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**REPORT FOR THE HUMAN RIGHTS COMMITTEE ON SERBIA**  
**prior to its 119<sup>th</sup> session (6 – 29 March 2017)**

**6 February 2017**





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## **ABOUT THE HUMANITARIAN LAW CENTER**

1. The Humanitarian Law Center (HLC) is a regional non-governmental organization dealing with issues of human rights and international humanitarian law. It was founded in 1992 in connection with the armed conflicts in the former Yugoslavia. By way of interviewing witnesses and victims since its establishment, the HLC has researched the murders, enforced disappearances, concentration camps, torture of prisoners of war and the pattern of ethnic cleansing during the armed conflicts. Advocating for the rights of victims of gross human rights violations, the HLC has represented over 1,000 victims in criminal trials, judicial and administrative proceedings for reparations, as well as before the European Court for Human Rights and different UN committees. It has also spearheaded a number of legislative initiatives for victims' rights and reparations.

## **SUBJECT MATTER OF THE REPORT**

2. In this report to the Human Rights Committee, the HLC will address issues related to its mission and scope of work, namely issues that fall under the right to life, prohibition of torture and other cruel, inhuman or degrading treatment or punishment, and the right to an effective remedy (arts. 2, 6 and 7). The report is based on the List of issues in relation to the third periodic report of Serbia, adopted by the Committee at its 117<sup>th</sup> session (CCPR/C/SRB/Q/3), as well as on the Replies of Serbia to the list of issues, received by the Committee on 20 December 2016 (CCPR/C/SRB/Q/3/Add.1).





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## MEASURES TAKEN TO SEARCH FOR PERSONS WHO WENT MISSING DURING THE ARMED CONFLICTS AND THE RESULT ACHIEVED, IN PARTICULAR ON EXPEDITIOUS IDENTIFICATION OF MASS GRAVES, BURIAL PLACES AND REMAINS

3. Since 2001, mass graves containing the bodies of 941 Kosovo Albanians, mainly civilians killed outside combat situations in Kosovo during 1999, have been found on four locations in Serbia. According to the UNMIK Office on Missing Persons and Forensics (OMPF), 744 bodies of Kosovo Albanians have been discovered in Batajnica, on the outskirts of Belgrade, at least 61 in Petrovo Selo, and 84 at Lake Perućac. At least 52 bodies have been subsequently found in the mass grave at Rudnica.<sup>1</sup> A total number of 1,125 Albanians are still registered as missing as result of the Kosovo war, along with 540 Serbs and other non-Albanians.<sup>2</sup>

4. The last discovery of the existence of a mass grave occurred in December 2013 in Rudnica. It is a result of the work of Kosovo institutions, which informed the institutions in Serbia, who on their part had a technical role in determining the microlocation of the grave and digging for it.<sup>3</sup> In the period 2014-2016 there have been no discoveries, exhumations or identifications of missing persons on the territory of Serbia. According to Serbia's reply to the list of issues (para. 78), investigation was carried out on the location of Kiževak near Raška, and was allegedly discontinued due to bad weather and lack of funds, but recommenced since September 2016. The HLC believes that the inefficiency to achieve any results in three-years' time demonstrates that insufficient funds are being allocated from the state budget for this purpose.

5. The search for persons missing in relation to the wars in Bosnia and Herzegovina and Croatia is being carried out in cooperation with these countries. In the view of associations of families of missing persons, progress is slow and cooperation is insufficient, which is being attributed to all sides.<sup>4</sup>

6. Following the discussion of Serbia's Initial Report by Serbia on the Implementation of the International Convention for the Protection of All Persons From Enforced Disappearances, the Committee on Enforced Disappearances recommended *that all cases of enforced disappearance that may have been committed by agents of the State party or by persons or groups of persons acting with their authorisation, support or acquiescence in the context of past armed conflicts are*

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<sup>1</sup> *The cover-up of evidence of crimes during the war in Kosovo: THE CONCEALMENT OF BODIES OPERATION*, Humanitarian Law Center, January 2017, available at: <http://www.hlc-rdc.org/?p=33299&lang=de> (last accessed 4 February 2017).

<sup>2</sup> Information provided by the Commission on Missing Persons to HLC in May 2016. With regard to Kosovo, the Commission itself relies on the data of the ICRC.

<sup>3</sup> *Dossier: Rudnica*, Humanitarian Law Center, January 2015, available at: <http://www.hlc-rdc.org/?p=28016&lang=de> (last accessed 4 February 2017).

<sup>4</sup> *Transitional Justice in Serbia in the period from 2013 to 2015*, Humanitarian Law Center, June 2016, available at: <http://www.hlc-rdc.org/?p=32161&lang=de> (last accessed 4 February 2017).





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*investigated thoroughly and impartially without delay, including guarantees for full access to the relevant archives.*<sup>5</sup>

7. Military and police archives containing material that can help ascertain the truth about the fate of persons disappeared in the 1990s for the most part remain inaccessible to interested individuals, non-governmental organisations and the general public. The Ministry of Defence and the Ministry of the Interior often thwarted attempts to gain access to the documents relating to the armed conflicts in the former Yugoslavia, despite being legally obliged to provide access to information that “the public has a justified interest to know”.<sup>6</sup> In an attempt to justify denying access to their archives, these institutions insisted that their archival material is either no longer existing, or classified as confidential. It should be noted, though, that some documents contained in the archives were declared confidential only after the public had shown interest in them.<sup>7</sup>

8. The National Strategy for the Prosecution of War Crimes, adopted by the Serbian Government in February 2016, defines as one of its key indicators of success the decrease of the number of missing persons whose fate is unresolved.<sup>8</sup> The Strategy sets several objectives to that end: amendment of the legislative framework; improvement of the administrative and institutional capacities of competent authorities; and promotion of regional cooperation.<sup>9</sup> It also commends the successful example of locating a mass grave in the *Sotin* case, which was a result of mutual cooperation between the Office of the War Crimes Prosecutor (OWCP), the Commission on Missing Persons, and the Croatian authorities. However, this is the only case to date where criminal prosecution has led to locating burial sites of missing persons. In all other cases completed or pending before the War Crimes Department, neither the OWCP or the Court inquired on the whereabouts of bodies of victims that have not been located, instead focusing on establishing that the accused is responsible for the killing. For instance, in the *Těrnje/Trnje* case, currently on trial, the Deputy Prosecutor did not ask any further question to a witness who stated that he collected and moved multiple bodies from the actual crime scene.<sup>10</sup>

9. In addition, Serbia has still not adopted a law on missing persons, despite the constant demands of associations of families of the missing and examples from neighboring countries where such a law has been adopted (Bosnia and Herzegovina, Kosovo).

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<sup>5</sup> Committee on Enforced Disappearances, Concluding observations on the report submitted by Serbia under article 29, paragraph 1 of the Convention (CED Concluding observations), para. 14.

<sup>6</sup> Law on Free Access to Information of Public Importance (Republic of Serbia Official Gazette nos. 120/04, 54/07, 104/09 and 36/10), article 2.

<sup>7</sup> *Access to Documents related to Crimes against International Law in the possession of Serbian Institutions: State Secret Prevails over Right to the Truth*, Humanitarian Law Center, April 2016, available at <http://www.hlc-rdc.org/?p=31572&lang=de> (last accessed 4 February 2017), p. 54.

<sup>8</sup> National Strategy for the Prosecution of War Crimes, available at [http://www.tuzilastvorz.org.rs/upload/HomeDocument/Document\\_en/2016-05/p\\_nac\\_stragetija\\_eng.PDF](http://www.tuzilastvorz.org.rs/upload/HomeDocument/Document_en/2016-05/p_nac_stragetija_eng.PDF) (National Strategy), p. 10.

<sup>9</sup> National Strategy, pp. 32-34.

<sup>10</sup> Higher Court in Belgrade, War Crimes Department, K-Po2 10/2013, transcript of the audio recording of the main hearing held on 6 June 2016, p. 53, available in Serbian at: <http://www.hlc-rdc.org/wp-content/uploads/2016/06/21-06.06.2016..pdf> (last accessed 4 February 2017).





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## VICTIMS' ACCESS TO REPARATION, INCLUDING ADEQUATE COMPENSATION

10. In Serbia, there are three mechanisms in place through which victims can claim reparations: administrative proceedings for the recognition of the status of a civilian victim of war; civil lawsuits seeking compensation from the Republic of Serbia; and a third mechanism, which is activated by filing a restitution claim within the pending criminal proceedings.

11. None of the mentioned mechanisms prove to be efficient. Court proceedings for damages have been lengthy and characterised by courts' efforts to downplay the state's responsibility for past crimes. Administrative proceedings for the realization of the right to reparations have been regulated by the retrograde and discriminatory Law on the Rights of Civilian Invalids of War, which deprives a large number of victims of the right to seek reparation. Finally, there is no criminal judgment for war crimes to date which at the same time granted restitution to victims. The judicial and administrative authorities fail to comply with Serbia's obligations stemming from international treaties (International Covenant on Civil and Political Rights, European Convention for the Protection of Human Rights and Fundamental Freedoms, and other applicable treaties), rendering the right of victims to receive reparations in Serbia unrealizable, if not illusory.<sup>11</sup>

12. The legislative and judicial framework for victims' compensation has been continuously under criticism by relevant international institutions in the past years. The issue was addressed with concrete recommendations by the previous Commissioner for Human Rights of the Council of Europe Mr. Hammarberg in 2011,<sup>12</sup> as well as by the current Commissioner Mr. Muižnieks in 2015.<sup>13</sup> The last three European Commission progress reports on Serbia (2014, 2015 and 2016) pointed out that *only few victims of war crime have access to effective compensation under the current legal framework*. This stance was reaffirmed by the European Parliament.<sup>14</sup> On the other hand, the government has not moved to improve civilian victims' rights, as opposed to plans to increase rights of veterans and disabled members of the military (see below, para. 19).

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<sup>11</sup> *Victims' Right to reparation in Serbia and the European Court of Human Rights Standards*, 2014/2015 Report, Humanitarian Law Center, January 2016, available at: <http://www.hlc-rdc.org/?p=31034&lang=de> (last accessed 3 February 2017).

<sup>12</sup> Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Serbia on 12-15 June 2011, Strasbourg, 22 September 2011, paras. 25, 27.

<sup>13</sup> Report by Nils Muižnieks, Commissioner for Human Rights of the Council of Europe, following his visit to Serbia on 16-20 March 2015, Strasbourg, 8 July 2015, paras. 28, 29 and 32.

<sup>14</sup> European Parliament resolution of 4 February 2016 on the 2015 report on Serbia (2015/2892(RSP)), para. 25.





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### High standard of proof of harm in civil proceedings

13. Victims of crimes committed by members of Serbian authorities have no other option but to launch a civil case for compensation against the Serbian state, where the burden of proof for the establishment of the crime in court is unfairly placed on them as plaintiffs. In some cases, courts have refused to take into account the evidence of the state's liability for the harm suffered. This evidence is often questioned, mistrusted, and its validity and authenticity challenged by the courts. By contrast, witnesses and evidence put forward by the proxies of the state are given unreserved credence.<sup>15</sup> In the *Bogilović and Džebo* case (compensation for torture suffered at the Šljivovica and Mitrovo Polje prison camps in 1995), the Supreme Court of Cassation quashed the final judgment on questions of fact instead on questions of law, and there are clear indications of the courts' intention to minimize granting compensation in litigation cases against the state.<sup>16</sup>

### Statutes of limitation

14. Courts interpret the relevant provisions of the Law on Contracts and Torts (LCT) in a manner detrimental to the victims, which ultimately leads to the denial of the victims' rights to compensation. The standard statute of limitation for compensation claims (a maximum of five years), when applied to victims of wars in the former Yugoslavia, victims were entitled to file their claims no later than 2000 or 2004, that is, during the regime of Slobodan Milošević or immediately after its fall. Given that the regime of Milošević was directly involved in the planning and implementation of systemic human rights violations and in the collapse of the judicial system and the rule of law, and for other objective reasons, very few victims opted for bringing a legal action against the state. As a consequence, the statutory time limitation expired, and thus their right to obtain material compensation became time-barred.

15. A special statute of limitations, which is prescribed by the LCT for damage resulting from a criminal offence and which should accordingly apply to all instances of grave human rights violations, is construed restrictively in courts. The Constitutional Court of Serbia held a position in 2011 that the special time limit may be applied to the state as the responsible person *only if* the individual offender has been finally sentenced for a criminal offence.<sup>17</sup> The limited effect of such an interpretation of the law is quite clear, given the fact that the majority of individuals responsible for crimes committed in the 1990s have not been finally adjudged guilty.

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<sup>15</sup> *Supra* note 11, pp. 28-29.

<sup>16</sup> HLC, "Case Study: Courts in Serbia in Service of Abolition of State's Responsibility", June 2016, available at: <http://www.hlc-rdc.org/?p=32095&lang=de> (last accessed 4 February 2017).

<sup>17</sup> Position of the Constitutional Court of the Republic of Serbia laid down in the regular session held on 7 July 2011, Su No. I-400/1/3-11.





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## **Restitution claims within criminal proceedings and narrow definition of an injured party under the Criminal Procedure Code**

16. The legal basis and the conditions for filing a restitution claim in the course of criminal proceedings, as well as persons eligible to use this mechanism, are laid down in the Criminal Procedure Code.<sup>18</sup> Despite the clear provisions contained in the Code and the long-time presence of this institute in the domestic legal system, it remains unused. Since the prosecution of war crimes began (in 2003), this mechanism has not been used in Serbia even once, owing to the courts' entrenched practice of rarely or never dealing with restitution claims. Instead, and without any justified reason, they instruct the victims (injured parties in criminal proceedings) to pursue their claims through civil litigation.

17. The Criminal Procedure Code defines an injured party as a person whose personal or property right has been violated or jeopardised by a criminal offence.<sup>19</sup> This anachronous definition is out of line with Serbia's international obligations in safeguarding the rights of victims of certain criminal offences, and as such is set to change in accordance with the Action Plan for Chapter 23 of EU accession negotiations.<sup>20</sup> However, to date there have been no concrete steps in making these amendments.<sup>21</sup>

## **Discriminatory administrative procedure for recognizing the status of civilian victim of war**

18. The Law on Civilian Invalids of War, dating from 1996, is still in force.<sup>22</sup> Pursuant to this law, the right to the assistance and support of the state is denied to the families of missing persons, victims of sexual violence, victims who suffer from the psychological consequences of the violence sustained, victims with physical disabilities of less than 50%, victims who perished on the territory of other former Yugoslav republics, as well as those who perished as a result of the crimes committed by the Serbian armed forces. By explicitly excluding from the circle of potential beneficiaries all victims who suffered violence or were injured by formations that the Republic of Serbia does not consider as an enemy, such as the Yugoslav National Army (JNA), the Yugoslav Army (VJ), the Ministry of the Interior (MUP), or the Republic of Srpska Army (VRS) and their subordinate formations, this law prevents thousands of Serbian citizens, especially ethnic minorities who were targeted by Serbian forces during the 90's, from obtaining any kind of social support from the State.

19. A recent development in this area particularly reveals the unwillingness of Serbia to tackle this issue. Namely, in December 2014, the Ministry of Labour, Employment, Veteran and Social Affairs prepared a Bill on the Rights of War Veterans, Disabled War Veterans, Civilian Victims of War

<sup>18</sup> Criminal Procedure Code ("Republic of Serbia Official Gazette" nos. 72/11, 101/11, 121/12, 32/13, 45/13 and 55/14), arts. 252-260.

<sup>19</sup> Criminal Procedure Code, point 11) of art. 2(1).

<sup>20</sup> Report 4/2016 on implementation of the Action Plan for Chapter 23, p. 284.

<sup>21</sup> The Ministry of Justice informed the HLC in January 2017 that the expert analysis required for the envisaged amendment has not yet been completed.

<sup>22</sup> Law on Civilian Invalids of War ("Republic of Serbia Official Gazette" no. 52/96), Article 2, available [here](#).







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and their Family Members. The Bill was prepared without any consultation with victims' associations or other relevant stakeholders. The Bill itself retains the majority of discriminatory provisions from the existing Law and it does not improve the protection of civilian victims of war in any sense.<sup>23</sup> The Ministry has refused to provide the public with the text of the Bill as well as the composition of the working group which participated in its preparation.<sup>24</sup> The text, which was subject to public debate, is in contrast with the obligations that Serbia undertook by Chapter 23 Action Plan, which envisages the harmonization of domestic legal provisions with the notion of a victim in international human rights protection agreements (see above, para. 17).

20. The Council of Europe Commissioner for Human Rights addressed a letter on 12 September 2016 to the Minister of Labour, Employment, Veteran and Social Affairs in the Government of the Republic of Serbia, Mr. Aleksandar Vulin, in which he is seeking information about the measures taken by Serbia in order to fulfil the recommendations on comprehensive and just reparations for civilian victims of war, which the Commissioner expressed in his Report on the visit to Serbia in July 2015 (see above, para. 12), as well as noting concern about the proposed Bill and the exclusion of inputs by civil society in its drafting. Minister Vulin replied on 23 September 2016.<sup>25</sup>

## RIGHTS OF VICTIMS OF ENFORCED DISAPPEARANCE AND THEIR RELATIVES TO REPARATION

21. Serbia has not adopted special legislation on missing persons, although government officials stated on several occasions that they are considering to do so. On the other hand, families of persons still accounted for as missing are deprived of any kind of reparation, as well as other type of support from the state. Namely, the Law on Civilian Invalids of War prevents them for applying for monthly cash benefits, unless they have their missing relative declared deceased in court proceedings. This condition is explicitly contrary to recommendations given by the Committee on Enforced Disappearances<sup>26</sup>, but has remained unchanged.

22. At the session held on 4-5 February 2015, the delegation of Serbia informed the Committee on Enforced Disappearances that psychosocial support has been provided for 789 families of missing persons, adding that Serbia spends 13 million euros annually for the needs of families of missing persons.<sup>27</sup> Responding to the HLC's question about more precise data regarding the way of spending the above-mentioned funds, the Commission on Missing Persons replied that it is "a postulated

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<sup>23</sup> HLC, "To Withdraw Discriminatory Bill on Rights of Civilian Victims of War", press release, December 2015, available [here](#).

<sup>24</sup> HLC, "Bill on Rights of Civilian Victims of War Still Hidden from Public Eye", press release, December 2015, available [here](#).

<sup>25</sup> Letter of the CoE Commissioner for Human Rights and Government's reply available [here](#).

<sup>26</sup> CED Concluding observations, para. 26.

<sup>27</sup> Committee on Enforced Disappearances examines report of Serbia, 5 February 2015, available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15547&LangID=E> (last accessed 4 February 2017).







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amount”, based on the information which was delivered to the Commission by the Ministry of Labour, Employment, Veteran and Social Affairs.<sup>28</sup> The HLC sent the same request to the Ministry of Labour, Employment, Veteran and Social Affairs, and the answer was that this is “a postulated amount”, which was obtained by multiplying the number of recorded missing persons in the Ministry (448) with the supposed number of 2.5 members of household and the amount of monthly compensation.<sup>29</sup> In other words, the Ministry of Labour does not have the precise number of families of missing persons who are beneficiaries of help; yet this is the potential number of beneficiaries.

## **INVESTIGATION, PROSECUTION AND CONVICTION OF PERPETRATORS OF CRIMES, INCLUDING WAR CRIMES AND ENFORCED DISAPPEARANCES**

### **Very low number of prosecution for such crimes**

23. The pace of work and raising of indictments by the OWCP are not satisfactory, regarding the expectations of the victims and the need to establish the rule of law in relation to grave crimes committed in the nineties of the previous century. Bearing in mind the fact that, according to the OWCP data, there are 876 cases in preliminary investigation proceedings, if the current tempo continues, less than 10% of war crimes cases will be solved in the following 10 years.<sup>30</sup> One year after the adoption of the National Strategy for the Prosecution of War Crimes, Serbia is yet to adopt a prosecutorial strategy, which is essential in determining the criteria for the prioritization of cases by the OWCP.

### **Significant low prosecution rate of middle and high ranking officials**

24. The OWCP has never indicted a high-ranking person for war crimes. All confirmed indictments from the reporting period have been filed against direct war crimes perpetrators – low ranking members of armed formations, who, as a rule, had no rank, despite the fact that the National Strategy for the Prosecution of War Crimes states that “cases against high-ranking suspects should be considered the priority in the work of the Prosecutor.” Thus, the practice of non-prosecution of senior perpetrators in the former military, police and political hierarchies of Serbia, that is, of the Federal Republic of Yugoslavia, has continued. In its practice so far, the only high

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<sup>28</sup> Reply of the Commission on Missing Persons to HLC’s inquiry, No. 021-01-01/2015-01/11, 25 February 2015

<sup>29</sup> Reply of the Ministry of Labour, Employment, Veteran and Social Affairs to HLC’s inquiry, No. 07-00-00564/2015-15, 17 March 2015.

<sup>30</sup> *Report on War Crimes Trials in Serbia During 2014 and 2015*, Humanitarian Law Center, March 2016, available at: <http://www.hlc-rdc.org/?p=31330&lang=de> (last accessed 5 February 2017), p. 8.





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ranking suspects the OWCP initiated proceedings against were members of the armed and civilian structures of Bosnia and Herzegovina and Republic of Croatia.<sup>31</sup>

25. The lack of prosecution of high ranking perpetrators is criticized by Trial Chamber presidents from the Higher Court's War Crimes Department. Announcing their judgments, they publicly ask why the superiors have not been charged, since evidence which indicates their responsibility was presented during the proceedings. In the *Lovas* case, the Presiding Judge stated the following: "The Second Brigade of the JNA has the biggest responsibility;" in the *Beli Manastir* case, the Presiding Judge said: "The superiors to the defendants are also responsible for this crime;" in the *Qyshk/Ćuška* case, the Presiding Judge emphasized: "The rules of the military hierarchy are such that one may conclude that someone else besides Toplica Miladinović [the first defendant] was there; however, we have dealt only with the charges presented."

#### Decrease in the number of new war crime indictments

26. In 2014 the OWCP raised seven indictments against nine persons in total for war crimes against civilians. Two of these relate to previous cases, only to include new indictees. Four cases were transferred from the BiH judiciary. In 2015 the OWCP filed two indictments in two more complex cases – *Srebrenica* and *Štrpci*. These two indictments included a total of 13 indictees and the death of more than 1,000 victims. Both cases are the result of the cooperation of the OWCP and State Prosecutor's Office of BiH. The trial in the *Srebrenica* case commenced on 12 December 2016, while the indictment for *Štrpci* has still not been confirmed, being sent back by the Court to the OWCP for amendments three times. Seven indictments were raised in 2016, each of them encompassing one single perpetrator.

27. At the same time, a great number of previously raised indictments lack reasoning and are unsupported by adequate evidence. The impression is that the OWCP hastily started proceedings in some of these cases, that is, issued unfounded indictments. Consequently, the OWCP did not manage to prove charges from indictments in the cases of *Tenja II*, *Čelebići* and *Prizren*, inter alia, because of insufficient or compromised evidence.<sup>32</sup>

#### Lack of human resources for the Office of the War Crimes Prosecutor

28. The mandate of the current War Crimes Prosecutor Vladimir Vukčević expired on 31 December 2015. However, the new Prosecutor has not been elected yet. The agenda of the National Assembly of the Republic of Serbia held on 21 December 2015 included the election of the new War Crimes Prosecutor, however a new Prosecutor was not elected at that session because none of the

<sup>31</sup> Proceedings against Ejup Ganić – a member of the Wartime Presidency of BiH, Jovan Divjak – a general in BiH Army, Vesna Bosanac – a Director of the General Hospital in Vukovar, Vladimir Šeks – Vice-President of the Croatian Parliament, Naser Orić – Commander of the BiH Army in Srebrenica, etc.

<sup>32</sup> *Supra* note 30, p. 9.





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six candidates had the required majority of votes. On 9 December 2016, the Prime Minister of Serbia vowed to have the new War Crimes Prosecutor elected within one week's time<sup>33</sup>; however, the election has not been on the agenda of the Government since.

29. The National Strategy for the Prosecution of War Crimes identifies *insufficient expertise and technical equipment of the public authorities responsible for the investigation and prosecution of war crimes, especially when compared to well equipped institutions of the same jurisdiction in the states of the region*.<sup>34</sup> The document also sets the objective that the capacity will increase in line with the time frame envisaged by the Action Plan for Chapter 23. However, it is also stated that the OWCP's capacities and those of other institutions shall be limited by government austerity measures.<sup>35</sup> There is reason to fear that the strengthening of the OWCP and other institutions and thus the effectiveness of prosecution of war crimes will remain under the direct influence of the executive, that is, the Ministry of Justice, because of the austerity measures.

#### Pressure on and verbal attacks against the Office of the War Crimes Prosecutor

30. Representatives of the political authorities repeatedly commented on the work of the OWCP in an inappropriate manner, at times amounting to open threats. The most extreme example was a statement by the President of the Republic of Serbia regarding the work of the Prosecutor for War Crimes in relation to the mass grave with the bodies of Kosovo Albanians in Rudnica, discovered in 2014. Namely, after publication of the "Rudnica" Dossier which gives serious indications on the role of the current Chief of Staff of the Serbian Armed Forces Ljubiša Diković in the crimes and concealment of bodies in the mass grave in Rudnica, President Tomislav Nikolić said that the Prosecutor for War Crimes "should be careful about what he is digging up in Serbia".<sup>36</sup>

31. More recently, the now retired Prosecutor for War Crimes Mr. Vladimir Vukčević has been denied membership in the Belgrade Bar Association. The Steering Committee of the Bar Association of Belgrade stated that, as the War Crimes Prosecutor, he did not engage in his duty professionally, and also criticized him for allegedly not prosecuting sufficiently the cases in which Serbs were victims and for allegedly allowing the Founder of the Humanitarian Law Center (HLC), Ms. Nataša Kandić, to take "absolute power in the Office of the War Crimes Prosecutor". The HLC believes that such

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<sup>33</sup> "Vučić: Government is solely to blame why the new War Crimes Prosecutor has not been appointed", Insajder.net, available in Serbian at: <https://insajder.net/sr/sajt/vazno/2333/Vu%C4%8Di%C4%87-Vlada-isklju%C4%8Divi-krivac-za-to-%C5%A1to-nije-imenovan-tu%C5%BEilac-za-ratne-zlo%C4%8Dine.htm> (last accessed on 5 February 2017).

<sup>34</sup> National Strategy, p. 8.

<sup>35</sup> The concluding remarks of the National Strategy state that "the Republic of Serbia shall consistently strive, as much as for ensuring that risk factors such as the need for fiscal consolidation, or the passage of time, have the least influence on efficiency of the implementation of the National Strategy." See p. 42.

<sup>36</sup> Ognjen Zorić, "Nikolić: Prosecutor Vukčević should consider what he is digging in Serbia", Radio Slobodna Evropa, available in Serbian at: <http://www.slobodnaevropa.org/content/nikolic-tuzilac-vukcevic-da-razmisli-sta-kopa-posrbiji/26849571.html> (last accessed on 4 February 2017).





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arbitrary decisions strive to undermine the independence of the OWCP and the future successor of Mr. Vukčević as War Crimes Prosecutor.<sup>37</sup>

32. Pressure that is focused against all efforts to shed light on the accountability of persons implicated in crimes related to the armed conflicts of the 1990s is not directed solely at the OWCP. The HLC, as a non-governmental organization whose mission is to promote the rule of law and acceptance of the legacy of mass human rights violations, has been regularly publishing dossiers in which it exposes facts about events and persons surrounding some of the gravest violations, for the purpose of alarming the general public and encouraging the competent authorities to investigate these crimes and prosecute those responsible. In April 2016, the HLC was ordered by the court to pay damages to the Serbian Army Chief of General Staff Ljubiša Diković, for the allegedly false factual accusations published in the “Ljubiša Diković Dossier”.<sup>38</sup> The reasoning of this judgment, which was delivered after the court’s refusal to have the HLC present any evidence, goes contrary to the established practice of the European Court of Human Rights, limits the space for debate on issues of public concern, and protects government officials from any criticism and public scrutiny of their possible criminal responsibility for past war crimes. The first-instance judgment was upheld by the Court of Appeal in October 2016.<sup>39</sup>

### **Lack of resources and institutional independence of the War Crimes Investigation Service**

33. The War Crimes Investigation Service (WCIS) is part of the Criminal Police Directorate of the Ministry of the Interior. It employs a total of 50 staff.<sup>40</sup> During the 2013-2015 period, the WCIS filed 19 criminal complaints<sup>41</sup>, which has been a sharp drop compared with the previous three-year period. Possible reasons for the lack of efficiency of the WCIS may be the lack of interest among its members to investigate such cases or the obstruction of investigation of crimes where there is reasonable suspicion that they were committed by members of the Serbian police or military. Another reason could be the presence in this unit of those who took a direct part in the armed conflicts in the former Yugoslavia and are therefore unwilling to gather evidence against their fellow

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<sup>37</sup> HLC, “Bar Association of Belgrade Abuses Public Powers”, press release, January 2017, available at: <http://www.hlc-rdc.org/?p=33284&lang=de> (last accessed on 5 February 2017).

<sup>38</sup> HLC, “Press Statement with Regard to the Judgement Rendered upon the Lawsuit Filed by General Diković against HLC and Nataša Kandić”, press release, April 2016, available at: <http://www.hlc-rdc.org/?p=31693&lang=de> (last accessed on 6 February 2017).

<sup>39</sup> HLC, “The Court of Appeal rules on General Diković’s lawsuit against the HLC and Nataša Kandić”, press release, October 2016, available at: <http://www.hlc-rdc.org/?p=32806&lang=de> (last accessed on 6 February 2017).

<sup>40</sup> Information obtained from the WCIS in response to the HLC’s request for information of public importance No. 050-125/16-1 of 11 February 2016.

<sup>41</sup> Information provided by the WCIS in response to the HLC’s request for information of public importance No. 050-125/16-1 of 11 February 2016; Interview with OWCP representatives, 24 December 2015.





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ex-combatants. This is the direct consequence of the absence of formal checks into the wartime engagement of the WCIS staff engaged in investigations.<sup>42</sup>

34. The National Strategy for the Prosecution of War Crimes and the Action Plan for Chapter 23 of EU accession negotiations foresee a production of an analysis (report) aimed at enhancing the status, capacity and efficiency of the WCIS, which was drafted in mid-December. However, the implementation of the conclusions, set for the 3<sup>rd</sup> quarter of 2016, has not begun.<sup>43</sup> In the meantime, the HLC acquired information that the current Head of WCIS was removed from his duties in mid-2016, which was done in a rather non-transparent manner. While the abovementioned capacity analysis is still underway, removal of the person in charge of the Service without giving out any information to the public sends a worrying signal in terms of its future reform.

### Threats and intimidation of witnesses in the context of war crimes proceedings

35. The efficient prosecution of war crimes entails adequate witness protection and victims' support. Serbia's witness protection system was subject to criticism in the European Commission's 2009, 2010, 2012, 2013, 2014, 2015 and 2016 Progress Reports and the European Parliament's Serbia 2011, 2012, 2013, 2014, 2015 and 2016 Progress Resolutions, as well as other relevant international authorities (Council of Europe, UN Committees). The latest EC Serbia 2016 Report reiterates once again that *no concrete steps have been taken to address the serious weaknesses in the witness protection system*. The National Strategy for War Crimes Prosecution, as well as the Action Plan for Chapter 23, foresee a number of measures needed to be implemented in order to improve the witness protection system. However, no concrete steps have been taken in over a year according to the Ministry of Justice Report 4/2016 on implementation of the Action Plan for Chapter 23.<sup>44</sup> On the contrary, witnesses are being intimidated and deterred from testifying, and there is also an instance of a lawsuit filed against a former protected witness due to alleged threats he sent to the prosecutor for war crimes.<sup>45</sup> The lack of support coming from the institutions, which are responsible for the prosecution of war crimes and the lack of adequate protection by respective bodies, send a message to other potential witnesses that the information they possess is not welcome.

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<sup>42</sup> *Ten Years of War Crimes Prosecutions in Serbia – Contours of Justice*, Analysis of the prosecution of war crimes in Serbia 2004- 2013, Humanitarian Law Center, October 2014, available at: <http://www.hlc-rdc.org/?p=27457&lang=de> (last accessed on 5 February 2017), p. 31.

<sup>43</sup> Report 4/2016 on implementation of the Action Plan for Chapter 23, p. 107.

<sup>44</sup> *Ibid*, p. 110.

<sup>45</sup> Radio Free Europe, "Former protected witness accused", November 26<sup>th</sup> 2015, available [here](#) (in Serbian language only).





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### **Institutional independence and efficiency of the war crimes judiciary threatened by increasing changes of individual judges**

36. Five judges from the Department for War Crimes of the Higher Court in Belgrade were changed on various grounds between 2012 and the end of 2015. Bearing in mind the fact that there are six judges in the Department for War Crimes, these frequent changes of judges have not only delayed the proceedings, since the new judges have had to get acquainted with the cases, but has also affected the quality of the trials. As a result of these changes, judges with no experience in war crimes matters whatsoever are allocated to the department and no system of mandatory training has been set up for them. The replacement of a few judges with many years of experience seems irrational from the perspective of court efficiency, which is something the President of the Higher Court in Belgrade is responsible for in accordance with the law.<sup>46</sup>

### **Measures taken to ensure proper accountability for the transfer and concealment of remains in mass graves on the territory of Serbia**

37. No one in Serbia has been charged for the concealment of bodies of Kosovo Albanians in the period 1999-2002, while the ICTY has convicted nearly the entire political, military and police leadership of the Republic of Serbia for the concealment of bodies. The ICTY has determined that the Serbian army and police were responsible for the collection of bodies in Kosovo, and that the police were responsible for their concealment.<sup>47</sup>

38. The laws on the military and military courts (in force during the 1990s), as well as official military orders, required that all cases of crimes, discovery of bodies and their treatment be documented by special organs within the military. Irrefutable evidence exists that these cases were indeed documented.<sup>48</sup> Therefore, the archives of the Serbian army and police represent one of the key sources of information about the circumstances relating to the disappearance of civilians in Kosovo, the locations of the remaining mass graves in Serbia and other sites containing mortal remains of victims. These archives have remained secret to date and responsible institutions have been actively opposing all efforts to make them accessible to the public as well as all initiatives

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<sup>46</sup> Law on Organisation of Courts ("Republic of Serbia Official Gazette" nos. 116/08, 104/09, 101/10, 31/11, 78/11, 101/11, 101/13 and 40/15), article 52.

<sup>47</sup> ICTY Trial Chamber Judgment in the case of *Vlastimir Djordjevic* (23 February 2011), paras. 553, 985, 988, 2118, 2119 and 2121; ICTY Trial Chamber Judgment in the case of *Sainovic et al* (13 September 2010) paras. 1356 and 1357.

<sup>48</sup> See ICTY Exhibit No. P1011, Report of the Commission for the collection of materials, on the battlefield sanitization performed on the territory of Kosovo and Metohija 1998-1999, *Sainovic et al* case; *The cover-up of evidence of crimes during the war in Kosovo: THE CONCEALMENT OF BODIES OPERATION*, Humanitarian Law Center, January 2017, available at: <http://www.hlc-rdc.org/?p=33299&lang=de> (last accessed 4 February 2017).





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directed at the establishing of responsibility of members of the army and police for crimes committed during the armed conflicts in the former Yugoslavia.<sup>49</sup>

## LEGISLATIVE AMENDMENTS TO CRIMINALIZE THE DENIAL OF GENOCIDE

39. In November 2016, the National Assembly of the Republic of Serbia opened the debate on the Bill on Amendments to the Criminal Code, which prohibits public approval and denial of genocide, crimes against humanity and war crimes, but only if those offenses have been established by the final judgment of a court in Serbia or the International Criminal Court. It does not, on the other hand, refer to acts of genocide, crimes against humanity and war crimes that have been established by the International Criminal Tribunal for the Former Yugoslavia (ICTY), or the International Court of Justice (ICJ) – the two international courts which have dealt with determining these crimes in the former Yugoslavia. Excluding from the qualifying cause those crimes established by the ICTY, the Bill allows for the denial and public approval of the Srebrenica genocide, as well as numerous other atrocities, that are already subject to widespread denial, with the aim of revision of the recent past that goes well against court-established facts.<sup>50</sup>

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<sup>49</sup> *Access to Documents related to Crimes against International Law in the possession of Serbian Institutions: State Secret Prevails over Right to the Truth*, Humanitarian Law Center, April 2016, available at: <http://www.hlc-rdc.org/?p=31572&lang=de> (last accessed 4 February 2017).

<sup>50</sup> HLC, “Legal protection for the denial of genocide in Srebrenica”, press release, November 2016, available at: <http://www.hlc-rdc.org/?p=32958&lang=de> (last accessed on 6 February 2017).

