

War crimes proceedings in Serbia (2020 - 2021)
Summary of the OSCE Mission to Serbia's monitoring results
presented in June 2022

The challenges caused by the COVID-19 pandemic affected the processing of war crimes cases in Serbia in the reporting period (2020 – 2021). Nonetheless, Serbian institutions managed to continue with war crimes processing. While the state of affairs remained largely unchanged, compared to the findings contained in the OSCE Mission's report "War crimes proceedings in Serbia (2015-2019) - An analysis of the OSCE Mission to Serbia's monitoring results" (hereinafter the "2019 Report"), the Mission observed some positive developments in this area.

In the reporting period, the amendment of the Constitution concerning the judiciary was achieved. The aim of the amendments is to contribute to judicial independence and separation of powers, enabling judicial appointments to be independent of the legislative and executive branches of power. Further elaboration of the legal framework will be crucial to provide safeguards for judges and prosecutors, including the ones dealing with war crimes, from political interference.

In October 2021, the Government adopted the new National Strategy for Prosecution of War Crimes for the period 2021 – 2026.¹ The new strategic document should be a useful tool in moving ahead the processing of war crimes cases. Ultimately, the success of the Strategy will be judged based on results.

Concerning international co-operation, the arrest warrants issued by the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Residual Mechanism for Criminal Tribunals (IRMCT) on contempt of court charges are still not executed.² In May 2021, the President of the IRMCT addressed this matter to the President of the UN Security Council (UNSC), calling upon the UNSC "to take the necessary measures to ensure that Serbia fulfils its obligations under the statute of the Mechanism and Security Council Resolution 1966 (2010)".³ On the other hand, concrete results have been achieved as a result of the co-operation between the Serbian War Crimes Prosecutor's Office (WCPO) and the IRMCT Office of the Prosecutor. Enhanced progress in processing of cases arising from this co-operation should validate the ultimate impact of recent positive improvements.

Judicial co-operation between the countries in the region remains crucial to ensure that those responsible for atrocities committed in the former Yugoslavia during the 1990s are held responsible. No significant changes in this area were recorded comparing to the findings in the 2019 Report. Co-operation with the authorities of Bosnia and Herzegovina (BiH) remained largely satisfactory, with indications of tangible improvement. In the reporting period, BiH judicial authorities transferred to Serbia three category II cases involving high-ranking defendants and significant numbers of victims. The abovementioned transfers – facilitated by the IRMCT Office of the Prosecutor – materialized into two ongoing prosecutions.⁴ In the

¹ During the consultative process, the Mission provided comments on the draft strategic document aiming to contribute to the creation of a comprehensive and above all practically viable strategic document targeting to continue and improve combating impunity for committed war crimes.

² In the period 2015 – 2019, mutual relations were compromised by Serbian institutions' refusal to execute arrest warrants against three defendants (Petar Jojić, Jovo Ostojić and Vjerica Radeta) charged with four counts of contempt of court in relation to alleged witness intimidation in the trial case of Prosecutor v. Vojislav Šešelj. In June 2017, defendant Ostojić passed away.

³ See: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N21/117/75/PDF/N2111775.pdf?OpenElement>

⁴ The "Rogatica" case and the "Sanski Most II" case.

reporting period, the Serbian judicial authorities for the first time had undertaken steps towards transferring of criminal prosecution of an individual – a BiH citizen – who was arrested and indicted by the WCPO, to the BiH state authorities.⁵ In addition, the WCPO transferred 24 investigative files to the Prosecutor’s Office of BiH. No progress in co-operation with Croatia was noted in the reporting period. In that regard, in 2021, the WCPO indicted a Croatian citizen, requesting a trial in absentia. Without prejudice to the legal outcome of these proceedings,⁶ the Mission affirms that addressing the existing impediments through bilateral agreement would only lead to a breakthrough in co-operation between the two countries in processing war crimes file thus achieving more justice for all victims.

Mutual assistance between authorities in Pristina and Belgrade had been significantly compromised ever since June 2018 with no signs of a positive development, which directly affects processing of cases of war crimes committed in Kosovo.⁷ A number of viable investigations remained unprosecuted in the reporting period.

Between 1 January 2020 and 31 December 2021, the WCPO charged a total of 16 defendants with war crimes against civilians and prisoners of war in 14 indictments. Nine of these were cases fully investigated by the BiH authorities and formally transferred to the Serbian courts for trial, whereas five cases derived from the WCPO’s investigative work (two cases in 2020 and three in 2021). Seven of them involve a large number of victims (more than 20 per case indicted), whereas the remaining seven concern isolated incidents ranging from one to 14 victims. No new cases regarding crimes committed against Kosovo Albanians were initiated since 2013.

Overall, most war crimes cases prosecuted in Serbia in the period 2020 – 2021 continued to involve low-ranking defendants. However, prosecutions of high-ranking defendants have been recorded for the first time since setting up of specialised institutions for war crimes processing in Serbia in 2003. In 2020, the WCPO indicted two brigade commanders in two cases involving hundreds of victims, whereas in 2021 the WCPO accused one brigade commander and one commander of the corps, charging the latter with ordering and participating in the displacement of thousands of Bosniak civilians from Srebrenica, BiH in 1995.

The vast majority of defendants in new indictments continued to be of Serbian nationality, correspondingly to what the OSCE Mission to Serbia observed in its 2019 and 2014 reports.⁸ Four defendants were members of the Bosniak forces, Croat forces and the Kosovo Liberation Army (KLA) forces. In the reporting period, more than two thirds of the accused were former members of the military (including “territorial defence” forces), while members of the police and paramilitary forces account for most of the other defendants. Three defendants were charged with acting in their capacity as civilians.

⁵ However, the other two citizens of BiH, arrested in Serbia and accused of war crimes, are still in custody in Serbia, and proceedings against them are underway before the Higher Court (i.e. the “Sarajevo/Hrasnica camp” case against Husein Mujanovic and the “Rasadnik camp” case against Osman Osmanovic).

⁶ After the WCPO filed an indictment in June 2021, the Higher Court in Belgrade ordered a supplemental investigation in this case. According to the Serbian Criminal Procedure Code, the trial panel shall decide on the WCPO’s motion to initiate trial in absentia after the indictment has been confirmed.

⁷ All references to Kosovo, whether to the territory, institutions or population, in this text should be understood in full compliance with United Nations Security Council Resolution 1244.

⁸ “War crimes proceedings in Serbia (2003-2014) - An analysis of the OSCE Mission to Serbia’s monitoring results”.

The average number of victims per prosecuted case between 2020 and 2021 continued to upsurge, comparing to the 2019 Report's findings, largely due to the significant number of victims in cases related to the events in and around the municipalities of Rogatica, Sanski Most, Ključ⁹ and Srebrenica, during the 1992-1995 conflict in BiH. New cases prosecuted in the reporting period have covered crimes committed against thousands of victims,¹⁰ predominantly ethnic Bosniaks and Serbs. Similarly to the findings from the 2014 and 2019 reports, the prosecuted cases in 2020 – 2021 predominantly involved crimes against victims of Bosniak ethnicity (more than 70 per cent of cases). Cases involving ethnic Serb victims represented 28 per cent of the total number of the prosecuted cases in the reporting period. None of the new cases involved ethnic Croat or Kosovo Albanian victims.

The scale of the crimes prosecuted in the reporting period continued to vary significantly, from incidents ranging from one to four victims to cases concerning attacks against civilian population, murder, inflicting of bodily injury, etc. of more than 800 persons, or a case involving the displacement of several thousand civilians from Srebrenica, BiH in 1995.

In 2020, the WCPO investigated seven cases against a total of 53 suspects, including initiating new investigations against eight individuals. In 2021, the WCPO initiated 14 investigations against 23 suspects. As of 31 December 2021, the WCPO had ongoing investigations against a total of 69 suspects, including the high-ranking individuals at the time of the alleged crime.

In spite of these positive results, a number of larger-scale crimes remain unprosecuted. A clear definition of WCPO priorities and more tangible results are advisable all the more, given the time remaining for viable prosecutions. While the WCPO understandably cannot entirely govern the dynamic of cases/case files transferred to them from the region and the IRMCT, it undeniably can improve the output of its own investigations and corresponding prosecutions. In that regard, it is necessary to promptly terminate all open investigations that appear to have no prospect of viable prosecution. Considerable strengthening of the WCPO – currently operating with 12 deputies – should have enabled this office to both process the transferred cases and focus considerably on investigation and prosecution of the cases it had initiated. The significant increase of the number of deputies is yet to result in a corresponding increase in the number of new cases investigated or indicted. In that regard, the upcoming revision and implementation of the Prosecutorial Strategy¹¹ is advisable as to properly address the significant backlog of cases.

Delays in war crimes proceedings recorded in the reporting period were mainly caused by external factors related to the COVID-19 pandemic. In that regard, the hearings in war crimes cases were not commenced before the War Crimes Departments (WCD) of the Belgrade's Higher Court and the Court of Appeals from mid-March until May 2020.¹² Furthermore, a

⁹ However, the proceedings related to the events in the Ključ municipality, BiH, involving more than 300 victims, were terminated in February 2021, since the accused passed away two months after the WCPO had filed the indictment.

¹⁰ In its 2014 and 2019 reports, the Mission considered only victims of crimes against physical integrity such as murder, torture, rape and beatings, whereas the victims of crimes such as displacement or destruction of property were not included. The reason for this was both because of the difficulties in determining their precise number and the comparatively less serious nature of the violations suffered.

¹¹ The Prosecutorial Strategy for the Investigation and Prosecution of War Crimes in the Republic of Serbia 2018-2023.

¹² On 15 March 2020, a state of emergency was declared in Serbia due to the COVID-19 pandemic. Accordingly, on 18 March 2020 the High Judicial Council issued a conclusion determining that only non-delayed trials will be held during the state of emergency. According to the conclusion, war crimes cases as such were not considered as non-delayed. After the lifting of the state of emergency on 6 May 2020, the trials in war crimes cases resumed.

number of hearings was postponed for medical reasons related to the pandemic.¹³ Even so, the overall pace of the war crimes proceedings was not significantly affected, given the rather adverse circumstances.

However, not all proceedings progressed in the reporting period. In the “Ćuška” case no hearing was held for two years. The proceedings in this case have been ongoing for over 11 years, whereas the retrial is still ongoing at the time of this update in May 2022, i.e. six and a half years after its start. The Mission observes that the adjudication of war crimes, particularly large-scale cases involving multiple defendants and large numbers of victims, is indeed more complex, since, among others, most of the evidence, including witnesses, were and still are often located out of the Serbian WCDs’ jurisdiction. However, trials should always be conducted in an efficient and expeditious fashion since both defendants and victims are entitled to trial within a reasonable time.

In the reporting period, a total of 56 defendants were tried in the course of 27 first and second instance trials and retrials.¹⁴ In the reporting period, the Higher Court rendered ten first-instance judgements (all convictions). Nine trials had been completed with final decisions, resulting in the conviction of more than 85 per cent of the accused (14 convicted and two acquitted).¹⁵ As of 31 December 2021, 18 trials were still ongoing at different procedural stages: 13 on first instance, three on retrial and two on appeal (either upon trial or retrial). In two cases the proceedings were terminated before the start of the main hearing.¹⁶

Sentences imposed during the reporting period were in line with the statutory punishment foreseen for war crimes (five to 15, or 20 years). In the first instance, two defendants were sentenced to 15 years imprisonment each, while six defendants were sentenced to ten years or less. The first instance court also sentenced three defendants to punishments below the statutory minimum of five years. In the final instance, 12 out of 14 defendants were sentenced to eight years or less, of whom seven 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 5.9 years.

More than two decades have passed since the conflicts on the territory of the former Yugoslavia. The ageing of defendants, witnesses and victims exposes war crimes cases to increasing challenges to their viability. The timeframe for feasible processing is considerably narrowed, and the coming years will leave the authorities with a last-ditch chance to tackle impunity in a wide-ranging and far-reaching manner. With the ultimate goals to have as many victims as possible see justice in their lifetimes, and that the most egregious crimes are prosecuted while the perpetrators are still alive, it is crucial to prioritize, select and prosecute viable cases in a systematic and coherent manner, and to adjudicate all war crimes proceedings in an efficient and expeditious fashion.

¹³ COVID-19 infections of judges, panel members, parties to the proceedings and witnesses.

¹⁴ Proceedings against five defendants were terminated due to their deaths, or suspended indefinitely due to their illnesses preventing them to stand a trial (one defendant each in the “Srebrenica” case, the “Štrpci” case, the “Drago Samardžija” case, the “Sanski Most II” case, and the “Nenad Bubalo” case).

¹⁵ The Court of Appeals issued nine final judgements confirming first-instance convictions and five rulings quashing the first-instance judgements and sending the case on retrial.

¹⁶ The proceedings in the “Drago Samardžija” case and the “Nenad Bubalo” case were suspended due to the death of the defendants.