HUMANITARIAN LAW CENTER

Second Report

on the Implementation of the National Strategy for the Prosecution of War Crimes

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Humanitarian Law Center

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CONTENTS

Acronyms and Abbreviations

Action Plan	Action Plan for Chapter 23 in the framework of Serbia's accession negotiations with the European Union
AP KM	Autonomous Province of Kosovo and Metohija
BiA	Serbian Security Intelligence Agency
BiH	Bosnia and Herzegovina
Commission on Missing Persons	The Commission on Missing Persons of the Government of the Republic of Serbia
CPC	Criminal Procedure Code (Official Gazette of the Republic of Serbia nos. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013 and 55/2014)
Deputy Prosecutor	Deputy War Crimes Prosecutor of the Republic of Serbia
DORH	State Attorney's Office of the Republic of Croatia
EU	European Union
EULEX	European Union Rule of Law Mission in Kosovo
Expert Group	Expert Group tasked with solving missing persons cases in the territory of the Former SFRY
Government	Government of the Republic of Serbia
HJC	The High Judical Council
HLC	Humanitarian Law Center
ICPM	International Commission on Missing Persons
ICRC	International Committee of the Red Cross
ICTY	United Nations International Criminal Tribunal for the Former Yugoslavia
MICT	United Nations Mechanism for International Criminal Tribunals
MoD	Ministry of Defence of the Republic of Serbia
MoI	Ministry of the Interior of the Republic of Serbia
National Strategy	National Strategy for the Prosecution of War Crimes
OEBS	Organization for Security and Co-operation in Europe
OWCP	Office of the War Crimes Prosecutor of the Republic of Serbia
Prosecutorial Strategy	Prosecutorial Strategy for Investigation and Prosecution of War Crimes 2018 – 2023
Prosecutor	War Crimes Prosecutor of the Republic of Serbia
SBA	Serbian Bar Association
SPC	State Prosecutorial Council
SRS	Serbian Radical Party
U.N.	United Nations Organisation
UNMIK	United Nations Interim Administration Mission in Kosovo
MICT	United Nations Mechanism for International Criminal Tribunals
WCIS	War Crimes Investigation Service of the Ministry of the Interior of the Republic of Serbia
Working Body	Working Body Responsible for Monitoring Implementation of the National Strategy for the Prosecution of War Crimes
WPU	Witnees Protection Unit

Preface

The Humanitarian Law Center (HLC) has been monitoring and providing support to war crimes trials ever since the first war crimes proceedings conducted in Serbia in 2002. The HLC is the only organization that has been continuously monitoring and analysing war crimes trials in Serbia and informing the public at home and abroad about them. It has been representing victims (injured parties) in war crimes cases through an Attorney, filing criminal complaints with the Office of the War Crimes Prosecutors (OWCP) against suspected perpetrators, and sharing its documentation on war crimes. Also, the HLC has been identifying witnesses and victims and encouraging them to give evidence in court and thus contribute to achieving justice for past crimes.

The National Strategy for the Prosecution of War Crimes (hereinafter: the National Strategy), a document that the Government of the Republic of Serbia adopted in February 2016, is based on, among other things, the Model Strategy developed by the HLC.[1] The HLC has been and will be reporting on the implementation of the National Strategy throughout its course with a view to offering independent research assessments and findings regarding its implementation.

This is the second HLC report on the implementation of the National Strategy. A comprehensive assessment of the state implementation of the National Strategy in the preceding period is provided in the HLC's Initial Report on the Implementation of the National Strategy for the Prosecution of War Crimes, which was released in December 2017.[2]

As shown by the HLC's findings below, no progress in war crimes prosecutions can be reported in the two years since the adoption of the National Strategy. The implementation of the National Strategy has been severely delayed, and 11 of the 12 indictments that have been issued since the adoption of the National Strategy were not the result of the OWCP investigation but transferred to the OWCP from BiH.[3] War crimes trials continue to be

1 *Model Strategy for the Prosecution of War Crimes Committed during and in relation to the Armed Conflicts in the Former Yugoslavia, Period 2015-2025*, HLC, 2015, available at the HLC website at: http://www.hlc-rdc.org/wp-content/uploads/2017/12/Izvestaj_Strategija_I_eng.pdf, last accessed: 27 April 2018.

2 *Initial Report on the Implementation of the National Strategy for the Prosecution of War Crimes*, HLC, 2017, available at the HLC website at: http://www.hlc-rdc.org/wp-content/uploads/2017/12/Izvestaj_Strategija_I_eng.pdf, last accessed: 27 April 2018.

3 *Doboj, Ključ-Šljivari, Bratunac, Bosanska Krupa, *Ključ-Kamičak, *Ključ-Kamičak I, Srebrenica, Sanski Most – Lušci, Caparde, Bosanska Krupa II, Ključ – Rejzovići, **Bogdanovci* are the cases in which

unnecessarily protracted, the procedural rights of victims have not been strengthened, the number of missing persons is decreasing at a slower pace than foreseen in the National Strategy, cooperation with the ICTY/MICT is hampered due to the decision of the Higher Court in Belgrade not to hand over to the ICTY/MICT members of the Serbian Radical Party charged with contempt of court, and the relevant international governmental and non-governmental organisations have negative opinions about Serbia's progress in the prosecution of war crimes.

indictments have been raised since the adoption of the National Strategy on 20 February 2016. *The cases of *Ključ-Kamičak* and *Ključ-Kamičak II* were merged. ****Note:** The indictment in the *Bogdanovci* Case was not confirmed before the Higher Court in Belgrade by the end of the work on this report. The HLC does not have any information as to whether the indictment in this case is the result of the OWCP's initial work or the indictment has been transferred.

Introduction

On 20 February 2016, the Government of the Republic of Serbia adopted the National Strategy for the Prosecution of War Crimes 2016-2020, which detailed a set of activities to help achieve the common objective of improving the prosecution of war crimes in Serbia.[4]

Determining individual criminal responsibility for war crimes committed during the 1990s is one of the formal conditions that Serbia has to meet to join the EU.[5] As a direct response to the recommendations made by the European Commission in its Screening Report on Chapter 23, Serbia has adopted the Action Plan for Chapter 23 relating to judicial reform and fundamental rights, and also war crimes.[6]

The Action Plan in section "1.4. War Crimes", foresees a set of activities for all the authorities responsible for war crimes prosecution. The main task of the National Strategy was to set forth the activities that have to be performed to improve the efficiency of war crimes prosecutions, following the guidance provided in the Action Plan.

The HLC is the only non-governmental organisation that has been monitoring the implementation of the National Strategy since its adoption. The monitoring is conducted in order to offer independent assessment of and findings on the state of implementation of the National Strategy. The initial HLC report on the implementation of the National Strategy was released in December 2017.[7] In the meantime, a government Working body for monitoring and reporting on the implementation of the National Strategy (hereinafter:

4 The full text of the National Strategy for the Prosecution of War Crimes is available at the OWCP official website at: http://www.tuzilastvorz.org.rs/upload/HomeDocument/Document__en/2018-05/strategija_trz_eng.pdf, last accessed: 13 April 2018.

5 *Negotiating Positions on Chapter 23 – European Union Common Position*, available at: https://www.mpravde.gov.rs/files/Ch23%20EU%20Common%20Position.pdf, last accessed: 12 June 2018.

6 *Report on the degree of alignment of Serbian legislation with the EU acquis* (*Screening Report*) is available at the Ministry of Justice official website: https://www.mpravde.gov.rs/files/Screening-report-chapter-23-serbia%20Official%20(3).pdf; the Action Plan for Chapter 23 is available at the Ministry of Justice official website: https://www.mpravde.gov.rs/files/Action%20plan%20Ch%2023.pdf. All sources last accessed: 13 April 2018.

7 *Initial Report on the Implementation of the National Strategy for the Prosecution of War Crimes*, HLC, 2017.

the Working Body)[8] was set up, 18 months behind schedule, and released its first report in late January 2018.[9]

The present report is the second HLC report on the implementation of the National Strategy. It provides an assessment of how the implementation of the National Strategy progressed in the period from 1 December 2017 to 1 June 2018.

8 Decision of the Government of Serbia establishing a Working Body for monitoring the implementation of the National Strategy for Prosecution of War Crimes (Official Gazette of the Republic of Serbia no. 80 of 29 August 2017).

9 *Report 2 – National Strategy for Prosecution of War Crimes was adopted at the second session of the Working Body on 22 January 2018.* Report 2 is available at the Ministry of Justice official website: https://www.mpravde.gov.rs/tekst/17978/izvestaj-o-sprovodjenju-nacionalne-strategije-za-procesuiranje-ratnih-zlocina.php, last accessed: 06 June 2018.

Methodology

The information used in the report was drawn from several sources. The first source comprised the reports of governmental and international bodies, including: the reports of the Working Body for monitoring the implementation of the National Strategy for the Prosecution of War Crimes,[10] quarterly reports on the implementation of the Action Plan for Chapter 23,[11] European Commission's Serbia Progress Reports,[12] Non-paper on the state of play regarding chapters 23 and 24 for Serbia,[13] and the reports of the Chief Prosecutor and the President of the United Nations Mechanism for International Criminal Tribunals (hereinafter: the MICT) submitted to the U.N. Security Council.[14] The second source included information gathered from the stake-holders identified in the National Strategy through requests for access to information of public importance. The third source comprised interviews that HLC researchers conducted with representatives of government authorities responsible for the implementation of the activities envisaged in the National Strategy.[15]

As the HLC is the only organisation that has been continuously dealing with and analysing war crimes proceedings in Serbia and providing, through attorneys, legal representation to victims in these proceedings, its researchers have built up a strong expertise in war crimes trials and are competent to report on how prosecution of war crimes is progressing.

10 Official reports are available at the Ministry of Justice official website: https://www.mpravde.gov.rs/tekst/17978/izvestaj-o-sprovodjenju-nacionalne-strategije-za-procesuiranje-ratnih-zlocina.php, last accessed: 06 June 2018.

11 Reports on the implementation of the Action Plan for Chapter 23 are available at the official website of the Ministry of Justice: https://www.mpravde.gov.rs/tekst/17033/izvestaj-br-32017-o-sprovodjenju-akcionog-plana-za-poglavlje-23.php, last accessed: 03 May 2018.

12 *Serbia 2018 Report*, pp. 18-20. The report is available at the official website of the Ministry of European Integration: http://www.mei.gov.rs/upload/documents/eu_dokumenta/godisnji_izvestaji_ek_o_napretku/ec_progress_report_18.pdf, last accessed: 04 May 2018.

13 *Non paper on the state of play regarding chapters 23 and 24*, pp. 5 and 6. *Non paper* is available at the official website of the Ministry of European Integration: http://www.mei.gov.rs/upload/documents/eu_dokumenta/non_paper_23_24/non_paper_23_24.1.pdf, last accessed: 04 May 2018.

14 The reports of the Prosecutor and President of the International Residual Mechanism for Criminal Tribunals (MICT) to the UN Security Council are available at: http://www.unmict.org/en/news/statements-and-speeches, last accessed: 06 June 2018.

15 Members of the Office of the War Crimes Prosecutor and the Commision on Missing Persons of the Government of the Republic of Serbia have contributed to this report through interviews with HLC representatives.

Therefore, previous HLC analyses and reports have also been an important source of information for the present report.[16]

The process of collecting the information needed for compiling this report met several obstacles. In some instances, the competent state authorities interpreted their obligation to provide access to information under the Law on Free Access to Information of Public Importance too narrowly. When addressing the Ministry of Justice, for example, the HLC on several occasions received a terse reply that "the Ministry does not hold the documents sought" without any further explanation.[17] The War Crimes Investigation Service did not respond at all to an HLC's request for an interview, just as it had failed to do during the preparation of the Initial Report.[18]

During the preparation of the report an interview was conducted with a representative of the Judicial Academy. Although familiar with the occasion for the interview and the intention to use the information from this conversation for the preparation of the report, by the end of the work on the report, the HLC still had not received a response to several requests for the authorization of allegations, in which we referred to the conversation with the representative of this institution.

An additional obstacle in the way was the fact that the Working Body responsible for supervising and reporting on National Strategy implementation was only established in August 2017, a year and a half later than planned, and has thus far has only released two official reports on the implementation of the activities set forth in the National Strategy. The two reports, in combination, cover the period from 20 February 2016 to 31 March 2018.[19]

16 See section: *Publications* on the HLC official website: http://www.hlc-rdc.org/?cat=223&lang=de, and section: *List of Cases*: http://www.hlc-rdc.org/?cat=234&lang=de. All sources last accessed: 12 June 2018.

17 Ministry of Justice letter 7-00-179/2018-32 of 29 May 2018 in response to an HLC Freedom of Information request. The HLC asked for information about the activities undertaken for the purpose of organising regional conferences, and the Ministry's reply was: "There are no documents".

18 *Initial Report on the Implementation of the National Strategy for the Prosecution of War Crimes*, HLC, 2017, p. 8.

19 The National Strategy stipulates that the Working Body will formulate conclusions and recommendations on implementation and submit them to the competent authorities, and inform the Council for the Implementation of the Action Plan for Chapter 23 and the Serbian Government on a quarterly basis on implementation results. *Report No. 1 on the implementation of the National Strategy for the Prosecution of War Crimes*was adopted at the second meeting of the Working Body on 22 January 2018; *Report No.*

General Findings on the National Strategy Implementation

The National Strategy defined a set of general indicators to be used to measure progress made in the prosecution of war crimes. These are:

1. Case prosecution based on the priorities established in accordance with the criteria laid down in the Prosecutorial Strategy;
2. The increase in the number of indictments in relation to the number of investigations;
3. The increase in the number of proceedings resulting in a final judgment in relation to the number of indictments;
4. The shorter average duration of war crimes proceedings;
5. The positive evaluation by the European Commission on the level of alignment of the system of protection and support to victims and witnesses in the Republic of Serbia with European Union standards;
6. The increased number of cases initiated and resolved as a result of regional cooperation;
7. A reduction in the number of missing persons whose fate has not been clarified;
8. Positive reports of the Chief Prosecutor and the President of the ICTY to the UN Security Council;
9. Positive reports from other relevant governmental and non-governmental organizations.

The HLC's general findings on the current state of implementation of the National Strategy will be based on these indicators.

2 on the implementation of the National Strategy for the Prosecution of War Crimes was adopted at the third meeting of the Working Body on 29 May 2018.

I. Case Prosecution Based on the Priorities Established in Accordance with the Criteria laid down in the Prosecutorial Strategy

The Prosecutorial Strategy for Investigation and Prosecution of War Crimes 2018-2023, (Prosecutorial Strategy) was adopted in March 2018, two years behind schedule.[20] According to the Action Plan for Chapter 23 and the National Strategy, the Prosecutorial Strategy was due to be adopted in the first half of 2016.[21]

There are a number of methodological flaws in the Prosecutorial Strategy, which leave room for arbitrary interpretation of obligations, and also of the results desired. The absence of clear criteria for prioritizing war crimes cases for prosecution is the major shortcoming of the Prosecutorial Strategy. Although the National Strategy stipulates that these criteria are to be clearly defined in the Prosecutorial Strategy, instead of doing so, the Prosecutorial Strategy merely refers to the criteria set out in the National Strategy without working them out in detail.[22]

In the view of the HLC, the absence of clear criteria for case prioritization can lead to the OWCP continuing its practice of prosecuting only the less demanding war crimes cases (cases involving a small number of victims, isolated and minor incidents, and low-ranking perpetrators).[23]

On 14 March 2018, the HLC submitted to the OWCP its comments on the Draft Prosecutorial Strategy for Investigation and Prosecution of War Crimes. The comments are discussed in more detail in the section on increasing efficiency of war crimes proceedings below.[24]

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20 *The Prosecutorial Strategy for Investigation and Prosecution of War Crimes in the Republic of Serbia for the period 2018-2023* is available at the official website of the Office of the War Crimes Prosecutor: http://www.tuzilastvorz.org.rs/upload/HomeDocument/Document__en/2018-05/strategija_trz_eng.pdf, last accessed: 23 May 2018.

21 See: Activity 1.4.1.3. in the Action Plan for Chapter 23: https://www.mpravde.gov.rs/files/Action%20plan%20Ch%2023.pdf; see also: the *National Strategy for the Prosecution of War Crimes*, area: 1. Increasing efficiency of war crimes proceedings before the Republic of Serbia bodies, pp. 21-22: http://www.tuzilastvorz.org.rs/upload/HomeDocument/Document__en/2016-05/p_nac_stragetija_eng.PDF. All sources last accessed: 23 May 2018.

22 *National Strategy for the Prosecution of War Crimes*, p. 21.

23 See: *Are war crimes trials in Serbia dying out?*, press release, HLC, 22 May 2017, available at: http://www.hlc-rdc.org/?p=33810&lang=de, last accessed: 23 May 2018.

24 *Comments of the Humanitarian Law Center (HLC) on the Draft Prosecutorial Strategy for Investigation and Prosecution of War Crimes in the Republic of Serbia for the period 2018-2023* are available at: http://www.hlc-rdc.org/wp-content/uploads/2018/03/Comments_of_the_Humanitarian_Law_Center_on_the_Draft_Prosecutorial_Strategy_for_Investigation_and_Prosecution_of_War_Crimes.pdf, last accessed: 23 May 2018.

II. Increase in the Number of Indictments in Relation to the Number of Investigations

Between 1 December 2017 and 1 June 2018, the OWCP brought four new indictments for war crimes, against five individuals.[25]

According to Report No. 2 on the implementation of the National Strategy for the Prosecution of War Crimes, **the OWCP has recently taken over 952 cases from the courts of general jurisdiction in Priština, Peć and Prizren**, of which 810 are against unknown perpetrators.[26] The report also states that in the period **from February 2016 to 16 April 2018, the OWCP took over 1,578 cases from the prosecutors' offices of general jurisdiction**.[27]

This information indicates that the number of cases at investigation and pre-investigation stages continues to be very high, confirming the trend observed by the HLC in its Initial Report of the Implementation of the National Strategy.[28] Bearing in mind that between 1 December 2017 and 1 June 2018 only four new indictments were filed, three of which were transferred from BiH,[29] the HLC concludes that **in the last six months there has been no increase in the number of indictments in relation to the number of investigations**.

Also, it should be noted that the OWCP is obliged under the Action Plan for Chapter 23 to prepare a report on its performance, detailing the actions it has taken with regard to all criminal complaints that have been filed since 2005, which would show whether or

25 Indictments are raised in the following cases: *Caparde*, *Bosanska Krupa II*, *Ključ - Rejzovići*, and *Bodanovci*. See section: *Announcements* at the official OWCP website: http://www.tuzilastvorz.org.rs/en/news-and-announcements/announcements; see also: List of cases prosecuted or being prosecuted before the Court in Serbia, available at: http://www.hlc-rdc.org/?cat=234&lang=de, last accessed: 03 May 2018.

26 *Report No. 2 on the implementation of the National Strategy for the Prosecution of War Crimes*, May 2018, p. 6.

27 *Ibid.*

28 *Initial Report on the Implementation of the National Strategy for the Prosecution of War Crimes*, HLC, 2017, pp. 10-11.

29 *Caparde*, *Bosanska Krupa II*, *Ključ - Rejzovići*, **Bodanovci*. ***Note:** The indictment in the *Bogdanovci* Case was not confirmed before the Higher Court in Belgrade by the end of the work on this report. The HLC does not have any information as to whether the indictment in this case is the result of the OWCP's initial work or because the indictment has been transferred. List of cases prosecuted or being prosecuted before the Court in Serbia, available at: http://www.hlc-rdc.org/?cat=234&lang=de, last accessed: 07 June 2018.

not all war crimes charges have been adequately investigated.[30] The report is running two years late.[31]

III. Increase in the Number of Proceedings Resulting in a Final Judgment in Relation to the Number of Indictments

During the reporting period, trials in 15 cases were held,[32] four new indictments were issued[33] and one first-instance judgment was handed down.[34] The War Crimes Department of the Court of Appeal in Belgrade handed down no judgments during the same period. As already pointed out in the previous HLC's report, **the increase in the number of indictments resulting in final judgments indicator is not a true indicator of the efficiency of the work of the authorities responsible for war crimes prosecution**. The HLC has already highlighted the issue of unsubstantiated indictments and the courts' practice of confirming such indictments without a thorough examination of the evidence that the prosecution proposed introducing.[35]

The judgment of acquittal in the case of *Ključ-Kamičak*[36] demonstrates that the said practice has indeed continued during the reporting period. Explaining the reasons for the judgment, Judge Vera Vukotić, who chaired the panel, said that the Court had concluded

30 Action Plan for Chapter 23, activity: 1.4.1.10, p 115.

31 Report no. 1-2018 on implementation of Action Plan for Chapter 23, pp. 298 - 299, available at the Ministry of Justice official website: https://www.mpravde.gov.rs/files/Report%20no.%201-2018%20on%20implementation%20of%20%20%20Action%20plan%20for%20Chapter%2023.pdf, last accessed: 23 May 2018.

32 *Lovas*, *Trnje*, *Ćuška*, *Bratunac*, *Srebrenica*, *Bosanski Petrovac – Gaj*, *Doboj, Ključ – Šljivari*, *Bosanska Krupa*, *Ključ – Kamičak*, *Sanski Most – Lušci*, *Caparde*, *Bosanska Krupa II*, *Ključ – Rejzovići*, and *Skočić*. See: List of cases prosecuted or being prosecuted before the courts in Serbia, available at: http://www.hlc-rdc.org/?cat=234&lang=de, last accessed: 03 May 2018.

33 See section: *Announcements* at the official OWCP website: http://www.tuzilastvorz.org.rs/en/news-and-announcements/announcements; see also: List of cases prosecuted or being prosecuted before the courts in Serbia, available at: http://www.hlc-rdc.org/?cat=234&lang=de, last accessed: 3 May 2018.

34 *Ključ-Kamičak* Case trial report, 25 December 2017, available (in Serbian) at: http://www.hlc-rdc.org/wp-content/uploads/2018/02/10._Kljuc_Kamicak_Izvestaj_sa_objave_presude_25.12.2017.pdf, last accessed: 3 May 2018.

35 See: *The third acquittal for war crimes in 2017,* press release, HLC, 28 December 2017, available at: http://www.hlc-rdc.org/?p=34666&lang=de, last accessed: 26.04.2018.

36 *Ibid. Ključ-Kamičak* Case trial report, 25 December 2017, available (in Serbian) at: http://www.hlc-rdc.org/wp-content/uploads/2018/02/10._Kljuc_Kamicak_Izvestaj_sa_objave_presude_25.12.2017.pdf, last accessed: 3 May 2018.

that, on the basis of the evidence presented, it was not possible to establish that the accused had committed the crime they were charged with.[37] Assessing the testimonies of the prosecution witnesses, the court found them to be contradictory, illogical, not true to life and at odds with other evidence presented.[38] Judge Vukotić also said that none of the individuals who had witnessed the murders listed in the indictments had been called in evidence.[39] Because of all this, the court ruled according to the *in dubio pro reo* principle – i.e. in the absence of evidence, it ruled in favour of the defendants.[40]

IV. Shorter Average Duration of War Crimes Proceedings

There have been only 33 trial days during the reporting period for all ongoing war crimes cases, with **29 trial days having been postponed for different reasons**.[41] Hearings have been scheduled over 30 days apart on average.[42] Given a total of 15 pending cases, the average number of trial days held per case has been just two.

The findings presented in this reports show that no measurable results have been achieved with respect to this indicator.

V. Positive Evaluation by the European Commission on the Level of Alignment of the System of Protection and Support to Victims and Witnesses in the Republic of Serbia with the European Union

The *Non-paper on the state of play regarding chapters 23 and 24* notes that there has been a delay in implementing most of the recommendations of the analysis of the Witness Protection Unit.[43] The Non-paper also states that Serbia still lacks a comprehensive victim and witness support system, in particular, one which includes a systematic referral mechanism to civil society organisations before, during and after criminal proceedings.[44]

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37 *Ključ-Kamičak* Case trial report, 25 December 2017, available (in Serbian) at: http://www.hlc-rdc.org/wp-content/uploads/2018/02/10._Kljuc_Kamicak_Izvestaj_sa_objave_presude_25.12.2017.pdf, last accessed: 3 May 2018.

38 *Ibid.*

39 *Ibid.*

40 *Ibid.*

41 A list of cases with a calendar of hearings held in 2017 and 2018 is available at: http://www.hlc-rdc.org/?cat=234, last accessed: 23 April 2018. See trial reports for the period: 1 December 2017-31 May 2018.

42 See: *Initial Report on the Prosecution of War Crimes*, HLC, 2017, p. 13.

43 *Non-paper on the state of play regarding chapters 23 and 24 for Serbia (November 2017)*, p. 6.

44 *Ibid.*

The European Commission, in its latest report on Serbia's progress, notes that "some initial steps were taken to align procedural rights with the EU *acquis*".[45] The report further states that an analysis of the national normative framework for implementing minimum EU standards on the rights and protection of crime victims has been finalised, and new services established within the Public Prosecutor's Office, albeit restricted to providing information and with a limited staff.[46]

Nevertheless, as stated in the report, "access to justice is hindered by lack of an efficient free legal aid system, the poor availability and quality of performance of the defence lawyers appointed, inefficient procedures for awarding compensation through civil proceedings, and weak enforcement of final judgments."[47] Cooperation between the Office of the War Crimes Prosecutor and the Witness Protection Unit is assessed in the report as improved, following a protocol on urgent measures applied in the witness protection programme from April 2017.[48] The report also states that the recommendations contained in the analysis of the work of the WPU as to working conditions, lack of specialised staff and the legislative changes needed for securing protective changes of identity need to be implemented.[49]

VI. Decrease in the Number of Missing Persons whose Fate has not been Clarified

According to the International Committee of the Red Cross (ICRC) figures of **May 2018**, **10,315** of the persons who went missing from the armed conflicts in Croatia, BiH and Kosovo remain unaccounted for.[50] In August 2017 their number stood at 10,390,[51] which means that in the ten months' period, 75 persons were found.

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45 *Serbia 2018 Report*, p. 29.

46 *Ibid.*

47 *Ibid.*

48 *Ibid.*

49 *Ibid.*

50 Data obtained from the International Committee of the Red Cross, 13 June 2018, HLCIndexIn: 25-F134245.

51 Data obtained from the International Committee of the Red Cross, 25 September 2017. If the currently available missing people figure is compared with the figures for May 2016 (10,698) and November 2012 (12,544), we can conclude that the pace of resolving the fate of missing persons has remained virtually unchanged even after the adoption of the National Strategy. See also: *Initial Report on the Prosecution of War Crimes*, HLC, 2017, pp. 14-15, 54-62.

The quantitative data show a decrease in the number of missing persons, but also show that the measures implemented so far under the National Strategy have failed to significantly increase efficiency in the search for missing persons.[52]

The inefficiency in the search for missing persons can be attributed to lack of political will, which is reflected in the insufficient commitment of the competent Serbian authorities to the search for missing persons, an inadequate institutional capacity, the inadequate number of staff engaged in the search, the lack of action on the part of the prosecuting authorities in the search for missing persons and in prosecution of those responsible, lack of access to official archives relevant to the search for missing persons, etc.

(For more information on the process of accounting for missing persons, see the section on War Crimes Trials and the Issue of Missing Persons below.)

VII. Increase in the Number of Cases Initiated and Resolved as a result of Regional Cooperation

All cases that have been opened following the adoption of the National Strategy resulted from regional cooperation. This trend continued during the reporting period: three of the four indictments issued in this period were transferred to the OWCP after being confirmed by the Court of BiH.[53]

As underlined earlier by the HLC, this indicator does not reflect the quality of the transferred cases or regional cooperation itself. Namely, the OWCP has continued to prosecute only simple cases during the reporting period, as evidenced by its latest indictments, which include only five individuals.[54]

(For more information about regional cooperation, see section on Regional and International Cooperation below.)

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52 *Initial Report on the Prosecution of War Crimes*, HLC, 2017, pp. 14-15.

53 See: *Caparde*, *Bosanska Krupa II*, *Ključ – Rejzovići*, and **Bogdanovci* cases in section *Announcements* at the official OWCP website: http://www.tuzilastvorz.org.rs/en/news-and-announcements/announcements, last accessed: 3 May 2018. ***Note:** The indictment in the *Bogdanovci* Case was not confirmed before the Higher Court in Belgrade until the end of the work on this report. The HLC does not have any information as to whether the indictment in this case is the result of the OWCP's initial work or because the indictment has been transferred.

54 See section: *Announcements* at the official OWCP website: http://www.tuzilastvorz.org.rs/en/news-and-announcements/announcements; see also: List of cases prosecuted or being prosecuted before the Court in Serbia, available at: http://www.hlc-rdc.org/?cat=234&lang=de, last accessed: 7 June 2018.

VIII. Reports of the Chief Prosecutor and President of the ICTY to the Security Council

In their latest reports submitted to the U.N. Security Council in December 2017, the Chief and President of the ICTY[55] expressed great concern over "the huge numbers of crimes yet to be prosecuted before domestic courts in the former Yugoslavia, and the thousands of victims who continue to cry for justice."[56]

Judge Carmel Agius, President of the ICTY, stated in his report that "while it is commendable to see that many cases have been adjudicated through special war crimes courts, and that specialised war crimes prosecutors continue to investigate and bring charges against perpetrators, **much more needs to be done** [HLC cursive]."[57]

ICTY Prosecutor Serge Brammertz for his part reiterated his concern over revisionist tendencies, noting that "convicted war criminals continue to be seen by many as heroes, while victims and survivors are ignored and dismissed",[58] adding that national prosecutor's offices now have the primary responsibility to achieve greater justice.[59]

IX. Positive Reports from Other Relevant Governmental and Non-Governmental Organisations

Amnesty International (AI), in its Report on the State of Human Rights 2017/18, notes that in the region of former Yugoslavia impunity has remained the norm, with courts continuing to have limited capacity and resources, and facing undue political pressure.[60]

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55 ICTY Prosecutor Brammertz's address before the U.N. Security Council, New York, 06 December 2017, available at the official ICTY website: http://www.icty.org/x/file/Press/Statements%20and%20Speeches/Prosecutor/171206-prosecutor-brammertz-address-unsc-en.pdf; ICTY President Judge Carmel Agius' address before the U.N. Security Council, New York, 06 December 2017, available at the official ICTY website: http://www.icty.org/x/file/Press/Statements%20and%20Speeches/President/171206-president-agius-address-unsc-en.pdf. All sources last accessed: 04 May 2018.

56 ICTY President Judge Carmel Agius' address before the U.N. Security Council, New York, 06 December 2017, p. 4.

57 *Ibid.*

58 ICTY Prosecutor Brammertz's address before the U.N. Security Council, New York, 06 December 2017, p. 3.

59 *Ibid.*, pp. 3- 4.

60 *Amnesty International Report 2017/2018*, pp. 51-52. The report is available at the *Amnesty International* official website at: https://www.amnesty.org/download/Documents/POL1067002018ENGLISH.PDF, last accessed: 24 May 2017.

According to the AI, prosecutors across the region have lacked the support of the executive and their work been compromised by a climate of nationalist rhetoric and lack of political commitment to sustained regional co-operation.[61] The AI also notes that by the end of 2017 the authorities had made no progress in establishing the fate of people who disappeared during the armed conflicts in the Balkans.[62]

In a section dedicated to the state of human rights in Serbia, the AI notes that only three prosecutions have resulted in final judgments, all of them acquittals.[63] The report further states that the trial of the case of *Srebrenica-Kravica* was halted in July to be reopened afresh in November, because the OWCP was without a Chief Prosecutor for as long as 18 months.[64]

Human Rights Watch (HRW), in its 2018 report, observes that war crimes prosecutions have been hampered due to lack of political support, and of sufficient staff and other resources at the Office of the War Crimes Prosecutor.[65] The report makes a specific reference to the dismissed indictment in the case of *Srebrenica-Kravica*, and to the report of ICTY Prosecutor Serge Brammertz, in which he calls on Serbia to officially acknowledge the crimes in Srebrenica as genocide.[66]

The U.S. Department of State, in its 2017 Human Rights Report, reiterates that despite numerous claims by Serbian officials that new evidence had been found in the *Bytyqi* Case, the Serbian government in 2017 made no significant progress toward providing justice for the victims.[67] This report too discusses the dismissal of the indictment in the

61 *Ibid.*

62 *Ibid.*

63 *Ibid.,* p. 323.

64 *Ibid.* **Author's note:** the Court of Appeal dismissed the indictment in *Srebrenica-Kravica*, on the grounds that it had not been filed by an authorised prosecutor. This is because at the time the indictment was filed, the OWCP was without a chief prosecutor or acting chief prosecutor (between 1 January 2016 and the end of May 2016). See: *State obstructing war crimes trials*, press release, HLC, 14 July 2017, available at: http://www.hlc-rdc.org/?p=34041&lang=de, last accessed: 24 May 2017.

65 *World Report 2018 (Events of 2017),* pp. 470-471, available at: https://www.hrw.org/sites/default/files/world_report_download/201801world_report_web.pdf, last accessed: 24 May 2017.

66 *Ibid.*, p. 471.

67 *Serbia 2017 Human Rights Report*, U.S. Department of State, pp. 1-2, available at: https://www.state.gov/documents/organization/277459.pdf, last accessed: 24 May 2018.

Srebrenica-Kravica Case because the OWCP was without a war crimes prosecutor or acting war crimes prosecutor for nearly 18 months.[68]

Areas Covered by the National Strategy for the Prosecutionof War Crimes

The National Strategy for the Prosecution of War Crimes is is organized around eight areas of intervention. For the objectives in each area, the activities that need to be carried out and the time frames for their implementation are defined. The eight areas are as follows:

1. Increasing efficiency of war crimes proceedings conducted before the judicial institutions of the Republic of Serbia;
2. Protection of witnesses and victims;
3. Support to witnesses and victims;
4. Defence of the accused;
5. War crimes and the issue of missing persons;
6. Cooperation with the International Criminal Tribunal for the former Yugoslavia;
7. Regional and international cooperation;
8. Improvement in societal attitudes towards the issue of war crimes trials.

In the following pages, the current situation in each of the above-listed areas will be discussed and key shortcomings identified.

68 *Ibid.*, p. 2.

INCREASING EFFICIENCY OF THE WAR CRIMES PROCEEDINGS
1. INVESTIGATION AND INDICTMENTS
Objective 1: The Office of War Crimes Prosecutor has adopted and implements Prosecutorial Strategy for the Investigation and Prosecution of War Crimes (hereinafter: Prosecutorial Strategy). Objective 2: The Office of War Crimes Prosecutor shall have accurate records of the events that may be qualified as war crimes, and records on unresolved cases, to be used, on the basis of clearly defined criteria, for the prioritization of cases pending and the development of a five-year plan for case processing. Objective 3: The Office of War Crimes Prosecutor applies the measures to increase its working efficiency. Objective 4: Enhanced capacity of the Office of War Crimes Prosecutor. Objective 5: Improved status and efficiency of the War Crimes Investigation Service.

Prosecutorial Strategy for the Investigation and Prosecution of War Crimes

Two years late, the Prosecutorial Strategy for Investigation and Prosecution of War Crimes in the Republic of Serbia 2018-2023 was adopted by the OWCP on 4 April 2018.[69]

Although the National Strategy envisages that the Prosecutorial Strategy shall be drafted and adopted "through a transparent and consultative process with all relevant stakeholders",[70] the presentation of the draft version of the Prosecutorial Strategy was organized only for a small circle of representatives of government authorities responsible for war crimes prosecution and legal professionals, with members of the press not being invited to attend.[71] Also, the deadline for submission of written comments to the draft strategy was extremely short.[72]

69 *Report 2 – National Strategy for Prosecution of War Crimes*, May 2018, p. 2. The Prosecutorial Strategy for Investigation and Prosecution of the War Crimes in the Republic of Serbia (2018-2023) is available at the official website of the Office of the War Crimes Prosecutor: http://www.tuzilastvorz.org.rs/upload/HomeDocument/Document__en/2018-05/strategija_trz_eng.pdf, last accessed: 23 May 2018.

70 *National Strategy for Prosecution of War Crimes*, p. 21.

71 *Serbia's New War Prosecution Strategy 'Flawed,' NGOs Claim*, BalkanInsight, 19 March 2018, available at: http://www.balkaninsight.com/en/article/serbia-s-war-crimes-strategy-seriously-flawed-ngos-say-03-16-2018, last accessed: 23 May 2018.

72 The OWCP only delivered the draft to the HLC on the afternoon of Friday, 9 March 2018, and its presentation was scheduled for Monday, 12 March. 14 March 2018 was the deadline for submission of written comments.

- **Comments of the Humanitarian Law Center Regarding the Draft Prosecutorial Strategy for Investigation and Prosecution of War Crimes in the Republic of Serbia 2018-2023**

Since the draft and adopted versions of the Prosecutorial Strategy are not significantly different from each other content-wise (except for one graph),[73] the HLC will here repeat its findings and commentaries on the draft strategy, as they were submitted to the OWCP.[74] First, the HLC sees the Prosecutorial Strategy as methodologically flawed. **From its content, it is impossible to precisely identify which activities the OWCP will carry out, and the time limits by which they must be completed.**[75] For example, the Prosecutorial Strategy does not set the deadline for the OWCP to define its criteria for prioritizing cases for prosecution, devise a five-year investigation plan, and compile a list of cases for the prosecutor's offices of general jurisdiction.[76] **Also, key success indicators are missing from the Strategy – both quantitative** (e.g. number of convictions, number of indictments against high-ranking perpetrators, number of indictments with a higher number of victims) **and qualitative** (e.g. enhanced regional cooperation, and a drop in the number of missing persons as a result of a more proactive approach of the OWCP), **progress achieved in the prosecution of war crimes**. Without these indicators it is impossible to measure the impact of the Prosecutorial Strategy or the OWCP's performance.

The most obvious shortcoming of this document is the absence of clear criteria for case prioritisation. In this respect, the Prosecutorial Strategy merely refers to the criteria

73 **Note:** The HLC compared the two versions; a comparative analysis of the Draft Prosecutorial Strategy and its final version is available (in Serbian) at: http://www.hlc-rdc.org/wp-content/uploads/2018/06/Tuzilacka_strategija_-_konacna_i_radna_verzija.pdf. See also: Draft Prosecutorial Strategy for Investigation and Prosecution of War Crimes in the Republic of Serbia (2018-2023), available at: http://www.balkaninsight.com/en/article/serbia-s-war-crimes-strategy-seriously-flawed-ngos-say-03-16-2018, and *The Prosecutorial Strategy for Investigation and Prosecution of War Crimes in Republic of Serbia (2018-2023),* available at: http://www.tuzilastvorz.org.rs/upload/HomeDocument/Document__en/2018-05/strategija_trz_eng.pdf. All sources accessed: 13 June 2018.

74 *Comments of the Humanitarian Law Center on the Draft Prosecutorial Strategy for Investigation and Prosecution of War Crimes in the Republic of Serbia in the period 2018 to 2023* are available at: http://www.hlc-rdc.org/wp-content/uploads/2018/03/Comments_of_the_Humanitarian_Law_Center_on_the_Draft_Prosecutorial_Strategy_for_Investigation_and_Prosecution_of_War_Crimes.pdf, last accessed: 23 May 2018.

75 *Prosecutorial Strategy for Investigation and Prosecution of War Crimes 2018-2023.*

76 *Prosecutorial Strategy for Investigation and Prosecution of War Crimes 2018-2023*, p. 18.

laid down in the National Strategy.[77] However, being a document of a *lex specialis* nature with respect to the National Strategy, the Prosecutorial Strategy should specify concrete criteria for the OWCP to use in deciding which cases should be given priority.[78] Otherwise, the absence of such criteria or their selective application can create confusion about which criteria the OWCP should apply in prioritising cases for prosecution. By way of illustration, the Prosecutorial Strategy states that the "the priorities for prosecution, as well as the timelines, vary, owing to many factors involved", and "[...] deviation from the set priorities may prove necessary in the event of an occurrence or change of the above circumstances. In that case the list of prioritised cases shall be revised [...]".[79]

In the HLC's view, regarding the priority for action as a variable risks undermining the very purpose of both Prosecutorial and National Strategies. Since due to the passing of time it is unlikely that all those responsible for crimes will be prosecuted, the HLC considers that defining the clear priorities for the OWCP's future work is absolutely essential.

In its analysis of the Draft Prosecutorial Strategy, the HLC discussed in detail the issue of trials in absentia. While it is true that the Criminal Procedure Code (CPC) provides for the possibility of a trial in absentia[80], **the HLC thinks that it must not be forgotten that a trial in absentia is an exception to the rule that the main trial cannot be held without the presence of the accused.**[81] **Furthermore, trials in absentia would unnecessarily consume the already limited OWCP resources, especially considering that persons convicted in absentia can apply for the reopening of criminal proceedings, beyond ordinary conditions.**[82] Instead of improving the efficiency of war crimes prosecution, the OWCP and the competent court would be burdened with cases that would have to be prosecuted again, if the accused became at some point available to the Serbian judiciary.

77 *National Strategy for Prosecution of War Crimes*, Objective 1, pp. 21-22; *The Prosecutorial Strategy for Investigation and Prosecution of the War Crimes in Republic of Serbia (2018-2023)*, p. 14.

78 Action Plan for Chapter 23, Activity 1.4.1.3. foresees a certain categorization of cases (category 1-3 cases), p. 109.

79 *Prosecutorial Strategy for Investigation and Prosecution of War Crimes 2018-2023*, p. 17.

80 Criminal Procedure Code (Official Gazette of the Republic of Serbia, *nos*. 72/2011, 101/2011, 121/2012, 32/2013, and 45/2013 i 55/2014), Article 381.

81 *Ibid.*

82 *Ibid.*, Article. 479.

The absence of strategic activities related to the improvement of cooperation with the EULEX Mission in Kosovo (EULEX), or to the establishment of cooperation with the Kosovo Specialist Prosecutor's Office in The Hague, is all too apparent. The Strategy merely describes previous cooperation with the EULEX Mission, without mentioning any activity that would step up this cooperation.[83]

Keeping Records of Acts that May Qualify as War Crimes and Unresolved Cases

According to Report No. 1 on the implementation of the National Strategy prepared by the Working Body, the War Crimes Investigation Service (WCIS) has systematised and presented in chronological order the documentation pertaining to "war crimes committed by the Kosovo Liberation Army" it received through cooperation with the Coordination Directorate and Police Directorates for Kosovo and Metohija. The documentation was submitted to the OWCP.[84]

The report also states that the material, comprising operative information, the criminal complaints filed so far, statements of potential witnesses and other evidence, has been systematised and processed chronologically by KLA zones of operations.[85] According to the report, "all these documents, after being analysed, will be handed over, through the OWCP, to the Kosovo Specialist Prosecutor's Office, together with all other relevant documents available from other government bodies (VBA, BIA, VOA, and Republic of Serbia's Commission on Missing Persons)".[86]

However, the Kosovo Specialist Prosecutor's Office, despite being based in The Hague and staffed by international investigators and prosecutors, is part of the Kosovo judicial system. It is therefore unclear what the basis of the cooperational mode would be by which the OWCP could hand over the documentation to this judicial body.[87] When asked by the HLC to explain whether any legal basis existed for the OWCP to establish cooperation with the Kosovo Specialist Chambers, the OWCP responded that it had not "signed any memorandum, protocol, or agreement

83 *Prosecutorial Strategy for Investigation and Prosecution of War Crimes 2018-2023*, pp. 33, 44-46.

84 *Report No. 1 on the implementation of the National Strategy for the Prosecution of War Crimes, January* 2018, pp. 3-4.

85 *Ibid.*, pp. 3-4.

86 *Ibid.*, p. 4.

87 See: the official website of the Kosovo Specialist Chambers & Specialist Prosecutor's Office: https://www.scp-ks.org/en, last accessed: 29 May 2018.

on transferring documents about war crimes committed on the territory of Kosovo and Metohija to the Kosovo Specialist Chambers."[88]

Report No. 2 on the Implementation of the National Strategy prepared by the Working Group indicates that the WCIS, in fulfilling its obligations under the National Strategy, has handed over to the OWCP the working material/record of the individual and mass crimes committed in the course of the armed conflicts in the territory of the former Yugoslavia.[89]

The National Strategy foresees that the record of cases that may involve war crimes and the list of unsolved cases should influence case prioritization and the development of the OWCP's five-year plan of activities.[90] None of the sources used in preparing this report makes any mention of the OWCP's five-year plan.[91]

Implementation of Measures Aimed at Improving Efficiency of the Office of the War Crimes Prosecutor

The National Strategy sets out a set of measures to improve efficiency of the Office of the War Crimes Prosecutor.[92]

As the first such measure, the OWCP is expected to use its existing capacity in line with the priorities defined in the Prosecutorial Strategy.[93] As the Prosecutorial Strategy was only adopted in April 2018, it is clear that during the reporting period the OWCP did not use its capacity in the way that was envisaged in the National Strategy.[94]

During the reporting period, the OWCP concluded one Plea Agreement, but had not submitted Requests for temporary or permanent confiscation of assets derived from crime.[95]

88 OWCP's letter PI 15/18 of 22 May 2018 in response to an HLC's request for access to information of public importance.

89 *Report 2 – National Strategy for Prosecution of War Crimes*, May 2018, p. 3; Report no. 1-2018 on implementation of Action Plan for Chapter 23, Activity 1.4.1.8, pp. 293-294.

90 *National Strategy for Prosecution of War Crimes*, pp. 21-22.

91 See: *Report 2 – National Strategy for Prosecution of War Crimes*, May 2018, pp. 3-5; Report no. 1-2018 on implementation of Action Plan for Chapter 23, Activity 1.4.1.8, p. 293.

92 *National Strategy for Prosecution of War Crimes*, pp. 22-23.

93 *Ibid.*

94 *Report 2 – National Strategy for Prosecution of War Crimes*, May 2018, p. 2.

95 Criminal Procedure Code (Official Gazette of the Republic of Serbia, nos. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013 and 55/2014), Art. 313-320; Criminal Proceeds Confiscation Act (Official Gazette

The OWCP has carried out activities to improve its efficiency (under Objective 3 of the National Strategy) such as taking steps to protect data against any unauthorised access, publication or other abuse, as required by the Personal Data Protection Act.[96] As stated by Report No. 2 on the implementation of the National Strategy, OWCP employees signed a statement on non-disclosure of confidential personal information in accordance with the Data Secrecy Act and other acts and secondary legislation.[97] Supervision of the application of the Act and pertinent secondary legislation is the responsibility of the War Crimes Prosecutor and First Deputy War Crimes Prosecutor.[98]

Strengthening OWCP Capacity

The Action Plan for Chapter 23, referenced in the National Strategy, foresees a gradual strengthening of the OWCP's capacity through the hiring of additional staff, including seven deputy prosecutors and seven assistant prosecutors, in the period 2015-2018, and the potential hiring of military experts.[99]

However, strengthening OWCP capacity fell short of this target. Between 1 October 2017 and 1 June 2018, two deputy prosecutors reached the compulsory retirement age.[100] At the time of this writing, the OWCP had four deputy war crimes prosecutors and hired seven assistant prosecutors for indefinite periods.[101] This means that the OWCP is functioning at half its capacity, with four instead of eight deputy prosecutors envisaged by its staffing plan.[102]

of the Republic of Serbia, nos. 32/2013, and 94/2016), Article 2, paragraph 9; *Report No. 2 on the implementation of the National Strategy for the Prosecution of War Crimes,* May 2018, pp. 6-7, HLC interview with an OWCP representative, 5 June 2018.

96 Personal Data Protection Act (Official Gazette of the Republic of Serbia, nos. 97/2008, and 104/2009 – other acts, 68/2012 – CC decision and 107/2012), *Report 2 – National Strategy for Prosecution of War Crimes*, May 2018, pp. 6-7.

97 *Report 2 – National Strategy for Prosecution of War Crimes*, May 2018, p. 7.

98 *Ibid.*

99 Action Plan for Chapter 23, Activity 1.4.1.2, pp. 107-108.

100 During the said period, Deputy War Crimes Prosecutors Milan Petrović and Dragoljub Stanković reached the compulsory retirement age. OWCP letter PI.18/18, of 8 June 2018 to an HLC request for information of public importance.

101 *Ibid.*

102 *Ibid.*

The last deputy elected during the reporting period was Svetislav Rabrenović. Rabrenović was elected to the position by the National Assembly on 22 March 2018.[103] In reply to an HLC enquiry, the SPC stated that at a session held on 18 September 2017 the SPC decided to advertise another two Deputy War Crimes Prosecutor vacancies and that the hiring process was in progress.[104] The SPC further stated that at a session held on 15 May 2018 it had decided to seek consent from the Ministry of Justice for amending its staffing plan to include three more Deputy War Crimes Prosecutor positions.[105]

Compared to the period covered by the Initial HLC Report on the Implementation of the National Strategy published in December 2017, **the OWCP's capacity was even further weakened**.[106]

Improving the Status and Efficiency of the War Crimes Investigation Service

At the time of this writing, the only information available about the work of the WCIS was that provided in the reports on the state of implementation of the Action Plan for Chapter 23[107] and the reports on the state of implementation of the National Strategy for the Prosecution of War Crimes adopted by the Working Body.[108]

As the HLC noted in the Initial Report on the Implementation of the National Strategy for the Prosecution of War Crimes, lack of transparency is one of the key deficiencies in the reform process in the field of war crimes prosecution.[109] While it is true that the work of this body is of such a nature that it cannot and should not be fully transparent, the legal community should be given at least some information about the reforms taking place in the unit, especially if these reforms are envisaged in the Action Plan. According to Report No. 2 on the implementation of the National Strategy compiled by the Working Body, joint investigative teams between the WCIS and the OWCP have

103 **Author's note:** Svetislav Rabrenović was elected Deputy War Crimes Prosecutor through a public competition procedure announced by the SPC on 8 April 2016. The SPC submitted a proposal for the election of the Deputy War Crimes Prosecutor to the National Assembly 4 September 2017. SPC's reply no. PI 21/18 of 15 May 2018 to an HLC request for information.

104 *Ibid.*

105 *Ibid.*

106 *Initial Report on the Prosecution of War Crimes*, HLC, 2017, p. 25-26.

107 Report no. 4-2018 on implementation of Action Plan for Chapter 23, Activity 1.4.1.7, p. 247; Report no. 1-2018 on implementation of Action Plan for Chapter 23, Activity 1.4.1.7, p. 288.

108 *Report 1 – National Strategy for Prosecution of War Crimes*, January 2018, pp. 7-16; *Report 2 – National Strategy for Prosecution of War Crimes*, May 2018, pp. 10-22.

109 See: *Initial Report on the Prosecution of War Crimes*, HLC, 2017, pp. 26-27.

been established[110] and meet regularly in order to improve operational efficiency.[111] Also, the OWCP and the WCIS have adopted joint internal operating rules.[112]

As regards working conditions improvement, Report 1/2018 on the implementation of the Action Plan for Chapter 23 states that the WCIS has obtained adequate workspace – additional office space and an adequate storage space for copies of paper case files.[113]

2. TRIALS
Objective 1: Improved efficiency of trials for war crimes, by ensuring continuity in the composition of the judicial chambers.
Objective 2: Harmonized jurisprudence of all war crimes courts and chambers in former Yugoslavia, through the establishment of a regional database.
Objective 3: Improved conditions in courtrooms where war crimes trials are conducted.
Objective 4: Continuous improvement of expertise of the holders of judicial office and staff engaged in war crimes cases.

Improved efficiency of trials for war crimes, by ensuring continuity in the composition of the judicial chambers

The War Crimes Department of the Higher Court in Belgrade has six judges sitting in two chambers and one judge serving as a pre-trial judge.

There were instances in the past of judges being transferred between departments before the expiry of their six-year term.[114] As no such transfers have taken place since the adoption of the National Strategy, this is without doubt a positive development.

110 *Report 2 – National Strategy for Prosecution of War Crimes*, May 2018, pp. 10-11, 19; Report no. 1-2018 on implementation of Action Plan for Chapter 23, Activity 1.4.1.7, p. 288.

111 *Ibid.*

112 *Ibid.*

113 *Ibid.*

114 See: *Report on War Crimes Trials in Serbia during 2014 and 2015*, HLC, 2016, pp. 18-20, available at: http://www.hlc-rdc.org/wpcontent/uploads/2016/03/Report_on_war_crimes_trials_in_Serbia_during_2014_and_2015.pdf, last accessed: 23 May 2018.

Improving Conditions in Courtrooms Used for War Crimes Trials

There are four courtrooms available for war crimes trials, which are also used for organized crime trials.[115] The activity aimed at improving conditions in the courtrooms should seek to provide conditions for unhindered holding of proceedings, and such proceedings will, in turn, contribute to a shorter average duration of war crimes proceedings.[116]

During 2017, a total of RSD 3,500,000 (approximate equivalent to EUR 29.660)[117] was invested in the improvement of conditions in the four courtrooms of the Special Department of the Higher Court in Belgrade used for war crimes and organised crime trials. The sum was used for the purchase and installation of an audio-conference system.[118] In 2018, no funds have been allocated by the Ministry of Justice for upgrading these courtrooms.[119]

- **Video Recording Main Hearings**

Large sums of money were invested in 2017 in improvements to the courtrooms used for war crimes trials. However, these improvements did not include technical upgrading which would enable video recordings of hearings, even though video recordings are provided for under the CPC.[120]

If the lack of financial resources to cover the accompanying costs related to maintenance of the equipment, engagement of additional technical staff, etc., is the reason why hearings are not recorded, then additional funds should be provided for these purposes.

It should be noted that the Organization and Jurisdiction of Government Authorities in War Crimes Proceedings Act acknowledges the need to publicize facts and evidence on past war crimes.[121] However, in the nearly 15 years of domestic war crimes prosecutions

115 See: *Initial Report on the Prosecution of War Crimes*, HLC, 2017, pp. 32-33.

116 *Ibid.*, p. 13.

117 **Note:** At the time of this writing, RSD 3.500.000 is approximate equivalent to EUR 29.660.

118 Ministry of Justice, reply no. 7-00-162/2018-32 of 18 May 2018 to an HLC request for information of public importance.

119 *Ibid.*

120 Criminal Procedure Code (Official Gazette of the Republic of Serbia nos. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013 and 55/2014), Article 236.

121 Organization and Jurisdiction of Government Authorities in War Crimes Proceedings Act (Official Gazette of the Republic of Serbia nos. 67/2003, 135/2004, 61/2005, 101/2007, 104/2009, 101/2011 and 6/2015), Article 16a.

the general public in Serbia has never had a chance to see a single testimony of a victim, perpetrator or witness participating in the trials, or a court delivering a judgment in a war crime case.[122] This is because, so far, **public access to war crimes trials in Serbia has effectively been restricted**, which has significantly reduced the opportunity for a social dialogue and dealing with the crimes committed in the 1990s.[123]

Continuous Improvement of Expertise of Judicial Office Holders and Staff Engaged in War Crimes Cases

According to the information available to the HLC, no specialized humanitarian law courses have been provided for judicial office holders and staff engaged in war crimes cases as part of the Judicial Academy training programmes, in the reporting period.[124]

The available information suggests that the Judicial Academy is developing a training curriculum for prosecutors and judges to enhance their knowledge of the investigation and trial of war crimes and improve protection of victims and witnesses.[125] The training will be conducted in cooperation with the MICT Prosecutor's Office.[126]

122 *Why are war crimes trials in Serbia conducted away from the public eye?,* press release, HLC, 2 June 2015, available at: http://www.hlc-rdc.org/?p=29250&lang=de, last accessed: 12 June 2018.

123 See: *Initial Report on the Prosecution of War Crimes*, HLC, 2017, pp. 32, 77-78.

124 According to the National Strategy for the Prosecution of War Crimes, the primary institution responsible for this activity is the Judicial Academy. See: National Strategy for the Prosecution of War Crimes, Objective 3, p. 26. **Note:** By the end of the work on this report, the Judicial Academy did not confirm or deny these allegations.

125 *Statement by H.E. MS. Nela Kuburović Minister of Justice of the Republic of Serbia, Meeting of the Security Council*, 06 June 2018, p. 3, is available at the Ministry of Justice official website: https://www.mpravde.gov.rs/vest/19637/govor-ministarke-kuburovic-na-sednici-saveta-bezbednosti-un.php, last accessed: 07 June 2018.

126 *Ibid.*

PROTECTION OF WITNESSES AND VICTIMS
Objective 1: Improved normative framework for effective functioning of the witness protection system in war crimes proceedings in Serbia.
Objective 2: Enhanced institutional capacity for witness protection in war crimes proceedings.
Objective 3: Improved position of witnesses and victims during criminal proceedings through consistent application of procedural disciplinary measures.
Objective 4: Enhanced cooperation of state bodies involved in the witness protection system.

Normative Framework for Effective Functioning of the Witness Protection System

Identity change is one of the most important protective measures provided for in the Protection Programme for Participants in Criminal Proceedings Act.[127] The National Strategy recognised the difficulties in applying this measure, describing its application as not sufficiently regulated and "giving rise to problems in issuing personal documents, problems with civil registries, problems in the penal system when sentences are being served, and all in the case of protected persons."[128] By the time this report was completed, the normative framework, i.e. primary and secondary legislation which would enable application of this measure, had not been finalised.[129]

Procedural Measures for Witness Protection

The National Strategy requires criminal chambers to apply consistently the provisions of the CPC regulating the sanctioning of participants in proceedings who violate courtroom order, particularly if they attack or offend witnesses and victims.[130]

127 Protection Programme for Participants in Criminal Proceedings Act (Official Gazette of the Republic of Serbia no. 85/2005), Article 14.

128 *National Strategy for Prosecution of War Crimes*, 2.9. Mechanisms for Protection and Support to Witnesses and Victims of War Crimes, pp. 18-19; *Serbia 2018 Report*, pp. 19-20.

129 Report no. 1-2018 on implementation of Action Plan for Chapter 23, Activity 1.4.4.5, pp. 307-308.

130 Higher Court in Belgrade's reply Su II 17a no. 111/18 of 28 May 2018 to an HLC's request for access to information of public importance.

Even though during the reporting period there were no situations requiring application of the said CPC provisions, **in the light of previous experience it is necessary that the criminal chambers use, to the greatest extent, the available procedural mechanisms for witness protection.**[131]

Non-procedural Witness Protection

The European Commission, in its 2018 Serbia Progress Report, states that witness protection has improved following the signature of a protocol on cooperation between the OWCP and the Ministry of the Interior's Witness Protection Unit in July 2017.[132] The report also states that the said protocol sets out mechanisms for cooperation on urgent measures in relation to a person under protection during a criminal procedure.[133]

Even though during the reporting period no problems in implementation of the Protection Programme were made known, the fact that the work of the Witness Protection is of such a nature that it cannot be fully transparent should be taken into account when assessing improvements made in the non-procedural witness protection. **Not even the expert community, when preparing their independent reports and findings, have a way of fully verifying the truth of the information presented in the official reports**, such as the reports on the implementation of the Action Plan for Chapter 23 or the Working Body's reports.[134]

131 Instances of witnesses being insulted and addressed with scorn during main hearings were described in: *Initial Report on the Implementation of the National Strategy for the Prosecution of War Crimes*, HLC, 2017, pp. 35-47.

132 *2018 Serbia Progress Report*, pp. 19-20.

133 *Ibid.*

134 Report no. 1-2018 on implementation of Action Plan for Chapter 23, Activity 1.4.1.7, p. 288-297, *Report 1 – National Strategy for Prosecution of War Crimes*, January 2018, pp. 20-24.

SUPPORT TO VICTIMS AND WITNESSES
Objective 1: Improvement of the normative framework regulating the status of victim and witness.
Objective 2: Enhancing the capacity of the bodies providing support to the witnesses of war crimes during all phases of the criminal proceedings, such as: the Service for Assistance and Support to Victims and Witnesses within the Higher Court in Belgrade, the Office of War Crimes Prosecutor and the Ministry of the Interior Protection Unit.
Objective 3: Establishment of a national network of services for assistance and support to victims and witnesses and integration of the Service for Assistance and Support to Victims and Witnesses of the Higher Court in Belgrade, taking into consideration the specificities of war crimes proceedings and the need for witnesses for the defense to receive the same treatment by the Service for Assistance and Support to Victims and Witnesses as the witnesses for the prosecution.
Objective 4: Improved regional cooperation in the field of providing support to victims and witnesses.

Normative Framework Regulating the Status of Victims and Witnesses

The Republic of Serbia has undertaken to align its national normative framework regulating the position of witnesses and victims with the relevant EU law in this area during its EU accession negotiations.[135]

According to the reports on implementation of the Action Plan for Chapter 23 and Report No. 1. on National Strategy implementation adopted by the Working Body, an analysis of Serbia's legislative alignment with EU Directive on crime victims was finalised.[136] The analysis was submitted to the Ministry of Justice and the Working Group tasked with proposing amendments to be made to the CPC.[137] The Working Group will use the

135 *Report on the degree of alignment of Serbian legislation with the EU acquis* (*Screening Report*) is available at the Ministry of Justice official website: https://www.mpravde.gov.rs/files/Screening-report-chapter-23-serbia%20Official%20(3).pdf, last accessed: 04 June 2018.

136 *Report 1 – National Strategy for Prosecution of War Crimes*, January 2018, pp. 25-27; Report no. 1-2018 on implementation of Action Plan for Chapter 23, Activity 3.7.1.16, p. 735.

137 *Ibid.* Analysis of victims' rights and services in Serbia and their alignment with EU Directive 2012/29/EU is available at: http://documents.worldbank.org/curated/en/141201473857309462/pdf/108242-V1-WP-P121377-PUBLIC-ABSTRACT-SENT-VictimSupportServices.pdf, last accessed: 12 June 2018.

recommendations made in the analysis as a guideline for its work.[138] The reports further state that the CPC amendments required by Chapters 23 and 24 will be finalised by the end of the third quarter of 2018. In the meantime, the Ministry of Justice set up a working group to propose amendments to the relevant regulations to bring the definition of "victim" into line with the standards enshrined in international human rights treaties and Directive 2012/29/EU[139].[140] Directive 2012/29/EU defines "victim" as: "a. a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence; b. family members of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person's death".[141] "Family members", under the Directive, means the spouse, the person who is living with the victim in a committed intimate relationship, in a joint household and on a stable and continuous basis, the relatives in direct line, the siblings and the dependants of the victim.[142]

The Ministry of Justice was supposed to pass a by-law which would regulate the compulsory provision of information to victims on all aspects of the criminal proceedings of interest to them, in accordance with Article 6 of Directive 2012/29/EU.[143] The by-law has not yet been passed, even though it was due two years ago.[144]

Enhancing the Capacity of Bodies Providing Support to the Witnesses of War Crimes – the Hiring of a Psychologist

The institutional mechanism for provision of support to victims and witnesses in war crimes cases comprises the Higher Court in Belgrade's Victim and Witness Assistance and Support Service and the OWCP's Witness and Victim Information and Support Service.

138 *Ibid.*

139 *Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime*, and replacing Council Framework Decision 2001/220/JHA. Directive 2012/29/EU is available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32012L0029, last accessed: 12 June 2018.

140 Ministry of Justice's response letter 7-00-156/2018-30 of 14 May 2018 to an HLC request for information under Free Access to Information of Public Importance Act.

141 *Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime*, Article 2, paragraphs 3-5.

142 *Ibid.*, paragraph 5.

143 *Ibid.*

144 *Ibid.*

The National Strategy noted that certain state authorities lacked professionals trained to provide psychological assistance and support to witnesses and victims.[145] The Action Plan for Chapter 23 specifically provides for the OWCP to hire a psychologist to provide information and support to victims and witnesses.[146]

Nonetheless, neither the Victim and Witness Assistance and Support Service at the Higher Court in Belgrade nor the Victim and Witness Information and Support Service of the OWCP hired a psychologist during the reporting period.[147]

The National Strategy also provides for modification of the Protection Unit staffing plan to permit the hiring of trained professionals for the provision of psycho-social support.[148] **The Protection Unit had not hired a psychologist by the time this report was completed.**[149]

Establishment of the National Network of Services for Assistance and Support to Victims and Witnesses

Based on an analysis of the degree of alignment of Serbia's normative framework in this area with Directive 2012/29/EU, it was recommended that Serbia establish a high-quality sustainable victim support network at national level.[150]

During 2017, victim and witness information and support services became operational at all prosecutors' offices in the Republic of Serbia and the OWCP.[151]

In early June 2018, the OSCE Mission to Serbia and the Delegation of the European Union to Serbia launched a three-year project entitled "Support for Victims and Witnesses of Crime in Serbia".[152] The project will assist Serbian institutions in establishing a nationwide

145 *National Strategy for Prosecution of War Crimes*, p. 11.

146 Action Plan for Chapter 23, Activity 1.4.4.4, p. 110.

147 *Report 2 – National Strategy for Prosecution of War Crimes*, May 2018, p. 37; OWCP's reply A.no. 14/18 of 18 May 2018 to an HLC's request for information of public importance.

148 *National War Crimes Prosecution Strategy*, p. 30.

149 *Report No. 2 on the Implementation of the National Strategy for the Prosecution of War Crimes,* May 2018, p. 38.

150 *Report 1 – National Strategy for Prosecution of War Crimes*, January 2018, p. 25; Report no. 1-2018 on implementation of Action Plan for Chapter 23, Activity 3.7.1.20, p. 737.

151 *Report 1 – National Strategy for Prosecution of War Crimes*, January 2018, pp. 30-31.

152 *OSCE Mission to Serbia and European Union support authorities in establishing nationwide support service to victims and witnesses of crime*, 1 June 2018, press release, OSCE Mission to Serbia official website, available at: https://www.osce.org/mission-to-serbia/383262, last accessed: 4 June 2018.

support service for victims and witnesses of crime in line with international standards and with Serbia's strategic goal of EU accession.[153] The project, worth EUR 1.5 million, is being implemented by the OSCE Mission to Serbia and entirely financed by the European Union.[154] It aims to enhance the legal framework governing provision of support to victims and witnesses of crime, and assist state institutions in strengthening their capacities, developing IT solutions to facilitate networking between service providers, educating a network of volunteers and raising awareness of the role of victim support services in Serbia.[155]

DEFENSE OF THE ACCUSED
Objective 1: Increasing the quality of (court-) appointed and selected defense attorneys in war crimes proceedings.
Objective 2: Improving the system of financing the costs of the (court-) appointed defense attorneys in war crimes cases.

Competence of Defence Lawyers

The great complexity of war crimes requires the defence lawyers to have considerable knowledge of international humanitarian law and international criminal law. The need to improve the quality of defence representation in war crimes cases is recognized also in the National Strategy, which provides for continuous training in the fields of international humanitarian law and international criminal law for lawyers representing defendants in war crimes cases. The training is to be delivered by the Judicial Academy through cooperation with the Serbian Bar Association. According to the information available to the HLC, during the reporting period, no training was organized in these areas in cooperation with the Judicial Academy and the Bar Association of Serbia.[156] In response to the HLC request for access to information of public importance, the Serbian Bar Association stated that it has not participated in the organization of organized training in the field of international humanitarian and international criminal law.[157]

153 *Ibid.*

154 *Ibid.*

155 *Ibid.*

156 **Note:** By the end of the work on this report, the Judicial Academy had not confirmed or denied these allegations.

157 Serbian Bar Association letter 345/2018 dated 16 May 2018 in response to an HLC request for information of public importance. In the letter the SBA states that between November 2017 and

Financing Defence Representation

Since defence in war crimes cases is one of the most expensive defences, it often happens that the defendants, being unable to afford to hire a lawyer, obtain a court-appointed attorney instead. The National Strategy has identified the problems with financing defence in war crimes cases and therefore envisaged an analysis of the provisions and impact of the Rulebook on remuneration for court-appointed attorneys in war crimes cases. The analysis is to be performed by a working group. In response to an HLC enquiry about this matter, the Ministry of Justice said that it had set up a working group to perform this job.[158]

The working group, however, arrived at the conclusion that the Rulebook need not be changed,[159] explaining that all regulations pertaining to the practice of law, including the said Rulebook, will be changed in 2018 in the context of negotiations on Chapter 23.[160]

However, although the said working group was tasked with amending the Rulebook on remuneration for court-appointed attorneys, not a single attorney was invited to sit on it.[161]

Collecting Evidence in Other Countries' Territories

The National Strategy envisages that the Ministry of Justice will initiate a regional conference to discuss the signing of intergovernmental agreements with the Republics

February 2018, the lawyers who participated in war crimes trials were asked by the OSCE to fill in a questionnaire prepared under the project "Monitoring of domestic war crimes trials (Stage 2)", after which they took part in the drafting of a training programme, as part of the same project.

158 Ministry of Justice's letter no. 7-00-162/2018-32 of 18 May 2018 in response to an HLC request for access to information of public importance.

159 *Report 1 – National Strategy for Prosecution of War Crimes*, January 2018, pp. 33-34; Ministry of Justice's reply no. 7-00-156/2018-30 of 14 May 2018 to an HLC request for information of public importance.

160 *Ibid.*

161 The members of the working group are: Čedomir Backović, Assistant Justice Minister responsible for European integration and international projects, Jelena Deretić, Assistant Justice Minister responsible for judiciary; Slavica Jelača, Assistant Justice Minister responsible for material and financial affairs; Ivana Ninčić, consultant at the Ministry of Justice. Branislav Stojanović, consultant at the Ministry of Justice, is the Secretary of the working group. (Ministry of Justice's letter no. 7-00-162/2018-32 of 18 May 2018 in response to an HLC request for access to information of public importance; Serbian Bar Association's letter no. 345/2018 of 16 May 2018 responding to an HLC request for access to information of public importance).

of Croatia, Bosnia and Herzegovina, and Montenegro, which would facilitate access to evidence located in the territory of foreign states for defence lawyers.[162] The Ministry of Justice has not yet organized such a conference.[163]

WAR CRIMES TRIALS AND THE ISSUE OF MISSING PERSONS
Objective 1: Improved normative framework of relevance for determining the fate of missing persons.
Objective 2: Enhanced institutional and administrative capacities of the state bodies involved in the process of determining the fate of missing persons, and their mutual cooperation.
Objective 3: Enhancement of regional and broader international cooperation in the field of determining the fate of missing persons

Normative and Institutional Frameworks

According to the ICRC figures from **May 2018**, **10,315** of the persons who went missing as a result of the armed conflicts on Croatia, BiH and Kosovo remain unaccounted for.[164] **1,650 in Kosovo, 2,051 in Croatia and 6,614 in BiH.**[165]

The Republic of Serbia has not passed a separate act on missing persons which would regulate the search process and the rights of the families of missing persons.[166] Although drafting of the Law on Missing Persons does not fall within the mandate of the Commission on Missing Persons, the Commission stated that they are willing to contribute to and support the preparation of the same.[167]

162 *National Strategy for Prosecution of War Crimes*, p. 36.

163 *Report 1 – National Strategy for Prosecution of War Crimes*, January 2018, pp. 41-42; *Report 2 – National Strategy for Prosecution of War Crimes*, May 2018, pp. 53-55; Ministry of Justice's letter no. 7-00-179/2018-32 of 29 May 2018 in response to an HLC request for access to information of public importance.

164 Data obtained from the International Committee of the Red Cross, 13 June 2018, HLCIndexIn: 25-F134245.

165 *Ibid.*

166 HLC interview with a representative of the Government of the Republic of Serbia's Commission on Missing Persons, 30 May 2018.

167 *Ibid.*

The HLC considers that passing a missing persons act would improve significantly the normative framework related to the search for missing persons. Such an act could lay down, in a systematic way, the responsibilities of various government authorities in the search for missing persons, and communication and data sharing between them with a view to improving the search process, and regulate the issue of compensations for the families of missing person. The HLC also notes that passing such an act was recommended by the relevant international bodies and organisations and associations of missing persons' families.[168]

- **International Convention for the Protection of All Persons from Enforced Disappearances**

The last report on Serbia's implementation of the Convention for the Protection of All Persons from Enforced Disappearances in Serbia was issued in February 2015.[169] In it, the Committee monitoring the implementation of the Convention noted with concern that more than 1,650 persons still remained listed as missing from the Kosovo conflict, many of whom might have been victims of enforced disappearance.[170] In this respect, the Committee recommended Serbia to continue and intensify its efforts within the framework of the Working Group on Missing Persons with a view to achieving further progress in the search of the missing persons and, in the event of death, the identification of their mortal remains.[171]

According to the information obtained from the representative of the Commission on Missing Persons: "Cooperation with the provisional institutions in Kosovo and Metohija is taking place through the Working Group for persons who are missing as a result of events in Kosovo, chaired by the ICRC. Through this mechanism, over 1,400 cases of missing persons have been solved so far, and the consolidation of the list of missing persons has

168 *Initial Report on the Prosecution of War Crimes*, HLC, 2017, pp. 54-56; *Transitional Justice in Serbia in the period from 2013 to 2015,* HLC, 2016, pp. 63-64, available at: http://www.hlc-rdc.org/wp-content/uploads/2016/06/izvestaj_o_TP_2013-2015_eng.pdf, last accessed: 13 June 2018.

169 Committee on Enforced Disappearances, *Concluding observations on the report submitted by Serbia under Article 29, paragraph 1, of the Convention* are available at at the official website of the Office for Human and Minority Rights: http://www.ljudskaprava.gov.rs/sites/default/files/dokument_file/zakljucna_zapazanja_eng.pdf, last accessed: 04 June 2018.

170 *Concluding observations on the report submitted by Serbia under Article 29, para 1 of the Convention, adopted at the 135th meeting,* 12 February 2015, pp. 5-6, para. 27. i 18.

171 *Ibid.*,p. 6.

been agreed by the Belgrade and Priština delegations, which currently contains another 1,650 persons still missing."[172]

If the statistics obtained from the ICRC for August 2017[173] and May 2018[174] are compared, it becomes clear that only eight cases of missing persons from Kosovo were solved over a period of ten months (from 1,658 missing in August 2017, to 1,650 in May 2018).

The situation in Bosnia and Herzegovina and Croatia is similar to that in Serbia. The ICRC figures from August 2017 and May 2018 show that the number of persons unaccounted for in BiH decreased by 61, and in Croatia by as few as six.[175] **The HLC emphasizes that the efforts should be continued and intensified in order to speed up the search process.** In that regard, the HLC also points to other recommendations made to Serbia by the Committee monitoring the implementation of the Convention for the Protection of All Persons from Enforced Disappearances, in its Concluding Observations, such as thorough and impartial investigation of all cases of enforced disappearances committed in the context of armed conflicts, full access to the relevant official archives and punishment of those responsible for enforced disappearances.[176] The HLC saw no progress being made during the reporting period towards implementing these recommendations. Namely, no progress has been made in the search for missing person through war crimes proceedings conducted by domestic courts, and no one has been prosecuted in relation to the mass grave sites discovered in Serbia.[177] Representatives of the Commission on Missing Persons were quoted in the HLC's Initial Report on the Implementation of the National Strategy as saying "we are not in a position to rummage through their [MoI's and

172 HLC interview with a representative of the Government of the Republic of Serbia's Commission on Missing Persons, 30 May 2018.

173 International Committee of the Red Cross figures for 25 September 2017.

174 Data obtained from the International Committee of the Red Cross, 13 June 2018, HLCIndexIn: 25-F134245.

175 International Committee of the Red Cross figures for 25 September 2017 and International Committee of the Red Cross figures, 13 June 2018, HLCIndexIn: 25-F134245. According to these sources, in BiH, 6,675 persons were unaccounted for in August 2017 and 6,614 in May 2018; in Croatia, 2,057 persons were unaccounted for in August 2017 and 2,051 in May 2018.

176 *Concluding observations on the report submitted by Serbia under Article 29, paragraph 1, of the Convention, adopted at the 135th meeting of the Committee on Enforced Disappearances on 12 February 2015*, para. 14.

177 See: *Initial Report on the Prosecution of War Crimes*, HLC, 2017, pp. 54-62.

MoD's] archives".[178] If this statement is anything to go by, then the HLC concludes that no progress has been made in obtaining access to the relevant official archives.

Institutional and Administrative Capacities of the State Bodies Involved in Solving Missing Persons Cases

At the time of this writing, the Missing Persons Division, which performs technical and administrative jobs for the Commission on Missing Persons, employed four persons on a permanent basis and three persons on a temporary/fixed-term basis.[179]

An analysis of the organizational structure and status of the Commission's technical service (comprising persons continuously involved in the Commission's work), which was slated for the third quarter of 2016, **has not yet been conducted.**[180]

As one of the reasons why the analysis has not been conducted, the representative of the Commission on Missing Persons has stated **the announced widening of the Commission's mandate to encompass kidnapped and killed persons as well**.[181] The widening of the Commission's mandate was announced by the President of Serbia, Aleksandar Vučić, during his visit to the Memorial Room of the "Kosmet Victims" on 14 November 2017.[182] Such a widening of the mandate of the Commission should be preceded by the amendment of the Decision establishing the Commission on Missing Persons of the Government of the Republic of Serbia[183], as well as the amendment to the Migrations Management Act[184], since the current mandate of the Commission stems

178 *Initial Report on the Prosecution of War Crimes*, HLC, 2017, p. 60.

179 HLC interview with a representative of the Government of the Republic of Serbia's Commission on Missing Persons, 30 May 2018.

180 *Report 1 – National Strategy for Prosecution of War Crimes*, January 2018, pp. 36-37; *Report 2 – National Strategy for Prosecution of War Crimes*, May 2018, pp. 47-48.

181 HLC interview with a representative of the Government of the Republic of Serbia's Commission on Missing Persons, 30 May 2018.

182 *Predsednik Republike Srbije Aleksandar Vučić posetio spomen sobu 'Kosmetske* žrtve' [*Serbia's President Aleksandar Vučić visits "Kosovo Victims" memorial room*], press release, 14 November 2017, available (in Serbian) at the Commission on Missing Persons of the Government of the Republic of Serbia's official website: http://www.kznl.gov.rs/latinica/arhiva.php, last accessed: 4 June 2018; *Report 1 – National Strategy for Prosecution of War Crimes*, January 2018, p. 36.

183 Decision establishing the Commission on Missing Persons (Official Gazette of the Republic of Serbia, nos. 49/2006, 73/2006, 116/2006, 53/2010 and 108/2012).

184 Migration Management Act (Official Gazette of the Republic of Serbia no. 107/2012).

from the aforementioned acts.[185] According to the representative of the Commission on Missing Persons, the systematization of the Missing Persons Division will be carried out in accordance with the amendments to these acts.[186]

A representative of the Commission on Missing Persons indicated that the Missing Persons Division's technical capacities are adequate.[187] The Republic of Serbia's 2018 Budget Act allocated RSD 33,500,000 (approximate equivalent to EUR 294.000) for the Commission on Missing Persons.[188]

Cooperation between State Authorities Engaged in Accounting for Missing Persons

According to the provisions of the National Strategy for the Prosecution of War Crimes, which envisage the improvement of the mutual cooperation of state authorities involved in the process of revealing the fate of the missing persons[189], the text of the Memorandum of Understanding between the OWCP and the Commission on Missing Persons has been agreed upon and the the Memorandum is expected to be signed during the next quarter.[190]

At the time of the publication of this report, war crimes trials had not brought about any progress in the search for missing persons. In other words, during the reporting period no missing person was found as a result of war crimes trials.[191]

- **Expert Group for Solving Cases of Persons Gone Missing on the Territory of Former SFRY**

The Expert Group for solving missing person's cases on the territory of the former SFRY was established pursuant to a decision of the Commission on Missing Persons of 25

185 HLC interview with a representative of the Government of the Republic of Serbia's Commission on Missing Persons, 30 May 2018.

186 *Ibid.*

187 *Ibid.*

188 Republic of Serbia 2018 Budget Law (Official Gazette of the Republic of Serbia no. 113/2017), Programme Activity 0014. **Note:** At the time of this writing, RSD 33.500.000 is approximately equivalent to EUR 283.900.

189 *National Strategy for the Prosecution of War Crimes*, p. 34.

190 Report 1/2018 on the implementation of the Action Plan for Chapter 23, Activity 1.4.1.7, p. 274; HLC interview with a representative of the Government of the Republic of Serbia's Commission on Missing Persons, 30 May 2018.

191 See: List of war crimes cases tried before domestic courts, available at: http://www.hlc-rdc.org/?cat=234&lang=de, last accessed: 4 June 2018.

December 2017.[192] According to the information posted on the Commission's website, the Expert Group was established to improve cooperation between the state authorities involved in war crimes investigation and prosecution, with a view to expediting the sharing of data relevant to clarifying the fate of missing persons.[193] Its main tasks include the collection, processing, sharing and analysis of data concerning locations, events and specific missing persons' cases.[194] The Expert Group comprises representatives of the Commission on Missing Persons, Office of the War Crimes Prosecutor, Ministry of Justice, War Crimes Investigation Service, Ministry of Defence, Military Security Agency, Military Intelligence Agency and Security and Intelligence Agency.[195]

According to the representative of the Commission on Missing Persons, the first concrete result of the work of the Expert Group was delivering the information requested to the competent authorities in the Republic of Croatia on 7 May 2018.[196]

Although its name indicates that it will seek to solve missing persons' cases *on the territory of the former SFRY*, the Commission representative explained that "the Expert Group deals with resolving cases of missing persons related to armed conflicts in the territory of the Republic of Croatia and BiH, and that an Analysis Team was set up, within the Working Sub-Group for Forensic Issues, to deal with the disappearance in cases related to the conflict in the autonomous province of Kosovo and Metohija."[197]

The HLC notes that the mandate of the Expert Group, the full name of which explicitly affirms that it will deal with *cases of missing persons on the territory of the*

192 Commission's decision no. 021-01-51/2017-01 of 25 December 2017, see*: Formirana Ekspertska grupa za rešavanje slučajeva nestalih lica na prostoru bivše SFRJ* [*Expert Group set up to solve missing person cases on the territory of the former SFRY*], press release, 8 January 2018, available (in Serbian) at the official website of the Commission on Missing Persons at: http://www.kznl.gov.rs/aktuelno.php, last accessed: 4 June 2018; Report 1/2018 on the implementation of the Action Plan for Chapter 23, Activity 1.4.1.8, p. 310.

193 *Formirana Ekspertska grupa za rešavanje slučajeva nestalih lica na prostoru bivše SFRJ [Expert Group set up to solve missing person cases on the territory of the former SFRY*], press release, 8 January 2018, available (in Serbian) at the official website of the Commission on Missing Persons at*:* http://www.kznl.gov.rs/aktuelno.php, last accessed: 4 June 2018.

194 *Ibid.*

195 *Ibid.*

196 HLC interview with a representative of the Government of the Republic of Serbia's Commission on Missing Persons, 30 May 2018.

197 *Ibid.*

***former SFRY*, should include the missing from the Kosovo conflict as well, otherwise the Expert Group will fail to live up to its name.**

It should be reiterated here that the military and police archives hold invaluable documentation that could help account for the missing. This documentation has already been used by investigative bodies in the search for mass graves containing the bodies of Kosovo Albanians in Batajnica, Perućac and Petrovo Selo.[198] Since the Expert Group comprises also representatives of the Ministry of Defence, Military Security Agency, Military Intelligence Agency and Security and Intelligence Agency,[199] its mandate should also include the search for missing persons from Kosovo. Its very composition should ensure collaboration and sharing of relevant information between all the authorities whose responsibilities include the search for missing persons.

- **Working Group Tasked with Collecting Facts and Evidence for the Investigation of Crimes Committed Against Members of the Serbian People and other Ethnic Communities in Kosovo and Metohija**

In November 2015, the Committee on Kosovo and Metohija of the National Assembly issued a decision setting up the Working Group for the collection of facts and evidence for the investigation of crimes committed against Serbs and members of other national communities in Kosovo and Metohija.[200] The Working Group is composed of representatives of the OWCP, WCIS, Commission on Missing Persons, and the Judiciary, Human Rights and Property Issues Group of the Office for Kosovo and Metohija.[201] Its main task is to intensively collect facts and evidence that can help investigate crimes against Serbs and other ethnic communities in Kosovo.[202]

198 For more information on the work of these investigative bodies see: *Dossier: Rudnica*, HLC, 2015, pp. 13-15, available at: http://www.hlc-rdc.org/wp-content/uploads/2015/01/Dosije_Rudnica_eng.pdf, last accessed: 13 June 2018.

199 *Formirana Ekspertska grupa za rešavanje slučajeva nestalih lica na prostoru bivše SFRJ [Expert Group set up to solve missing person cases on the territory of the former SFRY]*, press release, 08 January 2018, available (in Serbian) at the official website of the Commission on Missing Persons at: http://www.kznl.gov.rs/aktuelno.php, last accessed: 4 June 2018.

200 *Report No. 1 on the implementation of the National Strategy for the Prosecution of War Crimes*, January 2018, p. 37.

201 *Ibid.*

202 *Ibid.*

According to Report no. 1 on the implementation of the National Strategy, "the Committee on Kosovo and Metohija will submit the facts and evidence collected to the Specialised Court for KLA crimes, through the OWCP."[203] Here, it bears repeating that the OWCP, responding to an HLC enquiry regarding this matter, said that "no memorandum, protocol or agreement has been signed by the OWCP on the delivery of documentation on crimes committed in the territory of Kosovo and Metohija to the Specialist Kosovo Chambers".[204] So it remains unclear on what basis this cooperation will take place.

- **Search for and Exhumation of Mass Graves**

During the reporting period, no locations were searched in Serbia about which there are suspicions that they could be the possible mass graves of missing persons.[205] The last suspected mass grave site searched was the Kiževak quarry, but the search was suspended.[206] According to the interlocutor from the Commission on Missing Persons, the search will continue after more precise information on the location of a potential mass grave are obtained, since it is a quarry which covers a large area.[207] The interlocutor also adds that the preparation of the site will begin in the upcoming period, in order to search the terrain with the use of the most modern geo-radar, provided by the United Nations, with the aim of helping to locate the mortal remains of missing persons.[208]

Representatives of the Commission on Missing Persons attended, as observers, the exhumation of mortal remains in the municipality of Djakovica, from 16 April to 16 May 2018.[209] DNA testing is in progress to determine the number of missing persons the mass grave contains. The DNA testing is performed by the ICMP laboratory in The Hague.[210]

203 *Ibid.*

204 OWCP's letter PI 15/18 of 22 May 2018 responding to an HLC request for access to information of public importance.

205 HLC interview with a representative of the Government of the Republic of Serbia's Commission on Missing Persons, 30 May 2018.

206 *Ibid.*

207 *Ibid.*

208 *Ibid.*

209 *Ibid.*

210 *Ibid.*

Enhancing Regional and International Cooperation in Accounting for Missing Persons

On 7 December 2017, the International Commission on Missing Persons (ICMP) organised a regional meeting to present a working draft of a regional list of missing persons, under the ICMP project "Database of Active Missing Persons Cases from the Armed Conflicts in the Former Yugoslavia".[211] The database is a tool that will help to determine the precise number of missing persons in the region, to address duplicate cases, and to open new and close old cases.[212] According to the interview from the Serbian Missing Persons Commission, the ICMP will present the list during the upcoming Western Balkans Summit, which will take place in London on 9 and 10 July 2018, under the Berlin Process.[213]

The HLC believes that making a consolidated regional list of missing persons, which will be agreed upon by all bodies in the region responsible for accounting for missing persons, will immensely improve regional cooperation in this field.

- **Cooperation between the Commission on Missing Persons and the Mechanism for International Criminal Tribunals**

In January 2018, representatives of the Commission on Missing Persons had a working meeting with MICT Prosecutor Serge Brammertz.[214] The meeting was an opportunity to discuss the modalities of future cooperation between the MICT and the Commission.[215] It was agreed that the Commission would submit requests, in the form of an inquiries, to the Prosecutor's Office of the MICT, in which it will seek information and documentation

211 *Predstavljena radna verzija regionalne liste nestalih lica u okviru projekta "Baze podataka aktivnih slučajeva lica nestalih usled oružanih sukoba u bivšoj Jugoslaviji"* [*Working draft of a regional list of missing persons presented under the project "Database of Active Missing Persons Cases from the Armed Conflicts in the Former Yugoslavia"*], press release, 7 December 2017, official website of the Commission on Missing Persons, available (in Serbian) at: http://www.kznl.gov.rs/arhiva.php, last accessed: 6 June 2018.

212 *Ibid.*

213 For more details on the London Summit visit: https://www.gov.uk/government/topical-events/western-balkans-summit-london-2018/about, last accessed: 6 June 2018.

214 *Predstavnici Komisije u poseti MMKS radi postizanja dogovora o načinu pristupa arhivama ovog Mehanizma* [*Commission representatives visit MICT to reach an agreement on access to MICT records*], press release, available (in Serbian) at: http://www.kznl.gov.rs/aktuelno.php, last accessed: 7 June 2018.

215 *Ibid.*

from the MICT archive to help clarify the fate of missing persons.[216] The representative of the Commission on Missing Persons said that „so far, the Commission has submitted enquiries to the MICT, relating to conflicts in AP KM and Croatia."[217]

COOPERATION WITH THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA
Objective 1: Intensification of cooperation with the ICTY and the MICT so that evidence on committed war crimes is transferred to the national judiciary and priority cases opened on the basis of such evidence.

After the ICTY closed on 31 December 2017,[218] full cooperation with the Mechanism for International Criminal Tribunals, as the successor to the ICTY, remains an essential condition for Serbia's EU membership,[219] as was explicitly stated in the Stabilization and Association Agreement.[220]

Research of the ICTY and MICT Records and Liaison Officers

According to Report 1/2018 on the implementation of the Action Plan for Chapter 23, research of the ICTY/MICT databases, including the evidentiary database of the ICTY/MICT Office of the Prosecutor, continued during the reporting period.[221] Part of the research was conducted by the OWCP Liaison Officer at the MICT Office of the Prosecutor, and part by case examiners, through the Electronic Disclosure System.[222]

216 *Ibid.*

217 HLC interview with a representative of the Government of the Republic of Serbia's Commission on Missing Persons, 30 May 2018.

218 See: The official website of the International Criminal Tribunal for the Former Yugoslavia: http://www.icty.org/, last accessed: 6 June 2018.

219 *European Union Common Position Chapter 23: Judicary and fundamental rights*, p. 8, available at: http://mei.gov.rs/upload/documents/pristupni_pregovori/pregovaracke_pozicije/Ch23%20EU%20Common%20Position.pdf, last accessed: 12.06.2018. godine.

220 *Stabilisation and Association Agreement*, p. 11, Articles 2, available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/serbia/key_document/saa_en.pdf, last accessed: 06 June 2018.

221 Report no. 1-2018 on implementation of Action Plan for Chapter 23, Activity 1.4.1.5, p. 284-286.

222 *Ibid.*

As was confirmed by the OWCP, the OWCP Liaison Officer was present at the ICTY/MICT Office of the Prosecutor throughout the reporting period.[223]

Failure to Comply with the Arrest Warrant for Contempt of Court

Serbia failed to comply with the ICTY's request for the arrest of three senior officials of the Serbian Radical Party, namely Petar Jojić, Vjerica Radeta and Jovo Ostojić, charged with contempt of court – a request issued in January 2015.[224] One of them, Jovo Ostojić, has passed away in the meantime, but the arrest warrants for Jojić and Radeta are still active.[225] Rasim Ljajić, chairman of the National Council for Cooperation with the ICTY, commenting on the arrest warrants, said that "Serbia's hands are tied by the court decision that the requirements have not been met for their extradition. As long as this decision is in force, we cannot take any steps towards handing them over, because it would mean undermining the legal order of the state".[226]

The decision Ljajić refers to is the May 2016 decision of the Higher Court in Belgrade. This court, as the court competent to act upon ICTY arrest warrants, found that the legal requirements for extradition laid down by the Law on Cooperation with the ICTY had not been met in the case of the three Radical Party officials.[227] The explanation was that the said law does not provide for the surrender of persons charged with contempt of court, but only those charged with war crimes, crimes against humanity, and the crime

223 OWCP' letter A.no. 14/18, of 18 May 2018 responding to an HLC's request for information of public importance; *Report 1 – National Strategy for Prosecution of War Crimes*, January 2018, pp. 39-40; *Report 2 – National Strategy for Prosecution of War Crimes*, May 2018, pp. 51-53.

224 *Petar Jojić, Jovo Ostojić, and Vjerica Radeta charged with Contempt of Court*, press release, ICTY, 1 December 2015, available at the official ICTY website at: http://www.icty.org/en/press/petar-jojic-jovo-ostojic-and-vjerica-radeta-charged-contempt-court, last accessed: 6 June 2018.

225 *Trial Chamber I issues Revised Order in Lieu of Indictment in Jojić et al. contempt case*, press release, ICTY, 18 August 2017, available at the official ICTY website at: http://www.icty.org/en/press/trial-chamber-i-issues-revised-order-in-lieu-of-indictment-in-joji%C4%87-et-al-contempt-case, last accessed: 6 June 2018.

226 *Ljajić: Srbiji vezane ruke po pitanju izručenja troje radikala* [*Ljajić: Serbia's hands tied when it comes to extradition of three Radical Party members*], portal N1, 30 November 2016, available (in Serbian) at: http://rs.n1info.com/a211544/Vesti/Vesti/Troje-radikala-ne-moraju-da-brinu.html, last accessed: 13 June 2018.

227 See: *Court's Decision to Refuse Extradition of Three Members of Serbian Radical Party a Result of Political Calculations of Government of Serbia*, press release, HLC, 25 May 2016, available at: http://www.hlc-rdc.org/?p=32029&lang=de, last accessed: 13 June 2018.

of genocide.[228] The HLC notes that in some other, previous cases the Higher Court ruled differently in exactly the same kind of legal situation.[229] For example, when Jelena Rašić[230], and then Dragomir Pećanac[231] and Ljubiša Petković[232], were wanted by the ICTY for contempt of court, the court, applying the same law, found that the legal conditions for extradition had been met and had them arrested and handed over to the ICTY.

228 *Ibid.*

229 *Initial Report on the Prosecution of War Crimes*, HLC, 2017, pp. 17-18; 65-66.

230 *Nova optužnica zbog podmićivanja svedoka* [*New indictment for bribing witnesses*], *Sense* News Agency, 21 September 2010, available (in Serbian) at: http://www.sense-agency.com/tribunal_(mksj)/nova-optuznica-zbog-podmicivanja-svedoka.25.html?cat_id=1&news_id=11917, last accessed: 13 June 2018.

231 *Major Pećanac refuses to testify against General Tolimir*, *Sense* News Agency, 10 October 2011, available at: http://www.sense-agency.com/icty/major-pecanac-refuses-to-testify-against-general-tolimir.29.html?cat_id=1&news_id=13270, last accessed: 13 June 2018.

232 *Ljubiša Petković pleads not guilty*, *Sense* News Agency, 29 May 2008, available (in Serbian) at: http://www.sense-agency.com/tribunal_(mksj)/ljubisa-petkovic-se-izjasnio-da-nije-kriv.25.html?cat_id=1&news_id=713, last accessed: 13 June 2018.

REGIONAL AND INTERNATIONAL COOPERATION
1. Regional Cooperation
Objective 1: The Republic of Serbia shall invest efforts to develop normative regulation of the issues of regional cooperation in regard to prosecuting war crimes, as well as other related issues. Objective 2: Proceeding upon letters of request from the Republic of Serbia sent to states in the region is improved, through the joint action of the Office of War Crimes Prosecutor and the Ministry of Justice, and the number of cases in which evidence is exchanged between prosecutors' offices through regional cooperation is increased. Objective 3: Enhanced cooperation with the judicial bodies of the provisional institutions of Kosovo and Metohija.
2. International Cooperation
Objective 1: Enhanced international cooperation through the presentation of work of the national judicial bodies.

Regional Conferences

The National Strategy stipulates a series of regional conferences aimed at enhancing regional cooperation in the prosecution of war crimes and addressing some controversial issues that have hampered regional cooperation in the past.[233] **None of the regional conferences planned in the National Strategy was held during the reporting period.**[234]

Regional Meetings and Efforts to Improve Regional Cooperation

According to the information presented in the Working Body's reports on the implementation of the National Strategy, regional consultations between prosecutors' offices from the region (Prosecutor's Offices of BiH, DORH and OWCP) were organised

233 Regional conferences envisaged by the *National Strategy for the Prosecution of War Crimes*: Regional conference on the improvement of cooperation in the provision of support to victims and witnesses, p. 27; Regional conference to achieve an intergovernmental agreement establishing regional rules on the division of jurisdiction for proceeding in war crimes cases; Regional conference on enhancement of regional cooperation with regard to proceeding upon letters of request in war crimes cases; Regional conference setting up a facilitated procedure for obtaining evidence in the territory of another state by defence attorneys in war crimes cases; and Regional conference on uniform procedure of states in the region with regard to determining the fate of missing persons, p. 31.

234 *Report 2 – National Strategy for Prosecution of War Crimes*, May 2018, pp. 41-42, 53-54.

under the UNDP's "Strengthening Regional Cooperation in Prosecution of War Crimes and the Search for Missing Persons (2017-2019)" regional project.[235] The OWCP participated in the meeting, which is encouraging. However, **the initiative to organize the meetings did not come from the OWCP or the Ministry of Justice, as required by the National Strategy**, but from the UNDP.[236]

A few bilateral meetings also took place, and OWCP representatives held meetings with their counterparts from BiH and EULEX during the reporting period.[237]

At the time of this writing, **neither joint regional records of war crimes cases opened through regional cooperation,**[238] **nor joint cross-border investigative teams of prosecutors from the countries of the region, have been established.**[239]

Cooperation with the Republic of Croatia

The Justice Ministers of the Republic of Croatia and the Republic of Serbia met in March 2018. The two Ministers agreed to set up two joint commissions, one for the exchange of lists of persons accused or convicted of war crimes and another for dealing with challenges in war crimes prosecutions.[240]

In her address to the U.N. Security Council, Serbian Justice Minister Nela Kuburović said that the first commission held a meeting on 26 April 2018, at which lists were exchanged and modalities of future cooperation agreed.[241]

235 *Ibid*, p. 56.

236 *National Strategy for Prosecution of War Crimes*, pp. 31, 36.

237 OWCP's letter PIbr.15/18 of 22 May 2018 responding to an HLC request for information of public importance. In its letter A.no. 14/18 of 18 May 2018, responding to an HLC request for information of public importance, the OWCP notes that Dražen Jelenić was elected State Attorney General of the Republic of Croatia on 20 April 2018.

238 *National Strategy for Prosecution of War Crimes*, p. 37; *Report 2 – National Strategy for Prosecution of War Crimes*, May 2018, p. 57.

239 *National Strategy for Prosecution of War Crimes*, p. 37; *Report 2 – National Strategy for Prosecution of War Crimes*, May 2018, pp. 57-58.

240 *Minister Kuburović and Minister Bošnjaković: Good will to resolve all open judiciary issues*, press release, Ministry of Justice, 23 March 2018, available at: https://www.mpravde.gov.rs/en/vest/18822/minister-kuburovic-and-minister-bosnjakovic-good-will-to-resolve-all-open-judiciary-issues.php, last accessed: 7 June 2018; Ministry of Justice letter no. 7-00-156/2018-30 of 14 May 2018 responding to an HLC request for information of public importance; *Statement by H.E. MS. Nela Kuburović Minister of Justice of the Republic of Serbia, Meeting of the Security Council*, 06 June 2018, p. 5.

241 *Ibid.*

When preparing this report, the HLC sought from the Ministry of Justice the acts establishing these commissions and information about their composition. Instead of supplying these documents and information, the Ministry tersely responded that "there are no documents".[242] The official website of the Ministry of Justice and media reports do not offer sufficient details about the commissions' mandates, how they were established, their composition and when they are expected to finish their work.[243]

Cooperation with the Kosovo Judiciary

Since the OWCP does not have *de facto* jurisdiction over the territory of Kosovo, it is unable autonomously to undertake actions to investigate crimes and prosecute alleged perpetrators in Kosovo, or access crime scenes, alleged perpetrators, witnesses and victims, or directly obtain relevant information and documentation. Because of this, the OWCP has since its establishment cooperated first with UNMIK and later with the EULEX Mission.[244] Since 2013, cooperation with the Kosovo judiciary has been regulated by the Procedures for mutual legal assistance, which the Government of the Republic of Serbia adopted on 7 March 2013.[245]

The HLC finds that cooperation between Serbia and Kosovo in war crimes cases has *de facto* been stalled since May 2014, when the responsibility for investigations was transferred from EULEX to local prosecutors.[246] Despite earlier announcements that the EULEX Mission's mandate would end on 14 June 2018, in early June its mandate

242 Ministry of Justice letter no. 7-00-162/2018-32 of 18 May 2018 responding to the HLC's request for information of public importance.

243 See: *Minister Kuburović and Minister Bošnjaković: Good will to resolve all open judiciary issues*, press release, Ministry of Justice, 23 March 2018, available at: *https://www.mpravde.gov.rs/en/vest/18822/minister-kuburovic-and-minister-bosnjakovic-good-will-to-resolve-all-open-judiciary-issues.php*; *Dogovoreno formiranje komisija za procesuiranje ratnih zločina* [*Establishment of war crimes prosecution commissions financing agreed*], daily newspaper *Danas*, 23 March 2018, available (in Serbian) at: https://www.danas.rs/drustvo/dogovoreno-formiranje-komisija-za-procesuiranje-ratnih-zlocina/; *Kuburović: Sud za zločine OVK ostaće mrtvo slovo na papiru* [*Kuburović: Court for KLA crimes will remain dead letter*], *Večernje novosti*, 15 April 2018, available (in Serbian) at: http://www.novosti.rs/vesti/naslovna/politika/aktuelno.289.html:722182-Kuburovic-Sud-za-zlocine-OVK-ostace-mrtvo-slovo-na-papiru. All sources last accessed: 13 June 2018.

244 Official OWCP website, section *International Cooperation*, available at: http://www.tuzilastvorz.org.rs/en/co-operation/international-co-operation, last accessed: 07 June 2018.

245 *Ibid.*

246 OWCP's reply to an HLC petition for expediting proceedings in the KTP 149/13 case, HlcIndexIn: 25-F126625 of 27 October 2016; *Kosovo Faces Judicial Dilemmas as EU Law Mission Ends*, BalkanInsight, available at: http://www.balkaninsight.com/en/article/kosovo-faces-judicial-dilemmas-as-eu-law-mission-ends-04-12-2018, last accessed: 6 June 2018.

was extended until 14 June 2020.[247] EULEX's mandate, according to the relevant EU Council's decision, will include monitoring and advising the Kosovo judiciary and Kosovo Correctional Service, and supporting the Kosovo Specialist Chambers and the implementation of EU-facilitated dialogue agreements on normalisation of relations between Kosovo and Serbia.[248]

The HLC also notes that in more than four years, the OWCP has not issued a single indictment for crimes committed in Kosovo.[249] In this connection, it bears repeating a point made by the HLC in a constitutional appeal, commenting on the OWCP's failure to conduct an adequate and effective investigation into the *Landovica* Case: the Republic of Serbia may not recognize Kosovo as an independent state, but it should not let this political decision interfere with its legal obligation to prosecute war crimes within its jurisdiction.[250]

International Jurisprudence

During the reporting period, there were no activities relating to the participation of judges and public prosecutors handling war crimes cases in seminars on international humanitarian law or expert consultations at which they would, *inter alia*, present the domestic court's case-law in this field.[251] Also, no activities have been conducted to secure financial support for the translation of domestic judgments into English so that they can be included in the *Legal Tools Project,* the online database of all legal documents and sources in international criminal law available at the International Criminal Court website.[252]

247 *What is EULEX?*, available at the EULEX official website at: http://www.eulex-kosovo.eu/?page=2,16; *EULEX-mandate*, available at the EULEX official website at: http://www.eulex-kosovo.eu/?page=3,10,836. All sources last accessed: 12 June 2018.

248 *EULEX Kosovo: new role for the EU rule of law mission*, press release, Council of the European Union, 8 June 2018, available at: http://www.consilium.europa.eu/en/press/press-releases/2018/06/08/eulex-kosovo-new-role-for-the-eu-rule-of-law-mission/, last accessed: 13 June 2018.

249 The last indictment the OWCP brought in relation to crimes in Kosovo concerns the crime in Ljubenić; it was brought on 7 April 2014. The *Ljubenić* Case was subsequently merged with the *Ćuška* Case, which at the time of this writing was still being tried before the War Crimes Department of the Higher Court in Belgrade.

250 *Initial Report on the Prosecution of War Crimes*, HLC, 2017, p. 70.

251 *Report 2 – National Strategy for Prosecution of War Crimes*, May 2018, pp. 61-62.

252 OWCP's reply A.no. 14/18 of 18 May 2018 to an HLC request for access to information of public importance; *Report No. 2 on the Implementation of the National Strategy for the Prosecution of War Crimes*, May 2018, pp. 61-62.

IMPROVING THE SOCIETY'S ATTITUDE TOWARDS THE ISSUE OF WAR CRIMES TRIALS
Objective 1: Easier access to information on war crimes trials. Objective 2: Enhancement of capacity of media professionals for appropriate reporting on war crimes proceedings. Objective 3: Improvement of the curricula in a manner that enables students to obtain a sufficient quantity of relevant information on the conflicts in the former Yugoslavia, the war crimes committed during that time, and the norms of international humanitarian law. Objective 4: Public presentation of the National Strategy as a tool to express the firm and unequivocal commitment of the Republic of Serbia to undertake measures preventing impunity for war crimes.

Access to Information and Documents Pertaining to War Crimes Cases

- **OWCP, Higher Court in Belgrade and Court of Appeal in Belgrade Websites**

The OWCP continued to regularly publish the main hearings schedules for the current month on its website.[253] Also, its website offers information, mostly of a basic nature, on indictments issued, consisting of a single sentence containing the date of indictment, the name of the person/s indicted, and the offence the person/s is/are charged with.[254] The indictments are published only after being confirmed.[255] Judgments in war crimes cases are not published on the OWCP website. Most other sections of the website are not updated regularly.[256]

253 Section: *Download Documents,* official OWCP website, available at: http://www.tuzilastvorz.org.rs/en/, last accessed: 07 June 2018.

254 Section: *News and Announcements*, official OWCP website, available at: http://www.tuzilastvorz.org.rs/en/news-and-announcements/announcements, last accessed: 07 June 2018.

255 Section: *Indictments*, Official OWCP website, available at: http://www.tuzilastvorz.org.rs/en/cases/indictments, last accessed: 07 June 2018.

256 Examples: The section with the list of acting deputy war crimes prosecutors was not updated at the time of accession. The list includes two deputy prosecutors who retired during the reporting period: http://www.tuzilastvorz.org.rs/en/about-us/biographies; section for *Press Clipping*: http://www.tuzilastvorz.org.rs/en/news-and-announcements/press-clipping. All sources last accessed: 07 June 2018.

The Court of Appeal has continued to publish its war crimes judgments on its website.[257] The Higher Court in Belgrade launched a completely new website during the reporting period. Currently, only sporadic information can be found there on war crimes trials.[258] It should also be remarked that the new website seems poorly organized and unfinished. The last information on war crimes trials posted on the Higher Court in Belgrade website concerns the confirmation of the indictment in the *Štrpci* Case, on 1 September 2017.[259]

In addition to the above-mentioned websites, documents pertaining to war crimes trials in Serbia are available on the Humanitarian Law Center website.[260] This is currently the only website that systematically offers such documents for download. Also, all documents pertaining to ongoing war crimes trials received through request for information of public importance are posted regularly on the HLC website.[261] Indictments, judgments, hearings transcripts and daily trial reports produced by HLC trial observers are available for downloading on the "Individual Cases" section of the website.[262] Moreover, the HLC publishes all its reports and analyses in both Serbian and English.[263]

Recording Trials

In the period covered by this report, the Higher Court in Belgrade received no photography request or request for an audio or video recording of a main hearing for the purpose of public broadcasting.[264]

257 Internet presentation of the Court of Appeal in Belgrade, section: *Overview of the court practice of the Court of Appeal in Belgrade/War crimes*, available at: http://www.bg.ap.sud.rs/cr/articles/sudska-praksa/pregled-sudske-prakse-apelacionog-suda-u-beogradu/krivicno-odeljenje/ratni-zlocini/, last accessed: 07 June 2018.

258 Official website of the Higher Court in Belgrade: https://www.bg.vi.sud.rs/, last accessed: 7 June 2018.

259 *Potvrđena optužnica podignuta protiv okrivljenog Gojka Lukića i drugih* [*Indictment against Gojko Lukić and others confirmed*], press release, 1 September 2017, available (in Serbian) at: https://www.bg.vi.sud.rs/vest/955/potvrdjena-optuznica-podignuta-protiv-okrivljenog-gojka-lukica-i-drugih-.ph, last accessed: 7 June 2018.

260 See: Official website of the Humanitarian Law Center, available at: http://www.hlc-rdc.org/?lang=de, last accessed: 13 June 2018.

261 See: Section *Individual Cases*, official website of the Humanitarian Law Center, available at: http://www.hlc-rdc.org/?cat=234&lang=de, last accessed: 13 June 2018.

262 *Ibid.*

263 See: Section *Publications*, official website of the Humanitarian Law Center, available at: http://www.hlc-rdc.org/?cat=223&lang=de, last accessed: 13 June 2018.

264 Higher Court in Belgrade's reply Su II 17a no. 111/18 of 28 May 2018 to an HLC's request for access to information of public importance.

In the light of the modest progress made in access to information on war crimes trials, **the HLC would like to draw attention to the fact that an alarming 85 percent of respondents in a public opinion survey could not name even a single war crime that has been or is being tried before a Serbian court.**[265] 79 percent could not name a single judicial institution responsible for handling war crimes, 59 percent said they are ill-informed on war crimes trials.[266]

Since television is the most widely used source of information in Serbia (72 percent of the respondents surveyed said they obtained their news on war crimes trials mostly via television), **"a raised level of awareness of and improved public attitude toward war crimes trials"**, an objective stated in the National Strategy, **cannot be achieved without television coverage of war crimes trials**.

Vojislav Šešelj Conviction by a final MICT Judgment

The adoption of the National Strategy for the Prosecution of War Crimes was meant to show that the Republic of Serbia is clearly and firmly committed to taking steps to prevent impunity for war crimes and raise social awareness of the importance of punishing those responsible for them.[267]

However, in situations which offered an opportunity for Serbian officials to affirm this commitment, this did not happen. The most recent such opportunity was when the MICT judged Vojislav Šešelj, President of the Serbian Radical Party, guilty of crimes against humanity.[268]

On 11 April 2018, the MICT Appeal Chamber handed down a judgment on appeal reversing Šešelj's acquittal and sentencing him to 10 years in prison for instigating persecution (forcible displacement), deportation and other inhumane acts (forcible transfers) as crimes against humanity, as well as for committing persecution (a violation of the right to security), as a crime against humanity, in Hrtkovci, Vojvodina.[269]

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265 Public Opinion Research *„Serbian Citizen's Awareness of Wars in '90s, War Crimes and War Crimes Trials"*, conducted for Serbian Daily Newspaper *Danas* (publisher: *Dan Graf*), Belgrade, August 2017, is available at: http://www.hlc-rdc.org/wp-content/uploads/2018/01/Public-opinion-research-War-crimes-trials-Demostat.pdf, last accessed: 07 June 2018.

266 *Ibid.*

267 *National Strategy for Prosecution of War Crimes*, Objective 1, pp. 8, 20, 40-41.

268 *Prosecutor v. Vojislav Šešelj*, Appeal Judgement Summary (11 April 2018), available at the official website of MICT: http://www.unmict.org/en/cases/mict-16-99, last accessed: 07 June 2018.

269 *Ibid.*

With the Appeal Chamber judgment, Vojislav Šešelj became a convicted war criminal. According to the Law on the Election of Members of Parliament, Šešelj should have been stripped of his MP's mandate.[270] Namely, this law stipulates that an MP's mandate will be terminated if s/he has been convicted by final court decision to a prison sentence of not less than six months.[271]

Despite this, he has continued to sit in the National Assembly of the Republic of Serbia – and, what is more, on the Parliamentary Committee for the Control of Security Agencies.[272]

At the time of completion of this report, the procedure for terminating Vojislav Šešelj's MP's mandate has not been initiated.[273]

The HLC notes that the *Šešelj* Case demonstrates the apparent lack of a clear political stance on judicially established facts and criminal responsibility of this convict.[274] None of the most senior state officials has gone public to express sympathy for Šešelj's victims or open a debate on the role of the Serbian state in the crimes he committed against Croats in Hrtkovci, and also in other Vojvodina villages, including Novi Slankamen, Kukujevci, Golubinci, Petrovaradin, Bač, Beočin, Morovići and Beška.[275]

270 Law on the Election of Members of the National Assembly (Official Gazette of the Republic of Serbia, nos. 35/2000, 57/2003 – RSCC decision, 72/2003 – correction of other law, 18/2004, 101/2005 – other law, 85/2005 – other law, 28/2011 – CC decision, 362011 and 104/2009 – other law), Article 88.

271 *Ibid.*

272 See: Security Services Control Committee on the official website of the Republic of Serbia National Assembly at: http://www.parlament.gov.rs/national-assembly/composition/working-bodies/committees.91.492.html, last accessed: 7 June 2018.

273 *Ibid.*, see: Composition of the National Assembly of the Republic of Serbia.

274 *With Appeal Judgment on Vojislav Šešelj, Justice is Partially Achieved*, press release, HLC, 13 April 2018, available at: http://www.hlc-rdc.org/?p=35055&lang=de, last accessed: 07 June 2018.

275 *Ibid.*

Overview of the Implementation of Activities

1. INCREASING EFFICENCY OF THE WAR CRIMES PROCEEDINGS BEFORE THE REPUBLIC OF SERBIA BODIES		
1.1. Investigations and Indictments		
Activity	**Time Limit**	**Implementation Status**
The OWCP shall draft and adopt the Prosecutorial Strategy for Investigation and Prosecution of War Crimes.	Quarter 1 of 2016	Implemented
The WCIS shall prepare a database on mass crimes committed during the armed conflicts in former Yugoslavia.	Quarter 4 of 2016	Implemented
The OWCP shall endeavour to register and take over all the war crimes cases still pending before the domestic courts of general jurisdiction.	Quarter 4 of 2016	Implemented
With the aim of increasing working efficiency, the OWCP should undertake the following activities: • Use the existing capacity in line with the prosecutorial strategy; • Apply, whenever appropriate, the legal institution of plea agreement referred to in Articles 313-320 of the CPC; • Ensure full confidentiality of the investigation process; • Examine during the investigation whether the suspect holds any assets acquired through war crime and, if this happens to be the case, to submit to the court the relevant procedural request in that regard pursuant to the Law on Criminal Asset Recovery.	Continuous	Partly implemented
The number of deputy prosecutors and other staff of the OWCP shall increase in line with the time frame envisaged in the Action Plan for Chapter 23.	Continuous	Not implemented

Continuous training on international humanitarian, international criminal law and investigative techniques will be provided to the present and newly employed/newly appointed staff and deputy public prosecutors in the OWCP, as well as appropriate training relating to the approach to victims and witnesses to avoid the risk of secondary victimization.	Continuous	Not implemented
The defining of specific measures to be undertaken for the purpose of improving the status and operations of the WCIS requires that the MoI prepares an analysis (report) on the legal and factual situation and the needs of the WCIS within the MoI, aimed at determining the need for the Service reform.	Quarter 1 of 2016	Implemented
On the basis of the above analysis, the MoI will urgently undertake measures to ensure the optimal status and capacity of the WCIS.	Continuous, commencing from Quarter 2 of 2016	No information
Adoption of joint internal operating rules of the OWCP and the WCIS, at the initiative of the War Crimes Prosecutor.	Quarter 2 of 2016	Implemented
Improving cooperation between the OWCP and the WCIS through: • Organization of joint trainings; • Establishment of a joint strategic team to define the guidelines and directions for action in matters of common concern; • Formation of joint operational teams; • Periodic mutual organization of round tables.	Continuous	Partly implemented

1.2. Trials		
Activity	**Time Limit**	**Implementation Status**
Consistent application of Articles 10 and 10a of the Law on the Organization and Jurisdiction of Government Authorities in War Crimes Proceedings, in respect of the period for which judges are assigned to the War Crimes Chamber. Determination of additional judges in cases in which there is a reasonable fear that, due to the expiry of the term of the presiding judge instructed to the department for war crimes, the trial had to start over again.	Continuous	Implemented
The War Crimes Prosecutor should start negotiations with his counterparts in neighbouring states on the establishment of a regional database of war crimes case trials which would considerably contribute to harmonization of jurisprudence.	Continuous, commencing from Quarter 1 of 2016	Not implemented
The Ministry of Justice shall endeavour, on the proposal of the HJC, to provide adequate technical equipment for the courtrooms in which war crimes trials are held. Pursuant to Article 354 of the CPC, the Presidents of the Higher and Appellate Court in Belgrade will strive to ensure the maintenance of hearings in adequate courtrooms in other courts through cooperation with the HJC.	Continuous, commencing from Quarter 1 of 2016	Partly implemented
At the initiative of the OWCP, the Higher and Appellate Court in Belgrade, and in cooperation with the HJC, the SPC and the Judicial Academy, a system of training and additional education shall be established for judges, prosecutors, assistants, deputies and police investigators in the fields of international criminal and international humanitarian law.	Continuous, commencing from Quarter 1 of 2016	Not implemented

2. PROTECTION OF WITNESSES AND VICTIMS		
Activity	**Time Limit**	**Implementation Status**
Inter-sectorial Working Group of the Ministry of Justice shall prepare an analysis of court practice in the implementation of Article 102 of the CPC as well as an analysis of the provisions and results of the implementation of the Law on the programme for protection of participants in criminal proceedings, and formulate conclusions and recommendations on the needs of any amendment to this law or the accompanying bye-laws, in order to improve the witness and victim protection system.	Quarters 1 - 4 of 2016	Implemented
The MoI shall initiate and, in cooperation with the Commission for the Implementation of the Protection Programme for Participants in Criminal Proceedings, prepare the analysis of the status and needs of the Protection Unit.	Quarter 1 of 2016	Implemented
On the basis of the above analysis, the MoI shall urgently undertake measures to ensure the optimal status and capacity of the Protection Unit.	Commencing from Quarter 2 of 2016	Partly implemented
Criminal law chambers shall consistently apply the provisions of the CPC regulating the sanctioning of participants in the procedure who violate procedural discipline, particularly if they attack the integrity of the witnesses or victims.	Continuous	Implementation in progress
Competent public prosecutors, the SPC and the competent bar association shall regularly notify the court about the measures undertaken with regard to the caution referred to in Article 374 of the CPC.	Continuous	Implementation in progress

Improvement of rules of procedure by the Commission for the Implementation of the Protection Programme and the Protection Unit fully respecting the interests of the criminal proceedings in which the protected person is placed under protective measures.	Continuous	Implemented
Improvement of cooperation between the Protection Unit and the OWCP, through: • Organization of joint trainings; • Establishment of a joint strategic team to define guidelines and directions of acting in matters of common concern; • Formation of joint operational teams; • Periodic mutual organization of round tables.	Continuous	Partly implemented

3. SUPPORT TO VICTIMS AND WITNESSES		
Activity	**Time Limit**	**Implementation Status**
The Ministry of Justice shall perform an analysis of the level of harmonization of the normative framework Directive 2012/29/EU.	Quarter 1 of 2016	Implemented
The Minister of Justice shall establish a working group to propose amendments to the normative framework, with the aim of harmonization with the notion of the victim in international human rights treaties, and of effective application of minimum standards on their rights, Directive 2012/29/EU.	Quarter 2 of 2016	Partly implemented
The Ministry of Justice shall issue a bye-law regulating the mandatory provision of information to victims on all aspects of the criminal proceedings of interest to them, in accordance with Article 6 of Directive 2012/29/EU.	Quarter 2 of 2016	Not implemented
The Ministry of Justice shall create and distribute a brochure containing information about victims' rights (legal aid, psychological support, protection, etc.), in accordance with Article 4 of the Directive 2012/29/EU.	Quarter 3 of 2016	Not implemented
The Service for Assistance and Support to Victims and Witnesses within the Higher Court in Belgrade shall hire an expert for the provision of psycho-social support.	Quarter 4 of 2016	Not implemented
The Protection Unit of the MoI, through the changes in the Job Classification Act, shall enable the engagement of professional staff for the provision of psycho-social support.	Quarter 4 of 2016	Not implemented

To meet the needs of the Service for Assistance and Support to Victims and Witnesses staff, the Higher Court in Belgrade and the Judicial Academy, with the support of the HJC and the Ministry of Justice, shall occasionally organize additional training and encourage participation in professional conferences.	Continuous, commencing from Quarter 2 of 2016	Not implemented
To meet the needs of the Protection Unit staff, the Training Centre of the MoI shall occasionally organize additional training and encourage participation in professional conferences.	Continuous, commencing from Quarter 2 of 2016	Not implemented
Improvement of infrastructural and technical capacity of the services for assistance and support to victims and witnesses.	Continuous, commencing from Quarter 2 of 2016	Not implemented
Establishment of a countrywide network of services for assistance and support to victims and witnesses during investigation and all stages of criminal proceedings: • normative aspect (current normative framework, best comparative solutions, international standards); • financial assessment (sustainable financing, adequacy of premises and staff, training needs); • access to support services (network coverage, distance, mobile support teams).	For the analysis – Quarter 1 of 2016; for the network establishment – continuous, commencing from 2018	Partly implemented
The Ministry of Justice shall initiate a regional conference on the improvement of cooperation in the provision of support to victims and witnesses.	Continuous, commencing from Quarter 3 of 2016	Not implemented

4. DEFENCE OF THE ACCUSED		
Activity	**Time Limit**	**Implementation Status**
Developing a programme of initial and continuous training in international humanitarian and international criminal law for the lawyers representing defendants in war crimes cases.	Quarter 3 of 2016	Not implemented
Implementation of continuous training in the fields of international humanitarian and international criminal law for the lawyers representing defendants in war crimes cases.	Continuous, commencing from Quarter 4 of 2016	Not implemented
The working group established by the Minister of Justice shall prepare an analysis of the provisions and results of the application of the Rulebook on Remuneration for (Court-) Appointed Attorneys in war crimes cases.	Quarter 3 of 2016	Partly implemented

5. WAR CRIMES TRIALS AND THE ISSUE OF MISSING PERSONS		
Activity	**Time Limit**	**Implementation Status**
The Republic of Serbia shall continuously work on fulfilling the recommendations of the Committee on Enforced Disappearances and notify the Committee on results achieved.	Continuous	Partly implemented
Conduct an analysis of the organizational structure and status of the Support Service, with the aim of improving efficiency and sustainability in the context of the volume and specificity of tasks within the Commission's purview.	Quarter 3 of 2016	Not implemented
Improve mutual cooperation of the Commission on Missing Persons and other state bodies involved in the process of investigation and prosecution of war crimes, through periodically organized round tables.	Periodically (at least once per year)	Partly implemented
The Ministry of Foreign Affairs initiates the procedure for the signing and becoming party to the Agreement on the Establishment of the International Commission on Missing Persons (ICMP), granting the Commission the status of an international organization.	Quarter 4 of 2016	Implemented
The Government shall encourage the Commission on Missing Persons of the Republic of Serbia to establish a special cash fund for the support of competent state bodies in obtaining all available data on the location of the gravesites of the persons still missing.	Continuous	Not implemented

6. COOPERATION WITH THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA		
Activity	**Time Limit**	**Implementation Status**
• Fully access and examine the archive of the ICTY and the residual MICT, through appointed liaison officers. • Identify the materials and evidence of the International ICTY and the residual MICT relevant for the priority cases.	Continuous, commencing from Quarter 2 of 2016	Implementation in progress
The Republic of Serbia shall endeavour to maintain the good practice of the transfer of knowledge and experience from the ICTY, to gain both general knowledge and specific knowledge about individual cases.	Continuous	Implementation in progress
The Republic of Serbia shall endeavour to maintain the good practice of the *ad hoc* presence of advisors from the OWCP in the offices of the ICTY and the MICT.	Periodical	Implementation in progress

7. REGIONAL AND BROADER INTERNATIONAL COOPERATION		
7.1. Regional Cooperation		
Activity	**Time Limit**	**Implementation Status**
The Ministry of Justice shall initiate a regional conference to achieve an intergovernmental agreement with the Republics of Croatia, B&H, and Montenegro on the following open issues: 1) establishing regional rules on the division of jurisdiction for proceeding in war crimes cases; 2) enhancing regional cooperation with regard to proceeding upon letters of request in war crimes cases; 3) setting up a facilitated procedure for obtaining evidence in the territory of another state by defense attorneys in war crimes cases; 4) uniform proceeding of states in the region with regard to determining the fate of missing persons.	Quarter 1 of 2017	Not implemented
The Ministry of Justice shall establish a working group to prepare proposals of topics and normative issues for the Regional Conference.	Quarter 2 of 2016	Not implemented
The OWCP shall initiate the continuation of the „Palić Process" with the presence of international observers, as well as regular quarterly meetings between regional prosecutors.	Continuous, commencing from Quarter 1 of 2016	Partly implemented
The OWCP shall initiate the establishment of joint records of war crimes cases at the regional level the resolution of which commenced through regional cooperation.	Continuous, commencing from Quarter 2 of 2016	Not implemented
The OWCP shall promote the establishment of joint cross-border investigative prosecutorial teams with the countries of the region.	Continuous	Not implemented
Improving cooperation between the judicial authorities of the Republic of Serbia and of the WCIS with the Provisional Institutions of Self-Government in Pristina.	Continuous	Not implemented

7.2. International Cooperation		
Activity	**Time Limit**	**Implementation Status**
Active participation of judges and public prosecutors who handle war crimes cases in seminars on international humanitarian law and professional conferences.	Continuous, commencing from Quarter 1 of 2016	Not implemented
The Ministry of Justice, in cooperation with the OWCP and HJC, shall invest efforts into securing financial support for the project of translating domestic judgments into the English language, so that they can be included in the *Legal Tools Project*.	Continuous, commencing from Quarter 1 of 2016	Not implemented

8. OUTREACH		
Activity	**Time Limit**	**Implementation Status**
Increased frequency of acting in accordance with Article 16a of the Law on the Organization and Jurisdiction of Government Authorities in War Crimes Proceedings, by presidents of the competent courts.	Continuous	Not implemented
Improvement of the web site of the Higher Court in Belgrade, where all the necessary information about the judgments in war crimes cases shall be publicly available, with a gradual increase in the numbers of actual decisions.	Continuous	Partly implemented
Regular publishing of substantive reports on the work of judicial institutions responsible for prosecuting war crimes.	Continuous	Not implemented
Regular publishing of reports on the implementation of all relevant strategic documents in the field of prosecuting war crimes (the Action Plan for Chapter 23, the National Strategy, the Strategy of the Office of War Crimes Prosecutor).	Continuous	Implemented
With the support of the Council for the Implementation of the Action Plan for Chapter 23 and the Negotiating Group for Chapter 23, the inclusion of representatives of the institutions responsible for the prosecution of war crimes in the mechanism of cooperation with civil society organizations through their participation in occasional meetings with the National Convent of the EU.	Continuous	Partly implemented
Periodical organization of courses, workshops and trainings for journalists reporting on war crimes trials, in cooperation with media organizations, judicial institutions and international organizations.	Continuous	Not implemented

The quality and content of the curriculum that tackles issues related to the history of the conflict in the former Yugoslavia and the crimes that were committed during those conflicts shall be continuously monitored and upgraded.	Continuous	Not implemented
Publishing of the National Strategy text on the website of the Government of the Republic of Serbia, Ministry of Justice, the Office of War Crimes Prosecutor, the Higher Court and Court of Appeal in Belgrade.	Quarter 1 of 2016	Partly implemented
Following the adoption of this National Strategy, the highest State officials, led by the Prime Minister and the Minister of Justice, shall publicly declare their support for the work of all domestic bodies dealing with war crimes issues, for the fight against impunity and for respect for the rule of law.	Quarter 1 of 2016	Not implemented
Members of the Government of the Republic of Serbia and MPs, in accordance with the provisions of the newly adopted Code of Conduct for members of the Government and MPs, shall refrain from unauthorized commentaries on the work of the judiciary.	Continuous	Not implemented

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