

# 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.

5/2014

## [★] RECOM in a time of European integration

*Maja Mičić, Director, Youth Initiative for Human Rights in Serbia*

**A**lmost two decades after the end of the wars on the territory of the former Yugoslavia, Serbia is carving its European path, politically and on the ground, but the issue of dealing with the past remains an occasional and unwanted intrusion into our everyday lives, which hangs heavy with financial and personal misery. Transitional justice is a notion, misunderstood and little-known by young people in the formal education system, and by representatives of state institutions. Empathy and understanding are still closely reserved for those of one's own 'identity', national, religious or linguistic.



In recent years, the process of dealing with the past has been watched exclu-



sively through the prism of the International Criminal Tribunal for the former Yugoslavia (ICTY), extraditions of war crimes indictees, and the conditions set by the International Community. Other mechanisms of transitional justice have remained outside the grasp of either the public or the political establishment. An extremely dangerous narrative has been created, which presents dealing with the past as something that Serbia has been tarred with, an obstacle on the road to prosperity, the result of a world conspiracy aimed at holding back Serbia's development. It is rare to see steps directed at the deconstruction of such a narrative and the presentation of dealing with the past as something that is not just an 'imported product from the West', but a human obligation for both perpetrators and wider society.

By presenting transitional justice, criminal responsibility, justice and providing satisfaction for victims, merely as notions related to the Scheveningen detention unit, a construction has been built, according to which our obligation to deal with the past ends with the end of the work of ICTY. The narrative runs that it has lasted long enough, there have been enough indictments and convictions delivered, national interest has been sacrificed enough, justice for victims has been delivered such that, the image of Serbia as a reconstructed, righteous entity in the Western Balkans, has been strengthened.

The process of the European integration has triggered an almost competitive enthusiasm in showing and proving the extraordinary progress and changes to the system in the country that we are living in. Unfortunately, apart from the bureaucratic and formal framework that is being masked and decorated, the will

to honestly and seriously change the other, most important aspect of the system - the values - is questionable.

Given this social and political reality, it is more than clear that following on from one mechanism of transitional justice, the ICTY, other mechanisms must follow. Beside the accession to the European Union, Serbia, along with the other countries in the Western Balkans, will have another historic task to accomplish - the establishment of RECOM - an even more important task for the development of civilization and political maturity of our society.

The Initiative for RECOM, which first brought together conscious and motivated citizens in 2006, is now a body representing some 2,000 human rights organizations, associations and individuals, who are committed to the idea of establishing the Regional Commission for Establishing the Facts about War Crimes and other Gross Violations of Human Rights Committed on the Territory of the Former Yugoslavia. Following a detailed consultation process about the objectives, tasks, and the mandate of the Commission, which involved more than 6,000 people and more than 500 public consultation sessions throughout the region, more than 500,000 signatures were gathered, supporting the establishment of RECOM from members of the public throughout the region. This was the first such initiative established by human rights organizations to be successfully transferred to the political arena, and the Initiative for RECOM represents a model for advocacy on national and regional topics, deemed important for activists and the global academic community.

The work of the Commission will be

focused on research and fact-finding about crimes and their consequences, research into the social and political circumstances that led to the crimes, and discovering of the fates of the approximately 15,000 persons reported as missing. Ultimately, the Commission's work will replace the 'designed truths', which we deal with in the public space, will provide support for essential institutional reform and limit the space for further political manipulation, relativization, and perpetuation of the view that the Serbian people were the only victims.

At a time when nationalist and extreme rhetoric are growing both in Europe and nationally, the creation of a platform for the voice of the victims, which will be provided for by RECOM, is essential for building solidarity with victims and to do away with views which demand that empathy should be reserved for those of 'our' religious or ethnic background.

RECOM is a mirror before which we, a society as a whole, have to stand and deal with our own acts, failures to act, and relativization driven by the excuse of defending and protecting 'our own'.

RECOM is our measure of honesty in change, of our willingness to change the society of yesterday, where heads just turned away, where nothing was done, and to allow the construction of a new social and political identity, which shows responsibility towards victims,

towards the present, and also towards the future.

Without the component of transitional justice and the work on RECOM, as one of the key components of our dedication to the essential need to deal with the past, the process of European integration is in danger of being reduced to superficial and 'phony' administrative and formal changes to our external image without having a genuine impact on our society.

Finally, even though support and help from the European Union is welcome, responsibility for this aspect of transformation in our society lies with us. RECOM is not and must not be presented as, something that has been imposed on us, but as a true reflection of our personal social and human obligations. Not something designed to improve or change the image that we have of ourselves or which others have about us, but a duty that we have towards those who suffered evil in our names, because they were 'the other' different from the assumed 'WE'. Acknowledging and respecting the suffering of victims is a necessary step on the road to justice, satisfaction and reconciliation. Without fully accomplishing this step, the integration process alone will be reduced to checking off boxes on a form, missing an historical opportunity for essential social development.



# [ news ]

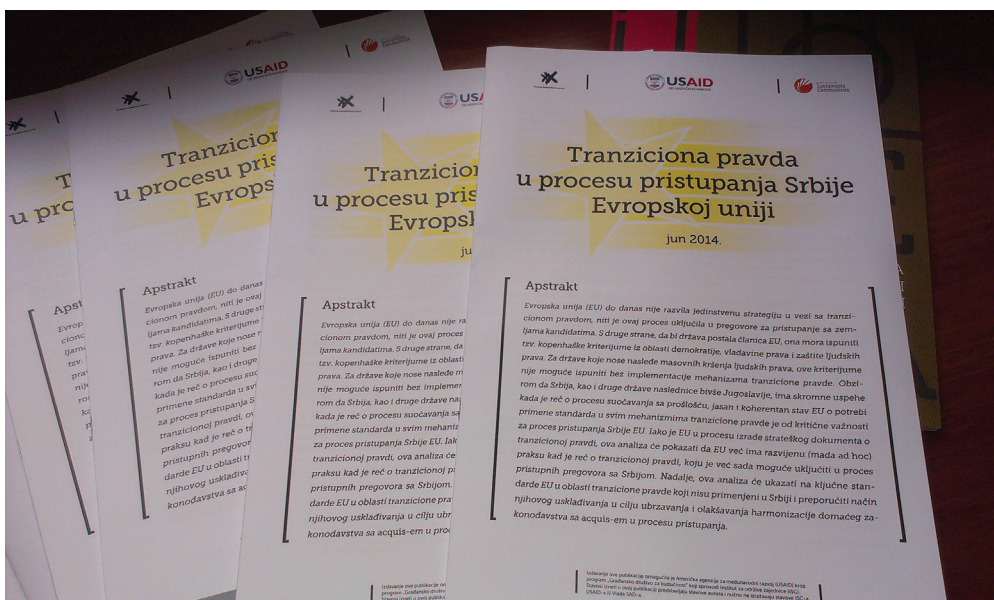
## Transitional Justice in Serbia's EU Accession Process

At the end of June 2014, the Humanitarian Law Center (HLC) published an analysis of the level of alignment of the Republic of Serbia's legislation with the European Union (EU) *acquis* in the area of transitional justice – 'Transitional Justice in Serbia's EU Accession Process'. The analysis outlines the transitional justice principles contained in various EU instruments, EU policies

on specific transitional justice mechanisms and the level of Serbia's compliance in this regard, as well as making recommendations for further harmonization of Serbia's legal system. The analysis shows that certain elements which are not part of the *acquis*, such as education and truth-telling mechanisms about the past, are an integral part of the process of dealing with the past and designed to help bring about a stable democratic system. Other than providing an overview of the level of alignment in rela-

tion to the further process of negotiations for accession to the EU, this document, which is the first of its kind in Serbia, represents a key advocacy tool both in relation to national institutions and to the EU.

The analysis was presented on 30 June 2014 at a conference in Media Centre Belgrade attended by more than 50 representatives of domestic and international institutions, embassies, non-governmental organizations, media establishments and individual



stakeholders. The analysis is available in [Serbian](#) and [English](#).

Addressing the conference, the Deputy Head of the EU Delegation to the Republic of Serbia, Mr. Oskar Benedikt, presented the EU position that the question of dealing with the past is of crucial importance in the process of European integration. Because the principles of human dignity, freedom, democracy, equality and rule of law and the respect for human rights on which the EU are founded are common to all member states as well as to states aspiring to EU membership, all these states – including Serbia – need to fully comply with them.

## Serbia's accession process to the EU is crucial for ending impunity for war crimes

In the middle of June, Amnesty International published a report entitled, '[Serbia: Ending Impunity for Crimes](#)

[under International Law](#)'.

The report analyses the shortcomings within the prosecutorial and judicial systems, identifies a number of obstacles to the thorough prosecution of crimes according to international law, and makes a recommendation to the authorities of the Republic of Serbia and the EU about the steps to be taken to address these shortcomings.

The report finds that a culture of impunity for war crimes, crimes against humanity and genocide is still prevalent in Serbia, and that the state fails to provide the vast majority of victims with truth, justice and reparation. The lack of the political will crucial for improving the legal framework and ensuring sufficient resources for efficient investigation and prosecution, poses the biggest obstacle to the ending of impunity. Amnesty International therefore calls on the Serbian authorities to demonstrate publicly their support for transitional justice processes and for the institutions which are

expected to ensure justice for victims.

At the same time, Amnesty International considers that addressing impunity for crimes under international law must be a crucial element in satisfying the accession criteria and that the EU must do all it can to make sure that Serbia deals with the culture of impunity. It stresses that 'the process of Serbia's accession to the EU is a unique opportunity to address the shortcomings in the legal system, and ensure [...] the tools and resources to investigate and prosecute these heinous crimes.'

The specific recommendations made concern improving the legal framework, investigations and prosecutions, support for and protection of witnesses, and providing the right to reparation.

## Day of Remembrance of the Srebrenica genocide

The 19th anniversary of the genocide committed on 11-19 July 1995 in

*'Their [the victim's] needs, and their rights, do not diminish with time and these cannot be sacrificed on the altars of political expediency, cost or the desire to move on.'*

From the report 'Ending impunity for crimes under international law'.





Srebrenica by the Army of Republika Srpska is being marked this year. On this occasion, as in previous years, human rights organizations from Serbia have again called on the competent authorities of the Republic of Serbia to declare a Day of Remembrance of the Srebrenica Genocide.

In the open letter addressed to the President of the Republic of Serbia, Mr. Tomislav Nikolić, the Government and the National Assembly of the Republic of Serbia recalls that as far back as 15 January 2009 the European Parliament adopted the [Resolution on Srebrenica](#).

The resolution stresses the importance of dealing

with the past for the European Integration Process of the Western Balkan states, and calls on them to affirm this and declare a Day of Remembrance of the Srebrenica Genocide in order to mark the anniversary of the event in a fitting manner.

Although this resolution is not part of the *acquis* which candidate states are required to align with, its force lies in the fact that it lays down the EU standards and declares the EU values which states aspiring to membership of the EU are expected to adopt and integrate into their value systems.

Prominent among the political reactions to

the request is that of the Serbian Progressive Party, whose head of the Parliamentary Group in the National Assembly of the Republic of Serbia said that 'remembrance of the terrible events of our past is necessary', stating further that it could be achieved 'through a Day of Remembrance of the victims or through other forms [of commemoration - editor's note]'. But he also affirmed that, in addition to making declaratory commitments, the most important thing was to pursue a policy of good relations in the region. The office of the Serbian President and the Serbian Government have made no response to the request of the non-governmental organizations.





## The 1990s Forced Mobilizations: Addressing the Rights of the Forcibly Mobilized in the process of European Integration

*Željko Stanetić, Director, Vojvodinian Civic Center*

Serbia's accession to the European Union is entering its first 'tangible' phase and in a few months we can expect the opening of the first of 35 chapters. With a certain enthusiasm, the Serbian authorities' representatives are already talking about the opening of the chapters 23 and 24, apparently unaware of how demanding these chapters will be and seemingly unaware of the state of judicial system in Serbia. The accession negotiations and the opening and successful closing of all chapters cannot guarantee in advance that the mistakes of past decades and grievances that the governments in the region harbour, will be corrected. Perhaps the best example of this is the position of civilian victims of war in Croatia, a nation soon to celebrate its first year as a full member of the European family of nations.

If we take a comprehensive look at the former Yugoslavia, we might say that the treatment of civilian victims of war by the authorities is most unsatisfactory in Serbia. Why? Because none of those who found themselves in a position of authority, have mustered enough strength to deal with the Law on Civilian Victims of War ('Official Gazette of the Republic of Serbia' No. 52/96), passed during the rule of Slobodan Milošević and which systematically excludes large groups of civilian victims of war, preventing them from exercising their fundamental rights. Although in the recent times it has seemed as though there was some



hope that this situation would change, following the Humanitarian Law Center's initiative, started in 2012 to amend the law, just a few months ago the Ombudsman's office, the Commissioner for the Protection of Equality and the Office for Human and Minority Rights, who initially supported the initiative, have withdrawn their support. The reason for this is a sad indictment on their views of the civilian victims of war – a loss of interest.

Since 2011, the organization that I manage - the Vojvodinian Civic Center - has been researching the phenomenon of forced mobilization of civilians who, during the wars, took refuge from the fighting in the areas of Croatia and Bosnia and Herzegovina, and I will focus on this group.

The exact number of those who were forcibly mobilized using psychological and physical torture, has not been



clearly established, along with other 'uncomfortable' numbers that have been hidden from the eyes of the public for years. What is certain beyond any doubt, is that there were more than 5,000 people who following years spent in the turmoil of a war zone and sometimes just a few hours after their arrival to Serbia were systematically hunted down and returned to the front lines, with the knowledge of, and under direct orders from, state officials. The thousands who were forcibly mobilized, have their rights limited by the 1996 law and stand disempowered, side by side with the families of missing persons, victims of sexual violence during the war and those who perished outside the borders of the Republic of Serbia.

The opportunity to start legal proceedings against the state was almost completely removed in 2005, even though some court cases had started earlier and were still in progress. During the research for our project 'Stolen Freedom' we found that the situation is further complicated because many of those who were forcibly mobilized during the 1990's are, to this day, unaware that the possibility of starting legal proceedings had ever existed in the past.

Besides the social rights that these people could otherwise have exercised, the opportunity for psychological and psychosocial support is maybe even more distant (while at the same time often more necessary). In fact, in addition to legal barriers, the victims of forced mobilization face certain social and psychological problems caused by the fact that they were abused by their fellow citizens and the state that they perceived as 'theirs'. The development of the Post-Traumatic Stress Disorder is a typical consequence of the torture and

abuse suffered by many of those who were forcibly mobilized.

The state of Serbia seems not have a strategy, nor any kind of organized institutional psychological support for these victims. The process of accession to the EU and the steps that Serbia must take, may to some extent, place the issue of forced mobilization on the agenda and possibly encourage state institutions to deal with the suffering of this group. A series of resolutions passed by the European Parliament over the past 15 years, have strengthened EU legislation in this field, and provide a relatively good framework in which the issue of civilian victims of war and civilian victims of torture could be addressed.

The key role to be played by stakeholders from the NGO sector and professional associations during the accession negotiations is to monitor the addressing of these issues during the EU accession process. Their previous experience in this field, and their wider knowledge and their understanding of the previous position of victims in Serbia is crucial.

Learning from the Croatian experience, by analyzing its positive and negative experiences and in consultation with Croatian institutions, organizations and experts, it seems that there can and must be a way to contribute so that these very important issues do not fall 'under the radar'. This should not be an impossible feat. Unless we use the opportunities presented by the accession process, the rights of the civilian victims of war will have to wait until such time as a more responsible political elite, insightful enough to listen to their story, comes to power. The recent history of this region has taught us that the chances of this are, unfortunately, minimal.



# [ War crimes trials ]

## – overview

### The Lovas case

Milan Devčić and another 12 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.

abusing a Bosniak civilian in the „Luka“ Camp in Brčko (B&H) as a member of the First Posavina Infantry Brigade of the Army of the Republic of Srpska, on May 10th, 1992. This case has been delegated by the Basic Court in Brčko, as a result of the cooperation between the B&H State Prosecution and the OWCP, in accordance with the Protocol on Cooperation between Serbia and B&H in the Prosecution of Suspected Perpetrators of war crimes, crimes against humanity and the crime of genocide.

The pre-trial proceedings completed, the scheduled main trial was adjourned until early September 2014, owing to the change of the presiding judge. Namely, the acting presiding judge asked to be exempted, because there are legal grounds for her not to act as a judge in this case. After her motion was granted, the case was delegated to the new presiding judge, who adjourned the main trial in order to become acquainted with the case.

### The Brčko case

The trial of Boban Krstić for a war crime against a member of a civilian population is pending. He has been charged in the indictment of the OWCP with



Memorial at the place of the former  
„Luka“ Camp

The accused denied the allegations in the indictment by presenting his case for the defence. One witness, a former prisoner of the „Luka“ Camp, also gave his statement before the court. He described the torture and the killing of camp detainees. He alleged that at the camp he was not

able to recognize the victim, whom he knew very well, before he said hello to him, because his face was so bloody and deformed due to the beating, and his eyes were completely closed up. He did not see who beat the injured party, but the injured party later on told him that it was a man known by the name of 'Pop', whose uncle was a registrar in Brčko. The trial will continue on September 15th, 2014, with the examination of the witness.

## The Trnje case

Pavle Gavrilović and Rajko Kozlina are standing trial for a war crime against the civilian population. According to the indictment filed by the OWCP, on 25th March 1999, the accused, at the time members of the JNA, killed 27 Kosovo Albanian citizens in the village of Trnje/Ternje (in the municipality of Suva Reka/Suharekë, Kosovo).

The presiding judge in the Trnje Case rendered a ruling that the injured parties, contrary to the existing practice of the War Crimes Department, cannot be represented by their chosen representatives, namely attorneys at law from Kosovo. She asked the Bar Association of Serbia to state its position on the possibility of their further representation in this case, before rendering a final decision. The victims' families, many of whom were witnesses of the crime, consider that this was a political decision and an expression of disrespect for their

rights and their wish to help the court clarify the circumstances of this serious crime. Consequently, they decided not to participate in this trial. The attorney from the Humanitarian Law Center also withdrew from this case for the same reason.

## The Čelebići Case

On November 22nd 2013 the Higher Court in Belgrade acquitted Samir Honda of charges that he committed a war crime against a civilian population, maintaining that during the proceedings the OWCP failed to prove the allegations in the indictment that the accused, in the capacity of a prison guard in the „Čelebići“ Camp (Konjic, B&H), participated in the torturing of captured civilians<sup>1</sup>.



A building in "Čelebići" Camp

On June 9th, 2014, the Court of Appeals in Belgrade confirmed the acquittal of Samir Honda.

<sup>1</sup> Humanitarian Law Center, "Acquittal in Case Against Samir Hondo", press release, last modified December 9th 2013, <http://www.hlc-rdc.org/?p=25772&lang=de>

# The Skočići Case

On February 22nd, 2014, the Higher Court in Belgrade convicted seven members of Simo's Chetnicks, the paramilitary unit, to imprisonment because they committed war crimes against a civilian population in 1992 against Roma citizens of the village of Skočići (B&H). They tortured, robbed, and subsequently killed 28 Roma, the oldest of whom was 71 and the youngest only two years old; while three injured parties, who were 13, 15 and 19 years old at the time, were kept prisoner by them for a number of months, during which time they were beaten, raped and sexually humiliated.<sup>2</sup>

Deciding on appeals filed by the accused, the Court of Appeals quashed this judgment on May 14th, 2014, and sent the case back for a new trial. In the reasons given for this judgment, the Court of Appeals expressed some racist positions, which were utterly inappropriate for a court and extremely offensive to the victims.<sup>3</sup>

The trials in the *Beli Manastir, Tenja II, Trnje* and *Prizren* cases, which were scheduled for the period June 18th - July 2nd, 2014, were not held on account of the strike organized by the Bar Association of Belgrade.

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2 Humanitarian Law Center, "Statement Regarding the Conviction in Skočić Case", press release, last modified February 26th 2013, <http://www.hlc-rdc.org/?p=22549&lang=de>

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3 Humanitarian Law Center, "Racist Positions of the Court of Appeals in the Judgment in the Skočić Case", press release, last modified July 14th 2014, <http://www.hlc-rdc.org/?p=27178&lang=de>


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