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# Serbia 2015 Progress Report – The Humanitarian Law Center Contribution

## 1. Prosecution of War Crimes

War crimes trials before the courts in Serbia **still lack adequate political support** from the institutions of the Republic of Serbia. This is indicated by the fact that, even after an entire decade of war crimes prosecution by national courts, Serbia still has no strategy for war crimes prosecution. Other areas are regulated by over 200 strategies. At the same time, a strategy for the prosecution of war crimes trials is in place in Croatia and Bosnia and Herzegovina, with which Serbia shares the experience of armed conflict. The Draft Action Plan for Chapter 23 provides for the adoption of a strategy of the Office of the War Crimes Prosecutor (OWCP), although the prosecutorial strategy is far less comprehensive than the national strategy, because it provides only for measures under the jurisdiction of the prosecution and excludes a number of other important measures and authorities.

In the second half of 2014, instead of receiving political support, institutions specialized in the prosecution of war crimes – primarily the OWCP – were subjected to pressures and threats from the highest ranking state representatives. The most glaring example was the message the President of the Republic of Serbia, Tomislav Nikolic, sent to the Chief Prosecutor for War Crimes of the Republic of Serbia, to “watch what [he] is digging up in Serbia” after the publication of the HLC’s Rudnica Dossier and the OWCP’s announcement that the allegations contained therein would be investigated.

The atmosphere in which the pressures and threats prevail and the absence of public support are reflected in the inefficiency in war crimes prosecution, as evidenced by the fact that OWCP still **shrinks from prosecuting high-ranking members of the military and the police, from applying the institute of command responsibility, and from prosecuting crimes against humanity**. The only progress in this regard has been the launching of an investigation into the former Commander of the 125<sup>th</sup> Motorized Brigade of the Yugoslav Army (VJ), General Dragan Zivanovic. However, no indictment against him has yet been issued.

**The trend of indicting a small number of persons** continued into 2014, when only seven charges were made (of which one indictment had been filed in 2013, but had been subsequently amended in 2014) against a total of seven persons. All have been charges against direct perpetrators who were members with no rank in their armed formations, and all tackle only less complex cases, with only one indictee per case and a total of 33 victims. From September 2014 to April 2015, the OWCP issued only one indictment, against five persons in the Strpci Case, but its confirmation is pending.

The inefficiency of the OWCP is partly the result of the fact that this institution has neither a work plan nor criteria by which to prioritize the cases within the large group pending. All this leads to wastage of resources on smaller cases, while the large-scale cases with larger numbers of victims remain unprosecuted.





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Chapter 23 of the Screening Report recommends that, in order to eliminate the perception of impunity, Serbia *should ensure that all allegations are properly investigated and prosecuted, and that all suspects have equal treatment – including in those cases of senior officials' alleged involvement in war crimes.*

### 1.1. Witness Protection

The witness protection system is not yet fully functional. This is particularly the case with the protection of former members of the military and the police who want to testify in war crimes and enter the Witness Protection Programme (WPP). This programme was established by the Law on the Protection of Participants in Criminal Proceedings ("Official Gazette of the Republic of Serbia," No. 85/2005), and its implementation is the responsibility of the Protection Unit, which operates under Serbia's Ministry of the Interior (MUP). Several participants in the WPP have pointed to the unprofessional and unlawful conduct of the members of the Protection Unit, but these allegations have never been adequately investigated. The reason is that the mechanisms of control of the implementation of the WPP are either inadequate or do not exist. Therefore, it is necessary to amend the Law on the Protection of Participants in Criminal Proceedings, in order to: a) establish an effective and independent mechanism for the investigation of complaints by persons under protection concerning the reasons for their termination of the programme; b) specify the duties and establish control mechanisms for the fulfillment of the obligations by the Protection Unit toward persons in the WPP in terms of social, economic, legal and psychological assistance; c) strengthen the mechanism whereby competent committees of the National Assembly monitor the work of the commission authorised to implement the WPP, by introducing a mandatory review and evaluation of its implementation. In addition, it is necessary to adopt bylaws that will govern all issues necessary for a complete change of identity of persons in the WPP designed to protect participants in criminal proceedings.

A particularly vulnerable group of witnesses is composed of the victims of sexual abuse. As there are no special measures to protect victims of sexual violence, they are subject to the usual procedural witness protection measures. Owing to the nature of these crimes and the consequences they have for victims, Serbia should adopt special measures to protect victims of sexual abuse, including i) the prohibition on accepting the earlier sexual conduct of the victim as evidence in the proceedings; ii) a rule of evidence whereby corroboration by other evidence is not necessary for proving rape; and iii) the rule that the consent of the victim is not grounds for a defendant's exemption from liability, if the victim feared for herself or a person close to her.

Chapter 23 of the Screening Report recommends that Serbian institutions should *ensure the confidentiality of the investigation, including witness and informant testimony, step up the security of witnesses and informants, and improve witness and informants support services.* Under the heading of procedural rights, the Report recommends *aligning with Directive 2012/29/EU on minimum standards on the rights, support and protection of victims of crime.*





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## 1.2. Regional cooperation

While regional cooperation in the realm of war crimes prosecution has been established between the OWCP and the prosecutors' offices in Croatia, Montenegro and Bosnia and Herzegovina, according to the OWCP, they still do not have direct contact with the representatives of the Kosovo judiciary, and therefore it gathers all its evidence and information on the crimes committed in Kosovo through the EULEX mission. The cooperation with EULEX mission should be improved and strengthened, but in addition, cooperation with the Kosovo Public Prosecutor's Office (PPO) should be established. Direct contact between the Serbian and Kosovo prosecutors' offices is crucial for prosecuting the crimes committed during and in the context of the war in Kosovo 1998-1999, and for searching for missing persons and the overall normalisation of relations between the two countries. The OWCP should initiate - and the Ministry of Justice should support this initiative - the signing of a formal agreement with the Kosovo PPO concerning the transfer of proceedings against foreign nationals to their countries' institutions, informing the prosecutors in the region of all the cases they are working on that involve citizens of other countries, and the transfer of evidence in those cases. This is in line with the EU acquis, and some recommendations are already included in the Chapter 24 Screening Report: *Serbia will need to remain fully committed to the continued normalisation of relations with Kosovo and implementation of all agreements reached in the dialogue, including by cooperating with EULEX as appropriate. This applies in particular to the steps towards judicial cooperation in criminal matters. Serbia will need to establish full cooperation in criminal matters with Kosovo as per IBM agreement. The same level of judicial cooperation in criminal matters needs to be achieved with Kosovo as with other neighbours.*

## 1.3. War crimes trials before Serbian courts

In 2014, courts in Serbia did not issue any first-instance judgments, while the Court of Appeals issued second-instance judgments in four cases. From September 2014 to April 2015, the Higher Court in Belgrade reached a verdict in the first instance, while the Court of Appeals in Belgrade reached one decision - whereby it overturned the first instance judgment in the *Cuska* Case and remanded the case for a retrial.

Because the Bar Association of Serbia was out of commission from September 17, 2014 to January 26, 2015, war crimes trials were not conducted either. This has greatly slowed down the prosecution of war crimes in Serbia.

By the decision of the Court President before the expiry of the mandate, Judge Snezana Nikolic Garotic was transferred in January 2015 from the Department for War Crimes to the Criminal Division of the Higher Court in Belgrade. At the time of her transfer she was working on six war crimes cases. Because of this transfer decision, Judge Garotic sent a complaint to the High Judicial Council and filed a claim to the Administrative Court. Such a sudden and unjustified decision is an example of bad practice. Judges with many years of experience in dealing with war crimes cases are removed from war crimes cases, which jeopardizes the quality of the trials. This is not the first such instance, and it is necessary to provide a mechanism by which judges who have acquired extensive experience in war crimes cases remain in this area, so that their knowledge and experience can contribute to improving the quality of war crimes trials in Serbia.





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The Chapter 23 Screening Report recommends that Serbia *should ensure that sentences are proportionate to the gravity of the offense in question*. In the given period, there were no decisions contrary to this recommendation.

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**Most of these problems pertaining to war crimes trials can be overcome by adopting and implementing the national strategy for the prosecution of war crimes in Serbia**, which would, among other things, bind the OWCP to adopting a prosecutorial strategy for dealing with unresolved war crimes cases. The establishment of a comprehensive strategic framework, with clear objectives, priorities and measures, and the resources necessary for a comprehensive prosecution of war crimes, is a prerequisite for terminating impunity and for establishing justice for crimes committed during the armed conflict in the former Yugoslavia.

## 2. Protecting the rights of victims of war crimes

Protection of the rights of victims of war crimes and their families has not improved since 2014. The Law on the Rights of Civilian Invalids of War ("Official Gazette of the Republic of Serbia", no. 52/96) is still in force. The Act denies the status of civilian victims of war to victims of sexual violence, victims killed on the territory of other states, victims killed by the Serbian army and police, victims who, as a consequence of war, suffer from psychological or physical impairments (if they are less than 50% of physical disability), and family members of the missing persons. The few victims who by this Act have the right to the status of civilian victims of war are forced to prove this status through a complicated procedure, which exposes them to re-traumatization. During 2014, and in the period from September 2014 to April 2015, not a single victim represented by the HLC achieved the status of a civilian victim of war in accordance with this Act. Six requests were rejected (four in the period from September 2014 to April 2015). Appropriate appeals or constitutional complaints were filed in those proceedings.

In December 2014, the Ministry of Labour, Employment, Social and Veterans' Affairs initiated the adoption of the Law on the Rights of War Veterans, Disabled War Veterans, Civilian Invalids of War and their Family Members. The draft of the law retains the discriminatory provisions of the Law on the Rights of Civilian Invalids of War, and like that law, violates the constitutional principle of equal protection before the law, whilst ignoring international standards for the protection of victims of human rights violations, including the standards of the European Union. Due to the specific nature of this category of victims, the HLC holds that the status of civilian war victims and their families, as well as their rights and the procedure for exercising those rights, should be regulated by a special law. Furthermore, the drafting of the new law should call on the skills of a broader range of experts, particularly in the field concerning civilian victims of war.

The Progress Report on Serbia in 2014 notes that *"only a few victims of war crimes have access to effective compensation under the current legal framework."*





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The UN Committee on Enforced Disappearances stated in its [concluding observations](#) from February 2015 that *the administrative compensation system established for victims of past wars is not available to victims of enforced disappearance*. The Committee recommends that Serbia establish a comprehensive and gender-sensitive system of reparations, and ensure that all persons who have suffered injuries due to enforced disappearance, including family members, exercise their right to reparation. In addition, during the preparation of the reports on the state of human rights in Serbia, the Council of Europe Commissioner for Human Rights, Nils Muižnieks, [stressed](#) that *inadequate reparations to all victims of war crimes are a serious issue which Serbia has not resolved effectively*. At the time of writing, the Report by the Commissioner on the situation of human rights in Serbia is still in preparation.

## 2.1. Compensation Lawsuits

In 2014, only three court proceedings for compensation of the damage were completed. In one of those three cases, the European Court of Human Rights rejected the petition as unacceptable, while in the other two proceedings, compensation was awarded to three victims. Before the courts in Serbia, the HLC currently conducts 43 procedures for material and non-material damages on behalf of victims. These procedures are in various stages. All procedures without exception last a long time, and have been characterized by the efforts of the courts to protect the state and reduce its liability for damages; tight statutes of limitations, regardless of the fact that in all cases the damages were the consequence of serious crimes; and distrust of the victims and their witnesses. In rare cases where compensations have been awarded, their amount had been so low that it makes the whole purpose of reparations meaningless.

The EC report on the progress of Serbia in 2014 points to these problems, stating that "*the system of awarding compensation to victims of crime through criminal or civil proceedings is not functional.*"

It is necessary to standardize the practice of the courts, in order to avoid conflicting decisions in identical cases, as well as the repetition of procedures. Procedures should be accelerated, and the statutes of limitation prescribed by law must be interpreted in accordance with international standards in the field of reparations for civilian victims, and in keeping with the European Court of Human Rights. The amounts of compensation should reflect the gravity of the injuries inflicted.

## 3. Institutional Reform

Serbia has yet to take decisive steps towards building a system that prevents the recurrence of crimes. Individuals involved in war crimes and human rights violations in connection with armed conflicts have not been removed from institutions, nor are such individuals denied access to military, police and civil service. Despite the fact that the Law on Lustration was repealed in June 2013 – after failing to be implemented in any single case – Serbia still lacks a law that would regulate this realm. Furthermore, the criteria and conditions that would prevent the employment in Serbian security and civilian institutions of those persons who participated in the armed conflicts of the 1990s have not been determined yet. The very fact that about 15% of those accused of war crimes in Serbia were actively in service to the army and police at the





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time of their indictment for war crimes amply testifies to the need for background checks of active members of both security and civilian institutions. The laws on the army and the police do not require the removal from service of a person against whom action is being taken. The absence of institutional reform enables individuals in the military, police, and civil services to use their positions to obstruct efforts for establishing accountability, finding out facts about war crimes, and disclosing the fate of missing persons or locating mass graves.

This situation is well illustrated by an event from the beginning of 2015. In January 2015, the HLC released the “Rudnica Dossier” which analyzes the evidence (ICTY evidence, testimonies of survivors and witnesses, etc.) concerning the four crimes committed in 1999 in Kosovo by the VJ and MUP of Serbia. The victims were Kosovar Albanian civilians. Their bodies were exhumed in 2013 from a mass grave in Rudnica (Serbia). All the evidence collected during the research and presented in the dossier indicates that members of the 37. Motorized Brigade who was under the command of the current Chief of the General Staff of the Serbian Army, General Ljubisa Dikovic, is responsible for these crimes. In the course of the research, the HLC was denied almost all requests for information of public importance pertaining to the operations of the 37th Motorized Brigade of the Yugoslav Army, whose commander in 1999 was Ljubisa Dikovic. In February 2015, the HLC was informed by the Ministry of Defence that Minister Bratislav Gasic had decided to declare all documentation pertaining to the 37th Motorised Brigade protected archival material that would be made available to the public in 30 years. The HLC notes that, according to the Law on Information Confidentiality, 30 years is the maximum protection to be imposed on any document, one that immediately designates the given document as a “state secret.” According to the law, this level of protection is applied only for the purpose of “preventing irreparable severe damage to the interests of the Republic of Serbia.” In February, the HLC requested from the Ministry of Defence access to this document, but received no reply. The HLC then filed a complaint with the Commissioner for Information of Public Importance.

#### 4. The Search for the Missing

Although Serbia is one of the signatories of the Declaration on the role of the state in addressing the issue of persons missing as a consequence of armed conflict and human rights abuses (issued in August 2014), it has not yet demonstrated its resolve to determine the fate of persons who are still listed as missing or to discover the locations of mass graves on its own territory. This is why it is necessary to intensify the efforts in Serbia in the search for missing persons, strengthen cooperation with the institutions responsible for the missing in Croatia, Bosnia and Herzegovina, and Kosovo, provide all available and relevant information on missing persons, and open the archives of the former Yugoslav National Army (JNA) and the Serbian MUP. In addition, Serbia still has no law on missing persons, which would regulate the legal situation of missing persons and their families in the areas of welfare, finance, property, and family rights.

Despite having had four mass graves discovered on its territory, Serbia has yet to launch its first criminal proceedings to establish the responsibility for the transfer and concealment of bodies found in the mass graves in Batajnica, Rudnica, Lake Perucac, and Petrovo Selo.





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The law on the military and military courts which was in force during the 1990s, obliged the special bodies of the military to document all cases of crimes and finding of bodies. There is evidence that the Army did act in accordance with that law. However, the state has not been willing to open the archives of its relevant institutions in order to locate the victims' mortal remains. Moreover, as previously stated, the state continues to hide this documentation, not only from the public but even from the OWCP.

As regards the mass grave in Rudnica, it should be noted that the information on its location was obtained by EULEX, rather than by the authorities of the Republic of Serbia. This is the first mass grave discovered in Serbia that is not under the jurisdiction of the ICTY investigators, due to the termination of the court's mandate. The investigation will therefore be carried out by the OWCP.

The already mentioned [concluding observations](#) of the UN Committee on Enforced Disappearances, issued in February 2015, recommend that Serbia *conduct a thorough and impartial investigation of all cases of enforced disappearance in the context of the previous armed conflicts, and adopt the necessary legislative measures with a view to set up a procedure to obtain a declaration of absence as a result of enforced disappearance, in order to adequately address the legal situation of disappeared persons and their relatives in areas such as social welfare, financial matters, family law and property rights.*

## 5. The Initiative for RECOM

In November 2014, the Delegates of the Presidents of Montenegro, Croatia, Kosovo, Serbia and two members of the Presidency of Bosnia and Herzegovina submitted to the Coalition for RECOM their proposed amendments to the Draft Statute for RECOM. At the general meeting held on November 14, 2014 in Belgrade, the Coalition for RECOM supported these proposed amendments and called on the institutions in their countries to decide on the establishment of RECOM.

Considering Serbia's crucial role during the wars of the 90's, as well as its publicly declared standpoints that it is "the pillar of stability in the Western Balkans"<sup>1</sup> and that it is "committed to preserving peace in the Western Balkans",<sup>2</sup> Serbia should effectuate these standpoints by taking the lead in ratifying the RECOM Statute.

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The European Parliament Resolution on Serbia's progress in 2014 recommends upgrading all of the above-listed mechanisms and processes of transitional justice as a key to ending impunity, ensuring justice for victims, establishing the truth about the armed conflicts of the 1990s, and promoting reconciliation and good neighbourly relations in the Western Balkans.

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<sup>1</sup> Tanjug, "Vucic: Serbia Pillar of Stability in the Western Balkans", December 4<sup>th</sup> 2014, available at <http://www.tanjug.rs/news/156198/vucic--serbia-pillar-of-stability-in-western-balkans.htm>

<sup>2</sup> Government of the Republic of Serbia, "Serbia Committed to Preserving Peace in the Western Balkans", January 13<sup>th</sup> 2015, available at <http://www.srbija.gov.rs/vesti/vest.php?id=106268>

