



Humanitarian Law Center

LIST OF ISSUES PRIOR TO REPORT

For Consideration by the United Nations Committee against Torture at its 62nd session

The Humanitarian Law Center (HLC) is a regional non-governmental organization dealing with issues of human rights and international humanitarian law.

It was founded in 1992 in connection with the armed conflicts in the former Yugoslavia. By way of interviewing witnesses and victims since its establishment, the HLC has researched the murders, enforced disappearances, concentration camps, torture of prisoners of war and the pattern of ethnic cleansing during the armed conflicts.

The HLC is the largest documentation center on war crimes and human rights violations committed during the wars in the former Yugoslavia.

The HLC also represent victims in criminal proceedings before the War Crimes Chambers and in civil proceedings for compensation.

To date, the HLC has represented over a thousand victims of grave violations of human rights and international humanitarian law.





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I. National war crimes prosecution and trials¹

Lack of political support and interference of the executive branch of government

Public statements made by the highest officials of the government show that there is no political support for national war crimes trials or the work of the special judiciary and prosecution for war crimes. Moreover, the political statements show an outright attempt to undermine the efforts of these institutions.

The lack of political support for the national prosecution of war crimes has **repercussions on the effectiveness of the prosecutions and of war crimes trials**. For instance, individuals responsible under the doctrine of command responsibility have so far completely eluded justice, because of the unwillingness of the Office of the War Crimes Prosecutor to apply this doctrine.²

Furthermore, the **National Strategy for the Prosecution of War Crimes** which sets objectives and priorities for the coming period was adopted in February 2016. The overall objective of the Strategy is to significantly improve the efficiency of war crimes investigation and prosecution. This objective is expected to be achieved through: curtailing impunity for war crimes, by punishing those responsible regardless of their capacity and status; supporting the judiciary through the promotion of regional judicial cooperation and harmonization of case law in order to achieve proportionality of punishment; enhancing witness and victim support mechanisms; improving cooperation between government bodies responsible for uncovering and prosecuting war crimes; and raising the level of societal awareness about the importance of punishing war crimes perpetrators. However, in 2016 a new War Crimes Prosecutor and a new Deputy Prosecutor still had not been appointed, the prosecution strategy was not adopted, the OWCP raised only seven indictments, which all concern simple cases which were transferred from BiH after being

¹ See HLC's Annual Report on War Crimes Trials for 2016, available here http://www.hlc-rdc.org/wp-content/uploads/2017/05/Izvestaj_o_sudjenjima_za_2016_eng.pdf

² Amnesty International Report, Serbia: Ending Impunity for Crimes Under International Law, June 17th, 2014, available at <http://www.amnesty.org/en/library/info/EUR70/012/2014/en>





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fully investigated and after the indictments had been confirmed by the BiH judiciary, not a single indictment was raised for crimes in Kosovo, the number of persons still missing was not reduced, and the proceedings in the main cases, such as *Ovčara*, *Lovas*, *Ćuška* and *Skočić*, were not completed. All these indicate that **the National Strategy is not being implemented.**

Suggested questions for Government of Serbia:

1. Please describe the implementation process of the ***National Strategy for the Prosecution of War Crimes*** (2016 – 2020) adopted by the Government of the Republic of Serbia.
2. Please provide detailed information on training programmes for prosecutors and judges dealing with war crimes cases, to detect and prosecute physical and psychological sequel of torture.
3. Please provide detailed information on the progress made in the *Ovčara*, *Lovas*, *Ćuška*, *Srebrenica* and *Skočić* cases.

The ineffectiveness of the prosecution of war crimes in Serbia

War crimes trials are characterised by multiple, long-standing problems that have continued to hinder establishing criminal justice for crimes in the past. The Office of the War Crimes Prosecutor was highly inefficient. The downward trend in the number of indictments from previous years continued into the 2015-2017 period, with fewer indictees and prosecutions focusing solely on low-level and direct perpetrators. In 2015 only two indictments were filled, against 13 persons (one of these two indictments has not been confirmed to date), and in 2016 seven indictments were filled, against 7 persons. The indictments are almost exclusively directed against low ranking perpetrators, and in the last six years, most of the indictments have only one defendant and one or a very small number of victims. **No charges have ever been brought against any individuals who held high military, police or political office during the conflicts.** No indictments were filed for crimes against humanity or for command responsibility. Of particular concern is the fact that in the previous period there have been a number of war crimes trials that have resulted in acquittals, primarily on account of poor investigations and unfounded indictments. War crimes trials last long. The excessive length of proceedings has been one of the reason why victims and witnesses are increasingly refusing to take part in them. The war crimes departments' policy of handing down too light sentences without giving reasons for such judgments has been criticized by





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the legal community. Since 2014, no new indictments were filed for war crimes committed in Kosovo, during the armed conflict in 1999.

Suggested questions for Government of Serbia:

4. Please provide updated information on the status of the Ovčara trial, on whether the appeal process has been completed, the exact charges, and sentences imposed. If the appeal process is still ongoing, please explain the reasons why.³
5. Please provide updated information on the status of the Bytyqi Brothers case, on whether there is a new investigation.
6. Please provide information whether there is an investigation for the detection of crimes committed against Albanian civilians, during the conflict in the territory of Kosovo, whose remains have been found in 2013 in the mass grave Rudnica, in the territory of Serbia?⁴
7. Please provide information whether there is an investigation for the detection of crimes committed during the operation “Reka” – in the villages of Meja and Korenica, the municipality of Gjakovë / Djakovica, in April 1999, when around 350 Albanian civilians were killed.⁵
8. Please provide updated information on the status of the investigation against former commander of the 125th Motorized Brigade, General Dragana Zivanovic, on suspicion that during the period from April 1 to May 15, 1999, in the villages of Cuska, Pavljan, Ljubenic and Zahac, he committed war crimes by failing to take any measures and failing to prevent the killings and serious injuries to civilians.⁶
9. Please provide updated detailed information on the investigation, prosecution and sanctioning of other war crimes and past human rights violations.
10. Please provide information on any measures taken to address the lack of human resources and funding of the Belgrade War

³ See HLC Press release, 25 Years Since Crime at Ovčara Victims’ trust in domestic judiciary is betrayed, available here <http://www.hlc-rdc.org/?p=32966&lang=de>

⁴ See HLC, Dossier Rudnica, available here http://www.hlc-rdc.org/wp-content/uploads/2015/01/Dosije_Rudnica_eng.pdf

⁵ See HLC, Dossier Operation Reka, available here http://www.hlc-rdc.org/wp-content/uploads/2015/10/Dossier-Operation_Reka.pdf

⁶ See HLC, Dossier 125th Motorized Brigade of the Yugoslav Army, available here <http://www.hlc-rdc.org/wp-content/uploads/2013/10/Dossier-125th-mtbr.pdf>





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Crimes Chamber and the Office of the War Crimes Prosecutor, as well as deficiencies in the system of witness protection.

11. With reference to the Committee's previous observations, please provide detailed statistical data on complaints relating ill-treatment allegedly committed by law enforcement officials related to war crimes cases and on the penal or disciplinary sanctions applied.

Searching for missing persons

The search for missing persons is progressing slowly, owing to the absence of an adequate legal framework and the inaction by the competent authority. A law which would have laid down the legal status of the families of missing persons was not passed, so they continue to be one of the most vulnerable categories in society. According to the International Committee of the Red Cross (ICRC), during the wars in the former Yugoslavia, 34,883 people disappeared. Nearly 12,000 people are still missing.

Over 900 bodies of missing Kosovo Albanians have been exhumed on the territory of the Republic of Serbia. These people were killed during the armed conflict in Kosovo and their bodies were transferred and buried in secret locations in Serbia, in order to conceal evidence of crimes. Secret mass graves were found in the training facility of the Special Antiterrorist Unit (SAJ) of the Serbian Interior Ministry (MUP) in **Batajnica** (on the outskirts of Belgrade); the training ground of the Special Operations Unit (JSO) in **Petrovo Selo**, near Kladovo; and near Lake **Perucac** at Bajina Basta. In 2013, a new mass grave was found in Serbia (in **Rudnica**, Raska), containing 52 bodies of Kosovo Albanian civilians. This is the first mass grave discovered in Serbia that will not be taken up by the ICTY, owing to the completion of its mandate. Therefore, the investigation of this mass grave falls under the exclusive jurisdiction of the Serbian authorities.

So far, no one in Serbia has been charged for the concealment of bodies of Kosovo Albanians in the period 1999-2002.⁷

Serbia's inaction in the search for missing persons and punishment of those responsible for war crimes constitutes inhuman treatment of the victims' family members.⁸

Suggested questions for the Government of Serbia:

⁷ See HLC, Dossier The cover-up of evidence of crimes during the war in Kosovo: THE CONCEALMENT OF BODIES OPERATION, available at http://www.hlc-rdc.org/wp-content/uploads/2017/01/Dosije_OPERACIJA_SKRIVANJA_TELA_eng.pdf

⁸ See e.g. *Kurt v. Turkey*, application no. 15/1997/799/1002, judgment of 25 May 1998, para. 134; *Cyprus v. Turkey*, application no. 25781/94, judgment of 10 May 2001, para. 157.





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12. Please provide information about measures undertaken in the search for missing persons and punishment of those responsible.

II. Redress and compensation for victims⁹

The rights of victims of human rights violations during the nineties in Serbia are below the minimum international standards, whether the victims are Serbian citizens or citizens of other countries in the region. The legal framework for the exercise of the rights of victims who are Serbian citizens, is the Law on Civilian Invalids of War, dating from 1996.¹⁰ The rights that the Law provides for civilian victims and their families can be divided into three groups: (1) monetary compensation; (2) healthcare; and (3) reduced prices of public transport tickets.

Pursuant to this law, **the right to the assistance and support of the state is denied to the families of missing persons, victims of sexual violence, victims who suffer from the psychological consequences of the violence sustained, victims with physical disabilities of less than 50%, victims who perished on the territory of another country and those who perished as a result of the crimes committed by the Serbian armed forces.**

The victims of crimes committed by Serbian forces who are nationals of other post-Yugoslav countries, in view of the fact that the previously mentioned law does not apply to them, are trying to achieve the right to compensation in court proceedings against the Republic of Serbia before the courts in Serbia. These cases are governed by the general rules of civil procedure, in which the victim is in the position of a prosecutor who must bear the burden of proof entirely. In most cases, the courts dismiss the victims' compensation claims because of an alleged statute of limitations, interpreting the relevant legal norms to the detriment of the victims. In the rare cases where the claims are granted, they result in minimum compensation amounts. The procedures in these cases last on average five years.

In the course of criminal proceedings for war crimes, victims, as injured parties, can file a claim seeking compensation in respect of material or non-pecuniary damages suffered. A compensation claim must be filed before the completion of the trial stage.¹¹ Yet, in the war crimes proceedings conducted so far, **the court has never decided upon compensation**

⁹ See HLC, „Victims' Right to Reparation in Serbia and the European Court of Human Rights Standards“, available at http://www.hlc-rdc.org/wp-content/uploads/2016/01/Izvestaj_o_reparacijama_2014_eng_FF.pdf

¹⁰ Law on Civilian Invalids of War (“Republic of Serbia Official Gazette” no. 52/96), Article 2, available in English at http://www.hlc-rdc.org/wp-content/uploads/2014/03/The_Law_on_Civilian_Invalids_of_War.pdf

¹¹ ZKP, Art. 252–260.





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claims filed in the course of criminal proceedings, but instructed the injured parties to claim compensation through civil litigation.¹²

Suggested questions for Government of Serbia:

13. Please provide information on redress and compensation measures ordered by the courts and actually provided to victims of war crimes. This information should include the number of requests made, the number granted, and the amounts ordered and those actually provided in each case.
14. Please provide information on adequate resources provided or planned to ensure the effective functioning of redress and compensation measures.
15. Please clarify whether the right to compensation depends on the existence of a judgement in criminal proceedings ordering compensation.
16. Does the current legislation on civilian victims of war offer adequate compensation and/or other benefits to all victims of torture in relation to war, regardless of their personal circumstances (e.g. residence, nationality, type of injury sustained, date and place of violation)?
17. Please provide detailed information on number of victims that have obtained rights under the Law on civilian victims of war, along with the amounts awarded.
18. Please provide information whether there is still the statute of limitations that applies to compensation for torture and ill-treatment in cases of war crimes, with respect to the fact that there is no statute of limitations for war crimes.
19. Please provide information about all beneficiary categories that may seek compensation for torture and ill-treatment in

¹² Judgment of the Higher Court in Belgrade in *Sotin*, K.Po2 2\$14 of 26.06.2015, p. 8, available (in Serbian) at http://www.hlc-rdc.org/wp-content/uploads/2015/10/Presuda_Sotin.pdf, accessed on 8 February 2017, Judgment of the Higher Court in Belgrade in Podujevo, K.Po2 44/2010 of 22. September 2010, available at <http://www.hlc-rdc.org/wp-content/uploads/2012/03/3.-Podujevo-II-prvostepena-presuda-u-ponovljenom-postupku-Djukic-Zeljko-broj-44-2010-nd.pdf>, accessed on 8 February 2017, Judgment of the Higher Court in Belgrade predemt u in *Zvornik II* case, K.Po2 28/2010, of 22 November 2010, p. 17, available (in Serbian) at <http://www.hlc-rdc.org/wp-content/uploads/2012/02/ZVORNIK-II-prvostepena-presuda-22.11.2010..pdf>, accessed on 8 February 2017.





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connection to war crimes and conditions that must be met in order to be entitled to those compensation measures.

III. Treatment of victims and witnesses in cases of war crimes

In the current practice of prosecuting war crimes in Serbia, it is evident that the measures of nonprocedural protection do not achieve their purpose when it comes to insider witnesses – former or active members of the armed forces of Republic of Serbia who participated and/or have knowledge of the crimes committed, owing to the inconclusive legal framework and insufficient political support for this most vulnerable aspect of the prosecution of war crimes. Among the numerous problems that hinder an effective protection of insider witnesses and thus seriously threaten prosecuting the persons responsible for committed war crimes, those that stand out are: an inadequate legal framework for the protection of insider witnesses who do not enter into a protection programme, weak mechanisms for the control and supervision of the witness protection programme, non-transparent and ad hoc procedures for the investigation of misconducts of members of Protection Unit, as well as the public support of government representatives for war crimes suspects. The problems in the system for the protection of insider witnesses in Serbia have been registered by several international institutions and organizations.¹³

On January 1, 2016, the Rules on Reimbursement of Costs associated with judicial proceedings have changed.¹⁴ In the past, the expenses of all persons who appeared in court to give evidence in war crimes cases were reimbursed by the court in cash, immediately after their hearing was completed. Since that practice was abandoned, **reimbursements of expenses related to giving evidence are now being made solely via deposits to witnesses' bank accounts.**

Because of this change, witnesses who claim for expenses associated with giving evidence in court must submit their bank account number if they come from Serbia, or foreign currency account number, including instructions for foreign payment, if they come from abroad. Witness expenses are paid by the Treasury of the National Bank of Serbia, and the process may take as long as several weeks.

The said procedures have significantly complicated matters for witnesses who go to court to give evidence, and, in consequence, have had a negative impact on war crimes proceedings.

¹³ Humanitarian Law Center, Report on War Crimes Trials in Serbia for 2010, "Remarks by the HLC's protected witness," available at: http://www.hlc-rdc.org/wp-content/uploads/2014/04/Izvestaj_o-domacim-sudjenjima-za-r-zi_srpski.pdf

¹⁴ Article 5 of the Rules on Reimbursement of Costs associated with judicial Proceedings, Official Gazette of the RS, nos. 9/2016 and 62/2016.





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The costs linked to giving evidence in court can be rather high, especially for witnesses from foreign countries or those coming from small towns and villages without a direct transport connection to Belgrade. The financial situation of most witnesses, especially victim-witnesses, is rather poor, so they often need to borrow money to go to court. For elderly witnesses, some of whom are sick or illiterate, opening a foreign currency account is a tricky task and additional burden. Most of the witnesses who testify in war crimes proceedings find this new procedure annoying, and even disturbing, especially the vulnerable witnesses.

Because of witnesses' inability to finance their appearance in court, a significant number of hearings were adjourned during 2016.¹⁵ This will undoubtedly add one more item to the already long list of reasons why victims refuse to give evidence before the War Crimes Department in Belgrade.

For the witnesses from Serbia who cannot afford to finance their appearance in court, failure to show up when called could even result in a fine, which would further deteriorate their financial situation, or in the police bringing them to court, which means being treated as criminals and further humiliated.¹⁶

Suggested questions for Government of Serbia:

20. Please provide information on the measures adopted, including legislative, to address concerns regarding the insufficient measures and services to protect victims and witnesses in cases of war crimes.
21. Please provide information on the measures adopted, including legislative, to address concerns regarding witnesses' inability to appear in court due to financial burdens.
22. Please provide detailed information on specific training and sensitization programmes developed by the State party for law enforcement personnel concerning the treatment of victims and witnesses in cases of war crimes.
23. Please indicate the number of witnesses that have been granted protection measures, in order to protect their identity, and prevent it from becoming public in war crimes trials.

¹⁵ See, e.g., *Trnje*, the main hearing of 20 May 2016, p. 110, available (in Serbian) at <http://www.hlc-rdc.org/wp-content/uploads/2016/06/19-20.05.2016..pdf>; HLC's trial report of 23 May 2016 in *Bosanski Petrovac – Gaj*, available (in Serbian) at http://www.hlc-rdc.org/wp-content/uploads/2016/05/Bosanski_Petrovac_-_Gaj_-_Izvestaj_sa_sudjenja_23.05.2016.pdf.

¹⁶ ZKP, Article 384.





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24. Please provide updated information about special protective measures for victims of sexual abuse in war crime trials.
25. Please indicate the progress in the witness protection program, when it comes to former members of the Serbian forces who are willing to testify about the crimes of their former colleagues.
26. Please refer to complaints to the unlawful actions committed by members of the Protection Unit, which is responsible for the implementation of the protection program, against former members of the armed forces under the Unit's protection.
27. Please indicate measures taken by the State party in order to establish a mechanism for the verification of individual complaints filed by persons protected by the protection program, or for checking the circumstances of their decision to leave the Program.
28. Please provide information about steps taken to adopt the by-laws required for changing the identities of protected persons.
29. Considering the fact that numerous law enforcement officials, of both junior and senior rank, who were involved in the wars in the territory of former Yugoslavia, remain in active service in Serbia, please indicate any further measures taken by the State party to reform the security forces or carry out the personnel changes in the police force, in order to make a clear break with the practices of the former regime and restore public confidence in law enforcement. Please provide information with respect to any particular challenges that the State party may be facing with respect to these requirements.

IV. Regional cooperation

A consequence of the cross-border nature of the armed conflicts in the former Yugoslavia is that victims, witnesses and perpetrators and evidence are for the most part today not located within the territory of one state or within the competence of a single national judiciary. What is more, as almost all former Yugoslavia successor states ban extradition of their citizens for trials in other countries, prosecution of war crimes committed on the territory of the former Yugoslavia is impossible without effective judicial cooperation among the countries in the region. The efforts to improve and formalise regional judicial cooperation in war crimes processing emerged back in 2004, and developed into what is now known as the "Brijuni Process", which has produced meaningful results.





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For the first time in 12 years, the OWCP did not participate in an annual regional conference of war crimes prosecutors. This year's conference was held on the Brijuni Islands, Croatia, in September 2016. As the decision not to participate in the conference came at the time bilateral relations between Serbia and Croatia hit a low point,¹⁷ the HLC sees this as alarming evidence of political interference with the judiciary, which undermines the implementation of both the Action Plan for Chapter 23 and the National Strategy for the Prosecution of War Crimes.¹⁸

Namely, the Action Plan for Chapter 23 foresees joint activities among prosecutor's offices in the region in the field of war crimes prosecution,¹⁹ and the National Strategy states, as one of its goals, "support to the judiciary through improving regional cooperation", and specifically mentions the participation of the OWCP in the regional conferences of war crimes prosecutors.²⁰

Absence of co-operation with Kosovo

In 2016, the OWCP notified the HLC that it is **de facto unable to investigate war crimes committed in Kosovo because they cannot undertake any evidentiary actions in Kosovo**. Namely, the EULEX mission, which previously facilitated judicial cooperation between Serbia and Kosovo, no longer has the mandate to undertake investigations; this has been since May 2014, when investigations were transferred to the competence of local prosecutors. And local prosecutors refuse to cooperate with the OWCP.

30. Please indicate measures taken by the State party to strengthen its regional cooperation with neighbouring countries related to the prosecution of war crimes. Please provide information with respect to any particular challenges that the State party may be facing with respect to these requirements.
31. In particular, please indicate measures undertaken to enable the prosecution of war crimes committed in Kosovo.
32. Please provide information about steps taken to conclude extradition agreements covering war crimes cases.

¹⁷ See, e.g., Tomislav Šoškarić, "Hrvatska i Srbija: Psihoza i 'šamaranje' za domaću publiku" [Croatia and Serbia: Psychosis and exchange of "blows" for domestic consumption], 26 August 2016, available (in Serbian) at <http://balkans.aljazeera.net/vijesti/hrvatska-i-srbija-psihoza-i-samaranje-za-domacu-publiku>

¹⁸ FHP, "Consequences of Political Tensions on Prosecution of War Crimes: For the first time, Serbia does not participate in the regional conference of war crimes prosecutors", 7 September 2016, available at <http://www.hlc-rdc.org/?p=32698&lang=de>, accessed on 7 March 2017.

¹⁹ Final version of the Action Plan for negotiations on Chapter 23, Activity 1.4.1.3, available at <http://www.mpravde.gov.rs/files/Action%20plan%20Ch%2023.pdf>, accessed on 6 March 2017.

²⁰ National Strategy for the Prosecution of War Crimes, Official Gazette of the RS no. 19/2016, available at http://www.tuzilastvorz.org.rs/upload/HomeDocument/Document_en/2016-05/p_nac_stragetija_eng.PDF, accessed on 7 March 2017.

