



HUMANITARIAN LAW CENTER

Third Report

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



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Belgrade,
December 2018



The project is supported by the European Union. The views expressed herein are those of the author and do not necessarily represent the official position of the European Union.

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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
Government	Government of the Republic of Serbia
HJC	The High Judicial Council
HLC	Humanitarian Law Center
ICMP	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
RECOM	Regional Commission Tasked with Establishing the Facts about All Victims of War Crimes and Other Serious Human Rights Violations Committed on the Territory of the Former Yugoslavia from 1 January 1991 to 31 December 2001
REM	Regulatory body for electronic media
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
MSA	Military Security Agency of the Republic of Serbia
MIA	Military Intelligence Agency of the Republic of Serbia
MICT	United Nations Mechanism for International Criminal Tribunals
MoD	Ministry of Defence
VJ	Yugoslav Army
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	Witness 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 towards achieving justice for past crimes.

The National Strategy for the Prosecution of War Crimes (hereinafter: the National Strategy) was adopted in February 2016. The HLC is the only non-governmental organisation that monitors and reports on its implementation with a view to assisting in a qualitative and quantitative assessment of the state of implementation of the measures and activities set forth in the National Strategy.

The present report is the third HLC report on the implementation of the National Strategy. It covers the period from 1 June to 1 December 2018. Comprehensive assessments of the State's implementation of the National Strategy during the previous 12 months are provided in the HLC's Initial Report on the Implementation of the National Strategy for the Prosecution of War Crimes and the Second Report on the Implementation of the National Strategy for the Prosecution of War Crimes.¹

As shown by the findings below, no progress in war crimes prosecutions can be reported in the 33 months since the adoption of the National Strategy. The implementation of the National Strategy continues to be severely delayed, and at least 12 of the 15 indictments that have been issued since the adoption of the National Strategy were not the result

¹ *Initial Report on the Implementation of the National Strategy for the Prosecution of War Crimes*, HLC, 2017, available at the HLC website: http://www.hlc-rdc.org/wp-content/uploads/2017/12/Izvestaj_Strategija_1_eng.pdf; *Second Report on the Implementation of the National Strategy for the Prosecution of War Crimes*, HLC, 2018, available on the HLC website at: http://www.hlc-rdc.org/wp-content/uploads/2018/07/Izvestaj_Strategija_2_ENG-ff.pdf. Both sources last accessed on 11 November 2018.



of the OWCP's investigation but transferred to the OWCP from BiH.² War crimes trials continue to be unreasonably 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 being impeded owing to the decision of the Higher Court in Belgrade not to hand over to the ICTY/MICT members of the Serbian Radical Party (SRS) charged with contempt of court, but also to the increasing attempts to re-interpret and deny the facts established during judicial processes conducted before the International Criminal Tribunal for the Former Yugoslavia (ICTY).

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.³

Determining individual criminal responsibility for war crimes committed during the 1990s is one of the formal conditions Serbia has to meet to join the EU. 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 23⁴ relating to judicial reform and fundamental rights, and also to war crimes.⁵

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² The cases in which indictments have been issued since the adoption of the National Strategy for the Prosecution of War Crimes on 20 February 2016: *Doboj, Ključ Šljivari, Bratunac, Bosanska Krupa, *Ključ Kamičak, *Ključ Kamičak II, Srebrenica – Kravica, Sanski Most – Lušci, Caparde, Bosanska Krupa II, Ključ– Rejzovići, **Bogdanovci, Kožuhe – Doboj, Brčko*, the **indictment against Branko Branković and **the indictment against Jovan Novaković. **Ključ Kamičak* and *Ključ Kamičak II* were merged into one case. ****Note:** the indictment in the Case of *Bogdanovci*, the indictment against Branko Branković and the indictment against Jovan Novaković had not been confirmed by the Higher Court in Belgrade by the time this report was finished. The HLC does not have any information as to whether these three indictments have been the result of the OWCP's own work, or have been transferred from another country.

³ Full text of the National Strategy for the Prosecution of War Crimes is available at the OWCP official website: http://www.tuzilastvorz.org.rs/upload/HomeDocument/Document_en/2016-05/p_nac_stragetija_eng.PDF, last accessed: 10 October 2018.

⁴ *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>, last accessed: 10 October 2018.

⁵ *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-chapter23-serbia%20Official%20\(3\).pdf](https://www.mpravde.gov.rs/files/Screening-report-chapter23-serbia%20Official%20(3).pdf), last accessed: 10 October 2018.



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

In parallel with the Working Body for Monitoring and Reporting on the Implementation of the National Strategy (hereinafter: the Working Body), the HLC monitors the implementation of the National Strategy with a view to producing a *Shadow Report*, offering findings and an independent assessment of the state of implementation of the National Strategy.⁶

This is the third report on monitoring the implementation of the National Strategy published by the HLC. It features a brief overview of the current state of play, and covers the period from 1 June to 1 December 2018.

Methodology

The information used in preparing this report was drawn from three main sources. The first source comprised the reports of governmental and international bodies, including: quarterly reports on the implementation of the Action Plan for Chapter 23⁷, 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.⁸ The second source included information gathered through requests for access to information of public importance from the authorities identified in the National Strategy as responsible for implementation of the activities envisaged in the National Strategy. And then, since the HLC monitors all war crimes trials conducted by the Higher Court in Belgrade and the Court of Appeals in Belgrade, and has been representing

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6 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).

7 Reports on the implementation of the Action Plan for Chapter 23 are available (in Serbian) at the official website of the Ministry of Justice: <https://www.mpravde.gov.rs/tekst/2986/pregovori-sa-eu.php>, last accessed: 30 November 2018.

8 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.irmct.org/en/basic-documents/reports>, last accessed: 15 November 2018



victims (injured parties) in several of these trials through a proxy, the HLC's reports on war crimes trials were the third source of information for the present report.⁹

Obstacles encountered in the process of compiling the HLC's Report on the Implementation of the National Strategy for the Prosecution of War Crimes

One obstacle to the process of gathering information was the fact that the Working Body mandated to monitor and report on National Strategy implementation was only established in August 2017, a year and a half later than planned and, as a result, their official reports had fallen well behind schedule. By the time the HLC finalised had its work on this report, the Working Body had released four reports, which, in combination, cover the period from 20 February 2016 to 30 September 2018.¹⁰

The Working Body reports, besides arriving late, have contained insufficient information and not covering the activities set forth in the National Strategy it refers to. Also, they are not always entirely coherent, and consequently difficult to read and understand even for the professional community closely following domestic war crimes. The Working Body's evaluation of the implementation of planned activities is often perfunctory and illogical. In Report No. 3, for instance, the activity concerning setting up a regional war crimes trials database is described as "being successfully implemented".¹¹ However, the sentence immediately following, which describes the situation in June 2018, states that "the activity was not implemented because a new Chief Attorney at the State Attorney's Office of the Republic of Croatia was appointed during the reporting period". According to the time

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⁹ 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 November 2018.

¹⁰ 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. 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; *Report No.3 on the Implementation of the National Strategy for the Prosecution of War Crimes* was adopted on 13 September 2018; *Report No. 4 on the Implementation of the National Strategy for the Prosecution of War Crimes* was adopted on 21 November 2018. All reports are available at the official website of the Ministry of Justice: <https://www.mpravde.gov.rs/tekst/17978/izvestaj-o-sprovodjenju-nacionalne-strategije-za-procesuiranje-ratnih-zlocina.php>, last accessed: 21 November 2018.

¹¹ *Report No.3 on the Implementation of the National Strategy for the Prosecution of War Crimes*, pp. 26-27.



limit set out in the National Strategy, this activity should have been implemented in the first quarter of 2016.¹² Therefore it should be noted that the Working Body's assessment of the implementation status of the said activity does not reflect reality, and the explanation given cannot justify the fact that the activity has not yet been implemented, even now, in December 2018.

The preparation of the Third report was hindered by the fact that the HLC received no response from the Ministry of Justice and the MUP's War Crimes Investigation Service's (WCIS) to its requests to interview representatives of these bodies on the subject.¹³ While compiling this report, the HLC submitted three requests for an interview to the Head of the WCIS, but received no response.¹⁴ The Office of the War Crimes Prosecutor, in response to an HLC request for an interview, advised the HLC to consult the reports of the Working Body for any information, emphasising that assessment of the results of National Strategy implementation and informing the public on the course of its implementation fall within the scope of the Working Body. In the same letter, the OWCP reminded the HLC that during 2017 and 2018 it responded to the requests for access to information of public importance submitted by the HLC concerning implementation of the activities set forth in the Action Plan and the National Strategy, adding that the information sought by the HLC could also be found on the official website of the OWCP, and concluding that all the sources of information suggested are relevant.¹⁵

Without calling into question the relevance of the sources of information indicated by the OWCP, the HLC considers that in the interest of a more comprehensive and accurate reporting on the implementation of the National Strategy there is a need to consult several various sources of information. Moreover, interested members of civil society must be given an opportunity to gain an insight into the implementation of the National Strategy, through interviews with relevant stakeholders and through access to pertinent documents.

¹² *Ibid.*, p 27.

¹³ Request for a meeting submitted to Minister of Justice Nela Kuburović (HlcIndexOut: 25-F135492), 1 November 2018; Request for a meeting submitted to War Crimes Prosecutor of the Republic of Serbia Snežana Stanojković, HlcIndexOut: 25-F135502, 1 November 2018; Request for a meeting submitted to Head of WCIS Momčilo Stefanović (HlcIndexOut: 25-F135526), 6 November 2018.

¹⁴ *Ibid*, Request for a meeting submitted to Head of the WCIS Momčilo Stefanović, HlcIndexOut: 65-F131355, 24 August 2017; Request for a meeting submitted to Head of the WCIS Momčilo Stefanović, HlcIndexOut: 65-F13399, 22 May 2018.

¹⁵ OWCP's reply A.219/18 of 7 November 2018 to the HLC's request for a meeting.



In this regard, interviews with representatives of state authorities responsible for implementing the activities foreseen in the National Strategy provide an opportunity for clarifying the unclear and confusing information that is often to be encountered as a result of the incomplete reporting on National Strategy implementation and of the terseness of the replies received from state institutions to requests for information of public importance.

It is worth recalling here that improving the public attitude towards war crimes trials i.e. easier access to information on war crimes trials, is one of the objectives of the National Strategy.¹⁶ That is why the HLC emphasises that more transparent work by the competent authorities and more meaningful communication between civil society members and representatives of state authorities are essential to achieving this goal.

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.

¹⁶ *National Strategy for the Prosecution of War Crimes*, pp. 5, 38, Area 8: *Improved public attitude towards war crimes trials*, Objective 1: *Easier access to information on war crimes trials*. The National Strategy is available at the official OWCP website: http://www.tuzilastvorz.org.rs/upload/HomeDocument/Document_en/2016-05/p_nac_stragetija_eng.PDF, last accessed: 20 November 2018.



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

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 on 4 April 2018.¹⁷ According to the Action Plan for Chapter 23 and the National Strategy, the Prosecutorial Strategy was meant to be adopted in the first half of 2016, which means that the Office of the War Crimes Prosecutor adopted it two years behind schedule.¹⁸

The HLC has already pointed out that the absence of clear criteria for prioritising war crimes cases for prosecution is the major shortcoming of the Prosecutorial Strategy.¹⁹ Although the National Strategy stipulates that these criteria are to be clearly defined in the Prosecutorial Strategy,²⁰ the Prosecutorial Strategy has failed to work them out in detail. Instead, it merely refers to the criteria set out in the National Strategy.

This shortcoming makes it impossible to monitor the state of implementation of the Prosecutorial Strategy and assess whether case prosecution meets the criteria laid down in it.

By looking at the indictments raised during the reporting period, it is safe to conclude that the OWCP is continuing the practice of prosecuting only the less complex cases.

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17 *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: 20 November 2018.

18 See *Action Plan for Chapter 23*, Activity 1.4.1.3.: <https://www.mpravde.gov.rs/files/Action%20plan%20Ch%2023.pdf>; see also: *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. Both sources last accessed: 15 November 2018.

19 *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: 20 November 2018.

20 *National Strategy for the Prosecution of War Crimes*, p. 17.



Two of the four indictments raised between 1 June and 1 December 2018 each involve only one low-ranking accused and one victim.²¹

The HLC therefore concludes that during the reporting period the OWCP continued to raise indictments only in the less complex cases, i.e. in cases not involving high-ranking suspects and crimes resulting in a higher number of victims.

II. Increase in the number of indictments in relation to the number of investigations

Between 1 June and 1 December 2018, the OWCP brought four new indictments for war crimes, against four individuals.²² Of these four indictments, two had not been confirmed by the Higher Court in Belgrade at the time of completion of this report: the indictment against Branko Branković and the indictment against Jovan Novaković. Also, at the time of completion of this report, the indictment in the *Bogdanovci* Case brought on 30 January 2018, has not been confirmed.²³

In late October 2018, after three and a half years, the Court of Appeal in Belgrade confirmed the OWCP indictment against five members of the Višegrad Brigade of the Army of Republika Srpska for the crime committed in *Štrpci* (*Štrpci Case*).

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The OWCP filed the first indictment in this case as a result of regional cooperation between the OWCP and the Prosecutor's Office of BiH, in March 2015.²⁴ Up till October 2018, the indictment had not been confirmed, even as much as ten times after it was first raised. Namely, the Higher Court in Belgrade refused to confirm the indictment

21 Indictments raised in the cases of *Kožuhe-Doboj* and *Brčko*. The indictment against Branko Branković and the indictment against Jovan Novaković had not been confirmed by the Higher Court in Belgrade by the time this report was finished. The HLC does not have any information about the accused's rank or the number of victims included in the indictments.

22 See: *Indictments* section under *Cases* section, official website of the Office of the War Crimes Prosecutor: <http://www.tuzilastvorz.org.rs/en/cases/indictments>, last accessed: 30 November 2018.

23 "Prosecutor brings charges for a 1991 war crime against civilians in v. *Bogdanovci, Croatia*", announcement, 30 January 2018, available at: <http://www.tuzilastvorz.org.rs/en/news-and-announcements/announcements/prosecutor-brings-charges-for-a-1991-war-crime-against-civilians-in-v-bogdanovci-croatia>, last accessed: 21 November 2018.

24 "Prosecutor indicts five for torture and killing of 20 *Štrpci* passengers", announcement, 3 March 2015, official website of the Office of the War Crimes Prosecutor: <http://www.tuzilastvorz.org.rs/en/news-and-announcements/announcements/prosecutors-indicts-five-for-torture-and-killing-of-20-%C5%A1trpci-passengers>, last accessed: 21 November 2018.



six times on the grounds that the indictment was not worded in accordance with the formal requirements of the Criminal Procedure Code. On three other occasions, the Higher Court ordered additional investigations.²⁵ In one instance, the Belgrade Court of Appeal dismissed the indictment because it was not raised by an authorized

25 Chronology of the *Štrpci* Case: **The first indictment** (KTO No. 1/15 of 03.03.2015.) was returned to the OWCP by a decision of the War Crimes Chamber of the Higher Court in Belgrade (K-Po2 No. 3/15 Kv-Po2 No. 14/15 of 06.03.2015.) in order to correct the identified formal defects; **the second indictment** (KTO No. 1/15 of 09.03.2015.) was returned to the OWCP by a decision of the War Crimes Chamber of the Higher Court in Belgrade (K-Po2 No. 3/15 Kv-Po2 No. 16/15 of 12.03.2015.) in order to correct the identified formal defects; **the third indictment** (KTO No. 1/15 of 13.03.2015.), was returned by the War Crimes Chamber of the Higher Court in Belgrade to the OWCP, ordering an additional investigation, in order to better clarify matters, so that the merits of the indictment could be examined (Order K. Po2 No. 3/2015, Kv-Po2 No. 34/2015 from 09.04.2015.); **the fourth indictment** (KTO No. 1/15 of 15.10.2015.) was returned to the OWCP by a decision of the War Crimes Chamber of the Higher Court in Belgrade (K Po2 No. 3/15, Kv-Po2 No. 73/15 of 19.10. 2015), in order to correct the identified formal defects; **the fifth indictment** (KTO 1/15 of 20.10.2015.) was returned by the War Crimes Chamber of the Higher Court in Belgrade to the OWCP, ordering additional investigation, in order to better clarify matters, so that the merits of the indictment could be further examined (K-Po2 br 4/2015, Kv-Po2 No. 76/2015 from 11.20.2015.); **the sixth indictment** (KTO No. 1/15 of 06.04.2017.) was confirmed by the War Crimes Chamber of the Higher Court in Belgrade (Decision K-Po2 No. 3/2015, Kv-Po2 No. 20/17 of 28.04.2017.), but the Court of Appeal in Belgrade (Decision Kž2-Po2 6/17 of 05.06.2017.) cancelled the decision on the confirmation of the indictment and returned it to the first-instance court for re-decision (the possibility of raising an indictment without an authorized prosecutor was considered controversial). The War Crimes Chamber of the Higher Court in Belgrade again made a decision (K-Po2 No. 3/15, Kv-Po2 No. 29/17 of 16.06.2017.) to confirm the same indictment, but the Court of Appeal in Belgrade reversed the decision and returned it to the first-instance court again (Resolution Kž2 Po2 8/17 of 24.07.2017.). The War Crimes Chamber of the Higher Court in Belgrade passed the ruling for the third time (K-Po2 No. 3/2015, Kv-Po2 No. 41/17 of 21.08.2017), which confirmed the indictment from April 6, but the Court of Appeal in Belgrade reversed this decision by rejecting the indictment, because it had not been raised by an authorized prosecutor (Kž2 Po2 12/17 of 02/10/2017). **The seventh indictment** (KOT No. 1/15 of 26.10.2017.) was returned to the OWCP by a decision of the War Crimes Chamber of the Higher Court in Belgrade (K-Po2 No. 4/17, Kv-Po2 No. 45/17 of 27.10.2017.) in order to correct the identified formal defects. **The eighth Indictment** (KTO No. 1/15 of 06.11.2017.) was returned to the OWCP by a decision of the War Crimes Chamber of the Higher Court in Belgrade (K-Po2 No. 4/17, Kv-Po2 No. 47 / 17 of 08.11.2017.) in order to correct the identified formal defects. **The ninth Indictment** (KTO 1/15 of 20.11.2017.) was returned to the OWCP by the War Crimes Chamber of the Higher Court in Belgrade with an order to issue an order to supplement the investigation (Order K-Po2 No. 4/17, Kv-Po2 No. 51/17 dated 21.12.2017.). **The tenth Indictment** (KTO 1/15 of 10.05.2018.) was returned to the OWCP by a decision of the War Crimes Chamber of the Higher Court in Belgrade (K-Po2 No. 4/17, Kv-Po2 No. 6/18 of 14.05.2018.) in order to correct the identified formal defects. The OWCP pleaded with a motion on this decision, after which the court found that the indictment was compiled in accordance with the CPC and it sent the indictment to the defendants for a plea. The tenth indictment, dated 10.05.2018, the War Crimes Chamber of the Higher Court in Belgrade confirmed (Kv-Po2 24/18 of 01.10.2018.). The Court of Appeal in Belgrade issued a ruling (Kž2-Po2 13/18 of 24.10.2018.), confirming the decision of the Higher Court in Belgrade.

prosecutor.²⁶ Ten indictments and three and a half years later, the Court of Appeal in Belgrade has issued a final decision confirming the indictment for the crime in Štrpci. The proceedings in this case are expected to start before the War Crimes Chamber of the Higher Court in Belgrade.²⁷

According to the OWCP data, this OWCP decided to work on a total of 2,009 cases that it had taken over from prosecutor's offices of general jurisdiction.²⁸ Given such a high number of cases at investigation and pre-investigation stages, and bearing in mind that over the last six months only four indictments have been filed, **no increase in the number of indictments in relation to the number of investigations can be reported for the last six months.**

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. The report, which would enable assessment of whether or not all war crimes charges have been adequately investigated,²⁹ is behind schedule by over two years.³⁰

²⁶ *Ibid.*

²⁷ The indictment in Case Štrpci is available at the official website of the Office of the War Crimes Prosecutor: <http://www.tuzilastvorz.org.rs/en/cases/indictments?term=%C5%A0trpci&date;> "After three and a half years, the Belgrade Court of Appeal has confirmed the indictment for the crime committed in Štrpci", press release, HLC, 29 October 2017, available at: <http://www.hlc-rdc.org/?p=35768&lang=de>. All sources last accessed: 04 December 2018.

²⁸ OWCP's reply PI. 25/18 of 5 November 2018 to the HLC's request for information of public importance.

²⁹ Action Plan for Chapter 23, Activity: 1.4.1.10, p. 125.

³⁰ OWCP's reply PI. 25/18 of 5 November 2018 to the HLC's request for information of public importance; *Report 2/2018 on the implementation of the Action Plan for Chapter 23*, p. 331, available at the official website of the Ministry of Justice: <https://www.mpravde.gov.rs/files/Izve%C5%A1taj%20br.%202-2018%20o%20sprovo%C4%91enju%20Akcionog%20plana%20za%20Poglavlje%2023.pdf>, last accessed: 22 November 2018.



III. Increase in the number of proceedings resulting in a final judgement in relation to the number of indictments

During the reporting period, trials in 13 cases were held.³¹ As stated above, the OWCP raised four indictments during the same period.³² The Higher Court in Belgrade handed down two first-instance judgements³³, and a judgement confirming a plea agreement concluded between a defendant and the OWCP.³⁴ The War Crimes Department of the Court of Appeal in Belgrade handed down one judgement.³⁵

Namely, the Higher Court in Belgrade accepted the plea agreement concluded between Dragan Maksimović and the OWCP (*Caparde* Case), and sentenced Maksimović to six years and two months in prison.³⁶ In November 2018, the Higher Court in Belgrade sentenced Milanko Dević to seven years in prison for murdering a Bosniak in the hamlet of Šljivari, in the municipality of Ključ (BiH).³⁷ The Higher Court in Belgrade sentenced

31 Lovas, Trnje, Čuška, Bratunac, Srebrenica - Kravica, Bosanski Petrovac - Gaj, Ključ - Šljivari, Bosanska Krupa, Ključ Kamičak, Sanski Most - Lušci, Ključ - Režovići, Bosanska Krupa II and Skočić. See: List of war crimes cases that have been prosecuted or are being prosecuted before domestic courts at: <http://www.hlc-rdc.org/?cat=234&lang=de>, last accessed: 22 November 2018.

32 See: *Announcements* section on the official website of the Office of the War Crimes Prosecutor: <http://www.tuzilastvorz.org.rs/en/news-and-announcements/announcements>; see also: List of war crimes cases that have been prosecuted or are being prosecuted before domestic courts at: <http://www.hlc-rdc.org/?cat=234&lang=de>, last accessed: 22 November 2018.

33 "On the occasion of the judgement of the High Court in Belgrade in the Case against Milanko Dević", press release, HLC, 14 November 2018, available at: <http://www.hlc-rdc.org/?p=35818&lang=de>; "On the occasion of the judgement of the Higher Court in Belgrade in the case against Ranka Tomić", press release, HLC, 27 November 2018, available at: <http://www.hlc-rdc.org/?p=35855&lang=de>. All sources last accessed: 28 November 2018.

34 Judgement accepting the plea agreement in the Case of *Caparde*, 6 June 2018. The judgement is available (in Serbian) at: http://www.hlc-rdc.org/wp-content/uploads/2018/08/Presuda_o_potvr%C4%91ivanju_SPK.pdf, last accessed: 22 November 2018.

35 "Sima's Chetniks' acquitted of murder of Roma Civilians in Skočić", press release, HLC, 3 July 2018, available at: <http://www.hlc-rdc.org/?p=35341&lang=de>, last accessed: 20 November 2018. The Court of Appeal handed down a judgement in the Case of *Skočić* (Kž1 Po2 5/15) on 28 March 2018. The attorney of the victims in this case only received the judgement on 27 June 2018.

36 Judgement accepting the plea agreement in the Case of *Caparde* is available (in Serbian) at: http://www.hlc-rdc.org/wp-content/uploads/2018/08/Presuda_o_potvr%C4%91ivanju_SPK.pdf, last accessed: 22 November 2018.

37 "On the occasion of the judgement of the High Court in Belgrade in the Case against Milanko Dević", press release, HLC, 14 November 2018, available at: <http://www.hlc-rdc.org/?p=35818&lang=de>, last accessed: 25 November 2018.



Ranka Tomić to five years imprisonment for the torture and inhumane treatment of a female prisoner of war in the village of Radić (Bosanska Krupa, BiH).³⁸

The War Crimes Department of the Court of Appeal in Belgrade upheld the judgement acquitting members of the “Sima’s Chetniks” unit of the murder of 27 Roma civilians and the destruction of a mosque in the village of Skočić (Zvornik, BiH), whilst modifying the judgement with respect to the defendants Zoran Alić, Zoran Đurđević and Tomislav Gavrić, by convicting them of inhumane treatment, violation of physical integrity, sexual humiliation and rape of protected witnesses.³⁹

As already pointed out in the previous HLC report, the increase in the number of indictments resulting in final judgements indicator does not provide an accurate picture of the efficiency of the work of the authorities responsible for war crimes prosecution.

IV. Shorter average duration of war crimes proceedings

There have been only 35 trial days during the reporting period for all ongoing war crimes cases, with 16 other trial days having been postponed for various reasons.⁴⁰ Hearings in cases have been scheduled about 50 days apart. Given a total of 13 pending cases, the average number of trial days held per case has been just four.

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The findings presented in this report show that no results have been achieved that would indicate any improvement with respect to this indicator.

V. Positive evaluation by the European Commission on the alignment of the system of protection of and support to victims and witnesses in the Republic of Serbia with European Union standards

The latest available report of the European Commission on Serbia’s Progress (the 2018 Report of April 2018) states that “some initial steps were taken to align procedural rights

38 “On the occasion of the judgement of the Higher Court in Belgrade in the case against Ranka Tomić”, press release, HLC, 27 November 2018, available at: <http://www.hlc-rdc.org/?p=35855&lang=de>, last accessed: 28 November 2018.

39 Court of Appeal judgement in the Case of *Skočić* (Kž1 Po2 5/15) was handed down on 28 March 2018. The attorney of the victims did not receive the judgement until 27 June 2018.

40 A chronological list of trials in 2018 is available at: <http://www.hlc-rdc.org/?cat=234&lang=de>, last accessed: 22 November 2018.



with the EU *acquis*.⁴¹ The report further states that an analysis of the national normative framework for implementing minimum EU standards on the rights and protection of victims of crime has been finalised, and new services established within the Office of the Public Prosecutor, albeit restricted to providing information and with limited staff.

However, the report also notes that 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 judgements.”⁴²

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 **November 2018, 10,261** of the persons who went missing from the armed conflicts in Croatia, BiH and Kosovo remain unaccounted for.⁴³ In May 2018 their number stood at 10,315, according to the same source.⁴⁴

From the speed at which the numbers of missing persons are decreasing, it can be concluded that the National Strategy has not brought about any significant improvement when it comes to efficiency in the search for missing persons.

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In its previous reports, the HLC has already identified the causes of inefficiency in the search for missing persons, namely: the lack of political will, which is reflected in the insufficient commitment of the competent Serbian authorities to the search for missing persons; the 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; the lack of access to official archives relevant to the search for missing persons, etc.⁴⁵

41 *Serbia 2018 Report*, p. 29. 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: 21 November 2018.

42 *Ibid.*

43 International Committee of the Red Cross data, HlcIndexIn: 25-F135764 of 04 December 2018.

44 International Committee of the Red Cross data, HlcIndexIn: 25-F134245 of 13 June 2018.

45 See: *Policy Paper: Accounting for Missing Persons from the Armed Conflicts of the 1990s in the Former Yugoslavia*, HLC, June 2018, available at: http://www.hlc-rdc.org/wp-content/uploads/2018/07/Predlog_prakticne_politike_Potruga_za_nestalima_ENG_stampano_ff_15.07.2018.pdf, last accessed: 15 November 2018.



VII. Increase in the number of cases initiated and finally resolved as a result of regional cooperation

Nearly all the cases that have been opened since the adoption of the National Strategy have resulted from regional cooperation. As many as 12 of the 15 indictments that have been issued since the adoption of the National Strategy have not been the result of the OWCP investigation but transferred to the OWCP from BiH.⁴⁶ As for the OWCP, it has continued to prosecute only the less complex cases during the reporting period, as evidenced by its latest three indictments, which charged only three alleged perpetrators.

It is true that the past several years have seen an exchange of information and evidence between prosecutor's offices and in the region, and also the transfer of cases for prosecution and the subsequent prosecution of transferred cases. But given the huge number of war crimes that have yet to be prosecuted, there is ample room for improvement in this area. Moreover, the absence of any exchange of cases against high-ranking suspects suggests there is a lack of trust between prosecutor's offices' in the region.

Therefore the HLC believes that this indicator is not capable of reflecting the quality of the transferred cases or regional cooperation itself.

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

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

In the second half of November 2018, the President of the MICT, Judge Theodor Meron, was on an official visit to Serbia.⁴⁷ During the visit, Judge Meron met with Serbian Prime

⁴⁶ *Doboj, Ključ Šljivari, Bratunac, Bosanska Krupa, *Ključ Kamičak, *Ključ Kamičak II, Srebrenica-Kravica, Sanski Most-Luči, Caparde, Bosanska Krupa II, Ključ-Rejzovići, **Bogdanovci, Kožuhe-Doboj, and Brčko* are the cases in which indictments have been issued since the adoption of the National Strategy for the Prosecution of War Crimes on 20 February 2016. Also **an indictment against Branko Branković was raised. * *Ključ Kamičak* and *Ključ Kamičak II* were merged into one case. ****Note:** The indictment in the *Bogdanovci* Case, the indictment against Branko Branković and the indictment against Jovan Novaković had not been confirmed by the Higher Court in Belgrade by the time this report was finished. The HLC does not have any information as to whether these three indictments have been the result of the OWCP's own work or have been transferred from another country.

⁴⁷ „*Mechanism President Meron on Official Visit to Serbia, Bosnia and Herzegovina and Croatia*“, press release, 19 November 2018, available at the official website of the MICT: <http://www.irmct.org/en/>



Minister Ana Brnabić, First Deputy Prime Minister and Minister of Foreign Affairs Ivica Dačić, and Serbian Minister of Justice, Nela Kuburović.⁴⁸

Following Meron's meeting with Prime Minister Brnabić, the MICT issued an official press release, stating that Judge Meron "expressed disagreement and disappointment with the recent interview given by the Prime Minister in which she denied that the crimes committed in Srebrenica constituted genocide [...]" President Meron further stated: "It does not help the Government of Serbia to challenge the judgments of a major international criminal tribunal."⁴⁹

The meeting between Prime Minister Brnabić and Judge Meron followed immediately after Brnabić's interview with Deutsche Welle's Conflict Zone talk show on 14 November 2018.⁵⁰ In the interview, the Prime Minister said that what happened in Srebrenica was "a terrible, terrible crime", not genocide.⁵¹

(For more information, see the "Cooperation with the International Criminal Tribunal for the Former Yugoslavia" and "Improving Public Attitude towards the Issue of War Crimes Trials" sections below)

IX. Positive reports from other relevant governmental and non-governmental organisations

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In late November, the European Parliament adopted a Resolution on the 2018 Commission Report on Serbia, which welcomes the adoption of the National Strategy, but also calls for its implementation. Serbia is urged to effectively investigate all war crimes cases, in

[news/mechanism-president-meron-official-visit-serbia-bosnia-and-herzegovina-and-croatia](#), last accessed: 22 November 2018.

48 „*The Hague court pleased with Serbia's cooperation*“, news, 19 November 2018, official website of the Ministry of Justice: <https://www.mpravde.gov.rs/en/vest/21679/the-hague-court-pleased-with-serbias-cooperation-.php>, last accessed: 23 November 2018.

49 "President Meron Meets Serbian Prime Minister Brnabić, Challenges her Statements Denying Genocide in Srebrenica", news, 20 November 2018, available at the official website of the MICT: <http://www.irmct.org/en/news/president-meron-meets-serbian-prime-minister-brnabi%C4%87-challenges-her-statements-denying-genocide>, last accessed: 23 November 2018.

50 „*Još nismo spremni za EU*“ [We are still not ready for the EU], Deutsche Welle, interview with Ana Brnabić, 14 November 2018, available (in Serbian) at: <https://www.dw.com/sr/jo%C5%A1-nismo-spremni-za-eu/a-46290937>, last accessed: 23 November 2018.

51 *Ibid.*



particular those that are high profile, and to cooperate with its regional partners in these cases.⁵²

The part of the resolution in which the European Parliament expresses regret over the „reiterated denial of the Srebrenica genocide“⁵³ has particularly attracted the attention of the public. In that sense, the resolution reaffirms that full co-operation with the ICTY/ MICT also implies fully accepting and implementing its rulings and decisions, and stresses that “the recognition of the Srebrenica genocide is a fundamental step in Serbia’s path towards joining the European Union.”⁵⁴

Since during the reporting period no other governmental or non-governmental organisation has published a report evaluating war crimes trials in Serbia or dealing with some other similar subject, the HLC refers the readers to the reports of *Amnesty International*, *Human Rights Watch* and the U.S. Department of State, which were discussed in the previous report published in July 2018.⁵⁵

⁵² *European Parliament resolution of 29 November 2018 on the 2018 Commission Report on Serbia (2018/2146(INI))*, 2017), paragraph 25, available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2018-0478+0+DOC+XML+V0//EN&language=EN>, last accessed: 30 November 2018.

⁵³ *Ibid*, para 26”

⁵⁴ *Ibid*.

⁵⁵ *Second Report on the Implementation of the National Strategy for the Prosecution of War Crimes*, HLC, July 2018, pp. 18-20, available at: http://www.hlc-rdc.org/wp-content/uploads/2018/07/Izvestaj_Strategija_2_ENG-ff.pdf, last accessed: 23 November 2018.



Areas Covered by the National Strategy for the Prosecution of War Crimes

The National Strategy for the Prosecution of War Crimes 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.



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 Investigation and Prosecution of War Crimes (hereinafter: Prosecutorial Strategy).

Objective 2: The Office of War Crimes Prosecutor will 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 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.

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One of the reasons for the inadequate degree of efficiency at the OWCP in previous years was the fact that the prosecution did not have a clearly defined work strategy, necessary for effective action in a complex matter such as the processing of war crimes.⁵⁶ In April 2018, the Office of War Crimes Prosecutor adopted the Prosecutorial Strategy for Investigation and Prosecution of War Crimes in Serbia for the period 2018-2023.⁵⁷

As regards the implementation of measures to increase the efficiency of the work of the OWCP, in the reporting period the OWCP did not conclude any Agreement on the Recognition of Criminal Offence, nor did it submit any requests for temporary or permanent seizure of property resulting from a criminal offence.⁵⁸

⁵⁶ *Model Strategy for the Prosecution of War Crimes Committed during and in relation to the Armed Conflicts in the Former Yugoslavia 2015-2025*, HLC, Belgrade, 2015. p. 11. The Model Strategy is available on the HLC website: http://www.hlc-rdc.org/wp-content/uploads/2015/04/Model-Strategy-for-the-Prosecution-of-War-Crimes-Committed-during-and-in-relation-to-the-Armed-Conflicts-in-the-Former-Yugoslavia_za-web.pdf, last accessed: 30.11.2018.

⁵⁷ *Prosecutorial Strategy for Investigation and Prosecution of War Crimes in the Republic of Serbia (2018–2023)*.

⁵⁸ *Report No 4 on the Implementation of the National Strategy for War Crimes Prosecution*, November 2018, p. 7.



The improvement of the capacity of the OWCP was noted, and the first trainings in international humanitarian law were conducted for the deputy prosecutors and prosecutorial assistants at the OWCP.⁵⁹ The participants were also members of the WCIS.⁶⁰

Application of the Prosecutorial Strategy for the Investigation and Prosecution of War Crimes

As the HLC already pointed out in its Comments to the Draft Prosecutorial Strategy,⁶¹ but also in the Second Report on the Implementation of the National Strategy,⁶² the Prosecutorial Strategy is methodologically flawed.⁶³ Namely, as from the text of the strategy it is not possible to clearly identify the exact activities to be undertaken by the OWCP, nor the time limits by which these activities must be completed, **it is impossible to assess whether the cases are being processed in accordance with the criteria of this Strategy.**

Besides, **it is impossible to evaluate the implementation of the Prosecutorial Strategy**, since it lacks the key performance indicators - expected quantitative indicators (e.g. number of convictions, number of indictments against high-ranking perpetrators, number of indictments with a higher number of victims) and qualitative indicators (e.g. improved regional cooperation) in the prosecution of war crimes. Although without such determinants it is not possible to monitor the implementation of the Prosecutorial Strategy, conclusions on the efficiency of the OWCP's work can be reached on the basis of the number of indictments and the complexity of the cases being processed. On the basis of the indictments raised during the reporting period, it can be concluded that the OWCP has continued with the practice of raising indictments in less complex cases.

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59 **Note of author:** Trainings for deputy prosecutors and prosecutorial assistants at the OWCP were also conducted during the previous years. This finding relates to the trainings that have been held in the framework of the implementation of the activities set forth in the National War Crimes Prosecution Strategy. See the part of the report related to the improvement of the capacity of the Office of the War Crimes Prosecutor, p. 23; *Report No 4 on the Implementation of the National Strategy for War Crimes Prosecution*, November 2018, pp. 12; 34-35.

60 *Report No 4 on the Implementation of the National Strategy for War Crimes Prosecution*, p. 27.

61 *Comments of the Humanitarian Law Center (HLC) on the Draft Prosecutorial Strategy for Investigation and Prosecution of War Crimes in the Republic of Serbia in the period 2018 to 2023*.

62 *Second Report on the Implementation of the National Strategy for War Crimes Prosecution*, HLC, June 2018, pp. 21-24.

63 *Prosecutorial Strategy for Investigation and Prosecution of War Crimes in the Republic of Serbia (2018–2023)*.



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

As stated in previous reports on the implementation of the National Strategy, adopted by the Working Body, the WCIS submitted to the OWCP the working material/records of individual and mass crimes committed during the armed conflicts in the territory of the former Yugoslavia.⁶⁴ The last available report of the Working Body contains information that the updating of material/records of individual and mass crimes committed during the conflict in the territory of the former Yugoslavia continues.⁶⁵

These are also the only items of information on the realization of this activity available to the public.⁶⁶

Keeping records of acts that may qualify as war crimes and unresolved cases should, according to the provisions of the National Strategy, influence the prioritisation of the cases, and on the basis of these records, a five-year plan of the OWCP procedure should be determined.⁶⁷ In the sources used in the preparation of this report, **there are no data on the above-mentioned five-year plan of the OWCP procedure.**⁶⁸

The HLC draws attention to the fact that for many years in the past remarks on the work of the OWCP related to the prosecution policy of processing less demanding cases. Bearing in mind the criticism related to the insufficiently precisely defined criteria for prioritisation of the cases in the Prosecutorial Strategy, it is necessary that the OWCP, without any further delay, adopts a five-year plan of action that will more closely determine these criteria.

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⁶⁴ *Report No 4 on the Implementation of the National Strategy for War Crimes Prosecution*, November 2018, p. 4.

⁶⁵ *Ibid.*

⁶⁶ See the section of the report on the obstacles that occurred while preparing the report of the Humanitarian Law Center on the implementation of the National Strategy, pp. 7-9.

⁶⁷ *National Strategy for the Prosecution of War Crimes*, p. 22.

⁶⁸ See: *Report No 4 on the Implementation of the National Strategy for War Crimes Prosecution*, May 2018, pp. 3-5; *Report 2/2018 on the implementation of the Action Plan for Chapter 23*, Activity 1.4.1.8, p. 326.



Applying measures to increase the efficiency of the Office of the War Crimes Prosecutor

The first measure envisaged by the National Strategy, which should improve the efficiency of the work of the Office of the War Crimes Prosecutor, implies that the OWCP will use the existing capacities in accordance with the priorities in actions determined by the Prosecutorial Strategy.⁶⁹ Since the Prosecutorial Strategy does not set down clear criteria that will guide the OWCP in determining the cases that will have priority for processing in the following period, it is not possible to monitor the increase in the efficiency of the OWCP's work on the basis of this parameter.⁷⁰

With regard to other measures foreseen by the National Strategy,⁷¹ during the reporting period, **the Office of the War Crimes Prosecutor did not conclude any Agreement on the Recognition of a Criminal Offence, nor did it submit any requests for temporary or permanent seizure of property resulting from a criminal offence.**⁷²

Regarding the conclusion of the Agreement on the Recognition of a Criminal Offence, it is necessary to recall that the Prosecutorial Strategy also affirms the application of this legal institute.⁷³ The Prosecutorial Strategy states that the large number of unresolved cases and over-extended length of criminal proceedings impose the need to find ways to increase the efficiency of the work of the OWCP.⁷⁴

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The fact that the conclusion of the Agreement on the Recognition of a Criminal Offence is mentioned as a measure to increase the efficiency of the work of the OWCP in both the National Strategy and the Prosecutorial Strategy obliges the OWCP to approach the conclusion of this Agreement whenever the conditions are met. By conducting and ending criminal proceedings in this way, full application of the principle of cost-effectiveness can be ensured.

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

70 See: *Comments of the Humanitarian Law Center (HLC) on the Draft Prosecutorial Strategy for Investigation and Prosecution of War Crimes in the Republic of Serbia in the period 2018 to 2023*, pp. 7-9.

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

72 *Report No 4 on the Implementation of the National Strategy for War Crimes Prosecution*, November 2018, p. 7.

73 *Prosecutorial Strategy for Investigation and Prosecution of War Crimes in the Republic of Serbia (2018–2023)*, pp. 23-24.

74 *Ibid*, p. 23.



Enhancement of the capacities of the Office of War Crimes Prosecutor

The National Strategy refers to the Action Plan for Chapter 23, which provides for the gradual enhancement of the capacities of the OWCP through the recruitment of additional staff, namely seven deputy prosecutors and seven assistants in the period 2015 to 2018, as well as the potential recruitment of military experts.⁷⁵

In the past period, an enhancement of the capacities of the OWCP has been noted, meaning that the number of deputy war crimes prosecutors has been doubled in relation to the previous period of six months.⁷⁶ At the time of the preparation of this Report, eight war crimes prosecutors are working in the Office of the War Crimes Prosecutor and seven prosecutorial assistants are employed for an indefinite period of time.⁷⁷

By decision of the Republic's Public Prosecutor (RJT), on September 28, 2018, Ljubica Veselinović and Ognjen Djukić, Deputy High Prosecutors in Belgrade, were sent to work at the OWCP.⁷⁸ They were sent to the OWCP for a maximum period of four years, starting from October 1, 2018.⁷⁹

Besides the RJT sending two deputy prosecutors to the OWCP, the State Prosecutorial Council (DVT), on the basis of the job competition announced on September 22, 2017, made a decision on the appointment of Gordana Jekić-Bradajić as Deputy War Crimes Prosecutor.⁸⁰

⁷⁵ *Action Plan for Chapter 23*, activity: 1.4.1.2, pp. 107-108, available at the official website of the Ministry of Justice: <https://www.mpravde.gov.rs/files/Action%20plan%20Ch%2023.pdf>, accessed: 28.11.2018.

⁷⁶ *Second Report on the Implementation of the National Strategy for War Crimes Prosecution*, HLC, June 2018, pp. 26-27.

⁷⁷ Response of the OWCP to the HLC's Request for Access to Public Information, PI. No 25/18, dated 05.11.2018.

⁷⁸ Response of the RJT to the HLC's Request for Access to Public Information, PI. No 91/18, dated 01.11.2018.

⁷⁹ *Report No 4 on the Implementation of the National Strategy for War Crimes Prosecution*, November 2018, p. 10; Response of the RJT to the HLC's Request for Access to Public Information, PI. No 91/18, dated 01.11.2018.

⁸⁰ *Decision on the appointment of a Deputy Prosecutor for War Crimes*, A No. 1108/18, dated 22.10.2018. The Decision is available at the official website of the State Prosecutorial Council (in Serbian): <http://www.dvt.jt.rs/saopstenja/>, last accessed: 28.11.2018.



On the basis of this job competition, the DVT also proposed to the National Assembly the election of Vasilije Seratlić, then judge at the First Basic Court in Belgrade, for the position of Deputy War Crimes Prosecutor.⁸¹ On November 9, 2018, the National Assembly of the Republic of Serbia passed a decision on the election of Vasilije Seratlić as Deputy War Crimes Prosecutor.⁸² With his election, the OWCP has a total of eight deputy war crimes prosecutors.

Regarding the enhancement of the capacities of the OWCP which is expected in the upcoming period, it is necessary to emphasise that the procedure for the election of three other deputies of war crimes prosecutor is underway, according to the DVT's job competition published on June 15, 2018.⁸³ Also, at the beginning of September 2018, the DVT's decision on the number of deputy public prosecutors came into force, on the basis of which the OWCP has 11 deputy war crimes prosecutors.⁸⁴

In the reporting period, the deputy war crimes prosecutors and prosecutorial assistants attended training in international humanitarian law organized by the Judicial Academy and the OSCE Mission to Serbia.⁸⁵ The first training was organized in June 2018, on the topic of the application of international humanitarian law in war crimes trials in Serbia, and the lecturers were Neda Dojčinović, legal adviser to the International Committee of the Red Cross, and Ivan Jovanović, a consultant to the OSCE Mission to Serbia.⁸⁶ The second training on war crimes investigation was organized in September, and was conducted by Peter McCloskey, former ICTY Prosecutor.⁸⁷

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81 Response of the DVT to the HLC's Request for Access to Public Information, PI. No 48/18 of 29.10.2018.

82 *Decision of the National Assembly of the Republic of Serbia on the election of Vasilije Seratlić as Deputy War Crimes Prosecutor*; RS No. 58, dated November 9, 2018, available at the official web site of the National Assembly of the Republic of Serbia (in Serbian): http://www.parlament.gov.rs/upload/archive/files/lat/pdf/ostala_akta/2018/RS58-18-lat.pdf, last accessed: 28.11.2018.

83 *Report No 4 on the Implementation of the National Strategy for War Crimes Prosecution*, November 2018, p. 10.

84 *Decision on the number of deputy public prosecutors* ("Official Gazette" of the Republic of Serbia, No. 106/2013, 94/2015, 114/2015, 80/2016, 39/2018, 68/2018), available at (in Serbian): <http://www.pravno-infosistem.com/SIGlasnikPortal/reg/viewAct/1d7bf745-079f-49bd-b824-27385230ba95>, last accessed: 28.11.2018.

85 *Report No 4 on the Implementation of the National Strategy for War Crimes Prosecution*, November 2018, pp. 12; 34-35.

86 *Ibid.*

87 *Ibid.*



Since the organization of the aforementioned trainings for deputy prosecutors and prosecutorial assistants in the OWCP is an activity that should be organized continuously, according to the National Strategy, it is necessary to continue organizing such trainings in the following period, especially having in mind that in the reporting period the number of deputy prosecutors was doubled with the arrival of new deputies who have not yet worked on war crimes cases. It is therefore necessary that they also attend those trainings where they would gain the necessary knowledge applicable in the matter of war crimes prosecution.⁸⁸

Improving the status and efficiency of the War Crimes Investigation Service

In the last report of the Working Body, information was provided that regular meetings and consultations between members of the WCIS and the OWCP were held,⁸⁹ while in the previous reports there were data on the establishment of the working procedures of the Prosecutor's Office and the WCIS, as well as on the joint investigation teams of the OWCP and the WCIS which have been established.⁹⁰

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When it comes to activities that envisage the implementation of urgent measures to ensure the optimal position and capacity of the WCIS,⁹¹ the latest report provides information that the WCIS members participated in trainings organized by the Government Human Resources Management Service.⁹²

Although the continuous training of the WCIS members is a concrete measure that can improve the efficiency of this service, it remains unclear in which way the training topics are selected. Namely, the report states that one member of the WCIS participated in the training on the topic "The Execution of the Judgments of the European Court of Human Rights".⁹³ **The HLC considers that organizing or attending a training that has nothing to do thematically with the fields of work of the WCIS cannot represent a measure that will improve the efficiency of this service.** The information on this training is

88 *National Strategy for the Prosecution of War Crimes*, p. 23.

89 *Report No 4 on the Implementation of the National Strategy for War Crimes Prosecution*, p. 14.

90 *Ibid.*, pp. 26-27.

91 *National Strategy for the Prosecution of War Crimes*, pp. 23-24.

92 *Report No 4 on the Implementation of the National Strategy for War Crimes Prosecution* (in Serbian), p. 21.

93 *Ibid.*



available only in the Serbian version of the official report on the implementation of the National Strategy for the prosecution of war crimes.

In addition to these trainings, ten members of the WCIS participated also in the trainings organized by the OSCE Mission in Serbia on the topic “War Crimes Investigations”, in September 2018.⁹⁴

In relation to the improvement of technical capacities, the WCIS received three new official vehicles during the reporting period.⁹⁵

As with the preparation of the Initial and the Second Reports on the Implementation of the National Strategy,⁹⁶ **the only information on the work of the WCIS is that available in the Reports on the Implementation of the Action Plan for Chapter 23 and the Reports on the Implementation of the National Strategy for War Crimes Prosecution, which have been adopted by the Working Body.**⁹⁷

Therefore, the HLC recalls its earlier conclusion that lack of transparency is one of the key shortcomings of the reform process in the prosecution of war crimes.

⁹⁴ *Ibid*, p. 27.

⁹⁵ *Ibid*, p. 20.

⁹⁶ *The Initial Report on the Implementation of the National Strategy for War Crimes Prosecution*, HLC, Decembar 2017, pp. 25-28; *Second Report on the Implementation of the National Strategy for War Crimes Prosecution*, HLC, June 2018, pp. 27-28.

⁹⁷ *Report 2/2018 on the implementation of the Action Plan for Chapter 23*, Activity 1.4.1.7, p. 320-325; *Report No 4 on the Implementation of the National Strategy for War Crimes Prosecution*, p. 13-25.



1. 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.

During the past six months, training for judges and court assistants from the War Crimes Chamber of the Higher and Appellate Courts in Belgrade, the first since the adoption of the National Strategy, was held.⁹⁸ During the reporting period, it was also noted that the composition of the trial chambers was not subject to change. In the reporting period there were no additional investments to improve conditions in the courtrooms used for war crimes trials.

The activity related to the equalization of the practices of the courts of the region, through the establishment of a regional database, has not been realized.

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

After the adoption of the National Strategy, there was no redistribution of judges' positions before the expiration of the six-year mandate. Bearing in mind that in the previous years the situation of redistribution of judges occurred before the expiry of the mandate,⁹⁹ providing continuity in the composition of the the judicial chambers is a positive finding.

⁹⁸ **Note of author:** Training for judges and court assistants from the War Crimes Chamber of the Higher and Appellate Courts in Belgrade were also held during the previous years. This finding relates to the trainings that have been held in the framework of the implementation of the activities set forth in the National Strategy for the Prosecution of War Crimes.

⁹⁹ See: *Report on War Crimes Trials in Serbia during 2014 and 2015*, HLC, 2016, pp. 18-20, available at: http://www.hlc-rdc.org/wp-content/uploads/2016/03/Report_on_war_crimes_trials_in_Serbia_during_2014_and_2015.pdf, last accessed: 23.11.2018.



Greater Uniformity of Jurisprudence in all Courts and War Crimes Departments in former Yugoslavia, through the establishment of a regional database

The fourth report of the Working Body states that the War Crimes Prosecutor initiated the establishment of a common regional register of war crimes cases opened through regional cooperation, during regional consultations within the project “Enhancing Regional Cooperation in Processing of War Crimes and the Search for Missing Persons (2017-2019)”, implemented with the support of the UNDP.¹⁰⁰ The HLC does not have additional information on any possible steps that the OWCP will undertake to form the said regional database. This information is not available in the Fourth Report of the Working Body, nor on the website of the OWCP.

The OWCP should actively work to establish a unified regional database on all war crimes trials in order to monitor the success of regional cooperation, but also to monitor how other jurisdictions interpret legal institutes of relevance for trials in war crimes cases.

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

During the reporting period, judges and judicial assistants from the War Crimes Chamber of the Higher and Appellate Courts in Belgrade attended training on the application of international humanitarian law in war crimes trials in Serbia, under the organization of the Judicial Academy and the OSCE Mission to Serbia.¹⁰¹ The training was organized in June 2018, on the topic of the application of international humanitarian law in war crimes trials in Serbia, and the lecturers were Neda Dojčinović, legal adviser to the International Committee of the Red Cross, and Ivan Jovanović, a consultant to the OSCE Mission to Serbia.¹⁰²

The organization of these trainings can undoubtedly contribute to an increase in the required competencies of the judicial office holders. Therefore, it is necessary to continue with the implementation of similar trainings in the following period, and in particular it

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100 Response of the OWCP at the HLC's Request for Access to Public Information, PI. No 25/18, dated 05.11.2018; *Report No 4 on the Implementation of the National Strategy for War Crimes Prosecution*, November 2018, p. 31.

101 *Report No 4 on the Implementation of the National Strategy for War Crimes Prosecution*, November 2018, pp. 33-35.

102 *Ibid*, p. 33.



is necessary to organize specialist trainings on issues that arise in ongoing trials for war crimes, such as deciding on a property rights claim or dealing with war crimes cases related to sexual violence in the war.

Improved Conditions in Courtrooms Used for War Crimes Trials

According to available information, consulted during the preparation of this report, in the previous six-month period there were no additional investments to improve conditions in courtrooms used for war crimes trials.¹⁰³

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 the criminal proceedings through consistent application of procedural disciplinary measures.
Objective 4: Enhanced cooperation of state bodies involved in the witness protection system.

Reforms in the area of improving the protection of witnesses and victims are characterized by lack of transparency.¹⁰⁴ This is reflected in the fact that it is practically impossible to monitor the improvement of institutional capacities for witness protection. The public is not familiar with the recommendations based on the analysis of the position and needs of the Protection Unit, which was completed back in 2016.¹⁰⁵ Also, it is not possible to evaluate the cooperation of state bodies involved in the witness protection programme.¹⁰⁶

103 *Report No 4 on the Implementation of the National Strategy for War Crimes Prosecution*, November 2018, p. 32.

104 See: *The Initial Report on the Implementation of the National Strategy for War Crimes Prosecution*, HLC, 2017, pp. 40-43; *Second Report on the Implementation of the National Strategy for War Crimes Prosecution*, HLC, 2018, p. 32.

105 *The Initial Report on the Implementation of the National Strategy for War Crimes Prosecution*, HLC, 2017, pp. 40-43.

106 *National Strategy for the Prosecution of War Crimes*, pp. 28-29.



Activities involving the consistent application of the provisions of the CPC,¹⁰⁷ which regulate the sanctioning of participants in proceedings who violate the procedural discipline, are carried out continuously.¹⁰⁸

Procedural Measures for Witness Protection

Procedural Measures for Witness Protection are being applied during criminal proceedings, and include measures to protect the integrity of witnesses and to protect particularly sensitive witnesses, and witnesses who are exposed to danger because of their testimony.¹⁰⁹

The National Strategy requires criminal chambers to apply consistently the provisions of the CPC that regulate the sanctioning of participants in proceedings that violate procedural discipline, especially if they attack the integrity of witnesses and victims.¹¹⁰ Although during the reporting period there were no controversial situations during the main hearings, which would have required the sanctioning of the participants in the proceedings,¹¹¹ it is necessary to point out the questionable situations that are happening outside the courtroom. Namely, since March 2018, the trial of the *Srebrenica-Kravica* Case has been monitored by members of the Serbian Radical Party, some of whom are party officials.¹¹² The HLC observers, who also monitor the trial in this case, have recorded at

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107 Criminal Procedure Code ("Official Gazette" of the Republic of Serbia, Nos. 46/06, 47/09, 122/08 and 122/08), Article 102 and Article 269-374.

108 *Ibid.*, pp. 42-44; Response of the Higher Court in Belgrade to the HLC's Request for Access to Public Information, Su II 17a No 319/18, dated 27.11.2018.

109 *Criminal Procedure Code* ("Official Gazette" of the Republic of Serbia, Nos. 46/06, 47/09, 122/08 and 122/08), Article 102-111; *Ten Years of War Crimes Prosecution in Serbia – Contours of Justice*, HLC, Belgrade 2014, p. 66.

110 *National Strategy for the Prosecution of War Crimes*, p. 28; *Criminal Procedure Code* ("Official Gazette" of the Republic of Serbia, No. 46/06, 47/09, 122/08 and 122/08). Article 102-111.

111 Response of the Higher Court in Belgrade to the HLC's Request for Access to Public Information, Su II 17a No 319/18, dated 27.11.2018.

112 See: „NUNS: Šešelj threatens journalists again”, daily *Danas*, March 31, 2018, year, available at (in Serbian): <https://www.danas.rs/drustvo/nuns-seselj-ponovo-preti-novinarima/>; „Notes from the court “You bloody traitors.””, daily *Danas*, November 16, 2018, available at (in Serbian): <https://www.danas.rs/drustvo/suocavanje/crtice-iz-suda-mamu-vam-izdajnicku/>; HLC report from the trial, *Srebrenica-Kravica* Case, May 23, 2018, available at (in Serbian): http://www.hlc-rdc.org/wp-content/uploads/2018/06/16_Srebrenica_-_Izvestaj_sa_sudjenja_23.05.2018.pdf; HLC report from the trial, *Srebrenica-Kravica* Case, March 29, 2018, available at (in Serbian): http://www.hlc-rdc.org/wp-content/uploads/2018/04/15_Srebrenica_-_Izvestaj_sa_sudjenja_29.03.2018..pdf. All sources last accessed: 29.11.2018.



least three situations in which SRP officials have openly insulted and otherwise offended the observers present, including members of victims' associations, as well as family members of victims.

Thus it has happened that, when entering the premises for the audience, Vojislav Šešelj, the president of the SRP and a war crimes convict, addressed the defendants with the exhortation to "hold on", because they were "not guilty of anything".¹¹³ While waiting for the appearance of the trial panel, Šešelj provocatively asked the question whether there were any members of the "Women in Black" association among the public, and asserted that he would "make them blue", and that the founder of the association, Stanislava Zajović, "should have been drowned the moment she was born".¹¹⁴ During the trial panel's entrance into the courtroom, most of the present members of the SRP did not stand up; to those few who did, however, Vojislav Šešelj said: "Why do you stand up? You are not the accused".¹¹⁵

The recent case of misconduct by a member of the SRP was recorded in mid-November. Namely, after the president of the panel had ordered a break and was leaving, an SRP member addressed the women who monitored the trial, swearing at them, "You bloody traitors!"¹¹⁶

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Although trials are public, the presence of trials requires that monitors respect the procedural discipline, and in particular, respect the members of families of victims (injured parties) who follow the trial from the section of the courtroom in which the audience is sitting. Even the fact that these questionable situations have occurred outside the courtroom, which is to say, in the section intended for the audience, or in the corridors of the court, **the HLC considers the behaviour described quite unacceptable, and directly offensive to and disrespectful of those present, including members of the families of victims, members of victims' associations, the interested expert public and journalists. It is particularly worrying that members of the Judicial Guard,**

113 HLC report from the trial, *Srebrenica-Kravica* Case, March 29, 2018, available at (in Serbian): http://www.hlc-rdc.org/wp-content/uploads/2018/04/15_Srebrenica_-_Izvestaj_sa_sudjenja_29.03.2018..pdf, last accessed: 29.11.2018.

114 *Ibid.*

115 *Ibid.*

116 "Notes from the court "You bloody traitors!"; daily *Danas*, November 16, 2018, available at (in Serbian): <https://www.danas.rs/drustvo/suocavanje/crtice-iz-suda-mamu-vam-izdajnicku/>; HLC report from the trial, *Srebrenica-Kravica* Case, November 13, 2018, available at (in Serbian): http://www.hlc-rdc.org/wp-content/uploads/2018/11/25_Srebrenica_-_Izvestaj_sa_sudjenja_13.11.2018..pdf. All sources last accessed: 29.11.2018.



who were present on some of these occasions, tolerated such behaviour. The HLC emphasises that the lack of an adequate and rapid response in such situations contributes to the humiliation of the family members of victims and members of victims' associations who are monitoring trials.

Non-procedural Witness Protection

The only information available to the public regarding non-procedural witness protection, or the implementation of the protection programme, is contained in the Reports of the Working Body for the implementation of the National Strategy or in the Reports on the Implementation of the Action Plan for Chapter 23.¹¹⁷ At the same time, **this also means that even when preparing the findings, not even the expert public has a mechanism by which it can check the allegations contained in these reports.**

The HLC has pointed out before that non-transparency is one of the key shortcomings of the reform process of the Protection Unit. Although, by the nature of the matter, the work of the Unit cannot be fully transparent, it is necessary to provide a mechanism that will enable at least the expert public to become familiar with the recommendations and measures that have been taken to improve the work of the Unit. In that sense, it is necessary to define a mechanism that will satisfy the necessary confidentiality in the work of the Unit, but also recognize the right of the expert public to supervise the implementation of activities that should improve the work of the Protection Unit.

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¹¹⁷ Report No 4 on the Implementation of the National Strategy for War Crimes Prosecution, November 2018, pp. 37-41; Report 2/2018 on the Implementation of the Action Plan for Chapter 23, Activities: 1.4.4.2; 1.4.4.3. 1.4.4.4, pp. 335-341 and Activitie 1.4.1.7, pp. 320-325.



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 the 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 the 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.

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During the implementation of the National Strategy up till now, the Ministry of Justice has conducted an analysis of the harmonization of the normative framework (which regulates the positions of witnesses and victims) and established a Working Group for the preparation of the National Strategy on the Rights of Victims and Witnesses of Criminal Offences.¹¹⁸

However, the activities that could directly improve the support system, such as the adoption of bylaws that would regulate the provision of information to victims; designing a brochure containing information on the rights of victims; the engagement of psychologists in the Victim and Witness Assistance and Support Service at the Higher Court in Belgrade and at the Protection Unit; improvement of the infrastructure and

¹¹⁸ This working group was established within the framework of the implementation of the project “*Support for victims and crime witnesses in Serbia*”, which is being implemented by the OSCE Mission to Serbia. The working group should propose amendments to laws and regulations with a view to harmonising the concept of a victim with the same concept in international human rights treaties, and an efficient application of minimum standards in relation to the rights, support and protection of victims of crime/injured parties, with a view to harmonising with the Directive 2012/29/EU. Stated according to: *Report No 4 on the Implementation of the National Strategy for War Crimes Prosecution*, November 2018, p. 51.



technical capacities of the Victim and Witness Assistance and Support Service - have not been implemented.¹¹⁹

Improvement of the normative framework regulating the status of victims and witnesses

After the Analysis of Victims' Rights and Services in Serbia and their alignment with EU Directive on Victims (Directive 2012/29/EU) was drafted,¹²⁰ the Ministry of Justice established a working group that would propose amendments to laws and regulations with a view to harmonizing the concept of a victim with the same concept in international human rights treaties,¹²¹ and with a view to harmonizing with the Directive 2012/29/EU.¹²²

Although the National Strategy had foreseen that the said amendments to the law would be made in the second quarter of 2016, **the latest official Report on the Implementation of the National Strategy does not provide information on which it can be concluded that the activity was realized.** Thus, the report states that the amendments to the relevant Articles of the Criminal Code and the Code of Criminal Procedure will be made after the adoption of the National Strategy on the Rights of Victims and Witnesses of Criminal Offences.¹²³ It is not clear from the report when the adoption of the said strategy is expected.¹²⁴

The National Strategy also stipulates that the Ministry of Justice will issue a bylaw, which will regulate the obligation to provide information to victims on all aspects of a criminal

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119 *Report No 4 on the Implementation of the National Strategy for War Crimes Prosecution*, November 2018, pp. 47-61.

120 *Analysis of victims' rights and services in Serbia and their alignment with EU Directive 2012-29-EU* is available at: <http://www.mdtfjss.org.rs/archive/file/VSS%20-%20Final%20Report%20-%2008%2008%202016.pdf>, last accessed: 30.11.2018.

121 Response of the Ministry of Justice at the HLC's Request for Access to Public Information, No 7-00-156/2018-30, dated 14.05.2018.

122 *Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 on the establishment of minimum standards on the rights, support and protection of victims of crime, replacing the Council Framework Decision 2001/220/JHA*. Directive 2012/29/EU is available at: <https://eur-lex.europa.eu/legalcontent/HR/TEXT/?uri=CELEX:32012L0029>, last accessed: 30.11.2018.

123 *Report No 4 on the Implementation of the National Strategy for War Crimes Prosecution*, November 2018, pp. 50-51.

124 *Ibid.*



proceeding that are in their interest, in accordance with Article 6 of Directive 2012/29/EU.¹²⁵ No such **bylaw has been adopted yet.**¹²⁶

Enhancing the capacity of the bodies providing support to the witnesses of war crimes

The institutional mechanism for support to victims and witnesses in war crimes cases includes the Victim and Witness Assistance and Support Service at the Higher Court in Belgrade, and the Service for the Informing and Support of Witnesses and Victims at the OWCP.

The National Strategy recognized the need for engaging professional staff to provide psycho-social support.¹²⁷ Nevertheless, **during the reporting period, no psychologist was hired within the Victim and Witness Assistance and Support Service neither at the Higher Court in Belgrade, nor at the Service for the Informing and Support of Witnesses and Victims at the OWCP.**¹²⁸

The National Strategy also envisages changing the systematization of jobs in the Protection Unit in order to enable the recruitment of experts to provide psycho-social support.¹²⁹ **But at the time of the completion of this report, the Protection Unit does not have an employed psychologist.**¹³⁰

Besides the engagement of psychologists, **the capacities of the Victim and Witness Assistance and Support Service should be both infrastructurally and technically advanced. However, there has been no evidence of any such capacity improvements sofar.**¹³¹

125 *National Strategy for the Prosecution of War Crimes*, p. 30.

126 *Report No 4 on the Implementation of the National Strategy for War Crimes Prosecution*, November 2018, pp. 50-51.

127 *National Strategy for the Prosecution of War Crimes*, pp. 30-31.

128 *Report No 4 on the Implementation of the National Strategy for War Crimes Prosecution*, November 2018, pp. 53-54.

129 *National Strategy for the Prosecution of War Crimes*, p. 30.

130 *Report No 4 on the Implementation of the National Strategy for War Crimes Prosecution*, November 2018, p. 55.

131 *Report No 4 on the Implementation of the National Strategy for War Crimes Prosecution*, November 2018, p. 57.



The HLC therefore concludes that during this reporting period, the key activities which should lead to the improvement of the system of support to witnesses and victims in war crimes proceedings have not been implemented.

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

The National Strategy has identified that the biggest defence problems for the accused in war crimes proceedings are – an insufficiently competent defence, that is to say, insufficient knowledge of the subject of international humanitarian and criminal law by defendants’ attorneys, as well as defence financing.

During the implementation of the National Strategy so far, only one one-day training for lawyers was organized, while the Rulebook on the Remuneration for (Court) Appointed Attorneys in war crimes cases has not been changed.

Increasing the quality of (court-) appointed and selected defence attorneys in war crimes proceedings

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The National Strategy recognizes the need to increase the quality of defence in war crimes proceedings, envisaging continuing training for the lawyers representing defendants, in the field of international humanitarian and international criminal law.¹³²

In the reporting period, the first training for defence attorneys in war crimes proceedings was organized on the topic “Investigation into war crimes cases from the perspective of the defence”.¹³³ The lecturers were lawyers Tomislav Višnjić, Novak Lukić and Aleksandar Lazarević.¹³⁴ The training was organized by the Bar Association of Serbia and the OSCE Mission to Serbia.¹³⁵

¹³² *National Strategy for the Prosecution of War Crimes*, p. 32.

¹³³ Database of the Humanitarian Law Center, HlcIndexIn: 3-F135765, of 22.11.2018.

¹³⁴ *Ibid.*

¹³⁵ *Ibid.*



Bearing in mind that this was the first training organized for lawyers representing defendants in war crimes proceedings since the adoption of the National Strategy, and that the Strategy foresees the implementation of continuous training in the field of international humanitarian and international criminal law, the HLC considers it is necessary to intensify the organization of such training for lawyers.

Financing Defence Representation

The National Strategy envisages the preparation of an analysis of the provisions and results of the application of the Rulebook on the Remuneration for (Court-) Appointed Attorneys in War Crimes Cases (Rulebook).¹³⁶ Regarding this activity, the Ministry of Justice formed a Working Group with the task of drafting an analysis of the provisions of the Rulebook.¹³⁷ To the HLC's request for access to public information in May 2018, the Ministry of Justice responded that the position of the Working Group was that the prospective amendment to the provisions of the Rulebook should be carried out during the consolidated procedure of amending the regulations relevant to the practice of law, since the necessary changes would be made to regulations relevant to this issue within the negotiation pertinent to Chapter 23 during 2018.¹³⁸

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The latest report of the Working Body states that the situation in relation to this activity is “unchanged”. **The HLC reminds the parties concerned that their lawyers did not have a representative in the Working Group that conducted the analysis.** The HLC does not have any information as to whether there has been any progress in this field, since the Serbian Bar Association did not respond to the HLC's request regarding information about the implementation of this activity.¹³⁹

¹³⁶ *National Strategy for the Prosecution of War Crimes*, p. 33.

¹³⁷ *Report No 4 on the Implementation of the National Strategy for War Crimes Prosecution*, November 2018, pp. 62-63; Response of the Ministry of Justice at the HLC's Request for Access to Public Information, Pl. No 7-00- 162/2018-32 dated 18.05.2018.

¹³⁸ Response of the Ministry of Justice at the HLC's Request for Access to Public Information, No 7-00-156/2018-30, dated 18.05.2018.

¹³⁹ The HLC's Request for Access to Public Information, HlcIndexOut: F170-F135437, dated 25.10.2018.



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

During the reporting period, the normative framework regarding the search for missing persons has not been improved, and neither have the institutional and administrative capacities of the Commission for Missing Persons of the Government of the Republic of Serbia.¹⁴⁰

During the reporting period, radars searched two locations on the territory of Serbia, and two locations in Kosovo, for which there are indications that they can represent the sites of mass graves.¹⁴¹

Normative and institutional framework

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There is no special law on missing persons in Serbia that would regulate the status and rights of families of missing persons.¹⁴² The Commission for Missing Persons stated in the previous period that they would be ready to make their contribution to the drafting of a bill.¹⁴³ However, according to the available information, obtained during the preparation of the report, **in the last six-months period there has been no progress in the preparation of this law.**

¹⁴⁰ *Report No 4 on the Implementation of the National Strategy for War Crimes Prosecution*, November 2018, pp. 72-74.

¹⁴¹ *Report No 4 on the Implementation of the National Strategy for War Crimes Prosecution*, November 2018, p. 66.

¹⁴² *Second Report on the Implementation of the National Strategy for War Crimes Prosecution*, HLC, July 2018, pp. 38-39.

¹⁴³ *Ibid*, p.38.



The HLC points out that the adoption of a Law on Missing Persons would greatly improve the normative framework that regulates the search for missing persons. Such a law would have the potential to systematically regulate the competency of state authorities, and communication and exchange of information among them, in order to improve the search process, and to regulate the issue of reparations to families of missing persons.

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

The last report of the Committee on the Application of the Convention for the Protection of All Persons from Enforced Disappearances in Serbia was adopted in February 2015.¹⁴⁴ The Committee recommends in this report that Serbia intensify its efforts within the Working Group on Missing Persons in order to achieve further progress in the search for missing persons.¹⁴⁵

In recent months, the Working Group held a meeting where, according to the Fourth Report on the Implementation of the National Strategy, information and documentation obtained between the two sessions were exchanged.¹⁴⁶ Also, a meeting of the Working Subgroup for Forensic Issues was held,¹⁴⁷ which agreed on the adoption of the Procedure for the Handover of Mortal Remains.¹⁴⁸

144 UN Committee on Enforced Disappearances, *Concluding observations on the report submitted by Serbia in accordance with Article 29, paragraph 1 of the Convention*, available 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: 30.11.2018.

145 *Concluding observations on the report submitted by Serbia in accordance with Article 29, paragraph 1 of the Convention*, adopted at the 135th meeting, 12.02.2015, pp. 5-6, para. 27 and 28.

146 *Ibid.*, p. 68.

147 *Ibid.* The Working Subgroup for Forensic Issues was established in 2005 within the Working Group on Persons Unaccounted for in Relation to the Events in Kosovo within the Belgrade-Priština Dialogue, with the mandate to guide and enhance the forensic process. More information on the work of the Working Group and Working Subgroup for Forensic Issues is available at the official web site of the Commission for Missing Persons of the Government of the Republic of Serbia (in Serbian): <http://www.kznl.gov.rs/radna-grupa-o-grupi.php>, last accessed: 30.11.2018.

148 *Report No 4 on the Implementation of the National Strategy for War Crimes Prosecution*, November 2018, p. 67.



- **Search and exhumation of graves**

The latest report on the implementation of the National Strategy states that during the reporting period, UNMIK provided the Working Group with special GPR radar to search the terrain.¹⁴⁹ The radar field search was conducted in August 2018, in the territory of the Raška municipality.¹⁵⁰ At the proposal of the Belgrade delegation, two locations were searched - Kiževak and Jalovište.¹⁵¹ Also, locations in Kosovo were searched, proposed by the Priština delegation - Kačanik and Ugljare.¹⁵² The search results will be known later, and a search report will be made by the United Nations Global Service Centre.¹⁵³

In addition to these radar searches, in October a check was carried out in the territory of Medvedja municipality, near the village of Medevce, to check allegations about the existence of a mass grave there. Information on this site was received by the Coalition for RECOM.¹⁵⁴ Also a check of the terrain was conducted at the Karadak site, near Rudnica (Raška).¹⁵⁵ According to the statement of the Commission for Missing Persons, these checks did not result in the finding of mortal remains.¹⁵⁶

In October, the process of exhumation of the mortal remains of the victims of “Operation Storm” on the territory of the Republic of Croatia was continued.¹⁵⁷

The HLC emphasises the need for further efforts to speed up the dynamics of the search for missing persons. Considering that in this last period the search of the terrain was conducted by radar, it is necessary to continue searching the terrain using this technology, which can greatly accelerate the search, and reduce the costs.

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149 *Ibid*, p. 68.

150 *Ibid*.

151 *Ibid*, p. 66.

152 *Ibid*.

153 *Ibid*.

154 “Field check at the locations of Medevce and Karadak conducted”, press release, October 18, 2018, official web site of the Commission for Missing Persons of the Government of the Republic of Serbia, available at (in Serbian): <http://www.kznl.gov.rs/aktuelno.php#a44>, last accessed: 30.11.2018.

155 *Ibid*.

156 *Ibid*.

157 See the press releases on the official website of the Commission for Missing Persons of the Government of the Republic of Serbia: “In the area of Lika-Senj County 9 mortal remains of victims of ‘Storm’ exhumed”, October 9, 2018; “15 victims of ‘Storm’ exhumed in Karlovac County”, October 23, 2018, available at (in Serbian): <http://www.kznl.gov.rs/aktuelno.php#a44>, last accessed: 30.11.2018.



- **Institutional and administrative capacities of the state bodies involved in the process of determining the fate of missing persons**

An analysis of the organizational structure and position of the Commission's expert service (persons permanently engaged in the work of the Commission) was not conducted in this reporting period, although the deadline for this activity was set for the third quarter of 2016.¹⁵⁸

Cooperation of the state bodies involved in the process of determining the fate of missing persons

- **Working Group for Compilation of Facts and Evidence of Crimes against Persons of Serbian Nationality and Other National Communities in Kosovo and Metohija**

In November 2015, the Committee for Kosovo and Metohija of the National Assembly of the Republic of Serbia brought in the decision about forming the Working Group for Compilation of Facts and Evidence of Crimes against Persons of Serbian Nationality and Other National Communities in Kosovo and Metohija.¹⁵⁹ During the reporting period, this Working Group presented the results of its work. According to the report, the documentation collected by the Working Group "should serve the Special Prosecutor's Office for issuing indictments against members of the terrorist KLA for commission of crimes and for determining command responsibility".¹⁶⁰

At this point, the HLC reiterates that the OWCP replied to the request of the HLC that it "did not sign a memorandum, protocol, agreement, and so on, by which it can provide documentation on crimes committed in the territory of Kosovo and Metohija to the Kosovo Specialist Chambers",¹⁶¹ so **it remains unclear how the collected documentation could be transferred.**

¹⁵⁸ *Report No 4 on the Implementation of the National Strategy for War Crimes Prosecution*, November 2018, p. 73.

¹⁵⁹ In November 2015, Committee for Kosovo and Metohija of the National Assembly of the Republic of Serbia brought in the decision about forming the Working Group for Compilation of Facts and Evidence of Crimes against Persons of Serbian Nationality and Other National Communities in Kosovo and Metohija, stated according to: *Report No 4 on the Implementation of the National Strategy for War Crimes Prosecution*, November 2018, pp. 74-75.

¹⁶⁰ *Report No 4 on the Implementation of the National Strategy for War Crimes Prosecution*, November 2018, pp. 74. See also: p. 5, 77.

¹⁶¹ Response of the OWCP at the HLC's Request for Access to Public Information, PI. No 15/18, dated 22.05.2018.



Besides, the HLC draws attention to the fact that, according to the Law on Organization and Competences of Government Authorities in War Crimes Proceedings, the Office of the War Crimes Prosecutor is responsible for war crimes cases.¹⁶² This law also provides for the War Crimes Investigation Service, which together with the OWCP should collect facts and evidence in order to clarify war crimes.¹⁶³ **Bearing in mind that the said law has regulated the institutional framework for the investigation and prosecution of war crimes, the HLC considers that it is inappropriate to transfer this competence to working groups formed on the basis of the decisions of Parliamentary assembly committees.**¹⁶⁴

- **Memorandum of Cooperation between the Office of the War Crimes Prosecution and the Commission for Missing Persons of the Government of the Republic of Serbia**

In June, a Memorandum of Cooperation between the Office of the War Crimes Prosecution and the Commission for Missing Persons was signed.¹⁶⁵ The content of the Memorandum does not introduce any innovations when it comes to cooperation between the two institutions, but only confirms that the documentation, data and information for

162 *Law on Organization and Competences of Government Authorities in War Crimes Proceedings* ("Official Gazette" of the Republic of Serbia, No. 67/2003, 135/2004, 61/2005, 101/2007, 104/2009, 101/2011 et al. and 6/2015), Article 4, par. 1.

163 *Ibid.*, Art. 8.

164 Report No. 4 on the Implementation of the National Strategy states that the meeting of the Working Group on July 20, 2018, at which the results of previous work were presented, was attended by the Speaker of the National Assembly, Maja Gojković, the Deputy Prime Minister of the Republic of Serbia and the Minister of the Interior, Dr. Nebojša Stefanović, Minister of Justice, Nela Kuburović, Minister of Labour, Employment, Veteran and Social Policy, Zoran Djordjević, Head of the Security Intelligence Agency (BIA), Bratislav Gašić, and representatives of the Military Intelligence Agency (MIA), Dejan Pajić, Military-Security Agency (MSA), Branislav Kušljic, and the Office for Kosovo and Metohija, Željko Jović. Stated according to: *Report No 4 on the Implementation of the National Strategy for War Crimes Prosecution*, November 2018, p. 74. Apart from this meeting, the results of the work were presented to the representatives of the embassies and international organizations in Belgrade, on October 25, 2018. Stated according to the announcements on the official website of the Commission for Missing Persons of the Government of the Republic of Serbia (in Serbian): <http://www.kznl.gov.rs/aktuelno.php#a44>, last accessed: 30.11.2018.

165 "The Office of War Crimes Prosecutor signed a Memorandum of Cooperation with the Commission for Missing Persons", press release, June 12, 2018, available at the official web site of the Office of War Crimes Prosecutor: <http://www.tuzilastvorz.org.rs/sr/vesti-i-saop%C5%A1tenja/saop%C5%A1tenja/tu%C5%BEila%C5%A1tvo-za-ratne-zlo%C4%8Dine-potpisalo-memorandum-o-saradnji-sa-komisijom-za-nestala-lica>, last accessed: 30.11.2018.

the need to conduct criminal proceedings, that is, to search for the location of individual or mass graves, will be delivered.¹⁶⁶

The HLC emphasises that signing a memorandum of cooperation between the two state institutions is not an activity that can effectively improve the cooperation of institutions. The obligation of the Commission for Missing Persons to cooperate with the OWCP arises from the Law on Organization and Competences of Government Authorities in War Crimes Proceedings.¹⁶⁷ According to the law, all state bodies are obliged, at the request of the War Crimes Prosecutor, to submit without delay any evidence or information they possess which can help in the detection of war crimes perpetrators.¹⁶⁸

Joint Declaration on Missing Persons and the Framework Plan to Address Remaining Missing Persons Cases from the Conflicts of the 1990s in the Former Yugoslavia

During the Summit on the Western Balkans, held within the framework of the Berlin Process in London in July 2018, the Joint Declaration on Missing Persons (Declaration) was signed.¹⁶⁹

The Declaration highlights the urgent need to intensify efforts to locate and identify the mortal remains of missing persons, with particular emphasis on strengthening regional cooperation in the process.¹⁷⁰ The Declaration also calls for independent and effective investigations, and the proactive engagement of all relevant institutions, in order to find new sources of information on potential locations of graveyard sites, including through archive searches. It is particularly important that the Declaration recognizes the needs of the families of the missing to be actively involved in the search process and to

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166 *Memorandum of Cooperation between the Office of the War Crimes Prosecution and the Commission for Missing Persons*, Art. 1 and 2. The Memorandum is available at the official web site of the Office of War Crimes Prosecutor: <http://www.tuzilastvorz.org.rs/en/news-and-announcements/announcements/owcp-and-cmp-sign-joint-memorandum-of-cooperation>, last accessed: 30.11.2018.

167 *Law on Organization and Competences of Government Authorities in War Crimes Proceedings* ("Official Gazette" of the Republic of Serbia, Nos. 67/2003, 135/2004, 61/2005, 101/2007, 104/2009, 101/2011 et al. and 6/2015), Article 7.

168 *Ibid.*, Art. 7, par. 4.

169 More about the London Summit is available at: <https://www.gov.uk/government/topical-events/westernbalkans-summit-london-2018/about>, last accessed: 30.11.2018.

170 *Joint Declaration on Missing Persons*, London, 10.07.2018, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/724294/180710_WBS_Joint_Declarations.pdf, last accessed: 30.11.2018.



have the opportunity to exercise their rights. The Declaration reiterates the call for a depoliticisation of the search for missing persons

The Declaration also envisaged the signing of the Framework Plan to Address Remaining Missing Persons Cases from the Conflicts of the 1990s in the Former Yugoslavia (Framework Plan), which was subsequently signed in November 2018.¹⁷¹

The Framework Plan aims to speed up the process and intensify multilateral cooperation in order to search for and identify persons still missing as a result of the conflicts in the territory of the former Yugoslavia.¹⁷²

The Plan consists of five basic activities, that include solving the questions pertaining to about 4,000 unidentified mortal remains throughout the former Yugoslavia; exchange of data on missing persons cases between domestic institutions and with families of missing persons through the “Database of Active Missing Persons Cases from the Armed Conflicts in the Former Yugoslavia in the 1990’s”; exchange of information about possible locations of hidden graves and participation in exhumations in the common interest of stakeholders; involvement of families of missing persons in the process and organization of joint commemorations on the occasion of marking the International Day of Missing Persons.

The International Commission on Missing Persons (ICMP) was also actively involved in the preparation of the Declaration and the Framework Plan.¹⁷³

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171 “*The Framework Plan to Address Remaining Missing Persons Cases from the Conflicts of the 1990s in the Former Yugoslavia signed*,” press release, 06.11.2018, available at the official web site of the Commission for Missing Persons of the Government of the Republic of Serbia (in Serbian): <http://www.kznl.gov.rs/aktuelno.php#a45>, last accessed: 30.11.2018.

172 “*The Framework Plan to Address Remaining Missing Persons Cases from the Conflicts of the 1990s in the Former Yugoslavia*” is available at the official website of the International Commission on Missing Persons: <https://www.icmp.int/wp-content/uploads/2018/11/FWP-ser.pdf>, last accessed: 30.11.2018.

173 “*EU and Western Balkan Countries Sign Joint Declaration Citing Efforts to Account for Missing Persons from 1990s*,” press release, July 10, 2018, available at the official web site of the ICMP: <https://www.icmp.int/press-releases/eu-and-western-balkan-countries-sign-joint-declaration-citing-efforts-to-account-for-missing-persons-from-1990s/>, last accessed: 30.11.2018.



COOPERATION WITH THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA

Objective 1: Intensifying 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.

The previous reports on the implementation of the National Strategy, adopted by the Working Body, state that the OWCP intensively cooperates with the MICT. Cooperation is carried out through regular meetings of prosecutors and the presence of liaison officers from the OWCP at the MICT. The reports also state that the OWCP monitors the practice of ICTY/MICT through an analysis of ICTY judgments and a review of the ICTY court case law database.¹⁷⁴

Investigation of the archives of the International Criminal Tribunal for the Former Yugoslavia and the Mechanism for International Criminal Tribunals - Liaison Officers

The Office of War Crimes Prosecutor has had a Liaison Officer at the ICTY since 2009.¹⁷⁵ Engagement in the capacity of “liaison officer” means searching the electronic database of the ICTY/MICT Prosecutor’s Office, as well as consultations and meetings with prosecutors in order to obtain evidence for the proceedings conducted by the OWCP.¹⁷⁶ As was confirmed to the HLC in the War Crimes Prosecution’s response, the OWCP Liaison Officer was present at the ICTY Prosecutor’s Office continuously during the reporting period.¹⁷⁷

The HLC emphasises that the information that the **OWCP Liaison Officer is present at the MICT Prosecutor’s Office continuously does not in itself refer to the results that**

¹⁷⁴ *Report No 4 on the Implementation of the National Strategy for War Crimes Prosecution*, November 2018, pp. 79-80.

¹⁷⁵ Response of the OWCP to the HLC’s Request for Access to Public Information, A. No. 78/17, dated 28.04.2017.

¹⁷⁶ The statements were taken from the official web site of the Office of War Crimes Prosecutor: <http://www.tuzilastvorz.org.rs/en/co-operation/international-co-operation>, last accessed: 30.11.2018.

¹⁷⁷ **Note of author:** After the ICTY ceased its work, on December 31, 2017. During the year, the OWCP Liaison Officers continued their work at the International Residual Mechanism for Criminal Tribunals. Response of the OWCP to the HLC’s Request for Access to Public Information, PI. No 25/18, dated 05.11.2018.



this form of cooperation have brought to the two prosecutors. It is not known how many war crimes cases being prosecuted or tried before domestic courts have so far used the evidence gathered by the Liaison Officers at the MICT.

Failure to comply with the court - failure to enforce an arrest warrant

Back in January 2015, the International Criminal Tribunal for the former Yugoslavia issued a warrant for the arrest of three members of the Serbian Radical Party - Petar Jojić, Jova Ostojić and Vjerica Radeta, because they threatened two witnesses, intimidated them, offered them bribes, and in other ways influenced them in order to get them to agree to give up cooperation with the prosecution or to become defence witnesses in the proceedings against Vojislav Šešelj.¹⁷⁸ However, Serbia refused to extradite the two indictees to the ICTY (Jova Ostojić had died in mid-2017), or afterwards to the MICT, when the case was taken over by that court.

In June 2018, the MICT, succeeding the ICTY, decided to prosecute Radeta and Jojić before the courts in Serbia.¹⁷⁹ At that time, the MICT also issued an order that if Radeta and Jojić were to be found in the territory of some EU member states, they were to be arrested immediately and extradited to Serbia.¹⁸⁰ However, *Amicus Curiae* appealed against that decision, about which the MICT has not yet decided.¹⁸¹

If the MICT makes the final decision to prosecute Radeta and Jojić in Serbia, the HLC would expect the proceedings against them to be conducted impartially. **Only on the basis of an impartial procedure, which will not be unnecessarily delayed, will it be possible to draw a conclusion on whether there is readiness for them to be tried, and consequently - whether there is readiness to comply with the decisions of the ICTY/ MICT.**

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¹⁷⁸ See: Case: *Jojić et al.* (IT-03-67-R77.5), the documentation of the case is available on the official website of the Mechanism for International Criminal Courts: http://jrad.unmict.org/webdrawer/webdrawer.dll/webdrawer/search/rec&sm_recnbr&sm_ncontents=mict-17-111&sm_created&sm_fulltext&sort1=rs_datecreated&count&template=reclist&rows=25#, last accessed: 22.11.2018.

¹⁷⁹ *Public redacted version of the 12 June 2018 order referring a case to the Republic of Serbia*, MICT-17-111—R90, D205-D191, p. 5, of 12.06.2018.

¹⁸⁰ *Ibid.*

¹⁸¹ *Notice of appeal against the order referring a case to the Republic of Serbia*, MICT-17-111—R90; D220-D-214, 26.06.2018; “*The Hague is pleased with the cooperation with Serbia*”, press release, November 19, 2018. Ministry of Justice, available at: <https://www.mpravde.gov.rs/en/vest/21679/the-hague-court-pleased-with-serbias-cooperation-.php>, last accessed: 22.11.2018.



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 of the Republic of Serbia sent to the states in the region is improved through joint action of the Office of War Crimes Prosecutor and the Ministry of Justice, and the number of cases in which the 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.

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The National Strategy pays special attention to the issue of improving the cooperation of the OWCP with prosecutors in the region. Activities that should improve co-operation include the organization of regional conferences; establishing a common record of war crimes cases at the regional level; establishment of joint cross-border investigative prosecutorial teams with the countries of the region; and improving cooperation with institutions in Kosovo. During the reporting period, none of these activities have been implemented.¹⁸²

Improving the normative framework for regional cooperation - Regional Conferences

The National Strategy stipulates that the Ministry of Justice will organize regional conferences, which should improve regional cooperation in the processing of war crimes,

¹⁸² Report No 4 on the Implementation of the National Strategy for War Crimes Prosecution, November 2018, pp. 81-91.



and help to resolve disputable issues that have arisen in the previous cooperation.¹⁸³ **In the reporting period, none of the planned regional conferences was held.**¹⁸⁴

Although these conferences were not held under the organization of the Ministry of Justice of the Republic of Serbia, two conferences were held in the countries of the region that dealt with the topic of regional cooperation in the processing of war crimes in the recent period.

The first conference was held in Sarajevo, organized by BIRN,¹⁸⁵ within the Balkan Transitional Justice programme.¹⁸⁶ Participants at the conference, among others, included Lidija Vukčević, Prosecutor of the Special State Prosecutor's Office of Montenegro, Jurica Ilić, Deputy at the County State Attorney's Office in Zagreb, Croatia, Gordana Tadić, acting Chief Prosecutor of Bosnia and Herzegovina, Christopher Bennett, Adviser to the Chief Prosecutor of the Special Prosecutor's Office of Kosovo, Paul Flynn, EULEX Special War Crimes Prosecutor, and Aleksandar Kontić, Legal Advisor to the MICT.¹⁸⁷

Bearing in mind that the central topic of the conference was precisely regional cooperation in the processing of war crimes, and that the prosecutors and deputy prosecutors of prosecutors' offices in the region responded to the invitation of the organizers, the absence of OWCP prosecutors was noticeable. **The OWCP was the only prosecution in the region that was not present at this conference.**

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183 Regional conferences foreseen in the National Strategy for the Prosecution of War Crimes: *Regional conference on enhancing cooperation in providing support to witnesses and victims*, p. 27; *Regional conference for the purpose of reaching an interstate agreement on the establishment of regional rules on the allocation of jurisdiction for dealing with war crimes cases; promoting regional co-operation in handling war crimes cases; the establishment of an easier procedure for obtaining evidence in the territory of another state by the defence in war crimes cases; the unified treatment of the countries of the region of the problem of resolving the fate of missing persons*, p. 31.

184 Report No 4 on the Implementation of the National Strategy for War Crimes Prosecution, November 2018, p. 60, 81-82; Response of the Ministry of Justice at the HLC's Request for Access to Public Information, PI. No 7-00-317/2018-32 dated 24.10.2018.

185 BIRN – Balkan Investigation Reporting Network: <http://birn.eu.com/>, last accessed: 30.11.2018.

186 More on the conference "After the ICTY: Regional Cooperation, Accountability, Truth and Justice in the Former Yugoslavia", see: <http://www.balkaninsight.com/en/page/after-the-icty>, last accessed: 30.11.2018.

187 Agenda of the conference "After the ICTY: Regional Cooperation, Accountability, Truth and Justice in the Former Yugoslavia" is available at: <http://www.balkaninsight.com/en/page/after-the-icty#agenda>, last accessed: 30.11.2018.



The next conference was held in Zagreb and was organized by the Serbian National Council, the Council of the Serbian National Minority of the City of Zagreb, the Center for Dealing with the Past (Documenta) and the SENSE Center for Transitional Justice.¹⁸⁸ Speakers at the conference, among others, included Serge Brammertz, MICT Chief Prosecutor and former ICTY Chief Prosecutor, Gordana Tadić, acting Chief Prosecutor of BiH, and Jasmina Dolmagić, Deputy Chief State Attorney of the Republic of Croatia. The Office of War Crimes Prosecutor of the Republic of Serbia was represented by Novak Vučo, prosecutorial associate.¹⁸⁹ Although a representative of the OWCP was present at this conference, it was notable that the OWCP's representative was only a prosecutor's associate, whilst the Croatian State Attorney's Office (DORH), the Prosecutor's Office of BiH and the MICT were presented by the prosecutors themselves.

These conferences were an opportunity to discuss over a period of a few days important aspects of regional cooperation in the processing of war crimes. It is especially important that the conferences were open to the general public and the media, and that the conferences were attended by representatives of the civil society and academic community, as well as of youth organization activists. Bearing in mind the ever narrower possibility for constructive interaction between representatives of judicial institutions on the one hand, and both civil society and media representatives on the other hand, these two conferences have created a space for discussion and debate. In this regard, **it is particularly worrying that the OWCP at the first conference was not present at all, whilst at the second conference the representative of the OWCP was a prosecutor's assistant.**

The HLC emphasises that regional cooperation between prosecutors' offices should be intensified, inter alia, through regular meetings and participation in such conferences. Also, the HLC draws attention to the fact that in order to improve the overall prosecution of war crimes in Serbia, it is not enough just to fulfill the activities enumerated in the National Strategy. To improve the processing of war crimes, a more proactive and dynamic approach is needed, which goes beyond the scope of the Strategy.

188 More on the conference "*Justice after The Hague*" see at: <https://www.documenta.hr/en/justice-after-the-hague-zagreb-journalists-building-october-9-10-2018.html>, last accessed: 30.11.2018.

189 Agenda of the "*Justice after The Hague*" conference is available at: <https://www.documenta.hr/assets/files/objave/Justice-after-the-Hague-programme.pdf>, last accessed: 30.11.2018.



Regional meetings and activities aimed at improving cooperation

According to the information contained in the Reports on Implementation of the National Strategy, adopted by the Working Body, regional consultations of the representatives of the Prosecutors' Offices of the Region (Prosecutor's Office of BiH, Special Prosecution of Montenegro, DORH and the OWCP) were also held during the reporting period, within the regional project "Enhancing Regional Cooperation in Processing of War Crimes and the Search for Missing Persons (2017-2019)", implemented with the support of the UNDP.¹⁹⁰ In addition to the aforementioned regional meetings, bilateral meetings were organized in the previous months, and the OWCP held meetings with representatives of BiH and representatives of the DORH.¹⁹¹

During the reporting period, no joint record of war crimes cases was established at the regional level, although a resolution to do so was initiated through regional cooperation.¹⁹² Also, the planned cross-border investigative prosecution teams of the competent prosecutor's offices of the countries of the region were not established.¹⁹³

The realization of activities so far, whose joint goal is the promotion of regional cooperation, has not led to the expected results. Cooperation should be improved through mechanisms that have led to concrete results in the past. Considering that the establishment of joint investigation teams between the prosecutors' offices of BiH and Serbia has so far resulted in the indictments in the *Srebrenica-Kravica* and *Štrpci* Cases, the concrete results of this joint work are the basis for the continuation of cooperation in the forthcoming period through the establishment of joint cross-border investigative prosecutorial teams with countries in the region. In this respect, **the OWCP is expected to have a more proactive role, which will not end only at the initiation of the establishment of various mechanisms of cooperation.**

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¹⁹⁰ Report No 4 on the Implementation of the National Strategy for War Crimes Prosecution, November 2018, pp. 84-86.

¹⁹¹ Response of the OWCP at the HLC's Request for Access to Public Information, PI. No 25/18, dated 05.11.2018.

¹⁹² National Strategy for the Prosecution of War Crimes, p. 37; Report No 4 on the Implementation of the National Strategy for War Crimes Prosecution, November 2018, p. 89.

¹⁹³ National Strategy for the Prosecution of War Crimes, p. 37; Report No 4 on the Implementation of the National Strategy for War Crimes Prosecution, November 2018, p. 90.



Cooperation with the judiciary of Kosovo

The cooperation of the OWCP with the institutions in Kosovo is almost non-existent,¹⁹⁴ since the OWCP does not have the capacity independently to undertake actions to investigate the crimes, to access the places of execution to access the places of execution, perpetrators, witnesses, and injured parties, or to obtain directly relevant data and documentation.

Obviously, the lack of cooperation between the War Crimes Prosecutor's Office and institutions in Kosovo creates a favourable situation for avoiding criminal responsibility for the crimes committed. Prosecutorial cooperation between Serbia and Kosovo has so far taken place without direct communication between the OWCP and representatives of the Kosovo judiciary.

Establishing appropriate mechanisms for direct, official cooperation and communication would undoubtedly contribute to better prospects for prosecuting war crimes. In this regard, **the HLC considers it necessary to establish a mechanism that will enable communication and cooperation between the OWCP and the Kosovo Prosecutor's Office.** The first step towards this cooperation should go towards the initiation of a formal agreement between the OWCP and the Kosovo Prosecutor's Office on the exchange of evidence and cooperation in the prosecution of war crimes, as was the case with the prosecutors' offices of BiH and Croatia.

194 *Report No 4 on the Implementation of the National Strategy for War Crimes Prosecution*, November 2018, pp. 90-91.



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 the manner that allows the students to obtain a sufficient quantity of relevant information on the conflicts in the former Yugoslavia, war crimes committed during that time, and norms of the international humanitarian law.

Objective 4: Public presentation of the National Strategy as the tool to express firm and unequivocal commitment of the Republic of Serbia to undertake measures preventing impunity of war crimes.

In the period covered by this report, there was no progress in terms of improving society's attitudes towards war crimes or war crimes trials. On the contrary, the past few months have seen an expansion of the promotion of convicted war criminals in the public eye, and the denial of genocide in Srebrenica.

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Promotion of convicted war criminals in the public eye

- **“Ratnik” (Warrior) Edition of the Ministry of Defense**

During the 63rd International Book Fair, which was organized in Belgrade from October 21st to 28th, 2018, the publishing house of the Ministry of Defence (MoD) of Serbia organized the promotion of four books from the “Warrior” series - four volumes of war diaries by Nebojša Pavković called “The Third Army in “The Merciful Angel”'s Embrace for seventy-eight days”, “Battle for Paštrik - Memories of Participants in 1999”, “Priština Corps 1998-1999 - Testimony of War Commanders” and “Battle at Košare - Memories of Participants in 1999”.

The first book presented by the MoD was the war diary of Nebojša Pavković, who was the Commander of the 3rd Army of the Yugoslav Army (VJ) during the conflict in Kosovo, and was sentenced to 22 years in prison by the ICTY for crimes committed against Albanian



civilians.¹⁹⁵ As the promoters of the publication pointed out, Pavković's war diaries were "a contribution to the preservation of knowledge about the applied war skills that helped to defend the country";¹⁹⁶ completely ignoring the fact that Pavković's 'martial arts' contributed to the killing of thousands of civilians, burning of homes and expulsion of hundreds of thousands of Albanians from Kosovo. Also, the organizers of the promotion of the publication did not mention at any moment that Nebojša Pavković is currently serving a 22-year sentence of imprisonment.

At the presentation of the book "Battle for Paštrik - Memories of Participants in 1999", the former commander of the 549th Motorized Brigade of the VJ, Božidar Delić, was among those who spoke.¹⁹⁷ In the course of 2013, the HLC presented to the public the Dossier "549th Motorized Brigade of the Army of Yugoslavia", in which evidence was presented about the participation of the unit commanded by Delić in the crimes during the conflict in Kosovo.¹⁹⁸ The HLC also filed criminal charges against him for the crime committed in the village of Trnje in March 1999.¹⁹⁹

In addition to this, retired general Dragan Živanović, who during the conflict in Kosovo was the commander of the 125th Motorized Brigade of the VJ, was one of the speakers at the presentation of the publication "Battle at Košare - Memories of Participants in 1999". In 2013, the HLC published the Dossier "125th Motorized Brigade of the Army of Yugoslavia", in which evidence was presented about the participation of this brigade in the crimes committed during 1998 and 1999 in Kosovo.²⁰⁰ Against Živanović, the HLC submitted a criminal report for the killing of 78 Kosovo Albanians in the village

195 See case: *Šainović et. al* (IT-05-87), available at: <http://www.icty.org/cases/party/743/4>, last accessed: 22.11.2018.

196, "Promotion of the war diary of General Pavkovic at the Book Fair", news, 22.10.2018, available at the official website of the Ministry of Defense: <http://www.mod.gov.rs/eng/13197/promocija-ratnog-dnevnika-general-pavkovica-na-sajmu-knjiga-13197>, last accessed: 22.11.2018.

197 "The Ministry of Defence presented two books of its "Warrior" series", news, October 29, 2018, available at (in Serbian): <http://tanjug.rs/mobile/full-view.aspx?izb=438588>, last accessed: 22.11.2018.

198 Dossier "549th Motorized Brigade of the Army of Yugoslavia", the HLC, Belgrade, 2013, available at: <http://www.hlc-rdc.org/wp-content/uploads/2013/03/Dossier-549th-Motorized-Brigade-of-Yugoslav-Army.pdf>, last accessed: 22.11.2018.

199 "Criminal complaint against Yugoslav Army officers for the crime committed against 17 Kosovo Albanians and one Ashkali", available at: <http://www.hlc-rdc.org/?p=26011&lang=de>, accessed: 27.11.2018.

200 Dossier "549th Motorized Brigade of the Army of Yugoslavia", HLC, Belgrade, 2013, available at: <http://www.hlc-rdc.org/wp-content/uploads/2013/03/Dossier-549th-Motorized-Brigade-of-Yugoslav-Army.pdf>, last accessed: 22.11.2018.



of Kraljane (Djakovica) in April 1999.²⁰¹ It is important to point out that Živanović is the only high-ranking member of the VJ against whom in 2014 the OWCP initiated an investigation into crimes committed in Kosovo.²⁰² However, after three years, the OWCP suspended the investigation.²⁰³

The fourth publication of the “Warrior” series, titled “Priština Corps 1998-1999 - Testimonies of War Commanders”, was presented to the public by Vladimir Lazarević, who in the course of the Kosovo conflict was the commander of the Priština Corps of the VJ and was convicted before the ICTY to a jail sentence of 14 years for crimes committed against Albanian civilians.²⁰⁴ As in the case of Nebojša Pavković, the organizers of the promotion did not reveal to the public the fact that Lazarević was sentenced before the ICTY for war crimes.

The HLC recalls that in October 2017 Vladimir Lazarević also visited the Military Academy, where he held a lecture.²⁰⁵ This lecture followed the speech of the former Defence Minister Aleksandar Vulin at the reunion of Third Army officers who had been engaged in the war in Kosovo. He held a speech in honour of the persons present, especially emphasising that “The time of shame has passed, it is now time for us to be

201 “Criminal charges for crimes against 78 Kosovo Albanians, against officers and members of the Army of Yugoslavia and the Ministry of the Interior”, available at: <http://www.hlc-rdc.org/?p=24590&lang=de>, last accessed: 22.11.2018.

202 “Order to Investigate General Živanović for War Crimes at KIM”, press release, 05.08.2014, available at the official web site of the Office of War Crimes Prosecutor: <http://www.tuzilastvorz.org.rs/en/news-and-announcements/announcements/general-%C5%BEivanovi%C4%87-to-face-investigation-for-kosovo-metohija-war-crimes>, last accessed: 22.11.2018.

203 “The War Crimes Prosecutor’s Office has suspended the only investigation against a high-ranking military officer”, press release, HLC, November 28, 2017, available at: <http://www.hlc-rdc.org/?p=34560&lang=de>. Besides Živanović, another speaker at the presentation of the publication was Dusko Šljivančanin, who during the conflict in Kosovo was the commander of the 53rd VJ battalion VJ, against which the HLC submitted a criminal complaint to the OWCP in 2013 for the crimes committed in March 1999 in the village of Goden, when 21 Albanian civilians were killed. Even five years after the filing of this criminal complaint, the HLC does not have any information whether the OWCP is acting upon this criminal complaint. See: “Criminal Complaint against Officers, Non-Commissioned Officers and Soldiers with regard to the Murder of 21 Albanian Civilians on March 25th, 1999”, available at: <http://www.hlc-rdc.org/?p=23483&lang=de>. All sources last accessed: 22.11.2018.

204 See case: *Šainović et. al* (IT-05-87), available at: <http://www.icty.org/cases/party/743/4>, last accessed: 22.11.2018.

205 “Lazarević has given a lecture”, Daily *Danas*, October 26, 2017, available at: <https://www.danas.rs/drustvo/lazarevic-odrzo-predavanje/>, last accessed: 22.11.2018.



quietly proud”,²⁰⁶ and that “the attitude towards these people is the mirror of our self-esteem”.²⁰⁷

- **Ratko Mladić in the *TV Happy* programme**

The latest in the series of appearances of war criminals before the public was Ratko Mladić, who is currently in the detention unit in Sheveningen. He appeared direct on a national television programme, *TV Happy*.²⁰⁸ Namely, on November 16 2018, in the morning programme of *TV Happy*, the guests were the son of Ratko Mladić - Darko Mladić - and Vojislav Šešelj. At one point, Darko Mladić called Ratko Mladić over the telephone. His father was then speaking directly on the morning programme, addressing and greeting Vojislav Šešelj.

Although a considerable section of the public assessed the involvement of Ratko Mladić in a direct broadcast on a TV chain with a national frequency as scandalous and unacceptable, and considered that the Regulatory body for Electronic Media (REM) was obligated to react, the REM issued a statement stating that Ratko Mladić was entitled to make a live appearance on the programme because he was not a person who has been finally judged, since the appeal procedure is still in progress.²⁰⁹ Claiming that the proceedings against Ratko Mladić have not been finalized is correct; but it must be borne in mind that Mladić is referred to as a participant in a joint criminal enterprise in some ICTY judgments.²¹⁰

206 “Vulin: *The time of shame has passed, it is now time for us to be quietly proud*”, RTS, October 07, 2017, available (in Serbian) at: <http://www.rts.rs/page/stories/sr/story/9/politika/2896858/vulin-proslo-je-vreme-stida-ovo-je-vreme-tihog-ponosa.html>, last accessed: 27.11.2018.

207 “Vulin: *The time when we were ashamed of those who defended the country from Nato is over*”, Blic, October 07, 2017, available (in Serbian) at: <http://www.blic.rs/vesti/politika/vulin-proslo-je-vreme-kada-smo-se-stideli-onih-koji-su-branili-zemlju-od-nato/xrejf4w>, last accessed: 27.11.2018.

208 “Mladić live in morning programme *TV Happy*: Hugs and kisses from Granpa’ Ratko”, news, 16.11.2018. N1, available at (in Serbian): <http://rs.n1info.com/Vesti/a436318/Ratko-Mladic-iz-Haga-u-jutarnjem-programu-Hepi-televizije.html>, last accessed: 26.11.2018.

209 “A statement on Ratko Mladić live in the *Happy TV* programme”, press release, November 19, 2018, available at the official website of the Electronic Media Regulatory Body (in Serbian): <http://www.rem.rs/sr/arhiva/vesti/2018/11/saopstenje-povodom-telefonskog-uključenja-ratka-mladica-u-program-hepi-tv>, last accessed: 27.11.2018.

210 See for example: ICTY verdicts in the cases of *Krstić (IT-98-33)*, available at the official website of the ICTY: <http://www.icty.org/case/krstic/4>, and *Tolimir (IT- 05-88 / 2) “Srebrenica”*, available at the official web site of the ICTY: <http://www.icty.org/cases/party/791/4>. All sources last accessed: 23.11.2018.



- **Denial of Genocide in Srebrenica by Serbian Prime Minister Ana Brnabić**

The attitude that Serbia does not have the sincere political will to deal with the crimes committed during the wars of the 1990s, was unambiguously expressed by the Prime Minister of the Republic of Serbia, Ana Brnabić, at the Deutsche Welle journalist's house "*Conflict Zone*", in November 2018, when she claimed that genocide was not committed in Srebrenica, but "a terrible, terrible crime".²¹¹

In addition to denying the genocide, whose existence has been established in several cases before the ICTY,²¹² the Prime Minister claimed that the ICTY owed Vojislav Šešelj three years of his life, alluding to the fact that Šešelj spent 13 years in detention and that he was sentenced to prison for a period of 10 years.²¹³ Considering also that the Speaker of the National Assembly of Serbia Maja Gojković did not act in accordance with Article 88 of the Law on the Election of Members of the Parliament,²¹⁴ which found that Šešelj's term of office was terminated on the day of the pronouncement of a legally valid criminal judgment, this position of the Prime Minister further reinforces the argument that in the public and political life of Serbia it is appropriate for persons accused or convicted of serious crimes against civilians to be promoted either as heroes or as victims of the ICTY.

- **Order of Karađorđe's Star – 1st class**

After his retirement from being the Chief of General Staff of the Serbian Armed Forces, Ljubiša Diković, in September 2018, received the award of the Order of the Star of Karađorđe's – 1st class, accompanied by the claims of the President of Serbia that Diković was an honourable and committed officer, despite the fact that "they falsely accused

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211 "Još nismo spremni za EU", ("We are not ready for the EU yet"), *Deutsche Welle*, interview Ana Brnabić, 14.11.2018, available at (in Serbian): <https://www.dw.com/sr/jo%C5%A1-nismo-spremni-za-eu/a-46290937>, last accessed: 23.11.2018.

212 See for example: ICTY verdicts in the cases of *Krstić* (IT-98-33), available at the official website of the ICTY: <http://www.icty.org/case/krstic/4>, and *Tolimir* (IT- 05-88 / 2) "*Srebrenica*", available at the official web site of the ICTY: <http://www.icty.org/cases/party/791/4>. All sources last accessed: 23.11.2018.

213 "Još nismo spremni za EU", ("We are not ready for the EU yet"), *Deutsche Welle*, intervju Ana Brnabić, 14.11.2018

214 Law on the election of Members of the Parliament ("Official Gazette" of the Republic of Serbia, No. 35/2000, 57/2003 - Decision of the USRS, 72/2003 - other law, 18/2004, 101/2005 - other law, 85/2005 - other law, 28/2011 - CS Decisions, 36/2011 and 104/2009 - other law), Article 88.



him and wanted to put a seal of shame on his forehead”²¹⁵ In two Dossiers, the HLC has submitted serious allegations that within the zone of responsibility of the 37th Motorized Brigade of the Yugoslav Army commanded by Diković during the Kosovo conflict, about 1,400 Albanian civilians were killed, whilst thousands of others were expelled.²¹⁶

The HLC believes that the tendency to exalt war criminals and the relativization of court-established facts threatens to become a permanent feature of politics in Serbia. Such a political climate has a devastating impact on war crimes trials before domestic courts. If such a trend continues, trials of high-ranking perpetrators will not be possible at all, and denial of victims’ suffering will remain the normal. Therefore, the HLC calls for the consistent implementation of the National Strategy for the Prosecution of War Crimes, respect for the rights of victims and the elimination from state organs and political parties, especially ruling parties, of convicted and suspected war criminals.

215 “Lieutenant-General Milan Mojsilović, new Chief of General Staff”, RTS, September 14, 2018, available at (in Serbian): <http://www.rts.rs/page/stories/ci/story/1/politika/3258943/general-major-milan-mojsilovic-novi-nacelnik-generalstaba.html>, last accessed: 26.11.2018.

216 *Dossier Diković Ljubša*, HLC, Belgrade, 2012, available at: <http://www.hlc-rdc.org/wp-content/uploads/2012/11/Ljubisa-Dikovic-File-and-Annex.pdf>; *Dossier Rudnica*, HLC, Belgrade, 2015, available at: http://www.hlc-rdc.org/wp-content/uploads/2015/01/Dosije_Rudnica_eng.pdf. All sources last accessed: 26.11.2018.



Implementation of Activities

1. INCREASING EFFICIENCY OF THE WAR CRIMES PROCEEDINGS BEFORE THE REPUBLIC OF SERBIA BODIES		
1.1. Investigations and Indictments		
Activity	Time Limit	Implementation Status
The OWCP will draft and adopt the Prosecutorial Strategy for Investigation and Prosecution of War Crimes.	Quarter 1 of 2016	Implemented
The WCIS will prepare a database on mass crimes committed during the armed conflicts in former Yugoslavia.	Quarter 4 of 2016	Partly implemented
The OWCP shall endeavor to register and take over all the war crimes cases still pending before the domestic courts of general jurisdiction.	Quarter 4 of 2016	Partly implemented
<p>With the aim of increasing working efficiency, the OWCP should undertake the following activities:</p> <ul style="list-style-type: none"> • 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 yes, 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 will increase in line with the time frame envisaged in the Action Plan for Chapter 23.	Continuous	Implemented

Continuing 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	Implementation in progress
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 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 Crime Prosecutor.	Quarter 2 of 2016	Implemented
Improving cooperation between the OWCP and the WCIS through: <ul style="list-style-type: none"> • 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



1.2. Trials		
Activity	Time Limit	Implementation Status
<p>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.</p> <p>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.</p>	Continuous	Partly implemented
The War Crimes Prosecutor should start negotiations with his counterparts in neighboring 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
<p>The Ministry of Justice shall endeavor, on the proposal of the HJC, to provide adequate technical equipment for the courtrooms in which war crimes trials are held.</p> <p>Pursuant to Article 354 of the CPC, 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.</p>	Continuous, commencing from Quarter 1 of 2016	Partly implemented
At the initiative of the OWCP, 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 will 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	Partly implemented



2. PROTECTION OF WITNESSES AND VICTIMS		
Activity	Time Limit	Implementation Status
Inter-sectorial Working group of the Ministry of Justice will prepare an analysis of court practice in the implementation of Article 102 of the CPC as well as the analysis of the provisions and results of the implementation of the Law on the program of protection of participants in criminal proceedings and formulate conclusions and recommendations on the needs of any amendment to this law or the accompanying bylaws in order to improve witness and victim protection system.	Quarter 1 - 4 of 2016	Implemented
The MoI will initiate and, in cooperation with the Commission for the Implementation of the Protection Program 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 will urgently undertake measures to ensure the optimal status and capacity of the Protection Unit.	Commencing from Quarter 2 of 2016	No information
Criminal law chambers 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 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 Program and the Protection Unit fully respecting the interests of the criminal proceedings in which the protected person is placed under protective measures	Continuous	No information
Improvement of cooperation between the Protection Unit and the OWCP, through: <ul style="list-style-type: none"> • 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 will perform an analysis of the level of harmonization of the normative framework Directive 2012/29/EU14.	Quarter 1 of 2016	Implemented
The Minister of Justice will establish a working group to propose amendments to the normative framework with the aim of harmonization with the notion of victim in international human rights treaties, and of effective application of minimum standards on the rights, 14 Directive 2012/29/EU.	Quarter 2 of 2016	Partly implemented
The Ministry of Justice will issue a bylaw 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 will create and distribute a brochure containing the 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	Partly implemented
The Service for Assistance and Support to Victims and Witnesses within the Higher Court in Belgrade will 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 job classification act will 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 will occasionally organize additional training and encourage the participation in professional conferences.	Continuous, commencing from Quarter 2 of 2016	No information
To meet the needs of the Protection Unit staff, the Training Centre of the MoI will occasionally organize additional training and encourage the participation in professional conferences.	Continuous, commencing from Quarter 2 of 2016	Implementation in progress
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 the investigation and all stages of the criminal proceedings: <ul style="list-style-type: none"> • normative aspect (current normative framework, best comparative solutions, international standards); • financial assessment (sustainable financing, adequacy of premises and staff, need 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	Implemented
The Ministry of Justice will 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. DEFENSE OF THE ACCUSED		
Activity	Time Limit	Implementation Status
Developing a program 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	Implemented
Implementation of the 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	Partly implemented
The working group established by the Minister of Justice will prepare an analysis of the provisions and results of the application of the Rulebook on the 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 will continuously work on fulfilling the recommendations of the Committee on Enforced Disappearances and notify the Committee on achieved results.	Continuous	Implementation in progress
Perform the analysis of the organizational structure and status of the support service with the aim of improving efficiency and sustainability in the context of 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)	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 encourages 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 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
<ul style="list-style-type: none"> • 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 endeavor to maintain 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 endeavor to maintain good practice of <i>ad hoc</i> presence of the advisors from the OWCP in the offices of the ICTY and the.	Periodical	Implementation in progress



7. REGIONAL AND BROADER INTERNATIONAL COOPERATION		
7.1. Regional Cooperation		
Activity	Time Limit	Implementation Status
The Ministry of Justice will initiate a regional conference to achieve an intergovernmental agreement with the Republic 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) enhancement of 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 will establish a working group to prepare proposals of topics and normative issues for the Regional Conference.	Quarter 2 of 2016	Not implemented
The OWCP will 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	Not implemented
The OWCP will initiate the establishment of joint records of war crimes cases at the regional level the resolving of which commenced through regional cooperation.	Continuous, commencing from Quarter 2 of 2016	Not implemented
The OWCP will 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	Partly implemented
The Ministry of Justice, in cooperation with the OWCP and HJC, will invest efforts to secure financial support of the project of translating domestic judgments into the English language, so that they can be included in the <i>Legal Tools Project</i> .	Continuous, commencing from Quarter 1 of 2016	Not implemented



8. OUTREACH		
Activity	Time Limit	Implementation Status
Increased frequency of acting by presidents of the competent courts in accordance with Article 16a of the Law on the Organization and Jurisdiction of Government Authorities in War Crimes Proceedings.	Continuous	Not implemented
Improvement of the web site of the High Court in Belgrade, where all the necessary information about the judgments in war crimes cases will be publicly available, with a gradual increase of the numbers of the 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	Partly 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	No information

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, is 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, will publicly declare their support for the work of all domestic bodies dealing with the war crimes issues, for the fight against impunity and for the 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, refrain from unauthorized commentaries of the work of the judiciary.	Continuous	Not implemented



**Third Report
on the Implementation of the National Strategy
for the Prosecution of War Crimes**

Publisher:
Humanitarian Law Center
Dečanska 12, Belgrade
www.hlc-rdc.org

Author: Višnja Šijačić
Editor: Ivana Žanić
Translation: Angelina Mišina and Marijana Mitrović
Proof Editing: Jonathan Boulting
Design: Todor Cvetković
Print Run: 80
Printing: "Format", Belgrade

CIP - Каталогизација у публикацији -
Народна библиотека Србије, Београд

341.322.5:343.11(497.11)"2016/2017"(047)

ŠIJAČIĆ, Višnja, 1985-
Third Report On the Implementation of the National Strategy for the
Prosecution of War Crimes / [Višnja Šijačić] ; [translation Angelina Mišina
and Marijana Mitrović]. - Belgrade : Humanitarian Law Center, 2018
(Belgrade : Format). - 73 str. : table ; 24 cm

Izv. stv. nasl.: Treći izveštaj o sprovođenju Nacionalne strategije za
procesuiranje ratnih zločina. - Podatak o autorki preuzet iz kolofona. -
Tiraž 80. - Napomene i bibliografske reference uz tekst.

ISBN 978-86-7932-097-1

а) Ратни злочини - Судски процеси - Србија - 2016-2017 - Извештаји
COBISS.SR-ID 271822604

