

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.

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To help shape the European future of the region with an education based on the facts

An interview with Mr. Jean-Daniel Ruch, Ambassador of Switzerland to Serbia and to Montenegro

Regional stability and reconciliation in the Western Balkans are one of the elements of Swiss foreign policy. Not only are they important for bilateral relations with Serbia, but they also represented one of the priorities during the Swiss OSCE chairmanship in 2014. Why does Switzerland consider regional stability and reconciliation in the Western Balkans important?

Because of the proximity between the Western Balkans



H.E. Mr. Jean-Daniel Ruch



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and Switzerland. This proximity is not only geographical, it is also emotional. Around 5% of the resident Swiss population originates from this region. The most important groups, with approximately equal numbers, are Serbs and Albanians. Let us be honest: Switzerland has been quite generous in granting asylum to victims of the wars in the former Yugoslavia during the nineties. This has not been easy. But it has definitely created a national interest for Switzerland to promote stability and reconciliation in this region.

Following the example of Switzerland, Serbia has also included regional cooperation and reconciliation among its priorities during its 2015 OSCE chairmanship, but during the first six months of its chairmanship it has not undertaken a single activity aimed at the implementation of this priority. How do you evaluate the gap between what was proclaimed and what has been implemented?

That is not true. The OSCE chairmanship, also through its Special Representative for the Western Balkans, Swiss Ambassador Gérard Stoudmann, has been involved in several issues. In particular, it has called on several occasions for the establishment of a sustainable political dialogue in Macedonia in order to prevent the situation from deteriorating. As we know, this dialogue has now produced tangible results.

Switzerland has been initiating and

supporting very actively initiatives aimed at dealing with the difficult legacy of the armed conflicts in the former Yugoslavia. What does Switzerland believe is the proper way of dealing with the past and what should this process include?

It seems to me there are three main dimensions to this work. The first one is justice. The ICTY's mandate has been to try the most senior persons responsible for the worst crimes. Domestic Courts are expected to complete this judicial task by trying those mid- and lower-level war criminals who could not be tried in The Hague. I cannot say I am fully satisfied with the path these processes have taken. It seems to me that they are producing more divisions and tensions than reconciliation. Maybe it would be the moment for Serbia, Bosnia and Herzegovina and Croatia to consider a coordinated regional completion strategy based on transparency and genuine cooperation between prosecutors, to be achieved within a given timeframe. Secret indictments and arrest warrants should belong to the past. Secondly, the new generation must be educated about what happened. It is obscene that a person considered as a war criminal in one place is a national hero in another. RECOM is a useful initiative in this regard. Thirdly, moral reparation is asked for. All the countries of this region have a lot to learn from the experience of the French-German reconciliation. There are symbolic gestures which have a profound impact

on the collective psyche of the nations. Remember for instance the incredible picture of Kohl and Mitterrand hand in hand in Douaumont, on the site of some of the most horrendous butchery of World War I. This has sealed the French-German reconciliation forever.



Mitterrand and Kohl at a commemoration service in Verdun in 1984.

In this regard, how do you assess the situation in Serbia?

Serbia has delivered what the ICTY asked for. This was not easy, and Serbia needs to be commended for that. Serbian leaders have also in several instances apologized for the crimes committed in the name of the Serbian people. This is not insignificant - quite the opposite. When it comes to domestic trials, Serbia does not score badly in a regional comparison. The main weakness is the reluctance of the judicial system to investigate the chain of command, and the unwillingness of the security structures to provide information. It is striking that the bodies of the

Kosovo Albanians found in Rudnica last year seem to have arrived there with no human intervention: nobody killed them, nobody collected the bodies, nobody dug the mass grave, nobody drove the trucks carrying the bodies. And, of course, nobody gave the orders.... It is certainly not healthy for the future of Serbia if this form of omertà continues to dominate. Probably the most disappointing area is education. The prejudices and lies of the Milosevic era continue to be transmitted to most of the younger generation. This happens not only in Serbia, of course; but this trend is sad and worrying.

Regional cooperation and reconciliation quite clearly represent an important part of Serbia's EU integration process. In your opinion, how might, and how should, Serbia's EU accession process influence the strengthening of regional stability and dealing with the past, which would lead towards an honest reconciliation between the post-Yugoslav states?

If the EU could push the countries of the former Yugoslavia to agree on common textbooks addressing the issue of war crimes committed by all sides, that really could produce a breakthrough. We have to think of the next generation. You cannot build a stable and prosperous Western Balkans on mistrust, lies and denial. Prosecuting war crimes is about the past, and it is important. But the future is more important than the past. Therefore, the European future of the region



should be conditioned by a genuine education of the young generation based on the facts.

As a former Advisor to the Prosecutor of the International Criminal Tribunal for the Former Yugoslavia, but also in your present capacity as the Swiss Ambassador to Serbia, how do you evaluate the contribution of the ICTY to the establishment of facts about the crimes committed and the reconciliation between different communities in the region?

Thanks precisely to the ICTY, nobody can in good faith deny the facts. They are now known, and can be known by everybody. In particular, state institutions like those in charge of writing schoolbooks or designing curricula are to be expected to rely on the

facts as established by the ICTY. The ICTY's record on reconciliation has been rather divisive so far, but I nurture the hope that, over the long term, its central contribution to reconciliation will be recognized by all. Not only because it established the facts, but also because, for the most serious crimes, it also established the responsibilities and punished the criminals. As a former advisor to the Prosecutor, I cannot of course but feel frustrated that, for various reasons, those most responsible for the crimes committed in the course of "Oluja" (Operation Storm) and for the crimes committed by the KLA have not been sentenced. I preserve the hope that this is not a definite „not“, but rather a „not yet“.

[news]

The Problem of Missing Persons Should Be Included in the Brussels Negotiations

The associations of family members of persons who disappeared during

and after the war in Kosovo, have asked the European Union on the occasion of the International Day of the Disappeared, to include the problem of the resolution of the fate of the missing within the negotiations on the normalization

of relations between Serbia and Kosovo.

According to the International Committee of the Red Cross, there are still 1,670 persons in Kosovo who can be considered as disappeared. According to the assessment of



Victims Family Members: "No time for waiting anymore" (photo taken from: www.presscentar.rs)



family members of Albanian and Serbian victims, the search for the missing in Kosovo has been stalled in recent years; and it has been hindered by the continuing lack of political will within Serbia and Kosovo to have this problem solved through mutual efforts. For this reason, the family members associations are seeking the European Union's support and the inclusion of this matter into the agenda for the negotiations in Brussels.

The families have made a joint request, demanding that the Kosovo and Serbian institutions also resolve a number of wrong identifications, verify all of the locations suspected of concealing the mortal remains of victims, initiate impartial investigations and prosecute the individuals responsible for the killing and hiding of victims' bodies in secret locations in Serbia and Kosovo.

Reactions in Kosovo and in Serbia

The official stance of both the Kosovo and Serbian institutions, as presented on the occasion marking the International Day of the Missing, is that the question of missing persons is among their priorities. However, there is some differences in the approach taken towards the solution of this issue. The Prime Minister of Kosovo, Isa Mustafa, shares with the associations the idea of eliciting additional pressure from the EU, stating that he has already discussed this topic with representatives of the European Commission. The President of the Serbian Commission for Missing Persons, Veljko Odalović, holds that the issue of missing persons must be resolved „in Belgrade and Priština“, even though „he does not mind having this issue included in the agenda of the Brussels meetings“.

Members of the European Parliament Visiting Serbia

Members of the European Parliamentary Committee on Foreign Affairs and its Subcommittee on Human Rights visited Serbia in late September. On this occasion, they met with representatives of the Serbian Government and the National Assembly, independent institutions, civil society organizations, the media, and international organizations operating in Serbia.

The meeting with the civil society organizations was held on September 23rd, 2015, with representatives of 11 non-governmental organizations participating. The Executive Director of the Humanitarian Law Center (HLC), Sandra Orlović, made a presentation regarding the problems which Serbia faces

in establishing criminal justice for the crimes committed, the protection of victims of war crimes, the enforcement of institutional reforms and the removal of individuals responsible for crimes from institutions.

Chapter 23 Action Plan

The Republic of Serbia Ministry of Justice [announced](#) on September 25th, 2015 that the European Commission made a positive evaluation of the [Draft Action Plan for Chapter 23](#), which relates to the judiciary and fundamental rights. What comes next is its adoption by the Government of the Republic of Serbia, followed by the discussion about it before the Council of the EU. In order to have the Action Plan adopted, it is necessary to obtain the consent

of all EU member states.

For the first draft version of the Action Plan, a special chapter has been dedicated to war crimes, on the basis of the recommendations for the enhancement of war crimes trials which were contained in the European Commission's Screening Report for this chapter. The HLC has taken part in the designing of the Draft Action Plan from the very beginning of its production in August 2014, by delivering to the Ministry of Justice [62 recommendations, 52 of which have been entirely or partially accepted](#).

Thanks to the recommendations made by the HLC, the Draft Action Plan envisages the adoption of a national strategic framework for the prosecution

of war crimes, a series of measures for improving the investigation of war crimes, protection of witnesses and support for victims, the strengthening of capacities within the Office of the War Crimes Prosecutor, and continuing professional training of persons employed in the institutions specialized for the prosecution of war crimes.

The Draft Action Plan does not contain a single measure for the improvement of the rights of victims of war crimes to compensation and other types of reparations, and the Ministry of Justice has so far ignored all the efforts by the HLC to make this issue one of the measures contained in the draft version of this document.





Serbia and Kosovo: Normalisation of relations without dealing with legacies of past

Dragan Popović, Director of Policy Center and Coordinator of the Working Group for Chapter 35 of the National Convention on the European Union

The normalisation of relations between Belgrade and Priština is a kind of mantra, and probably the most repeated phrase in the process of European integration. It sounds neutral enough not to cause concern (in addition, the noticeable use of the names of capital cities instead of countries is a tool which serves precisely the purpose of not causing anxiety and uneasiness). At the same time, the European Union uses this phrase as an umbrella term for everything that the officials from Serbia and Kosovo need to do in order to further the progress of their states towards the EU. What generally tends to be a problem with European integration – focusing on the form rather than the substance, becomes even more evident in the case of Kosovo.

More than abnormal circumstances have led to the need for normalisation of relations between these two Balkan neighbours. One hundred years of Serbian attempts, in various ways and with varying intensity, to keep this territory forcibly under control, eventually escalated into massive war crimes and persecution, first of the Albanian and then of the Serbian



Dragan Popović

population of Kosovo at the end of the last century. The hatred that was stirred up, firmly based as it was on prejudices and stereotypes on both sides, has persisted to this day. Each and every incident, even the smallest, causes enormous tensions and virtually threatens war. That war has not started yet is the consequence of the simple fact of having NATO troops stationed everywhere, including Kosovo. But a peace built on the presence of foreign troops is not a sustainable solution – it is a truce held in anticipation that the foreigners will leave so that we can continue our bloody feast.

In such a post-conflict but also pre-conflict situation, the measures for the normalisation of relations should inevitably include measures of transitional justice. The truth about the victims, the circumstances of their suffering, and the places where the mortal remains of more than 1500 people were buried or otherwise ended up, must be high on the agenda in the negotiation process. The same is true for the prosecution of war crimes suspects, including high-ranking officials such as the Chief of the General Staff of the Serbian Army, Ljubiša Diković. However, this is still not the case. The Brussels negotiations, i.e. their positive outcome, which for the time being are being measured mainly by how many different agreements are signed, and not so much by how many of these agreements are implemented, are the main condition for the opening of the chapters in the negotiation process for the accession of Serbia to the European Union. This has been officially confirmed in almost every statement or decision of the relevant European bodies concerning this process. The European Union is also responsible for drawing up the agenda of the Brussels negotiation process. After the latest agreement, signed in August 2015 in Brussels, it was announced that the negotiating chapters will be opened and thus the actual process of Serbia's accession to the EU will begin. It can therefore be concluded that the mere signing of the agreement was sufficient for

eliciting the series of praises from European officials, including the commissioners.

The absence so far of dealing with the past as a topic of the negotiations is very often interpreted as the desire of the EU not to cause a collapse of the whole process by talking about „difficult“ topics. Not for the first time, here also the tragic misunderstanding and short-sightedness of political elites both in Serbia and in Western countries become evident. If lasting peace is an aim, then we are talking about a long-term process that requires dedication and courage, as well as statesmanlike behaviour on the part of all the participants. Short-term measures may seem useful and can make life easier for people quickly, but they cannot eliminate the risk of a repetition of conflicts. At present, people with a heavy personal burden of the past are negotiating the relations between Serbia and Kosovo. Their main political capital is their alleged transformation and change of attitudes and values, and their willingness to deal with the past. However, we are witnessing a completely different situation in reality - at least when it comes to Serbia. In the last three years there have been several outbursts of hatred towards Albanians, especially following individual incidents, such as the occasion when a drone carrying the flag of Greater Albania appeared at a football match between the two countries (Serbia



and Albania - Ed.). Throughout this entire process, it is very significant that hate speech has been used mainly in the media in which the government has management rights (such as *Večernje novosti*) or those where the government has overt influence on the editorial policy (such as *Informer*).

Neither do numerous government officials hesitate to use hate speech. Prominent among them are people like Milovan Drecun, who occupies the important position of President of the Parliamentary Committee for Kosovo and Metohija. Furthermore, every March 17th, in memory of the violence committed in Kosovo in 2004, special school classes in which the children listen to texts full of hatred, stereotypes and prejudices regarding Albanians are held in schools. The texts were compiled by the Office for Kosovo and Metohija under the leadership of the current Minister of Labour, Employment, Veteran and Social Policy, Aleksandar Vulin.

Bearing all this in mind, the real question is whether the Serbian political elite really want a lasting peace or to use Kosovo as a bargaining chip in exchange for various benefits on the path towards accession to the EU. The only guarantee that a future conflict would be out of the question and that the policy has been completely changed would be the application of a wide range of transitional justice measures. In addition to supporting

the initiatives for the establishment of the facts, a more courageous and above all indiscriminate approach to criminal responsibility and resolving the fate of missing persons, the issues of material and symbolic reparations, as well as the reform of institutions, will very soon be on the agenda. Regarding the question of Kosovo, the reform of the security services, the army and the police, and also the reform of the education system, will be of particular importance.

The negotiations in Brussels have so far produced limited outcomes. Signed away from the public eye and without any participation of civil society organizations or any civic contribution, these agreements are often hidden or tendentiously interpreted by the two governments and their officials. Both in Serbia and Kosovo, votes are still being won by advocating nationalism. While such an atmosphere persists, the normalisation of relations between Kosovo and Serbia will not be substantial, nor will it facilitate the adoption of one of the fundamental values which the EU is meant to advocate – the development of good neighbourly relations. Paradoxically, these very imperfect steps forward represent the main capital of the Serbian government, which because of them, receives unanimous applause throughout Europe. It is evident that the criteria are being set very low, and that the EU does not want to pressure Serbia too much when it comes to Kosovo.

Serbia's path towards the EU must be viewed by Serbian society and the elite as a mechanism, not as an aim. The aim is to modernize the country and organize the society. Negotiations with the EU are a good way of accelerating these processes and influencing the government to stay on the right course, but only under one condition – that all the time we keep in mind the essence, rather than the form. In this context, it would mean that the real aim cannot just be the international agreements or the absence of conflict in the Balkans. The real aim

is the full normalisation of relations and the establishment of lasting peace, especially between Serbia and Kosovo. Achieving this aim is impossible without completely dealing with the past. The EU must understand that this is a long process and it would be better to start with it early on, rather than to stall. This might require a little more effort on the part of European officials and a bit more work with the politicians in the region, but the results would follow. And we are talking about long-term results.



[War Crimes Trials -] Overview

Judgments rendered

The Case of Sanski Most

The Higher Court in Belgrade rendered a judgement on September 10th, 2015, finding the accused Miroslav Gvozden guilty of committing a war crime against a civilian population, and sentenced him to 10 years of imprisonment. The indictment filed by the Office of the War Crimes Prosecutor (OWCP) charged him with the killing of six Croat civilians and the wounding of one, a crime committed on December 5th, 1992 in the settlements of Tomašica and Sasine (the Municipality of Sanski Most), together with four other members of the Republic of Srpska Army. However, the Trial Chamber found him guilty of the killing of only three of the Croat civilians, and established that he did not participate in the murder of the other three.

Appellate proceedings

The Case of Bijeljina II

The appellate proceedings initiated by the appeal filed by the OWCP against Miodrag Živković for the criminal offence of a war crime against a civilian population are pending before the Court of Appeals in Belgrade. The Higher Court in Belgrade rendered a judgment on April 14th, 2015, acquitting the accused Miodrag Živković of the charges that he killed one Bosniak civilian and that he raped and sexually abused his daughter and daughter-in-law on multiple occasions in June 1992 in Bijeljina (BiH) – a crime he allegedly committed in the capacity of a volunteer unit soldier, and together with four other individuals, who have been finally convicted of the act in question.

A public session of the Second Instance Chamber was held on September 28th, and during this session the OWCP presented the appeal.

The Case of Tuzla Column

The proceedings against Ilija Jurišić for the criminal offence of using illicit means of warfare are pending before the Court of Appeals in Belgrade. He was charged by the OWCP's indictment with the fact that he, as the officer in charge in the Public Security Service in Tuzla Operational Headquarters on May 15th, 1992, had, in violation of the agreement reached on the peaceful retreat of JNA soldiers from the "Husinska buna" military barracks, issued an order for the attack on the military convoy, which was peacefully retreating from Tuzla, on which occasion at least 50 soldiers were killed and at least 51 wounded.

The Court of Appeals quashed the first instance guilty judgment in the repeat trial and opened the case on its own. At the main hearing held on September 23rd, a military expert witness was examined, and he stuck to his earlier finding that the attack on the JNA convoy represented a sabotage attack with the objective of breaking up and destroying the military convoy.

Repeat proceedings

The Case of Lovas

Milan Devičić and another 10 accused are being tried in repeat proceedings for a war crime against a civilian population. The OWCP's indictment charged them with the killing of 41 civilians of Croat nationality in Lovas (Croatia) during October and November 1991 a crime they allegedly committed in their capacity as members of either the JNA, the "Dušan the Mighty" paramilitary formation or local government.



Catholic church in Lovas, destroyed in 1991 (photo taken from: <http://www.lovas.hr/stradanje-u-domovinskom-ratu>)

In the main hearing held on September 24th, a military expert advisor hired by the accused, Miodrag Dimitrijević, answered questions raised by the accused Radovan Vlajković, and stated that a procedure such as taking people out into a minefield should not have happened without a written order; but he also added that such an order, regardless of the form in which it was issued, should not have



been executed. The following day, September 25th, a military expert witness, Boško Antić, was examined, and he offered his expert opinion that the Brigade Commander in whose area of responsibility Lovas lay was in command of all the units within that area and had an obligation to control the execution of his orders; therefore, it was impossible that he was not aware of what was happening in Lovas.

The Case of Čuška/Qushk

A repeat trial against Toplica Miladinović and 13 others accused of the criminal offence of a war crime against a civilian population is pending. The OWCP's indictment has charged them with the killing of at least 109 Albanian civilians, a crime they allegedly committed as members of the 177th Peć Military Territorial Detachment during March and April 1999 in the villages of Ljubenić/Lubeniq, Čuška/Qushk, Pavljan/Pavlan and Zahać/Zahaq (the Municipality of Peć/Pejë, Kosovo).

The repeat trial continued on September 17th with the presentation of the defence cases. Only one of the accused, who had made an agreement on testifying with the OWCP, and who later on testified under a pseudonym,

pleaded guilty to the criminal offence in the indictment, whereas the other accused pleaded not guilty. The criminal proceedings against Radoslav Brnović have been separated, because the Trial Chamber was informed that this accused had passed away in the meantime.

The Case of Bosanski Petrovac

A repeat trial of Nedeljko Sovilj and Rajko Vekić for the war crime against civilian population is pending. The OWCP's indictment charges them with the killing of a Bosniak civilian, a crime committed on December 21st, 1992, as members of the Republic of Srpska Army on the local Jazbine – Bjelaj road, in the Municipality of Bosanski Petrovac (BiH), in the forest known as "Osoje".

The trial, which was scheduled for September 30th, was postponed for November 25th, in order to allow for the organization of the arrival and examination of the witness, who possess direct information relating to the killing, and who has been located in BiH in the meantime.

First instance proceedings

The Case of Gradiška

Currently, Goran Šinik is standing trial for a war crime against a civilian population. The OWCP's indictment charged him with the killing of a civilian of Croat nationality, Marijan Vištica, in the place known as Bok Jankovac (BiH), a crime he allegedly committed as a member of the Republic of Srpska Army on September 2nd, 1992.

In the main hearing held on September 25th, witness Nebojša Prčić was examined. This witness stated that on the day in question, he gave a ride to the accused and Marjan Vištica to Gradiška, to the place where Vištica was killed. The Court then confronted the accused with the witness, and during this confrontation they both confirmed their earlier allegations – the witness stated that he gave a ride to the accused, whereas the accused stated that he was not present in Gradiška on the day in question.

The Case of Bosanski Petrovac – Gaj

Milan Dragišić is standing trial because of a war crime against a civilian population. The OWCP's indictment charged him with the killing

of three and attempted killing of another three Bosniak civilians, a crime he allegedly committed as a member of the Republic of Srpska Army in the settlement of Gaj in Bosanski Petrovac (BiH) on September 20th, 1992.

The main hearing session scheduled for September 15th could not be held because the summoned witnesses did not appear before the court. According to the information given by the court, one witness does not want to testify at all, while the other two witnesses failed to appear before the court owing to health reasons. However, according to the information in possession of the OWCP, all three witnesses are ready to testify via video link from the Cantonal Court in Bihać.

In the main hearing held on October 8th two witnesses were examined. They had no direct information about the incident at hand, but they heard that same day that the accused had killed Bosniak civilians.



Higher Court in Belgrade (photo taken from: <http://www.bg.vi.sud.rs/lt/>)



The Case of Sanski Most – Kijevo

The trial of Mitar Čanković for a war crime against a civilian population is currently ongoing. The OWCP's indictment charged him with the killing of one Bosniak civilian in the settlement of Kijevo, in the vicinity of Sanski Most (BiH), which he allegedly committed in the capacity of soldier of the Republic of Srpska Army on September 19th, 1995.

In the main hearing held on September 9th, an eyewitness, the son of the killed Ismet Bešić, was examined. He told the court that the accused shot his father with an automatic rifle from close proximity. A medical expert witness, who conducted the autopsy of the killed Ismet Bešić, was also examined.

The Case of Trnje/ Termje

The proceedings against Pavle Gavrilović and Rajko Kozlina for a war crime against a civilian population are pending. The OWCP's indictment charged them with killing 27 civilians of Albanian nationality, a crime they allegedly committed in the capacity of JNA members on March 25th, 1999 in the village of Trnje/Termje, in the Municipality of Suva Reka/Suha Reke (Kosovo).

The trial sessions scheduled for September 25th and 28th could not be held owing to the fact that one of the accused was in hospital. The HLC issued a [press statement](#) on October 5th, 2015, drawing attention to the length of the trial in this case.

The Case of Bihać II

The trial of Svetko Tadić is pending before the Higher Court in Belgrade for a war crime against a civilian population. The OWCP's indictment charged him with the killing of 23 Bosniak civilians, a crime he allegedly committed in the capacity of a member of the Republic of Srpska Army in the second half of September 1992, on the territory of the settlements of Duljci, Ćukovi-Duliba and Orašac (in the Municipality of Bihać, BiH), together with other members of the Republic of Srpska army and police.

The trial session scheduled for September 30th could not be held because the accused had been admitted to hospital.



The monument for the victims killed in the area of Bihać in 1992 (photo taken from: bosniangenocide.wordpress.com)


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