serbia's dominant media outlets. And then were asked which sources they trusted, they said that they trusted least the sources they used the most. What sources did people say they trusted? At the top of the list were stories told by their relatives and stories told by witnesses. That is to say that if people were to move away from perceptions formed at the time of conflict, the way this would happen would be to encourage discussion of the events in environments conducive to people sharing with and listening to one another. The society would have to be engaged in a process that would be open, trustworthy and not accusatory.

By now we all know that this is not what happened. Society and culture were largely disengaged from a process that involved international institutions confronting states with conditions, politicians seeking strategies of minimum compliance with minimal publicity, and long trials which media frequently declined to follow and which had outcomes and procedures that the public could often not understand. To the degree that the activity of post-conflict justice was communicated to the public, information often came through media that acted as cheerleaders, or through an outreach programme that concentrated its attention heavily on members of the legal profession.

The result is that over a decade of trials have left a limited effect. A documentary record has been produced covering only cases that have been brought to trial and leaving out a range of other crucially important facts. Those facts that have been established are to a large degree not known to the public, and an

unresponsive educational system has in some measure assured that perceptions popular during the 1990s have hardened rather than changed. Meanwhile the controversial decisions that have split the Tribunal over the past two years have had the consequence of undermining the authority of the verdicts it has reached. We have not seen the anticipated effects on the levels of knowledge and perception, and without these it is difficult to anticipate any effects on the level of dialogue or reconciliation.

It could be said that the expectation that a small, or even of a large number of criminal trials might lead to an encompassing and open social dialogue was always unrealistic, and that there is no reason to be surprised at the absence of this effect. Such an argument would find good historical support. Not only are there few if any cases in history of public consciousness being transformed in a short period of time, but the very thought of transforming consciousness is frequently and legitimately attacked; it seems to carry shades of "social engineering" and totalitarianism. That is to say, why would we want "confrontation with the past," and why does it matter that it has not happened?

There are probably two main reasons why this failure matters: because of democracy and because of Europe.

Democracy involves accountability of state officials to the public and shared responsibility across a political community for understanding the past and making decisions about the future. None of these elements are possible when some set of officials or former officials are shielded from accountability, or when incomplete knowledge of the past impedes understanding of the future. Fifteen years after the end of the last large-scale violent conflict in Kosovo, it is still common to hear complaints that everything in the



region continues to be understood in terms of ethnic conflict and war. This is partly the fault of intellectual laziness on the part of outside observers, but also partly the fault of political and security structures that have remained untouched by new knowledge or democratic changes. The solidarity demonstrated across ethnic lines in the recent floods that have overwhelmed the region show that the public is aware of shared responsibility. Their politicians and cultural institution need to catch up, and justice is an essential part of that process.

On the level of Europe, only a region with states and societies at peace with one another can genuinely enter the common legal and security framework that Europe offers. The current Serbian government has received considerable international credit for settling some disputes with the government of Kosovo. The agreements that have been reached, however, are agreements among political leaders, which were never confirmed with or explained to the public. In effect they have shown that Serbia and Kosovo are capable of making arrangements with one another; they have not shown that they are capable of making peace. Among the obstacles to making peace are a deeply ingrained sense of grievance on both sides, a lack of knowledge on both sides about the other, and an absence of channels for open

communication. Establishing the facts about the conflict between the parties is the most important step that can be taken toward building the peace that is required.

With so much time lost and so much undone, is there still anything that can be done? One thing we may have learned from the post-conflict experience is that legal initiatives by themselves cannot address the social needs related to justice that emerge out of violence. While there are people who advocate forgetting and moving forward, this is not a genuine alternative: the needs are still present, and forgetting is not a real possibility.

Where institution have failed to address their responsibility, there are people in all fields who are seeking to see that knowledge is generated and spread, and that dialogue takes place. It is essential to support initiatives that include people and initiatives from below. This includes, but is not limited to, support for initiatives like the REKOM campaign that seek to bring together victims, veterans and civil society groups to produce a reliable and consensual factual record of the recent past, to make dialogue possible and reconciliation more probable. There are no foundations other than knowledge and understanding for assuring Serbia's and the region's European future.

# [ news ]

## Regional reconciliation high on the EU agenda

Representatives of the European Commission met non-governmental organizations, during the visit of EU Commissioner for Enlargement Štefan Füle to Serbia in early May 2014. Among the representatives of the European Commission were Myriam Ferran and Manuel Munteanu, who have a responsibility for Serbian affairs at the Directorate General for Enlargement of the European Union.<sup>1</sup> The meeting concerned the situation in Serbia and the preparation of the annual report on Serbia's progress in 2014.

Given the long-term institutional neglect of transitional justice issues – such as the prosecution of those responsible for war crimes, victims' rights and the reform of institutions – the HLC expressed its concern at the meeting that

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1 Directorate General for Enlargement, Sector - Albania, Bosnia and Herzegovina, Serbia and Kosovo; C-2 Unit for Serbia.



these institutions would continue to act in the same way during the upcoming negotiations about the process of Serbia's accession to the EU. However, the HLC believes that it is precisely this process that offers Serbia a chance to finally face these issues in a responsible and systematic way. The HLC called on the European Commission to keep this issue in the spotlight during the accession negotiations and other related processes, such as the implementation of the Stabilization and Association Agreement. Representatives of the European Commission confirmed that the legacy of the conflict was a high priority on the European agenda in the enlargement process, and that they would insist, during the

negotiations with the government institutions of the Republic of Serbia, on resolving these issues. The position of the European Union is reinforced by Štefan Füle's statement, following his meeting with Serbian President Tomislav Nikolić, that regional cooperation and reconciliation in the region are among the priorities in the process of Serbia's EU accession negotiations.<sup>2</sup>

## Screening Report for Chapters 23 and 24 in June

Representatives of the European Commission

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2 The Internet portal Euractiv.rs, News, "File: Ključan period za odnose Srbije i EU" ("Füle: Key Period for Relations with Serbia"), accessed May 28th, 2014: <http://www.euractiv.rs/vesti/102-srbija-i-eu/7216-file.html>



announced that the Screening report for chapters 23 and 24 would be published in the June. This report contains the findings from earlier explanatory and bilateral screenings of these chapters, which analyzed Serbia's regulatory compliance with EU standards in the areas of the judiciary, fundamental rights, justice, freedom and security. The procedure stipulates, that after these screening meetings, the European Union should publish a report on the screening, which should contain findings about compliance and recommendations for further harmonization. After the publication of the report, Serbian government institutions responsible for these chapters should prepare action plans for the implementation of recommendations contained in the report. The action plans contain an overview of the activities that will be undertaken to in order to address the recommendations and be in full conformity with EU legislation, as well as a time-frame and a financial framework for the implementation of these activities.

### High-speed harmonization with EU legislation - will public consultation be the loser?

Around 40 NGOs have



demanding the withdrawal of proposals to amend legislation, which entered the parliamentary procedure on a fast-track basis, without public debate or consultation with experts. An open letter requesting that the proposed legislation be immediately withdrawn from the procedure was sent on May 25<sup>th</sup> to the National Assembly of the Republic of Serbia and other relevant government bodies.

On May 8<sup>th</sup> the Government of the Republic of Serbia adopted eight draft bills,<sup>3</sup>

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<sup>3</sup> The following laws have been put before the Assembly: Draft Law on the Amendments to the Criminal Procedure Code, Draft Law on the Amendments to the Civil Procedure Code, Draft Law on the Amendments to the Law on Enforcement, Draft Law on Enforcement of Criminal Sanctions, Draft Law on Mediation in Disputes, Draft Law on Amendments to the Law on Extra-Judicial Procedure, and

and on the same day, sent them to the National Assembly for urgent consideration. Since both domestic regulations and EU standards require that the process of adopting regulations be transparent and that it involve the public, the Ministry of Justice had been expected to open a public debate, confirming in practice the government's commitment to the principle of transparency and openness in the process of adopting laws and regulations. Specifically, in accordance with the Rules of Procedure of the Government of the Republic of Serbia,<sup>4</sup> "the

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the Draft Law on the execution of non-custodial sanctions and measures.

<sup>4</sup> The Government of the Republic of Serbia, "Government's Rules and Procedures", Službeni glasnik Republike Srbije, No. 61 July 18, 2006 – revised text from April 2, 2013, [http://www.srbija.gov.rs/vesti/dokumenti\\_sekcija.php?id=2432](http://www.srbija.gov.rs/vesti/dokumenti_sekcija.php?id=2432)

proponent is required, when preparing a law that significantly modifies certain issues or issues of special interest, to initiate a public debate.”

As far as the European standards are concerned, the Council of Europe’s Code of Good Practice for Civil Participation in the Decision-Making Process<sup>5</sup>

5 Council of Europe, “Code of Good Practice for Civil Participation in the Decision-Making Process,” 2009, also available in Serbian at: [http://www.coe.int/t/ngo/code\\_good\\_prac\\_en.asp](http://www.coe.int/t/ngo/code_good_prac_en.asp)

“defines a set of general principles, guidelines, tools and mechanisms for civil participation in the political decision-making process” which are “implemented at local, regional and national level.” The document is not binding in character, but the Council of Europe recommends to its members that it be applied. Since Serbia is a member of the Council of Europe, it is expected to respect and implement the documents adopted by this body.

At its second meeting during the first regular session in 2014, the National Assembly adopted these laws, and they were published in the Official Gazette of the Republic of Serbia, No. 55 on 23 May 2014. The requests submitted by the non-governmental organizations had not been taken into consideration, nor were domestic legislation or international standards, on the way regulations should be adopted, followed.

## [★] Education for reconciliation

*Marijana Toma, Deputy Executive Director, Humanitarian Law Center*

Every society seeking to overcome a difficult and violent past which has been marked by crimes, undertakes measures to initiate and pursue a successful reconciliation process. Such measures include the establishment of official truth commissions, prosecution of those responsible for the crimes, provision of material and symbolic reparations to victims, for the suffering inflicted upon them, reforming institutions and the establishment of the rule of law, in order to guarantee that violations and wrongdoings will not recur.

The introduction of education programs about past crimes, to the process of transitional justice has rarely been a



matter of priority for the societies in transition, as many of them have had to



address more urgent problems, such as the prosecution of those responsible for most serious crimes, and provision of adequate compensation to victims for the suffering they experienced. However, the need to build a lasting peace and to resolve, once and for all, the conflicts of the past, has made most post-war societies change this attitude over the time. Erroneous interpretations of past events, denying the victims, and misuse of the past for the purpose of denying personal accountability are just some of the weapons used in one of the most important processes taking place in post-war societies - the battle for the values of the new generation.

Before the beginning of the 21<sup>st</sup> century, in most countries that had undergone such experiences, there was a fear in society and also in educational institutions, of introducing new or revising existing teaching programs and curricula to encompass facts about crimes and abuses from the recent past (in the history curricula in particular), mostly because claims were difficult to verify, there was a lack of historical distance, with living narratives of the past which influenced views of the conflict, and the fear that a new cycle of violence might break out, especially among divided communities. However, the role of teaching about, and learning the facts about, the recent past is being increasingly recognised not only as a precondition for building a peaceful and safe democratic future following a period of violence, but also as one of the most important mechanisms that a country has to put in place, to attain sustainable reconciliation between formerly warring communities or groups.

Yet few post-war countries have approached this question in a serious and studious way. Germany struggled for decades to come up with a way to present the Holocaust in history textbooks. The efforts of the occupying authorities,

who introduced new history teaching programs, and the demands from the newly-awakened 'second post-WWII generation' failed to bear fruit. Only with the appearance of the third post-war generation, and following clear messages sent by the political elite about Germany's responsibility for the horrors of WWII, did it become possible for the Holocaust to enter the public sphere, and the education system. At the time of the introduction of democracy in post-apartheid South Africa, there was a lively debate about whether the history of the country, marked by centuries-long racial divisions, should be taught at all in schools, and to what extent such teaching could be productive in a situation where democracy, based on commonality, the building of a 'rainbow nation' and mutual tolerance, was still nascent. The opinion of those who pushed for the introduction of education about the most traumatic period of South Africa's history eventually prevailed – the opinion that learning about crimes and human rights violations should first of all prevent manipulation and relativization of crimes, while contributing to non-recurrence. However, in the majority of post-war countries, even those where the introduction of changes or new approaches to the teaching of history have been recommended by official transitional justice mechanisms, such as truth commissions, such important changes to the educational system have never been implemented.

Since, as has been made clear by the EU, reconciliation in the region and dealing with the grave legacy from the past, are among the prerequisites for Serbia's accession to the EU, it is important to discuss the role of education about the crimes committed in the recent past, in the context of the EU accession process. Although each EU member state is responsible for its own education system and there is no common EU education

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policy concerning the role of education in societies that are exiting conflict or are in transition from authoritarian to democratic rule, there are European standards for designing teaching curricula, to which EU member states and other European institutions, such as the Council of Europe (CoE), adhere. In its Recommendation Rec(2001) 15, the CoE's Committee of Ministers, governed by the opinion that a better understanding of twentieth-century European history can contribute to conflict prevention and reconciliation, addressed, in particular, the role of history teaching in Europe, in the twenty-first century. The CoE recommendations state that history teaching in a democratic Europe of the twenty-first century should be 'a decisive factor in reconciliation, understanding and mutual trust between peoples' and also 'an instrument for the prevention of crimes against humanity'. Furthermore, history teaching must not be an instrument of ideological manipulation, or used for the promotion of intolerant and ultra-nationalistic, xenophobic, racist or anti-semitic ideas. History taught in schools cannot be based on 'distortion of the past for the purposes of propaganda', or on 'an excessively nationalistic version of the past', 'abuse of the historical record', 'denial of historical fact' or 'omission of historical fact'.

In post-war Serbia, the introduction of new teaching programs and the revision of existing programs to include facts about Serbia's recent violent past is not a priority issue for the government. On the contrary, the content of history textbooks dealing with the recent past and wars of the 1990, which have been in use in Serbian schools since 2000, is highly questionable and ethnically biased. As a rule, the blame for war crimes is laid on the opposing side in the conflicts, and Serbia's own role in the crimes is clearly glossed over. Selective presentation of facts about the crimes committed,

omission of those facts which refute the Serbian version of the wars in the 1990s are evident, and the authors resort to presenting false facts, in order to justify Serbian policy during the wars.

If Serbia is sincere in its efforts to become an EU member, it must initiate a thorough and comprehensive debate about revising the content of textbooks used in academic subjects that deal with the country's recent past. It is particularly important for Serbia to confront new generations, in a sensitive way, with the nation's violent past of the 1990s, with a view to pursuing reconciliation with neighbouring countries and building a European future. Education about past crimes can play an important role in the democratization of society and the strengthening of democratic culture, by fostering critical thinking, building tolerance toward others and promoting understanding of others among younger generations, the future advocates of Serbian EU membership. The integration of themes from our recent past into teaching programs in educational institutions, could help those institutions to regain their status as the key place where the new generation get answers to their questions regarding the recent past, which burden this society, and as a place where they can obtain those answers in a responsible and educationally appropriate way, instead of giving an opportunity to others, who may often approach this matter in a non-pedagogical manner and with ulterior motives.

Lastly, education about the recent past can also contribute to changing young people's role in the reconciliation and European integration processes. Instead of being at the very end of these processes, either as passive observers of those who make decisions, or as active opponents, abused by nationalist elites, who are hostile towards Serbia's European future, they can become active promoters of reconciliation with our



neighbours and of Serbia's European future. In order to build a stable path for Serbia's EU accession, it is necessary to articulate more carefully, the voice that is coming from Serbian classrooms, while

demonstrating a better understanding of the experiences, needs, fears and hopes of young generations as they prepare for a European future, in the shadow of the Balkans' violent past.

## [ War crimes trials ] – overview

### The Lovas case

Ljuban Devetak and another 13 persons are being retried for a war crime against the civilian population. An indictment brought by the Office of the War Crimes Prosecutor (OWCP) alleges that the accused, at the time members of either the Yugoslav People's Army, the 'Dušan Silni' (Dušan the Great) paramilitary unit or local authority forces, killed 41 Croatian civilians in Lovas, Croatia, in October and November 1991.



*Memorial to the civilians murdered in Lovas*

The proceedings against the accused Ljuban Devetak were terminated on May 12<sup>th</sup>, 2014. The indictment was dismissed because the defendant was deemed to be permanently disabled and unable to follow the course of the criminal proceedings against him, due to illness. With regard to the other defendants in this case, the preliminary hearing was postponed because two of the defendants were unable to come to the court, due to the recent floods.

### The Beli Manastir case

Zoran Vukšić, Slobodan Strigić and Branko Hrnjak, former members of the Beli Manastir police department, are being retried for a war crime against the civilian population. An OWCP indictment charges them with taking part in the murder of four ethnic Croats near Beli Manastir (Croatia) on 17th October 1991.



*The Higher Court in Belgrade, War Crimes Chamber*

Due to the absence of members of the Trial Panel, the trial previously scheduled for May 13<sup>th</sup>, was postponed until June 30<sup>th</sup>, 2014.

## The Bosanski Petrovac Case

The retrial of Nedjeljko Sovilj and Rajko Vekic for war crimes against the civilian population is ongoing. The indictment issued by the War Crimes Prosecutor charges them with the murder of a Bosniak civilian, on December 21st, 1992, in the Osoje woods, located between Jazbine and Bjelaj, in the county of Bosanski Petrovac. The indictment alleges that at the time, Sovilj and Vekic, were members of the Army of Republika Srpska.



*Courtroom in the Higher Court in Belgrade*

## The Prizren case

A retrial held at the Higher Court in Belgrade in June 2013, found Marko Kashnjeti guilty of war crimes against the civilian population, and sentenced him to two years in prison. The Trial Panel said that Kashnjeti was guilty of the following: on June 14, 1999, in Prizren, having joined the Kosovo Liberation Army, and armed with an automatic rifle, Kashnjeti stopped a vehicle with two Serbian civilians in it, searched them, took their IDs, struck one of them with a rifle butt to the head, tied them, and then locked them up in the yard of a nearby house. A few hours later he took them to the outskirts of Prizren and ordered them to go to Serbia.



*Appeal Court, Belgrade*

The defense appealed the decision. Deciding on the appeal, the Court of Appeals in Belgrade ordered a new trial. The court session scheduled for May 19<sup>th</sup> 2014 was not held, because the expert witness failed to show up.




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