



HUMANITARIAN LAW CENTER

Practical Policy Proposal/Policy Paper:

Improving the Status and Rights
of Victims and Witnesses in War Crimes
Proceedings in Serbia



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*"The witness should be taught how to breathe. You know, it's very scary to go into a courtroom, and see the judges, prosecutors, defence attorneys and defendants (who have harmed you the most). In such a situation, you have to fight so as not to get overwhelmed by emotions and lose control over yourself. That's why it is necessary to work with witnesses- so they can deal with their emotions and testify successfully."*¹

S.S., witness in *Zvornik* Case

¹ Personal interview, conducted on 25/03/2019 in Đulići, Zvornik Municipality, with the witness S.S., who testified in the *Zvornik* Case.

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ABSTRACT

The role of victims in war crimes proceedings is irreplaceable, as their testimonies in these proceedings are often the key evidence that can support the allegations in the indictment. Over the past 16 years, since the establishment and operation of the War Crimes Department of the Higher Court in Belgrade², the Humanitarian Law Centre (HLC) has identified a number of deficiencies in the victim and witness support system in war crimes proceedings. Some of the shortcomings are: an inadequate normative framework governing the status of victims and witnesses, and the insufficient capacities of the institutions in charge of assistance and support to victims and witnesses of war crimes during all stages of criminal proceedings,³ as well as the insufficient training and sensitivity of employees in institutions competent for war crimes proceedings.

The attitude of the competent judicial authorities towards victims greatly affects their decision to participate in criminal proceedings, as well as their sense of confidence in the judicial system. This practical policy proposal analyses the status of victims and witnesses in war crimes proceedings, identifies existing problems, and provides the institutions of Serbia responsible for war crimes prosecutions with recommendations for improving the status of victims during criminal proceedings.

² With the passage of the Law on Organisation and Jurisdiction of Government Authorities in War Crimes Proceedings in 2003, exclusive jurisdiction for dealing with war crimes cases at first instance was assigned to the War Crimes Chamber of the Belgrade District Court (now the War Crimes Department of the Higher Court in Belgrade).

³ The Victim and Witness Assistance and Support Service at the Higher Court in Belgrade and the Victim and Witness Information and Support Service of the OWCP of the Republic of Serbia.

INTRODUCTION

The HLC is the only non-governmental organisation in Serbia that has been continuously monitoring and analysing all war crimes trials before the courts in Serbia, and informing the domestic and international public about it since 2002. The HLC files criminal complaints against suspects and submits documentation on war crimes committed to the Office of the War Crimes Prosecutor (OWCP); identifies and encourages witnesses and victims to testify in war crimes cases, thereby contributing to the establishment of justice for crimes of the past. On the basis of its insight into war crimes proceedings in Serbia over many years, the HLC has addressed specific problems and shortcomings in the existing victim and witness support system, and has therefore developed a practical policy proposal to provide an analysis of the current situation and offer recommendations for the improvement of the status of victims and witnesses in war crimes proceedings before the courts in Serbia.

A victim is a natural person who has suffered harm, including physical, psychological or emotional damage or economic loss that was directly caused by a crime. In criminal proceedings, victims are also considered family members of a person whose death was directly caused by a crime and who suffered damage as a result of the death of that person.⁴ This practical policy proposal will use the term "victim" as the equivalent of the term "injured party" from the Criminal Procedure Code (CPC).⁵ Most of the victims who testify in war crimes cases have survived or witnessed mass murders, rapes, abuse and torture, expulsion and destruction of property during the conflicts in the former Yugoslavia. Due to the specific circumstances under which the acts against international law (genocide, war crimes and crimes against humanity) have been committed, any victim in these proceedings should, whenever possible, have the status of especially vulnerable witness.⁶ Given that giving testimony is very traumatic for many victims, it is vital that the judicial system recognises the needs and concerns of the victims and provides them with the support and necessary information to reduce re-traumatisation and, at the same time, prepare them for quality testimony.

Therefore, in order to ensure a smooth and efficient trial, it is crucial that victims have the support of the institutions responsible for prosecution, and that they are informed about court proceedings and their rights, so that their testimony is of as high a quality as possible, but the consequences in later life as minimal as possible.

⁴ Ministry of Justice of the Republic of Serbia. *Working text: National Strategy on the Rights of Victims and Witnesses of Crime for the period 2019-2025*, p. 7, available at: <https://www.mpravde.gov.rs/sekcija/53/radne-verzije-propisa.php>, accessed: 22/05/2019 – that definition is in accordance with Article 2 of Directive 2012/29/EU.

⁵ *Criminal Procedure Code* ("Official Gazette of the Republic of Serbia", Nos. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013 and 55/2014).

⁶ The authority conducting proceedings may, ex officio, at the request of parties or the witness himself, designate as an especially vulnerable witness a witness who is especially vulnerable in view of her/his age, experience, lifestyle, gender, or state of health, or the nature, manner or consequences of the criminal offence committed, or other circumstances, *Criminal Procedure Code* ("Official Gazette of RS", Nos. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013 and 55/2014), Article 103, paragraph 1.

This practical policy proposal is structured in such way that the first part analyses the legal framework governing the rights of victims and witnesses, and the second part analyses the institutional framework, while the third part identifies the existing problems and the HLC's proposals to the competent institutions for improving the conditions under which victims testify in war crimes proceedings before the courts in Serbia. For drafting this practical policy proposal, the HLC used information collected from competent institutions, as well as information received from victims and on the basis of interviews conducted in the field. A survey conducted by the HLC examined victims' views on their overall testimony experience.⁷ In addition, the HLC's previous analyses and reports were an important source of information for the preparation of this practical policy proposal.⁸ The results of the HLC's investigation showed that victims who had chosen to testify before the courts in Serbia were exposed to a great deal of emotional strain before, during and after the testimony, as they relived their traumatic experiences. Incomplete support to victims and lack of information about the trial itself (rules and possible outcomes of criminal proceedings) lead to loss of confidence in Serbian institutions, both for witnesses victims who have chosen to testify and future witnesses and victims. On the other hand, supporting and informing victims and witnesses contributes to a greater response from victims who are willing to testify before the courts, and to the better quality of their testimony, as well as increased confidence in the pursuit of criminal justice.⁹

7 The HLC interviewed 31 victims who had testified before the War Crimes Department of the Higher Court in Belgrade in the following Cases: *Lovas, Zvornik, Skočić and Trnje*, and who now live in Bosnia and Herzegovina (BiH), Croatia and Kosovo.

8 *War Crimes Trials in Serbia - Individual Cases*, available at: <http://www.hlc-rdc.org/?cat=234>, accessed: 08/06/2019.

9 *Development of a Witness and Victim Support System – the Croatian experience: good practices and lessons learned*, p. 14, available at: <https://www.eurasia.undp.org/content/dam/rbec/docs/UNDP-CROATIA%20-%20Witness%20and%20Victim.pdf>, accessed: 10/06/2019.

I. RELEVANT LEGAL FRAMEWORK

i. Directive on compensation to victims of crime

The Council Directive 2004/80/EC of 29 April 2004 on compensation to crime victims was adopted in order to ensure that victims of crime in the European Union are entitled to fair and adequate compensation for the damages they have suffered, regardless of where in the EU the crime was committed. The compensation to which this Directive applies is not intended for victims of any criminal offence, but rather of serious forms of crime affecting the victim's personality, or physical and psychological integrity, or causing serious physical injuries or serious impairment of the victim's health. The directive itself uses the term "violent crime" deliberately, even though it does not individually list the offences covered by the term, which are left to the Member States to specify.¹⁰ However, it is quite clear that war crimes against civilians, as well as all other serious violations of human rights related to armed conflicts (torture, sexual violence, forced disappearance, etc.) fall into this category of violent and intentional crimes.

The basic obligation under this Directive is to establish a compensation mechanism at national level for all cases where the victim could not obtain fair and adequate compensation from the direct perpetrator of the crime because they were unknown, unavailable to prosecuting authorities or in poor financial standing. The European Convention of 1983 on Compensation to Victims of Violent Crimes also obliges all EU Member States to establish such a mechanism. Serbia signed this Convention in 2010, but to date it has not ratified it, and thus, in relation to Serbia, the Convention has not entered into force.

Decisions on compensations are entrusted to one or more authorities within each state, the procedure itself must be as simple and accessible as possible to the victim, and all administrative formalities must be kept to a minimum.¹¹ In addition, states must ensure that all potential applicants for compensation have access to all necessary information in order to be able to file the request,¹² and must also create the appropriate form for submitting requests,¹³ as well as assist victims in applying for and obtaining the necessary documentation.¹⁴ The Directive provides for the right of the victim to file a request in their country of residence, including in the event that the offence took place in another Member State, and it obliges the Member States to cooperate in forwarding the request. Member States have transposed¹⁵

10 For example, the *Croatian Law on Compensation of Victims of Crimes* ("Official Gazette", Nos. 80/08 and 27/11), which transposes the mentioned Directive, lists under these crimes a criminal offence committed with intent to apply force or harm sexual integrity, as well as the criminal offence of endangering life and property by generally dangerous actions or means that cause death, serious bodily injury or serious impairment of health for one or more persons; and it is prescribed by the criminal law as a more severe form of the basic criminal offence committed with intent /Article 5(3)/.

11 Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims, Article 3 (3), available at: https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/directive_2004_80_relating_to_compensation_en_1.pdf, accessed: 10/06/2019.

12 *Ibid*, Article 4.

13 *Ibid*, Article 5 (1)

14 *Ibid*, Article 5 (2)

15 Transposition involves a series of measures, primarily amendments to laws and regulations, which the Member State is obliged to undertake to implement the EU Directive.

this Directive in different ways, usually with amendments to existing laws, while some Member States have enacted special laws on compensation for victims of these crimes to comply with this Directive (Belgium, Bulgaria, Czech Republic, Croatia, Slovenia, Slovakia).

ii. Directive on minimum standards on the rights, support and protection of victims of crime

The European Union (EU) has regulated in its Acts certain rights of crime victims, even though the primary responsibility for regulating the status of the victim is left to the Member States. Adopting regulations at EU level seeks to establish minimum standards of rights for victims which must be applied in all Member States, although freedom is given to some countries to establish more advanced standards if they wish.¹⁶ In this regard, a EU directive was adopted establishing minimum standards on the rights, support and protection of victims of crime - Directive 2012/29/EU (Directive). The Directive, which was adopted in 2012, replaced the former 2001 Council Framework Decision,¹⁷ and defined a much wider scope of rights that must be guaranteed to the victim of a crime, from the first contact with the competent state authority - even before the formal initiation of criminal proceedings -, during criminal proceedings and even after the conclusion of criminal proceedings.¹⁸

The Directive is a binding document for all EU Member States, and comprehensively addresses the needs of victims, so that they are recognised and treated with respect and dignity and so that they can have access to justice and compensation.¹⁹ The rights proclaimed by the Directive can be divided into two categories: the right to information and the rights of crime victims in criminal proceedings. The most important obligation of the Directive is to provide victims with information about all their rights from the first moment they contact the competent government authority. Victims must also be given access to free support services of various forms, such as counselling, referral to specialist services, emotional and psychological support, risk prevention and prevention of risk of re - victimisation.²⁰

16 *The legal and institutional framework in Serbia regarding the rights and needs of civilian victims of war*, p. 55, available at: <http://www.hlc-rdc.org/wp-content/uploads/2017/08/The-legal-and-institutional-framework-in-Serbia-regarding-the-rights-and-needs-of-civilian-victims-of-war.pdf>, accessed: 03/06/2019.

17 The European Union Framework Decision 2001/220/JHA on the status of victims in criminal proceedings was adopted by the Council of the European Union in 2001. With this Decision, the European Union established minimum standards on the rights of victims in criminal proceedings, which relate primarily to the right of the victim to be heard, and the opportunity to participate in criminal proceedings, as well as to protection, compensation and access to mediation and to any relevant information.

18 *The legal and institutional framework in Serbia regarding the rights and needs of civilian victims of war*, p. 58, available at: <http://www.hlc-rdc.org/wp-content/uploads/2017/08/The-legal-and-institutional-framework-in-Serbia-regarding-the-rights-and-needs-of-civilian-victims-of-war.pdf>, accessed: 03/06/2019.

19 *The National Strategy for the Development of Support Systems for Victims and Witnesses in Croatia for the period from 2016 to 2020* ("Official Gazette", No. 75/15), available at: https://narodne-novine.nn.hr/clanci/sluzbeni/2015_07_75_1437.html, accessed: 16/05/2019.

20 *The legal and institutional framework in Serbia regarding the rights and needs of civilian victims of war*, p. 58, available at: <http://www.hlc-rdc.org/wp-content/uploads/2017/08/The-legal-and-institutional-framework-in-Serbia-regarding-the-rights-and-needs-of-civilian-victims-of-war.pdf>, accessed: 03/06/2019.

These services can be performed by state institutions and also civil society organisations. It is up to Member States to establish networks of these services, including the competent body as the main point of contact available to victims from the moment when the offence occurred, until the completion of the criminal proceedings, and thereafter if necessary.²¹

During criminal proceedings, the Directive provides for a series of rights for victims, such as the right to be informed on the progress of the case, the right to an interpreter, the right to file a complaint, the right to hear witnesses and expert witnesses, the right to present evidence, as well as the right to complain against the decision on waiver of prosecution. The Directive also prescribes that the victim must be provided with legal assistance when necessary, as well as with respect for their privacy and personal integrity.²² The States are also obliged to carry out timely and individual assessments for each victim in order to determine whether protective or other measures are necessary due to any specific vulnerability or exposure to re-victimisation. This assessment must take into consideration the personal characteristics of the victim, the type or nature of the crime, as well as the special circumstances of the crime.²³ Bearing in mind the given parameters, the Directive emphasises that special attention should be paid to victims who are particularly vulnerable due to the gravity of the crime, to victims of crimes with discriminatory motives, and to those victims who are particularly vulnerable to offenders because they depend on them.²⁴ The needs assessment is conducted with the participation of the victim, taking into account their wishes, including the desire not to use special protection measures.²⁵ Implementing the Directive in individual assessment can provide additional protection for each victim who is in need of protection, and in case the victim wishes to exercise additional rights (cumulative fulfilment).²⁶

The Directive prescribes that all competent officials who may come into contact with the victims, primarily police officers and members of the judiciary, must undergo general and specialised training to increase awareness of victims' needs in order to communicate with the victims and act impartially, respectfully and professionally.²⁷ The Directive has put the needs of victims in the foreground and paved the way for the development of practices that place victims at the heart of the criminal justice system. This is of great importance for Serbia as a country in the EU accession process, which needs to align its legislation with the EU legislation by the time of accession.²⁸

21 *Ibid.*

22 *Ibid.*

23 *Ibid.*

24 Directive 2012/29/EU, Article 22, paragraph 2, available at: <https://eur-lex.europa.eu/legal-content/HR/TXT/PDF/?uri=CELEX:32012L0029&from=hr>, accessed: 08/10/2019.

25 *Status and Rights of Victims of Crime in the Republic of Croatia*, p. 24, available at: <https://www.documenta.hr/assets/files/publikacije/polozaj-i-prava-zrtava-kaznenih-djela-2017-web.pdf>, accessed: 19/05/2019.

26 *Ibid.*, p. 25.

27 *Ibid.*

28 *The legal and institutional framework in Serbia regarding the rights and needs of civilian victims of war*, p. 60, available at: <http://www.hlc-rdc.org/wp-content/uploads/2017/08/The-legal-and-institutional-framework-in-Serbia-regarding-the-rights-and-needs-of-civilian-victims-of-war.pdf>, accessed: 03/06/2019.

iii. The Criminal Procedure Code of the Republic of Serbia

The provisions of the Criminal Procedure Code (CPC) are crucial when it comes to the role and rights of victims (injured parties) in criminal proceedings before the courts in Serbia. According to the CPC, a victim (injured party) is a person whose personal or property right has been violated or jeopardised by a criminal offence.²⁹

During the criminal proceeding, the victim (injured party) is entitled to: submit a motion and evidence for realising a restitution claim and to suggest interim measures for providing it; present facts and propose evidence of importance for proving the claim; retain a proxy from amongst the attorneys; examine the files and objects serving as evidence; be notified about the dismissal of a criminal complaint or abandonment of criminal prosecution by the public prosecutor; submit objections to the public prosecutor's decision not to conduct criminal prosecution or to abandon criminal prosecution; be advised about the possibility of assuming criminal prosecution and representing the prosecution; attend the preparatory hearing; attend the trial and participate in examining evidence; file an appeal against the decision on the costs of the criminal proceedings and the adjudicated restitution claim; be notified about the outcome of the proceedings and be served the final judgment; and perform other actions and be served the final judgment and perform other actions where provided for by the Code.³⁰ The CPC also stipulates that the victim (injured party) may be denied the right to examine the case files and objects until they are questioned as a witness.³¹

In most cases, the court will question the victim (injured party) during the criminal proceeding, from which moment they become a witness-injured party. According to the CPC, a witness is a person for whom it is probable that s/he will provide information about a criminal offence, the perpetrator, or other facts being determined in the proceedings.³²

a) Procedural Witness Protection

In order to ensure that more victims gain confidence in the Serbian judiciary and thus contribute to the detection of perpetrators of criminal offences and events of the past, it is necessary that effective witness protection measures exist and are applied.³³

²⁹ *The Criminal Procedure Code* ("Official Gazette of RS", Nos. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013 and 55/2014), Article 2, paragraph 1, point 11.

³⁰ *Ibid*, Article 50, paragraph 1.

³¹ *Ibid*, Article 50, paragraph 2.

³² *Ibid*, Article 91.

³³ *Initial Report on the Implementation of the National Strategy for the Prosecution of War Crimes*, p. 34, available at: http://www.hlc-rdc.org/wp-content/uploads/2017/12/Izvestaj_Strategija_I_eng.pdf, accessed: 15/05/2019.

The CPC provides for special procedural measures for witness protection, which are applicable both in the investigation and at the main hearing.³⁴ Procedural protective measures encompass measures to protect the integrity of all witnesses, and especially highly vulnerable witnesses and witnesses who face risks as a result of their giving evidence in court.³⁵

Protecting the Integrity of Witnesses

The court or the prosecutor, depending on the stage of the proceedings, is obliged to protect the witness from insults and threats or other forms of assault on his/her integrity that come from other participants in the process. To achieve this, the court may issue a reprimand and a fine of up to 150,000 dinars, while the prosecutor can issue only a reprimand.³⁶ In addition to reprimands and fines, the court has at its disposal two so-called preventive measures that it can impose when the integrity of a witness had been violated or assaulted: to close the hearing to the public, and to remove the accused from the courtroom.³⁷

Protecting Highly Vulnerable Witnesses

According to the CPC, a highly vulnerable witness is one whose vulnerability is the result of his/her age, life experience, gender, health, nature, or manner, or the consequences of the crime, or other circumstances.³⁸ The measures applied for this type of witness are examination through a council, a single judge or the prosecutor (depending on the stage of the proceedings), examination with the help of a social worker, psychologist or other professional, or examination by technical means of video and sound transmission. A highly vulnerable witness cannot be confronted with the defendant, unless the defendant requests this and the authorised body allows it, taking into account the degree of sensitivity of the witnesses and the rights of the defendant.³⁹ **The HLC's recommendation is that victims of sexual violence, as well as victims coping with the aftermath of a crime in the form of post-traumatic stress disorder, are always accorded the status of a highly vulnerable witness in order to minimise their re - victimisation.**

³⁴ *The Criminal Procedure Code* ("Official Gazette of RS", Nos. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013 and 55/2014), Article 102-111.

³⁵ *Initial Report on the Implementation of the National Strategy for the Prosecution of War Crimes*, p. 35, available at: http://www.hlc-rdc.org/wp-content/uploads/2017/12/Izvestaj_Strategija_I_eng.pdf, accessed: 15/05/2019.

³⁶ *Ten Years of War Crimes Prosecutions in Serbia – Contours of Justice*, p. 66, available at: http://www.hlc-rdc.org/wp-content/uploads/2014/10/Analiza_2004-2013_eng.pdf, accessed: 07/05/2019.

³⁷ *Ibid*, page 67.

³⁸ *The Criminal Procedure Code* ("Official Gazette of RS", Nos. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013 and 55/2014), Article 103.

³⁹ *Ten Years of War Crimes Prosecutions in Serbia – Contours of Justice*, p. 67, available at: http://www.hlc-rdc.org/wp-content/uploads/2014/10/Analiza_2004-2013_eng.pdf, accessed: 07/05/2019.

Protection of Endangered Witnesses

If there are circumstances indicating that a witness, by testifying or answering certain questions, would endanger their own life, health, freedom or property, or that of their loved ones, the court may grant to this witness the status of a protected witness.⁴⁰ The primary purpose of witness protection measures is to protect their identity, and prevent it from becoming public.⁴¹

According to the CPC, the measures for protected witnesses are these: closed sessions, a ban on publicising the identity of the protected witness, and the withholding of information about the identity of the protected witness from the defendant and his counsel. The latter measure is used only in exceptional circumstances and can be applied no more than 15 days before the commencement of the trial. These measures are implemented by the amendment or redaction of data concerning the identity of the protected witness from the trial record, concealing the appearance of a protected witness or his/her examination in a separate room with voice distortion, or examination of protected witnesses by way of video and audio conference.⁴²

Once granted protection, the witness is given a pseudonym used during the process and also in public, instead of his/her authentic identity. A breach of this rule constitutes the criminal offence of a violation of the confidentiality of the proceedings.⁴³ **Protection measures for protected witnesses are of extreme importance in cases where so-called “insider witnesses” appear (persons who were members of military or police units whose members were indicted). Defining measures for protection and applying them appropriately encourages “insider witnesses” to testify before the court and reveal the facts of the crime.**

Protection of Victims of Sexual Violence

The specific nature and vulnerability of victims of sexual violence calls for special protection measures in criminal proceedings. This is precisely the reason why international frameworks have developed specific institutional standards and obligations for dealing with victims of sexual violence during court proceedings. Among these measures are closed sessions (exclusion of the public during the testimony), direct testimony by closed circuit television, and special rules regarding the assessment of the testimony of the victims. The Rules of Procedure and Evidence of the International Criminal Tribunal for the former Yugoslavia introduced a rule that the prior sexual conduct of the victim shall not be admitted in evidence, that no corroboration of the victim’s testimony shall be required, and that the victim’s consent shall not be allowed

40 When it comes to war crimes trials, most often the status of a protected witness was accorded to members of military or police units that had participated in the commission of the crime, and often when they themselves had been involved in the commission of the crime.

41 *Ten Years of War Crimes Prosecutions in Serbia – Contours of Justice*, p. 68, available at: http://www.hlc-rdc.org/wp-content/uploads/2014/10/Analiza_2004-2013_eng.pdf, accessed: 07/05/2019.

42 *Ibid.*

43 *Ibid.*

as a defence argument if the victim has been subjected to or threatened with violence.⁴⁴ With regard to successor states of the former Yugoslavia, in addition to the usual procedural protection measures, Croatia and BiH have adopted a rule rejecting reference to the victims' past sexual life as defence evidence.⁴⁵ In contrast to the laws in BiH and Croatia, the CPC does not contain specific measures for the protection of victims of sexual violence. Hence, only the usual procedural protection measures apply.⁴⁶ **In this regard, the HLC's recommendation is to amend the CPC in order to accept the standards established by the International Criminal Tribunal for the former Yugoslavia (ICTY) for proving sexual violence in war: no corroboration of the victim's testimony should be required; consent should not be grounds for relieving responsibility if the victim was subjected to violence or intimidation, or if s/he feared for their life or the life of a close person; and the prior sexual conduct of the victim should not be admitted in evidence.**

b) Non-procedural Protection

Non-procedural witness protection is achieved by applying regular institutional mechanisms for the protection of fundamental human rights and freedoms (non-procedural protection in the narrow sense), and through a special protection programme.⁴⁷ The Law on the protection of participants in criminal proceedings introduced a special protection programme into the Serbian legal system in 2005.⁴⁸

Regular Witness Protection Mechanisms

According to the CPC, witnesses who during proceedings inform the court and the prosecutor that they have been threatened have no adequately guaranteed protection, because the court and the prosecutor in such situations are not obliged to request police protection for these witnesses. Instead, the law allows the court and the prosecutor to do something in this regard, but doesn't oblige them.⁴⁹ If a request is forwarded to the police, the measures that can be applied in such cases by the police are

44 The Rules of Procedure and Evidence of the International Criminal Tribunal for the former Yugoslavia, rule 96, available at: https://www.icty.org/x/file/Legal%20Library/Rules_procedure_evidence/IT032Rev50_en.pdf, accessed: 20/10/2019.

45 See the Criminal Procedure Code of the Republic of Croatia /edited text/ ("Official Gazette", Nos. 152/08, 76/09, 80/11, 91/12 – Decisions and Resolutions CCRC 143/12, 56/13 and 145/13), Article 422, Paragraph 1, and the Criminal Procedure Code ("Official Gazette of Bosnia and Herzegovina", Nos. 3/03, 32/03, 36/03, 26/04, 63/04, 13/05, 48/05, 46/06, 76/06, 29/07, 32/07, 53/07, 76/07, 15/08, 58/08, 12/09, 16/09, 93/09 and 72/13), Article 264, paragraph 1.

46 *Ten Years of War Crimes Prosecutions in Serbia – Contours of Justice*, p. 69, available at: http://www.hlc-rdc.org/wp-content/uploads/2014/10/Analiza_2004-2013_eng.pdf, accessed: 07/05/2019.

47 Goran P. Ilić et al. *Commentary on the Criminal Procedure Code (3rd revised edition)* /Belgrade, 2013/, p. 307.

48 *The Law on the Protection of Participants in Criminal Proceedings* ("Official Gazette of RS", No. 85/2005); this law provides for the protection of other participants in criminal procedures (Articles 1 and 3).

49 *The Criminal Procedure Code* ("Official Gazette of RS", Nos. 72/2011, 101/2011, 121/2012, 32/2013 and 45/2013), Article 102, paragraph 4.

the common procedures for the protection of all citizens.⁵⁰ The prosecutor is legally obliged to take legal action upon learning of an act of violence against or a serious threat to the witness, or to inform the competent prosecutor.⁵¹

The Protection Programme for War Crimes Witnesses

The Protection Programme for War Crimes Witnesses (Protection Programme) is part of a broader protection mechanism which, in addition to war crimes, applies to cases of organised crime and crimes against constitutional order and security. In addition to witnesses and cooperating witnesses, the programme applies to suspects, defendants, injured parties (victims), expert witnesses and experts.⁵²

The Protection Programme is aimed at witnesses and persons close to them whose collaboration in providing the relevant information in criminal proceedings puts them at risk. The programme aims to ensure the protection of the life, health, physical integrity and personal property of such persons. The Protection Programme can be initiated before, during and after the completion of the proceedings.⁵³ Commencement, renewal, suspension or termination of the Programme is decided by the Committee for Implementation of the Protection Programme (the Committee).⁵⁴

iv. Obligations and activities aimed at improving the normative framework regulating the status of victims and witnesses in criminal proceedings

Within the framework of the accession negotiations with EU, Serbia has committed itself to aligning its legislative framework regulating the status of victims and witnesses with the relevant EU acquis in this area.⁵⁵ The determination to improve standards regarding the rights, support and protection of crime

50 *The Law on the Police* ("Official Gazette of RS", Nos. 101/2005, 63/2009 and 92/2011), Article 75: "If and when there are justifiable reasons, the police will take appropriate measures to protect the victim and any other person who has given or may give information relevant to the criminal proceedings or a person in some way related to these persons, if they are in danger from the offender or other persons".

51 *Criminal Procedure Code* ("Official Gazette of RS", Nos. 72/2011, 101/2011, 121/2012, 32/2013 and 45/2013), Article 102, Paragraph 5.

52 *The Law on the Protection of Participants in Criminal Proceedings* ("Official Gazette of RS", No. 85/2005), Article 5.

53 *Ibid*, Articles 1, 2, 4.

54 *Ibid*, Article 7.

55 *The legal and institutional framework in Serbia regarding the rights and needs of civilian victims of war*, p. 60, available at: <http://www.hlc-rdc.org/wp-content/uploads/2017/08/The-legal-and-institutional-framework-in-Serbia-regarding-the-rights-and-needs-of-civilian-victims-of-war.pdf>, accessed: 03/06/2019.

victims is reflected in the Screening Report,⁵⁶ in the Action Plan for Chapter 23,⁵⁷ and finally in the National Strategy for the Prosecution of War Crimes.⁵⁸ In this respect, the Action Plan for Chapter 23 provided for a series of activities aimed at improving the rights and status of crime victims. Thus, the Action Plan provides for: development of a Protocol on mandatory provision of information to victims about all aspects of the trial that are of interest to the victims;⁵⁹ introduction of employment of psychologists at the OWCP who will deal with victims and witnesses;⁶⁰ improvement of normative framework in Serbia in order to effectively implement minimum standards concerning the rights, support and protection of crime victims/injured parties, in accordance with Directive 2012/29/EU;⁶¹ creation and distribution of a brochure/booklet containing information on victims' rights;⁶² establishment of a countrywide network of services for support to the victims, witnesses and injured parties in the investigative phase and all phases of criminal proceedings.⁶³ By the time the work on this practical policy proposal was completed, none of the prescribed activities had been implemented.

v. National Strategy for the Prosecution of War Crimes

One of the eight areas covered by the National Strategy for the Prosecution of War Crimes (National Strategy) relates to support to witnesses and victims.⁶⁴ In this context, the National Strategy provided for activities such as improving the normative framework regulating the status of witnesses and victims,⁶⁵ enhancing the capacity of the bodies providing support to the witnesses of war crimes during all phases of criminal proceedings,⁶⁶ establishing a national network of services for assistance and support to victims and witnesses and integrating the Victim and Witness Assistance and Support Service at the Higher Court in Belgrade, taking into consideration the specificities of war crimes proceedings and

56 *Screening Report for Serbia, Chapter 23 – Judiciary and fundamental rights*, p. 36, available at: http://www.mei.gov.rs/upload/documents/eu_dokumenta/Skrining/screening_report_ch_23.pdf, accessed: 20/10/2019.

57 *Action plan for Chapter 23*, pp. 123-124, 293-296, Activities: 1.4.4.3., 1.4.4.4., 1.4.4.5., 3.7.1.16., 3.7.1.17., 3.7.1.18., 3.7.1.19., 3.7.1.20. Action plan for Chapter 23 is available at the official website of the Ministry of Justice RS: <https://www.mpravde.gov.rs/files/Action%20plan%20Ch%2023.pdf>, accessed: 02/04/2019.

58 *National Strategy for the Prosecution of War Crimes*, p. 29-32. Full text of the National Strategy for the Prosecution of War Crimes is available at the OWCP's official website: http://www.tuzilastvorz.org.rs/upload/HomeDocument/Document__en/2016-05/p_nac_stragetija_eng.PDF, accessed: 02/04/2019.

59 *Action plan for Chapter 23*, p. 124, Activity 1.4.4.5. Action plan for Chapter 23 is available at the official website of the Ministry of Justice RS: <https://www.mpravde.gov.rs/files/Action%20plan%20Ch%2023.pdf>, accessed: 02/04/2019.

60 *Ibid*, p. 123, Activity 1.4.4.4.

61 *Ibid*, p. 294, Activity 3.7.1.17.

62 *Ibid*, p. 294, Activity 3.7.1.18.

63 *Ibid*, pp. 295-296, Activity 3.7.1.20.

64 *National Strategy for the Prosecution of War Crimes*, pp. 29-32. The full text of the National Strategy for the Prosecution of War Crimes is available at the OWCP's official website: http://www.tuzilastvorz.org.rs/upload/HomeDocument/Document__en/2016-05/p_nac_stragetija_eng.PDF, accessed: 02/04/2019.

65 *Ibid*, pp. 29-30.

66 *Ibid*, p. 30.

the need for the witnesses for the defence to receive the same treatment by the Victim and Witness Assistance and Support Service as the witnesses for the prosecution.⁶⁷ Moreover, the National Strategy recognised the need to improve regional co-operation in the field of providing support to victims and witnesses.⁶⁸ It also provided that the Ministry of Justice would issue a by-law regulating the mandatory provision of information to victims on all aspects of the criminal proceedings of interest to them in accordance with Article 6 of Directive 2012/29/EU.⁶⁹

Since the beginning of the implementation of the National Strategy, the Ministry of Justice has conducted an analysis as regards the degree of alignment with the normative framework (governing the status of witnesses and victims of crime), and established the Working Group for drafting the National Strategy on the Rights of Victims and Witnesses of Crime.⁷⁰ However, activities that should directly improve the support system (such as the adoption of a by-law regulating the mandatory provision of information to victims; creating a brochure containing information on victims' rights; employment of psychologists in the Victim and Witness Assistance and Support Service at the Higher Court in Belgrade, in the Victim and Witness Information and Support Service of the OWCP, as well as in the Protection Unit; infrastructural and technical improvement of the Victim and Witness Assistance and Support Service) had not been implemented by the time this paper on practical policy proposal was completed.⁷¹

vi. National Strategy on the Rights of Victims and Witnesses of Crime for the period from 2019 to 2025

The Action Plan for Chapter 23⁷² provides for the adoption of the National Strategy on the Rights of Victims and Witnesses of Crime and the accompanying Action Plan for its implementation.⁷³ In February

67 *Ibid*, p. 31.

68 *Ibid*, pp. 31-32.

69 *Ibid*, p. 30.

70 This Working Group was established within the framework of the project "Support for Victims and Witnesses of Crime in Serbia", which is being implemented by the OSCE Mission to Serbia. The Working Group should propose amendments to laws and regulations to align the term victim with the same term in international human rights agreements, and to effectively implement minimum standards on the rights, support and protection of victims of crime/injured parties in order to comply with Directive 2012/29/EU. See: *Report No. 5 on the Implementation of the National Strategy for the Prosecution of War Crime*, April 2019, p. 70, available at the official website of the Ministry of Justice RS: <https://www.mpravde.gov.rs/tekst/17978/izvestaj-o-sprovodjenju-nacionalne-strategije-za-procesuiranje-ratnih-zlocina.php>, accessed: 18/04/2019.

71 See: *Report No. 6 on the Implementation of the National Strategy for the Prosecution of War Crime*, June 2019, p. 39, available at: <https://www.mpravde.gov.rs/tekst/17978/izvestaj-osprovodjenjunacionalne-strategije-za-procesuiranje-ratnih-zlocina.php>, accessed: 22/05/2019.

72 *Action plan for Chapter 23*, pp. 295-296, Activity 3.7.1.20. Action plan for Chapter 23 is available at the official website of the Ministry of Justice RS: <https://www.mpravde.gov.rs/files/Action%20plan%20Ch%2023.pdf>, accessed: 02/04/2019.

73 Ministry of Justice of the Republic of Serbia. *Working text of the National Strategy on the Rights of Victims and Witnesses of Crime for the period 2019-2025*, available at: <https://www.mpravde.gov.rs/sekcija/53/radne-verzije-propisa.php>, accessed: 22/05/2019.

2019, the Ministry of Justice of Serbia presented the Draft of the National Strategy on the Rights of Victims and Witnesses of Crime (Draft Strategy). The current working text of the Draft Strategy states that this strategy is motivated by the need to align the reform processes aimed at improving the status of victims and witnesses with EU standards and to regulate them in a comprehensive and systematic manner, taking into account the need to maintain and improve the achieved level of standards within the normative framework and its application.⁷⁴

However, when it comes to the status and rights of the injured parties, the HLC considers that the current working text of the Draft Strategy needs to be further improved in order that it be realised in accordance with the purpose of adopting this Strategy.⁷⁵ **Thus, it is necessary to include victims of war crimes committed on the territory of the former Yugoslavia in the category of highly vulnerable victims, with particular reference to victims of sexual violence;⁷⁶ to employ psychologists in the established Support Services;⁷⁷ and to set precise deadlines for training judicial and prosecutorial office holders in the field of providing assistance and support to victims.⁷⁸**

Moreover, training for judicial officers should also be provided for in order to gain knowledge about dealing with victims and witnesses appropriately. This is especially important because judicial and prosecutorial officials, as well as judicial officers, are changing, and therefore a system of continuous training needs to be established.

In cases of criminal offences with elements of gender-based violence, such as the case of victims of sexual violence in war, it should be provided that the victim is always questioned by a person of the same sex, which is in accordance with the EU Directive.⁷⁹ Similarly, in order to improve regional co-operation in the prosecution of war crimes, it is necessary to provide for a way of cooperation between the Victim and Witness Assistance and Support Service in Serbia and those in Bosnia and Herzegovina, Croatia and Kosovo, since in most cases victims and witnesses are located outside Serbia. Even though the cooperation between the Services is already ongoing through international legal assistance, this cooperation should be regulated by a protocol, such as the one that the Service has with the Court of BiH.⁸⁰ This would not only improve regional co-operation, but also facilitate access to justice for victims and witnesses.⁸¹

In June 2019, the Action Plan for the Implementation of the National Strategy on the Rights of Victims and Witnesses of Crime for the period from 2019 to 2022 (Action Plan) was also presented. At the

74 *Ibid.*

75 Comments by the HLC on the Draft of the National Strategy on the Rights of Victims and Witnesses of Crime, submitted to the Ministry of Justice on 15/03/2019, available at: <https://www.mpravde.gov.rs/files/FHP%20-%20Komentari%20na%20radni%20tekst%20nacrt%20AP.pdf>, accessed: 20/05/2019.

76 *Ibid.*

77 *Ibid.*

78 *Ibid.*

79 *Ibid.*

80 Personal interview with a representative of the Victim and Witness Support Service on 03/07/2019.

81 *Ibid.*

time this practical policy proposal was published, neither the National Strategy nor the Action Plan had been adopted.

II. Institutional Framework for Support to Witnesses and Victims (Injured Parties) in the Republic of Serbia

Victim and witness support throughout a trial is an ongoing element of both international and national courts prosecuting serious violations of international humanitarian law.⁸² With the amendments of the 2013 Law on Organisation of Courts, Serbia also adopted this standard, whilst in cases of war crimes, victim and witness support was established back in 2006.

However, the current normative framework and the capacities to support victims and witnesses in war crimes cases in Serbia are not fully in line with international standards and do not meet the challenges for testifying in these cases. According to the Law on Organisation and Jurisdiction of Government Authorities in War Crimes Proceedings, the Victim and Witness Assistance and Support Service at the Higher Court in Belgrade (Assistance and Support Service) is responsible for victim and witness support in war crimes proceedings.

i. The Victim and Witness Assistance and Support Service at the Higher Court in Belgrade

The Assistance and Support Service was established in 2006 by the Law on Organisation and Jurisdiction of Government Authorities in War Crimes Proceedings⁸³, and is directly subordinated to the President of the Higher Court in Belgrade.⁸⁴ The Assistance and Support Service provides witnesses and victims (injured parties) with logistical assistance and the so-called 'emotional support' (care and attention, encouragement and respect).

The Assistance and Support Service acts from the moment it receives information that the victim (injured party) or the witness has received an invitation to testify, until the moment of his/her departure from the court after giving testimony. The jurisdiction of the Assistance and Support Service relates to assistance to victims (injured parties) and witnesses on their arrival at court, informing victims

⁸² See the system of protection and support before the International Criminal Court, available at: http://www.icc-cpi.int/en_menus/icc/structure%20of%20the%20court/protection/Pages/victims%20and%20witness%20unit.aspx; the system of protection and support before ICTY, available at: <http://www.icty.org/sid/158>; the system of protection and support before the International Criminal Tribunal for Rwanda, available at: www.unictr.org/AboutICTR/ICTRStructure/WitnessesVictimsSupportSectionWVSS/tabid/106/Default.aspx, accessed: 13/05/2019.

⁸³ *Law on Organisation and Jurisdiction of Government Authorities in War Crimes Proceedings* ("Official Gazette of RS", Nos. 67/2003, 135/2004, 61/2005, 101/2007, 104/2009, 101/2011 and 6/2015).

⁸⁴ *Ibid*, Article 11.

about aspects of their trials, mediation in reimbursement of expenses, emotional support before the testimony and, in some cases, emotional support during and immediately after the trial.⁸⁵

One of the measures to facilitate witness participation in criminal proceedings is simplifying as far as possible the rules regulating reimbursement of expenses⁸⁶ incurred in relation to participation in judicial proceedings.⁸⁷ Until 2016, all persons appearing in court to testify in war crimes cases were reimbursed by the court in cash immediately after their testimony. However, since 1 January 2016, reimbursements of expenses related to testifying are being made solely via bank accounts. As a result of this change, witnesses who lodge a claim for expenses associated with testifying in court must submit their bank account number if they come from Serbia, or submit a foreign currency account number, including instructions for foreign payment, if they come from abroad. The Treasury of the National Bank of Serbia makes payments to witnesses' accounts, and the process may take as long as several weeks.⁸⁸ This new procedure has significantly complicated matters for witnesses who go to court to testify, and has consequently resulted in a negative impact on war crimes proceedings.⁸⁹

Following the example of the services of the international courts and courts in the region,⁹⁰ the Assistance and Support Service has the same obligations to the prosecution witnesses as to the defence witnesses, but only when the trial begins.⁹¹ From 2010, the Assistance and Support Service has employed three persons – an associate and two clerks. However, although the scope of responsibilities of the Assistance and Support Service has been expanded to include witnesses and victims (injured parties) in cases of the Department for Organised Crime of the Higher Court in Belgrade, the human capacity of this Service has not been proportionally increased - on the contrary, its staff has been reduced, so

85 *Ten Years of War Crimes Prosecutions in Serbia – Contours of Justice*, p. 46, available at: http://www.hlc-rdc.org/wp-content/uploads/2014/10/Analiza_2004-2013_eng.pdf, accessed: 07/05/2019.

86 Under the Rulebook on reimbursement of expenses related to court proceedings ("Official Gazette of RS" Nos. 9/2016 and 62/2016), participants in judicial proceedings are entitled to reimbursement of costs related to travel, meals, lodging and lost earnings.

87 *Initial Report on the Implementation of the National Strategy for the Prosecution of War Crimes*, p. 45, available at: http://www.hlc-rdc.org/wp-content/uploads/2017/12/Izvestaj_Strategija_I_eng.pdf, accessed: 15/05/2019.

88 *Ibid*, p. 46.

89 The costs linked to giving testimony in court can be rather high, especially for witnesses from abroad and those coming from small towns and villages without a direct transport connection to Belgrade. At the same time, the financial situation of most witnesses, especially injured parties, is rather poor, so they often need to borrow money to go to court. For witnesses from the Republic of Serbia who cannot afford to finance their appearance in court, failure to show up when summoned can even result in a fine, which further deteriorates their financial situation, or results in the police bringing them to court, which means being treated as criminals and further humiliated.

90 See the system of protection and support before the International Criminal Court, available at: http://www.icc-cpi.int/en_menus/icc/structure%20of%20the%20court/protection/Pages/victims%20and%20witness%20unit.aspx; the system of protection and support before ICTY, available at: <http://www.icty.org/sid/158>; the system of protection and support before the International Criminal Tribunal for Rwanda, available at: www.unict.org/AboutICTR/ICTRStructure/WitnessesVictimsSupportSectionWVSS/tabid/106/Default.aspx, accessed: 13/05/2019.

91 *Ten Years of War Crimes Prosecutions in Serbia – Contours of Justice*, p. 46, available at: http://www.hlc-rdc.org/wp-content/uploads/2014/10/Analiza_2004-2013_eng.pdf, accessed: 07/05/2019.

that today it has only two employees – an associate and a clerk.⁹² **Considering the large number of witnesses they work with, it is necessary to strengthen the human resources of the Assistance and Support Service and hire at least one additional person.**⁹³

In addition to the small number of employees, another problem in the day-to-day operation of the Assistance and Support Service is that they have few premises. Namely, the Assistance and Support Service has at its disposal two rooms in which to receive witnesses at the Higher Court in Belgrade, and one room used by employees of the Assistance and Support Service.⁹⁴ These two rooms for reception of witnesses and victims (injured parties) are insufficient, because in a situation where it is necessary to support more witnesses, employees must cope with the situation and use other offices of the Higher Court, in order to place highly vulnerable witnesses or witnesses under protective measures. This situation impedes the efforts of the representatives of the Assistance and Support Services to prevent communication between witnesses who testify in the same case before the trial.⁹⁵ **In this regard, it is necessary to provide the Assistance and Support Service with additional premises that could be used continuously.**⁹⁶

In addition to reduced human and spatial capacities, the staff of the Assistance and Support Service needs additional training to deal with certain categories of victims (injured parties) in war crimes proceedings. The staff of the Assistance and Support Service has indeed received a number of different trainings on access to witnesses and victims (injured parties) in criminal proceedings. These trainings were organised by the Organisation for Security and Co-operation in Europe (OSCE) Mission to Serbia and a programme of the European Union - WINPRO. However, **members of the Assistance and Support Service need additional training to work with victims of sexual violence during armed conflicts**, because by the time this practical policy proposal was finished, they had not received any specific training in this field.

ii. Victim and Witness Information and Support Service of the OWCP of the Republic of Serbia

Since the implementation of the CPC in 2012, the Victim and Witness Assistance and Support Service at the Higher Court in Belgrade no longer has the formal authority to provide assistance and support to witnesses during the investigation, but only immediately before, during and after the trial. This change was introduced when investigations were transferred from the jurisdiction of the court (the investigating judge) to the jurisdiction of the OWCP.⁹⁷ After the investigation in war crimes cases was transferred to the

92 Personal interview with a representative of the Victim and Witness Support Service on 03/07/2019.

93 *Ibid.*

94 *Ibid.*

95 *Ibid.*

96 *Initial Report on the Implementation of the National Strategy for the Prosecution of War Crimes*, p. 48, available at: http://www.hlc-rdc.org/wp-content/uploads/2017/12/Izvestaj_Strategija_I_eng.pdf, accessed: 15/05/2019.

97 The new CPC, which has been applied in cases of war crimes since January 2012, has transferred the investigation to the prosecutor's office. However, people interviewed by the HLC for the purpose of drafting *Ten Years of War Crimes Prosecutions*

jurisdiction of the Office of the War Crimes Prosecutor (OWCP) in January 2012,⁹⁸ the support system for witnesses and victims (injured parties) has weakened, since the Service, as a court body, no longer had jurisdiction over victims (injured parties) and witnesses in the prosecutorial investigation.⁹⁹

As part of the process of establishing a network of victim and witness information and support services in the Public Prosecutor's Office in Serbia, in April 2017, the Victim and Witness Information and Support Service of the OWCP was established (OWCP Service). The OWCP Service has two staff members and one coordinator, all of whom have already worked for the OWCP.¹⁰⁰ The OWCP Service exists alongside the previously established Victim and Witness Assistance and Support Service at the Higher Court in Belgrade in order to provide victims with support in all stages of the proceedings, including preliminary investigation, main investigation, main hearing and trial.¹⁰¹ **Neither the OWCP Service nor the Assistance and Support Service at the Higher Court in Belgrade has a psychologist, and the work of the OWCP Service should be improved in that sense, by hiring a psychologist.**

III. Available Support Measures for Witnesses and Victims (injured parties) in Serbia

Support for victims (injured parties) in criminal proceedings should be integral to a comprehensive support system and should involve institutions with various responsibilities operating on different levels. The main task of victim support measures during criminal proceedings is protecting victims (injured parties) from reliving the trauma. Support for victims (injured parties) who testify in war crimes cases before the Higher Court in Belgrade encompasses three measures: a) informing the victims about aspects of the trial, b) assisting victims on their arrival at court, and c) emotional support before and during their testimony.¹⁰²

Effective victim support measures are necessary as an incentive for future witnesses to testify before the courts in Serbia in order to reveal the details of the crimes they witnessed, thereby increasing the

in Serbia – Contours of Justice, noted that even before the prosecutorial investigation was introduced, the OWCP had largely directed police action in gathering evidence.

98 Prosecutorial investigation – New Criminal Procedure Code ("Official Gazette of RS", Nos. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013 and 55/2014), which had been applied in war crimes cases since January 2012, has been transferred to the jurisdiction of the prosecutor's office.

99 *Ten Years of War Crimes Prosecutions in Serbia – Contours of Justice*, p. 60, available at: http://www.hlc-rdc.org/wp-content/uploads/2014/10/Analiza_2004-2013_eng.pdf, accessed: 07/05/2019.

100 Information on the Victims and Witness Information and Support Service is available (in Serbian) on the Office of the War Crimes Prosecutor's website: http://www.tuzilastvorz.org.rs/upload/HomeDocument/Document__sr/2017-08/latinica.pdf, accessed: 02/04/2019.

101 *Semi-Annual Report of the Negotiating Group on Chapter 23 for the Third and Fourth Quarter of 2018*, Activity No. 1.4.4.3., p. 230-232. The report is available at: <https://www.mpravde.gov.rs/tekst/22364/polugodisnji-izvestaj-pregovaracke-grupe-za-poglavlje-23-za-treci-i-cetvrti-kvartal-2018-godine.php>, accessed: 02/04/2019.

102 *Ibid.*

chances of convicting those indicted for the crime. In order to realise this, **it is necessary that victims (injured parties) have access to support services at all times. Measures taken to this effect must be put in place at the earliest stages of criminal proceedings, and tailored to the individual needs of each victim (injured party).**¹⁰³

Furthermore, institutions and other stakeholders who come into contact with victims must be educated and trained to work with them.¹⁰⁴ However, **lack of special protection measures for victims of sexual violence (see page 12), inadequate application of existing mechanisms for protecting and supporting witnesses and victims, and imposition of financial burdens on victims and witnesses in war crimes cases, are just some of the chronic weaknesses in this area** that had not been solved since the adoption of the National Strategy for processing war crimes in Serbia, by the time this paper on practical policy proposals was completed¹⁰⁵. So the challenges that victims face remain unaddressed.¹⁰⁶

i. Providing Information to Victims (Injured Parties)

According to standards mandatory for all EU Member States, the victim (injured party) must be informed about all the stages in the proceedings, as well as about their rights in the proceedings, and about available support and protection measures.¹⁰⁷ Crime victims (injured parties) should be provided with information on relevant rights, services, and prevention measures, as well as emotional and, where available, psychological support, in all stages in the proceedings.¹⁰⁸ During the investigation, relevant information to victims (injured parties) is provided by the OWCP Service.

The HLC's research has shown that the victims (witnesses-injured parties), after the completion of the investigation procedure up to the testimony at the main trial, either have limited or non-existent communication with the incumbent prosecutor. This lack of communication with the incumbent prosecutor creates within victims (injured parties) the feeling of being important only during the testimony. In this regard, **the incumbent Deputy Prosecutor for War Crimes needs to maintain regular communication with the victims (injured parties) in order to create in them a sense of confidence and security, and show that they are not left to themselves after giving their statement during the investigation.**

103 Directive 2012/29/EU, Articles 8, 9 and 18, available at: <https://eur-lex.europa.eu/legal-content/HR/TXT/PDF/?uri=CELEX:32012L0029&from=hr>, accessed: 08/10/2019.

104 *Ibid*, Article 25.

105 *Initial Report on the Implementation of the National Strategy for the Prosecution of War Crimes*, p. 14, available at: http://www.hlc-rdc.org/wp-content/uploads/2017/12/Izvestaj_Strategija_I_eng.pdf, accessed: 15/05/2019.

106 *Ten Years of War Crimes Prosecutions in Serbia – Contours of Justice*, p. 60, available at: http://www.hlc-rdc.org/wp-content/uploads/2014/10/Analiza_2004-2013_eng.pdf, accessed: 07/05/2019.

107 *Ibid*.

108 *Analysis of victims' rights and services in Serbia and their alignment with EU Directive 2012/29/EU*, p. 13, available at: <http://www.mdtfjss.org.rs/archive/file/VSS%20-%20Final%20Report%20-%2008%2008%202016.pdf>, accessed: 18/05/2019.

Along with a summons to testify, the Support and Assistance Service gives the witness a brochure on its work, describing its jurisdiction and the protective measures it provides. The brochure additionally includes contact information, as well as information on reimbursement of costs for arriving at the court.¹⁰⁹ On the day of the testimony, representatives of the Support and Assistance Service welcome the victim at the entrance to the court. After a short conversation in a closed room reserved for the victims, the victim is taken to the court and given an explanation about where the various parties involved in proceedings will be seated and some technical notes on, for example, the use of the microphone, etc. Support and Assistance Service representatives also familiarise the witness with his/her rights and obligations under the CPC (informing them of the possibility of a property claim, or, in the case of a victim who is under protection, explain that at the hearing the witness does not have to answer questions that might reveal his/her identity). They also explain the nature of direct and cross-examination, and alert the witness to the possibility of potentially hostile questions.¹¹⁰

During the HLC's research, it was noted that witnesses were not sufficiently informed about their rights and that the limited time spent with representatives of the Assistance and Support Service before the trial was not sufficient for them to fully understand their rights and obligations under the CPC. Apart from that, **in the existing Victim Support System, victims (witnesses-injured parties) are not in most cases provided with the opportunity to receive information about relevant procedural actions (the launch or termination of an investigation), of which the OWCP Service should inform them, or about the completion of legal proceedings, the release of the accused from custody or information on any prison sentences, of which the Assistance and Support Service should inform them.**¹¹¹ Although the Assistance and Support Service informs the witnesses of all aspects of the trial, it should be emphasised that fully informing the witness **includes an explanation of what the testimony process looks like, with particular attention paid to clarifying the methodology of witness examination. This should also include familiarising the witness with the basic terminology used in criminal proceedings, to minimise the possibility of misunderstanding.**

After testifying, most of the victims and witnesses (injured parties) did not return to court to attend the trial or the sentencing. Victims interviewed by the HLC during the research stated that information on the outcome of the court proceedings was obtained mainly from the HLC. From the aforementioned, it can be concluded that **there is a need for the Assistance and Support Service to inform the victims (by letter and/or telephone call) of the outcome of the procedure in which they testified. Bearing in mind that the court decision is delivered to the injured parties (victims) only after the second-instance procedure is completed, it is of particular importance to organise continuous and timely notification to the victims (injured parties).**¹¹²

109 Personal interview with a representative of the Victim and Witness Support Service on 03/07/2019.

110 *Ten Years of War Crimes Prosecutions in Serbia – Contours of Justice*, p. 61, available at: http://www.hlc-rdc.org/wp-content/uploads/2014/10/Analiza_2004-2013_eng.pdf, accessed: 07/05/2019.

111 *Ibid.*

112 Personal interview with a representative of the Victim and Witness Support Service on 03/07/2019.

ii. Property Claim

One of the problems identified by the HLC is the practice of the courts in Serbia of not awarding property claims (compensation) to victims (injured parties) during criminal proceedings, even though the Criminal Procedure Code enables it.¹¹³ Namely, although not deciding on property claims within criminal proceedings is provided for as an exception under the CPC, in practice it is almost the norm that the court doesn't decide on a claim, but refers the victim (injured party) to civil proceedings in order to exercise their right. Courts, as a rule, refer the victim (injured party) to civil proceedings, stating that deciding on such requests would further extend the duration of the criminal proceedings. Such action significantly worsens the status of the victims (injured parties), as they are forced to start another court proceeding, which is very expensive and time consuming. **For this reason, the HLC considers that in all cases where possible, victims (injured parties) should be awarded compensation during the course of criminal proceedings, while reference to civil proceeding should be an exception.**

Recognising the practice that courts do not decide on a claim in criminal proceedings, the Supreme Court of Cassation Working Group of the Republic of Serbia clearly stated in the Guidelines for improving court practice in compensation proceedings for victims of serious crime in criminal proceedings (the Guidelines)¹¹⁴, that the court is obliged to decide on compensation within criminal proceedings, if the right conditions are met.¹¹⁵ Indeed, the Guidelines state that the possibility of not deciding on a claim in criminal proceedings should be interpreted as an exception to the rule, so that the exercise of this right is not unnecessarily procrastinated.¹¹⁶

The Guidelines also provide answers to questions in relation to types of non-material damage, determining the damage as well as the amount of monetary compensation, both for non-material and material damage; point out the importance of informing victims about their rights - in other words, the obligation of the public prosecutor and the court to inform victims about their rights at different stages of criminal proceedings, and to assist in filing property claims and work on providing evidence to decide on them.¹¹⁷

113 *The Criminal Procedure Code* ("Official Gazette of RS", Nos. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013 and 55/2014), Article 252.

114 The Guidelines were developed and published with the support of the OSCE Mission to Serbia through the project "*Support for Victims and Witnesses of Crime in Serbia*", implemented by the OSCE Mission and financed by the European Union.

115 The Supreme Court of Cassation of the Republic of Serbia. *The Guidelines for improving court practice in compensation proceedings for victims of serious crime in criminal proceedings*, p. 8, available at: <https://www.podrskazrtvama.rs/media/domaci/Smernice.pdf>, accessed: 08/10/2019.

116 *Ibid*, p. 21.

117 *Ibid*, p. 8.

iii. Assistance to Victims (Injured Parties) on Arrival at Court

Providing assistance to victims (injured parties) by organising their arrival to and stay in the place where the trial takes place is an obligation of institutions for victim and witness support.¹¹⁸ Because most of the victims who come to testify before the War Crimes Department of the Higher Court in Belgrade come from other countries, assistance in arranging their arrival is extremely significant. It is the responsibility of the Assistance and Support Service to contact witnesses by telephone after receiving confirmation that s/he has been summoned to testify. The Support and Assistance Service establishes the way for the victim to come to testify, takes care of logistical needs, and, for ill or elderly witnesses, assesses whether there is a need for a chaperone to accompany the witness. The Service also has the responsibility to arrange the hotel accommodation and transport of the witnesses.¹¹⁹

Regarding the arrival of witnesses from Bosnia and Herzegovina and from Croatia, summonses to testify are sent through international legal assistance.¹²⁰ Witnesses from Kosovo arrive by invitation via the European Union Rule of Law Mission in Kosovo (EULEX). Members of the EULEX mission bring witnesses from Kosovo to Serbia, while members of the Protection Unit of the Ministry of the Interior act as chaperones to the witnesses until they reach the court building in Belgrade, where the Assistance and Support Service takes over.¹²¹ In addition to EULEX, the HLC and the HLC Kosovo were regularly involved in providing support to witnesses who came from Kosovo to Serbia to testify. Likewise, during the mandate of the United Nations Mission in Kosovo (UNMIK), this institution enabled questioning of witnesses through video conferencing.

Since the beginning of war crimes trials before the courts in Serbia, the HLC has enabled victims in war crimes cases to continuously monitor the course of the trial. This activity includes logistical preparation, organisation of arrivals and accommodation, as well as support throughout the procedure.¹²² The presence of victims in the first war crimes trials strengthened confidence in the newly established institutions for the prosecution of war crimes in Serbia and served as a strong incentive for potential witnesses from BiH, Croatia and Kosovo to decide to participate in the trials in Serbia. However, in recent years, the situation has worsened owing to long-running trials and a large number of war crimes acquittals, which has resulted in the fact that victims' confidence has been shaken.¹²³

What happens in practice is that, for various procedural reasons, the main hearings are adjourned and witnesses have to come again to court to testify. In a study conducted by the HLC, adjourning major

118 Directive 2012/29/EU, Article 9, available at: <https://eur-lex.europa.eu/legal-content/HR/TXT/PDF/?uri=CELEX:32012L0029&from=hr>, accessed: 08/10/2019.

119 *Ten Years of War Crimes Prosecutions in Serbia – Contours of Justice*, p. 59, available at: http://www.hlc-rdc.org/wp-content/uploads/2014/10/Analiza_2004-2013_eng.pdf, accessed: 07/05/2019.

120 Personal interview with a representative of the Victim and Witness Support Service on 03/07/2019.

121 *Ibid.*

122 *Ten Years of War Crimes Prosecutions in Serbia – Contours of Justice*, p. 64, available at: http://www.hlc-rdc.org/wp-content/uploads/2014/10/Analiza_2004-2013_eng.pdf, accessed: 07/05/2019.

123 *Ibid.*

hearings and failing to provide timely information on adjournment were identified as very disturbing and stressful. **Bearing in mind the obligation of the Assistance and Support Service to contact witnesses and arrange their arrival to court, communication with victims should be improved to ensure that victims are notified in a timely manner if the main hearing is adjourned.**

iv. Emotional Support

Emotional support to victims and witnesses (injured parties) should be provided before, during and – in some cases – after criminal proceedings.¹²⁴ During the prosecutorial investigation, this type of support should be provided by the OWCP Service; and upon their arrival at court to testify, it should be provided by the Assistance and Support Service.

Before the trial, the Assistance and Support Service receives only the witness's contact information and the date of the testimony, along with clarification as to whether this is a victim (injured party) or a witness for the prosecution or the defence. These data are insufficient to qualitatively and adequately help witnesses minimise the effects of the stress caused by testifying.¹²⁵ Apart from that, the emotional support provided by the Support and Assistance Service is limited to the period of the victim's attendance at court on the day of his/her testimony. During the short time with the witnesses before their testimonies, the representatives of the Victim and Witness Support Service inform them about important aspects of the trial, encouraging them through conversation, and neutralising any negative emotions that may impair their ability to testify. Support and Assistance Service employees try not to go over the content of the testimony with the witnesses, either before or after their testimony. In this way, the Assistance and Support Service remains impartial and avoids any criticism about instructing witnesses.¹²⁶ Following the testimony, representatives of the Assistance and Support Service complete a short and anonymous evaluation questionnaire with the witnesses in order to obtain feedback on how satisfied they were with the support provided, what was most important to them, and whether they had any suggestions for possible corrections or improvements to the existing support system.¹²⁷

During the HLC's research, most of the victims (witnesses-injured parties) pointed out that, during their testimony, the most important thing to them was the presence of people of trust in the courtroom - family members, other victims, Assistance and Support Service employees, as well as HLC representatives.¹²⁸ **Holding meetings before testifying is not a common practice of the Assistance and Support Service,**

124 Directive 2012/29/EU, Articles 8 and 9, available at: <https://eur-lex.europa.eu/legal-content/HR/TXT/PDF/?uri=CELEX:32012L0029&from=hr>, accessed: 08/10/2019.

125 Personal interview with a representative of the Victim and Witness Support Service on 03/07/2019.

126 *Ten Years of War Crimes Prosecutions in Serbia – Contours of Justice*, p. 63, available at: http://www.hlc-rdc.org/wp-content/uploads/2014/10/Analiza_2004-2013_eng.pdf, accessed: 07/05/2019.

127 *Ibid*, p. 64.

128 Personal interviews conducted in February, March and April with the injured parties who testified before the War Crimes Department of the Higher Court in Belgrade in the following Cases: *Lovas*, *Zvornik*, *Skočić* and *Trnje*, and who are currently living in Bosnia and Herzegovina, the Republic of Croatia and Kosovo.

but it could be very important to victims (witnesses-injured parties) because, in some cases, direct contact is very useful.¹²⁹

In the interviews conducted by the HLC, the victims (witnesses-injured parties) stated that, prior to their testimony, it would have been very helpful to them if a visit to the courtroom had been arranged, in order for them to familiarise themselves with the space, the seating arrangements and the manner of questioning. This would have avoided unnecessary stress on the day of the testimony, when it was important to memorise all the technical matters related to it and also concentrate on the testimony.

v. Absence of Psychological Support System

Psychological support for victims constitutes one of the basic mechanisms of victim support. This form of support is different from emotional support, in that emotional support is aimed at giving attention and care, respect and encouragement to the victim, while the psychological support aims at preventing the victim's re - traumatising and re - victimisation. To achieve this, psychological support includes certain psycho-therapeutic procedures, applied in general psychological and psychiatric practice.¹³⁰

Meetings with the competent judicial authorities, the unfamiliar surroundings of the courtroom, confronting the accused, recalling and testifying about events that happened many years ago in front of persons who are complete strangers, and the psychological reactions of victims to such stress, indicate the need for psychological support throughout criminal proceedings.¹³¹ On some occasions, the OWCP Service and the Assistance and Support Service refer the injured party to specialized civil society organisations or specialised health care institutions.¹³² **This type of support should be available before, during and after the trial, because testifying can have long-term physical and psychological consequences for the victims (injured parties).**¹³³ **During the prosecutorial investigation, psychological support should be provided by the OWCP Service; however, at the time of writing this practical policy proposal, the OWCP does not employ a psychologist who could professionally provide psychological support to victims (injured parties) in the investigation phase.**

129 *Ten Years of War Crimes Prosecutions in Serbia – Contours of Justice*, p. 63, available at: http://www.hlc-rdc.org/wp-content/uploads/2014/10/Analiza_2004-2013_eng.pdf, accessed: 07/05/2019.

130 Zoran Ilić, "Psychological preparation of witnesses – victims of torture as a prevention of re - traumatising" in: *Torture in War: Consequences and Rehabilitation: the Yugoslav Experience* [„Psihološka priprema svedoka - žrtava torture kao prevencija retraumatizacije“ u: *Tortura u ratu, posledice i rehabilitacija: Jugoslovensko iskustvo*], Ed. Željko Špirić et al (Beograd: IAN, 2004), pp. 357-358.

131 *Ten Years of War Crimes Prosecutions in Serbia – Contours of Justice*, p. 63, available at: http://www.hlc-rdc.org/wp-content/uploads/2014/10/Analiza_2004-2013_eng.pdf, accessed: 07/05/2019.

132 Directive 2012/29/EU, Articles 8 and 9, available at: <https://eur-lex.europa.eu/legal-content/HR/TXT/PDF/?uri=CELEX:32012L0029&from=hr>, accessed: 08/10/2019.

133 *Echoes of Testimonies: a Pilot Study into the long-term impact of bearing witness before the ICTY*, p. 21, available at: http://www.icty.org/x/file/About/Registry/Witnesses/Echoes-Full-Report_BCS.pdf, accessed: 22/05/2019.

Following the arrival of the victims (witnesses-injured parties) to testify, psychological support should be provided by the Assistance and Support Service; however, there is no full-time employed psychologist in this service either. **It should be emphasised that there is a full-time psychologist in the Higher Court in Belgrade, who can be engaged by the Assistance and Support Service with the consent or decision of the competent authority.**¹³⁴ Prior to formally establishing this capability, the Assistance and Support Service engaged the psychologist from the Higher Court in Belgrade when it was necessary; for example, when a witness suffering from post-traumatic stress disorder (PTSD) was required to testify.¹³⁵

In some cases, when a victim (injured party) is visibly upset after giving testimony, representatives of the Assistance and Support Service work on his/her "stabilisation"; in other words, they help the person overcome the violent emotional reaction to the testimony through conversation. After making an assessment that the person's condition is stable, a representative of the Assistance and Support Service escorts the witness out of the court building, thus ending the engagement of the Service.¹³⁶ In some cases, the Service contacts the witnesses after the trial. If it is established that a witness doesn't feel well, he or she is referred to specialised civil society organisations or institutions involved in psychological support.¹³⁷

During the research conducted by the HLC, the majority of victims (witnesses-injured parties) emphasised the importance of psychological support so that the experience of testifying would not cause additional harm, suffering or trauma. The practice has shown that psychological assistance can help sensitive witnesses in terms of a certain improvement in their physical and mental well-being, as well as in increased self-confidence and a sense of well-being during testimony, thereby improving the quality of evidence and assisting with post-trial recovery.

In the support model that the HLC applied in the previous period, victims (witnesses-injured parties) were allowed to follow the whole course of the main trial after their testimony, in the presence of a psychologist. The psychologist was with the victims before and after the trial; they talked about their expectations, fears, and the reactions of other participants in the procedure, which helped them overcome stressful situations during the trial.¹³⁸ The psychologist stayed in contact with the victims once the trial had ended. In addition to psychological support, the HLC provided legal information,

134 *Report No. 1 on the Implementation of the National Strategy for the Prosecution of War Crimes*, January 2018, p. 29, available at: <https://www.mpravde.gov.rs/files/Report%20-%20National%20Strategy%20for%20Prosecution%20of%20War%20Crimes.docx> (Serbian version: <https://www.mpravde.gov.rs/tekst/17978/izvestaj-o-sprovodjenju-nacionalne-strategije-za-procesuiranje-ratnih-zlocina.php>), accessed: 07/05/2019. It is stated that there is a full-time psychologist, Ljubinka Marković, employed in the Higher Court in Belgrade, and, bearing in mind the scope of her duties, she can be engaged by the Service for assistance and protection of victims and witnesses in the Department for war crimes of the Higher Court in Belgrade with the previous consent of the competent authority.

135 Personal interview with a representative of the Victim and Witness Support Service on 03/07/2019.

136 *Ibid.*

137 *Ibid.*

138 *Ten Years of War Crimes Prosecutions in Serbia – Contours of Justice*, p. 64, available at: http://www.hlc-rdc.org/wp-content/uploads/2014/10/Analiza_2004-2013_eng.pdf, accessed: 07/05/2019.

explaining to victims various stages of the procedure and answering their questions and expectations.¹³⁹ From the HLC's experience of applying this model of victim support, it can be concluded that the involvement of a psychologist is necessary long before the commencement of the proceedings, as that allows the person giving support the opportunity to get to know the victims and establish a relationship of trust with them.¹⁴⁰

It should be emphasised here that the Action Plan for Chapter 23 explicitly provides for employment of psychologists in the OWCP who would inform and support witnesses and victims (injured parties).¹⁴¹ Nevertheless, at the time of this writing, this activity has not been implemented. Bearing in mind that the National Strategy for the Prosecution of War Crimes also provides for the employment of a psychologist in the Assistance and Support Service; this activity should be implemented.¹⁴²

vi. Preparedness of the Participants in Criminal Proceedings to Work with Victims (Injured Parties)

A certain number of institutional representatives responsible for prosecuting war crimes, who come into contact with victims (witnesses-injured parties), are not sufficiently sensitised and trained to work with victims (injured parties).¹⁴³ What is particularly problematic is developing an awareness of victims' and witnesses' needs in some participants in criminal proceedings. During the research, the HLC found that victims (witnesses-injured parties) were most disturbed when defendants' attorneys behaved unprofessionally, disparaging their personalities during cross-examination.¹⁴⁴ Insults to witnesses on the part of the accused and the defence are not uncommon in war crimes trials in Serbia, and witnesses who have been granted the status of protected witness are most frequently exposed to insults.¹⁴⁵ While some witnesses may perceive this as a role of the defence, cross-examination can be a traumatic experience, and it can produce the feelings of being on trial oneself and of not being trusted. In these situations, it is crucial that the court protects the witness from insults and threats by other parties in the proceedings, and prevents inappropriate interrogation techniques. **Such witness protection can be**

139 *Ibid.*

140 *Guidelines on Witness Protection Measures in International Law and Law of the Republic of Serbia (Smernice o merama zaštite svedoka u međunarodnom pravu i zakonodavstvu Republike Srbije)*, p. 21, available at: <https://www.pars.rs/images/biblioteka/smernice-o-merama-zastite-svedoka-u-medjunarodnom-pravu-i-pravu-RS.pdf>, accessed: 24/05/2019.

141 *Action plan for Chapter 23*, p. 123, Activity 1.4.4.4., available at: <https://www.mpravde.gov.rs/files/Action%20plan%20Ch%2023.pdf>, accessed: 02/04/2019; *Second Report on the Implementation of the National Strategy for the Prosecution of War Crimes*, p. 35, available at: http://www.hlc-rdc.org/wp-content/uploads/2018/07/Izvestaj_Strategija_2_ENG-ff.pdf, accessed: 29/05/2019.

142 *National Strategy for the Prosecution of War Crimes*, pp. 27-28, available at: http://www.tuzilastvorz.org.rs/upload/HomeDocument/Document__en/2016-05/p_nac_stragetija_eng.PDF, accessed: 02/04/2019.

143 Personal interview with a representative of the Victim and Witness Support Service on 03/07/2019.

144 *Ten Years of War Crimes Prosecutions in Serbia – Contours of Justice*, p. 65, available at: http://www.hlc-rdc.org/wp-content/uploads/2014/10/Analiza_2004-2013_eng.pdf, accessed: 07/05/2019.

145 *Ibid.*

ensured by the court imposing disciplinary sanctions on defence attorneys, as well as by informing the Bar Association about the imposed disciplinary sanction.¹⁴⁶ However, in most cases, the court's response in such situations generally either comes down to no more than an informal warning to the accused or the defence counsel, or is completely absent.

The difficulty of undergoing cross-examination is sometimes exacerbated by the legal terminology, which may limit the witnesses' understanding of what the defence attorneys are asking them. In such situations, the judge must intervene, asking the witness if s/he has understood the question, or whether it should be repeated or rephrased. Judicial panels should seek to strike a balance between preventing overly hostile or aggressive cross-examination of a witness, on the one hand, while allowing the defence to question all aspects of an indictment, on the other. **Questions such as whether the witness needs to take a break, would like a drink of water, or would prefer to sit if visibly disturbed, may contribute to diminishing the negative experiences associated with giving testimony.** Participants in criminal proceedings should undergo additional training in dealing with witnesses and adopt a method of communication which respects their integrity and dignity.

CONCLUSION

Once a crime has been committed, it is not possible to go back in time and erase the damage, but it is certainly possible to apply mechanisms to repair the damage, as much as the circumstances of the case allow. Incomplete protection and support for witnesses in war crimes cases can undermine victims' confidence in the fairness of Serbian judicial institutions. What further worsens the status of victims (injured parties) is their subjective feeling that they have been treated merely as a means for the provision of evidence in criminal proceedings; moreover, incomplete support in practice often results in the re-traumatisation of victims who have chosen to testify.

Support to victims (injured parties) in Serbia is mainly provided during the investigation phase and the main trial. The existing mechanisms of victims' and witnesses' protection from intimidation and attacks on their integrity and the support system are only partially fulfilling their function. The established support services face a significant lack of human and technical resources and space, which represents an exceptionally challenging environment for providing quality support to victims and witnesses.¹⁴⁷ Despite such obstacles, the readiness of witnesses to testify and the quality of their testimony are essential to the prosecution of crimes that violate international law.¹⁴⁸ However, although participation

146 *Guidelines on Witness Protection Measures in International Law and Law of the Republic of Serbia*, p. 13, available at: <https://www.pars.rs/images/biblioteka/smernice-o-merama-zastite-svedoka-u-medjunarodnom-pravu-i-pravu-RS.pdf>, accessed: 24/05/2019; *National Strategy for the Prosecution of War Crimes*, p. 23, available at: http://www.tuzilastvorz.org.rs/upload/HomeDocument/Document__en/2016-05/p_nac_stragetija_eng.PDF, accessed: 02/04/2019.

147 *Analysis of victims' rights and services in Serbia and their alignment with EU Directive 2012/29/EU*, p. 18, available at: <http://www.mdtfjss.org.rs/archive/file/VSS%20-%20Final%20Report%20-%2008%2008%202016.pdf>, accessed: 23/05/2019.

148 *Guidelines on Witness Protection Measures in International Law and Law of the Republic of Serbia*, p. 6, available at: <https://www.pars.rs/images/biblioteka/smernice-o-merama-zastite-svedoka-u-medjunarodnom-pravu-i-pravu-RS.pdf>,

in court proceedings is mandatory for witnesses, the current system does not provide them with the support that they need.

The research conducted by the HLC among victims has identified the need to improve the victim and witness support system. Improving the work and the capacity of the OWCP Service and the Assistance and Support Service ensures respect for the victims' rights, contributes to the greater efficiency of the legal system, and provides reliable testimonies necessary for successful prosecution of the accused.

In order to improve the support system, it is necessary to ensure standardised treatment of victims in all stages of the procedure, provide assistance through legal representation, present the necessary information about the course of the procedure, offer psychological assistance, strengthen cooperation between competent government institutions and civil society organisations, and establish effective regional cooperation.¹⁴⁹

Establishing quality support to victims and witnesses is particularly important, because the witnesses who provide the highest quality testimony possible are almost always those witnesses who are provided with psychosocial and practical support, who are well-informed and not afraid of making statements about the events they are testifying about - all of which, in the context of the rule of law, contributes to reaching fair and adequate court decisions. In a broader sense, support measures for victims and witnesses represent an important element of institutional support to war crimes trials and send a message to the wider community that participation in war crimes proceedings is of interest to - and the responsibility of - the entire society. Improving support to victims and witnesses sends the clear message that Serbia wants to enable a more efficient prosecution of war crimes. This will ultimately lead to an increasing confidence in the institutions, the secure establishment of the rule of law, and a functioning legal system.

accessed: 23/05/2019

149 *The National Strategy for the Development of Support Systems for Victims and Witnesses in Croatia for the period from 2016 to 2020* (Official Gazette, No. 75/15), available at: https://narodne-novine.nn.hr/clanci/sluzbeni/2015_07_75_1437.html, accessed: 16/05/2019.

**Practical Policy Proposal/Policy Paper:
Improving the Status and Rights of Victims and Witnesses
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