War crimes proceedings in Serbia (2015-2019)

An analysis of
the OSCE Mission to Serbia's
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Belgrade, 2021
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Executive summary

The present report was created in the framework of the EU *funded Support to Monitoring of National War Crimes Trials (Phase II)* project and it follows up on the OSCE report "War crimes proceedings in Serbia (2003-2014) - An analysis of the OSCE Mission to Serbia's monitoring results" (hereinafter, "2014 Report").

The findings contained in the 2014 Report were based on the analysis of a large volume of data collected through monitoring of war crimes proceedings held in Serbia between 2003 and 2014. In that Report, the OSCE Mission to Serbia analysed data trends to identify issues affecting the efficient and independent adjudication of war crimes cases in Serbia. The findings were grouped into key areas of focus, addressed in separate chapters, which contain recommended remedial actions for the relevant Serbian authorities. The recommendations addressed, among other issues, the need for consistency in case law, correct interpretation of national and international law, adherence to fair trial standards, and deficiencies in the legislative framework.

Similarly to the 2014 Report, the present report is based primarily on monitoring of trial sessions and an analysis of legislation, indictments, judgements, and other judicial decisions. In some cases, the research was complemented by interviews with judges, prosecutors, police officers, lawyers and representatives from international and civil society organizations.

The present report highlights changes in the legal and factual situation compared to the previous reporting period. It outlines new concerns identified, and assesses whether the recommendations contained in the 2014 Report have been addressed.

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Overall, the OSCE Mission to Serbia's findings are largely similar to those contained in the 2014 Report.

The challenges to a full and impartial ascertainment of criminal responsibilities for past atrocities go beyond the courtroom. Hindrances remain to full judicial independence. The legal framework still does not guarantee judges and prosecutors from political interference. Appointment, transfer and removal of judges and prosecutors are still subject to external influence. The former War Crimes Prosecutor was impeded

from starting private practice at the end of his mandate. The 17-month delay in the appointment of a new War Crimes Prosecutor has affected the war crime proceedings. Although the Government adopted the National Strategy for the Prosecution of War Crimes, one of the crucial implementing documents, the Prosecutorial Strategy for the Prosecution of War Crimes does not fully translate the Government's priorities into practice (Chapter One).

Concerning international co-operation (Chapter Two), Serbia's mutual relations with the UN International Criminal Tribunal for the former Yugoslavia (ICTY) and its successor, the International Residual Mechanism for Criminal Tribunals (IRMCT) were compromised by the Serbian institutions' refusal to execute arrest warrants against three defendants wanted by the ICTY for contempt of court. Co-operation with the authorities of Bosnia and Herzegovina (BiH) remained overall satisfactory, while co-operation with Croatia did not significantly improve. Mutual assistance between authorities in Pristina and Belgrade appears to have been significantly compromised by the cease of executive functions of the European Union Rule of Law Mission in Kosovo[2] (EULEX) in June 2018. A number of key obstacles in the legal framework still persist, and viable investigations are left unprosecuted. Further improvements in this field are recommended.

When it comes to new investigations and indictments (Chapter Three), most of the 26 new cases prosecuted by the Serbian War Crimes Prosecutor's Office (WCPO) between 2015 and 2019 are cases that BiH authorities had fully investigated and then formally transferred to Serbian courts for trial. All but one of these cases involved one defendant, always of Serbian nationality. In the 2015-2019 period, only six cases were initiated as a result of WCPO investigations. While four of them (two of which first indicted in 2015) involve a large number of victims (more than 20 per case indicted), the remaining two concern isolated incidents. In the reporting period, no new cases regarding crimes committed against Kosovo Albanians were initiated. Overall, most war crime cases prosecuted in Serbia continue to involve low-ranking defendants and isolated incidents with a low number of victims. A number of larger-scale crimes remain unprosecuted. A clear definition of WCPO priorities and more tangible results are advisable.

The reporting period saw no prosecutions of high-ranking defendants. Two mid-ranking defendants were prosecuted in the reporting period. A clear definition of the legal basis for the responsibility of superiors by the WCPO and the War Crimes Departments within the Higher Court in Belgrade and the Court of Appeals in Belgrade (WCD) would help improve the track record in the prosecution of high-ranking defendants and ensure better implementation of the relevant National War Crimes Strategy's recommendation to prosecute cases against high-ranking suspects as a priority (Chapter Four).

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The reporting period also saw delays in war crimes proceedings. WCD judges did not always resort to efficient trial management techniques. Unclear charges caused some indictments to be returned to the WCPO, thus significantly delaying their filing. Unclear findings on individual contribution to crime co-perpetration caused first-instance judgments to be quashed and sent for retrials which lasted as long as the first trial. Delays had a substantive impact on the viability of criminal prosecutions. At least ten defendants and a number of witnesses passed away before the end of the trial. Further efforts to expedite proceedings are advisable, so as to comply with defendants' and victims' right to a decision within a reasonable time (Chapter Five).

Additional efforts are encouraged to ensure the accurate application of international humanitarian law (IHL) provisions in all indictments and judgements (Chapter Six). In several cases, prosecutors and judges did not establish the existence of all legal elements of war crimes. The question of the nature and duration of the armed conflict in Kosovo remains unresolved in Serbian jurisprudence.

Regarding sentencing (Chapter Seven), courts continued to apply mitigating circumstances in an inconsistent manner. Courts often provided insufficient reasoning when imposing sentences under the legal minimum or reducing previously imposed sentences. A clearer legal approach appears advisable.

As a final point, this report refers to the field of protection of witnesses (Chapter 8). In its previous report, the OSCE Mission to Serbia had noted its concerns with regard to the procedural measures afforded to witnesses during the trials in some cases. In addition, the previous report raised concerns in relation to the ability of the Witness Protection Unit (WPU) to adequately protect witnesses. In this reporting period, concrete steps have been taken by Serbia's institutions to address these concerns, although some impediments persist.

Based on the report's analysis, the OSCE Mission to Serbia developed the following key recommendations:

To the Serbian legislature:

- Judicial independence and separation of powers require amendment of the constitution to make judicial appointments independent of the legislative and executive branches of power.

To Serbian public officials:

- It is recommended to refrain from commenting on or otherwise interfering with decisions taken by WCPO prosecutors or WCD judges so as not to give an impression of external interference.

To the High Judicial Council and State Prosecutorial Council:

- It is recommended to publicly and timely react to all undue interferences or pressures against judicial institutions or individual judges or prosecutors.

To the Higher Court's WCD:

- It is necessary to ensure that first instance judgements precisely state whether the material contribution of each accused has been proved beyond reasonable doubt.
- It is recommended to ensure efficient management of trials, including by rejecting proposals to hear redundant witnesses.

To the WCPO:

- It is recommended to amend the Prosecutorial Strategy for the Prosecution of War Crimes to clearly identify criteria for case selection and prioritization.
- It is recommended to increase the output of new cases investigated and prosecuted.
- It is recommended to ensure that unprosecuted larger-scale crimes are prosecuted as a matter of priority.
- It has been a good practice to continue refraining from instituting trials *in absentia*.
- In indictments, it is advisable to clearly specify the material contribution of each accused to each crime charged, and qualify it under the proper mode of liability.

To the Ministry of Interior (MoI):

- It is recommended to sign memorandums of understanding between the War Crimes Investigation Service and their counterparts in the region, to ensure the prompt exchange of intelligence and evidence.
- It is advisable to continue with the good practice of ensuring the integrity and professionalism of police units dealing with war crimes, including carefully screening their members to ensure that the Witness Protection Unit and the War Crimes Investigation Service employ no officers who took part in armed conflicts as members of army or police forces.

To the War Crimes Investigation Service:

- It is advisable to ensure that all available resources are focused on generating viable criminal reports and supporting the WCPO in ongoing investigations. It is recommended to refrain from investing resources in activities that do not have a prospect of resulting in viable investigations.

To the Judicial Academy:

- It is advisable to ensure that international humanitarian law is included in the standard training curriculum for students, judges and prosecutors.

Overview of war crimes proceedings in Serbia (2015-2019)

From January 2015 until the end of 2019, the WCPO charged a total of 38 **defendants** with war crimes against civilians and prisoners of war, while 162 defendants were charged from the start of the WCPO operations in November 2003 until the end of 2014. The overwhelming majority of defendants in new indictments continued to be of Serbian nationality, similarly to what the OSCE Mission to Serbia observed in its 2014 report. Only two defendants were members of non-Serbian forces, i.e., belonging to the Bosniak forces and the Kosovo Liberation Army (KLA) forces respectively. Almost two thirds of the accused were former members of the military (including "territorial defence" forces), while police and paramilitary forces account for most of the others. One defendant was charged with acting in his capacity as civilian. None of the defendants prosecuted by the WCPO held high-ranking positions at the time of the offences, while two defendants (just above 5 %) had mid-ranking positions.

Between 2015 and 2019, **the average number of victims per prosecuted case increased substantially** comparing to the previous reporting period largely due to the significant number of victims in two cases related to events in and around Srebrenica, BiH. Cases prosecuted in the reporting period have covered crimes committed against more than 1700 **victims**,[3] belonging to almost all of the main ethnic groups (i.e. Bosniaks, Croats, Kosovo Albanians, and Serbs). The prosecuted cases predominantly involve crimes against victims of Bosniak ethnicity (80% of cases). Cases involving Serbian and Kosovo Albanian victims represent 8% each of the total number of the prosecuted cases. A single case involved Croatian victims (4% of the prosecuted cases).

3 For the purpose of this report, only victims of crimes against physical integrity such as murder, torture, rape and beatings will be considered. Crimes such as displacement or destruction of property are not included, both because of the difficulties in determining their precise number and the comparatively less serious nature of the violations suffered. This include the"Bratunac-Suha" case where the defendant has been charged with participating in the displacement of about 300 Bosniak residents in June 1992. Yet, the reporting team could not provide the exact total number of victims of crimes against physical integrity, as the WCPO did not specify the exact number of victims in some cases (see the "Srebrenica-Branjevo" case).

The scale of the **crimes** prosecuted continues to vary significantly. While most cases involve sporadic incidents (32% of cases involve three victims or fewer), one case involves killings of more than 1300 persons and another two involve the killing of 100 or more.

In the reporting period, a total of 102 defendants were tried in the course of 43 first instance **trials and retrials.**[4] As of 31 December 2019, 21 trials had been completed with final decisions, resulting in the conviction of 70% of the accused.[5] The remaining 15 trials were still ongoing at different procedural stages: eight in first instance, two on retrial and five on appeal (either upon trial or retrial), while in three cases the proceedings were suspended and terminated.[6] In four cases, main hearing was supposed to start.

Sentences imposed during the reporting period were in line with the statutory punishment foreseen for war crimes (5 to 15, or 20 years). In the first instance, one defendant was sentenced to the statutory maximum of 20 years, and two were sentenced to 15 years each, while 14 defendants were sentenced to ten years or less. The courts also sentenced three defendants to punishments below the statutory minimum of five years. The average length of the punishment imposed with final sentences in the reporting period was 10 years.

4 Against 10 defendants, proceedings were terminated due to their deaths or suspended indefinitely due to their illnesses preventing them from standing a trial (five defendants in the "Lovas" case, two defendants in the "Ćuška" case, one defendant each in the "Doboj" case, the "Branko Branković" case and the "Bihać II" case).

5 27 defendants were convicted, while 19 were acquitted.

6 The proceedings in the "Doboj" case were suspended due to the death of the defendant, while in the "Branko Branković" case and the "Bihać II" case proceedings were suspended due to the defendant's illness.

CHAPTER ONE
Independence and autonomy of judges and prosecutors in war crimes cases

1. Challenges in legal guarantees for judges and prosecutors' independence

In 2003, Serbia adopted the Law on War Crimes,[7] which established institutions within the police, the prosecution and courts with the exclusive jurisdiction to investigate, prosecute and adjudicate war crimes cases. These institutions include the War Crimes Investigation Service (WCIS) within the police, the War Crimes Prosecutor's Office (WCPO) and the War Crimes Departments within the Higher Court in Belgrade and the Court of Appeals in Belgrade (WCDs).[8]

In its 2014 Report, the OSCE Mission to Serbia defined these institutions' independence as "fragile", due to the lack of a solid set of legal guarantees ensuring that prosecutors and judges are only answerable to the law and free from undue political pressure. In its previous report, the OSCE Mission to Serbia also noted that the justice system lacked mechanisms to react to and remedy cases of external interference with prosecutorial and judicial decisions. In particular, the report flagged the fact that the election of all first-time judges and prosecutors,[9] and the election and re-election of the War Crimes Prosecutor (WCP), are carried out by the Serbian National Assembly among candidates nominated by the Government.[10]

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7 The Law on Organization and Competences of Government Authorities in War Crimes Proceedings (*Official Gazette of the RS*, no. 67/2003, and subsequent amendments).

8 In addition, the Law also created the Witness Support Service within the District Court (now Higher Court) in Belgrade and a Special Detention Unit for war crimes suspects. The 2005 Law on the Protection Programme for Participants in Criminal Proceedings (*Official Gazette of the Republic of Serbia* no. 85/2005) also led to the creation, in 2006, of the Witness Protection Unit, charged with providing security to witnesses in war crimes and organized crime cases.

9 See Constitution of the Republic of Serbia, Official Gazette of the Republic of Serbia no. 98/2006, Article 147.

10 Law on Public Prosecution (*Official Gazette of the RS*, no. 116/2008, and subsequent amendments), Articles 74-75.

This situation has not changed in the reporting period, with other branches of power still retaining a substantial degree of influence on the work of the judiciary.

The 17-month delay in the election of the WCP illustrates, among others, these challenges. While Mr. Vladimir Vukčević's term of office as WCP was expiring on 31 December 2015,[11] the State Prosecutorial Council (SPC) advertised the call for the WCP's position on 9 September 2015.[12] The SPC conducted the selection process and proposed a list of five candidates for election to the Government[13] which subsequently proposed all five candidates to Parliament.[14] In December 2015, the Parliament failed to elect the WCP since none of the candidates received the required minimum of 126 MP votes. In June 2016, after the new public call for the WCP was re-advertised, the SPC conducted the evaluation process and proposed three candidates for the election in October. The Government, seven months later, proposed two of those three candidates to Parliament. On 15 May 2017, Parliament elected Snežana Stanojković who took office as WCP on 31 May 2017.[15]

Although the Law on Public Prosecution foresees that the Republic Public Prosecutor (RPP) shall appoint an acting prosecutor pending the election of a new head of the WCPO, and although the date when Mr. Vukčević's mandate would cease was known well in advance, the RPP did not appoint an acting WCP.[16] The RPP did not exercise its authority to appoint an acting WCP throughout the time it took the National Assembly to elect a new WCP, although it was apparent that the WCP position being vacant would affect the viability of war crimes trials.[17]

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11 On 21 January 2015, the National Assembly of the Republic of Serbia amended the Law on War Crimes to allow the WCP then in charge, Mr. Vladimir Vukčević, to remain in office until the expiry of his six-year mandate, regardless of age (Article 5(4)(5) of the Law on War Crimes).

12 See: https://www.paragraf.rs/dnevne-vesti/100915/100915-vest8.html.

13 According to the Law on the SPC ((*Official Gazette of the Republic of Serbia*, no. 116/2008, and subsequent amendments) the SPC establishes a list of candidates for the election of the public prosecutors, and submits it to the Government (art. 13(1)). Within the process of nominating candidates for the election of public prosecutors, the panel formed by the SPC determines the degree of fulfilment of the criteria for the election on the basis of 1) evaluation of competence; 2) presentation of programmes on organization and improvement of the prosecutor's office, and 3) the written test, whereby candidates carriers of the prosecutor's function along with judges do not take the written test (SPC' Rulebook on Criteria for Assessment of Qualifications, Competencies, and Ethics of Candidates, art. 22).

14 According to the Law on Public Prosecution, the Government proposes to the National Assembly one or more candidates for the public prosecutor formerly nominated by the SPC (Art. 74 (2-3)).

15 Ministry of Justice, "Report Two on Implementation of the National Strategy for Prosecution of War Crimes", page 3, available at https://www.mpravde.gov.rs/tekst/17978/izvestaj-o-sprovodjenju-nacionalne-strategije-za-procesuiranje-ratnih-zlocina.php; WCPO press release "Snežana Stanojković takes office as Serbian War Crimes Prosecutor", 31 May 2017, available on WCPO's official website, http://www.tuzilastvorz.org.rs/en/news-and-announcements/announcements/snežana-stanojković-takes-office-as-serbian-war-crimes-prosecutor.

16 The Law on Public Prosecution, *supra*, stipulates that if the term of office of a public prosecutor is terminated, the RPP is to appoint an acting public prosecutor until a new public prosecutor takes office, for a period not exceeding one year (Art. 36(1)).

17 See below, chapter five.

The WCPO thus operated without clear leadership for almost one and a half years which significantly delayed not only key criminal trials[18] but also the adoption of the Prosecutorial Strategy for the prosecution of War Crimes, one of the cornerstones of both the National Strategy for the Prosecution of War Crimes[19] and Action Plan for Chapter 23.[20]

In the reporting period, the OSCE Mission to Serbia also observed considerable delays in the process of election of a deputy WCP. On 15 September 2017, the Parliamentary Committee on the Judiciary, State Administration and Local Self-Government proposed to the National Assembly to accept the proposal of the SPC to elect Mr. Svetislav Rabrenović as Deputy WCP. After six months, the National Assembly elected him as Deputy WCP. In this period, the WCPO operated with only four deputies.

These examples demonstrate the importance of delinking judicial and prosecutorial careers (primarily appointments/dismissals) from the influence of the other branches of power.

In its 2014 Report, the OSCE Mission to Serbia noted that the **assignment of judges to the WCDs** lacked full transparency. The Law on War Crimes foresees that WCD judges are chosen by the **presidents of the Court of Appeals and Higher Court in Belgrade** among judges who are already assigned to those courts. Each assignment to the WCD lasts for a period of six years,[21] to guarantee a minimum level of stability and professionalism of WCD judges and ensure that they are not removed for reasons of political convenience.

Despite these legal guidelines on the selection criteria,[22] court presidents have maximum discretion in assigning judges to the WCDs, which also has considerable financial implications for the judge in question.[23] Such practice interferes with the independence of individual judges since removal from the WCD is a *de facto* demotion and thus represents a powerful leverage tool for the Higher Court/Court of Appeals president who is, in turn, appointed by Parliament.[24] Therefore, the Higher Court/Court of Appeals President's power to choose and remove WCD judges leaves room for indirect control of the political power over WCD judges' work.

18 See below, chapter five.
19 National Strategy for the Prosecution of War Crimes, page 21.
20 Action Plan for Chapter 23, pages 106 and 108.
21 Article 10(4) and 10a(4), Law on War Crimes, *supra.*
22 Articles 10(4) and 10a(5), *id.*
23 Articles 17 and 18, *id.*
24 According to the Law on Judges, the National Assembly elects the president of the court at the proposal of the High Judicial Council (Art. 70(1) art. 71(1) of the Law on Judges (*Official Gazette of the Republic of Serbia*, no. 116/2008, and subsequent amendments).

During the reporting period, the **concerning practice of replacing WCD judges before the expiry of their six-year mandate, started in 2014,[25] continued.** In the 2016 annual calendar of tasks, the Belgrade Higher Court President reassigned a judge and the deputy president of the department from the WCD to the First Instance Criminal Department,[26] only two years after his appointment.[27] Replacing the WCD judge also caused delays in war crimes proceedings since main hearings where the judge in question was a president of the trial panel or a panel member needed to start from the beginning.[28]

It appears that there is a practice whereby judges of both WCDs sign a document assigning them to the WCD for a period of *up to* six years, which - if true - would be in violation of the Articles 10 and 10a of the Law on War Crimes. In relation to the first case of removal in 2014, the Court of Appeals' president confirmed[29] that the appointment to the WCD had been made for a period of "up to" six years.[30]

While judges are free to accept or renounce assignment to the WCD, Court Presidents and WCD judges do not have the power to derogate to the legal provisions establishing the duration of their mandate.

The European Charter on the Statute of Judges recommends "the decision to appoint a selected candidate as a judge, and to assign him or her to a tribunal, is taken by an independent authority or on its proposal, or its recommendation or with its agreement or following its opinion."[31] In the same vein, the Venice Commission is of the opinion that a judicial council should have a decisive influence on the appointment and promotion of judges.[32]

In line with these international standards, the assignment of judges to the WCDs should not be left to the discretionary decision of Court presidents, as is currently the

25 See 2014 report, pages 22 – 23.
26 The assignment of judges to various judicial functions within the Court is carried out through the so-called "Annual Calendar of Tasks", see Law on Organization of Courts (*Official Gazette of the Republic of Serbia* no. 116/08 and subsequent amendments) Article 34 (Annual calendar of activities); and Law on Judges, Article 23 (Immutability of Annual Tasks).
27 The Annual Calendar of Tasks I Su 2/15 – 242 from 30 November 2015. The judge did not complain against his removal and the HJC did not issue any statement regarding the matter.
28 See below, chapter five. The Serbian SPC foresees that the main hearing has to start anew if the composition of the trial panel changes.
29 As provided by the Belgrade Court of Appeals' president in his decision of 8 December 2014 (case SU no. I-2 217/14), rejecting the appeal filed by the judge in question against the decision on removal from the Higher Court WCD before the expiry of the six-year term.
30 Articles 10 and 10a, Law on War Crimes, *supra*.
31 European Charter on the Statute for Judges from 10 July 1998, paragraphs 1.3. and 3.1.
32 Opinion of the Venice Commission no 403/2006 on judicial appointments from 22 June 2007, paragraph 25.

case, but be made by the HJC after a competitive selection process.[33] The introduction of the practice of providing a detailed written explanation of (re)assignment of judges would improve the current state of affairs.

2. Cases of external interference

In the reporting period, the OSCE Mission to Serbia observed numerous instances of external interference with both prosecutors and judges charged with war crimes prosecutions and trials in Serbia.

During a parliamentary debate in May 2019, several MPs accused a judge of the WCD Court of Appeals of *inter alia* having acquitted ethnic Albanian defendants of war crimes against Serb civilians "probably for money".[34] The MPs did not provide any evidence supporting their allegations.

The adverse climate to the work of the Serbian war crimes institutions is also exemplified by the refusal of the Bar Association of Belgrade (BAB) to admit the

33 The Mission has raised the same concerns in its "Comments on the Draft Law on Combating Organized Crime and Corruption". Such a change would not impact negatively on the duration of criminal proceedings, due to the introduction of newly elected judges, given that thus far judges who have been assigned (for the first time) to the WCD also needed time to familiarise themselves with the cases. The procedure and the selection process by the HJC should result in selection of experienced candidates (primarily in dealing with complex cases). The assumption that the most complex cases are tried before the Belgrade Higher Court would not change anything in this model – all other judges in Serbia would also have an equal opportunity to apply and demonstrate if they meet the necessary criteria e.g. expertise, years of experience, handling complex cases, knowledge of international humanitarian law and human rights.

34 On 13 January 2019, the judge in question (Miodrag Majić) gave an interview to a daily, making technical comments on a draft law proposed by the Serbian Government, designed to harshen criminal punishment for some criminal offences, which in the judge's opinion would not achieve any deterrent effect. On 19 May 2019, the judge reiterated his position during a TV talk show; in the following days, several public officials publicly questioned the judge's independence (See: Nova srpska politička misao, *Dragana Boljević o slučaju "Majić": To je poruka svim stručnjacima - bolje bi vam bilo da ćutite*; *Ušli smo u jednu novu fazu, pravosuđe je postalo meta u koju se puca ne ćorcima, već pravim mecima*, 24 May 2019, available at http://www.nspm.rs/hronika/dragana-boljevic-o-slucaju-majic-to-je-poruka-svim-strucnjacima-bolje-bi-vam-bilo-da-cutite-usli-smo-u-jednu-novu-fazu-u-kojoj-je-pravosudje-postalo-meta-u-koju-se-puca-ne-corcima-vec-pravim-mecima.html?alphabet=l; BBC, Miodrag Majić: *Šta napadi na njega pokazuju drugim sudijama*, 24 May 2019, available at https://www.bbc.com/serbian/lat/srbija-48385140; N1, *Boljević o slučaju Majić: Poruka svim stručnjacima - bolje bi vam bilo da ćutite*, 22 May 2019, available at http://rs.n1info.com/Vesti/a485833/Boljevic-o-uvredama-koje-je-dobio-Majic.html).

former WCP as its member, in 2016 and 2017.[35] Reportedly, the BAB reasoned that Mr. Vukčević had not performed his prosecutorial function professionally.[36] In April 2017, the head of the Parliamentary Committee on Kosovo and Metohija stated that Mr. Vukčević had failed to sufficiently prosecute crimes committed against Serbs. He also recalled the BAB's refusal to allow Mr. Vukčević, stating there was no place for him in the public sphere".[37] These statements created a public perception that the previous WCP was unworthy and politicized, discrediting the work that the WCPO had done under Mr. Vukčević's management.

Other instances of pressure in war crimes trials were observed when members of the Serbian Radical Party (SRS) gathered outside the Higher Court in Belgrade in protests against the trial in the "Srebrenica" case. On those occasions, as a part of the protests, SRS MP/leader and ICTY war crime convict Vojislav Šešelj stated, *inter alia*, that the defendants were being prosecuted for "a fictional" crime, claiming that the defendants were innocent.[38]

Another instance occurred in June 2015, soon after Switzerland decided not to extradite to Serbia a high profile Bosniak defendant suspected of committing war crimes against Serb civilians in the Srebrenica area. Although the case was still pending before Serbian courts, the Serbian Prime Minister during a press conference accused the defendant of personally slaughtering a Serbian public official and "taking his eyes out",[39] which amounts to violation of the presumption of innocence. Such statements may corroborate the impression that Serbia would not independently adjudicate war crimes cases, thus diminishing the likelihood that defendants are extradited to Serbia in the future.

In the reporting period, the OSCE Mission to Serbia noted instances where persons convicted of war crimes continued holding public positions. The most notable case concerns the SRS MP Vojslav Šešelj who maintained his MP mandate despite being

35 Politika, *Vladimir Vukčević nedostojan za advokaturu*, 20 January 2017, available at http://www.politika.rs/sr/clanak/372455/Hronika/Vladimir-Vukcevic-nedostojan-za-advokaturu#!, Politika, Vladimiru Vukčeviću definitivno zabranjen ulazak u advokaturu, 31 October 2017, available at http://www.politika.rs/sr/clanak/391760/%D0%A5%D1%80%D0%BE%D0%BD%D0%B8%D0%BA%D0%B0/%D0%92%D0%BB%D0%B0%D0%B4%D0%B8%D0%BC%D0%B8%D1%80%D1%83-%D0%92%D1%83%D0%BA%D1%87%D0%B5%D0%B2%D0%B8%D1%9B%D1%83-%D0%B4%D0%B5%D1%84%D0%B8%D0%BD%D0%B8%D1%82%D0%B8%D0%B2%D0%BD%D0%BE-%D0%B7%D0%B0%D0%B1%D1%80%D0%B0%D1%9A%D0%B5%D0%BD-%D1%83%D0%BB-%D0%B0%D0%B7%D0%B0%D0%BA-%D1%83-%D0%B0%D0%B4%D0%B2%D0%BE%D0%BA%D0%B0%D1%82%D1%83%D1%80%D1%83.

36 Novi Magazin, *Intervju Vladimir Vukčević: Odbijaju me nedostojni advokati*, 27 January 2017, available at http://www.novimagazin.rs/vesti/intervju-vladimir-vukcevic-odbijaju-me-nedostojni-advokati; Politika, *Vladimir Vukčević nedostojan za advokaturu*, 20 January 2017, available at http://www.politika.rs/sr/clanak/372455/Vladimir-Vukcevic-nedostojan-za-advokaturu.

37 Alo, *Žestoko mu odgovorio Drecun: Vukčević je za sve zločine optuživao Srbe!*, 26 April 2019, available at https://www.alo.rs/vesti/aktuelno/drecun-vukcevic-je-za-sve-zlocine-optuzivao-srbe/104680/vest.

38 Protests were usually organized on the day when hearings in the "Srebrenica" case took place, for example see https://www.youtube.com/watch?v=pMXpAUeTgws, https://www.youtube.com/watch?v=8zIRIg1MvRI and https://www.youtube.com/watch?v=FbbDaXx6-Ew.

39 The full press conference is available at https://www.youtube.com/watch?v=RmCnAf4gxqQ.

convicted, on 11 April 2018, by the Appeals Chamber of the ICTY to ten years of imprisonment for war crimes and crimes against humanity. Namely, according to the law,[40] an MP's mandate shall be terminated before the end of term for which he/she has been elected if he/she has been convicted by a final court decision to an unconditional prison sentence of not less than six months.[41]

Although some of the above-mentioned events do not constitute direct political interference, the OSCE Mission to Serbia notes that these instances contribute to creating an environment that is not conducive for witnesses to come forward to testify, for institutions to promote accountability for past atrocities, or for societies to achieve reconciliation.

3. Strategic priorities for war crimes prosecutions and their implementation

On 20 February 2016, the Government adopted the **National Strategy for the Prosecution of War Crimes for 2016 - 2020** (National Strategy)[42], in line with its obligations under the Action Plan for Chapter 23.[43]

The Government's first declared priority is that "all priority and serious allegations of war crimes are properly investigated and then prosecuted".[44] The first indicator of the Strategy's implementation[45] is "the processing of cases based on the priorities established in accordance with the criteria defined by the Prosecutorial Strategy"[46]

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40 Law on the Election of Members of the Parliament, (*Official Gazette of the Republic of Serbia*, no. 35/2000, 57/2003 – decision of CCRS, 72/2003 – oth.law, 75/2003 – correction of oth. law, 18/2004, 101/2005 – oth. law, 85/2005 – oth.law, 28/2011 – decision of CC and 36/2011), Art. 88.1.3.

41 According to the Law on Co-operation of the Serbia and Montenegro with the International Criminal Tribunal for the Criminal Prosecution of Individuals Responsible for Severe Violations of the International Humanitarian Law Committed in Former Yugoslavia since 1991 (*Official Gazette of the Federal Republic of Yugoslavia*, no. 18/2002, *Official Gazette of Serbia and Montenegro*, no 16/2003) the country is obliged to respect and implement the court decisions and verdicts of the ICTY, Art 1.2.

42 See: https://www.tuzilastvorz.org.rs/upload/HomeDocument/Document__en/2016-05/p_nac_stragetija_eng.PDF.

43 In March 2015, the Ministry of Justice (MoJ) set up a Working Group for revising the Draft National Strategy for the Prosecution of War Crimes. The Working Group (WG) comprised of representatives of the WCPO, the Court of Appeals in Belgrade (Criminal Department), the Court of Appeals in Novi Sad, the Higher Court in Belgrade (War Crimes Department), the Witness Protection Unit (Ministry of Interior), the War Crimes Investigation Service (Ministry of Interior), the Department for European Integration and International Projects (MoJ), the Bar Association, the Novi Sad Law Faculty, the Embassy of the Republic of Serbia to The Hague and the Institute for Criminological and Sociological Research in Belgrade.

44 National Strategy, page 8.

45 National Strategy, page 10.

46 The National Strategy described itself as a "link between the Action Plan for Chapter 23 and the Prosecutorial Strategy for Investigation and Prosecution of War Crimes in the Republic of Serbia, which was adopted by the War Crimes Prosecutor's Office, based on the Action Plan for Chapter 23, in accordance with the principles set forth in the National Strategy, in an attempt to improve the efficiency of investigations and prosecution" (National Strategy, page 9.)

which, according to the National Strategy, "should define the criteria for the selection of war crimes cases" and devise "a list of priority and major war crimes cases."[47] The National Strategy indicates four possible criteria for case prioritization, the first two being **that the case involves a large number of victims and that the suspect is "high-ranking"**.[48] The document also clearly states that "the Republic of Serbia shall continue to do everything in its power in the forthcoming period to ensure that **all grave, large-scale and systematically committed war crimes are investigated"**, thus identifying the crime's systemic impact as a primary criterion for prioritization.

By adopting the **Prosecutorial Strategy**[49] in April 2018, after the belated appointment of the new WCP, the WCPO demonstrated its readiness to deal vigorously with past atrocities.[50] The Strategy should have represented a significant step forward, considering the number of war crimes cases that are yet to be prosecuted.

The Action Plan for Chapter 23 and the National Strategy are clear in setting the main objective of the Prosecutorial Strategy. The National Strategy identifies "criteria for setting priorities", and tasks the WCPO, in the Prosecutorial Strategy, to "define the criteria for the selection of war crimes cases and compile a list of priority and major war crimes cases that should be prosecuted to fulfil the obligation that all priority and important cases are prosecuted".[51] Yet, the Prosecutorial Strategy does not foresee the implementation of the relevant National Strategy's directives, explicitly stating that "with full appreciation of the proposals [...] we repeat that all the cases before the War Crimes Prosecution come under the category of especially complex cases".[52] The WCPO told the OSCE Mission to Serbia that "all investigations are a priority for the WCPO",[53] thus confirming that there are no prioritization criteria currently in place for the WCPO's work.

The Prosecutorial Strategy does not refine the criteria guiding the WCPO's decisions on what cases to focus its limited resources, by elaborating on their content or explaining how they shall be applied in practice. Rather, it relates that "the interests of the criminal procedure" shall be the primary criterion, and takes as "auxiliary criteria" the criteria from the National Strategy (set out verbatim) together with three other auxiliary criteria: promptness in processing, existence of active or passive personality, and the gravity of damage inflicted upon the protected good. [54]

47 National Strategy, page 21.
48 National Strategy, pages 21-22.
49 The text of the document is available at: https://www.tuzilastvorz.org.rs/upload/HomeDocument/Document__en/2018-05/strategija_trz_eng.pdf.
50 See as well the IRMCT Prosecutor's Progress Report to the UN SC, https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2018_1033.pdf.
51 National Strategy, page 20 – 21.
52 Prosecutorial Strategy, page 14.
53 Meeting with WCPO representatives, 22 November 2019.
54 Prosecutorial Strategy, page 14-15.

The elaboration of the elements and the substance of guiding principles for the triage of war crimes cases is limited only to these three new, auxiliary criteria and would not appear to offer sufficient guidance for their practical application. More importantly, the Prosecutorial Strategy does not explain the meaning of the criterion – "interest of the criminal proceedings"[55]

In the part following the definition of the criteria, the draft Prosecutorial Strategy itself expresses doubts in regard to the feasibility of the criteria it proclaimed. The Prosecutorial Strategy, however, lists a series of imprecise circumstances that actually might serve as a basis for departure from strict application of the prioritization standards.[56]

In spite of the complexity of the task of priority setting, and the degree of professional judgment that needs to be involved, the Prosecutorial Strategy lacked the greater precision in the definition of primary criteria for case selection and the relationship among the diverse criteria set out in the document.

Since the adoption of the Prosecutorial Strategy, **the WCPO did not indict any new cases involving a large number of victims or against high ranking defendants,[57] which contradicts the prerogatives of the National Strategy**[58] and the Action Plan for Chapter 23.[59]

The National Strategy also clearly indicates that war crimes should be "investigated and the perpetrators punished [...] regardless of national, ethnic and religious affiliation or status of the offender and the victim [...]".[60] Moreover, the Government "gives full support for the practice of avoiding trials *in absentia*."[61]

However, the newly appointed War Crimes Prosecutor's programme as a WCP candidate[62] mentions the prosecution of crimes against Serbian victims, including through initiating the trials *in absentia* against defendants of other ethnicities, if necessary. Such approach, albeit legally valid, would however appear to contradict another commitment of the Government provided for in the National Strategy, i.e. to "promote a policy of reconciliation, tolerance, regional co-operation and good neighbourly relations, as a prerequisite for lasting stabilization and prosperity of the entire region."[63]

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55 This deserves special attention not only due to its rank as a primary criteria, but also because of its inexplicit nature and the fact that, as a non-legal category, it can include an entire spectrum of elements – from the authorities and obligations of the organs of the proceedings envisaged by the Criminal Procedure Code (CPC), the requirements of due process, to the rights and interests of the accused and the damaged party.

56 Prosecutorial Strategy, page 17.

57 See below, chapter 3.

58 See more in detail below, Chapter 3.

59 Action Plan for Chapter 23, pages 106 and 108.

60 National Strategy, page 5.

61 National Strategy, page 22.

62 The programmes of the candidates to the WCP position are available (in Serbian) on the website of the Humanitarian Law Center (*Programi kandidata za Tužioca za ratne zločine*, 25 December 2015, http://www.hlc-rdc.org/?p=30935).

63 National Strategy, page 5. Contrariwise, the National Strategy stressed the Government's full support for the practice of avoiding trials *in absentia*, page 22.

Noteworthy, after the appointment of the new WCP, no sharp increase was observed in the number of cases involving Serb victims and no trials *in absentia*, in accordance with the non-discrimination principle, set out in the Prosecutorial Strategy, were instituted.[64]

4. Recommendations

To the legislature:

- It is recommended to enact constitutional changes so as to eliminate any political interference in the appointment of judges and prosecutors.
- It is recommended to amend the Law on War Crimes to establish that judges of the WCDs are appointed by the HJC after a regular competition among all judges in Serbia; it is advisable to clarify that each appointment of judges to the WCD lasts six years and this cannot be derogated; it is recommended to establish that WCD judges cannot be assigned to another judicial function without their consent before the expiry of each six year mandate.

To Serbian public officials:

- It is advisable to refrain from commenting on, or otherwise interfering with, decisions taken by WCPO prosecutors or WCD judges.

To the High Judicial Council and State Prosecutorial Council:

- It is recommended to publicly and timely react to all undue interferences or pressures against judicial institutions or individual judges or prosecutors.

To the WCPO:

- It is recommended to amend the Prosecutorial Strategy to clearly identify the criteria for case selection and prioritization.
- It is recommended to continue with the good practice of not treating the ethnic aspect as a criterion for prioritizing or prosecuting cases.
- Continue refraining from instituting trials in absentia.

64 Prosecutorial Strategy, page 15.

CHAPTER TWO
International co-operation

As the OSCE Mission to Serbia observed in its 2014 report, Serbian institutions are particularly dependent on international co-operation for war crimes prosecutions.

Defendants who are within Serbia's jurisdiction are mostly investigated for crimes committed in areas that are currently outside its jurisdiction: in fact, all cases prosecuted in Serbia so far have involved crimes committed in BiH, Croatia or Kosovo. This circumstance heavily restricts WCIS and WCPO's access to crime scenes, and in many cases also to victims and witnesses.

Conversely, cases where Serbian authorities have direct access to victims and witnesses residing in Serbia often involve perpetrators residing outside Serbia's jurisdiction. Since BiH, Croatia and Serbia do not extradite to each other their own nationals for war crimes, this makes it hardly possible that such cases are prosecuted in Serbia.

Moreover, the ICTY's closure at the end of 2017 emphasized the need to ensure that all the evidence it collected during extensive investigations since 1993 is put at the disposal of domestic authorities in charge of war crimes prosecutions. In his latest address[65] as ICTY Chief Prosecutor, Serge Brammertz emphasized to the UN Security Council that despite the Tribunal's closure, much more remains to be done, since many victims are still awaiting justice in the countries of the former Yugoslavia.

Lastly, the UN International Residual Mechanism for Criminal Tribunals charged with handling the ICTY's legacy (IRMCT) relies on assistance from domestic jurisdictions to complete the on-going cases initiated before the ICTY.

The above scenario makes a compelling case for international co-operation as the key to successful prosecutions in almost all war crimes cases prosecuted in Serbia.

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65 Available at: https://www.icty.org/en/press/prosecutor-serge-brammertz-addresses-the-united-nations-security-council-1.

1. Co-operation with the ICTY/IRMCT

The ICTY/IRMCT's assistance to Serbia

In its previous report, the OSCE Mission to Serbia noted that the ICTY had provided Serbia with almost complete case materials that were quickly transformed into viable prosecutions. However, this was limited to just two cases, transferred in 2003 and 2004.[66]

In the reporting period, this practice seems to have resumed. In 2019, the IRMCT provided new investigative files in two cases to the WCPO.[67] At present, it is not yet known what investigative results the WCPO will obtain based on the transferred material.

Transfer of additional materials would greatly assist the WCPO to focus its attention on viable, large-scale prosecutions. In this regard, starting from the end of 2019, the IRMCT facilitated the takeover of two category II cases from the BiH judicial authorities, involving high-ranking defendants and a significant number of victims.[68]

The WCPO continues to have a liaison officer in The Hague who has access to ICTY databases, from which evidentiary materials can be extracted and used. Access to such material, however, remains limited by any existing protective measures for witnesses and confidentiality rules.[69] Namely, while the ICTY and IRMCT can in certain cases lift such measures,[70] its practice of concealing names of witnesses and other sensitive information has reportedly remained in place, thus limiting the value and the use of the materials. The OSCE Mission to Serbia is not aware of any initiative by the ICTY or IRMCT either to lift the protective measures which are no longer needed, or to seek witness' consent to disclosure of their statements to Serbian prosecutors.

66 The first is the case related to events in the Ovčara farm in Croatia (transferred in 2003, which resulted in trials against 21 defendants) and the one related to crimes in the town of Zvornik, in BiH (transferred in 2004, which resulted in trials against ten defendants).

67 The materials were transferred in September 2019, and several meetings were held between the prosecutor's offices in the region in that regard, but, according to the WCPO, the submission of files was not completed by the end of 2019. Interview with WCPO officials, 22 November 2019 and later.

68 IRMC Prosecutor's Progress report to the UN SC, available at https://www.irmct.org/sites/default/files/documents/S-2019-888_E.pdf; correspondence with the WCPO.

69 Rule 86(G) of the Rules of Procedure and Evidence of the Mechanism allows victims or witnesses for whom protective measures have been ordered in proceedings before the ICTR, the ICTY, or the MICT to seek to rescind, vary, or augment their protective measures by applying to the President. Parties to a proceeding in another jurisdiction authorised by an appropriate judicial authority may also seek variation of protective measures under Rule 86(H).

70 Rule 86, IRMCT Rules of Procedure and Evidence.

Serbia's assistance to the ICTY/IRMCT

In its 2014 Report, the OSCE Mission to Serbia noted that the country had over the years complied with its obligations to provide the ICTY with the necessary assistance: it had executed the arrest warrants against high profile ICTY fugitives, adopted legislation enabling it to comply with ICTY's requests, and was reportedly complying expeditiously with all remaining requests for assistance filed by the ICTY in the cases that are still pending.

In the reporting period, mutual relations were compromised by Serbian institutions' refusal to execute arrest warrants against three defendants[71] charged with four counts of contempt of court in relation to alleged witness intimidation in the trial case of Prosecutor v. Vojislav Šešelj.[72] The ICTY issued arrest warrants in January 2015 and made them public in November 2016. In March 2017, the INTERPOL issued international arrest warrants against the three individuals.[73]

Although Serbia has a duty under international law to comply with its obligations under the UN Charter and co-operate with the Tribunal in accordance with the ICTY Statute, the WCD refused to execute the request claiming that Serbian domestic law does not foresee extradition to the ICTY except for core crimes (war crimes, crimes against humanity, and genocide).[74]

In June 2017, one of the three defendants, Jovo Ostojić, passed away. The other two were not surrendered to the ICTY. After the ICTY's closure, the IRMCT took over the competence for the proceedings that are still pending at the time of writing and that will continue to overshadow Serbia's relations with the IRMCT if not promptly addressed.

71 Petar Jojić, Jovo Ostojić and Vjerica Radeta.
72 ICTY annual report 2017, page 5, https://icty.org/x/file/About/Reports%20and%20Publications/AnnualReports/annual_report_2017_en.pdf.
73 *Ibid.*, page 11.
74 Higher Court in Belgrade ruling Kv Po2 6/2016 from 18 May 2016, pages 2 – 4.

2. Regional co-operation

Transfer of criminal proceedings

In its 2014 report, the OSCE Mission to Serbia noted that transfer of criminal proceedings from other jurisdictions in the region had been a major source of new cases tried before the WCDs. Although the WCPO has agreements with all neighbouring countries, transfer of criminal proceedings had occurred **almost exclusively from BiH**.

In the reporting period, this system continued to be used regularly to transfer to Serbia criminal proceedings against defendants not available to the authorities in BiH and Croatia. Between 2015 and 2019, Serbian judiciary took 26 cases, of which 14 – all from BiH – have led to charges before the Serbian courts. All of them involve low-profile defendants and Bosniak victims.

Transfers continued to occur on a piecemeal, *ad hoc* basis rather than a planned one. In its 2014 report, the OSCE Mission to Serbia suggested that the two countries sign a memorandum of understanding on the modalities and timing for the possible transfer of war crimes proceedings to Serbia, in order to enable better planning and allocation of resources by the WCPO to promptly tackle these cases in a manner that is compatible with other priorities.

This has not occurred. In the reporting period, the number of cases transferred from BiH largely outnumber those originated from WCPO's own investigations. Although the exact number is not known at the moment, it is believed that many more war crimes proceedings pending before BiH authorities could be transferred to Serbia in the near future; since there does not appear to be any prioritization in the cases that are transferred, the WCPO's resources risk being clogged with cases that do not meet the criteria for case prioritization as outlined in the National Strategy.

Two cases were transferred from Croatia. Yet, the WCPO has so far made no transfer of cases investigated in Serbia to other jurisdictions. This tool could prove an efficient way to bring to justice defendants, including perpetrators of crimes against Serbian victims, who, after having been investigated by the WCIS and the WCPO, are not available to the Serbian authorities.

Assistance in the collection of evidence

After transferring criminal proceedings to Serbia, the BiH authorities also assisted the Higher Court WCD panels in collecting evidence at trial, including through providing documents and hearing witnesses' testimonies. This included both witnesses coming to testify before Serbian courts and through video-link live broadcast from BiH.

To this end, the BiH authorities provided mutual legal assistance such as summoning witnesses in due time to the trial hearing, setting up the needed technical arrangements,

and ensuring witnesses' presence at the trial. While this sequence of events mostly took place with no hindrances, the OSCE Mission to Serbia observed a number of cases where witnesses repeatedly failed to appear at the video-link location, thus causing a considerable number of trial sessions to be cancelled and contributing to delays in such cases.[75] In another case,[76] it took the BiH authorities seven months to provide a death certificate, which had a substantial impact on the duration of the trial.

Transfer of evidence and other requests for assistance

In the reporting period, the **WCPO based two investigations** on evidence received from BiH and Croatia, respectively.[77]

The WCPO apparently acted promptly upon requests for international assistance from both BiH and Croatia, usually obtaining replies within a reasonable time. Co-operation with the BiH authorities appears to be overall quicker and smoother than co-operation with Croatian authorities. According to the WCPO, foreign regional authorities process Serbian requests for assistance much more quickly if the case involves victims of their own nationality, whereas if they concern cases with Serbian victims they are processed much more slowly, if at all.[78]

In line with the National Strategy, the WCPO has continued to refrain from instituting trials *in absentia* against defendants who are not present in Serbia, although the Law on War Crimes gives Serbia jurisdiction over war crimes committed on the territory of the entire former Yugoslavia while the current Criminal Procedure Code (CPC)[79] foresees this as a possibility. Croatian judicial authorities, on the other hand, continued to indict and try *in absentia* Serbian and other defendants for war crimes.[80]

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75 See below, chapter five.

76 The "Bratunac" case.

77 Information provided by the WCPO, reply to the Mission's request for access to information of public importance.

78 Interview with WCPO officials, 22 November 2019.

79 The *Official Gazette of the Republic of Serbia* no. 72/2011 and subsequent amendments, Article 381(1).

80 In Croatia, out of 37 war crimes trials in 2015, 14 trials were held in the absence of the defendants, while in other cases only some of the defendants were absent. In 2016, criminal proceedings against 93 persons were carried out *in absentia*. Out of the total of 34 defendants indicted 2017, 33 were out of reach for Croatian authorities and 38 per cent of the defendants were tried *in absentia* before the Croatian courts. Trials *in absentia* continued in 2018 and 2019 respectively, *Documenta* – Centre for Dealing with Past, Centre for Peace, Non-Violence and Human Rights Osijek, *Report on Monitoring War Crimes Trials in 2015, 2016, 2017;* for more see https://www.documenta.hr/assets/files/Izvjestaji%20sudjenja/Dokumenta-godisnji-izvjestaj-2015-ENGLESKI.pdf, https://www.documenta.hr/assets/files/Godisnji%20izvjestaji/Annual-report-2016-a.pdf, https://www.documenta.hr/assets/files/Izvjestaji%20sudjenja/REPORT-ON-WAR-CRIME-TRIALS-IN-CROATIA-DURING-2017.pdf, BIRN, *Croatian Trial of Serbs for Vocin Massacre Opens*, available at https://balkaninsight.com/2018/10/16/the-trial-for-the-massacre-in-vocin-started-in-zagreb-court-10-16-2018/ , N1, *Trial in absentia against ex-JNA general opens in Croatia,* available at http://rs.n1info.com/English/NEWS/a429795/Former-Ygoslav-general-s-trial-in-absentia-opens-in-Croatia.html, https://www.documenta.hr/hr/zlo%C4%8Din-u-manja%C4%8Di-opt.-ratko-andri%C4%87-su%C4%91enje-u-odsutnosti.html,https://www.documenta.hr/hr/zlo%C4%8Din-u-tabori%C5%A1tu-opt.-milan-velebit-su%C4%91enje-u-odsutnosti.html.

3. Co-operation with EULEX and Kosovo institutions

In its 2014 report, the OSCE Mission to Serbia noted that Serbian authorities had been productively co-operating with international rule of law institutions present in Kosovo (UNMIK and, since 2008, EULEX) on crucial issues related to the prosecution of war crimes cases, including missing persons.

Until EULEX ceased its executive functions in June 2018, the **WCPO** used to have operational meetings with EULEX prosecutors from the Special Prosecution Office based in Pristina. Although the two prosecutors' offices never concluded a formal protocol for co-operation foreseeing transfer of criminal proceedings or evidence, Serbian prosecutors exchanged a considerable amount of evidence and information with EULEX prosecutors. The WCPO has also assisted EULEX by facilitating contacts with witnesses residing in central Serbia. On the other hand, however, the **WCIS** used to co-operate with EULEX war crimes investigation service in Kosovo based on their Protocol on Co-operation concluded in 2009.[81] EULEX police have been assisting Serbian prosecutors in locating and interviewing witnesses in Kosovo and ensuring the presence of a number of Kosovo Albanian witnesses at trials held before the Higher Court in Belgrade.

However, **after EULEX ceased its executive functions in June 2018 the situation has significantly changed**. Since then, the WCPO has not held any meeting with non-EULEX representatives of the Special Prosecution Office of Kosovo (SPRK). The WCPO still channels its requests for assistance through EULEX, but Kosovo institutions ceased to provide any answer to them.[82] Conversely, the WCPO mostly responded to requests submitted by SPRK though EULEX. [83]

Mutual assistance between authorities in Pristina and Belgrade thus appears to be significantly compromised by EULEX's cease of executive functions. At present, only an agreement at the political level can allow for judicial co-operation to resume to a functioning operational degree.

81 This cooperation was established through the WCPO and the MoI's Coordination Administration for Kosovo and Metohija, according to the Ministry of the Interior.

82 According to the information obtained from the WCPO, in the reporting period, out of 70 submitted requests the WCPO received response to eight, whereas upon 55 requests submitted from 2016 the WCPO did not receive a single positive response. On the contrary, the WCPO responded positively on 12 out of total 15 request received from the SPRK in the reporting period.

83 Meeting with WCPO representatives, 22 November 2019. Also, see the Government of Serbia's Working Body's reports on the Implementation of the National Strategy for Prosecution of War Crimes, available at: https://www.mpravde.gov.rs/tekst/17978/izvestaj-o-sprovodjenju-nacionalne-strategije-za-procesuiranje-ratnih-zlocina.php.

The WCPO was involved in providing assistance in investigating the allegations contained in the Council of Europe's report on organ trafficking until 2016, when the SPRK took over the mandate from the Special Investigation Working Group.[84]

4. Other co-operation tools

In 2014, the WCPO obtained funds for the initiation of a project on the exchange of **regional liaison officers** to further strengthen direct access to information and evidence in war crimes cases. The purpose of the project was to facilitate access to and exchange of information in ongoing investigations through a semi-permanent representative in other prosecution offices in the region.[85] War crimes prosecutors hold joint regional meetings to discuss relevant topics and address existing challenges.[86]

Another co-operation tool available to the Serbian authorities in war crimes cases is that of **joint investigation teams**. So far, the OSCE Mission to Serbia has become aware of at least three cases that the WCPO investigated jointly with the BiH authorities: the already cited "Zvornik" case, and the recent cases "Srebrenica" and "Štrpci", the latter of which led to a joint police arrest operation. These cases are good examples of how effective regional co-operation can lead to meaningful results.

5. Recommendations

To the Serbian Government:

- It is recommended to undertake steps to re-establish a channel of judicial co-operation with the authorities in Pristina, particularly with the SPRK.

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84 Meeting and correspondence with WCPO officials. However, regarding the same set of facts, in October 2016 Serbia's "Working Group for the Compilation of Facts and Evidence of Crimes against Persons of the Serbian Nationality and Other National Communities in Kosovo and Metohija" was established within the Parliamentary Committee for Kosovo and Metohija. Although not directly charged with criminal investigations, the working group appears to be in charge of co-ordinating State effort to shed light on these crimes, with a view also to providing useful information and evidence to be used in prosecutions.

85 The project initiated in 2014 with the support of the OSCE Mission to Serbia and the Embassy of the Kingdom of the Netherlands in Serbia was concluded in 2015 and did not resume in the reporting period.

86 In the reporting period, total of nine bilateral meetings and 14 multilateral regional meetings of war crimes prosecutors were organized within the UNDP Regional War Crimes Project. The last such meeting gathering regional chief prosecutors and the IRMCT's Prosecutor was held in December 2019 in Sarajevo. For more, see https://www.tuzilastvorz.org.rs/en/news-and-announcements/announcements/conclusions-of-the-prosecutors-meeting-on-regional-cooperation-in-war-crimes-proceedings-held-in-sarajevo-17-19-december-2019.

To the WCPO:

- It is recommended to obtain from the BiH and Croatian authorities an estimated number of cases that are likely to be transferred to Serbia, and devise a timeline for their transfer.
- It is recommended to initiate procedures under the existing international treaties for transferring viable cases to the jurisdiction where the defendant resides (e.g. BiH, Croatia) and where the defendant is not available to Serbian authorities.
- It is recommended, after re-establishing the modality of co-operation with the judicial authorities in Pristina, to find ways for the exchange of investigation information with the SPRK.

To the MoI:

- It is recommended to sign memoranda of understanding between the WCIS and its counterparts in Croatia and BiH to ensure the prompt exchange of intelligence and evidence.·

CHAPTER THREE
Investigations

The WCPO is the driving force of war crimes investigations in Serbia, since under the CPC, the prosecutor is in charge of co-ordinating investigations, including the police's work. It is the WCPO's responsibility to identify cases to be prosecuted and determine investigative actions to be taken.

Within the Serbian Ministry of Interior (MoI), the WCIS has exclusive jurisdiction over war crimes cases. In the overall structure of the MoI, the WCIS is placed under the Criminal Police Directorate (CPD) which forms part of the MoI's General Police Directorate. There is currently no plan to move the WCIS directly under the General Police Directorate, as previously suggested in order to decrease layers of supervision on the WCIS's work.[87] The WCIS management appears to prefer the current structure, which gives it an easier access to co-operation with colleagues within the CPD.[88]

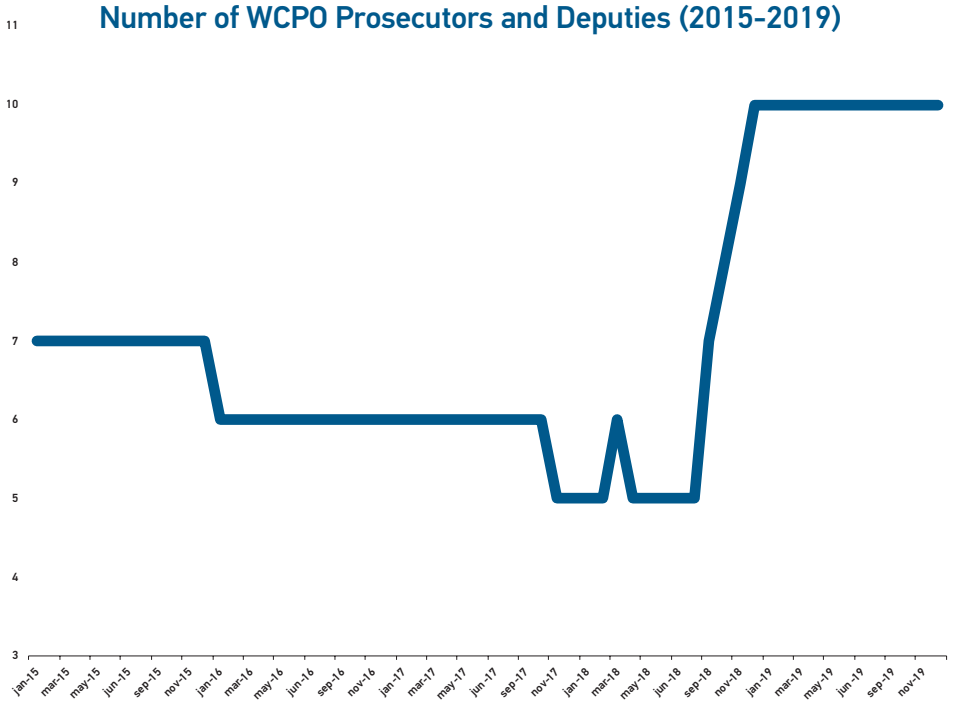
In the reporting period, relations between the WCPO and the WCIS seemed to have become closer.[89] While the management of the two institutions holds regular meetings, communication on investigative measures is done formally, in writing and through the MoI's chain of command.[90]

1. Investigative resources

Between 2015 and 2018, the WCPO was understaffed, lacking both deputy prosecutors and prosecutorial assistants from its staffing table.

87 See 2014 OSCE report, page 52.
88 Meeting with WCIS officials, 21 November 2019.
89 Based on the new working methodology, the joint investigation teams of the WCPO and the WCIS have adopted the procedures necessary to coordinate the activities in each individual case, the information received from the Ministry of the Interior.
90 Meeting with WCIS officials, 21 November 2019.

In 2015, the WCPO operated with six deputies and a WCP. After the latter's retirement in January 2016, the WCPO's overall staff decreased in May 2017[91] and in the second half of November 2017, when it further decreased due to the retirement of the Deputy WCP.



Until September 2018, the number remained practically unchanged: another Deputy WCP retired and a new one (then serving as a prosecutorial assistant) was appointed, thus again leaving the overall resources available to the WCPO unchanged.

91 After the new WCP's appointment in May 2017, the WCPO's overall staffing decreased, since Ms. Stanojković was already serving as a Deputy WCPO prosecutor.

Between September and December 2018, five new deputies were appointed, and in December 2019 one Deputy WCP was assigned, thus bringing the total number of prosecutors up to its current number of ten. The reason why those deputies could not be appointed earlier is unknown. One Deputy WCP position[92] and three assistant positions are currently vacant at time of writing.[93]

The WCPO is reportedly at time of writing still lacking administrative staff and material resources such as up-to-date IT equipment (modern case management database, video conference system etc.) and vehicles.

In the reporting period, the WCIS saw an increase in its staff, which is now organized into four sections: one works on active investigations, one on missing persons, one on operational analytics and documenting, and one on co-operation with the ICTY/IRMCT. Its work is based both on research into existing materials and on collection of new evidence. New regulations in force prevent the recruitment of persons who participated in armed conflicts as members of the military or police forces.[94]

The WCIS was recently allocated more adequate premises and has received the donation of high-performance analytical software.[95]

2. New indictments

Even considering its staffing constraints, **between 2015 and 2019 the WCPO generated 26 indictments** – an average of 5.2 per year.[96] Even considering the lowest number of prosecutors/deputies as the average number (five), this would equate to one indictment per prosecutor per year.

92 Foreseen in the SPC's Decision on the Number of Prosecutors and Deputy Prosecutors (*Official Gazette of the Republic of Serbia*, no. 106/2013 and subsequent amendments).

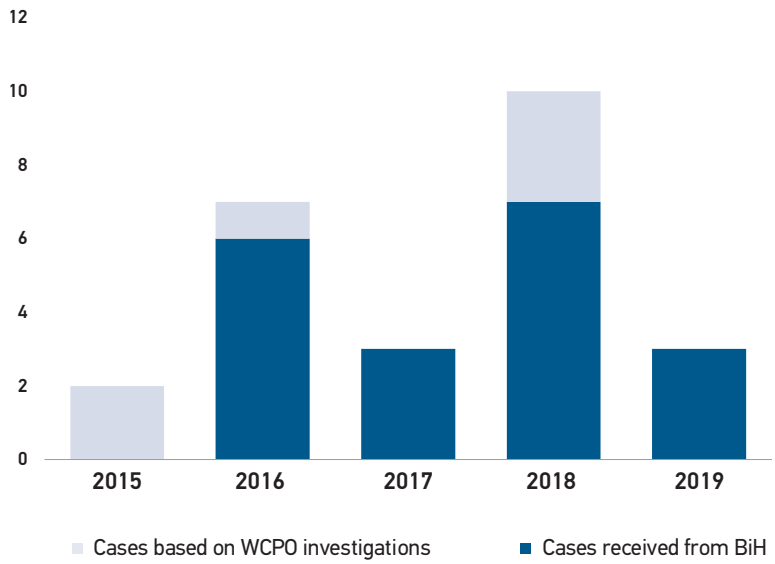
93 Foreseen in the WCPO's staffing table, information obtained from the WCPO.

94 Rulebook on conducting an internal recruitment for available vacancies of police officers in the Ministry of Interior (*Official Gazette of the Republic of Serbia*, no. 30/2019) and Rulebook on competencies for employees in the Ministry of Interior (*Official Gazette of the Republic of Serbia*, no. 6/16 and subsequent amendments), according to the information received from the Ministry of the Interior.

95 Meeting with WCIS representatives, 21 November 2019.

96 This number included the indictment in the "Bogdanovci" case and the "Petar Vuković case". For the note, the indictment in the "Bogdanovci" case was initially filed by the WCPO in 2013 and before it was finally confirmed in 2018, the indictment in this case had been amended since the investigation had been supplemented. Defendant Predrag Vuković was indicted in 2015 with the crimes committed in the Kosovo villages of Ćuška and Ljubenić, but has been unavailable to Serbian authorities since 2018.

New cases indicted per year (2015-2019)



Moreover, **only six of the 26 indictments originated from the WCPO's own investigations**, whereas 20 are criminal proceedings fully investigated in BiH and then transferred to Serbia. In other words, in more than three quarters of its new indictments, the WCPO and WCIS did not conduct the investigation.[97]

This means that **between 2015 and 2019 the WCPO filed, on average, just over one indictment per year based on own investigations.** Apart from one smaller-scale case, all the WCPO's own cases involve from eight to 1313 victims, with some resulting from extensive investigative efforts (such as Srebrenica or Štrpci, filed in 2015).

The significant increase of the number of deputy prosecutors in 2018 did not result in a corresponding increase in the number of new cases indicted in 2019.[98]

97 In the cases where indictments are transferred with completed investigation files, the WCIS and the WCPO do no criminal investigative work. The WCPO does review the file to confirm, or not, whether the investigation done in BiH will support the charges in the indictment; if not, they turn back to the counterparts in BiH.

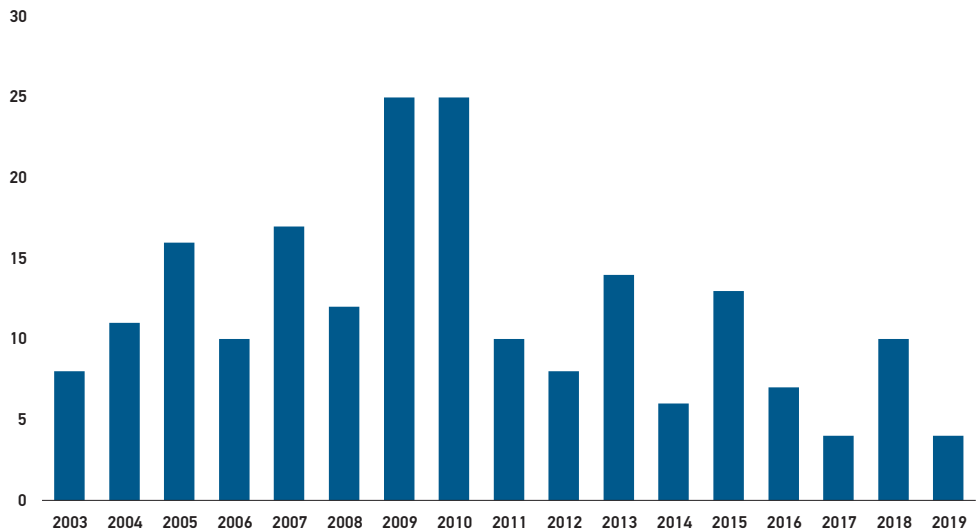
98 In 2019, the WCPO issued two orders to conduct an investigation against two persons. For the note, in 2018 the WCPO issued seven orders against nine persons, in 2017 one order against one person, in 2016 five orders against 13 persons, and in 2015 six orders against 15 persons.

As the OSCE Mission to Serbia reported in its 2014 report, EULEX has also informally delivered to the WCPO several complete investigative files involving suspects residing in Serbia.[99] The WCPO has not yet issued any indictments in these cases.

3. Number of defendants indicted

In its 2014 report, the OSCE Mission to Serbia noted that the number of defendants per case had dropped from an average of over four defendants per case in 2009 to an average of one defendant per case in 2014.

Number of Defendants (2003-2019)



In the reporting period, the number of defendants indicted continued to follow this trend. In fact, 2015 was the last year where the WCPO indicted more than ten defendants.

Criminal proceedings received from BiH comprised one defendant in all but one case, comprising two defendants in total. Cases originated from WCPO investigations *on average* involved more defendants: 2015 was marked by the arrest of eight defendants in relation to the crimes in and around Srebrenica in 1995, and the filing of an in-

99 Interview with representatives of the SPRK acting in period within the EULEX mandate.

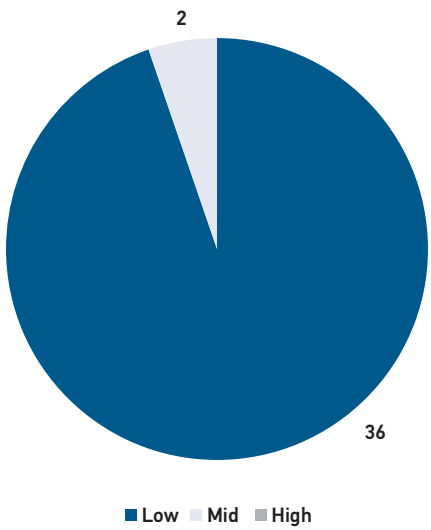
dictment against five more for serious crimes committed in and around Štrpci, BiH.[100] However, all new cases investigated by the WCPO in subsequent years (one in 2016 and three in 2018) involved only one defendant each.

The above figures confirm the trend the OSCE Mission to Serbia noticed in its 2014 report, that in recent years not only are there fewer indictments, but also that new cases **tend to focus on isolated perpetrators rather than organized groups**.

4. Defendants' hierarchical level

The overwhelming majority of defendants continued to be persons vested with low level of responsibility during the conflicts (non-commissioned officers and enlisted soliders), similarly to what the OSCE Mission to Serbia observed in its 2014 report. None of the defendants prosecuted by the WCPO in the reporting period held "high-ranking" positions at the time of the offences (brigade commander or civilian police equivalent), while only a limited number of them were commissioned officers ("mid-ranking").

Defendants' Hierarchical Level (2015-2019)



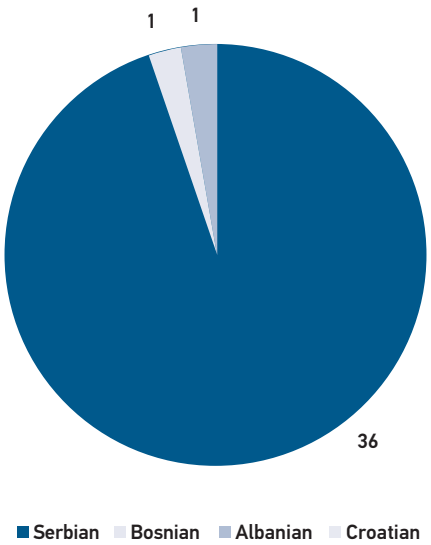
100 The indictment states that in 1993, four former members of the "Avengers" unit attached to the VRS and one member of the VRS, gathered at the railway station in Štrpci, BiH, abducted 20 passengers of non-Serbian ethnicity from a train operating on the Belgrade-Bar route, treated them inhumanely and then killed them.

Moreover, two of the seven mid-ranking defendants tried in the reporting period were acquitted for lack of evidence whereas two were convicted finally.[101]

5. Defendants' nationality

The overwhelming majority of defendants in new indictments continued to be of Serbian nationality, similarly to what the OSCE Mission to Serbia observed in its 2014 report. In fact, except for two defendants (one Bosniak, one Albanian), all defendants indicted by the WCPO between 2015 and 2019 were of Serbian nationality.

Defendants' nationality (2015-2019)



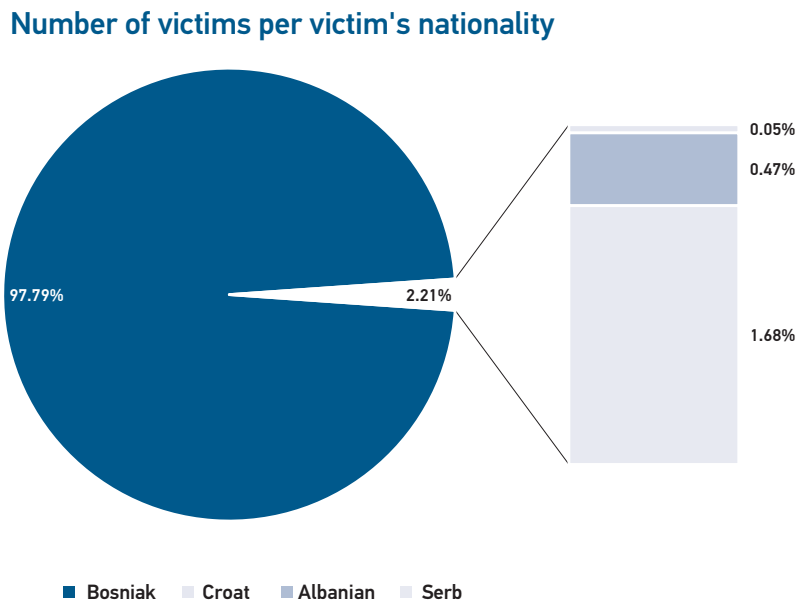
This is, among others, a direct consequence of the fact that non-Serbian defendants reside in other jurisdictions and are thus generally unavailable to Serbian authorities. As already mentioned, in the reporting period the WCPO continued to refrain from instituting trials *in absentia* against such defendants and did not initiate transfer of a sole case to a foreign jurisdiction. Conversely, the predominance among new WCPO indictments of cases received from BiH (all involving Serbian defendants) also impacted this figure.

101 "Acquittals were in the "Trnje" case and the "Tuzla Convoy case"; convictions in the"Ovačara" case (final), the "Bosanska Krupa" case (final), the "Ćuška" case (retrial), the "Lovas" case (appeal phase) and the "Sarajevo – Hrasnica" case (ongoing).

The OSCE Mission to Serbia continues to acknowledge the fact that, whereas prosecutors in some other jurisdictions neglect criminal prosecutions against defendants of their own ethnicity, the defendant's ethnicity does not seem to impact WCPO decisions on whether or not to indict a case.

6. Victims' nationality and number

In the vast majority of new cases indicted during the reporting period, victims were of Bosniak nationality (almost 98 per cent of the cases). There were just two cases involving Serbian victims and one involving Croat victims.



This is, among others, a direct consequence of the fact that, as already shown in the chart, the vast majority of new cases indicted between 2015 and 2019 result from the transfer of cases from BiH, all of which involve victims of Bosniak nationality.

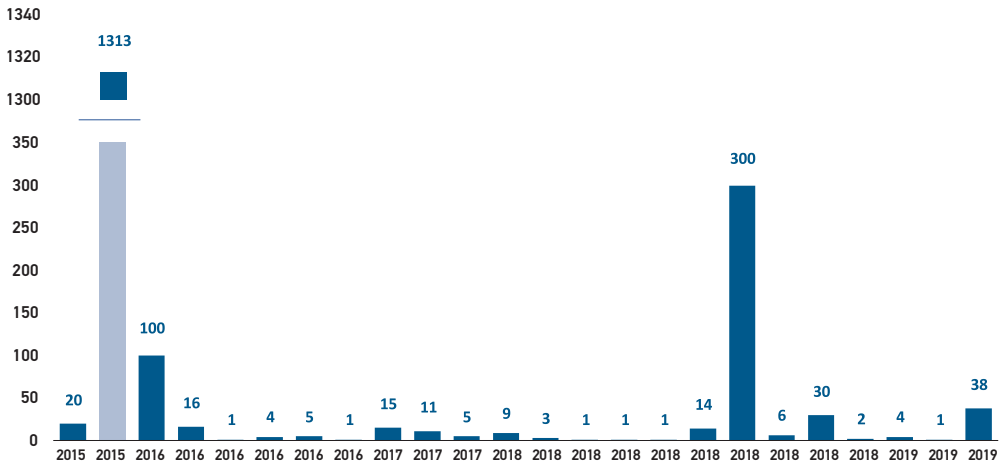
As already noted, the cases transferred from BiH involved on average a low number of victims. On the other hand, indictments based on the WCPO investigations mostly focused on cases (including two Srebrenica-related cases) involving a large number of victims of Bosniak nationality.

In the reporting period, there were no new cases indicted involving Kosovo Albanian or Roma victims. All but two victims of new cases indicted are civilians.

7. Number of victims

In its 2014 report, the OSCE Mission to Serbia noted that the average number of victims decreased in the 2010 – 2015 period compared to previous years, with the downward trend reaching its nadir in 2014, when on average each new case in which an indictment was filed included only just over two victims.

Number of victims in new cases indicted (2015-2019)



In the reporting period, **the average number of victims per case increased substantively**, largely due to the high number of victims involved in two cases related to events in and around Srebrenica.

12 out of 25 new cases involved five or fewer victims.

8. Conclusions

While the WCPO in the reporting period indicted at least three large-scale cases involving a large number of victims, most war crime cases prosecuted in Serbia still involve isolated incidents, low-ranking perpetrators and a low number of victims. In its 2014 report, the OSCE Mission to Serbia pointed out that a number of large-scale massacres committed during the Kosovo conflict were never the object of prosecution, by either Serbian authorities or UNMIK/EULEX, for instance:

1. Meja and Korenica villages, 27 April 1999. Around 300 people killed;

2. Izbica village, 28 March 1999. Over 100 people killed;

3. Pusto Selo village, 31 March 1999. Over 100 people killed.[102]

Despite the WCPO's reassurances that all these cases are being investigated, no tangible progress was achieved in the last five years. The WCPO's stance that all cases are a priority creates the risk that limited time and limited prosecutorial and police resources will leave serious cases unprosecuted.

9. Recommendations

To the WCPO and the WCIS:

- It is recommended to increase the output of new cases investigated and prosecuted.
- It is recommended to continue with the good practice of ensuring that the nationality of victims/defendants plays no role in determining whether a case should be investigated and prosecuted.

To the WCPO:

- It is advisable to adopt a clear case prioritization strategy with a focus on the most serious and viable cases, in order to: (a) ensure that all the most serious war crimes cases are investigated; and (b) avoid the risk of arbitrariness in choosing which case to prosecute.
- It is advisable to ensure that unprosecuted large-scale massacres are prosecuted as a matter of priority.
- It is advisable to formally terminate as soon as possible all open investigations which appear to have no prospect of viable prosecution.

To the WCIS:

- It is advisable to ensure that all available resources are focused on generating viable criminal reports and supporting the WCPO in ongoing investigations. It is recommended to refrain from investing resources in activities that do not have a prospect of resulting in viable investigations.

To the MoJ:

- It is advisable to ensure that sufficient funding and other material resources are allocated to the WCPO.

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102 Of note, the OSCE Mission to Serbia identified large scale massacres committed during the Kosovo conflict based on publicly available information contained in ICTY judgements.

CHAPTER FOUR
Modes of liability and responsibility of superiors

1. Co-perpetration: WCPO indictments and WCD judgments

In the reporting period, co-perpetration continued to be, by far, the most commonly charged form of complicity in war crimes cases involving multiple defendants.

General provisions of the Criminal Code of the Federal Republic of Yugoslavia (CCFRY) define co-perpetration in a very broad manner: "several persons jointly commit[ting] a criminal act by participating in the act of commission or in some other way." Co-perpetration has a material element (undertaking the act of commission of the offence or the act closely linked to it) and a mental element (knowledge of joint commission of the offence).

In recent years, the WCD Court of Appeals highlighted that unclear charges or enacting clauses prevented defendants from developing an efficient defence since they must know at every stage of the proceedings the factual and legal charges against them. Similarly, judgments must indicate the facts established in relation to individual criminal conducts and the supporting evidence, in order to enable the exercise of the right to appeal.

In its 2014 report, the OSCE Mission to Serbia observed that, when dealing with crimes allegedly committed by more than one person, WCPO indictments and WCD first instance judgements did not always clearly detail each co-defendant's conduct and mode of liability. This had an adverse impact on the defendants' right to be informed of the charges against them in a clear and detailed manner, and caused a number of judgements to be quashed on appeal and returned for retrial.

The OSCE Mission to Serbia continued to note **indictments** that failed to describe the exact contribution of a defendant to the commission of a criminal offence.

In the "Štrpci" case, in March 2015 the WCPO first filed an indictment against four former members of the "Avengers" unit attached to the Army of Republika Srpska (VRS) and one member of the VRS for the abduction, torture and murder of 20 passengers on a train in Štrpci in 1993. However, the pre-trial panel returned it to the Prosecution because it found that charges lacked specificity.[103] The WCPO submitted a new indictment, which was again returned for unclear charging and subsequently for supplemented investigation. The same pattern was repeated four more times, and the WCPO supplemented the investigation two more times before the indictment was finally confirmed. In the meantime, the Court ordered the release of the all five defendants who were in custody.[104]

The OSCE Mission to Serbia recalls that when formulating charges, the prosecution is, in accordance with the law, required to clearly set out the mode of participation in the crime. Indictments need to specify, for each accused, the relevant actions that are sufficient to establish criminal responsibility, in order to put them in a position to know exactly the charge against them and to prepare an adequate defence at trial.[105] If such threshold cannot be attained, the Prosecutor should consider collecting additional evidence or possibly dismissing the charges.

During the reporting period, the OSCE Mission to Serbia also continued to observe the practice of unclear establishment of individual criminal responsibility in **judgments**:

> In the "Ćuška" case, on 30 March 2015 the Court of Appeals quashed the first instance judgment and sent the case for retrial because it found, *inter alia*, that the trial panel had failed to clearly individualize the criminal acts of each defendant. After a first instance trial that had lasted for four years, all evidentiary proceedings had to start from the beginning at the retrial.

Since 2003, there have been at least ten cases where the appeals courts quashed the first-instance judgments and returned the cases for re-trial, *inter alia,* because of the lack of clearly specified charges against co-accused.[106]

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103 Ruling K Po2 3/15 Kv Po2 14/15 from 6 March 2015, K Po2 3/15 Kv Po2 16/2015 from 12 March 2015, K Po2 3/15 Kv Po2 76/2015 from 20 November 2015 and K Po2 3/15 Kv Po2 34/2015 from 9 April 2015.

104 The Higher Court initially confirmed the charges contained in the indictment on 24 April 2017, over two years after it was first filed. In October 2017, the Court of Appeals dismissed the indictment because it found that it was not filed by an authorized prosecutor. The indictment was finally confirmed on 25 October 2018 and the main trial started in March 2019, four years after the filing of the indictment.

105 According to the CPC, the indictment must contain "[...] a description of the factual aspects of the act which constitute the elements of the definition of the criminal offense, the time and the place of the commission of the criminal offense, the object upon which and instrument by means of which the criminal offense was committed" (Article 332-2).

106 The final cases "Bitići", "Gnjilanska grupa", "Lički Osik", "Prijedor", "Sjeverin", "Beli Manastir", "Bijeljina II", "Skočić", and the ongoing cases "Lovas" and "Ćuška"

Moreover, even in recent years, the OSCE Mission to Serbia continued to observe the long-lasting adverse procedural effects of indictments and judgments containing unclear determination of individual contribution to criminal offences. A number of cases were still under retrial during the reporting period, after the Court of Appeals quashed first instance judgments containing unclear adjudication of individual criminal responsibilities. This also included voluminous cases such as "Lovas" and "Skočić" where indictments were first filed in 2007 and 2010 respectively.

The OSCE Mission to Serbia recalls that judgments should always clearly explain the individual contribution to the criminal offence, and in particular the factual circumstances giving rise to criminal responsibility in relation to each individual found to be co-responsible. It should be emphasized that this does not amount to requiring an exact description of all the actions by the accused, as this would be an unattainable standard of proof; however, charges and judgments should clearly spell out at least the minimum elements that meet the threshold for criminal responsibility. Where this threshold is not reached, the defendant should be acquitted.

2. Responsibility of superiors

In its 2014 report, the OSCE Mission to Serbia observed that when dealing with the otherwise limited number of cases involving alleged responsibility of superiors, Serbian institutions had failed to take a clear position on the legal basis for this type of criminal responsibility. The report concluded that responsibility of superiors was "a crucial, open question in Serbian war crimes jurisprudence" since the WCPO and the WCDs had neither embraced nor discarded the applicability of command responsibility within the Serbian domestic criminal legal system,[107] or consistently resorted to other modes of liability of superiors. The OSCE Mission to Serbia emphasized that a clear position on the entire subject of the responsibility of superiors was overdue, *inter alia*, to ensure legal certainty in the criminal justice system and the coherence of judicial decisions.

In the reporting period, the OSCE Mission to Serbia did not observe any improvement of the described situation. The issue is all the more concerning, if one considers that, as the OSCE Mission previously reported, Serbian judicial practitioners point out the absence of a relevant provision in the CCFRY as the reason why there has never been an indictment or a trial against a high-level defendant in Serbia.[108]

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107 Command responsibility is a type of individual criminal responsibility of superiors (either military or civilian) for war crimes committed by their subordinates. Superiors have an affirmative duty under international law to prevent persons under their effective control from violating international humanitarian law rules, or to punish them if violations have already occurred. Failure to discharge this duty is what entails the superior's criminal responsibility under international law.

108 See 2014 OSCE report, page 61.

To date, the WCPO has not formally indicted any defendants with command responsibility, claiming that this type of responsibility, introduced with the 2006 Serbian Criminal Code, is not applicable to offences committed during the 1990s.[109] A recent WCD decision appears to confirm this legal stance.[110] Serbian legal practitioners, including WCPO representatives[111] and defence counsels,[112] seem to agree that command responsibility *per se* is not applicable in the current Serbian legal system and that commission by omission could be considered on a case by case basis. This mode of liability is grounded in Article 30 of the CCSFRY.[113]

However, during the reporting period the WCPO did not resort to the commission by omission theory, unlike what it had done previously done in the "Zvornik II" indictment in 2005 and, more recently, in an order to conduct an investigation in 2014:

> On 5 August 2014, the WCPO ordered an investigation against General Dragan Živanović for failing to prevent the murder of about 120 Albanian civilians, the destruction of private property, as well as robberies and expulsions in April and May of 1999. Although during the reporting period[114] the investigation was terminated for alleged lack of evidence, this shows that the WCPO did consider the commission by omission theory as a ground for responsibility of superiors for war crimes committed in 1999.

On the other hand, in the first case ever tried before the WCDs involving Serbian Army members currently in office, the WCPO charged a defendant who in 1999 was a military superior, with ordering the crime (instead of failing to prevent its commission).

> In the "Trnje" case, on 16 April 2019 the trial panel announced its verdict against the two defendants charged with the killing of 27 Albanian civilians in the village of Trnje on 25 March 1999. The WCD panel found the lower ranking accused guilty of directly perpetrating the crime, and sentenced him to 15 years of imprisonment. The Court acquitted his superior, Pavle Gavrilović, who was charged with ordering the crime, finding that there was insufficient evidence that he had actually issued the order.[115]

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109 *Ibid.*

110 The "Trnje" case, judgment K Po2 10/2013 from 1 April 2013, page 116.

111 Meeting with WCPO representatives, 22 November 2019.

112 Meeting with three defence counsel representing defendants before the ICTY and the WCDs, 22 November 2019.

113 Art. 30 CCSFRY stipulates that a criminal offence can also be committed by omission "if the offender abstained from performing an act which he was obligated to perform". The existence of such positive obligation, and the failure to discharge it, is the key to the criminal responsibility for an act carried out by another person. Although not labelled "command responsibility", this could effectively ensure accountability of superiors for acts committed by their subordinates. Croatian judges held superiors responsible under alternative modes of liability such as responsibility by omission.

114 WCPO ruling KTI 01/14 of 1 March 2017.

115 The trial panel, in addition to the considerations that the evidence was insufficient and contradictory, also stated that it was "illogical" or "unreasonable" that the defendant issued the order that "there shall be no survivors", since he was well educated and acquainted with rules of IHL and he had even put a brochure on IHL standards at the disposal of his soldiers.

In the judgment, despite the lack of superior responsibility charges, the Court seized the opportunity to suggest that the Directive and the Guidelines on the Application of International Humanitarian Law, issued by Socialist Federal Republic of Yugoslavia (SFRY) authorities in 1988, could be considered as a legal basis for a duty to prevent commission of crimes by subordinates, the violation of which could trigger responsibility for commission by omission.

The WCPO has lodged an appeal against the judgment, maintaining that the evidence is sufficient to prove beyond reasonable doubt that the defendant had ordered the crime.

Regardless of the Court of Appeals' final decision on the case,[116] the issue of the adequate legal basis for responsibility of superiors remains unsettled: it is unlikely that the WCPO will be able to collect evidence-supporting charges of "ordering" in all unprosecuted cases involving responsibility of mid- and high-ranking perpetrators. At the same time, however, according to the National Strategy, these cases should be given priority.[117] The issue of how to address responsibility of superiors remains a crucial open question for the Serbian system to take a clear stance on. Charging commission by omission appears the only viable option for such cases.

3. Recommendations

To the Higher Court's WCD:

- It is necessary to establish the factual situation in relation to the conduct of each accused through the evidence heard at the trial.
- Considering all the specifics of war crimes cases, it is necessary to ensure that first instance judgements state as accurately as possible whether the material contribution of each accused has been proved beyond reasonable doubt.

To the WCPO:

- It is necessary to clearly specify in indictments the material contribution of each accused to each crime charged, and qualify it under the proper mode of liability.

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116 In its judgement Kž1 Po2 5/19 from 12 December 2019, the Court of Appeals upheld the Higher Court's decision. The Court found that the first-instance court correctly assessed all the evidence examined in the first-instance proceedings, both those charging the lower ranking defendant and those acquitting the defendant Gavrilović. However, the Court in its decision did not refer to the Higher Court's notion on responsibility of superiors.

117 National Strategy, page 21.

To the WCPO and the WCDs:

- It is advisable to take a clear stance on the legal framework for responsibility of superiors through case law, stemming from crimes committed by subordinates, either through command responsibility or commission by omission, in view of the competences and responsibilities within the criminal proceedings in regard to war crimes processing.

CHAPTER FIVE
Delays in war crimes trials

1. General observations

Trials should always be conducted in an efficient and expeditious fashion: according to Article 32 of the Serbian Constitution and Article 6 of the European Convention on Human Rights (ECHR), everyone is entitled to a trial within a reasonable time.

Delays adversely impact on the rights of all parties involved: the accused's right to a trial within reasonable time; the victims' right to know the truth and seek monetary compensation; the significance of the case for the victims who have to wait long years in order to see redress for their suffering. Delays also cause a waste of taxpayers' money and of defence and prosecution's time, preventing the latter from other investigations.

Shortening of the average duration of war crimes proceedings is one of the nine indicators for measuring the progress made in the implementation of the National Strategy for the Prosecution of War Crimes for the period 2016 – 2020.

However, the OSCE Mission to Serbia has continued to observe a number of war crimes trials that are characterized by unnecessary, considerable delays. Some war crimes cases have been pending for around a decade:

Case name	Status as of 31.12.2019.	Time elapsed from the filing of the indictment
"Lovas"	Appeal upon retrial on-going	12 years
"Skočić"	Final	9 years
"Ćuška"	Retrial on-going	9 years

Some of the reasons for the observed delays have already been mentioned in the previous chapters: the belated election of the WCP called into question the legality of actions performed by their deputies; lack of clarity in WCPO indictments and in Higher Court's WCD judgments caused the Court of Appeals to quash judgments and entire trials to be repeated; the impromptu removal of judges from their WCD assignments forced some trials to start from the beginning. Moreover, the OSCE Mission to Serbia also noted a number of instances where delays could have been reduced or entirely avoided through a more efficient case management by the trial panel and, notably, the panel president. These various factors will be examined in the following paragraphs.

On the other hand, during the reporting period, the Higher Court passed four judgments,[118] accepting the plea agreements, concluded between four defendants and the WCPO, and sentenced them to prison terms ranging from one year and six months to 10 years.

More frequent concluding of plea agreements should ensure the efficiency of criminal proceedings, in line with the principles of economy and expediency of proceedings, but also contribute to faster administration of justice, especially in cases where they can protect the interests of victims.

2. The belated election of the War Crimes Prosecutor

Chapter 1 illustrated the 17-month delay in appointing a WCP, and non-designation of an acting WCP in the meantime.

Acting upon defence motions, the Court of Appeals' WCD held that indictments filed by Deputy WCPs in the absence of a WCP or an acting WCP were not filed by an "authorized prosecutor" and were thus in violation of the CPC[119] and the Law on Public Prosecution.

> Of note, albeit the position and jurisdiction of the Serbia's Public Prosecution falls within the *materiae constitutionis,*[120] its position is not consistently implemented therefore leading to several contradictions.[121] Among others is the one related to the position of the Deputy Prosecutor and its authorities in regard to

118 "Gorne Nerodimlje", "Kelesija Caparde", "Srebrenica – Branjevo" and "Sremska Mitrovica" cases.

119 CPC, Article 416: "During and after the conclusion of the trial the panel will issue a ruling dismissing the indictment if it determines that: [...] the proceedings are being conducted without a request of an authorized prosecutor."

120 The Constitution of Serbia regulates the position and jurisdiction of Public Prosecution in detail, dedicating it ten articles (Articles 156 – 165).

121 These include a legal dispute if the Public Prosecution is a corporate or a single-headed state body. In light of the mentioned, it is uncertain who is the possessor of the public prosecution function – the Public Prosecution as such, the RPP, or the Public Prosecutor in each particular Public Prosecution. For more, please see B. Nenadić, M. Majić, G. Ilić, *Analysis of the constitutional position of the Public Prosecution in the Republic of Serbia with the recommendations for its improvement*, OSCE Mission to Serbia, 2016.

the criminal proceedings.[122] This also led to diverse interpretations of the relevant legal provisions of both CPC and the Law on Public Prosecution by the WCDs of the Higher Court and the Court of Appeals with regard to the "authorized prosecutor" in war crimes cases.[123]

Therefore, criminal proceedings based on indictments filed between 1 January 2016 and 31 May 2017 in eight cases were put on hold, including the ones in highly complex and publicly sensitive cases such as "Srebrenica" and "Štrpci". This situation generated procedural complications, by causing key procedural steps such as indictments and collection of evidence at trial to be voided and reiterated. After the new WCP took office, the WCPO moved the court to proceed in the cases in which the indictments had been dismissed.[124]

In the Štrpci case, the indictment was first filed on 3 March 2015, when the previous WCP was still in office; however, the WCD returned the indictment to the WCPO nine times due to unclear charging and lack of evidence.[125] The WCD confirmed the indictment on 28 April 2017. However, in October 2017 the Court of Appeals dismissed the indictment because it found that it had not been filed by an authorized prosecutor. The indictment was finally confirmed on 25 October 2018, and the main trial started in March 2019, i.e. four years after the indictment's first filing.

The above described situation calls into question once more the decision of the RPP not to appoint an acting WCP to somewhat[126] remedy the situation during the 17-month period it took the competent institutions to elect Mr. Vukčević's successor.

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122 In spite of the rather uniform interpretation on the position of the Public Prosecutor in the national criminal law theory, there is no consensus on the position of the Deputy Prosecutor and its authorities in regard to the criminal proceedings. According to some authors, the Deputy's authorities within the criminal proceedings are rather originated than derived from the Public Prosecutor. As stated by others, the Deputy Prosecutor possesses only the authorities transferred from the prosecutor. According to some legal experts, "current constitutional arrangement of the Public Prosecution, with Public Prosecutor as a sole carrier of the prosecutorial function and Deputy Public Prosecutors dispossessed of their own authorities and performing only the tasks delegated by the Public Prosecutor, does not correspond to the state of affairs in practice, where the number of Deputy Public Prosecutors is significantly higher than the number of Public Prosecutors, and the fact that Public Prosecution has greater workload according to its new role in the criminal proceedings". For more, see D. Nedić, *Komentar Zakona o javnom tužilaštvu*, Poslovna politika, 1991, p. 44 – 45, M. Škulić, G. Ilić, M. Matić Bošković, S. Nenadić, *Državno veće tužilaca u svetlu najavljenih izmena Ustava*, Udruženje javnih tužilaca i zamenika javnih tužilaca Republike Srbije, 2016, B. Nenadić, M. Majić, G. Ilić, *op.cit.*

123 Namely, the Higher Court's standpoint was that deputy prosecutors were authorized to act despite the fact that there was neither WCP nor acting WCP in the office after 1 January 2016. However, the Court of Appeals opposed this view. For more, see the Higher Court's rulings Kv Po2 20/17 from 28 April 2017, Kv Po2 29/17 from 16 June 2017, Kv Po2 41/17 from 21 August 2017 and the Court of Appeals rulings Kž Po2 6/17 from 5 June 2017, Kž Po2 8/17 from 24 July 2017 and Kž Po2 12/17 from 2 October 2017.

124 The "Srebrenica", "Lovas", "Štrpci", "Bosanska Krupa", "Bratunac", "Ključ – Kamičak", "Doboj", and "Sanski Most – Lušci Palanka" case.

125 See above, chapter four.

126 Namely, assuming the RPP exercised its authority and appointed an acting War Crimes Prosecutor in this case, his/her office would *ipso jure* cease after 12 months, thus leaving the WCPO without the chief prosecutor and acting head for five months.

3. Transfer of WCD judges causing changes in trial panel composition

As already observed in Chapter 1, the WCD judges are susceptible to being transferred upon the Courts' Presidents' decisions.

Article 388 of the CPC foresees that, if the composition of the trial panel changes during the trial, the entire main trial has to start from the beginning. The *rationale* of the provision is that, in adversarial proceedings, the evidence is collected before the trial panel; in principle, a judge who was not present when the evidence was collected cannot make an informed assessment of the evidence. Yet, the trial panel may decide to examine the transcripts of witnesses' testimonies' given earlier or to read it out.

> In January 2015, after the transfer of a trial panel member from the WCD to the Higher Court Criminal Division, the entire main trial in the "Boban Pop Kostić" case had to start from the beginning. In order to avoid delays in the case, the panel in its new composition decided not to examine again witnesses who had already testified, and instead read into the minutes the transcripts of their testimonies given earlier at the trial.

While this solution mitigated the adverse impact on trial duration, it deprived the new panel member of the possibility to assess the credibility of witnesses that had previously testified.

In January 2016, the transfer of a WCD Higher Courts judge after two years[127] caused the trial panel composition to change in four additional cases. Yet, in one of the cases, the transferred judge was a president of the panel, which resulted the main hearing starting from the beginning and all evidence being examined again.

> In March 2016, the retrial in the "Lovas case", one of the most complex and lengthy cases ever tried before the WCDs, had to formally start from the beginning: the defendants had once again to enter their pleas and give statements; the defence once again proposed the examination of evidence that had already been rejected by the Court. New panel members including the president of the trial panel, had to acquaint themselves with ongoing trials based on written evidence, in order to limit the delays to the trial that the change in the panel would have had.

Affected cases also include the high-profile complex "Trnje" case. The above-mentioned transfers of judges resulted in postponements of cases, and they have severely prolonged the length of the proceedings in the "Lovas" case. It is unclear why the Belgrade Higher Court's President could not allow the transferred judge to

127 See above, Chapter 1.

complete the trial he was involved in as a presiding judge, especially considering that he adopted this approach in relation to another judge whose assignment to the WCD came to an end and who was allowed to see through the cases where he was president of the trial panel.

4. Defendants' absence at trial hearings

The OSCE Mission to Serbia observed a case where the alleged medical condition of one of the two defendants caused significant delays to the trial before the WCD.

> In the "Trnje" case, after a number of hearings had already been postponed due to defendants' health problems, at the 20 May 2016 hearing two medical experts stated that both defendants were fit and capable to follow the proceedings. However, from July 2016 until the end of 2017 no trial hearings were held because of alleged medical problems claimed by defendant Gavrilović, a commissioned officer in the Serbian Army. This caused a *de facto* freeze in the trial for a year and a half. Both injured parties and the Prosecutor, more than once moved the Court to impose detention on remand on the accused. The Court dismissed all the requests as premature. It was only in January 2018 that the Court decided to hear a new expert testimony on the Gavrilović's health condition, which again confirmed his fitness to stand trial. Even after the expert assessment, the Court failed to take any action when the defendant again did not attend trial sessions in July 2018 and January 2019. Finally, the victims have filed a constitutional complaint, claiming that, by the Higher Court's proceedings, the right to a trial within a reasonable time, the right to a fair trial and the right to an effective remedy had been violated.[128]

Proceedings in the "Srebrenica" case are also being slowed down by the illness of a defendant, whose health condition caused the postponement of at least four trial sessions between February and June 2018.

The OSCE Mission to Serbia reminds that courts need to ensure that a party's absence or uncooperative behaviour does not hinder the expeditious progress of criminal proceedings, also as a matter of respect to the Court and to other trial parties. Where

128 In September 2017, the injured parties filed a complaint with the Higher Court, in order to accelerate the proceedings, seeking protection of their right to a trial within a reasonable time. The Higher Court rejected the claim as unfounded, finding various reasons for which the proceedings had lasted longer than usual. Among other reasons, the Court found that the defendants' absences were justified as supported by the adequate medical documentation. The victims appealed, pointing that the reasons given by the Higher Court were ungrounded. On 27 October 2017, the Court of Appeals dismissed the complaint, accepting the Higher Court's reasoning. Finally, the victims have filed a constitutional complaint, claiming that, by the Higher Court's proceedings, the right to a trial within a reasonable time, the right to a fair trial and the right to an effective remedy had been violated. On 17 October 2019, the Constitutional Court dismissed the constitutional complaints of the injured parties as unfounded.

necessary, legal means available to the Court in order to ensure parties' attendance to the trial should be resorted to. Courts should also consider severing proceedings against defendants whose health makes them unfit to regularly attend trial sessions for a prolonged period of time, in order to ensure that the case is promptly adjudicated in relation to other defendants.

5. Witnesses' absence at trial hearings

Regularly summoned witnesses have an obligation to show up at the hearing and give testimony.[129] In case of unjustified absence, the Court may compel witnesses to appear and impose a fine of up to 100,000 RSD.[130]

The OSCE Mission to Serbia also observed a number of instances of trial hearings postponed because of a failure of regularly summoned witnesses to attend trial hearings.

> In the "Bosanski Petrovac - Gaj" case,[131] at least five trial hearings had to be postponed because witnesses and expert witnesses repeatedly failed to appear to give testimony. The main trial lasted three years and ten months, although it involved only one defendant.
>
> In the "Bosanska Krupa" case, at least five trial hearings were postponed because several witnesses did not attend the hearings to be conducted via video-link from Bihać (BiH), including because of health conditions.
>
> In the "Ćuška" case, the trial panel had to postpone at least four trial hearings because witnesses supposed to testify via video-link had failed to appear.

Even in cases involving witnesses testifying from areas outside the WCD's jurisdiction and powers to compel them to appear, the Court could have put in place time-saving practices, such as liaising ahead of the hearing with the party that proposed the witnesses in order to confirm their attendance at the upcoming hearing. The Court could for instance verify whether summonses have been served correctly on the witnesses due to appear, if their health condition enables them to attend the hearing and testify, and if the necessary logistical arrangements (such as video-link) are in place. In some cases, the Prosecution may liaise further with the police and, where international legal assistance is involved, with foreign authorities in order to confirm attendance of the witnesses. Ultimately, all the efforts put in this endeavour do not guarantee that the witness will appear at the hearing.

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129 CPC, Article 96(3) "All persons summoned as witnesses have an obligation to respond to the summons, and, unless specified otherwise by this Code, to give testimony."

130 CPC, Article 108(1): "Where witnesses duly summoned fail to appear and fail to justify their absence, or without authorization or a justifiable reason leave the location where they were to be questioned, may be ordered brought in by force, and may also be punished with a fine of up to 100,000 RSD."

131 In the previous reporting period documented as the "Dragišić" case.

This would enable the Court to take remedial action where necessary, including, where it is established that witnesses will not attend, thus more often cancelling the hearing in advance. Some WCD judges have resorted to this solution more frequently in the past, by informing prosecution and defence lawyers through the registry of the change in schedule.

6. Redundant witnesses

The OSCE Mission to Serbia also observed cases where the Higher Court's WCD invested considerable amount of time and resources in collecting evidence which was not indispensable to make a determination on the criminal responsibility of the accused.

> During the first instance trial in the "Ćuška" case, which lasted from 2010 until 2014, over 100 witnesses were heard. The Court of Appeals subsequently annulled the first instance judgment because the Higher Court, *inter alia*, had failed to indicate the exact criminal conduct of the accused. In addition, the appellate panel found that more efforts had to be made in attempting to ensure the immediate presence of witnesses and injured parties in the courtroom. The Higher Court already knew that a number of questioned witnesses had only general knowledge of the events and were not able to help on the key issue in focus during the retrial, i.e. the individual conduct of each of the accused.[132] The retrial is still ongoing at the time of writing, i.e. four and a half years after its start, and over nine years after the first indictment was filed. To this point, the trial panel has managed to question a total of 31 witnesses.[133]

In one more case, the Court decided to hear multiple witnesses on similar sets of circumstances.

> In the "Štrpci" case, the WCPO proposed to hear a large number of witnesses who had only general knowledge of part of the events, since they were on board a train together with the victims but did not see when they were abducted and who were the abductors. Although their testimonies were mostly identical and concerned a marginal, almost undisputed point of the indictment, the Court ini-

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132 Accordingly, the Court *inter alia* summoned and heard a number of witnesses, local Albanian villagers, on the circumstance that on the critical day Serbian soldiers entered the village and separated the men who were later found dead. Their testimonies did not involve the criminal responsibility of any accused and were largely overlapping.

133 For the note, in 2015 the trial panel held five hearings and questioned one witness; in 2016, out of nine scheduled hearings five were held, and the Court managed to question 11 witnesses. In 2017, the Court held six hearings, questioning nine witnesses. In 2018, the Court scheduled five hearings – three were held with four witnesses being heard. Finally, in 2019, the Court held four hearings out of six scheduled, and managed to hear six witnesses. This dynamic is mostly a result of the additional effort the Higher Court made following the Court of Appeal's order. Nonetheless, if the Court decides to hear all the witnesses who had already given testimony at the first trial, considering the slow pace of the retrial, one can reasonably expect the first instance retrial not to be concluded in the next few years.

tially allowed the questioning of all witnesses proposed by the WCPO but remedied the situation afterward.[134]

Article 395 of the CPC gives the presiding judge the power to refuse evidence that would unnecessarily prolong the proceedings. The cases cited above illustrate how the Court's decision not to exercise its full trial management powers had an unnecessary adverse impact on the duration of the evidentiary proceedings.

7. WCDs resources

During the reporting period, the situation remained unchanged in relation to the number of judges acting in first instance war crimes cases. Accordingly, the WCD of the Higher Court has seven judges, six of whom are assigned to two trial panels, and one pre-trial judge. It should be noted that the trial panels' judges do not adjudicate solely these cases, but also organized crime cases. The WCD also lacks administrative staff[135] and material resources such as modern IT equipment.[136]

The WCD of the Court of Appeals, as in the previous reporting period, operates with total of six judges assigned to one trial panel. In addition to war crimes cases, all WCD judges act in the cases of the Criminal Department and the Organized Crime Department.

8. Consequences of delays

Over 20 years have passed since some of the events which are the object of trials before the WCDs. The passing of time exposes war crimes cases to increasing threats to their viability, considering the ageing of both defendants and witnesses/victims.

During the reporting period, a number of trials were not be concluded before one or more defendants passed away.

In the "Lovas" case, still pending final adjudication in the reporting period, twelve years after the filing of the indictment, five defendants passed away and

134 During the trial, the WCPO shortened the list of these witnesses upon the presiding judge's initiative.

135 In terms of administrative staff, one clerk is in charge of war crimes cases, and the Witness Support Service within the Higher Court lacks psychologist. Engagement of psychological expert would be highly beneficial, given the traumatic experiences of witnesses involved in these proceedings, according to the information provided by the Higher Court's representatives.

136 IT equipment - dating back from the early 2000s when the court building, where the WCD seats, began operating - often slows down the administrative work necessary for case processing, according to the information provided by the Higher Court's representatives.

one became permanently incapable to follow the trial. The indictment was first filed in 2007 and the first trial ended in 2012 with the conviction of all defendants. In 2013, the Court of Appeals ordered a retrial for lack of clarity in the determination of individual criminal responsibilities in the first instance judgment. The retrial started in 2014 and lasted over five years, since the WCD panel repeated the entire evidentiary proceedings already held during the first trial. Moreover, in June 2018 the panel decided to start the retrial anew, because part of the proceedings was conducted during a time when there was no authorized prosecutor representing the WCPO. Due to the concurrence of these delaying factors, only eight of the initial fourteen defendants had survived to hear the announcement of the first instance retrial judgment on 20 June 2019.

In the reporting period, other prosecutions were terminated due to defendants' death:

In the "Ćuška" case, two defendants have passed away since the retrial started in 2015.

The "Doboj" case was terminated on 8 May 2018 upon the defendant's death.

In the "Skočić" case, in 2015 the WCD retrial panel issued a judgment acquitting all defendants for failure by the prosecution to prove the charges as better specified in the amended indictment. In 2018, the Court of Appeals partially reversed the retrial judgment, convicting three of the eight defendants and acquitting three more. One of the remaining defendants had passed away in the meantime.

In addition, the OSCE recorded cases of witnesses also passing away, thus depriving the proceedings of valuable evidence.

In the "Bratunac" case, in February 2018 one of the protected witnesses and injured parties (a woman who had allegedly been raped in 1992) passed away, after having waited for 23 years to give testimony against the alleged perpetrators.

In the "Sanski Most" case, on 25 May 2015 the Court was to hear testimony from two witnesses. However, one of them had passed away.

The awareness that "time is running out" should prompt the WCPO to use the limited time remaining for viable prosecutions to investigate and prosecute cases that meet one or more prioritization criteria described in Chapter 1.

9. Examples of efficient trial management

During the reporting period, the OSCE Mission to Serbia also monitored war crimes trials that were managed in an efficient and timesaving manner:

In the "Brčko" case, evidentiary proceedings ended just after six months since the start of the first trial. The Court held only three hearings, during which it managed to question 12 witnesses and let the defendant present his defence.

In the "Boban Pop Kostić" case, a WCD panel sentenced the accused to two years of imprisonment in March 2015, after a trial that lasted ten months. In June 2015, the Court of Appeals quashed the judgment. The retrial ended in November 2015 with the acquittal of the accused, and the Court of Appeal dismissed the Prosecutor's appeal in March 2016. Overall, less than a year passed between the first instance judgment and the final acquittal on appeal.

The above examples show that an efficient management of the trial can lead to an expeditious adjudication of war crimes proceedings.

10. Recommendations

To the Belgrade Higher Court management:

- When reassigning WCD judges upon the expiry of their six-year term, it is advisable to ensure that they are able to finish the cases in which they were panel members.

To the WCDs:

- It is advisable to ensure efficient management of trials.
- It is recommended to verify, before holding a trial session, that all arrangements have been put in place in order to secure the presence of defendants and witnesses.
- Where necessary, it is recommended to compel defendants who are absent for no justified reason to appear in court.
- It is recommended to consider postponing hearings in advance, where it is clear that summonsed witnesses are not in a position to appear.
- It is recommended to reject proposals to hear redundant witnesses.
- It is recommended to strive to limit the amount of evidence collected during retrials, resorting to reading non-crucial evidence into the minutes where possible.

To the WCPO:

- It is recommended to avoid proposing witnesses whose testimony does not bring any added value to the Prosecution's case.

CHAPTER SIX
Application of IHL provisions

In relation to application of IHL provisions, the OSCE Mission to Serbia previously reported on inconsistent application of some international humanitarian law, consequently leading to legal uncertainty.

1. War crimes in Serbian criminal law

In the reporting period, the WCPO in its indictments charged all the defendants with war crimes against the civilian population and war crimes against prisoners of war as crimes under IHL.

Of note, defendants are still charged with offences under the CCFRY, which was the law in force during the 1990's and is unanimously recognized as more favourable to the defendant.[137]

The CCFRY requires that an act be in violation of international law in order to be qualified as a war crime. As an illustration, the offence of war crimes against the civilian population (Article 142) will be considered: *"Whoever **in violation of rules of international law effective at the time of war**, armed conflict or occupation, orders that civilian population be subject to killings, torture, inhuman treatment, [...] or who commits one of the foregoing acts, shall be punished [...]."*

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137 The 1976 Criminal Code of the Socialist Federal Republic of Yugoslavia (CCSFRY) and the 1993 Criminal Code of the Federal Republic of Yugoslavia (CCFRY) are almost identical codes. Articles 142 (War Crimes against Civilian Population) and 144 (War Crimes against Prisoners of War) of the Criminal Code of the Socialist Federal Republic of Yugoslavia adopted in 1976 each foresaw a punishment of "at least 5 years, or the death penalty". Article 38(1) of the CCSFRY establishes that, when not otherwise prescribed, a term of imprisonment cannot be longer than 15 years. The same Article 38, in its para. 2, foresees that the Court can also impose a punishment of 20 years for crimes "eligible for the death penalty." The 1992 Constitution of the Federal Republic of Yugoslavia abolished the death penalty for federal crimes (including war crimes). In 1993, legislative amendments formally abolished the death penalty from the Criminal Code (Article 37), and provided that instead imprisonment of 20 years can be imposed for the most serious offenses (Article 38(2)). As a result, the 1993 Criminal Code of the Federal Republic of Yugoslavia foresees a punishment for war crimes from 5 to 15 years of imprisonment, or a fixed term of 20 years of imprisonment.

The reference to international law obliges the judge to verify whether the act charged (a) is one of the acts prohibited by Article 142; and (b) is illegal under international law.[138] In order to do so, WCD judges have often resorted to the interpretation of international law (especially customary international law) made by international tribunals and the ICTY in particular.

According to the customary international law, an act will be considered a war crime if the following **elements** are fulfilled: (a) there must be an armed conflict; (b) the act committed must be prohibited; (c) there must be a "nexus" between the conflict and the crime; (d) the victim must belong to a protected category. An additional principle is that (e) the official capacity of the perpetrator is irrelevant.

In its previous report, the OSCE Mission to Serbia noted cases of misinterpretations of the requirements (a), (c) and (e) above.[139] The situation has not changed significantly in the reporting period.

2. Existence of an armed conflict

The first element that a court needs to establish in its judgement is the existence of an armed conflict. Whether an armed conflict occurred and which one, is decided by a threshold outlined, yet insufficiently, in the Geneva Conventions and its Additional Protocols. In addition, another standard for determining the armed conflict is formulated by the ICTY Appeals Chamber: "an armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State".[140]

I. The nature of the conflict and the applicable IHL rules

IHL differentiates between international armed conflicts and non-international armed conflicts.[141] The distinction is of crucial importance, because protected persons enjoy more statutory guarantees in international armed conflicts (the four Geneva Conventions and their Additional Protocol I), than in non-international armed conflicts (Article 3 common to the four Geneva Conventions and Additional Protocol II).[142]

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138 For instance, the act of killing *per se* is not illegal under IHL (e.g. the killing of a civilian, as "collateral damage" of a legitimate attack, may not be illegal according to the present IHL rules.

139 See 2014 Report, pages 67 – 72.

140 ICTY, *Prosecutor v. Duško Tadić* (IT-94-1-A), *Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction*, 2 October 1995 ("Tadić interlocutory appeal"), para. 67.

141 The ICTY stated that an international armed conflict exists "whenever there is a resort to armed force between States." A non-international armed conflict exists "whenever there is [...] protracted armed violence between governmental authorities and organized armed groups or between such groups within a State", *ibid.*

142 Of note, the ICTY's position, however, is that most of the guarantees of the four Geneva Conventions also apply to a non-international armed conflict, as they have become part of the international customary law.

In the reporting period, WCD judges correctly applied the appropriate body of IHL rules.[143] The judges **continued** its consistent practice of determining the conflicts in BiH (the ones starting from June 1992) and Croatia (at least until December 1991)[144] as non-international conflicts.

However, determining whether the 1998 – 1999 conflict in **Kosovo** was international or non-international in nature remained to be a problematic matter.

Of note, fighting between the Kosovo Liberation Army (KLA) and Serbian forces escalated to a full-fledged armed conflict as of spring of 1998. Starting 24 March 1999, a third actor, NATO, also intervened in the hostilities through a bombing campaign.

In the reporting period, three final cases commenced before the WCDs were related to the Kosovo conflict.[145] All the cases concerned crimes committed after 24 March 1999. In the "Trnje" case, in line with the previous practice, the WCD established that there simultaneously existed an armed conflict between KLA members and Serbian armed forces on one side and an armed conflict between the latter and NATO.[146] However, in the "Ramadan Maljoku" case, the Court unprecedentedly qualified the conflict as non-international.[147]

The latter case represents a **good example** of how WCPO prosecutors and WCD judges should decide, on a case-by-case basis, whether crimes in Kosovo were committed in the context of the international armed conflict between NATO and Serbian forces, or the non-international one between the latter and the KLA, and apply the corresponding legal provisions accordingly.

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143 For example, see the "Sotin" case, judgement K-Po2 2/2014 from 26 June 2015 , pages 130 – 131, the "Sanski Most – Kijevo" case, judgement K-Po2 7/2014 from 18 May 2016, pages 80 – 81, the "Bosanski Petrovac" case, judgement K-Po2 12/13 from 30 June 2016, pages 19 – 20, the "Ključ – Šljivari" case, judgement K-Po2 4/2016 from 13 November 2018, pages 32 – 34, the "Bratunac" case, judgement K-Po2 8/2017 from 23 September 2019, pages 71 – 72, the "Bosanski Petrovac – Gaj", judgement K-Po2 13/2014 from 24 April 2019, page 67.

144 Of note, all Croatian cases prosecuted before the WCD in the period of 2003 – 2019 concerned crimes committed before the end of 1991. No WCD decision involved the charges for crimes committed in Croatia from 1992 onwards. The Croatian courts consider this conflict as an international armed conflict.

145 The "Trnje" case (trial and the appellate proceedings), the "Radmadan Maljoku" case (judgement upon the plea agreement) and the "Prizren" case (appellate proceedings upon the retrial).

146 In period 2003 – 2014, the WCDs established in all Kosovo cases that there had existed an armed conflict between KLA members and Serbian armed forces on one side, and that simultaneously there was an armed conflict between the latter and NATO.

147 Judgement SPK Po2 1/19 from 19 March 2019.

Noteworthy, while it is possible that more than one conflict exists at the same time on one territory, the actions of a defendant can be committed in the context of **one and only one conflict**, which can only be either international or non-international.[148]

II. The end date of the Kosovo conflict

The Geneva Conventions, save for some limited exceptions,[149] prescribe that IHL applies until the "general close of military operations." Therefore, in principle, when the conflict ends, so does the application of IHL. The ICTY has clarified in this respect that "[i]nternational humanitarian law applies from the initiation of such armed conflicts and extends beyond the cessation of hostilities until a general conclusion of peace is reached; or, in the case of internal conflicts, a peaceful settlement is achieved".[150]

In this respect, the OSCE Mission to Serbia extensively reported on a specific interpretative problem that emerged in the WCD jurisprudence related to the **end date** of the non-international conflict in Kosovo.[151]

In the reporting period, in the "Ramadan Maljoku" case, the WCPO charged defendant Maljoku for war crimes against civilian population committed on 21 June 1999 in the village of Gornje Nerodimlje (Uroševac municipality), Kosovo.[152]

Having in mind the date of the commission of the crime, it is noteworthy that this case also falls under cases involving specific interpretative problem in relation to the end date of the non-international conflict in Kosovo.

Namely, while the ICTY's case law established that the international conflict between Serbia and NATO ended in June 1999 with the two most relevant dates to this end being the signature of the so-called "Kumanovo Agreement" (9 June 1999) and the date when its implementation was finalized (i.e. 20 June 1999, when Serbian

148 For example, cases involving crimes by Serbian forces against Kosovo Albanian civilians are clearly committed in the context of the non-international conflict between the KLA and Serbian forces. Consequently, civilian victims enjoy the guarantees of Common Article 3 and Additional Protocol II as persons taking no part in the hostilities between Serbian forces and the KLA. The same civilians as citizens of the then FRY could not be afforded any protection by the Geneva Convention IV, not only because the conflict of which they are victims of was not international, but also because that Convention only protects civilians who are citizens of another contracting party. Unless, it is argued that most provisions of the Geneva Conventions are also applicable to non-international armed conflicts as customary international law, in which case the judge should provide legal arguments supporting this theory.

149 There are some exceptions to this rule regarding the obligation to repatriate persons protected under the Geneva Convention III and IV and the obligations imposed upon occupying powers by the Convention IV.

150 ICTY, *Tadić* interlocutory appeal, supra, para. 70

151 For more see 2014 Report, pages 68 – 70.

152 According to the indictment filed in December 2018, defendant Maljoku and three members of KLA entered the village of Gornje Nerodimlje (Uroševac municipality, Kosovo), went to the home of one Serbian family, where they subjected to severe beatings two civilians and detained them in the garage nearby the house. The defendant threatened the two that they will be killed if they do not hand over their weapon. However, at one point, the captives managed to escape.

forces completed their withdrawal from the territory of Kosovo and NATO officially terminated the air campaign),[153] Serbian courts have been divided on this point.[154]

Yet, the trial panel in particular case failed to provide its reasoning and a legal interpretation of the relevant IHL rules, in support of its conclusion that the armed conflict remained after the withdrawal of the Serbian forces from the territory of Kosovo by 20 June 1999.

3. The "nexus" between the crime and the armed conflict

For an act to be qualified as a war crime, the acts of the accused must be **sufficiently related to the armed conflict**. As the ICTY Appeals Chamber put it, *"what ultimately distinguishes a war crime from a purely domestic offence is that a war crime is shaped by or dependent upon the environment – the armed conflict – in which it is committed"*.[155] The "nexus", that is the link between the crime and the armed conflict, has been identified as a necessary element of war crimes by the ICTY case law[156] and the legal doctrine.[157]

Of note, the ICTY clarified that the "nexus" requirement is met when the armed conflict has *"played a substantial part in the perpetrator's ability to commit [the crime], his decision to commit it, the manner in which it was committed or the purpose for which it was committed"*.[158]

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153 For more, see: ICTY, *Prosecutor v. Haradinaj et al. (IT-04-84)*, Trial Judgement, para 100, *Prosecutor v. Limaj et al. (IT-03-66)*, Trial Judgement, para. 171 – 174, *Prosecutor v. Milutinović et al. (IT-05-87)*, Trial Judgement, Volume 1 of 4, para. 841, 1217, *Prosecutor v. Đorđević*, Trial Judgement, para. 1579, Appeal Judgement, para. 521.

154 Up to date, the majority position is the one adopted by the Higher Court, saying that both armed conflicts in Kosovo eded with the Kumanovo Agreement signed on 9 June 1999. In contrast, the Court of Appeals consistently held that both international and non-international conflict in Kosovo ended with the signing of the Kumanovo Agreement on 9 June 1999. In its findings, the Court did not exclude that in some areas in Kosovo a conflict may have existed after 9 June 1999, but unquestionably not after 20 June 1999, when there was only one party to the conflict present in Kosovo. Nevertheless, according to the Supreme Court of Cassation's (SCC) legal opinion from 2013, non-international armed conflict in Kosovo continued at least until the end of December 1999, see 2014 Report, pages 69 – 70.

155 ICTY, *Prosecutor v. Dragoljub Kunarac et al.* (IT-96-23/1-A), Appeals Judgement, para. 58.

156 *Ibid*, ICTY, *Prosecutor v. Duško Tadić* (IT-94-1-T), Appeals Judgement, 7 May 1997, para. 573.

157 See ICRC, Commentary on the First Geneva Convention: Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 2nd edition, 2016, available at https://ihl-databases.icrc.org/ihl/full/GCI-commentary , paras. 2922 – 2924.

158 ICTY, *Prosecutor v. Dragoljub Kunarac et al.* (IT-96-23/1-A), Appeals Judgement, paras. 58 – 59: "What ultimately distinguishes a war crime from a purely domestic offence is that a war crime is shaped by or dependent upon the environment – the armed conflict – in which it is committed. It need not have been planned or supported by some form of policy. The armed conflict need not have been causal to the commission of the crime [...]". The ICTY also pointed out some clear indicators of the existence of the nexus such as "the fact that the victim is a non-combatant; the fact that the victim is a member of the opposing party; the fact that the act may be said to serve the ultimate goal of a military campaign; and the fact that the crime is committed as part of or in the context of the perpetrator's official duties" (ibid., para. 59).

In the reporting period, the WCD in a number of its judgements addressed the issue of the "nexus", mainly providing satisfactory reasoning[159] in that regard, including the cases where judges evidently established the "nexus" as a general element of war crimes.[160]

However, the OSCE Mission to Serbia continued to note cases where the WCD in its judgements **failed to mention the "nexus"** as one of the essential elements of the criminal offence of war crimes:

> For instance, in the judgements in the "Bijeljina II" case, the Court reasoned, *inter alia*, that it was indisputable between the parties that the crime occurred at the time of the armed conflict in BiH and that the victims were civilians (i.e. belonged to protected category), thus failing to mention the "nexus" among the legal elements.[161]
>
> In the "Gradiška" case,[162] referring to the charges (i.e. killing as a war crime against civilian population), the Appellate Court stated that the prosecution was required to prove that the offence was committed during an armed conflict, that the act was illegal under international law, and that the defendant killed the victim. The Court however did not mention the "nexus" between the conflict and the crime as a mandatory element.[163]

In other cases, the Court did mention the "nexus" among the legal elements that needed to be established, but then failed to show how the evidence collected proved its existence:

> For example, in the judgement in the "Sanski Most" case, the Court found that the defendant's acts of killing "fulfilled all elements of the war crime against civilian population as the crime was committed during an armed conflict (...) and the killings were committed as a consequence of the conflict and aimed at civilian members of other nationality and religions", without further elaboration on the subject.[164]

Of note, the mere fact that in some cases the link between the crimes and the armed conflict is clear and self-evident, does not however absolve the Court from its duty of establishing whether the "nexus" has been proven.

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159 For example, the "Skočić case", judgement Kž1 Po2 5/15 from 28 March 2018, pages 6 – 7, the "Bosanska Krupa II" case, judgement K-Po2 11/2017 from 15 November 2019, page 92, the "Beli Manastir" case, judgement K-Po2 9/13 from 29 May 2015, pages 56 – 58, the "Bosanski Petrovac" case, judgement K-Po2 12/13 from 30 June 2016, pages 21 – 22, the "Bosanska Krupa" case, judgement K-Po2 5/2017 from 26 November 2018, page 53, the "Bratunac" case, judgement K-Po2 8/2017 from 23 September 2019, page 72.

160 The "Brčko" case, judgement K-Po2 5/18 from 19 September 2019, page 27, the "Bosanska Krupa II" case, judgement K-Po2 11/2017 from 15 November 2019, page 93.

161 Judgment K-Po2 10/14 from 14 April 2015, page 26 and judgement K-Po2 10/15 from 24 November 2015, page 38. Of note, the trial panel acquitted the defendant both times.

162 In previous reporting period documented as the "Šinik" case.

163 Judgement Kž1 Po2 5/16 from 22 February 2017, page 2

164 Judgement K-Po2 4/2014 from 10 September 2015, page 46

In one case, it seems that the Court erred in its interpretation of the "nexus" and its relation to the motive:

> In the "Gradiška" case, the trial panel in its judgment acquitting the defendant referred to the defendant's motives to commit the alleged crime, finding that the prosecution did not explicitly submit an evidence to prove the defendant's motive but rather submitted evidence indicating what the motive had been (i.e. to take over the victim's apartment). The Court then concluded: "probably the reason [for such prosecution's strategy] is that if the apartment appeared as a motive for the murder, even if it was proved that the defendant had killed the victim, the offence committed would not be a war crime but rather other criminal offense (nexus)".[165]

In contrast, according to both ICTY[166] and domestic jurisprudence,[167] the motives behind the crime are generally not relevant for establishing elements of war crimes, including the "nexus".

4. Irrelevance of the perpetrator's capacity

As clarified in practice of the international criminal tribunals, war crimes can be committed by anyone, **including civilians**.[168] In other words, the perpetrator does not need to belong to one party to the conflict.[169] The language of the CCFRY suggests that the capacity of the perpetrator is irrelevant under domestic law.[170]

In the reporting period, the WCDs explicitly confirmed this positon in two cases.

> In the "Sanski Most" case, the Court of Appeals dismissed as ungrounded the defense's notion claiming that the defendant as a civilian could not be held res-

165 Judgement K-Po2 6/2014 from 13 October 2016, page 39.

166 ICTY, *Prosecutor v. Duško Tadić* (IT-94-1-A), Appeal Judgement, para. 252 and 325, *Prosecutor v. Dragoljub Kunarac et al.* (IT-96-23 & 23/1), Appeal Judgement, para. 103, *Prosecutor v. Momčilo Krajišnik* (IT-00-39), Trial Judgement, para. 706.

167 For example see the "Suva Reka" case, Judgement Kž1 Po2 4/10 from, 30 June 2010, page 14-15, the "Lički Osik" case, Judgement K-Po2 17/2011 from 16 March 2012, page 67, the "Ovčara" case, Judgement Kž1 Po2 2/2014 from 24 November 2017, page 48.

168 See ICTY, *Prosecutor v. Milomir Stakić* (IT-97-24-A), appeals judgement, 22 March 2006, para. 347: "The Appellant's contention that there was not a sufficient connection shown between himself and the police, who were the direct perpetrators of many of the crimes for which he was found guilty as a co-perpetrator, is also unconvincing. The relevant question is whether the Appellant's acts were connected to the armed conflict – not to a particular group." See also ICTR, Prosecutor v. Jean Paul Akayesu (ICTR-96-4-A), appeals judgement, 1 June 2001, paras. 443-445.

169 The only requirement, as explained above, is that the crime is sufficiently linked to the conflict (the "nexus").

170 War crime against the civilian population (Article 142): "*Whoever* in violation of rules of international law effective at the time of war, armed conflict or occupation, orders [...] or *who* commits [...]. War crime against the wounded and sick (Article 143): "*Whoever*, in violation of the rules of international law at the time of war or armed conflict, orders [...] or *whoever* commits [...]". War crime against prisoners of war (Article 144): "*Whoever*, in violation of the rules of international law, orders [...] or *who* commits [...]".

ponsible for committing a war crime but rather other crime. As the WCD reasoned, interpreting the relevant articles of CCFRY, "the perpetrator can be any person, not only a member of armed forces or a combatant".[171]

In the "Ovčara" case, the Court of Appeals explained that one of the defendants committed a war crime (against prisoners of war) although the accused did not belong to any armed group nor possessed any authority or power over the prisoners.[172]

Yet, in a number of cases, upon the submitted evidence, the WCD judges in their judgements tend to establish that the perpetrator was a member of armed forces or armed groups or just note of the fact that the perpetrator belonged to a particular party.[173] This practice, however, did not result in quashing of judgements nor did it lead to acquittals.

5. Recommendations

To the WCPO and the WCDs:

- It is necessary to clearly state in indictments and judgements whether war crimes charged were committed in the context of armed conflicts of an international or a non-international nature. It is recommended to refrain from qualifying an armed conflict as both international and non-international.
- It is necessary to apply the correct body of IHL, depending on the nature of the armed conflict in question.
- It is advisable to take a uniform stance on the issue of the end date of the Kosovo conflict, based exclusively on an interpretation of the applicable IHL rules.
- It is necessary to always explain and demonstrate the existence of a "nexus" between the crime and the conflict.
- It is recommended to continue to refrain from considering the capacity of the defendant as one of the elements necessary for war crimes.

To the Judicial Academy:

- It is advisable to ensure that IHL is included as part of the training curriculum for students, judges and prosecutors.

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171 Judgement Kž1 Po2 7/15 from 22 February 2016, page 7.

172 As the Court reasoned, the context and circumstances of the armed conflict influenced her conduct because she acted as if she had such power and authority exercising it by killing one prisoner of war, Judgement Kž1 Po2 2/2014 from 24 November 2017, page 49.

173 For example see the "Bosanska Krupa" case, judgement K-Po2 5/2017 from 26 November 2018, pages 43 – 45, the "Gradiška" case, judgement K-Po2 6/2014 from 13 October 2016, page 30, the "Bratunac" case, judgement K-Po2 8/2017 from 23 September 2019, pages 48, 53, 72, the "Bosanski Petrovac" case, judgement K-Po2 12/13 from 30 June 2016, pages 10, 20, 21, judgement in the "Bosanski Petrovac – Gaj" case, page 68, judgement in the "Ključ – Šljivari" case, page 41

CHAPTER SEVEN
Sentencing practices

In its 2014 report, the OSCE Mission to Serbia noted its concerns with regard to sentencing practices in war crimes cases. In particular, it noted an improper use of "particularly mitigating" circumstances, which led to sentences under the legal minimum without adequate reasoning. Among mitigating circumstances, the OSCE Mission to Serbia noted that the WCDs systematically cited "family-related" considerations, which are not related to the circumstances of the crime, criminal intent or the accused, and also discriminated against those accused who, for whatever reason, did not have a family. Last, the OSCE Mission to Serbia noted that courts inconsistently considered the time elapsed between the crime and the judgment, as a mitigating circumstance.

1. The use of standardized "family-related" mitigating circumstances

In the reporting period, the WCD panels continued using standardized "family-related" mitigating circumstances as mitigating factors. Namely, in 16 out of 18 conviction cases, the WCDs cited family-related circumstances (marital status, children) as mitigating factors.[174] Yet, in at least ten cases[175] the WCDs did not reason appropriately, if at all, why the defendant should have received a lower punishment for being married or employed.[176]

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174 This number is referring to both first-instance and final judgements and does not include the judgements based on the plea agreement as the courts in these judgements did not impose the punishment but rather reviewed if the agreed punishment between the prosecution and the defendant was in accordance with the law.

175 See the "Sanski Most" case, the "Sanski Most – Kijevo" case, the "Ključ – Kamičak" case, the "Bratunac" case, the "Bosanska Krupa II" case, the "Ključ – Šljivari" case, the "Ovčara" case, the "Skočić" case, the "Lovas" case and the "Beli Manastir" case.

176 It is noteworthy that these factors should play no role in the determination of the punishment. First, the law does not foresee the family situation as a circumstance, but the "personal" situation of the defendant. Second - a multitude of reasons why a person is married or not, or has children or not - are not related to the crime committed, the social damage created, or the purpose of the punishment (retribution, and special and general prevention). In at least three cases the Courts mitigated a convicted accused's sentence saying it was for the "family-related" consideration that he was (un)employed ("Logor Luka" case, "Sotin" case and the "Trnje" case).

2. Inconsistent use of the "lapse of time"

In the reporting period, the WCD panels on the one hand, generally did not provide reasons for considering the lapse of time as a mitigating factor, while on the other, they sometimes applied this factor in a contradictory manner. In particular, judges considered the lapse of time as a mitigating factor irrespectively of the actual amount of time passed between the crime and the judgement.

For example, the WCDs considered the lapse of time as a mitigating factor in ten cases, while they did not consider the lapse of time to be a mitigating factor in eight cases where an almost identical amount of time had passed.

The Court of Appeals expressed its opinion on the matter in the reporting period.

> Namely, examining the first instance retrial judgement in the "Beli Manastir" case, in regard to the sentence imposed, the WCD disregarded the lapse of time as a mitigating circumstance initially considered by the Higher Court, finding that "the lapse of time from committing a criminal offense in war crimes proceedings should not be regarded as a mitigating circumstance".[177]

However, the Court departed from this stance in its subsequent decisions.

> For example, in at least two recent cases ("Bosanska Krupa" and "Ključ – Šljivari") where the Higher Court did not consider the lapse of time as mitigating factor, the Court of Appeals however granted the defences' appeals finding a lapse of time as a mitigating factor, and reduced the imposed punishments accordingly.[178]

3. Sentencing under the legal minimum

In the reporting period, the OSCE Mission to Serbia observed that the WCD panels continued to impose sentences under the legal minimum foreseen for war crimes under the CCSFRY (five years), without providing adequate reasoning for doing so:

177 The judgement Kž1 Po2 6/15 from 12 December 2016, page 12. The Court however confirmed the Higher Court's decision on the penalties imposed to the defendants.

178 The judgement Kž1 Po2 3/19 from 27 May 2019, page 15, the jugement Kž1 Po2 2/19 from 8 April 2019, page 9.

In the "Bosanski Petrovac - Gaj" case, on 24 April 2019 the trial panel of the Higher Court sentenced the defendant to a sentence under the legal minimum of four years of imprisonment, although the defendant was found guilty of murdering one Bosniak civilian and attempting to kill two more.[179]

In the "Ključ – Rejzovići" case, on 24 September 2019 the trial panel of the Higher Court sentenced the defendant to a sentence under the legal minimum of two years of prison. The defendant was found guilty of violation of bodily integrity of one Bosniak civilian and for robbery.[180]

In the "Sremska Mitrovica" case, on 18 February 2015 the Higher Court accepted the plea agreement between the defendant and the prosecution and sentenced the defendant to just one year and six months of imprisonment, after finding him guilty of torture of two Croatian prisoners of war.[181]

In the "Ramadan Maljoku" case, on 19 March 2019 the Court accepted the plea agreement entered between the defendant and prosecution, and sentenced him to one year and six months imprisonment, after finding him guilty of torture of two Serbian civilians.[182]

The OSCE Mission to Serbia also observed cases where the Court of Appeals' WCD reduced sentences imposed by the Higher Court without providing adequate justification for doing so:

179 The judgement K-Po2 13/14 from 24 April 2019. The Court found and reasoned on the defendant's substantially diminished mental competence, i.e. that his capacity to understand the significance of his act and his ability to control his conduct was substantially reduced. However, the trial panel did not provide adequate reasoning for its decision to reduce the sentence under the minimum, but rather finding and listing all mitigating and aggravating circumstances. For the note, the Court of Appeals quashed the first instance judgement and remanded the case for retrial, for reasons unrelated to the punishment determined by the trial panel.

180 The judgement K-Po2 1/18 from 24 September 2019. In determining the sentence, the trial panel regarded the lapse of time between the crime and the adjudication of the case, as well as the defendant's age at the time of the crime, as particularly mitigating circumstances, indicating that the punishment could be attained by a lesser sentence. Yet, the panel failed to explain why these circumstances were considered as unusually significant, so as to justify an extraordinary reduction of punishment under the minimum.

181 Judgement Spk Po2 1/15 from 18 February 2015. According to the CPC, the public prosecutor and the defendant may conclude a plea agreement from the moment of issuance of an order to conduct an investigation until the defendant states his/her position in relation to the charges at trial. Depending on the point when the defendant and prosecutor conclude agreement, the judge for the preliminary proceedings or the president of the trial panel decides on the plea agreement examining if the agreement is compiled in accordance with the law. The judge, *inter alia*, examines if the agreed penalty of other criminal sanction or other measure was proposed in line with the criminal and other law. In this case, the president of the trial panel *inter alia* determined that the penalty was agreed in accordance with the law including the provisions on punishment reduction.

182 In this particular case, the president of the trial panel considered the agreed penalty as in compliance with the law, proportionate to the gravity of the committed criminal offense, and the personality of the perpetrator, and found that the extent of the penalty would serve its purpose, see judgement Spk Po2 1/19 from 19 March 2019.

In the "Bosanska Krupa" case, on 27 May 2019 the Court of Appeals[183] reduced the sentence of five years of imprisonment previously imposed by the Higher Court[184] against a female defendant found guilty of, *inter alia,* inflicting of bodily injury, great suffering, torture and inhuman treatment of an 18-year old girl who served as an army nurse. The Court of Appeals reduced the sentence to three years, under the legal minimum, finding that the lapse of time, the lack of previous convictions and the current age of the defendant (62 years) to be "particularly mitigating" circumstances that outweighed aggravating circumstances such as the severity of the crime and the command position held by the defendant at the time. The Court did not provide an adequate reasoning for that finding or for departing from the Higher Court's assessment.[185]

In the "Skočić" case, the Court of Appeals reduced the punishment imposed upon retrial against three defendants, finding that the retrial panel had failed to properly weigh the mitigating circumstance in determining the punishment. However, the Appeals Court itself failed to provide a reasoning for its finding, not addressing the specific weight of each circumstance.

By failing to provide specific and detailed reasoning on the relevance and specific weight of individual circumstances, the Court of Appeals is hindering the consistent application of mitigating and aggravating circumstances in sentencing practices.

More generally, courts should carefully determine what circumstances may qualify as "particularly mitigating". Circumstances that apply to all defendants should not be qualified as "particularly" mitigating. For instance, all defendants currently on trial before the WCDs are charged with crimes committed at least 20 years ago, which also means that inevitably, the defendants' age has increased in the meantime; also, most defendants tried before the WCDs do not have previous convictions.

In any case, especially when imposing sentences under the legal minimum, WCDs should always explain how mitigating circumstances outweigh the aggravating ones, where present.

183 Judgement Kž1-Po2 3/19 from 27 May 2019.
184 Judgement K-Po2 5/17 from 26 November 2018.
185 The appellate panel also failed to reason its conclusion that the aggravating circumstances (i.e. severity of the crime, victim's age and the condition, defendant's commanding authority and her influence on other members of the unit) "in particular case were not of such magnitude that they had a more dominant influence on the court's decision".

4. Recommendations

To the WCDs:

- It is necessary to ensure the consistent application of mitigating circumstances and consequent reduction of punishment.
- It is necessary to always explain the specific weight of each mitigating and aggravating circumstance.
- It is recommended to limit the use of "particularly mitigating circumstances" to cases featuring circumstances of an exceptionally mitigating nature, and avoid invoking the application of "particularly mitigating circumstances" to defendants and cases presenting ordinary features.
- When applying "particularly mitigating circumstances", it is necessary to always provide adequate reasoning, especially when aggravating circumstances are also present.
- It is advisable to avoid standard formulations when assessing mitigating circumstances.
- It is necessary to refrain from considering family characteristics of defendants (such as marital status) as mitigating circumstances.
- It is necessary to take a consistent stance on whether the lapse of time should be considered a mitigating circumstance, and ensure its application in a coherent manner if invoked.
- It would be useful to hold joint meetings of all WCDs judges to discuss the interpretation of mitigating and aggravating circumstances and determine their relevance to the sentencing, thus contributing to practice harmonization in this matter.

CHAPTER EIGHT
Protection of witnesses

Witness protection continued to be a key feature of war crimes cases.

In its 2014 report, the OSCE Mission to Serbia noted its concerns with regard to non-compliance to the procedural measures afforded to witnesses during the trials in some cases. In addition, the OSCE Mission to Serbia identified concerns in relation to the ability of the Witness Protection Unit to adequately protect witnesses, especially insiders, out of court.

In the reporting period, concrete steps have been taken to address these concerns. However, the system still faces impediments.

1. In-court protection

The CPC foresees a series of measures that the judge can apply to ensure that the witness' identity is not revealed to the public. These include excluding the public from the courtroom,[186] examination of the witness from a separate room,[187] face and/or voice distortion.[188] The Code also foresees special precautionary measures and interviewing modalities for protected witnesses[189] who are always given a pseudonym.[190]

Erasure of personal data from all records is listed as one of the possible measures, as leaving of witness' personal data in the records would frustrate the purpose of the entire system of in-court protection. Erasure of data refers not only to personal data of the protected witness him/herself, but also to any circumstances that could indirectly

186 CPC, Article 106 (1).
187 CPC, Article 108 (2).
188 *Ibid.*
189 CPC, Article 108.
190 CPC, Article 108(2) and 109 (6).

reveal the witness' identity. The WCD judges continued resorting[191] to all measures listed above to address potential risks to the safety of sensitive witnesses. However, in one case judges published information that could lead to the disclosure of the identity of some witnesses.

> In the "Bratunac" case, for example, the first instance judgement mentions the full name of the close relative of a protected witness, so that the protected witness' identity could be inferred relatively easily.[192]

Under the current CPC, the court may impose a measure of special protection whereby data about the identity of a protected witness is withheld from the defendant and his defence counsel.[193] This measure is rather exceptional as it is restricting the right to defence. Accordingly, the CPC regulates that the court can order this measure if certain conditions are met.[194] Yet, the defence is in any case entitled to know their identity at the latest 15 days before the start of the trial.[195] However, in two cases judges failed to timely disclose the identity of protected witnesses.

> In the "Srebrenica" case, the Court failed to reveal the identity of protected witnesses to the defence before the beginning of the main hearing. For that reason, the defence counsels asked for the hearing in the case to be postponed.[196]
>
> In the "Bratunac" case, the Court disclosed the identities of the protected witnesses to the defendant and his defence counsel at the main hearing after the defendant presented his defence.[197]

Albeit the CPC clearly regulates this topic, the WCD judges interpreted the provision in a more restrictive way.[198]

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191 In the reporting period, the WCD Higher Court in Belgrade granted 14 witnesses such protection measures.

192 Judgement of the WCD Higher Court in Belgrade, K-Po2 8/2017 from 23 September 2019. Of note, the protected witness' relative herself entered the protection programme, however, the person died in the course of the proceedings, before testifying before the Court.

193 CPC, Article 106 (2).

194 The court can apply this measure in case when, after taking statements from witnesses and the prosecutor, it determines that the life, health or freedom of the witness or a person close to him is threatened to such an extent that it justifies this restriction and that the witness is credible, *ibid.*

195 CPC, Article 106 (3).

196 Hearings scheduled for 12 and 13 December 2016.

197 Hearing held on 29 June 2016.

198 The presiding judge in the "Srebrenica" case interpreted this rule, finding that the defendants' right to defence had not been violated if the information was disclosed 15 days before the main hearing at which the protected witnesses were being questioned rather than the very commencement of the main hearing itself. The other presiding judge in the "Bratunac" case has interpreted this provision similarly.

2. Out-of-court protection

Serbia has a specialized Witness Protection Unit (WPU) within the MoI, tasked to ensure the physical safety of particularly sensitive witnesses (including, where needed, through measures of 24/7 surveillance, change of identity and relocation) in war crimes, organized crime and other serious cases.[199] The Unit's focus is on the so-called "insider" witnesses who often represent the key evidence against higher-ranking perpetrators.[200]

The WPU's modus operandi foresees four types of witness protection measures: physical protection of person and property, relocation, concealing identity and information about ownership, and change of identity.[201] All the measures had been applied, although the full and proper application of the change of identity measure still requires adoption of several bylaws, which different ministries have not adopted yet.[202]

In its preceding report, the OSCE Mission to Serbia informed on a number of entities who raised concerns as to the WPU's reliability, professionalism and even impartiality.[203] It appeared that some of the problems were attributable to the poor working relationship between the previous WPU head and the WCPO management. These relations reportedly started to change for the better from June 2014 when the new WPU head was appointed.

In the reporting period, concrete steps were taken to address these concerns. The MoI conducted the assessment on the status and needs of the WPU Protection Unit, with special focus on the process of hiring of staff, implementation of appropriate work methodology including the technical capacity and the appropriate staffing

199 Law on the Protection Programme for Participants in Criminal Proceedings, Article 5.

200 Convictions in a number of the most significant WCD cases were based on statements given by one or more insiders – for more, please see the "Ovčara" case, the "Podujevo" case, the "Suva Reka" case, the "Skočić" case, the "Scorpions I" case.

201 Law on the Protection Programme for Participants in Criminal Proceedings, *supra*, Article 14(3).

202 These bylaws should address the obstacles in issuing personal documents, and problems with civil registries, and/or penal system when serving the sentence.

203 In 2011, a Council of Europe's Special Rapporteur highlighted that "inappropriate behaviour by members of the WPU towards witnesses has sometimes resulted in the witnesses either changing their testimony or simply deciding not to testify at all." In 2012, the European Parliament similarly pointed out "serious deficiencies in the functioning of the witness protection programme regarding cases of war crimes, which have resulted in a number of witnesses voluntarily opting out of the programme after being systematically intimidated." Similarly, the European Commission's progress reports have repeatedly highlighted deficiencies in Serbia's witness protection programme. For more, please see: Council of Europe, *Rapporteur Jean-Charles Gardetto*, *The protection of witnesses as a cornerstone for justice and reconciliation in the Balkans* (Doc. 12440 rev.), 12 January 2011, European Parliament, Resolution on the European integration process of Serbia (2011/2886(RSP)), 29 March 2012, European Commission, Serbia 2013 Progress Report, 16 October 2013, page 12, Serbia 2015 Progress Report, page 15 and 19, Serbia 2016 Progress Report, page 18 and 57.

of the WPU.[204] Accordingly, the MoI allocated significant funds for equipping the WPU[205], and provided additional premises for the needs of the Unit.[206] Changes in the legal framework improved the position of the Unit, and determined the staffing procedure[207], resulting in the increase of its staff.[208]

In July 2017, the MoI and the WCPO signed a protocol intended to promote co-operation between the WCPO and the WPU.[209] Working relations between WCPO and WPU have been improved significantly compared to the previous reporting period.[210]

Yet, the system still faces impediments.

> In particular, in the "Srebrenica" case, one protected witness was to testify, but he did not attend the hearing, informing the trial panel that he was not willing to testify due to safety concerns and health reasons.[211] The witness was not questioned by the end of 2019, albeit summoned by the Court on a number of occasions. It remains to be seen whether he will testify at all.[212]

Despite the concerns addressed, the protected witness repeatedly refused to enter the protection programme. Whatever the reasons may be, the situation described above **may form a perception** that the witness protection system, as a whole, ultimately cannot lay the ground for key insider - witnesses in the most serious cases to feel

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204 The Commission for the Implementation of the Witness Protection Programme within the MoI conducted the assessment in the period of October 2015 – February 2016 and finalized it in consultation with the WCPO, for more see 1st and 2nd Report on Implementation of the National Strategy for the Prosecution of War Crimes, available at: https://www.mpravde.gov.rs/files/Report%20-%20National%20Strategy%20for%20Prosecution%20of%20War%20Crimes.docx and https://www.mpravde.gov.rs/files/Report%202%20-%20National%20Strategy%20for%20Prosecution%20of%20War%20Crimes%20-%20March%202018.....docx.

205 The Unit was supplied with tactical equipment, IT equipment, specialized vehicles with a certain level of protection, and devices of communication, *ibid.*

206 The premises were allocated by the Police Directorate in December 2017, and the WPU has moved to new premises in second quarter of 2018, see 7th Report on Implementation Of The National Strategy For The Prosecution Of War Crime, available at: https://www.mpravde.gov.rs/files/Report%207%20-%20National%20Strategy%20for%20Prosecution%20of%20War%20Crimes.docx.

207 By new amendments of the Law on Police entered into force in April 2018 (*Official Gazette of the Republic of Serbia* no. 24/2018), the Unit got a status of the special unit within the MoI, Article 5. In June 2018, the Government adopted a Regulation on the Special Police Units (*Official Gazette of the Republic of Serbia* no. 47/2018), thus establishing the procedure of filling vacancies within the WPU, Articles 48 – 54.

208 In 2019, eight police officers were hired within the Protection Programme from January 2019 and positions for social worker and psychologist were advertised, see 7th Report on the Implementation of the National Strategy for the Prosecution of War Crime, *supra.*

209 The document regulates the manner in which the WCPO and the WPU would implement the protection measures, their tasks and responsibilities, the capacity building measures and the modalities of addressing mutual complaints related to conducts of each side, available in Serbian only: http://www.tuzilastvorz.org.rs/upload/Regulation/Document__sr/2018-11/trz_protokol_o_saradnji_0.PDF.

210 Interview with WPU officials, 20 November 2019 and interview with WCPO officials, 22 November 2019.

211 The witness informed the trial panel that he received threats over the phone in the period of November – December 2017, and that he was afraid for his and his family's safety, transcript of the main hearing held on 25 September 2018.

212 The witness did not respond to the Court's summons for the trial hearings commenced on 25 September 2018, 24 October 2018, 13 November 2018, 19 March 2019 and 12 December 2019.

secure and safe in order to step forward and testify.[213] However, the OSCE Mission to Serbia will continue to monitor the matter closely.

In the previous reporting period, the OSCE Mission to Serbia heard allegations from the WPU that in some cases WCPO prosecutors made promises to witnesses in terms of the scope and the type of protection measures within the programme which the WPU could not keep, thus affecting the relationship between WPU and the witnesses. Yet, the OSCE Mission to Serbia did not record any such case from 2015 on.

3. Recommendations

To the WCPO and the WCDs:

- It is necessary to always advise witnesses on the possibility of receiving procedural protection during war crimes criminal proceedings (Article 111, CPC).
- It is necessary to pay particular attention not to inadvertently disclose names or other personal data that could reveal the identity of a protected witness.

To the WCPO:

- It is recommended to continue with the good practice of refraining from making any decisions or promises in matters relating to witness protection and related measures.

To the MoI:

- It is necessary to ensure the WPU's integrity and professionalism, including by carefully screening its members.
- It is necessary to continue with the good practice of ensuring that the WPU employs no officers who took part in armed conflicts as members of the army or the police.

To the Government of Serbia:

- It is necessary to ensure that the relevant ministries adopt all bylaws required for the successful implementation of the witness protection measure of change of identity.

213 See also cases documented in 2011 and 2012, 2014 OSCE Report, pages 85 – 86.

List of acronyms used

BiH	(Bosnia and Herzegovina)
BAB	(Bar Association of Belgrade)
CCFRY	(Criminal Code of the Federal Republic of Yugoslavia)
CCSFRY	(Criminal Code of the Socialist Federal Republic of Yugoslavia)
CPC	(Criminal Procedure Code)
CPD	(Criminal Police Directorate)
ECHR	(European Convention for the Protection of Human Rights and Fundamental Freedoms)
EU	(European Union)
EULEX	(European Union Rule of Law Mission in Kosovo)
FRY	(Federal Republic of Yugoslavia)
HJC	(High Judicial Council)
ICTY	(International Criminal Tribunal for the Former Yugoslavia)
IHL	(International Humanitarian Law)
INTERPOL	(International Criminal Police Organization)
IRMCT	(International Residual Mechanism for Criminal Tribunals)
JNA	(Jugoslovenska narodna armija – Yugoslav People's Army)
KLA	(Kosovo Liberation Army)
MoI	(Ministry of Interior)
MP	(Member of Parliament)
OSCE	(Organization for Security and Co-operation in Europe)
RPP	(Republic Public Prosecutor)
SCC	(Supreme Court of Cassation)
SFRY	(Socialist Federative Republic of Yugoslavia)
SRS	(Srpska Radikalna Stranka – Serbian Radical Party)
SPC	(State Prosecutorial Council)
SPRK	(Special Prosecution Office of Kosovo)
UN	(United Nations)
UNMIK	(United Nations Interim Administration Mission in Kosovo)
VRS	(Vojska Republike Srpske – Army of Republika Srpska)
WCD	(War Crimes Department)
WCIS	(War Crimes Investigation Service)
WCP	(War Crimes Prosecutor)
WCPO	(War Crimes Prosecutor's Office)
WPU	(Witness Protection Unit)

Annex

Facts and figures of war crimes proceedings before the WCDs (2015-2019)

Case name	**"Beli Manastir"**	**"Bihać II"**	**"Bijeljina II"**
Case number	Kž1 Po2 6/15	K Po2 12/14	Kž1 Po2 1/16
Number of defendants	4 (Velimir Bertić, Branko Hrnjak, Zoran Vukšić, Slobodan Strigić)	1 (Svetko Tadić)	1 (Miodrag Živković)
Number of victims	30	24	3
Hierarchy level of defendants	Low police rank	Low military rank	Low military rank
Indictment filed	23/06/2010	09/10/2014	04/06/2014
Stage of the proceeding	Final	Indictment dismissed	Final
Duration of the proceeding since start of first trial	5 years and 4 months	1 year and 4 months	1 and 7 months
Number of witnesses heard at trial	68	15	6
First instance judgement date and outcome	**19 June 2012** Zoran Vukšić: 20 years Slobodan Strigić: 10 years Branko Hrnjak: 5 years Velimir Bertić: 1 year 6 months	/	**14 April 2015** Acquittal
Appeals decision date and outcome	**29 March 2013** Zoran Vukšić, Slobodan Strigić and Branko Hrnjak: annulled and retrial Velimir Bertić: confirmed	/	**28 September 2015** Annulled and retrial
Retrial judgement date and outcome	**29 May 2015** Zoran Vukšić: 20 years Slobodan Strigić: 10 years Branko Hrnjak: 5 years	/	**24 November 2015** Acquittal

Case name	**“Beli Manastir”**	**“Bihać II”**	**“Bijeljina II”**
Second appeal date and outcome	**12 February 2016** Confirmed	/	**26 September 2016** Confirmed
Factual background	The Court established that between August and December 1991 the defendants Zoran Vukšić and Velimir Bertić, former members of Serbian Krajina Special Police Units, tortured and treated inhumanely a number of Croatian civilians detained in a detention centre located in the town of Beli Manastir, Republic of Croatia. Three defendants (Zoran Vukšić, Slobodan Strigić and Branko Hrnjak) are also charged with murdering four Croatian civilians. Zoran Vukšić is also charged with the murder of another Croatian civilian and the serious wounding of two others.	The indictment alleges that on 23 September 1992 in Duljci (Bihać municipality, BiH), Svetko Tadić, as a member of the VRS, took part in the killings of five Bosnian Muslim civilians in villages around Bihać. Later that day, Svetko Tadić, with a group of soldiers belonging to the Rajinovac unit of the VRS, attacked Bosnian Muslim civilians by shooting at them and stabbing them with knives. As a result, 18 civilians were killed and one suffered permanent injuries. The soldiers then set the dead bodies on fire.	According to the indictment, on 14 June 1992 in Bijeljina (BiH) the defendant, in his capacity as a member of a Serb volunteer unit, together with Dragan Jović, Zoran Đurđević, Alen Ristić and Danilo Spasojević, entered the house of a Muslim civilian Ramo Avdić, threatening him with weapons. Jović shot and killed Avdić. The defendants stole money, jewellery and a car from the victims’ family and their neighbour. Thereafter, the defendants repeatedly raped Avdić’s daughter and daughter-in-law, first in the house and then in a place called Ljeljenča on the Bijeljina-Brčko road, before releasing them.

Case name	**"Beli Manastir"**	**"Bihać II"**	**"Bijeljina II"**
Procedural notes	The evidence in the case was transferred by the State's Attorney's Office of the Republic of Croatia to the WCPO.	Four co-perpetrators were convicted in separate proceedings before the Cantonal Court in Bihać (BiH) after pleading guilty to the crime charged. Two additional suspects deceased. The Bihać Court had initiated proceedings also against Svetko Tadić but, due to his unavailability to the BiH authorities, transferred the case to the WCPO. The defendant's brother was sentenced by the Higher Court in Belgrade to 13 years of imprisonment for the same crime ("Bihać I" case). On 6 July 2016, the Higher Court in Belgrade made a decision to dismiss the charges against Svetko Tadić, since the medical examination found that the defendant was temporarily unable to stand trial.	Three co-defendants in the case were previously convicted for the same crimes in the "Bjeljina I" case. Dragan Jović, Zoran Đurđević and Alen Ristić were sentenced to 20, 13 and ten years of imprisonment, respectively. This case was transferred to Serbia by BiH under the Agreement on Mutual Legal Assistance in Civil and Criminal Matters between the two countries. A fifth defendant, Danilo Spasojević, was tried in BiH and sentenced to five years of imprisonment. The defendant Miodrag Živković was acquitted of all charges.

Case name	**“Bogdanovci”**	**“Bosanska Krupa”**	**“Bosanska Krupa II”**
Case number	K Po2 3/14	Kž1 Po2 3/19	K Po2 11/17
Number of defendants	1 (Boško Soldatović)	1 (Ranka Tomić)	2 (Joja Plavanjac, Zdravko Narančić)
Number of victims	9	1	11
Hierarchy level of defendants	Low military rank	Mid military rank	Low military rank
Indictment filed	21/12/2018	26/05/2016	26/12/2017
Stage of the proceeding	Pending trial start	Final	Appeal
Duration of the proceeding since start of first trial	/	2 years and 7 months	1 year and 7 months
Number of witnesses heard at trial	None	12	18 and 2 expert witnesses
First instance judegment date and outcome	/	**26 November 2018** Conviction: 5 years	**15 November 2019** Joja Plavanjac: 15 years Zdravko Narančić: 7 years
Appeals decision date and outcome	/	**27 May 2019** Sentence modified 3 years	/
Retrial judgement date and outcome	/	/	/
Second appeal date and outcome	/	/	/

Case name	**"Bogdanovci"**	**"Bosanska Krupa"**	**"Bosanska Krupa II"**
Factual background	The indictment alleges that in November 1992, the defendant Boško Soldatović, in his capacity as a member of the JNA, murdered nine civilians in Bogdanovci, Croatia.	The Court established that in mid July 1992, the defendant Ranka Tomić, as the head of the unit called "Women of the Petrovac Front" ("Front Žena Petrovac"), together with other members of this unit, committed acts of torture, inhuman treatment, infliction of great suffering and violation of bodily integrity against prisoner of war Karmena Kamenčić, nurse in the Army of BiH, in Radić (municipality of Bosanska Krupa, BiH). After imprisonment, the defendant ordered the victim to remove all her clothes, after which she beat her, mutilated her body parts and made her sing Serbian songs. After that, the defendant, together with a minor, took the victim to a valley, where they ordered her to dig a grave, after which the minor killed the victim, by shooting her with an automatic weapon.	The indictment alleges that in August 1992, the defendant Zdravko Narančić, as a former member of the VRS and a guard at a local school where Bosniak civilians were being held, aided and abetted Joja Plavanjac by allowing him to enter the school and kill 11 civilians in Bosanska Krupa (BiH). The victims' bodies were exhumed from a mass grave located in Lušci Palanka (Sanski Most municipality, BiH) in 2006.

Case name	**“Bogdanovci”**	**“Bosanska Krupa”**	**“Bosanska Krupa II”**
Procedural notes	The indictment against the defendant Soldatović in the “Bogdanovci” case was initially filed by the WCPO in 2013. Before it was finally confirmed in 2018, the indictment in this case had been amended since the investigation had been supplemented.	In 2016, the Supreme Court of Federation of BiH rendered the final judgments against Bora Kuburić and Radmila Banjac for the same crime, sentencing them to three years in prison respectively. BiH authorities initiated criminal proceedings against Ranka Tomić, but due to her unavailability, transferred the case to the Serbian WCPO.	As the defendants were unavailable to the BiH authorities, the Serbian WCPO took over the criminal prosecution of the case upon referral from BiH.

Case name	**"Bosanski Petrovac"**	**"Bosanski Petrovac Gaj (Dragišić)"**	**"Branko Branković"**
Case number	Kž1 Po2 4/16	K Po2 4/19	K Po2 5/18
Number of defendants	2 (Neđeljko Sovilj, Rajko Vekić)	1 (Milan Dragišić)	1 (Branko Branković)
Number of victims	1	6	2
Hierarchy level of defendants	Low military rank	Low military rank	Low military rank
Indictment filed	06/08/2012	10/10/2014	14/09/2018
Stage of the proceeding	Final	Retrial ongoing	Indictment dismissed
Duration of the proceeding since start of first trial	4 years and 5 months	4 years and 6 months	/
Number of witnesses heard at trial	11 and 2 expert witnesses	25 and 4 expert witnesses	/
First instance judegment date and outcome	**11 March 2013** Neđeljko Sovilj and Rajko Vekić: 8 years	**24 April 2019** Conviction: 4 years	/
Appeals decision date and outcome	**4 November 2013** Annulled and retrial	**25 November 2019** Annulled and retrial	/
Retrial judgement date and outcome	**30 June 2016** Neđeljko Sovilj and Rajko Vekić: 8 years	/	/
Second appeal date and outcome	**27 March 2017** Acquittal	/	/

Case name	**“Bosanski Petrovac”**	**“Bosanski Petrovac Gaj (Dragišić)”**	**“Branko Branković”**
Factual background	The indictment alleges that the defendants, members of the VRS, on 21 December 1992 came across civilians Mile Vukelić and Mehmed Hrkić on a local road near Bosanski Petrovac (BiH). They allegedly ordered Vukelić to continue on and held Mehmed Hrkić back, took him deeper into the forest and killed him with multiple firearm shots.	The indictment alleges that on 20 September 1992 the defendant, in his capacity as a member of the VRS, murdered three Muslim civilians and attempted to kill three more in Bosanski Petrovac, BiH.	The indictment alleges that in June 1992 the defendant, in his capacity as a member of village guard, murdered two Muslim civilians in Prhovo (municipality of Ključ, BiH).
Procedural notes	The defendants were indicted by BiH authorities on 31 October 2011. Since they were unavailable to the BiH authorities, the latter formally transferred the case to the WCPO.	As the defendant was unavailable to the BiH authorities, the Serbian WCPO took over criminal prosecution of the case upon referral from BiH.	As the defendant was unavailable to the BiH authorities, the Serbian WCPO took over criminal prosecution of the case upon referral from BiH. On 5 February 2019, the Higher Court in Belgrade made a decision to dismiss the charges against Branko Branković, since the medical examination found that the defendant was permanently unable to stand trial.

Case name	**"Bratunac"**	**"Bratunac - Suha"**	**"Brčko"**
Case number	K Po2 8/17	K Po2 8/18	K Po2 5/18
Number of defendants	1 (Dalibor Maksimović)	1 (Jovan Novaković)	1 (Nikola Vida Lujić)
Number of victims	6	300	1
Hierarchy level of defendants	Low military rank	Low military rank	Low military rank
Indictment filed	14/04/2016	22/10/2018	12/09/2018
Stage of the proceeding	Appeal	Pending trial start	Appeal
Duration of the proceeding since start of first trial	3 years and 6 months	/	1 year
Number of witnesses heard at trial	19 and 1 expert witness	None	12
First instance judgement date and outcome	**23 September 2019** Conviction: 15 years	/	**19 September 2019** Conviction: 8 years
Appeals decision date and outcome	/	/	/
Retrial judgement date and outcome	/	/	/
Second appeal date and outcome	/	/	/

Case name	**“Bratunac”**	**“Bratunac - Suha”**	**“Brčko”**
Factual background	The indictment alleges that the defendant, as a member of the VRS, killed four Bosniak male civilians and raped one Bosniak woman in Bratunac area (BiH), on 9 May 1992. The defendant and other unknown soldiers of the VRS allegedly captured a group of Bosniak civilians. They singled out three men from this group and shot them dead. As one of them was still showing signs of life, the defendant personally approached the victim and slit his throat with a knife. Maksimović is also accused of firing a shot from a car and killing one Bosniak civilian. On the same day, according to the indictment, the defendant also captured one Bosniak woman and repeatedly raped her.	According to the indictment, the defendant Novaković, the former commander of the Moštanice Company of the Territorial Defense in Bratunac (BiH), has been charged with participating in the displacement of about 300 Bosniak residents of Suha (Bratunac municipality) in June 1992.	The indictment alleges that in June 1992, the defendant Vida-Lujić, as a member of the so-called “Red Berets” unit raped a Bosniak woman in Brčko, BiH.
Procedural notes	The BiH authorities had initiated criminal proceedings against the defendant, but due to his unavailability, transferred the case to the Serbian WCPO.	The BiH authorities had initiated criminal proceedings against the defendant, but due to his unavailability, transferred the case to the Serbian WCPO.	As the defendant was unavailable to the BiH authorities, the Serbian WCPO took over the criminal prosecution of the case upon referral from BiH.

Case name	**"Brčko II"**	**"Ćuška"**
Case number	K Po2 9/18	K Po2 4/15
Number of defendants	1 (Miloš Čajević)	18 (Radoslav Brnović, Boban Bogićević, Dejan Bulatović, Zvonimir Cvetković, Slaviša Kastratović, Veljko Korićanin, Vidoje Korićanin, Toplica Miladinović, Siniša Mišić, Ranko Momić, Milojko Nikolić, Zoran Obradović, Srećko Popović, Abdulah Sokić, Milan Ivanović, Vladan Krstović, Lazar Pavlović, Predrag Vuković)
Number of victims	14	138
Hierarchy level of defendants	Low military rank	Mid military rank (Miladinović); low military rank (all others)
Indictment filed	22/10/2018	10/09/2010; 01/04/2011; 27/04/2011; 31/05/2011; 07/11/2011; 26/09/2012; 07/04/2014; 03/07/2019.
Stage of the proceeding	Trial ongoing	Retrial ongoing
Duration of the proceeding since start of first trial	7 months	9 years
Number of witnesses heard at trial	3	more than 120
First instance judgement date and outcome	/	**11 February 2014** Toplica Miladinović, Milojko Nikolić, Dejan Bulatović: 20 years Ranko Momić: 15 years Abdulah Sokić: 12 years Srećko Popović: 10 years Siniša Mišić: 5 years Slaviša Kastratović, Boban Bogićević: 2 years Veljko Korićanin, Radoslav Brnović: acquittal *Zvonimir Cvetković, Vidoje Korićanin, Zoran Obradović: indictment withdrawn*
Appeals decision date and outcome	/	**26 February 2015** Annulled and retrial

Case name	**“Brčko II”**	**“Ćuška”**
Retrial judgement date and outcome	/	/
Second appeal date and outcome	/	/
Factual background	The indictment alleges that in May 1992, the defendant Miloš Čajević, as a member of the reserve police attached to the VRS, applied intimidation and terror measures against 11 Bosniak civilians in Brčko, BiH. He is also accused of inhuman treatment against two Bosniak civilians in the “Luka” camp and of raping one Bosniak woman.	The amended WCPO joint indictment charges former members of the 177th Military Territorial Detachment of the Yugoslav Army (known as the “Jackals” unit) with a series of massacres committed against Kosovo Albanian civilians in the villages of Ćuška, Zahać, Pavljan and Ljubenić in Kosovo in April and May of 1999. The defendants participated in killings, committed rapes, destroyed and plundered the victims’ houses. Most of the survivors then left their homes and fled to Albania. The former leader of the “Jackals” Nebojša Minić, also known as “The Dead”, passed away in Argentina in 2005.
Procedural notes	As the defendant was unavailable to the BiH authorities, the Serbian WCPO took over the criminal prosecution of the case upon referral from BiH.	In June 2015, for reasons of procedural efficiency, the Higher Court ruled to merge the proceedings in the “Ćuška” case and the “Ljubenić” case – which includes three defendants (Milan Ivanović, Vladan Krstović, Lazar Pavlović) – since they are based on similar facts. In November 2019, the Court also ruled to merge the proceedings in the “Ćuška” case and the “Predrag Vuković” case, since they are based on similar facts. In April 2016, the Panel issued a ruling dismissing the indictment against Dejan Bulatović, since medical experts established that he was not able to follow the proceedings for medical reasons. In addition, during the proceedings, two defendants died (Radoslav Brnović, Milojko Nikolić), and accordingly criminal proceedings against them were discontinued. The proceedings against the defendant Ranko Momić, who is at large, are severed from the case.

Case name	**"Doboj"**	**"Gornje Nerodimlje"**	**"Gradiška (Šinik)"**
Case number	K Po2 9/17	Spk Po2 1/19	Kž1 Po2 4/16
Number of defendants	1 (Dušan Vuković)	1 (Ramadan Maljoku)	1 (Goran Šinik)
Number of victims	16	2	1
Hierarchy level of defendants	Low police rank	Low military rank	Low military rank
Indictment filed	21/03/2016	24/12/2018	08/04/2014
Stage of the proceeding	Proceedings discontinued	Final	Final
Duration of the proceeding since start of first trial	1 year and 10 months	/	1 year and 8 months
Number of witnesses heard at trial	8 and 1 expert witness	/	9
First instance judgement date and outcome	*Defendant died before the end of the trial*	**19 March 2019** Conviction: 1 year and 6 months	**13 October 2016** Acquittal
Appeals decision date and outcome	/	/	**22 February 2017** Confirmed
Retrial judgement date and outcome	/	/	/
Second appeal date and outcome	/	/	/

Case name	**“Doboj”**	**“Gornje Nerodimlje“**	**“Gradiška (Šinik)“**
Factual background	The indictment alleges that in the period from May 1992 to March 1993, the defendant, as a prison guard in the District Prison in Doboj (BiH), was engaged on several occasions with other prison guards in campaigns of torture against a large number of persons who had been deprived of liberty and held detained in that prison. The campaigns included bodily injuries, as well as physical and psychological torture that resulted in the victims’ physical and mental suffering, harm to their bodily integrity and death (one person died as a result of severe beatings).	The Court established that on 21 June 1999, the defendant Maljoku and four members of KLA entered the village of Gornje Nerodimlje (Uroševac municipality, Kosovo), went to the home of one Serbian family, where they subjected to severe beatings two civilians and detained them in the garage nearby the house. The defendant threatened the two that they will be killed if they do not hand over their weapon. At one point, the captives managed to escape.	The indictment alleges that the defendant, as a member of the VRS, killed a Croatian civilian in Gradiška (BiH) on 2 September 1992. The defendant pulled the victim from the bus, and together with two other men drove him to a nearby village. After the two latter men returned to Gradiška, the defendant allegedly killed the civilian. There are no eye witnesses to the event.
Procedural notes	The BiH authorities had initiated criminal proceedings against the defendant, but due to his unavailability, transferred the case to the Serbian WCPO.	The proceedings were completed through a plea bargain concluded between the defendant and the Prosecution.	The District court of Banja Luka (BiH) transferred the case to the WCPO. The defendant Goran Šinik was acquitted of all charges.

Case name	**"Kalinovik"**	**"Kelesija - Caparde"**	**"Ključ - Rejzovići"**
Case number	K Po2 3/19	Spk Po2 1/18	K Po2 1/18
Number of defendants	1 (Dalibor Krstović)	1 (Dragan Maksimović)	1 (Željko Budimir)
Number of victims	1	5	3
Hierarchy level of defendants	Low military rank	Low military rank	Low military rank
Indictment filed	26/9/2019	26/12/2017	01/02/2018
Stage of the proceeding	Pending trial start	Final	Appeal
Duration of the proceeding since start of first trial	/	/	1 year and 8 months
Number of witnesses heard at trial	/	/	9
First instance judgement date and outcome	/	**6 June 2018** Conviction: 6 years and 2 months	**24 September 2019** Conviction: 2 years
Appeals decision date and outcome	/	/	/
Retrial judgement date and outcome	/	/	/
Second appeal date and outcome	/	/	/

Case name	**“Kalinovik”**	**“Kelesija - Caparde”**	**“Ključ - Rejzovići”**
Factual background	The indictment alleges that in June 1992, the defendant Dalibor Krstović, as a member of the VRS, raped a Bosniak woman in Kalinovik, BiH.	The court established that in June 1992, the defendant Maksimović, as a former member of the VRS, entered a house in the village of Caparde, BiH and killed five Bosniak civilians.	The indictment alleges that in November 1992, the defendant Željko Budimir, together with two members of the VRS, Predrag Bajić and Mladenko Vrtunić, went to the home of a Bosniak civilian, Ale Štrkonjić, in Rejzovići, Ključ municipality, BiH, where they physically mistreated him and forced him to give them money, which Ale did. At one point, Ale managed to escape, and then one of the co-perpetrators killed his wife Fatima and her mother Fata.
Procedural notes	The BiH authorities had initiated criminal proceedings against the defendant, but due to his unavailability, transferred the case to the Serbian WCPO.	The proceedings were completed through a plea bargain concluded between the defendant and the Prosecution.	The courts of BiH rendered the final judgments against Bajić and Vrtunić in 2014 for the same crime, sentencing them to 13 and nine years in prison respectively. As the defendant Budimir was unavailable to the BiH authorities, the Serbian WCPO took over the criminal prosecution of the case upon referral from BiH.

Case name	**"Ključ - Šljivari"**	**"Ključ - Kamičak"**	**"Kožuhe"**
Case number	Kž1 Po2 2/19	Kž3 Po2 1/19	K Po2 4/18
Number of defendants	1 (Milanko Dević)	2 (Dragan Bajić, Marko Pauković)	1 (Nebojša Stojanović)
Number of victims	1	5	1
Hierarchy level of defendants	Low military rank	Low military rank	Low military rank
Indictment filed	05/04/2016	26/05/2016	13/7/2018
Stage of the proceeding	Final	Final	Trial ongoing
Duration of the proceeding since start of first trial	3 years and 2 months	3 years and 2 months	11 months
Number of witnesses heard at trial	18	5 witnesses, 2 expert witnesses and 1 professional consultant	6
First instance judgement date and outcome	**13 November 2018** Conviction: 7 years	**25 December 2017** Acquittal	/
Appeals decision date and outcome	**8 April 2019** Sentence modified: 6 years	**1 June 2018** Annulled and retrial	/
Retrial judgement date and outcome	/	**27 December 2018** Acquittal	/
Second appeal date and outcome	/	**29 May 2019** Overturned Conviction: Dragan Bajić, Marko Pauković: 12 years **13 November 2019** Confirmed	/

Case name	**“Ključ - Šljivari”**	**“Ključ - Kamičak”**	**“Kožuhe”**
Factual background	The court established that the defendant, as the member of the VRS, in July 1992, together with Bogdan Šobot and another unidentified VRS member, went to the home of a Bosniak civilian, Ismet Šljivar, in Šljivari (municipality of Ključ, BiH), removed him from his house and took him to a nearby river. Afterwards, the defendant allegedly fired multiple shots at Ismet Šljivar, and threw the victim’s body into the river.	The court established that in October 1992, the defendants, as members of the VRS, killed five Bosniak civilians (one being a minor) in the village of Kamičak (Ključ municipality, BiH).	The indictment alleges that in May 1992, the defendant, in his capacity as a member of a volunteer unit operating within the Serbian armed force, killed Ivan Sivrić, a member of the Croatian Defence Council (HVO) in Kožuhe, Doboj municipality, BiH. The victim had been captured by the Serb armed force and subsequently detained inside the factory compound. The defendant removed the captive from the compound and took him to the site nearby the river Bosna. There, in a previously prepared grave hole, the defendant fired several gunshots into the victim who died on the spot.

Case name	**"Ključ - Šljivari"**	**"Ključ - Kamičak"**	**"Kožuhe"**
Procedural notes	The Supreme Court of Federation of BiH rendered the final judgment against Bogdan Šobot in 2018, sentencing him to six years in prison. The BiH authorities had also initiated criminal proceedings against Milanko Dević, but due to his unavailability, transferred the case to the Serbian WCPO.	The BiH authorities initiated criminal proceedings against the defendants, but due to their unavailability, transferred the case to the WCPO. The WCPO had issued individual indictments against the defendants and proposed to the court that the proceedings against the defendants be merged and that single proceedings be conducted.	As the defendant was unavailable to the BiH authorities, the Serbian WCPO took over the criminal prosecution of the case upon referral from BiH.

Case name	**“Lovas”**	**“Luka camp”**
Case number	K Po2 1/14	Kž1 Po2 8/15
Number of defendants	14 (Dragan Bačić, Ljuban Devetak, Milan Devčić, Jovan Dimitrijević, Miodrag Dimitrijević, Radisav Josipović, Zoran Kosijer, Željko Krnjajić, Aleksandar Nikolaidis, Darko Perić, Milan Radojčić, Petronije Stevanović, Saša Stojanović, Radovan Vlajković)	1 (Boban Pop Kostić)
Number of victims	70	1
Hierarchy level of defendants	Mid military rank (Dimitrijević), low military/police rank (all others)	Low military rank
Indictment filed	28/11/2007	31/03/2014
Stage of the proceeding	Appeal upon retrial	Final
Duration of the proceeding since start of first trial	11 years and 8 months	1 year and 11 months
Number of witnesses heard at trial	195	4
First instance judgement date and outcome	**26 June 2012** Ljuban Devetak: 20 years Petronije Stevanović: 14 years Milan Radojčić: 13 years Milan Devčić, Željko Krnjajić, Miodrag Dimitrijević: 10 years Zoran Kosijer: 9 years Jovan Dimitrijević, Saša Stojanović: 8 years Dragan Bačić, Aleksandar Nikolaidis: 6 years Darko Perić, Radovan Vlajković: 5 years Radisav Josipović: 4 years	**20 March 2015** Conviction: 2 years
Appeals decision date and outcome	**9 December 2013** Annulled and retrial	**10 June 2015** Annulled and retrial

Case name	**"Lovas"**	**"Luka camp"**
Retrial judgement date and outcome	**20 June 2019** Milan Devčić: 8 years Saša Stojanović: 7 years Željko Krnjajić, Zoran Kosijer, Jovan Dimitrijević: 6 years Darko Perić, Radovan Vlajković: 5 years Radisav Josipović: 4 years *Miodrag Dimitrijević: indictment dismissed* *Ljuban Devetak, Aleksandar Nikolaidis, Petronije Stevanović, Dragan Bačić, Milan Radojčić died before the end of the trial*	**5 November 2015** Acquittal
Second appeal date and outcome	/	**28 March 2016** Confirmed
Factual background	The indictment alleges that on 10 October 1991 JNA troops commanded by defendant Željko Krnjajić launched an attack on the village of Lovas (Croatia) and killed 20 Croatian civilians. Subsequently, at the orders of heads of the provisional government Ljuban Devetak, Milan Radojčić and Milan Devčić, several defendants in the case committed a series of crimes against Croatian civilians (including using them as human shields and forcing them to walk into a mine field).	The indictment alleges that the defendant, in his capacity as a member of VRS, served as a guard at a detention camp known as "Luka", located in Brčko (BiH) and that on 10 May 1992 he tortured a Bosniak civilian prisoner detained in the camp, by inflicting on him severe psychological harassment and repeated beatings.
Procedural notes	The proceedings against five defendants were discontinued owing to their deaths. In April 2019, the Court dismissed the indictment against Miodrag Dimitrijević, since the medical expertise found that the defendant was not capable of following the proceedings.	The "Luka Camp"case is based on criminal proceedings initiated before the Brčko District Basic Court. In February 2014, the WCPO took over criminal prosecution in accordance with the Agreement on Mutual Legal Assistance in Civil and Criminal Matters between BiH and Serbia. The defendant Boban Pop Kostić was acquitted of all charges.

Case name	**“Ovčara I”**
Case number	Kž1 Po2 2/14
Number of defendants	18
Number of victims	200
Hierarchy level of defendants	Mid military rank (Vujović), low military rank (all others)
Indictment filed	04/12/2003, 25/04/2004, 13/04/2005, 08/04/2008
Stage of the proceeding	Final
Duration of the proceeding since start of first trial	13 years and 9 months
Number of witnesses heard at trial	122
First instance judgement date and outcome	**12 December 2005** Miroljub Vujović, Stanko Vujanović, Ivan Atanasijević, Milan Lančužanin, Predrag Milojević, Đorđe Šošić, Miroslav Đanković and Predrag Dragović: 20 years Jovica Perić, Milan Vojnović and Vujo Zlatar: 15 years Predrag Madžarac: 12 years Nada Kalaba: 9 years Goran Mugoša: 5 years Marko Ljuboja, Slobodan Katić: acquittal
Appeals decision date and outcome	**14 December 2006** Annulled and retrial
Retrial judgement date and outcome	**12 March 2009** Miroljub Vujović, Stanko Vujanović, Ivan Atanasijević, Predrag Milojević, Đorđe Šošić, Miroslav Đanković, Saša Radak: 20 years Milan Vojnović: 15 years Jovica Perić: 13 years Nada Kalaba: 9 years Milan Lančužanin: 6 years Goran Mugoša, Predrag Dragović: 5 years Predrag Madžarac, Marko Ljuboja, Vujo Zlatar, Slobodan Katić and Milorad Pejić: Acquittal

Case name	**"Ovčara I"**
Second appeal date and outcome	**14 September 2010** Miroljub Vujović, Stanko Vujanović, Jovica Perić, Predrag Madžarac, Milan Vojnović, Milan Lančužanin, Marko Ljuboja, Predrag Milojević, Vujo Zlatar, Goran Mugoša, Đorđe Šošić, Miroslav Đanković, Slobodan Katić, Predrag Dragović, Saša Radak, Milorad Pejić: Confirmed Ivan Atanasijević: 15 years Nada Kalaba: 11 years **24 November 2017 - *(see Procedural notes)*** Miroljub Vujović, Stanko Vujanović, Predrag Milojević, Goran Mugoša: Confirmed Ivan Atanasijević: Sentence modified:15 years Nada Kalaba: Sentence modified: 11 years Miroslav Đanković, Saša Radak: Sentence modified: 5 years Jovica Perić, Milan Vojnović, Milan Lančužanin, Predrag Dragović: Acquittal *Đorđe Šošić died before the end of the appeal proceedings*
Factual background	The defendants, Miroljub Vujović and others, in their capacity as members of the Vukovar Territorial Defence and a volunteers unit Leva Supoderica are charged with committing a war crime against the prisoners of war on 20/21 November 1991, on the Ovčara farm, near Vukovar, Croatia. The indictment charges the defendants with murder, violating bodily integrity, inhumane treatment in a way which outrages personal dignity of prisoners of war, members of the Croatian armed forces who laid down their weapons and were taken from the Vukovar hospital on the morning of 20 November 1991. The prisoners were taken from the hospital by members of the JNA and later put under control of the members of Vukovar Territorial Defence and volunteers unit Leva Supoderica, who were beating the prisoners at a hangar in Ovčara and later took them divided in groups to a place called Grabovo, near Ovčara farm, where they were killed by firing squads. As a result, 200 people were killed and buried into a mass grave, including two women, one of which was visibly pregnant. 193 victims have been identified so far.

Case name	**“Ovčara I”**
Procedural notes	Saša Radak, one of the defendants in the “Ovčara” case, filed a constitutional appeal against the appellate decision on 15 October 2010. Three years after receiving the constitutional appeal, the Constitutional Court issued a decision where it found that the Court of Appeals violated the fundamental right of the accused to an impartial court, as a part of the right to a fair trial. The Constitutional Court stated that the effects of its decision extend to other co-accused in the same case who suffered the same violation. Deciding on the appeal filed by Radak, the Constitutional Court ordered for the case to be remanded back to Court of Appeals for a new decision, but did not formally annul the Court of Appeals’ judgment. Even though the decision of the Constitutional Court applies to other co – defendants in the ”Ovčara” case, as they were in the same legal situation as Radak, four other defendants in this case have filed a constitutional appeal on the same grounds. The defendants in the “Ovčara” case have filed this extraordinary legal remedy, and deciding on it the Supreme Court of Cassation (SCC). On 19 June 2014, deciding on the ensuing defence request for protection of legality, the SCC returned the entire case to the Court of Appeals for a new adjudication of the case.

Case name	**"Prizren"**	**"Sanski Most"**	**"Sanski Most – Kijevo"**
Case number	Kž1 Po2 7/13	Kž1 Po2 7/15	Kž1 Po2 3/16
Number of defendants	1 (Mark Kašnjeti)	1 (Miroslav Gvozden)	1 (Mitar Čanković)
Number of victims	2	7	1
Hierarchy level of defendants	Low military rank	Low military rank	Low military rank
Indictment filed	11/05/2012	02/04/2013	9/4/2014
Stage of the proceeding	Final	Final	Final
Duration of the proceeding since start of first trial	2 years and 7 months	2 years and 9 months	2 years and 7 months
Number of witnesses heard at trial	13	11	10 (3 expert witnesses)
First instance judgement date and outcome	**19 November 2012** Conviction: 2 years	**10 September 2015** Conviction: 10 years	**18 May 2016** Conviction: 9 years
Appeals decision date and outcome	**8 March 2013** Annulled and retrial	**22 February 2016** Sentence modified: 12 years	**12 December 2016** Confirmed
Retrial judgement date and outcome	**21 June 2013** Conviction: 2 years	/	/
Second appeal date and outcome	**20 March 2015** Acquittal	/	/

Case name	**“Prizren”**	**“Sanski Most”**	**“Sanski Most – Kijevo”**
Factual background	The indictment alleges that on 14 June 1999, in Prizren (Kosovo), the defendant, in his capacity as a member of the KLA, illegally detained two Serb civilians and hit one of them with the rifle’s gunstock. That same day, Kašnjeti and another KLA member released these two civilians, along with another Serb civilian who had been detained by KLA, and ordered them to go to Serbia.	The court established that, on 5 December 1992 the defendant Miroslav Gvozden, together with four other members of the VRS participated in the attack on the villages of Sasine and Tomašica, municipality Sanski Most (BiH). On this occasion six civilians were murdered and one was severely wounded.	The court established that on 19 September 1995 the defendant, in his capacity as a member of VRS, participated in a VRS operation of arrest and detention of civilians from Kijevo (Sanski Most municipality, BiH). On this occasion, the defendant allegedly separated one civilian from the group, confiscated his personal belongings, and killed him with firearm shots.
Procedural notes	The defendant Mark Kašnjeti was acquitted of all charges.	The Cantonal Court in Bihać (BiH) transferred the case to the WCPO.	

Case name	**"Sanski Most – Lušci Palanka"**	**"Sarajevo - Hrasnica"**
Case number	K Po2 7/17	K Po2 11/18
Number of defendants	1 (Milorad Jovanović)	1 (Husein Mujanović)
Number of victims	15	30
Hierarchy level of defendants	Low police rank	Mid military rank
Indictment filed	3/4/2017	24/12/2018
Stage of the proceeding	Trial ongoing	Trial ongoing
Duration of the proceeding since start of first trial	2 years and 5 months	10 months
Number of witnesses heard at trial	20	11
First instance judgement date and outcome	/	/
Appeals decision date and outcome	/	/
Retrial judgement date and outcome	/	/
Second appeal date and outcome	/	/

Case name	**“Sanski Most – Lušci Palanka”**	**“Sarajevo - Hrasnica”**
Factual background	According to the indictment, in the period from June to July 1992, Milorad Jovanović, as a former member of the reserve police force of the Ministry of Interior (MUP), the Republika Srpska (RS) in BiH, in Sanski Most, together with the commander of the Unit of the Police Station in Lušci Palanka and other members of the unit, committed acts of unlawful arrest and detention, torture, inhuman treatment, infliction of great suffering and violation of bodily integrity against 12 non-Serb civilians, in Lušci Palanka (municipality of Sanski Most, BiH). The bodily injuries, as well as physical and psychological torture resulted in the victims’ physical and mental suffering, harm to their bodily integrity, and the death of one person (as a result of severe beatings).	According to the indictment, defendant Husein Mujanović as a commander of Hrasnica camp in Sarajevo, BiH, unlawfully detained, inhumanly treated, ordered and was among those who inflicted great suffering of Serbian civilians in the period July – October 1992.
Procedural notes	/	In July 2018, members of the Serbian Ministry of the Interior arrested Mujanović on the border between Serbia and BiH. He is still in custody.

Case name	**"Skočić"**	**"Sotin"**
Case number	Kž1 Po2 5/15; Kž3 Po2 1/18	Kž1 Po2 4/15
Number of defendants	8 (Zoran Alić, Damir Bogdanović, Sima Bogdanović, Dragana Đekić, Zoran Đurđević, Tomislav Gavrić, Đorđe Šević, Zoran Stojanović)	5 (Dragan Lončar, Miroslav Malinković, Žarko Milošević, Dragan Mitrović, Mirko Opačić)
Number of victims	32	16
Hierarchy level of defendants	Low paramilitary rank	Low military rank
Indictment filed	30/04/2010	21/12/2013
Stage of the proceeding	Final	Final
Duration of the proceeding since start of first trial	Tomislav Gavrić, Zoran Đurđević, Zoran Alić: 8 years and 6 months All other defendants: 7 years and 7 months	1 year and 10 months
Number of witnesses heard at trial	43	15 and 1 expert witness
First instance judgement date and outcome	**22 February 2013** Zoran Stojanović, Zoran Đurđević: 20 years Tomislav Gavrić, Zoran Alić: 10 years Đorđe Šević, Dragana Đekić: 5 years Damir Bogdanović: 2 years *Sima Bogdanović died before the end of the trial*	**26 June 2015** Dragan Mitrović: 15 years Žarko Milošević: 9 years Dragan Lončar, Miroslav Malinković, Mirko Opačić : Acquittal
Appeals decision date and outcome	**14 May 2014** Annulled and retrial *Zoran Stojanovic died before the end of the appeal proceedings*	**18 November 2016** Confirmed
Retrial judgement date and outcome	**16 June 2015** Acquittal	/

Case name	**“Skočić”**	**“Sotin”**
Second appeal date and outcome	**28 March 2018** Tomislav Gavrić, Zoran Đurđević: 10 years Zoran Alić: 6 years Damir Bogdanović, Đorđe Šević, Dragana Đekić: Confirmed ***Third appeal date and outcome:*** **13 February 2019** Tomislav Gavrić, Zoran Đurđević: Sentence modified: 8 years Zoran Alić: Sentence modified: 5 years	/
Factual background	The indictment alleges that all defendants belonged to a paramilitary formation known as “Sima’s Chetniks” which had strong ties with the Bosnian Serb Army, and was composed entirely of ethnic Serbs from Serbia and BiH. On 12 July 1992 some of the defendants alongside other unit members entered the village of Skočić (Zvornik, BiH), destroyed the local mosque and executed 27 Roma Muslim civilians, mostly women and children (one child survived the execution). The court established that the defendants Gavrić, Đurđević and Alić subsequently held three young Roma women captive and subjected them to rapes and other inhumane treatment for the subsequent seven months.	The indictment alleges that the defendants, former members of the territorial defence, local police in Sotin and the JNA, in the period from October until the end of December 1991 murdered 16 Croatian civilians in Sotin, near Vukovar (Croatia). The body remains of 13 victims were discovered in a mass grave near Sotin in April 2013.
Procedural notes	/	The indictment in the case is largely based on the statements given by a cooperating defendant Žarko Milošević who concluded an agreement on testifying with the Prosecution in July 2013. The Higher Court accepted the agreement in full, including the proposed sentence of nine years of imprisonment.

Case name	**"Srebrenica - Branjevo"**	**"Srebrenica"**	**"Sremska Mitrovica"**
Case number	Spk Po2 1/16	K Po2 3/17	Spk Po2 1/15
Number of defendants	1 (Brano Gojković)	8 (Nedeljko Milidragović, Milivoje Batinica, Aleksandar Dačević, Boro Miletić, Jovan Petrović, Dragomir Parović, Aleksa Golijanin, Vidosav Vasić)	1 (Marko Crevar)
Number of victims	Several hundred	1313	2
Hierarchy level of defendants	Low military rank	Low police rank	Low police rank
Indictment filed	22/01/2016	21/01/2016	05/03/2013
Stage of the proceeding	Final	Trial ongoing	Final
Duration of the proceeding since start of first trial	/	2 years and 10 months	/
Number of witnesses heard at trial	/	23	/
First instance judgement date and outcome	**27 January 2016** Conviction: 10 years	/	**18 February 2015** Conviction: 1 year and 6 months
Appeals decision date and outcome	/	/	/
Retrial judgement date and outcome	/	/	/
Second appeal date and outcome	/	/	/

Case name	**“Srebrenica - Branjevo“**	**“Srebrenica”**	**“Sremska Mitrovica”**
Factual background	The defendant pleaded guilty to committing war crimes against civilian population by taking part in the killings of several hundred Bosniak men aged 17 to 65 after the fall of Srebrenica in July 1995. These victims were executed on 16 July 1995 by members of the 10th Sabotage Detachment of the VRS at the Branjevo farm in the Pilica village, Zvornik municipality (BiH).	The indictment alleges that on 16 July 1995, eight former members of the special police forces of Republika Srpska took part in the killings of more than 1,000 Bosniaks at a warehouse at the outskirts of Srebrenica, BiH.	The defendant pleaded guilty that on 27 February 1992 the defendant, in his capacity as member of the police of the Republic of Srpska Krajina, violated the bodily integrity and tortured two Croatian prisoners of war in a detention facility in Sremska Mitrovica in order to extort information and a confession from them.
Procedural notes	/	The “Srebrenica” case is the result of the investigation conducted by the WCPO of Serbia, and represents co-operation between the WCPO of Serbia and the State Prosecutor’s Office of BiH.	/

Case name	**"Štrpci"**
Case number	K Po2 4/17
Number of defendants	5 (Gojko Lukić, Ljubiša Vasiljević, Duško Vasiljević, Jovan Lipovac, Dragana Đekić)
Number of victims	20
Hierarchy level of defendants	Low military rank
Indictment filed	10/05/2018 *(see Procedural notes)*
Stage of the proceeding	Trial ongoing
Duration of the proceeding since start of first trial	10 months
Number of witnesses heard at trial	31
First instance judgement date and outcome	/
Appeals decision date and outcome	/
Retrial judgement date and outcome	/
Second appeal date and outcome	/
Factual background	The indictment alleges that in 1993, four former members of the "Avengers" unit attached to the VRS and one member of the VRS, gathered at the railway station in Štrpci (BiH), abducted 20 passengers of non-Serbian ethnicity from a train operating on the Belgrade-Bar route, treated them inhumanely and then killed them.

Case name	**“Štrpci”**
Procedural notes	In October 2018, after three and a half years, the indictment in the “Štrpci” case was finally confirmed. The indictment, initially filed by the WCPO in March 2015 and subsequently amended and re-submitted, was dismissed in October 2017. The Court of Appeals found that the indictment was not filed by an authorised prosecutor as it was re-submitted at the time when neither the War Crimes Prosecutor nor a designated acting head were in office. Before it was finally confirmed, the indictment in this case had been corrected six times for formal reasons, and the investigation had been supplemented three times. Proceedings against ten other individuals charged with the same criminal offence are underway before the Court of BiH. In a co-ordinated operation launched by the Serbian and BiH judicial and police authorities, all of the 15 suspects were deprived of liberty on 5 December 2014. However, all five defendants who are being prosecuted in Serbia were released from custody during the investigation.

Case name	**"Tenja II"**	**"Teslić"**	**"Trnje"**
Case number	Kž1 Po2 3/15	KPo2 5/19	Kž1 Po2 5/19
Number of defendants	2 (Žarko Čubrilo, Božo Vidaković)	1 (Nebojša Mirović)	2 (Pavle Gavrilović, Rajko Kozlina)
Number of victims	19	38	37
Hierarchy level of defendants	Low military rank	Low police rank	Mid military rank (Gavrilović) Low military rank (Kozlina)
Indictment filed	22/06/2012	30/12/2019	04/11/2013
Stage of the proceeding	Final	Pending trial start	Final
Duration of the proceeding since start of first trial	3 years and 2 months	/	4 years and 10 months
Number of witnesses heard at trial	43	/	30 and 3 expert witnesses
First instance judgement date and outcome	**6 April 2015** Acquittal	/	**1 April 2019** Pavle Gavrilović: Acquittal Rajko Kozlina: 15 years
Appeals decision date and outcome	**23 December 2015** Confirmed	/	**12 December 2019** Confirmed
Retrial judgement date and outcome	/	/	/
Second appeal date and outcome	/	/	/

Case name	**“Tenja II”**	**“Teslić”**	**“Trnje”**
Factual background	According to the indictment, on 7 July 1991 the defendant Božo Vidaković, in his capacity as commander of the Fourth Company of the Territorial Defense forces in Tenja (Croatia), murdered a prisoner of war, member of the Croatian police, in Tenja. The indictment also alleges that he illegally detained seven Croatian civilians in July and August 1991, whom he subsequently handed over to unidentified persons who murdered them. The indictment further alleges that Žarko Čubrilo, in his capacity as a member of the Territorial Defense forces in Tenja, first illegally detained eleven Croatian civilians in an improvised facility in Tenja and then in mid-July, with the assistance of two other Territorial Defense members, took them to a location near Tenja and murdered them.	According to the indictment, during the summer of 1992, Nebojša Mirović, as a former member of the the Teslić Public Security Centre (BiH), committed acts of torture and infliction of great suffering and violation of bodily integrity against 38 Bosniak civilians, in Teslić, BiH. The bodily injuries resulted in the death of one person (as a result of severe beatings).	The indictment alleges that the defendants, in their capacity as members of the Yugoslav’s Army (JA), on 25 March 1999 participated in an attack on the village of Trnje, municipality of Suva Reka (Kosovo). The order to attack the village was allegedly issued by Gavrilović, at the time commander of the Logistics Battalion of the 549th Motorized Brigade of the Yugoslav Army, who assembled his subordinate commanders, including Kozlina, and gave them instructions to kill civilians saying “There must be no survivors.” The court established that Kozlina and other commanders organized their troops and then launched an attack on the village, which resulted in the killing of 27 Kosovo Albanian civilians and the wounding of two more.

Case name	**"Tenja II"**	**"Teslić"**	**"Trnje"**
Procedural notes	Proceedings against Božo Vidaković were severed on 17 April 2014 as the defendant failed to appear in court on several occasions because of medical reasons. The State's Attorney's Office of the Republic of Croatia transferred the evidence in the case to the WCPO.	As the defendant was unavailable to the BiH authorities, the Serbian WCPO took over the criminal prosecution of the case upon referral from BiH.	This is the first WCPO indictment against members of the Serbian Army currently in office. Gavrilović went into retirement after the start of the trial. In 2008, Gavrilović was called by the defence to testify about the events in Trnje at the ICTY trial against Milan Milutinović and others. Two other former members of Gavrilović's unit testified regarding the same events as prosecution witnesses in the "Milutinović" and "Milošević" cases as protected witnesses.

Case name	**“Tuzla convoy”**	**“Željko Maričić”**	**“Zvornik - Karakaj”**
Case number	Kž1 Po2 5/14	K Po2 10/18	K Po2 1/19
Number of defendants	1 (Ilija Jurišić)	1 (Željko Maričić)	1 (Dalibor Maksimović)
Number of victims	101	6	4
Hierarchy level of defendants	Mid police rank	Low military rank	Low military rank
Indictment filed	09/11/2007	27/11/2018	10/05/2019
Stage of the proceeding	Final	Trial ongoing	Trial ongoing
Duration of the proceeding since start of first trial	7 years and 10 months	10 months	4 months
Number of witnesses heard at trial	110	5	4
First instance judgement date and outcome	**28 September 2009** 12 years	/	/
Appeals decision date and outcome	**11 October 2010** Annulled and retrial	/	/
Retrial judgement date and outcome	**02 December 2013** Conviction: 12 years	/	/
Second appeal date and outcome	**25 December 2015** Acquittal	/	/

Case name	**"Tuzla convoy"**	**"Željko Maričić"**	**"Zvornik - Karakaj"**
Factual background	The indictment relates to an attack carried out against JNA forces which were retreating from the town of Tuzla (BiH) on 15 May 1992. It is alleged that there existed an agreement between BiH forces and the JNA to allow the latter to retreat peacefully from Tuzla in a convoy. Ilija Jurišić, as a member of the BiH forces, allegedly received an order from his superior officer to attack the JNA convoy and personally passed on the order over the radio. The attack resulted in the killing of 51 JNA members and the wounding of at least 50 more.	According to the indictment, in May 1992, the defendant, in his capacity as a member of the VRS, committed acts of inhumane treatment, infliction of great suffering and violation of bodily integrity against six Bosniak civilians who had previously been detained and held in elementary school in Ključ (BiH). The civilians were subjected to severe beatings for one whole day. In addition, according to the indictment, the defendant stabbed one victim in the back with his knife, inflicting great suffering upon him.	The indictment alleges that the defendant, as a member of the VRS, killed four detained Bosniak male civilians, by firing from a firearm in Karakaj, near Zvornik, BiH in April 1992. The bodies of the killed Bosniak civilians were found in the mass grave located at Kazanbašča near Zvornik in 2003, and subsequently exhumed and identified.
Procedural notes	This case was transferred to the WCPO in 2004 by the Office of the Military Prosecutor in Belgrade.	As the defendant was unavailable to the BiH authorities, the Serbian WCPO took over the criminal prosecution of the case upon referral from BiH.	The defendant was indicted and convicted by the first-instance court for war crimes against civilians in the "Bratunac" case. The BiH authorities had initiated criminal proceedings against the defendant, but due to his unavailability, transferred the case to the Serbian WCPO.

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