

Fifth Report

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



Humanitarian Law Center

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

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TABLE OF CONTENTS

Preface	4
Introduction	7
I. Case prioritisation based on the criteria laid down in the Prosecutorial Strategy	14
II. Increase in the number of indictments in relation to the number of investigations...	15
III. Increase in the number of proceedings resulting in a final judgment in relation to the number of indictments	15
IV. Shorter average duration of war crimes proceedings.....	16
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.....	17
VI. Decrease in the number of missing persons whose fate has not been clarified	18
VII. Increase in the number of cases initiated and finally resolved as a result of regional judicial cooperation	18
VIII. Reports of the Chief Prosecutor and President of the ICTY to the U.N. Security Council.....	19
IX. Positive reports from other relevant governmental and non-governmental organisations	20
Areas Covered by the National Strategy for the Prosecution of War Crimes	21
INCREASING EFFICIENCY OF THE WAR CRIMES PROCEEDINGS.....	22
PROTECTION OF WITNESSES AND VICTIMS	29
SUPPORT TO VICTIMS AND WITNESSES	32
DEFENCE OF THE ACCUSED	37
WAR CRIMES TRIALS AND THE ISSUE OF MISSING PERSONS	39
COOPERATION WITH THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA.....	45
REGIONAL AND INTERNATIONAL COOPERATION.....	49
IMPROVING THE SOCIETY'S ATTITUDE TOWARDS THE ISSUE OF WAR CRIMES TRIALS	56
Implementation of Activities	62

Acronyms and Abbreviations

Action Plan	Action Plan for Chapter 23 in the framework of Serbia's accession negotiations with the European Union
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
Draft	First draft of the Revised Action Plan for Chapter 23
EU	European Union
EULEX	European Union Rule of Law Mission in Kosovo
EC	European Commission
Framework Plan	Framework Plan to Address the Issue of Missing Persons from the Conflicts on the Territory of the former Yugoslavia
Government	Government of the Republic of Serbia
HJC	The High Judicial Council
HLC	Humanitarian Law Center
ICPM	International Commission on Missing Persons
ICRC	International Committee of the Red Cross
ICTY	United Nations International Criminal Tribunal for the Former Yugoslavia
IRMCT	United Nations International Residual Mechanism for Criminal Tribunals
Missing Persons Commission	Commission on Missing Persons of the Government of Serbia
MoI	Ministry of the Interior of the Republic of Serbia
MoJ	Ministry of Justice of the Republic of Serbia
MPG	The Missing Persons Group of the International Commission on Missing Persons
NCEU	National Convention on the European Union
National Strategy	National Strategy for the Prosecution of War Crimes
OEBS	Organization for Security and Co-operation in Europe
OTP	Office of the Prosecutor of the United Nations International Residual Mechanism for Criminal Tribunals
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
Request	Request for access to information of public importance
SCC	Serbia's Supreme Court of Cassation

SPC	State Prosecutorial Council
SRS	Serbian Radical Party
U.N.	United Nations Organisation
UNDP	United Nations Development Programme
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 since the very first war crimes proceedings were conducted in Serbia in 2002. The HLC is the only organisation that has been continuously monitoring and analysing war crimes trials in Serbia and informing the public at home and abroad about them. The HLC has been filing criminal complaints against suspected perpetrators with the Office of the War Crimes Prosecutors (OWCP), and it has also been identifying witnesses and victims and encouraging them to give evidence in court, and thus contribute to achieving justice for past crimes.

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

This is the HLC's fifth report on the implementation of the National Strategy. A comprehensive assessment of the state implementation of the National Strategy in the preceding period can be found in the *Initial Report on the Implementation of the National Strategy for the Prosecution of War Crimes*, the *Second Report on the Implementation of the National Strategy for the Prosecution of War Crimes*, the *Third Report on the Implementation of the National Strategy for the Prosecution of War Crimes*, and the *Fourth Report on the Implementation of the National Strategy for the Prosecution of War Crimes*, which the HLC released and presented in 2017 and 2018.¹

¹ *Initial Report on the Implementation of the National Strategy for the Prosecution of War Crimes*, HLC, December 2017, available online on the HLC website at: http://www.hlc-rdc.org/wp-content/uploads/2017/12/Izvestaj_Strategija_I_eng.pdf; *Second Report on the Implementation of the National Strategy for the Prosecution of War Crimes*, HLC, June 2018, available on the HLC website at: http://www.hlc-rdc.org/wp-content/uploads/2018/07/Izvestaj_Strategija_2_ENG-ff.pdf; *Third Report on the Implementation of the National Strategy for the Prosecution of War Crimes*, HLC, December 2018, available on the HLC website at: www.hlc-rdc.org/?p=35908&lang=de; *Fourth Report on the Implementation of the National Strategy for the Prosecution of War Crimes*, HLC, June 2019, available on the HLC website at: <http://www.hlc-rdc.org/wp-content/uploads/2019/07/Fourth-Report-on-the-Implementation-of-the-National-Strategy-for-the-Prosecution-of-War-Crimes.pdf>. [All sources accessed on 6 November 2019].



As shown by the findings presented in this fifth report, no progress in war crimes prosecutions can be reported for the 44 months since the adoption of the National Strategy. The prosecutorial activities are continuing to show a downward trend. Namely, out of the total of 23 indictments that have been filed since the adoption of the National Strategy, 19 were transferred to the OWCP from B&H.² War crimes trials continue to be lengthy, the procedural rights of victims have not been strengthened, and the number of persons identified as missing has been decreasing slower than expected. As regards the attitudes towards war crimes and war crimes trials in Serbia, the past several months have been marked by the continued public promotion of convicted war criminals.

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 in order 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 23*,⁴

7

² The indictments raised since the adoption of the National War Crimes Prosecution Strategy on 20 February 2016: *Doboj, Ključ – Šljivari, Bratunac, Bosanska Krupa, *Ključ – Kamičak, *Ključ – Kamičak II, Sanski Most – Lušci Palanka, Caparde, Bosanska Krupa II, Ključ – Režovići, Bogdanovci, Kožuhe – Doboj, Brčko, Brčko II*, the indictment against Branko Branković, *Bratunac II, Brčko II, Ključ – Velagići, Gornje Nerodimlje, Sarajevo – Hrasnica, Zvornik-Standard*, **the indictment against Predrag Vuković and Kalinović. *The *Ključ – Kamičak* and *Ključ – Kamičak II* indictments have been merged. **The trial of Predrag Vuković has been merged with the trial of the *Čuška* Case. The cases arising from indictments other than those transferred from B&H: *Bogdanovci, Gornje Nerodimlje, Sarajevo – Hrasnica*, and the case against Predrag Vuković.

³ *National Strategy for the Prosecution of War Crimes* is available online at: http://www.tuzilastvorz.org.rs/upload/HomeDocument/Document__en/2016-05/p_nac_stragetija_eng.PDF [accessed on 6 November 2019].

⁴ *Action Plan for Chapter 23* is available on the Ministry of Justice official website at: <https://mpravde.gov.rs/files/Action%20plan%20Ch%2023.pdf>, accessed on: 6 November 2019.



relating to judicial reform and fundamental rights, and also to war crimes.⁵ The Action Plan in section 1.4. War Crimes, lays down a set of activities to be undertaken by all government authorities responsible for war crimes prosecution.

Revision of the Action Plan for Chapter 23

The Ministry of Justice of the Republic of Serbia in 2018 initiated the process of revising the *Action Plan for Chapter 23*. After civil society institutions and other stakeholders in February 2019 submitted their suggestions and comments on the first draft of the *Revised Action Plan for Chapter 23* (the first draft),⁶ the document was modified and submitted to the European Commission (EC) for opinion and comments.⁷ The EC submitted its comments on the first draft during the reporting period.⁸

In its general comments on Chapter 23, the EC stated, among other things, that their comments do not include their views on the fulfilment of activities from the original Action Plan,⁹ and that, in other words, the absence of comments on deleted activities from the original Action Plan should not be read as their endorsement of the action being successfully completed.¹⁰ As regards war crimes, the EC underlined that recommendations from peer review missions that are in the scope of the Action

⁵ *Report on the degree of alignment of Serbian legislation with the EU acquis (Screening Report)* is available online on the Ministry of Justice official website at: [https://www.mpravde.gov.rs/files/Screening-report-chapter-23-serbia%20Official%20\(3\).pdf](https://www.mpravde.gov.rs/files/Screening-report-chapter-23-serbia%20Official%20(3).pdf) [accessed on 6 November 2019].

⁶ See: *First draft of the Revised Action Plan for Chapter 23*, on the official website of the Ministry of Justice at: <https://www.mpravde.gov.rs/tekst/22159/prvi-nacrt-revidiranog-akcionog-plana-za-poglavlje-23.php> [accessed on 8 November 2019]; *Comments of the Humanitarian Law Center (HLC) on the first draft of the Revised Action Plan for Chapter 23* HlcIndexOut: 25-F136701, 8 February 2019. The HLC submitted a total of 22 comments on the first draft. Some of them concerned the activities that the first draft planned to delete, some proposed a revision of certain existing activities, and some proposed adding new activities to the Action Plan. Of the 22 comments submitted, 15 (or 68%) have been accepted.

⁷ *Prvi nacrt revidiranog AP PG23 izmenjen na osnovu komentara organizacija civilnog društva [First draft of the Revised AP Ch23 modified based on CSO comments]* is available on the official website of the Ministry of Justice at: <https://www.mpravde.gov.rs/tekst/26438/prvi-nacrt-revidiranog-ap-pg23-izmenjen-na-osnovu-komentara-organizacija-civilnog-drustva.php>, [accessed on 20 November 2019].

⁸ *EU Comments Chapter 23 Judiciary*, pp. 146-174.

⁹ *Chapeau comment for the draft Action Plans for Chapters 23 and 24*, p. 2.

¹⁰ *Ibid.*



Plan should be taken into account, making a specific reference to the peer reviews on war crimes.¹¹

As regards the EC comments about the judiciary, this report will focus on those concerning war crimes.¹² Particularly relevant in this respect is the comment which states that as the *National Strategy for the Prosecution of War Crimes* is due to expire in 2020, the drafting of a follow-up strategy or extending the period of implementation of the current one should be foreseen.¹³ Another important suggestion by the EC concerns the deletion of the sub-activities related to the drafting, public consultation, and implementation of the National Strategy. Since these activities have already been implemented, the EC suggests the monitoring of the effects of the implementation of the National Strategy as being the next step.¹⁴

With respect to the activity involving the establishment of a system of trainings and education in international humanitarian law, the EC suggests that this system should be funded from the budget of Serbia.¹⁵ As regards the reports which the OWCP is to prepare to indicate whether or not all war crimes allegations have been adequately investigated, and which, according to the current version of the draft Action Plan for Chapter 23, are to be released once a year,¹⁶ the EC suggests adding a number of criteria to ensure that these

11 *Ibid*, p. 3. A candidate country may request legal assistance under the TAIEX (Technical Assistance and Information Exchange instrument), which results in reports on the alignment of specific national laws and policies with EU standards. Missions made up of experts from EU Member States (peer-review missions) report on the functioning of specific sectors on the basis of an in-depth analysis. These reports are not public (as cited in *Why Do We Need the Priebe Report As Well? How to Reverse the Trend of State Capture in the Western Balkans*, Jelena Pejić, Sonja Stojanović Gajić, Belgrade Center for Security Policy, Belgrade, November 2018, p. 9, available at: <http://www.preugovor.org/Policy-Papers/1482/Why-Do-We-Need-the-Priebe-Report-As-Well.shtml>); see also: *Guidance Note on the Organisation of Rule of Law Peer-Review Missions*, European Commission, 15 July 2014, p. 4, available at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/taix-peer_review_0.pdf [all sources accessed on: 25 November 2019].

12 War crimes trials are part of the *Judiciary* section of the Action Plan for Chapter 23.

13 *EU Comments Chapter 23 Judiciary*, p. 146, Activity 1.4.1.1.

14 *Ibid*.

15 *Ibid*, p. 152, Activity 1.4.1.3. The trainings delivered since the adoption of the National Strategy have in most cases been funded by the European Commission and organised with the support from the OSCE Mission to Serbia or the IRMCT. See: *Fourth Report on the Implementation of the National Strategy for the Prosecution of War Crimes*, HLC, June 2019, p. 24; “Mechanism OTP delivered advanced training on investigating and prosecuting sexual and gender based violence”, News, 17 April 2019, available on the IRMCT website at: <https://www.irmct.org/en/news/mechanism-otp-delivered-advanced-training-investigating-and-prosecuting-sexual-and-gender-based> [accessed on 21 November 2019].

16 *Revised Action Plan for Chapter 23*, June 2019, Judiciary, p. 154, Activity 1.4.1.5.



reports are operational. This would include setting a timeframe within which all cases that are at investigation and pre-investigation stages are to be investigated.¹⁷

Even though the Ministry of Justice announced on its official website that it would launch a public consultation on the latest version of the draft revised *Action Plan for Chapter 23* (modified on the basis of comments received from civil society organisations), the consultation process had not been opened by the end of the reporting period.¹⁸ It should be underlined here that the ongoing revision of the *Action Plan for Chapter 23* does not affect the implementation of measures and activities foreseen in the National Strategy. Following the guidance provided in the Action Plan, the National Strategy set forth the activities that have to be undertaken to improve the efficiency of war crimes prosecutions. Implementation of the National Strategy is not supposed to stagnate on account of the ongoing revision of 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 offering its findings and an independent assessment of the state of implementation of the National Strategy in the form of *shadow reports*.¹⁹

This is the fifth report on the implementation of the National Strategy produced by the HLC. It features a brief overview of the current state of play, and covers the period from 1 June to 1 December 2019.

Methodology

The information used in preparing this report has been drawn from three main sources. The first source comprised the reports of governmental and international bodies, including the reports of the Working Body and the reports of the Chief Prosecutor and the President of the International Residual Mechanism for Criminal Tribunals submitted to the U.N. Security Council.²⁰ The second source included the information gathered through requests

¹⁷ *EU Comments Chapter 23 Judiciary*, p. 155, Activity 1.4.1.5.

¹⁸ See the section *Prvi nacrt revidiranog AP PG23 izmenjen na osnovu komentara organizacija civilnog društva*, at: <https://www.mpravde.gov.rs/tekst/26438/prvi-nacrt-revidiranog-ap-pg23-izmenjen-na-osnovu-komentara-organizacija-civilnog-drustva.php> [accessed on 20 November 2019].

¹⁹ *Decision of the Government of Serbia establishing a Working Body for monitoring the implementation of the National Strategy for the Prosecution of War Crimes* (Official Gazette of the Republic of Serbia no. 80 of 29 August 2017).

²⁰ The reports of the Chief Prosecutor and President of the International Residual Mechanism for Criminal Tribunals (IRMCT) to the U.N. Security Council are available at: <http://www.irmct.org/en/basic-documents/reports> [accessed on 6 November 2019].



for access to information of public importance from the authorities identified in the National Strategy as responsible for carrying out the activities set forth in the National Strategy. And finally, since the HLC monitors all war crimes trials conducted by the Higher Court in Belgrade and the Court of Appeals in Belgrade, the HLC's war crimes trials monitoring reports provided the third source of information for the present report.²¹

Obstacles faced by the HLC in compiling the Report on the Implementation of the National Strategy for the Prosecution of War Crimes

In preparing this report, the HLC found itself confronted with a startling paucity of information regarding the state of implementation of the National Strategy.

One obstacle to 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. As a consequence, its reports had been constantly falling behind schedule.

By the time the HLC had finalised its work on this report, the Working Body had released six reports, which, in combination, cover the period from 20 February 2016 to 31 March 2019.²² The sixth and latest Working Body report was released on 19 June 2019.²³ The Working Body's reports, besides arriving late, have, for the most part,

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21 See section *Publications*, on the HLC official website: <http://www.hlc-rdc.org/?cat=223&lang=de> and section *List of Cases* at: <http://www.hlc-rdc.org/?cat=234&lang=de>. [Both sources accessed on 7 November 2019].

22 The National Strategy stipulates that the Working Body will formulate conclusions and recommendations regarding its 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 as regards 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 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; *Report No. 5 on the Implementation of the National Strategy for the Prosecution of War Crimes* was adopted on 28 March 2019; *Report No. 6 on the Implementation of the National Strategy for the Prosecution of War Crimes* was adopted on 19 June 2019. All these reports are available on the official website of the Ministry of Justice at: <https://www.mpravde.gov.rs/tekst/17978/izvestaj-o-sprovođenju-nacionalne-strategije-za-procesuiranje-ratnih-zlocina.php> [accessed on 25 November 2019].

23 "Usvojen šesti izveštaj o sprovođenju Nacionalne strategije za procesuiranje ratnih zločina" [*Report No. 6 on the Implementation of the National Strategy for the Prosecution of War Crimes* has been approved],



contained insufficient information, and their findings have often not corresponded with the activities as they were described in the National Strategy. This makes them difficult to read and understand, even for the professional community closely following domestic war crimes trials.

As the process of gathering information for a report also entails requesting information from the competent authorities under the Law of Free Access to Information of Public Importance, their restrictive interpretation of their obligation to supply information also posed a barrier to access to information. The Ministry of Justice, for instance, in response to several of the HLC's enquiries directly concerning National Strategy implementation, merely stated that "they had no information", or "they had no documents about activities", or "they had no documents available", or "they had no documents."²⁴ The Ministry of the Interior, for its part, replied to a request for information made on 22 May 2019²⁵ as late as 6 August 2019,²⁶ after the *Fourth Report on the Implementation of the National Strategy*, for which the information had been needed, had already been released and presented to the public.²⁷

An almost complete absence of coverage of National Strategy implementation by the Serbian press, and the absence of outreach activities by the institutions responsible for carrying out activities foreseen in the strategy, were among the reasons why the information about the National Strategy implementation was hard to find. Beside of that,

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News, 19 June 2019, available (in Serbian) on the official website of the Ministry of Justice at: <https://www.mpravde.gov.rs/vest/24794/usvojen-sesti-izvestaj-o-sprovođenju-nacionalne-strategije-zaprosuiranje-ratnih-zlocina.php> [accessed on 25 November 2019].

24 Ministry of Justice's reply to an HLC request for access to information of public importance of 15 November 2019 (HLC incoming mail register: HLCIndexIn: 25-F139822, 19 November 2019). The request included, among other things, the following queries: Have any activities been undertaken with a view to organising regional prosecutorial conferences?; When will amendments to relevant laws and regulations be made in order to bring the definition of the term "victim" into conformity with the definitions provided in international human rights treaties, and to effectively apply minimum standards on the rights, support and protection of victims of crime/injured parties enshrined in Directive 2012/29/EU?

25 Request for access to information of public importance (HLCIndexIn: 170-F137822) of 22 May 2019.

26 Ministry of the Interior's reply (02/4 no. 072/1-483/19-4) of 6 August 2019 to an HLC request for access to information of public importance.

27 *The HLC presented its Fourth Report on the Implementation of the National Strategy for the Prosecution of War Crimes*, HLC, news, 1 August 2019, available at: <http://www.hlc-rdc.org/?p=36825&lang=de> [accessed on 22 November 2019].



the official websites of the competent institutions only offer scanty information when it comes to National Strategy implementation progress.

During the preparation of this report, unlike the previous ones, the quarterly reports on the implementation of the Action Plan for Chapter 23 were not consulted. This is because there have not been any. The last quarterly report was published in July 2018.²⁸ No regular quarterly reports have been published since, but only the Semi-annual Report of the Negotiating Group for Chapter 23, covering the third and fourth quarter of 2018.²⁹

As a result of the above-described situation, where information about the progress of National Strategy implementation is becoming increasingly unavailable and difficult to access, preparation of a shadow report is becoming increasingly difficult. This undermines the transparency of the implementation of the strategy as a document of national importance, while reducing the room for critical appraisal and assessment, qualitative and quantitative, of the implementation of measures and activities set forth in the strategy.

Improving society's attitude towards war crimes trials i.e. providing easier access to information on war crimes trials³⁰, is one of the objectives of the National Strategy. However, the above-described difficulties faced in monitoring National Strategy implementation show that the competent institutions have not come any closer to achieving it.

The HLC reiterates that this objective cannot be achieved without the work of the competent authorities being more transparent, and more meaningful communication being achieved between them and civil society members.

13

28 *Report No. 2/2018 on Implementation of the Action Plan for Chapter 23*, July 2018, is available on the official website of the Ministry of Justice at: <https://www.mpravde.gov.rs/files/Izve%C5%A1taj%20br.%202-2018%20o%20sprovo%C4%91enju%20Akcionog%20plana%20za%20Poglavlje%2023.pdf> [accessed on 3 November 2019].

29 **Note:** The *Semi-annual report of the Negotiating Group for Chapter 23* is available in the English language only at the Ministry of Justice's website: <https://www.mpravde.gov.rs/tekst/26471/polugodisnji-izvestaj-pregovaracke-grupe-za-poglavlje-23-za-treci-i-cetvrti-kvartal-2018-godine.php>, [accessed on 22 November 2019]; Ministry of Justice's reply (25-F137604, of 24 April 2019) to an HLC request for access to information of public importance.

30 *National Strategy for the Prosecution of War Crimes*, pp. 5, 38, Area 8. Improving Society's Attitude to the Issue of War Crimes Trials, Objective 1. Easier access to information on war crimes trials. The National Strategy is available in English on the official website of the Office of the War Crimes Prosecutor at: http://www.tuzilastvorz.org.rs/upload/HomeDocument/Document__en/2016-05/p_nac_stragetija_eng.PDF [accessed on 20 November 2019].



I. Case prioritisation based on 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 2018.³¹

The previous HLC reports on the implementation of the National Strategy pinpointed the major shortcoming of the Prosecutorial Strategy – the absence of clear criteria for the OWCP to apply in prioritising war crimes cases for prosecution in the coming period.³² Because there are no criteria against which to evaluate case prosecution, it is not possible to track the progress of the implementation of the Prosecutorial Strategy.

By looking at the indictments filed during the reporting period, the HLC can only repeat its finding from previous reports, that the OWCP is continuing the practice of filing indictments only in the less complex cases. Both the indictments filed and confirmed between 1 June and 1 December 2019, that concern cases involving only one low-ranking suspect, show that this is the case.³³ Besides, as in the previous reporting periods, the case prosecution is largely based on indictments that have been transferred to the OWCP from B&H, as evidenced by the fact that one of the two indictments filed by the OWCP in this reporting period is based on a case transferred from B&H.

31 *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 at: http://www.tuzilastvorz.org.rs/upload/HomeDocument/Document__en/2018-05/strategija_trz_eng.pdf [accessed on 20 November 2019].

32 *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/Komentari_Fonda_za_humanitarno_pravo_na_Nacrt_Tuzilacke_strategije_za_istragu_i_gonjenje_ratnih_zlocina_u_Republici_Srbiji_2018-2023_14.03.2.pdf; *Serbia 2019 Progress Report*, p. 20, available on the official website of the Ministry of European Integration at: http://www.mei.gov.rs/upload/documents/eu_dokumenta/godisnji_izvestaji_ek_o_napretku/Serbia_2019_Report.pdf [both sources accessed on 20 November 2019].

33 The indictment against *Predrag Vuković and the indictment in the *Kalinovik* Case. *The case against Predrag Vuković has been merged with the *Čuška* Case.



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

The OWCP raised two indictments for war crimes against two individuals³⁴, and issued one order to conduct an investigation over the reporting period.³⁵ There was a total of 2,557 cases at the pre-investigation stage and 15 cases at the investigation stage.³⁶ The OWCP decided to work on 2,030 cases which it had taken over from prosecutors' offices of general jurisdiction.³⁷

Given such a high number of cases at investigation and pre-investigation stages, and bearing in mind that over the last six months only two 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.**

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

Trials in 19 cases³⁸ were held over the reporting period. As outlined above, two indictments were raised in the same period.³⁹ The Higher Court in Belgrade handed down

15

34 See sub-section *Indictments* in section *Cases* on the official website of the Office of the War Crimes Prosecutor at: <https://www.tuzilastvorz.org.rs/en/cases/indictments> [accessed on 5 December 2019].

35 Tužiteljstvo BiH zatražilo izručenje Osmana Osmanovića [*The Prosecutor's Office of BiH requests the extradition of Osman Osmanovic*], 27 November 2019, *NI*, available at: <http://ba.n1info.com/Vijesti/a394112/Tuziteljstvo-BiH-zatrailo-izrucenje-Osmana-Osmanovica.html> [accessed on 06 December 2019].

36 OWCP's reply (PL.br. 29/19, of 25 November 2019) to an HLC request for information of public importance.

37 *Ibid.* The latest report of the Working Body states that all pending war crimes cases of the domestic courts of general jurisdiction have been registered and taken over, see: *Report No. 6 on the Implementation of the National Strategy for the Prosecution of War Crimes*, June 2019, p. 6.

38 Lovas, Čuška, Bratunac, Bratunac II, Srebrenica – Kravica, Bosanska Krupa, Ključ Kamičak, Sanski Most – Lušci Palanka, Ključ – Režovići, Bosanska Krupa II, Štrpci, Doboj Kožuhe, Bogdanovci, Brčko, Brčko II, Ključ Velagići, Sarajevo Hrasnica, Zvornik-Standard, and Trnje. 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> [accessed on 22 November 2019].

39 See section *Press Releases* on the official website of the Office of the War Crimes Prosecutor official website: <http://www.tuzilastvorz.org.rs/en/news-and-announcements/announcements> and section *List of Cases* at the HLC's website: <http://www.hlc-rdc.org/?cat=234> [both sources accessed on 22 November 2019].



five first-instance rulings in war crimes cases.⁴⁰ The War Crimes Department of the Court of Appeal in Belgrade issued four judgments.⁴¹

As already pointed out in the previous reports, the increase in the number of indictments resulting in final judgements indicator does not accurately capture the degree of efficiency of the work of the authorities responsible for war crimes prosecution.

IV. Shorter average duration of war crimes proceedings

There were 43 days of trial for all ongoing war crimes cases **during the reporting period, with 13 trial days pushed back for various reasons.**⁴² Trial hearings within first instance proceedings are, on average, scheduled once a month.⁴³

When it comes to this indicator, the findings presented in this report show that no results have been achieved that would indicate significant improvement in these statistics.

⁴⁰ In the cases of *Lovas*, *Bratunac*, *Brčko*, *Ključ-Rejzovići* and *Bosanska Krupa II*; see: *On the verdict of the Higher Court in Belgrade in the Lovas Case*, HLC, 21 June 2019, available at: <http://www.hlc-rdc.org/?p=36716&lang=de>; *Rape victim referred to civil proceeding for damages*, press release, HLC, 25 September 2019, available at: <http://www.hlc-rdc.org/?p=36916&lang=de>; *On the verdict for the rape of a Bosniak women in Brčko*, press release, HLC, 20 September 2019, available at: <http://www.hlc-rdc.org/?p=36910&lang=de> [all sources accessed on 12 November 2019].

⁴¹ See section: *Donete odluke – ratni zločin novembar 2019, Dragan Bajić i dr, 13. novembar 2019*, (trećestepena odluka u predmetu *Ključ-Kamičak*) [*Decisions handed down in war crimes cases, November 2019, Dragan Bajić et. al., 13 November 2019 (third-instance decision in Ključ-Kamičak)*] at: <http://www.bg.ap.sud.rs/lt/articles/sluzba-za-odnose-sa-javnoscu/aktuelni-predmeti/ratni-zlocini/rz-donete-odluke/> [accessed on 13 November 2019].

⁴² A chronological list of trials in 2018 is available at: <http://www.hlc-rdc.org/?cat=234&lang=de> [accessed on 22 November 2019].

⁴³ *Ibid.*



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 (presented in May 2019) notes that "concerning procedural rights, the legal framework remains only partially aligned with the *acquis*."⁴⁴

The report further states that "with respect to the support provided to and the protection of witnesses, there is a delay in adopting amendments related to the implementation of urgent measures for witness protection," and that "there is a further delay in implementing most of the recommendations of the analysis of the Witness Protection Unit carried out in 2016."⁴⁵ "Steps already taken to increase the capacity of the Witness Protection Unit within the Ministry of the Interior, along with new rules and procedures for selecting staff, are expected to improve its work," the report concludes.

The report also notes that a new Law on Free Legal Aid was adopted in November 2018, to be implemented as of October 2019⁴⁶, and that the accessibility of free legal aid to the most vulnerable groups should be monitored.

With respect to the *National Strategy on the Rights of Victims and Witnesses of Crime*, the report notes that it is in course of being prepared.⁴⁷

17

⁴⁴ *Serbia 2019 Progress Report*, p. 32, available on the official website of the Ministry of European Integration at: http://www.mei.gov.rs/upload/documents/eu_dokumenta/godisnji_izvestaji_ek_o_napretku/Serbia_2019_Report.pdf [accessed on 13 November 2019].

⁴⁵ *Ibid.*

⁴⁶ Law on Free Legal Aid (Official Gazette of the Republic of Serbia no. 87/2019), available (in Serbian) at: <https://www.paragraf.rs/propisi/zakon-o-besplatnoj-pravnoj-pomoci.html> [accessed on 13 November 2019].

⁴⁷ The *Draft National Strategy on the Rights of Victims and Witnesses of Crime* is available at: <https://www.mpravde.gov.rs/files/Working%20Document%20-%20NATIONAL%20STRATEGY%20ON%20THE%20RIGHTS%20OF%20VICTIMS%20AND%20WITNESSES%20OF%20CRIME.pdf> [accessed on 25 November 2019].



VI. Decrease in the number of missing persons whose fate has not been clarified

According to data obtained from the International Committee of the Red Cross (ICRC), **as of November 2019, 10,090** of the individuals who went missing from the armed conflicts in Croatia, B&H and Kosovo are still unaccounted for.⁴⁸ In November 2018 their number stood at 10,261, according to the same source.⁴⁹

Judging by the rate at which the numbers of missing persons are decreasing, it can be concluded that the National Strategy has failed to bring about significant improvement with respect to efficiency in tracing missing persons.

In its previous reports, the HLC has already pinpointed the main causes of the ineffectiveness of the search for missing persons, namely: the lack of a firm political will to make the search for missing persons more effective; the inadequate capacity for conducting the search; the lack of action on the part of the prosecuting authorities in the search for missing persons and in the prosecution of those responsible for their disappearance; and impeded access to archives held by state authorities.⁵⁰

18

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

Almost all the cases that have been opened since the adoption of the National Strategy are a product of regional judicial cooperation. At least 19 of the 23 indictments that have been raised since the adoption of the National Strategy have not been the result of the OWCP's own investigation but transferred to the OWCP from B&H.⁵¹ As in previous

48 International Committee of the Red Cross data, HlcIndexIn: 25-F140061, 9 December 2019.

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

50 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 [accessed on 15 November 2019].

51 The indictments brought since the adoption of the National Strategy for the Prosecution of War Crimes are as follows: *Doboj, Ključ – Šljivari, Bratunac, Bosanska Krupa, *Ključ – Kamičak, *Ključ – Kamičak II, Srebrenica – Kravica, Sanski Most – Lušci Palanka, Caparde, Bosanska Krupa II, Ključ – Rejzovići, Bogdanovci, Kožuhe – Doboj, Brčko*, indictment against Branko Branković, *Bratunac II, Brčko II, Ključ Velagići, Gornje Nerodimlje, Sarajevo-Hrasnica, Zvornik-Standard, *case against Predrag*



reporting periods, the OWCP has prosecuted only the simpler cases, as is evidenced by its last two indictments which charge just two suspects.

The overwhelming number of war crimes cases not yet prosecuted indicates that there is still plenty of room for improvement in regional judicial cooperation. Moreover, the absence of cases against high-level suspects among the cases shared through regional cooperation suggests there is a lack of trust between prosecutors' offices in the region. The HLC therefore believes that this indicator is not capable of reflecting the quality of the cases transferred or of the regional judicial cooperation itself.

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

VIII. Reports of the Chief Prosecutor and President of the ICTY to the U.N. Security Council⁵²

In their latest reports and addresses to the U.N. Security Council in July 2019, both the Chief Prosecutor and President of the IRMCT expressed concern over the denial of crimes and glorification of convicted war criminals, adding that, since the closure of the ICTY the domestic courts have been entrusted with processing war crimes.

19

Chief IRMCT Prosecutor Serge Brammertz noted that the anniversary of the Srebrenica genocide was again used by some to deny it, adding that “a government minister called

Vuković and *Kalinovik*. * *Ključ – Kamičak* and *Ključ – Kamičak II* have been merged; the case against Predrag Vuković has been merged with the *Čuška* Case which opened in 2010. The cases in which the indictments were not transferred from B&H are *Bogdanovci*, *Gornje Nerodimlje*, *Sarajevo-Hrasnica* and indictment against Predrag Vuković.

52 After the closure of the ICTY on 31 December 2017, the International Residual Mechanism for Criminal Tribunals (IRMCT) assumed a number of its functions, including: conducting and finalising all appeals proceedings, review proceedings, retrials, trials for contempt and false testimony, protection of victims and witnesses, supervision of sentence enforcement, assistance to national judiciaries, monitoring of cases referred by the ICTY to national courts, and preservation and management of archives. For more information on the mandate of the IRMCT see the official website of the IRMCT at: <http://www.irmct.org/en/about/functions> [accessed on 21 November 2019].



the Srebrenica genocide false, while a Member of Parliament congratulated Ratko Mladic for the genocide, which he said was a brilliant military operation.”⁵³

With respect to efforts to achieve more justice for more victims, Prosecutor Brammertz said that in the former Yugoslavia, thousands of cases still need to be processed by the national courts.⁵⁴

Judge Carmel Agius, President of the IRMCT, underlined that “all those who are committed to the rule of law have a vital part to play in the fight against impunity - and particularly now, when there is a resurgence in genocide denial and revisionism in both the former Yugoslavia and Rwanda. This includes by defending judicial processes and pronouncements, and speaking out against those who try to distort the truth as established by international and domestic courts [...] they must be reminded that the domestic courts have been entrusted with continuing to carry out these functions, and not politicians or individuals.”⁵⁵

(For more information see the sections discussing cooperation with the International Criminal Tribunal for the former Yugoslavia and improving society’s attitude towards war crimes trials further below.)

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

As during the reporting period no governmental or non-governmental organisation has published a report assessing war crimes trials or addressing these subjects, the HLC refers

53 “IRMCT Prosecutor Brammertz’s address to the UN Security Council, New York, 17 July 2019”, p. 4, available on the official website of the IRMCT at: https://www.irmct.org/sites/default/files/statements-and-speeches/PR214e%20ANNEX%20Prosecutor%27s%20remarks%20before%20the%20UNSC_1.pdf [accessed on 21 November 2019].

54 *Ibid*, p. 3; see also: “Prosecutor Serge Brammertz addresses the United Nations Security Council”, news, 17 July 2019, available on the official website of the IRMCT at: <https://www.irmct.org/en/news/19-07-17-prosecutor-serge-brammertz-addresses-united-nations-security-council> [accessed on 21 November 2019].

55 “Address to the UN Security Council by Judge Carmel Agius, President, International Residual Mechanism for Criminal Tribunals”, 17 July 2019, p. 4, available on the official website of the IRMCT at: https://www.irmct.org/sites/default/files/statements-and-speeches/PR213e_ANNEX%20_Presidents_remarks_UNSC.pdf [accessed on 21 November 2019].



readers to the findings made by *Amnesty International*, *Human Rights Watch* and the U.S Department of State, which were presented in the previous HLC report, published in July 2019.⁵⁶

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

The National Strategy for the Prosecution of War Crimes is organised 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.

21

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

⁵⁶ *Fourth Report on the Implementation of the National Strategy for the Prosecution of War Crimes*, HLC, June 2019, p. 19.



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 prioritisation 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.

22

With respect to the implementation of the measures to improve the efficiency of the OWCP's work, the OWCP did not conclude any plea agreement or issue any order for the seizure or confiscation of proceeds from crime during the reporting period.⁵⁷

Aside from the continuing participation of OWCP members in professional development programmes and expert meetings, no further strengthening of the OWCP capacity can be reported for the last six months.⁵⁸

57 OWCP's reply (PI.no. 29/19 of 25 November 2019) to an HLC request for access to information of public importance.

58 **Note:** There were training courses for deputy prosecutors and prosecutorial assistants at the OWCP during previous years as well. This finding refers to the training courses delivered in the context of implementation of the activities set forth in the National Strategy for the Prosecution of War Crimes. See the section of this report which discusses strengthening the capacity of the OWCP (pp. 24-25); OWCP's reply (PI.no. 28/19 of 20 November 2019) to an HLC request for access to information of public importance, p. 2.



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

As the HLC has already pointed out in its *Comments on the Draft Prosecutorial Strategy*⁵⁹, and previous reports on the implementation of the National Strategy⁶⁰, the Prosecutorial Strategy has a number of methodological flaws.⁶¹ As from the text of the Prosecutorial Strategy it is impossible to precisely identify which activities the OWCP has to carry out, and the time limits within which they must be completed, **there are no criteria against which to assess whether or not case a prosecution is being conducted in accordance with the Strategy.**

On top of that, the absence of key performance indicators from the Strategy – both quantitative (e.g. number of convictions, number of indictments raised against high-ranking suspects, number of indictments in cases involving a higher number of victims), and qualitative (e.g. enhanced regional judicial cooperation) - makes the monitoring and evaluation of the state of implementation of the Prosecutorial Strategy virtually impossible. Nonetheless, judging by the indictments raised in the reporting period and the complexity of cases selected for prosecution, it may be concluded that the OWCP has continued its practice of bringing indictments only in the less complex cases.

23

Keeping records of acts that may qualify as war crimes and records of unresolved cases

According to the latest available report of the Working Body and the MoI's reply to an HLC request for information of public importance concerning this matter, the WCIS has delivered to the OWCP the material/records on individual and mass crimes committed during the armed conflicts in the territory of the former Yugoslavia, and the updating of the material is still in progress.⁶² This was the only information available about this activity.

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

60 *Second Report on the Implementation of the National Strategy for the Prosecution of War Crimes*, HLC, June 2018, pp. 21-25.

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

62 *Report No. 6 on the Implementation of the National Strategy for the Prosecution of War Crimes*, June 2019, p. 4; Ministry of the Interior's reply (02/4 no. 072/1-483/19-4 of 06 August 2019) to an HLC request for access to information of public importance, p. 1.



Taking measures to improve the efficiency of the Office of the War Crimes Prosecutor

The first measure envisaged in the National Strategy that is expected to improve the efficiency of the Office of the War Crimes Prosecutor stipulates that the OWCP should use its existing capacity in line with the priorities defined in the Prosecutorial Strategy.⁶³ But as the Prosecutorial Strategy does not establish clear criteria that could guide the OWCP in prioritising war crimes cases for prosecution in the coming period, **it is not possible to monitor and measure the increase in the efficiency of the OWCP's work against this parameter.**⁶⁴

As regards other measures envisaged in the National Strategy⁶⁵, the OWCP **did not conclude any plea agreement or issue any order for the seizure or confiscation of proceeds from crime during the reporting period.**⁶⁶

Strengthening the capacity of the Office of the War Crimes Prosecutor

Over the last six months, the OWCP has not hired any additional deputy war crimes prosecutors or prosecutorial assistants.⁶⁷ As in the preceding reporting period, there are nine deputy war crimes prosecutors, besides the prosecutor for war crimes, as well as eight prosecutorial assistants in the OWCP.⁶⁸

The HLC notes that the OWCP should have 11 deputy war crimes prosecutors, as required by a decision of the State Prosecutorial Council which entered into force in early September 2018.⁶⁹

63 *National Strategy for the Prosecution of War Crimes*, p. 18.

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

65 *National Strategy for the Prosecution of War Crimes*, p. 18.

66 OWCP's reply (PI.no. 29/19 of 25 November 2019) to an HLC request for access to information of public importance.

67 OWCP's reply (PI.br. 28/19 of 20 November 2019) to an HLC request for access to information of public importance; see: *Fourth Report on the Implementation of the National Strategy for the Prosecution of War Crimes*, HLC, June 2019, p. 24.

68 OWCP's reply (PI.br. 28/19 of 20 November 2019) to an HLC request for access to information of public importance, p. 3.

69 Decision on the number of deputy public prosecutors (Official Gazette of the Republic of Serbia nos. 106/2013, 94/2015, 114/2015, 80/2016, 39/2018, 68/2018, and 36/2019.), Article 7, available

Continuing training

During the reporting period, deputy war crimes prosecutors and prosecutorial assistants continued undergoing professional development training courses. One deputy war crimes prosecutor attended the conference titled “Pritvor – regionalna krivična zakonodavstva, iskustva u primeni i mere unapređenja” [Pre-trial detention – criminal legislation in countries in the region, their experiences with application of pre-trial detention, and measures for improvement]. Another deputy war crimes prosecutor participated in the 59th regular annual symposium of the Serbian Association for Criminal Law and Practice held in November.⁷⁰

Three deputy war crimes prosecutors made a study visit to the IRMCT and the International Criminal Tribunal in The Hague in early September. One prosecutorial assistant attended an investigator course organised by the Institute for International Criminal Investigation from The Hague.⁷¹ The study visit and participation in the course were organised as part of the project “Support to Monitoring of National War Crimes Trials” (Phase II), led by the OSCE Mission to Serbia.⁷²

Furthermore, the War Crimes Prosecutor and two deputy war crimes prosecutors participated in a regional meeting of judges, prosecutors and attorneys dealing with war crimes cases. The topic of the meeting was “Mutual admissibility of evidence in the countries and jurisdictions in the region, and admissibility of IRMCT evidence”.⁷³ The meeting was organised jointly by the UNDP and the OSCE Mission to Serbia.

25

Improving the position and efficiency of the War Crimes Investigation Service (WCIS)

In early February 2018, the War Crimes Investigation Service moved to larger quarters, with adequate working space and storage space for case files in paper form, as indicated in the MoI’s reply to the relevant HLC request for information. The MoI also stated in the

(in Serbian) at: <http://www.pravno-infosistem.com/SlGlasnikPortal/eli/rep/sgrs/pravosudje/odluka/2013/106/2/reg> [accessed on 28 November 2019].

70 OWCP’s reply (Pl.no. 28/19 of 20 November 2019) to an HLC request for access to information of public importance, p. 2.

71 *Ibid.*

72 *Ibid.*

73 *Ibid.*



reply that there was no need for further measures in that respect, because with the new premises the optimal position and capacity of the WCIS had been ensured.⁷⁴

Given that the Working Body has not published any report on National Strategy implementation since 19 June 2019, and that no reports were published on the implementation of the Action Plan for Chapter 23 during the reporting period, the only information available regarding this particular activity is that obtained in the late MoI's reply to a request for information that the HLC made when preparing the previous (fourth) report.⁷⁵

2. TRIALS

Objective 1: Improved efficiency of trials for war crimes, by ensuring continuity in the composition of the judicial chambers.

Objective 2: Harmonised 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.

There were no changes in the composition of the chambers of the War Crimes Department of the Higher Court in Belgrade.⁷⁶ Over the last six months, judges of the War Crimes Departments of the Higher Court and the Court of Appeals in Belgrade have continued attending continuous training programmes.⁷⁷

74 Ministry of the Interior's reply (02/4 no. 072/1-483/19-4, of 06 August 2019) to an HLC request for access to information of public importance, p. 1.

75 Request for access to information of public importance (HLCIndexIn: 170-F137822), of 22 May 2019; Ministry of the Interior's reply to (02/4 no. 072/1-483/19-4, of 06 August 2019) to an HLC request for access to information of public importance.

76 See section *List of Cases* at: <http://www.hlc-rdc.org/?cat=234&lang=de> [accessed 25 November 2019].

77 **Note:** Trainings were provided for judges and judicial assistants of the War Crimes Departments of the Court of Appeal in Belgrade and the Higher Court in Belgrade during previous years as well. This finding refers to the training courses delivered in the context of implementation of the activities set forth in the National Strategy for the Prosecution of War Crimes.



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

Since the National Strategy was adopted, there have been no instances of judges being transferred between departments before the expiry of their six-year term.⁷⁸

In view of the fact that such transfers did take place in the past, the continuity in the composition of judicial chambers is a positive development.

In November 2019, Judge Siniša Vazić retired from the bench upon reaching the mandatory retirement age.⁷⁹

Harmonisation of case law among all Courts and War Crimes Departments in former Yugoslavia through the establishment of a regional war crimes cases database

In response to a HLC enquiry about the establishment of a regional war crimes cases database, the OWCP stated as follows: In September 2018, within the framework of the fourth regional consultations held under the project “Enhancing Regional Cooperation in the Processing of War Crimes and the Search for Missing Persons (2017-2019)“, implemented with the support of the UNDP, Serbia’s War Crimes Prosecutor initiated the establishment of a common regional database of war crimes cases that have been opened as a result of regional judicial cooperation.⁸⁰

As the OWCP said exactly the same thing when asked about this matter during the preparation of the Third Report on the Implementation of the National Strategy for the Prosecution of War Crimes⁸¹, and as no further and more detailed information is available

27

78 See *Report on War Crimes Trials in Serbia during 2014 and 2015*, pp. 17–19, at: http://www.hlc-rdc.org/wp-content/uploads/2016/03/Report_on_war_crimes_trials_in_Serbia_during_2014_and_2015.pdf [accessed on 24 November 2019].

79 “Apelacioni sud u Beogradu nastavlja svoj rad bez četvero sudija kojima je prestala sudijska funkcija usled navršenog radnog veka” [Court of Appeal in Belgrade continues its work without four judges who have retired from the bench], press release, 28 November 2019, available on the official website of the Court of Appeal in Belgrade at: <http://www.bg.ap.sud.rs/lt/articles/sluzba-za-odnose-sa-javnoscju/vesti-i-saopstenja/> [accessed on 28 November 2019].

80 OWCP’s reply (PI.no. 28/19 of 20 November 2019) to an HLC request for access to information of public importance, p. 1.

81 OWCP’s reply (PI.no. 25/18 of 5 November 2018) to an HLC request for access to information of public importance, p. 2.



regarding this activity, it may be inferred that no progress has been made over the last year towards establishing the database.⁸²

Continuing improvement of expertise of judicial office holders and staff engaged in war crimes cases

Judges of the War Crimes Department of the Higher Court in Belgrade also took part in the study visit to the IRMCT and the International Criminal Tribunal in The Hague.⁸³ The visit was organised as part of the project “Support to Monitoring of National War Crimes Trials” (Phase II), implemented by the OSCE Mission to Serbia.⁸⁴

In addition, the judges handling war crimes cases participated in the meeting “Mutual admissibility of evidence in the countries and jurisdictions in the region, and admissibility of IRMCT evidence.”⁸⁵ The meeting was organised jointly by the UNDP and the OSCE Mission to Serbia.⁸⁶

82 See: *Third Report on the Implementation of the National Strategy for the Prosecution of War Crimes*, HLC, December 2018, p. 29.

83 According to Humanitarian Law Centre information.

84 The information about who organised the study visit is found on page 2 of OWCP’s reply PI.no. 28/19 of 20 November 2019 to an HLC request for access to information of public importance.

85 *Ibid.*

86 *Ibid.*



PROTECTION OF WITNESSES AND VICTIMS

Objective 1: Improved normative framework for effective functioning of the witness protection system in war crimes proceedings in Serbia.

Objective 2: Enhanced institutional capacity for witness protection in war crimes proceedings.

Objective 3: Improved position of witnesses and victims during the criminal proceedings through consistent application of procedural disciplinary measures.

Objective 4: Enhanced cooperation of state bodies involved in the witness protection system.

When it comes to the activities aimed at improving protection for victims and witnesses, it is necessary to point out the difficulties in assessing the reforms made in this area.⁸⁷ Because the recommendations of the analysis of the position and needs of the Witness Protection Unit (WPU), which was carried out in 2016, have never been published, it is not possible to assess whether there has been any improvement in the institutional capacities for protection of witnesses or cooperation between the state authorities involved in the witness protection system.⁸⁸

Activities involving the consistent application of the provisions of the CPC⁸⁹ that regulate the sanctioning of participants in proceedings who violate procedural rules, are carried out continuously.⁹⁰

⁸⁷ See: *Initial Report on the Implementation of the National Strategy for the Prosecution of War Crimes*, HLC, December 2017, pp. 37-40; *Second Report on the Implementation of the National Strategy for the Prosecution of War Crimes*, HLC, June 2018, p. 32; *Third Report on the Implementation of the National Strategy for the Prosecution of War Crimes*, HLC, December 2018, pp. 30-33; *Fourth Report on the Implementation of the National Strategy for the Prosecution of War Crimes*, HLC, June 2019, pp. 31-33.

⁸⁸ Analysis of the position and needs of the Protection Unit is a highly confidential document, see: *Initial Report on the Implementation of the National Strategy for the Prosecution of War Crimes*, HLC, December 2017, p. 39.

⁸⁹ Criminal Procedure Code (Official Gazette of the RS, nos. 46/06, 47/09 and 122/08), Article 102 and Articles 369-374.

⁹⁰ State Prosecutorial Council's reply (PI 40/19) of 22 November 2019 to an HLC request for access to information of public importance, p. 2; Higher Court in Belgrade's reply (Su II- 17a no. 430/19 of 29 November 2019) to an HLC request for access to information of public importance, p. 1.



Procedural measures for witness protection

Protection measures applied during criminal proceedings encompass measures to protect the integrity of witnesses, including the most vulnerable witnesses, and witnesses who face risks as a result of their giving evidence in court.⁹¹ The National Strategy requires the criminal chambers to apply consistently the provisions of the CPC regulating the sanctioning of the participants in proceedings who violate courtroom conduct rules, particularly if they attack the integrity of witnesses or victims.⁹²

In its previous reports, the HLC has reported several instances of disruption of the order of the courtroom through misbehaviour, which has resulted in fines, and also situations where inappropriate remarks made during the trial provoked reactions from the judges presiding over the chambers.⁹³

There were no instances of misbehaviour in the courtroom over the reporting period.⁹⁴ The State Prosecutorial Council has not received any notification from the War Crimes Departments of the Higher Court and Court of Appeal in Belgrade concerning reprimands issued pursuant to Article 374 of the Criminal Procedure Code (CPC), for persons acting in an untimely manner or inadequately, thus causing delays in the proceedings.⁹⁵ The judges handling war crimes cases have not been applying the provisions of the CPC concerning the sanctioning of participants in the proceedings who misbehave in the courtroom.⁹⁶

30

91 Criminal Procedure Code (Official Gazette of the RS, nos. 46/06, 47/09 and 122/08), Articles 102-111; *Ten years of war crimes prosecution in Serbia – Contours of Justice*, HLC, 2014, p. 62.

92 *National Strategy for the Prosecution of War Crimes*, p. 23; Criminal Procedure Code (Official Gazette of the RS, nos. 46/06, 47/09 and 122/08), Articles 102-111.

93 *Third Report on the Implementation of the National Strategy for the Prosecution of War Crimes*, HLC, December 2018, pp. 31-32; *Fourth Report on the Implementation of the National Strategy for the Prosecution of War Crimes*, HLC, June 2019, pp. 32-33.

94 See section *List of cases* at: <http://www.hlc-rdc.org/?cat=234&lang=de>, [accessed on 2 December 2019].

95 State Prosecutorial Council's reply (PI 40/19 of 22 November 2019) to an HLC request for access to information of public importance, p. 2.

96 Higher Court in Belgrade's reply (Su II- 17a no. 430/19 of 29 November 2019) to an HLC request for access to information of public importance, p. 1.



Non-procedural measures for witness protection

The only information available to the public concerning non-procedural protection measures or implementation of the protection programmes is that which is presented in the reports of the Working Body for monitoring the implementation of the National Strategy.⁹⁷ Since the latest report of the Working Body was adopted in mid-July 2019 (Report no. 6), no more recent information has been available about the activities aimed at improving the witness protection system.

In its latest report on Serbia's progress, the European Commission remarked that there has been a delay in adopting amendments related to the implementation of urgent measures for witness protection⁹⁸ and a further delay in implementing most of the recommendations of the Analysis of the Witness Protection Unit (the Analysis) conducted in 2016.⁹⁹ Given the absence of information about the Analysis, **the report of the European Commission provided a rare opportunity for the expert community to learn something about the impact of the Analysis.**

The report also notes that “steps already taken to increase the capacity of the Witness Protection Unit within the Ministry of the Interior, along with new rules and procedures for selecting staff, are expected to improve its work.”¹⁰⁰

⁹⁷ Report No. 6 on the Implementation of the National Strategy for the Prosecution of War Crimes, June 2019, pp. 47-60.

⁹⁸ Serbia 2019 Progress Report, p. 32.

⁹⁹ Ibid.

¹⁰⁰ Serbia 2019 Progress Report, p. 32.



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 defence 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.

32

The public consultation process was launched in late November on the draft of the Serbian 2019-2025 National Strategy on the Rights of Victims and Witnesses of Crime.¹⁰¹

During the reporting period, there were no further trainings for the staff of the Victim and Witness Assistance and Support Service at the Higher Court in Belgrade (the Assistance and Support Service).¹⁰² No infrastructural or technical improvement was made to the Assistance and Support Service during the same period.¹⁰³

¹⁰¹ "Počela javna rasprava o predlogu Nacionalne strategije za ostvarivanje prava žrtava i svedoka krivičnih dela" [Public consultation launched on the proposed text of the National Strategy on the Rights of Victims and Witnesses of Crime], news, 28 November 2019, available (in Serbian) at: <https://www.mpravde.gov.rs/vest/27832/pocela-javna-rasprava-o-predlogu-nacionalne-strategije-za-ostvarivanje-prava-zrtava-i-svedoka-krivicnih-dela-.phpm> [accessed on 2 December 2019].

¹⁰² Higher Court in Belgrade's reply (Su II- 17a no. 430/19 of 29 November 2019) to an HLC request for access to information of public importance, p. 1.

¹⁰³ *Ibid.*



Improving the normative framework governing the position of witnesses and victims

The latest available European Commission report on Serbia's progress notes that the legal framework that governs the procedural rights of victims of crimes remains only partially aligned with the EU *acquis*.¹⁰⁴ Following an analysis of Serbia's normative framework's alignment with the EU Victims' Rights Directive (Directive 2012/29/EU)¹⁰⁵, the Ministry of Justice set up a working group to draft amendments to the relevant laws and regulations, with the view to bringing the definition of the term "victim" into conformity with the definitions provided in international human rights treaties¹⁰⁶ and with Directive 2012/29/EU.¹⁰⁷

At the time this report was completed there was no information about when the said amendments would be presented. When the HLC asked the Ministry of Justice about this, the reply received was brusque: "no documents".¹⁰⁸ The previous official reports on the Implementation of the National Strategy state that the relevant articles of the Criminal

104 *Serbia 2019 Progress Report*, p. 32.

105 *Analysis of victims' rights and services in Serbia and their alignment with EU Directive 2012-29-EU*, available at the World Bank website: <http://documents.worldbank.org/curated/en/966041511259504946/Analysis-of-victims-rights-and-services-in-Serbia-and-their-alignment-with-EU-Directive-2012-29-EU> [accessed on 2 December 2019].

106 Ministry of Justice's reply (7-00- 156/2018-30 of 14 May 2018) to an HLC request for access to information of public importance; *Report No. 2 on the Implementation of the National Strategy for the Prosecution of War Crimes*, May 2018, p. 35, states that the Working Group for drafting amendments to the Criminal Procedure Code was set up by the Ministry of Justice's decision no. 119-01- 00016/2018-06 of 17 April 2018, pursuant to the Action Plan for Chapter 23. The report further states that the Working Group for drafting a working draft of the Law Amending the Criminal Code was set up by the Ministry of Justice's decision no. 119-01-00017/2018-06 of 8 March 2018. According to the report, the amendments will provide further alignment of the Criminal Code with *Directive 2012/29/ EU establishing minimum standards on the rights, support and protection of victims of crime*.

107 *DIRECTIVE 2012/29/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA*. The Directive is available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32012L0029&from=EN> [accessed on 2 December 2019].

108 Ministry of Justice's reply to an HLC request for access to information of public importance of 15 November 2019 (HLCIndexIn: 25-F139822, 19 November 2019).



Code and Criminal Procedure Code will not be amended until the National Strategy on the Rights of Victims and Witnesses of Crime has been adopted.¹⁰⁹

Draft of the National Strategy on the Rights of Victims and Witnesses of Crime

The public consultation process on the draft National Strategy on the Rights of Victims and Witnesses of Crime for the period 2019-2025 started on 28 November and will last until 17 December 2019.¹¹⁰ The process will cover, in addition to the draft National Strategy, the draft Action Plan for strategy implementation.¹¹¹

The HLC points out the purpose of these documents: to improve the position and rights of victims and witnesses of crime in line with EU standards, so that victims and witnesses of crime have access to an adequate level of procedural rights, support and assistance.

Guidelines for improving court practice in handling compensation claims filed by victims of serious crimes in the course of criminal proceedings (Guidelines for handling compensation claims in criminal proceedings)

- 34 Serbia's Supreme Court of Cassation (SCC) in October presented the *Guidelines for improving court practice in handling compensation claims made by victims of serious crimes during criminal proceedings* (the Guidelines).¹¹² The SCC Guidelines offer concrete instructions to both public prosecutors and judges on how to handle these compensation claims in the most economical and effective way.

109 Report No. 6 on the Implementation of the National Strategy for the Prosecution of War Crimes, June 2019, p. 65.

110 "Počela javna rasprava o predlogu Nacionalne strategije za ostvarivanje prava žrtava i svedoka krivičnih dela" [Public consultation launched on the proposed text of the National Strategy on the Rights of Victims and Witnesses of Crime], news, 28 November 2019, available (in Serbian) on the official website of the Ministry of Justice at: <https://www.mpravde.gov.rs/vest/27832/pocela-javna-rasprava-o-predlogu-nacionalne-strategije-za-ostvarivanje-prava-zrtava-i-svedoka-krivicnih-dela-.phpm> [accessed on 2 December 2019].

111 *Ibid.*

112 *Smernice za unapređenje sudske prakse u postupcima za naknadu štete žrtvama teških krivičnih dela u krivičnom postupku* [Guidelines for improving court practice in handling compensation claims made by victims of serious crimes during criminal proceedings] are available (in Serbian) at: <https://www.podrskazrtvama.rs/lat/media/domaci/Smernice.pdf> [accessed on 01 December 2019].



According to the Criminal Procedure Code, victims of crime (injured parties) are entitled to make a compensation claim (seeking compensation for the harm suffered as a result of a crime) before the completion of criminal proceedings. Thus far, however, no war crime victim has had his or her compensation claim adjudicated during criminal proceedings¹¹³, because, as is explained to them by the courts, such an act would delay criminal proceedings. So the courts have invariably instructed victims to seek compensation through civil action following the completion of criminal proceedings. Consequently, referring victims to civil proceedings to pursue compensation has become common practice, rather than an exception, since the courts have been sticking to the position that compensation claims cannot be decided upon in criminal proceedings but only in civil proceedings. As a result of such a stance, victims are exposed to further victimisation, because after often lengthy and emotionally gruelling criminal proceedings, they are forced to engage in further lengthy and very costly proceedings to be able to realise their right to compensation. That is why the majority of victims are reluctant to go through further court proceedings and thus renounce their right to compensation.

The HLC believes that, by issuing the “Guidelines”, the SCC has made a step forward in improving the rights of crime victims, since this document provides direct guidance to prosecutor’s offices and courts in Serbia on the concrete steps they need to take to enable victims to realise their right to compensation immediately during the course of criminal proceedings.

That being so, the HLC nevertheless thinks that **the OWCP should be more active in gathering the evidence necessary for adjudicating compensation claims, so that victims can realise their right to compensation in the course of criminal proceedings.** In view of the fact that the 2013 Criminal Procedure Code changed the concept of criminal proceedings significantly and gave public prosecutors a role in gathering evidence regarding compensation claims, the role of the OWCP in the effective exercise of the right to compensation appears to be essential. Furthermore, **the HLC calls on the courts to translate the “Guidelines” into practice, and in each case where evidence suggests that the compensation claim is well-founded, to decide upon it right away in the course of the criminal proceedings, and thus save the victims from exhausting themselves further by pursuing compensation through civil proceedings.**¹¹⁴

113 See: “Rape victim referred to civil proceeding for damages”, press release, HLC, 25 September 2019, available at: <http://www.hlc-rdc.org/?p=36916&lang=de> [accessed on 1 December 2019].

114 “Guidelines for handling compensation claims in criminal proceedings – a step towards improving the rights of victims”, press release, HLC, 14 October 2019, available at: <http://www.hlc-rdc.org/?p=36963&lang=de> [accessed on 01 December 2019].



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

The National Strategy has recognised the need to hire trained professionals for the provision of psycho-social support to witnesses and victims.¹¹⁵ However, as in the previous reporting periods, the Victim and Witness Assistance and Support Service at the Higher Court in Belgrade¹¹⁶ and the Victim and Witness Information and Support Service of the OWCP¹¹⁷ have not implemented this activity. The National Strategy also foresees that the Protection Unit's Job Classification Plan needs to be modified to create new positions to be filled by trained professionals who will provide psycho-social support to witnesses and victims.¹¹⁸

According to the information that was available by the time this report was completed, **the Protection Unit has not hired a psychologist either.**¹¹⁹

Apart from hiring a psychologist, the National Strategy provides for improvement of the infrastructure and technical capacity of the Victim and Witness Assistance and Support Service.¹²⁰ These activities have not been implemented either.¹²¹

115 *National Strategy for the Prosecution of War Crimes*, p. 25.

116 Higher Court in Belgrade's reply (Su II- 17a no. 430/19 of 29 November 2019) to an HLC request for access to information of public importance, p. 1; *Report No. 1 on the Implementation of the National Strategy for the Prosecution of War Crimes*, January 2018, p. 28, states that psychologist Ljubinka Marković, who is employed for an indefinite term by the Higher Court in Belgrade, can be seconded to the Witness and Victim Support Service at the War Crimes Department of the Higher Court in Belgrade, subject to the consent or decision of the competent body.

117 OWCP's reply (PI.no. 28/19 of 20 November 2019) to an HLC request for access to information of public importance, p. 3; *Informator o radu Tužilaštva za ratne zločine 2006-2019* (ažuriran sa stanjem na dan 26.08.2019) [Information booklet of the OWCP (updated on 26 August 2019)] p. 11, available (in Serbian) on the official website of the Office of the War Crimes Prosecutor (section *Download Documents*) at: <http://www.tuzilastvorz.org.rs/sr/>, [accessed on 04 December 2019].

118 *National Strategy for the Prosecution of War Crimes*, p. 25.

119 Ministry of the Interior's reply (02/4 no. 072/1-483/19-4) of 6 August 2019.

120 *National Strategy for the Prosecution of War Crimes*, p. 26.

121 Higher Court in Belgrade's reply (Su II- 17a br. 430/19 of 29 November 2019) to an HLC request for access to information of public importance, p. 1; *Initial Report on the Implementation of the National Strategy for the Prosecution of War Crimes*, HLC, December 2017, pp. 45-46; *Second Report on the Implementation of the National Strategy for the Prosecution of War Crimes*, HLC, June 2018, pp. 34-35; *Third Report on the Implementation of the National Strategy for the Prosecution of War Crimes*,



DEFENCE OF THE ACCUSED

Objective 1: Increasing the quality of (court-) appointed and selected defence attorneys in war crimes proceedings.

Objective 2: Improved system of financing the costs of the (court-) appointed defence attorneys in war crimes cases.

The insufficient competence of defence lawyers in the fields of international criminal law and international humanitarian law, and the inadequate financing of defence representation, are some of the chronic problems in defence representation, as identified by the National Strategy.¹²²

Between June and December 2019, some of the lawyers providing representation in war crimes cases took part in the study visit to IRMCT and the International Criminal Court in The Hague and in the annual meeting of judges, prosecutors and lawyers. According to the latest information available to the HLC, the Rulebook on remuneration for court-appointed attorneys in war crimes cases was not amended in the said period.¹²³

Improving the skills of court-appointed and retained attorneys

37

Two lawyers providing representation in war crimes cases also participated in the study visit to the IRMCT and the International Criminal Courts in The Hague in early September, as mentioned in the section of the Report dealing with trainings held for deputy prosecutors and prosecutorial assistants from the OWCP and judges and judicial assistants dealing with war crimes cases.¹²⁴ The study visit was organised under the project “Support to Monitoring of National War Crimes Trials” (Phase II), led by the OSCE Mission to Serbia.

HLC, December 2018, p. 35; *Fourth Report on the Implementation of the National Strategy for the Prosecution of War Crimes*, HLC, June 2019, pp. 37-38.

122 *National Strategy for the Prosecution of War Crimes*, pp. 27-28.

123 *Report No. 6 on the Implementation of the National Strategy for the Prosecution of War Crimes*, June 2019, p. 82.

124 According to the HLC's information.



In addition, lawyers providing representation in war crimes cases participated in the regional meeting of judges, prosecutors and lawyers on “Mutual admissibility of evidence in the countries and jurisdictions in the region and admissibility of IRMCT evidence”,¹²⁵ organised jointly by the UNDP and the OSCE Mission to Serbia.

It is worth recalling that the National Strategy envisages the development of initial and continuing education programmes in the field of international humanitarian and international criminal law for lawyers representing defendants in war crimes cases, as a joint effort by the Serbian Bar Association, the Office of the War Crimes Prosecutor, the War Crimes Department of the Higher Court in Belgrade and the Judicial Academy.¹²⁶ And, as a next activity, the Strategy envisages implementation of continuing training in these areas for lawyers representing defendants in war crimes cases, through collaboration between the Serbian Bar Association and the Judicial Academy.¹²⁷

It must be conceded that the above-mentioned study visit and regional meeting were indeed organised, but they can hardly be considered as continuing training in the field of international humanitarian and international criminal law, not least because they were organised as part of the projects implemented by the OSCE Mission to Serbia and UNDP, and not by the Serbian Bar Association or the Judicial Academy, as stipulated in the National Strategy.

38

Financing defence representation

The National Strategy envisages conducting a review of the provisions and effects of the application of the Rulebook on remuneration for court-appointed attorneys in war crimes cases (the Rulebook).¹²⁸

The latest available Working Body’s report (Report no. 6) describes this activity as fully implemented.¹²⁹ The Ministry of Justice has set up a Working Group tasked with

125 OWCP’s reply (Pl.no. 28/19 of 20 November 2019) to an HLC request for access to information of public importance, p. 2.

126 *National Strategy for the Prosecution of War Crimes*, p. 27.

127 *Ibid.*

128 *National Strategy for the Prosecution of War Crimes*, p. 28.

129 *Report No. 6 on the Implementation of the National Strategy for the Prosecution of War Crimes*, June 2019, p. 82.



reviewing the provisions of the Rulebook.¹³⁰ In response to an HLC enquiry about this matter in May 2018, the Ministry of Justice said that the Working Body had arrived at the conclusion that the Rulebook needed not be modified.¹³¹ The Serbian Bar Association did not reply to three enquiries about the state of implementation of the said activities.¹³² According to the information available to the HLC, the Bar is not represented in the Working Group.¹³³

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.

The Working Rules and Procedures for the implementation of the Protocol on Cooperation in the Search for Missing Persons signed between the Government of the Republic of Serbia and the Council of Ministers of Bosnia and Herzegovina were agreed and signed during the reporting period. The first report of the Missing Persons Group (MPG) of the International Commission on Missing Persons (ICMP) was presented and adopted in the same period. The report concerns the activities carried out between November 2018 and July 2019.

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¹³⁰ *Ibid*; Ministry of Justice's reply (7-00-156/2018-30 of 14 May 2018) to an HLC request for access to information of public importance.

¹³¹ *Ibid*.

¹³² Request for access to information of public importance of 25 October 2018 (HlcIndexOut: F170-F135437); Request for access to information of public importance of 22 May 2019 (HlcIndexOut: F170-F137823); Request for access to information of public importance of 4 January 2019 (HlcIndexOut: F170-F139655).

¹³³ Ministry of Justice's reply (7-00-162/2018-32 of 18 May 2018) to an HLC request for access to information of public importance.



The process of identification of Serbian victims who died in the period from 1991 to 1995 in Croatia, and the handover of the identified mortal remains of individuals who died in the Kosovo armed conflict, continued during the reporting period.

Normative and institutional frameworks

- **Improving the legislative framework**

According to the information provided on the website of the Commission on Missing Persons of the Government of Serbia (the Missing Persons Commission), the Missing Persons Commission held a meeting in June to discuss the initiative to amend the Law on Management of Migration and the need to draft a Law on Missing Persons.¹³⁴ Veljko Odalović, Chair of the Missing Persons Commission, brought up the subject of expanding the Commission's mandate beyond the search for missing persons, to include the „issue of killed persons“.¹³⁵ Odalovic added that this initiative should be inserted in the Law on Migration Management.¹³⁶ The HLC points out that expanding the Missing Persons Commission's mandate has been discussed since 2017, but the mandate has remained unchanged.¹³⁷

The Missing Persons Commission's website also informs the public that the meeting discussed the need to draft a Law on Missing Persons which would regulate the rights of missing persons' families.¹³⁸ This matter is a complex one, as is stated on the website; because, in addition to the families of Serbian citizens who died in the conflicts, there are several hundred thousand people living in Serbia who, after leaving the war-affected areas, had their citizenship status in Serbia permanently regulated.¹³⁹

134 “Održana deveta sednica Komisije za nestala lica” [Ninth meeting of the Missing Persons Commission has taken place], News, Missing Persons Commission, 9 June 2019, available (in Serbian) on the official website of the Missing Persons Commission of the Government of Serbia at: <http://www.kznl.gov.rs/aktuelno.php> [accessed on 7 December 2019].

135 *Ibid.*

136 Law on Management of Migration (Official Gazette of the Republic of Serbia no. 107/2012).

137 *Second Report on the Implementation of the National Strategy for the Prosecution of War Crimes*, HLC, June 2018, p. 41.

138 “Održana deveta sednica Komisije za nestala lica” [Ninth meeting of the Missing Persons Commission has taken place], News, Missing Persons Commission, 9 June 2019.

139 *Ibid.*



The HLC points out that Serbia does not have a Law on Missing Persons which would specifically regulate the status and rights of missing persons' families. Such a law should be the one to systematically regulate the competences of state authorities, and communication and exchange of information among them, in order to improve the search process, and regulate the issue of reparations for missing persons' families.¹⁴⁰

- **Enhancing the institutional framework: Analysis of the Organisational Structure and Position of the Professional Service of the Missing Persons Commission of the Government of the Republic of Serbia**

As stated in the HLC's previous (Fourth) Report, the analysis of the organisational structure and position of the professional service (persons permanently engaged in the work of the Missing Persons Commission of the Serbian Government) was completed.¹⁴¹ Pursuant to the Rulebook on Internal Job Organisation and Job Classification (which entered into force on 10 April 2019), the Department for Missing Persons was formed, as a smaller organisational unit to replace the Missing Persons Division.¹⁴² The Department consists of two smaller units: the Group for Missing Persons from the territory of the Autonomous Province of Kosovo, and the Group for Missing Persons from the territory of the former Yugoslavia (SFRY).¹⁴³ The Department is to have a staff of nine, once financial resources are made available.¹⁴⁴ At the time of this writing, no information was forthcoming about whether the financial resources have been secured.

41

- **Mortal remains identification**

In mid-June 2019, the mortal remains of 11 Serb victims who died between 1991 and 1995 in Croatia in the course of the armed conflict in the former Yugoslavia were identified, in the presence of their family members, at the Forensics and Criminology Institute of

¹⁴⁰ See: *Policy Paper: Accounting for Missing Persons from the Armed Conflicts of the 1990s in the Former Yugoslavia*, HLC, June 2018, pp. 10-11, available online at: http://www.hlc-rdc.org/wp-content/uploads/2018/07/Predlog_prakticne_politike_Potruga_za_nestalima_ENG_stampano_ff_15.07.2018.pdf [accessed on 7 December 2019].

¹⁴¹ *Fourth Report on the Implementation of the National Strategy for the Prosecution of War Crimes*, HLC, June 2019, p. 42; *Report No. 6 on the Implementation of the National Strategy for the Prosecution of War Crimes*, June 2019, p. 99.

¹⁴² *Ibid.*

¹⁴³ *Ibid.*

¹⁴⁴ *Ibid.*



the Medical Faculty in Zagreb.¹⁴⁵ The mortal remains of an additional 13 victims who died between 1991 and 1995 were identified in the same month at the Forensics and Criminology Institute of the Medical Faculty in Zagreb.¹⁴⁶ All victims were identified by DNA analysis.¹⁴⁷

The process of the handover of identified mortal remains of persons who died during the armed conflict in Kosovo continued during this reporting period. In September 2019, the mortal remains of a family of five from Đakovica were handed over to the competent Kosovo authorities at the Kula-Rožaje border crossing.¹⁴⁸ Prior to that, the mortal remains of two other Serbs who died during the armed conflict in Kosovo in 1999 had been handed over.¹⁴⁹ In both cases, the mortal remains had been exhumed from the location called “Bunker”, in Đakovica, and their identity was determined by DNA analysis.¹⁵⁰

145 “U Zagrebu obavljena identifikacija posmrtnih ostataka jedanaest žrtava srpske nacionalnosti stradali u toku oružanih sukoba na prostoru bivše Jugoslavije” [The mortal remains of 11 Serb victims who died during the armed conflicts on the territory of the former Yugoslavia identified in Zagreb], News, 17 June 2019, Missing Persons Commission, available on the official website of the Missing Persons Commission of the Government of Serbia at: <http://www.kznl.gov.rs/aktuelno.php> [accessed on 7 December 2019].

146 “U Zagrebu obavljena identifikacija posmrtnih ostataka trinaest žrtava srpske nacionalnosti stradali u toku oružanih sukoba na prostoru bivše Jugoslavije” [The mortal remains of 13 Serb victims who died during the armed conflicts on the territory of the former Yugoslavia identified in Zagreb], News, 21 October 2019, Missing Persons Commission, available on the official website of the Missing Persons Commission of the Government of Serbia at: <http://www.kznl.gov.rs/aktuelno.php> [accessed on 7 December 2019].

147 *Ibid.*

148 “Izvršena primopredaja posmrtnih ostataka petočlane porodice stradali u konfliktu na AP KIM 1999” [Handover of the mortal remains of five members of the Šutaković family who died in the conflict in the Autonomous Province of Kosovo and Metohija in 1999], News, 10 September 2019, Missing Persons Commission, available on the official website of the Missing Persons Commission of the Government of Serbia at: <http://www.kznl.gov.rs/aktuelno.php> [accessed on 7 December 2019].

149 “Preuzeti posmrtni ostaci dva lica stradali u konfliktu na AP KiM 1999” [The mortal remains of two persons who died in the conflict in the AP of Kosovo and Metohija in 1999 have been taken over], News, 10 September 2019, Missing Persons Commission, available on the official website of the Missing Persons Commission at: <http://www.kznl.gov.rs/aktuelno.php> [accessed on 7 December 2019].

150 *Ibid.*; “Izvršena primopredaja posmrtnih ostataka petočlane porodice stradali u konfliktu na AP KIM 1999” [Handover of the mortal remains of five members of the Šutaković family who died in the conflict in the AP of Kosovo and Metohija in 1999], News, 10 September 2019, Missing Persons Commission.

Regional cooperation in accounting for missing persons - Regional Missing Persons Group of the International Commission on Missing Persons (ICMP)

The Missing Persons Group (MPG) of the ICMP was formed under the regional Framework Plan to Address the Issue of Missing Persons from the Conflicts on the Territory of the former Yugoslavia (the Framework Plan), signed in The Hague by representatives of the domestic institutions responsible for the search and identification of missing persons from Bosnia and Herzegovina, Croatia, Kosovo, Montenegro and Serbia in November 2018. The Group is tasked with overseeing the implementation of activities laid down in the Framework Plan.¹⁵¹

The MPG held its third meeting in Podgorica in June, to discuss the results of the implementation of the activities under the Framework Plan.¹⁵² The meeting was attended by heads of the institutions responsible for the search for missing persons from Serbia, Montenegro, Bosnia and Herzegovina, Croatia and Kosovo. As stated in the press release issued by Serbia's Missing Persons Commission, the meeting was organised in order to discuss the results achieved so far in accounting for missing persons under the Framework Plan and the methods used for reporting the results.¹⁵³

The first report of the MPG, listing the activities carried out under the Framework Plan and the progress made between November 2018 and July 2019, was presented in July on the sidelines of the 6th Berlin Process Summit in Poznan, Poland.¹⁵⁴ According to the

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151 "Potpisan Okvirni plan za rešavanje pitanja nestalih lica iz sukoba na području bivše Jugoslavije" [Framework Plan to Address the Issue of Persons Missing from the Conflicts on the Territory of the former Yugoslavia signed], press release, 6 November 2018, available (in Serbian) on the official website of the Missing Persons Commission of the Government of the Republic of Serbia at: <http://www.kznl.gov.rs/aktuelno.php#a45>, [accessed on 7 December 2019].

152 "Održan treći sastanak Grupe za nestala lica" [Third meeting of the Missing Persons Group has taken place], News, 14 June 2019, Missing Persons Commission, available on the official website of the Missing Persons Commission of the Government of Serbia at: <http://www.kznl.gov.rs/latinica/aktuelno.php>, [accessed on 7 December 2019].

153 *Ibid.*

154 "U Poznanu predstavljen prvi izveštaj Grupe za nestala lica" [First report of the Missing Persons Group presented in Poznan], News, 4 July 2019, Missing Persons Commission, available on the official website of the Missing Persons Commission of the Government of Serbia at: <http://www.kznl.gov.rs/latinica/aktuelno.php>; "Berlin Process Poznan Meeting: Missing Persons Group Maintains Effort to Account for those Still Missing from 1990s Conflicts in Former Yugoslavia", Press release, 4 July 2019, available on the ICMP website at: <https://www.icmp.int/bs/press-releases/berlin-process-poznan-meeting-missing-persons-group-maintains-effort-to-account-for-those-still-missing-from-1990s-conflicts-in-former-yugoslavia/> [both sources accessed on 7 December 2019].



websites of Serbia's Missing Persons Commission and the ICMP, the MPG enhanced regional cooperation in accounting for the missing, through the exchange of data that may help to identify the as-yet unidentified mortal remains, and through the development of the Database of active missing persons cases from the conflicts on the territory of the former Yugoslavia.¹⁵⁵

- **Protocol on Cooperation in the Search for Missing Persons signed between the Government of the Republic of Serbia and the Council of Ministers of Bosnia and Herzegovina: Working rules and procedures**

Working Rules and Procedures for the implementation of the Protocol on Cooperation in the Search for Missing Persons agreed between the Government of the Republic of Serbia and the Council of Minister of Bosnia and Herzegovina were signed in late July 2019.¹⁵⁶ These rules and procedures lay down the relationship, rights, duties and joint work of the government institutions of the Republic of Serbia and Bosnia and Herzegovina responsible for the search for missing persons from the armed conflicts on the territory of the former Yugoslavia.¹⁵⁷

Fund to support the competent government bodies in collecting all available information on gravesites locations

The National Strategy envisages the setting up of a special fund to support the competent government bodies in collecting all available information on the location of graves that may hold the bodies of missing persons.¹⁵⁸ During the reporting period, no information was made available about whether any steps have been taken to implement this activity.¹⁵⁹

¹⁵⁵ *Ibid.*

¹⁵⁶ "Potpisana Radna pravila i procedure u traženju nestalih lica" [Working Rules and Procedures for the search for missing persons have been signed], News, 30 July 2019, Missing Persons Commission, available on the official website of the Missing Persons Commission of the Government of Serbia at: <http://www.kzn.gov.rs/latinica/aktuelno.php>, [accessed on 7 December 2019].

¹⁵⁷ *Ibid.*

¹⁵⁸ *National Strategy for the Prosecution of War Crimes*, p. 29.

¹⁵⁹ The latest available official report on the implementation of the National Strategy: *Report No. 6 on the Implementation of the National Strategy for the Prosecution of War Crimes*, June 2019, p. 106.



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 OWCP has maintained intensive cooperation with the IRMCT, through regular meetings between prosecutors and through its liaison officer based at the IRMCT office. Also, a study visit to The Hague Branch of the IRMCT was organised.¹⁶⁰

As regards the IRMCT case of *Jojić et al.*, after the IRMCT in June decided not to refer the case to the Serbian judiciary, Serbia appealed against this decision in July.¹⁶¹

Research of the Archive of the International Criminal Tribunal for the former Yugoslavia and the International Residual Mechanism for Criminal Tribunals – liaison officers

The OWCP has had its liaison officer at the ICTY/IRMCT since 2009.¹⁶² His responsibilities include searching the electronic database of the Office of the ICTY/IRMCT Prosecutor, and holding consultations and meetings with IRMCT prosecutors for the purpose of obtaining evidence to be used in the cases prosecuted by the OWCP.¹⁶³ As confirmed in the OWCP's response to an HLC enquiry on this matter, the OWCP liaison officer was present at the Office of the Prosecutor (OTP) of the IRMCT throughout the reporting period.¹⁶⁴ It is not known, however, in how many war crime cases that have been tried or

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¹⁶⁰ *Ibid.*

¹⁶¹⁰ *In the case against Petar Jojić and Vjerica Radeta*, MICT-17-111-R90-AR14.1, *The Republic of Serbia's Appeal*, 8 July 2019; as cited in: *Jojić & Radeta – Response to Appeal against Decision Re-examining the Referral of a Case to the Republic of Serbia*, MICT-17-111-0058, 17 July 2019, available on the official website of the IRMCT: <https://jrad.irmct.org/view.htm?r=245559&s=> [accessed on 4 December 2019].

¹⁶² OWCP's letter A.no.78/17 of 28 April 2017 in response to an HLC request for information of public importance; *Third Report on the Implementation of the National Strategy for the Prosecution of War Crimes*, HLC, December 2018, pp. 48-49.

¹⁶³ Information taken from the Office of the War Crimes Prosecutor website: <http://www.tuzilastvorz.org.rs/sr/saradnja/me%C4%91unarodna-saradnja> [accessed on 4 December 2019].

¹⁶⁴ **Author's note:** Since the closure of the ICTY on 31 December 2017, the OWCP liaison officers have been based at the International Mechanism for Criminal Tribunals (pp. 2-3 of OWCP's reply PI.no. 28/19 of 20 November 2019 in response to an HLC request for information of public importance).



are being tried by domestic courts the evidence collected by the OWCP liaison officer at the Mechanism OTP has been used.

During the reporting period, the Serbian War Crimes Prosecutor and deputy war crimes prosecutors met with the IRMCT Chief Prosecutor.¹⁶⁵

Jojić et al.

In January 2015, the International Criminal Tribunal for the former Yugoslavia issued a request for the arrest and handover of three officials of the Serbian Radical Party - Petar Jojić, Jovo Ostojić and Vjerica Radeta. The three were charged with threatening, intimidating, offering bribes to, and otherwise interfering with witnesses who were to give evidence against Vojislav Šešelj, in an attempt to dissuade them from testifying.¹⁶⁶ Jovo Ostojić died in mid-2017, and Serbia refused to hand over to the ICTY the remaining two indictees.¹⁶⁷ In June 2018, the IRMCT decided to transfer the case against Radeta and Jojić to Serbia.¹⁶⁸

165 "OWCP delegation pays a working visit to the IRMCT", News, 9 September 2019, available on the Office of the War Crimes Prosecutor official website at: <https://www.tuzilastvorz.org.rs/en/news-and-announcements/announcements/owcp-delegation-pays-a-working-visit-to-the-irmct>; "Tužilac za ratne zločine Republike Srbije Snežana Stanojković sastala se sa glavnim Tužiocem MRMKS Seržom Bramercem" [Serbian War Crimes Prosecutor Snežana Stanojković met with IRMCT Chief Prosecutor Serge Brammertz], News, 4 November 2019, available on the official website of the Office of the War Crimes Prosecutor at: <http://www.tuzilastvorz.org.rs/sr/vesti-i-saop%C5%A1tenja/saop%C5%A1tenja/tu%C5%BEilac-za-ratne-zlo%C4%8Dine-republike-srbije-sne%C5%BEana-stanojkovi%C4%87-sastala-se-sa-glavnim-tu%C5%BEiocem-mr%D0%BCKs-ser%C5%BEom-bramercom> [both sources accessed on 4 December 2019].

166 See the case of *Jojić et al.* (IT-03-67-R77.5); case documentation is available on the IRMCT website at: 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# [accessed on 4 December 2019].

167 War Crimes Department of the Higher Court in Belgrade, decision Pom Ik2 Po2 48/2016, Kv Po2 16/2016 of 18 May 2016 upholding the decision of the Pre-Trial Judge that the legal conditions had not been met for the arrest and extradition of the accused, available online (in Serbian) at: http://www.hlc-rdc.org/wp-content/uploads/2016/05/2st_presuda_Jojic_Radeta_i_Ostojic.pdf [accessed on 4 December 2019].

168 *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, 12 June 2018. In it, the IRMCT ordered that Radeta and Jojić be immediately arrested and extradited to Serbia if found on the territory of any EU Member State.



After the *Amicus Curiae* Prosecutor appealed against this decision¹⁶⁹, the IRMCT in May this year revoked it, and ordered Serbia to hand over the accused to the IRMCT without delay.¹⁷⁰

Explaining the rationale behind this decision, the IRMCT stated that witness statements had been put to the court which demonstrated that the witnesses were “categorically unwilling” to be witnesses if proceedings were transferred to Serbia, owing to fears for their safety and the safety of their family members, including fear of being killed or seriously harmed physically.¹⁷¹ The explanation further stated that the witnesses wished to continue to cooperate with the IRMCT to ensure that the evidence they would provide was considered.¹⁷²

The Republic of Serbia filed a submission against the decision, arguing that the arguments advanced by the *Amicus Curiae* are “unfounded”, “erroneous”, and “arbitrary”, and that there is no valid reason prohibiting the conduct of the trial in Serbia, as the legal framework on witness protection in Serbia can adequately address any security concerns by the witnesses.¹⁷³

The IRMCT nonetheless decided that Jojić and Radeta are to be tried before the Mechanism. This decision is based on the information received from the witnesses, which have raised serious concern as to the possible impact a trial in Serbia might have on the safety, privacy, and wellbeing of the witnesses and their families, for which reasons the witnesses are only willing to testify if the proceedings are continued before the IRMCT.¹⁷⁴ The fact that these two witnesses are the sole source of direct evidence supporting two counts of the indictment was the main reason behind the IRMCT’s decision.¹⁷⁵

169 *Notice of appeal against the order referring a case to the Republic of Serbia*, MICT-17-111—R90; D220-D-214, 26 June 2018; “The Hague court pleased with Serbia’s cooperation”, News, Ministry of Justice, 19 November 2018, available online at: <https://www.mpravde.gov.rs/en/vest/21679/the-hague-court-pleased-with-serbias-cooperation-.php> [accessed on 4 December 2019].

170 *Jojic & Radeta – Decision re-examining the referral of a case to the Republic of Serbia* (MICT-17-111-0052/3), 13 May 2019, available online on the official website of the IRMCT at: <https://jrad.irmct.org/view.htm?r=245231&s> [accessed on 4 December 2019].

171 *Ibid*, p. 2.

172 *Ibid*.

173 *Ibid*, p. 3.

174 *Ibid*.

175 *Ibid*, p. 4.



After Serbian Justice Minister Nela Kuburović announced that Serbia would appeal against the IRMCT extradition decision¹⁷⁶, the appeal was filed on 8 July 2019.¹⁷⁷ The *Amicus Curiae* Prosecutor filed a response to the appeal, submitting that Serbia's appeal should be denied¹⁷⁸, because Serbia had failed to demonstrate that the Single Judge's Decision contained any specific error of law or was so unfair or unreasonable as to constitute an abuse of his discretion.¹⁷⁹

The *Amicus Curiae* Prosecutor further stated that Serbia had not identified any discernible error of law that invalidated the Decision of the Single Judge. Serbia's submissions, in the view of the *Amicus Curiae* Prosecutor, have not addressed the central, relevant issue under consideration by the Single Judge.¹⁸⁰ Serbia misunderstands its international legal obligations, and the meaning of the "primacy of international law", the *Amicus Curiae* further states,¹⁸¹ and cites a rule from the Rules of Procedure and Evidence of the IRMCT¹⁸², which provides that the obligations concerning cooperation of states with the IRMCT laid down in the IRMCT Statute¹⁸³ "shall prevail over any legal impediment to the surrender or transfer of an accused or of a detained witness [...] that may exist under the national law or treaties of the State concerned".¹⁸⁴

176 "Kuburović najavila žalbu na odluku Suda u Hagu o izručenju dvoje radikala" [Kuburović announces appeal against the Hague court extradition order for two Radicals], news, daily newspaper *Danas*, 24 May 2019, available online (in Serbian) at: <https://www.danas.rs/drustvo/kuburovic-najavila-zalbu-na-odluku-suda-u-hagu-o-izrucenju-dvoje-radikala/>; *Order assigning judges to a bench of the Appeals Chamber*, 18 June 2019, available online at: <https://jrad.irmct.org/view.htm?r=245384&s=> [both sources accessed on 4 December 2019].

177 *In the case against Petar Jojić and Vjerica Radeta*, MICT-17-111-R90-AR14.1, *The Republic of Serbia's Appeal*, 08 July 2019. Source: *Jojic & Radeta – Response to Appeal against Decision Re-examining the Referral of a Case to the Republic of Serbia*, MICT-17-111-0058, 17 July 2019, available on the official website of the ICTY at: <https://jrad.irmct.org/view.htm?r=245559&s=> [accessed on 4 December 2019]. **Note:** The HLC has not perused Serbia's appeal.

178 *Jojic & Radeta – Response to Appeal against Decision Re-examining the Referral of a Case to the Republic of Serbia*, MICT-17-111-0058, 17 July 2019, para. 3.

179 *Ibid.*

180 *Ibid.*, para 17.

181 *Ibid.*, para 20.

182 *Rules of Procedure and Evidence*, as amended on 4 March 2019, Rule 60. The Rules are available on the official IRMCT's website at: https://www.irmct.org/sites/default/files/documents/mict-1-rev_5-en.pdf [accessed on 4 December 2019].

183 *Resolution 1966 (2010) Adopted by the Security Council at its 6463rd meeting, on 22 December 2010*, Article 28, paras. 1 and 2. The Resolution is available on the official IRMCT website at: https://www.irmct.org/sites/default/files/documents/101222_sc_res1966_statute_en.pdf [accessed on 4 December 2019].

184 *Ibid.*; *Jojic & Radeta – Response to Appeal against Decision Re-examining the Referral of a Case to the Republic of Serbia*, MICT-17-111-0058, 17 July 2019, para. 21.



As regards Serbia’s non-compliance with the arrest warrants for Radeta and Jojić, **the HLC points out that Serbia cannot cite its domestic legislation to justify its failure to meet its international obligations, including full cooperation with the IRMCT.** It is worth recalling that in at least three other contempt-of-court cases, no legal obstacles were found to prevent the arrest and transfer of the accused to the ICTY. Namely, when Jelena Rašić¹⁸⁵, and then Dragomir Pećanac and Ljubiša Petković, were wanted by the ICTY for this offence, the court found that the legal conditions for their extradition had been met, and had them arrested and handed over to the ICTY.¹⁸⁶

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.
1. International Cooperation
Objective 1: Enhanced international cooperation through the presentation of work of the national judicial bodies.

49

The National Strategy acknowledges the importance of enhancing regional judicial cooperation as a key to increasing efficiency in the area of war crimes prosecutions.¹⁸⁷

185 “Nova optužnica zbog podmićivanja svedoka” [New charges for offering bribes to witnesses], News, 21 September 2010, *Sense News Agency*, available (in Serbian) at: [http://www.sense-agency.com/tribunal_\(mksj\)/nova-optuznica-zbog-podmicivanja-svedoka.25.html?news_id=1191](http://www.sense-agency.com/tribunal_(mksj)/nova-optuznica-zbog-podmicivanja-svedoka.25.html?news_id=1191); “Major Pećanac refuses to testify against General Tolimir”, News, *Sense News Agency*, 10 October 2011, available at: http://www.sense-agency.com/icty/major-pecanac-refuses-to-testify-against-general-tolimir.29.html?cat_id=1&news_id=13270; “Ljubiša Petković se izjasnio da nije kriv” [Ljubiša Petković pleads not guilty] news, *Sense News Agency*, 29 May 2008, available (in Serbian) at: [http://www.sense-agency.com/tribunal_\(mksj\)/ljubisa-petkovic-se-izjasnio-da-nije-kriv.25.html?cat_id=1&news_id=713](http://www.sense-agency.com/tribunal_(mksj)/ljubisa-petkovic-se-izjasnio-da-nije-kriv.25.html?cat_id=1&news_id=713) [both sources accessed on 4 December 2019].

186 *Initial Report on the Implementation of the National Strategy for the Prosecution of War Crimes*, HLC, December 2017, pp. 60-61.

187 *National Strategy for the Prosecution of War Crimes*, pp. 5, 12-14, 31-34.



One regional conference of prosecutors was held in the reporting period (in Sarajevo).¹⁸⁸ As regards the exchange of evidence between the prosecutors' offices in the region, according to the OWCP statistical indicators, the OWCP received evidence from the Prosecutor's Office of B&H in three cases, from the State Attorney's Office of the Republic of Croatia (DORH) in one case, and no item of evidence from the EULEX Mission.¹⁸⁹

Improving the normative framework of regional judicial cooperation – regional conferences

As has been reported in the section discussing improvement of the capacity of the Office of the War Crimes Prosecutor, the war crimes prosecutor and two deputy war crimes prosecutors took part in **the October regional meeting of judges, prosecutors and lawyers handling war crimes cases, on the topic of “Mutual admissibility of evidence in the countries and jurisdictions in the region and admissibility of IRMCT evidence”**.¹⁹⁰ The meeting, jointly organised by the UNDP and the OSCE Mission to Serbia, was held in Belgrade. **In November, a regional meeting of prosecutors was held in Sarajevo**, also organised by the UNDP, with the support of the Government of the United Kingdom and the Italian Embassy.¹⁹¹ The participants included delegations of

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188 “Regional prosecutors meet in Sarajevo to discuss cooperation in war crimes cases”, news, 27 November 2019, available on the official website of the OWCP at: <https://www.tuzilastvorz.org.rs/en/news-and-announcements/announcements/regional-prosecutors-meet-in-sarajevo-to-discuss-cooperation-in-war-crimes-cases>; “Regionalni sastanak tužilaca u okviru UNDP projekta regionalne saradnje u procesuiranju predmeta ratnih zločina održan u Sarajevu” [Regional meeting of prosecutors held in Sarajevo as part of the UNDP project on regional cooperation in the prosecution of war crimes], News, 27 November 2019, available on the official website of the Prosecutor's Office of B&H at: <http://tuzilastvobih.gov.ba/?id=4336&jezik=b> [both sources accessed on 3 December 2019].

189 OWCP's reply (PI.no. 30/19 of 25 November 2019) to an HLC request for access to information of public importance.

190 OWCP's reply (PI.no. 28/19 of 20 November 2019) to an HLC request for access to information of public importance, p. 2.

191 “Regional prosecutors meet in Sarajevo to discuss cooperation in war crimes cases”, news, 27 November 2019, available on the official website of the OWCP; “Regionalni sastanak tužilaca u okviru UNDP projekta regionalne saradnje u procesuiranju predmeta ratnih zločina održan u Sarajevu” [Regional meeting of prosecutors held in Sarajevo in the framework of the UNDP project on regional cooperation in the prosecution of war crimes], news, 27 November 2019, available on the official website of the Prosecutor's Office of B&H.



the OWCP, the Prosecutor's Office of B&H, the IRMCT, the Supreme Prosecutor's Office of Montenegro and State Attorney's Office of Croatia.¹⁹²

The HLC sees the resumption of regional prosecutorial conferences and the OWCP's renewed participation in them as an encouraging development, bearing in mind that the good practice of the Serbian War Crimes Prosecutor and her deputies participating in the conferences organised under the Palić¹⁹³ and Brijuni Processes had been discontinued a few years ago.¹⁹⁴

It should nevertheless be noted that most of the conferences and meetings that have been held over the last several months have been organised as part of the project "Enhancing Regional Cooperation in the Processing of War Crimes and the Search for Missing Persons (2017-2019)".¹⁹⁵ This means that the initiative to hold these meetings and conferences did not originally come from the Serbian Ministry of Justice, as required by the National Strategy.¹⁹⁶ The National Strategy stipulates that the Ministry of Justice is to initiate regional conferences, which should aim to enhance regional cooperation in war crimes prosecutions through addressing certain outstanding issues that have been hampering its

¹⁹² *Ibid.*

¹⁹³ The first regional meeting to discuss interstate cooperation in war crimes prosecutions (including concrete forms of cooperation in war crimes cases, such as enhancing existing mechanisms of crossborder cooperation, access to witnesses and other evidence, etc.) took place in November 2004 under the auspices of the OCSE Mission. This cooperation mechanism in the meantime became known as the "Palić Process". The next regional conference was held on the Brijuni Islands, Croatia, in June 2005 (referred to in the *National Strategy for the Prosecution of War Crimes*, p. 18, and the information provided on the OWCP website in section *Cooperation/ International Cooperation/ Organization for Security and Co-operation in Europe (OSCE)*, available at: <https://www.tuzilastvorz.org.rs/en/co-operation/international-co-operation> [accessed on 3 December 2019]; *National Strategy for the Prosecution of War Crimes*, p. 32.

¹⁹⁴ "Consequences of Political Tensions on Prosecution of War Crimes: for the first time, Serbia does not participate in the regional conference of war crimes prosecutors", press release, HLC, 7 September 2016, available at: <http://www.hlc-rdc.org/?p=32698&lang=de> [accessed on 27 June 2019].

¹⁹⁵ *Report No. 6 on the Implementation of the National Strategy for the Prosecution of War Crimes*, June 2019, pp. 114-115; *Second Report on the Implementation of the National Strategy for the Prosecution of War Crimes*, HLC, June 2018, p. 50; *Third Report on the Implementation of the National Strategy for the Prosecution of War Crimes*, HLC, December 2018, pp. 48-49; *Fourth Report on the Implementation of the National Strategy for the Prosecution of War Crimes*, HLC, June 2019, p. 51.

¹⁹⁶ Ministry of Justice's reply to an HLC request for access to information of public importance of 15 November 2019 (HLCIndexIn: 25-F139822, 19 November 2019), pp. 1-2.



progress.¹⁹⁷ In response to an HLC enquiry about the activities undertaken so far to hold a regional conference, the Ministry of Justice stated, “there are no documents about these activities.”¹⁹⁸

Cooperation among prosecutor’s offices in the region

During the reporting period, the Prosecutor’s Office of B&H shared with the OWCP the evidence it possessed for three war crimes cases.¹⁹⁹ Since the adoption of the National Strategy in February 2016, 19 indictments have been transferred to the OWCP from B&H, constituting over 80% percent of all the indictments that the OWCP has since filed.²⁰⁰ Evidence pertaining to one war crime case was transferred to the OWCP by the DORH during the reporting period.²⁰¹

197 The following are the regional conferences foreseen in the *National Strategy for the Prosecution of War Crimes*: a regional conference on strengthening cooperation in the provision of support to victims and witnesses, p. 27; a regional conference to negotiate an intergovernmental agreement which would lay down regional rules on the division of jurisdiction over war crimes cases; a regional conference on simplifying and facilitating the procedure for processing requests for legal assistance in war crimes matters; a regional conference on facilitating the collection of evidence in the territory of another state by defence lawyers in war crimes cases; a regional conference on establishing a uniform approach to resolving missing persons cases, p. 31.

198 Ministry of Justice’s reply to an HLC request for access to information of public importance of 15 November 2019 (HLCIndexIn: 25-F139822, 19 November 2019), pp. 1-2.

199 OWCP’s reply (PI.no. 30/19 of 25 November 2019) to an HLC request for access to information of public importance.

200 The following are the cases in which indictments have been transferred to the OWCP from B&H 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, Sanski Most – Lušci Palanka, Caparde, Bosanska Krupa II, Ključ – Režovčići, Kožuhe – Doboj, Brčko, Brčko II*, the indictment against Branko Branković, *Bratunac II, Brčko II, Ključ Velagići, Zvornik Standard i Kalinovik. *Ključ – Kamičak and Ključ – Kamičak II* have been merged into one case.

201 OWCP’s reply (PI.no. 30/19 of 25 November 2019) to an HLC request for access to information of public importance.



The EULEX Mission has not shared any evidence with the OWCP during the reporting period.²⁰² This information should be viewed in the light of the fact that in June 2018 the scope of the work of the EULEX Mission was changed. According to the relevant EU Council decision,²⁰³ EULEX's mandate now includes monitoring and advising the Kosovo judiciary and Kosovo Correctional Service, supporting the Kosovo Specialist Chambers and the implementation of EU-facilitated dialogue agreements on normalisation of relations between Kosovo and Serbia.²⁰⁴ In early April 2019, the Serbian media reported that the Kosovo courts had taken over war crimes cases from EULEX.²⁰⁵

Given the changed circumstances and the fact that EULEX's mandate has been reduced to overseeing and advising, the HLC considers it necessary to put in place a mechanism which will enable communication and cooperation between the OWCP and the Kosovo Prosecutor's Office.

202 OWCP's reply (PI.no. 30/19 of 25 November 2019) to an HLC request for access to information of public importance.

203 *Council decision CFSP 2018/856 of 8 June 2018 amending Joint Action 2008/124/CFSP on the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO*, Article 2, paragraph 5, available at: <https://www.eulex-kosovo.eu/eul/repository/docs/CouncilDecision-203336.pdf> [accessed on 28 June 2019].

204 "Brnabić: Ništa dobro od najava kosovskih suđenja za ratne zločine" [Brnabić: Nothing good can come from announced Kosovo takeover of war crimes cases], news, *Radio Free Europe*, 1 April 2019, available online (in Serbian) at: <https://www.slobodnaevropa.org/a/29854626.html>; "EULEX Kosovo: new role for the EU Rule of Law Mission", press release, Council of the EU, 8 June 2018, available online at: <https://www.consilium.europa.eu/en/press/press-releases/2018/06/08/eulex-kosovo-new-role-for-the-eu-rule-of-law-mission/> [accessed on 3 December 2019].

205 "Kosovski sudovi preuzeli slučajeve ratnih zločina od Euleksa" [Kosovo courts take over war crimes cases from EULEX], news, *Insajder*, 1 April 2019, available online (in Serbian) at: <https://insajder.net/sr/sajt/vazno/13967/>; "Kosovski sudovi preuzeli slučajeve ratnih zločina od Euleksa" [Kosovo courts take over war crimes cases from EULEX], [Kosovo courts take over war crimes cases from EULEX], news, *Večernje novosti*, 1 April 2019, available online (in Serbian) at: <http://www.novosti.rs/vesti/naslovna/dosije/aktuelno.292.html:786389-Kosovski-sudovi-preuzeli-slucajeve-ratnih-zlocina-od-Euleksa>; "Kosovski sudovi preuzeli slučajeve ratnih zločina od Euleksa" [Kosovo courts take over war crimes cases from EULEX], news, RTS, 1 April 2019, available at: <http://www.rts.rs/page/stories/sr/story/9/politika/3473774/kosovski-sudovi-preuzeli-slucajeve-ratnih-zlocina-od-euleksa.html> [all sources accessed on 3 December 2019].



Application of the principle of “universal jurisdiction” – parallel investigations

Despite good cooperation between the OWCP and the Prosecutor’s Office of B&H in the form of exchange of evidence and transfer of cases, the practice of conducting parallel investigations into suspected war crimes perpetrators sparks mistrust between the two prosecutors’ offices. In late November 2019, a B&H citizen was arrested on the Serbia-B&H border on suspicion of having committed a war crime against civilians concurrently with a war crime against prisoners of war.²⁰⁶

According to the Law on Organisation and Jurisdiction of Government Authorities in War Crimes Proceedings, the authorities of the Republic of Serbia have jurisdiction to prosecute any gross violations of international humanitarian law that have been committed on the territory of the whole former Yugoslavia since 1 January 1991.²⁰⁷ This means that the OWCP has jurisdiction to prosecute all crimes committed during the wars in the former Yugoslavia, regardless of the nationality of the alleged perpetrator or victim, and regardless of where in the former Yugoslavia the alleged crime was committed (*the principle of universal jurisdiction*). This principle, formally speaking, allows Serbian prosecutors to conduct investigations and bring indictments against nationals of any state in the region.²⁰⁸ However, **the practice of prosecuting nationals of other Yugoslavian successor states deserves criticism for undermining the very foundations of regional judicial cooperation – mutual trust and respect.**²⁰⁹

According to the information available at the time of completion of this report, the Prosecutor’s Office of B&H has asked the Ministry of Justice of B&H to submit to the competent judicial authorities of the Republic of Serbia a request for the extradition of

206 “Na graničnom prelazu Sremska Rača uhapšen Osman Osmanović” [Osman Osmanović arrested on Sremska Rača border crossing] news, *N1 News Channel*, 24 November 2019, available online at: <http://ba.n1info.com/Vijesti/a393405/Uhapsen-Osman-Osmanovic.html> [accessed on 3 December 2019].

207 Law on Organisation and Jurisdiction 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 – other laws and 6/2015), Articles 2 and 3.

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

209 See: *Analysis of War Crimes Prosecution 2004-2013*, HLC, Belgrade, 2018, pp. 52-54, available at: http://www.hlc-rdc.org/wp-content/uploads/2014/10/Analiza_2004-2013_eng.pdf [accessed on 3 December 2019].



Osmanović to Bosnia and Herzegovina.²¹⁰ The Prosecutor's Office gave the following reasons for the request: it has already been working on the Osmanović Case,²¹¹ the crimes Osmanović is suspected of committing occurred on the territory of B&H, the victims were citizens of B&H, the evidence and witnesses are in B&H, and Osmanović is a B&H citizen.²¹²

In the HLC's view, the OWCP should hand over all the evidence it possesses against Osmanović to the competent authorities of B&H, whose citizenship he holds, in order that he can stand trial in B&H. The HLC's stance on this question is that each state formed after the disintegration of Yugoslavia should first and foremost prosecute its own citizens for war crimes, as this sends a message to the other states of the region that the state in question is willing to deal with crimes committed by its citizens and has a genuine intention to normalise relations within the region.²¹³

It is worth recalling in this respect the *Protocol on Cooperation in the Prosecution of Perpetrators of War Crimes, Crimes against Humanity and Genocide* (the Protocol) signed between the Prosecutor's Office of Bosnia and Herzegovina and the Office of the War Crimes Prosecutor of the Republic of Serbia in 2013. The Protocol provides for the exchange of information and evidence concerning crimes committed on the territory of either of the parties where the suspects are nationals or residents of the other party to the Protocol, as well as informing the other party about the status of a case following the exchange of information/evidence.²¹⁴ **The Protocol contains a provision designed to put an end to parallel investigations, which imposes the obligation on either party to inform the other party, within three months from the signing of the agreement, of all ongoing cases against nationals of the other party.**²¹⁵

55

210 "Tužilaštvo BiH zatražilo izručenje Osmana Osmanovića (1960) pravosuđu BiH" [The Prosecutor's Office of B&H requests extradition of Osman Osmanović (born in 1960) to B&H judicial authorities], press release, 27 November 2019, available on the official website of the Prosecutor's Office of B&H at: <http://www.tuzilastvobih.gov.ba/?id=4337&jezik=b> [accessed on 3 December 2019].

211 *Ibid.*

212 *Ibid.*

213 See also: "Husein Mujanović should be extradited to B&H", HLC, press release, 21 February 2019, available at: <http://www.hlc-rdc.org/?s=mujanovi%C4%8D&lang=de> [accessed on 3 December 2019].

214 *Protokol Tužilaštva Bosne i Hercegovine i Tužilaštva za ratne zločine Republike Srbije o saradnji u progonu počinitelaca krivičnih dela ratnih zločina, zločina protiv čovečnosti i genocida* [Protocol signed between the Prosecutor's Office of Bosnia and Herzegovina and the Office of War Crimes Prosecutor of the Republic of Serbia on Cooperation in the Prosecution of Perpetrators of War Crimes, Crimes against Humanity and Genocide], 31 January 2013, available at: http://www.tuzilastvorz.org.rs/upload/Cooperation/Documents/2016-05/s_protokol_trz_tbih_lat.pdf [accessed on 3 December 2019].

215 *Ibid.*, Article 3.



Furthermore, at the Western Balkans Summit held in London in July 2018 within the framework of the Berlin Process, a Joint Declaration on War Crimes was signed, which acknowledged the need for strengthening regional cooperation.²¹⁶ The Declaration underlines the importance of removing impediments to effective regional cooperation, including through the exchange of information, cooperation between prosecutor's offices, expeditious mutual legal assistance and avoiding conflicts of jurisdiction.²¹⁷

In the light of the above, the HLC calls on the competent institutions in Serbia to abandon the application of the principle of universal jurisdiction, because it widens the gulf of mistrust between the states in the region, and consequently further impedes the effective prosecution of war crimes.

IMPROVING THE SOCIETY'S ATTITUDE TOWARDS THE ISSUE OF WAR CRIMES TRIALS

Objective 1: Easier access to information on war crimes trials.

Objective 2: Enhancement of capacity of media professionals for appropriate reporting on war crimes proceedings.

Objective 3: Improvement of the curricula in a manner that 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.

No progress was made in the reporting period towards improving the public attitude towards war crimes or war crimes trials. The promotion and glorification of convicted war criminals intensified during this period.²¹⁸

²¹⁶ For more information about the London Summit visit: <https://www.gov.uk/government/topical-events/westernbalkans-summit-london-2018/about> [accessed on 3 December 2019].

²¹⁷ *Joint Declaration on War Crimes*, London, 10 July 2018, p. 10, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/724294/180710_WBS_Joint_Declarations.pdf [accessed on 3 December 2019].

²¹⁸ See also: *Initial Report on the Implementation of the National Strategy for the Prosecution of War Crimes*, HLC, December 2017, pp. 68-76; *Second Report on the Implementation of the National Strategy*



As in the previous reporting periods, information on war crimes trials was not easily accessible. This was largely because the reports on the implementation of strategic documents in the field of war crimes prosecution, such as the Action Plan for Chapter 23 and the National Strategy, were published at too slow a pace to be able to fulfil the right of the public to know about the progress of the reform processes that these two documents had mapped out. As regards the state of implementation of the Prosecutorial Strategy, there were no reports available.

Public promotion of convicted war criminals

The “Ratnik” (“Warrior”) series, published by the Ministry of Defence

The promotion of the “Ratnik” (“Warrior”) series by the Ministry of Defence, which began during the International Belgrade Book Fair in October 2018, continued in 2019.²¹⁹ The Ministry of Defence spent around four million dinars from Serbia’s state budget on the publication of the “Warrior” series.²²⁰

The latest book by Nebojša Pavković, “The Stench of Gunpowder and Death in Kosovo and Metohija 1998”, was launched by the Ministry of Defence at the 64th Belgrade Book Fair. The HLC recalls that Nebojša Pavković, a retired general of the Yugoslav Army (VJ), was finally convicted, together with Nikola Šainović, former Vice-President of the Government of the FRY, Sreten Lukić, Chief of MoI Staff in Kosovo, and Vladimir Lazarević, also a retired general of the VJ, on all five counts of the ICTY indictment, including forcible transfer, deportation, killings and persecution of the Albanian population of Kosovo.²²¹ The Ministry of Defence also staged a public discussion entitled

57

for the Prosecution of War Crimes, HLC, June 2018, pp. 54-58; *Third Report on the Implementation of the National Strategy for the Prosecution of War Crimes*, HLC, December 2018, pp. 50-55.; *Fourth Report on the Implementation of the National Strategy for the Prosecution of War Crimes*, HLC, June 2019, pp. 55-60.

219 As stated on the Ministry of Defence’s website, “the reason for launching the ‘Warrior’ series is the effort to preserve the experience of our war commanders during the NATO aggression in 1999, their war skills, decision-making methods, disposition of units - everything by which they made us feel proud at that time, defending the country – as a contribution to the culture of memory”. See “‘Warrior’ edition promoted at the Central Military Club”, News, 10 April 2019, available at the official website of the Ministry of Defence: <http://www.mod.gov.rs/eng/13814/edicija-ratnik-promovisana-u-domu-vojske-13814> [accessed on 5 December 2019].

220 Serbian Ministry of Defence reply (32-128 of 3 October 2019) to an HLC request for access to information of public importance.

221 See Šainović *et al.* (IT-05-87) at: <https://www.icty.org/en/case/milutinovic/4> [accessed on 5 July 2019].



“Experiences from operations during the NATO aggression – PRESERVING MEMORY THROUGH BOOKS”, which featured convicted war criminals Vladimir Lazarević²²² and Vinko Pandurević.²²³

The HLC issued a press release criticising the Ministry of Defence for using the Book Fair to promote convicted war criminals.²²⁴ The Ministry of Defence countered the criticism with a press release of its own, in which it stated that “for far too long, others have written the history of Serbia and decided what is true and what is not, so this is our way to tell the truth about the wars Serbia neither wanted nor provoked.”²²⁵

The Humanitarian Law Center remains firm in its belief that the promotion of convicted war criminals at the Belgrade Book Fair organised by the Ministry of Defence leads to the relativisation of past crimes and denial of the facts established during judicial processes conducted before the ICTY. When the relativisation comes from government institutions themselves, this casts serious doubt on the state’s intention and willingness to prosecute these crimes and improve the general public’s attitude towards war crimes trials, especially those conducted by domestic courts.

Paucity of information about war crimes trials

In the nearly three years of the implementation of the National Strategy, not one of the activities to achieve the objective defined as “easier access to information about war crimes trials” has been implemented in a way that could be considered successful.

The first such activity is concerned with the consistent application of Article 16a of the Law on Organisation and Jurisdiction of Government Authorities in War Crimes

222 See Šainović *et al.* (IT-05-87).

223 See Popović *et al.* (IT-05-88) at: <http://www.icty.org/en/case/popovic> [accessed on 5 December 2019].

224 “Belgrade Book Fair – a place to promote war criminals”, press release, HLC, 25 October 2019, available at: <http://www.hlc-rdc.org/?cat=221&lang=de> [accessed on 5 December 2019].

225 “Ministarstvo odbrane Fondu za humanitarno pravo: Srbija dugo ćutala i puštala druge da pišu njenu istoriju” [Ministry of Defence to Humanitarian Law Centre: Serbia has been silent for too long, letting others write its history], News, 25 October 2019, RTV, available at: http://www.rtv.rs/sr_lat/drustvo/ministarstvo-odbrane-fondu-za-humanitarno-pravo-srbija-dugo-cutala-i-pustala-druge-da-pisu-njenu-istoriju_1060685.html [accessed on 5 December 2019].



Proceedings²²⁶ by the presidents of the competent courts.²²⁷ This article governs the granting of permissions for trial recording for the purpose of public broadcasting. While preparing its reports on the implementation of the National Strategy, the HLC has submitted to the Higher Court in Belgrade several requests for access to information of public interest, in order to find out whether the court had received any requests for permission to take photographs or make audio and video recordings of a trial for the purpose of public broadcasting.²²⁸ In one of the replies provided, the court said that it had received two such requests between February 2016 and May 2017. Both these requests were for the *Srebrenica-Kravica* Case and both were denied.²²⁹ In its subsequent replies, which concerned the period after May 2017, the Higher Court stated that it had received no such requests in the said period.²³⁰

226 Law on Organisation and Jurisdiction of Government Authorities in War Crimes (Official Gazette of the Republic of Serbia nos. 67/2003, 135/2004, 61/2005, 101/2007, 104/2009, 101/2011 – other laws and 6/2015). Article 16a reads as follows: “The recording of a trial for the purposes of public broadcast may be approved by the Court President upon obtaining the parties’ opinions. The recording referred to in paragraph 1 of this Article may be carried out by public media. If the recording of a trial is approved, the panel may, for justified reasons, decide that certain parts of the trial may not be recorded.”

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

228 Request for access to information of public importance (HLCIndexIn: 170-F129688) of 20 April 2017, p. 2; Higher Court in Belgrade’s reply (Su II 17a no. 93/17 of 18 May 2017) to an HLC request for access to information of public importance, p. 2; Request for access to information of public importance, HLCIndexIn: 170-F133865, of 04.05.2018, p. 2; Higher Court in Belgrade’s reply (Su II 17a no. 111/18 of 28 May 2018) to an HLC request for access to information of public importance, p. 2; Request for access to information of public importance, HLCIndexIn: 170-135616, of 19 November 2018; Higher Court in Belgrade’s reply (Su II 17a no. 319/18 of 27 November 2018) to an HLC request for access to information of public importance; Request for access to information of public importance, HLCIndexIn: 170-137852, of 30 May 2019; Higher Court in Belgrade’s reply (Su II 17a no. 301/19 of 19 June 2019) to an HLC request for access to information of public importance; Request for access to information of public importance, HLCIndexIn: 170-139667, of 6 November 2019, p. 2; Higher Court in Belgrade’s reply (Su II 17a no. 430/19, of 29 January 2019) to an HLC request for access to information of public importance, p. 2.

229 Higher Court in Belgrade’s reply (Su II 17a no. 93/17 of 18 May 2017) to an HLC request for access to information of public importance, p. 2.

230 Higher Court in Belgrade’s reply (Su II 17a no. 111/18 of 28 May 2018) to an HLC request for access to information of public importance, p. 2; Higher Court in Belgrade’s reply (Su II 17a no. 319/18 of 27 November 2018) to an HLC request for access to information of public importance; Higher Court in Belgrade’s reply (Su II 17a no. 301/19 of 19 June 2019) to an HLC request for access to information of public importance; Higher Court in Belgrade’s reply (Su II 17a no. 430/19 of 29 January 2019) to an HLC request for access to information of public importance, p. 2.

The HLC recalls that, unlike with trials for organised crime, **the media have never made a video footage of a war crimes trial.**²³¹ Consequently, for more than 15 years of domestic war crimes prosecution, the general public in Serbia has never had a chance to see a single testimony of a victim, perpetrator or witness participating in a trial, or a court delivering a judgment in a war crime case.

The second activity is concerned with upgrading the website of the Higher Court in Belgrade, so that all necessary information about war crimes judgments is posted on it, and also, gradually over time, the full texts of the judgments rendered in war crimes cases.²³² In 2018, the Higher Court in Belgrade's website was completely redesigned, but it still contains little information about war crimes cases.²³³ **At the time of this writing, a modest amount of information about war crimes cases was available from the new Higher Court's website.** The latest item of information posted is the news, dated 20 June 2019, that the judgment on the *Lovas* Case had been handed down and pronounced.²³⁴ It is not without significance to mention here that the Higher Court in Belgrade has handed down four more judgments in war crimes cases since that date.²³⁵

The third activity, as set out in the National Strategy, is regular publication of meaningful and relevant reports on the performance of the judicial institutions responsible for handling war crimes cases.²³⁶ Apart from the *Report in relation to sub-sections 1.4.1.10. and 1.4.3.5. of the Action Plan for Chapter 23*, posted by the OWCP on its website in late December 2018²³⁷, and designed to show what actions the OWCP has taken with

231 *Model Strategy for the Prosecution of War Crimes Committed during and in relation to the Armed Conflicts in the former Yugoslavia 2015-2025*, HLC, 2015, p. 30. The *Model Strategy* is available online at: 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 [accessed on 6 December 2019].

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

233 Official website of the Higher Court in Belgrade at: <https://www.bg.vi.sud.rs/> [accessed on 6 December 2019].

234 "Doneta i javno objavljena presuda u krivičnom postupku koji se vodi protiv okrivljenog Krnjajić Željka i dr. ('Lovas')" [Judgment delivered and pronounced in the criminal case against Željko Krnjajić et al. (*Lovas*)], Press release, 20 June 2019, available at: <https://www.bg.vi.sud.rs/vest/2014/doneta-i-javno-objavljena-presuda-u-krivicnom-postupku-koji-se-vodi-protiv-okrivljenog-krnjajic-zeljka-i-dr-lovas-.php> [accessed on 6 December 2019].

235 Specifically, until 1 December 2019. The cases in which first instance judgments have been handed down are *Bratunac*, *Brčko*, *Ključ-Rejzovići* and *Bosanska Krupa II*.

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

237 *Izveštaj na osnovu tačaka 1.4.1.10. i 1.4.3.5. Akcionog plana za Poglavlje 23 [Report in relation to sub-sections 1.4.1.10. and 1.4.3.5. of the Action Plan for Chapter 23]* is available (in Serbian) on the



regard to all criminal complaints that have been filed with it since 2005, and thus enable assessment of whether or not all war crimes charges have been adequately investigated, **the HLC has not been able to identify any other performance report published by a judicial institution responsible for handling war crimes.**

The fourth activity is concerned with the implementation of all strategic documents relevant to war crimes prosecution (Action Plan for Chapter 23, National Strategy, Prosecutorial Strategy).²³⁸ As mentioned earlier, **the latest Report on the Implementation of the Action Plan for Chapter 23 was published in July 2018, and the last (sixth) Report of the Working Body on the Implementation of the National Strategy was published on 19 June 2019, while there are no reports available on the implementation of the Prosecutorial Strategy.**²³⁹

The fifth and last activity envisages the engagement of representatives of the institutions responsible for handling war crimes in the mechanism for cooperation between civil society organisations and government bodies, through their occasional participation in the National Convention on the European Union (NCEU) conferences.²⁴⁰ According to the information available to the HLC, **the last NCEU conference a member of an institution responsible for war crimes processing participated in took place on 1 November 2016.**²⁴¹

To judge by the inadequate implementation so far of the above listed activities, **keeping the public informed about domestic war crimes trials continues to be a serious challenge for the judicial authorities responsible for handling these crimes.** As the National Strategy will expire in twelve months' time, unless some meaningful steps are taken promptly, the stated goal of the National Strategy will remain unaccomplished.

61

OWCP website at: http://www.tuzilastvorz.org.rs/upload/HomeDocument/Document__sr/2018-12/izvestaj_latnica.pdf [accessed on 6 December 2019].

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

239 See the section of the report concerned with the obstacles faced by the HLC in compiling the Report on the Implementation of the National Strategy for the Prosecution of War Crimes.

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

241 „Neophodan veći uticaj i rad civilnog društva u ispunjavanju obaveza iz Poglavlja 23” [CSO should have greater influence on and work more towards fulfilling obligations under Chapter 23], news, 4 November 2016, available on the official website of the National Convention on the EU: <http://eukonvent.org/neophodan-veci-uticaj-i-rad-civilnog-drustva-u-ispunjavanju-obaveza-iz-poglavlja-23/> [accessed on 6 December 2019].



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	Implemented
The OWCP shall endeavour to register and take over all the war crimes cases still pending before the domestic courts of general jurisdiction.	Quarter 4 of 2016	Implemented
<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 victimisation.	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	Implemented
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"> • Organisation 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 organisation 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 Organisation 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 neighbouring states on the establishment of a regional database of war crimes case trials which would considerably contribute to harmonisation of jurisprudence.	Continuous, commencing from Quarter 1 of 2016	Not implemented
<p>The Ministry of Justice shall endeavour, on the proposal of the HJC, to provide adequate technical equipment for the courtrooms in which war crimes trials are held.</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
Intersectoral 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 programme 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 Programme for Participants in Criminal Proceedings, prepare the analysis of the status and needs of the Protection Unit.	Quarter 1 of 2016	Implemented
On the basis of the above analysis, the MoI 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 Programme 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
<p>Improvement of cooperation between the Protection Unit and the OWCP, through:</p> <ul style="list-style-type: none"> • Organisation 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 organisation 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 harmonisation of the normative framework Directive 2012/29/EU.	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 harmonisation 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	No information
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 organise additional training and encourage the participation in professional conferences.	Continuous, commencing from Quarter 2 of 2016	Implementation in progress
To meet the needs of the Protection Unit staff, the Training Centre of the MoI will occasionally organise additional training and encourage the participation in professional conferences.	Continuous, commencing from Quarter 2 of 2016	Not implemented
Improvement of infrastructural and technical capacity of the services for assistance and support to victims and witnesses.	Continuous, commencing from Quarter 2 of 2016	Not implemented
Establishment of a countrywide network of services for assistance and support to victims and witnesses during 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. DEFENCE OF THE ACCUSED		
Activity	Time Limit	Implementation Status
Developing a programme of initial and continuous training in international humanitarian and international criminal law for the lawyers representing defendants in war crimes cases.	Quarter 3 of 2016	Not implemented
Implementation of 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 organisational 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	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 organised 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 organisation.	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 endeavour 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 endeavour to maintain good practice of <i>ad hoc</i> presence of the adviser from the OWCP in the offices of the ICTY and the IRMCT.	Periodical	Implementation in progress

7. REGIONAL AND BROADER INTERNATIONAL COOPERATION		
7.1. Regional Cooperation		
Activity	Time Limit	Implementation Status
<p>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:</p> <p>1) establishing regional rules on the division of jurisdiction for proceeding in war crimes cases;</p> <p>2) enhancement of regional cooperation with regard to proceeding upon letters of request in war crimes cases;</p> <p>3) setting up a facilitated procedure for obtaining evidence in the territory of another state by defence attorneys in war crimes cases;</p> <p>4) uniform proceeding of states in the region with regard to determining the fate of missing persons.</p>	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	Implementation in progress
The OWCP will initiate the establishment of joint records of war crimes cases at the regional level the resolution of which commenced through regional cooperation.	Continuous, commencing from Quarter 2 of 2016	Not implemented
The OWCP 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
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7.1. 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 Organisation 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	Delay in implementation
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 organisations through their participation in occasional meetings with the National Convent of the EU.	Continuous	Not implemented
Periodical organisation of courses, workshops and trainings for journalists reporting on war crimes trials, in cooperation with media organisations, judicial institutions and international organisations.	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



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