War crimes proceedings in Serbia (2020-2023)

An analysis of
the OSCE Mission to Serbia's
monitoring results

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Publisher:
OSCE Mission to Serbia

Design:
comma | communications designs

Printing house:
Jovšić Printing Centar

Print run:
100

ISBN 978-86-6383-125-4

Belgrade 2025

OSCE Organization for Security and Co-operation in Europe
Mission to Serbia

Funded by the European Union

#ЕУ ЗА ТЕБЕ

This report was produced with the financial support of the European Union, the German Federal Ministry for Economic Cooperation and Development (BMZ), and the Austrian Development Cooperation (ADC).

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Belgrade, 2025

Contents

Executive summary 9

CHAPTER ONE - Operational environment 15

1. Increased guarantees for judges' and prosecutors' independence 15
2. Practices for appointment and removal of judges 18
3. Delays in the appointment of the new War Crimes Prosecutor 20
4. Incidents of political interference 21
5. Recommendations 22

CHAPTER TWO - International co-operation 25

1. Co-operation with the International Residual Mechanism for Criminal Tribunals 26
   - a. The IRMCT's assistance to Serbia 26
   - b. Serbia's assistance to the IRMCT 27
2. Regional co-operation 28
   - a. Transfer of criminal proceedings 29
   - b. Extradition and transfer of cases 30
   - c. *In absentia* trials 32
   - d. Assistance in the collection of evidence and other international legal assistance 33

3. Co-operation with EULEX and Kosovo[1] institutions 36
4. Recommendations 38

CHAPTER THREE - Investigations 41
1. Strategic approach 41
2. Investigative resources 45
3. Number of new indictments 48
4. Number of defendants indicted 50
5. Defendants' hierarchical level 52
6. Defendants' nationality 54
7. Victims' nationality 55
8. Number of victims 57
9. Recommendations 58

CHAPTER FOUR - Modes of liability and superior responsibility 61
1. Co-perpetration 61
2. Responsibility of superiors 62
3. Recommendations 65

Chapter FIVE - Delays in war crime trials 67
1. COVID-19 pandemic 67
2. Persistence of systemic issues 67
3. Changes in judicial and prosecutorial staff 68
4. Absence of defendants 69
5. Failure of witnesses to appear 70
6. Recommendations 72

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

CHAPTER SIX - Application of IHL provisions 75
1. War crimes in Serbian criminal law 75
2. Existence of an armed conflict 76
3. Recommendations 78

CHAPTER SEVEN - Sentencing 81
1. Recent practices 81
2. Sentencing under the legal minimum 82
3. Inconsistent application of mitigating circumstances 83
4. Recommendations 83

CHAPTER EIGHT - Protection of witnesses 85
1. Out of court protection 85
2. Recommendations 87

CHAPTER NINE - Victims' rights 89
1. Victim support 89
2. Compensation for damages 90
3. Recommendations 94

Glossary 97

Annex I - Summary of the OSCE Mission to Serbia's monitoring results in 2024 99

Annex II - Facts and figures of war crimes proceedings before the WCDs (2020-2023) 103

Executive summary

This report, produced by the OSCE Mission to Serbia, provides a comprehensive analysis of war crimes proceedings in Serbia from 2020 to 2023. It builds upon previous OSCE reports,[2] offering an updated assessment of the progress and challenges in Serbia's efforts to address war crimes. The report examines key areas including judicial reforms, international co-operation, investigative practices, application of International Humanitarian Law (IHL), sentencing, witness protection, and victims' rights. Through careful monitoring of court proceedings and analysis of legal developments, the OSCE Mission to Serbia aims to provide constructive insights and recommendations to support Serbia's ongoing efforts to strengthen its war crimes prosecution framework and align with international standards. This executive summary highlights the main findings and recommendations across nine thematic chapters.

As highlighted in **Chapter 1**, Serbia has undertaken significant constitutional reform efforts aimed at strengthening judicial independence and prosecutorial autonomy, addressing long-standing concerns raised by international bodies. Key improvements include removing the National Assembly's role in electing judges and most prosecutors, introducing functional immunity, and abolishing probationary periods for appointments. However, some areas of concern persist, particularly regarding prosecutorial autonomy within the hierarchical structure. The practice of prematurely replacing War Crimes Department (WCD) judges before their mandates expire continued, causing disruptions to ongoing cases. Similar to the situation from 2016/17, the selection process for the new Chief War Crimes Prosecutor has again been marked by significant delays. While no direct interference with the work of war crimes institutions was observed, troubling public statements by high-ranking government officials regarding war crimes cases and convictions were noted. Such statements risk undermining efforts to promote accountability and hinder reconciliation in the region. The implementation of judicial reforms represents a significant step forward, but their effectiveness will depend on practical implementation and the development of a culture of independence within judicial and prosecutorial bodies.

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2 War crimes proceedings in Serbia (2003-2014): An analysis of the OSCE Mission to Serbia's monitoring results, Belgrade, 2015, https://www.osce.org/serbia/194461 (herafter: 2014 Report); War crimes proceedings in Serbia (2015-2019): An analysis of the OSCE Mission to Serbia's monitoring results, Belgrade, 2021, updated October 2022, https://www.osce.org/mission-to-serbia/536151 (hereafter: 2019 Report).

Chapter 2 shows that the period 2020-2023 saw mixed progress in international co-operation for war crimes prosecutions. Co-operation with the IRMCT improved, with the transfer of investigative materials in several cases. However, Serbia's failure to execute arrest warrants for contempt of court cases remains a point of contention. Regional co-operation, particularly with Bosnia and Herzegovina, showed positive developments, including the transfer of high-profile cases and increased assistance in evidence collection. Co-operation with Croatia remained challenging, with sporadic cases of mutual assistance. A new trend of *in absentia* indictments emerged, marking a shift in the War Crimes Prosecutor's Office (WCPO) strategy. Co-operation with Kosovo[3] institutions deteriorated significantly following EULEX's cessation of executive functions in 2018, severely impacting ongoing cases like "Ćuška". The reporting period highlighted the critical need for enhanced regional co-operation and renewed efforts to establish functional judicial co-operation with Kosovo authorities. Despite some progress, significant challenges persist in ensuring effective international co-operation for comprehensive war crimes accountability.

In **Chapter 3,** the OSCE Mission to Serbia discusses the significant developments in Serbia's approach to war crimes investigations and prosecutions observed in the 2020-2023 period. The adoption of a new National Strategy for the Prosecution of War Crimes 2021-2026 (National Strategy) and the Revised Prosecutorial Strategy for the Investigation and Prosecution of War Crimes 2022-2026 (Revised Prosecutorial Strategy) marked a more structured approach to case prioritisation and management. The WCPO's staffing improved, with 11 prosecutors now in place alongside the Chief Prosecutor. However, this increase in resources has not yet translated into a commensurate rise in new indictments, particularly those originating from the WCPO's own investigations. The period saw 26 new indictments, with only 11 stemming from WCPO investigations. Notably, there was a significant shift towards indicting high-ranking officials, with nine such indictments filed for the first time. While there was a slight increase in the average number of defendants per case, most indictments still focused on individual perpetrators, which could potentially limit the overall impact of war crimes prosecutions in Serbia. The diversity of defendants' and victims' nationalities increased, though Serbian defendants and Bosniak victims were still predominant. A positive trend towards prosecuting larger-scale cases was observed, including cases involving hundreds or thousands of victims. However, significant crimes stemming from the Kosovo conflict remain unaddressed, raising concerns about comprehensive accountability. Moreover, despite some progress, the WCPO's output remains modest relative to its increased resources, highlighting ongoing challenges in independently initiating and completing complex war crimes investigations.

As highlighted in **Chapter 4**, during 2020-2023, Serbia made notable progress in addressing modes of liability and superior responsibility in war crimes cases, though challenges persist. Although co-perpetration remained the primary form of charged

3 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.

complicity, the WCPO began indicting high-ranking officials, including charges for ordering crimes and, for the first time, responsibility for subordinates' actions. This marks a shift towards addressing superior responsibility, albeit through existing legal mechanisms rather than formal command responsibility. Moreover, the legal basis for superior responsibility through commission by omission remains unresolved. While progress is evident, a comprehensive approach to superior responsibility is still developing, with gaps in prosecuting complex cases involving high-ranking officials and larger groups.

Chapter 5 shows that the 2020-2023 period saw persistent delays in war crimes trials in Serbia, despite efficiency being a priority in both the national and the prosecutorial strategies. The challenges caused by the COVID-19 pandemic affected the processing of war crimes cases in Serbia in the reporting period. Nonetheless, Serbian institutions managed to continue with war crimes processing. Among the other noticed factors contributing to delays was frequent absence of defendants and failure of witnesses to appear (especially for video link testimony from abroad), as well as changes in judicial and prosecutorial staff. Notable cases like “Lovas” and “Ćuška” exemplify the challenge of excessively lengthy trials. While some measures were taken to mitigate delays, such as agreeing to accept previously presented evidence when judges were replaced, systemic issues remain. The impact of these delays is significant, affecting the rights of the accused, victims' access to justice, and in some cases, resulting in proceedings being terminated due to defendants' deaths. These persistent challenges underscore the need for more effective trial management and procedural reforms to ensure timely justice in war crimes cases.

While previous reports noted challenges in the application of IHL by Serbian courts, during 2020-2023, as discussed in **Chapter 6**, the application of IHL did not affect the outcome of any proceedings. Judges generally applied appropriate IHL rules for events related to Bosnia and Herzegovina and Croatia, and the previously differing positions on the nature and duration of the Kosovo conflict now appear to be more consolidated. The courts generally addressed the "nexus" requirement between crimes and armed conflict adequately, though some judgments failed to explicitly mention or substantiate this crucial element. Positively, courts correctly applied the principle of irrelevance of perpetrator capacity in war crimes.

In **Chapter 7**, the OSCE Mission to Serbia observes that sentencing practices in Serbian war crimes trials continued to show inconsistencies, perpetuating concerns raised in previous OSCE reports. Key issues included the imposition of sentences below the legal minimum without adequate justification, inconsistent application of mitigating circumstances, and varying approaches to considering the time lapse between the crime and trial. A regional meeting in November 2022 highlighted these challenges, emphasising the need for a more standardised approach to sentencing. Observations collected in the reporting period underscored the ongoing need for clearer sentencing guidelines and more consistent consideration of mitigating and aggravating factors in war crimes cases.

In the reporting period, as acknowledged in **Chapter 8**, Serbia's Witness Protection Unit underwent significant improvements to address previous concerns about its effectiveness in war crimes cases. Key developments included a substantial increase in staffing, addition of specialised personnel (psychologists, social workers, IT experts), upgraded material resources, improved relations with the WCPO, and expanded international agreements for witness relocation. These changes reflect a more comprehensive approach to witness protection, addressing physical, psychological, and social needs of protected individuals. However, the full implementation of identity change measures remains hindered by legislative gaps, as competent authorities continued to fail to adopt necessary by-laws. Problems with out-of-court protection of witnesses were still detected in one of the most complex cases currently on trial.

As the OSCE Mission to Serbia discusses in **Chapter 9**, the 2020-2023 period saw significant developments in victims' rights in Serbian war crimes proceedings. The adoption of the National Strategy for Exercising the Rights of Victims and Witnesses of Criminal Offences (2020-2025) marked a crucial step, recognizing war crimes victims as particularly vulnerable and outlining comprehensive support measures. Operational improvements included strengthening the WCPO's Service for Information and Support to Injured Parties and Witnesses, now offering more comprehensive assistance throughout proceedings. However, challenges persisted in compensation for damages. Despite the Supreme Court of Cassation's 2019 Guidelines encouraging resolution of compensation claims within criminal proceedings, the WCD continued to refer victims to civil proceedings. This practice places additional burdens on victims, requiring them to navigate complex legal procedures alone, potentially compromising their anonymity, and causing further delays in obtaining redress. The WCPO's Revised Strategy acknowledged the importance of collecting evidence for civil claims during criminal investigations, but implementation has been slow. Issues such as quantifying damages, particularly moral damages, and concerns about the presumption of innocence have been cited as reasons for not adjudicating civil claims within criminal proceedings. The adoption of a new Action Plan in 2023 and recent guidance to WCPO prosecutors show ongoing efforts to address these challenges, but practical implementation remains limited.

In light of the above, main OSCE recommendations include:

To the Legislature:

- It is recommended to amend the Law on War Crimes[4] to establish that judges of the War Crimes Departments within the High Court in Belgrade and the Court of Appeals in Belgrade (WCDs) are appointed by the High Judicial Council after a regular competition among all judges in Serbia who satisfy other criteria prescribed by the Law.

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

- It is advisable to reinstate the provision that each appointment of judges to the WCD lasts six years and not to derogate from this provision.
- It is recommended to amend legislation to allow extradition to the IRMCT of defendants accused of contempt of court, in order to fulfil Serbia's international obligations.

To the Supreme Court:

- It is urged to expedite the development of a template for compensation claims in criminal proceedings to facilitate the process for victims and courts.

To the High Judicial Council:

- It is recommended to ensure timely decisions on the reassignment of WCD judges to avoid disruptions to ongoing cases.
- It is advised to consider establishing a mechanism for sharing best practices and ensuring consistency in IHL application across different WCD panels.

To the High Prosecutorial Council:

- It is urged to ensure timely completion of the selection process for the Chief War Crimes Prosecutor to avoid prolonged interim leadership.

To the WCDs:

- It is crucial to ensure efficient management of trials, including verifying arrangements for the presence of defendants and witnesses before trial sessions.
- It is recommended to provide clear legal reasoning on the application of different modes of liability, particularly in cases involving superior responsibility.
- It is crucial to ensure consistent application of mitigating circumstances and consequent reduction of punishment across all cases.
- It is strongly recommended to implement the Supreme Court‘s Guidelines and adjudicate compensation claims within criminal proceedings wherever possible.

To the WCPO:

- It is strongly recommended to increase efforts to independently investigate and prosecute large-scale war crimes cases, particularly those related to the Kosovo conflict that have remained unaddressed for decades.
- It is advised to continue developing and refining approaches to charging superior responsibility, exploring various modes of liability applicable to high-ranking officials.
- It is crucial to implement a thorough pre-hearing verification process for witnesses, especially those testifying via video link from abroad.
- It is crucial to proactively collect and present evidence relevant to compensation claims during the investigation phase, as mandated by the Criminal Procedure Code (CPC).

To the Government of Serbia:

- It is strongly advised to undertake concrete steps to re-establish channels of judicial co-operation with the authorities in Pristina, particularly with the Special Prosecution Office of Kosovo, to enable effective prosecution of war crimes cases, especially those committed in Kosovo.
- It is strongly advised to prioritise the adoption of by-laws necessary for the full implementation of identity change measures for protected witnesses.

CHAPTER ONE - Operational environment

1. Increased guarantees for judges' and prosecutors' independence

In the reporting period, Serbia has undertaken significant constitutional reform efforts aimed at strengthening the independence of the judiciary and autonomy of prosecutors, addressing long-standing concerns raised by international bodies including the OSCE. These reforms, adopted through constitutional amendments in 2022[5] and implementing legislation which is already partly adopted[6] and partly under consideration,[7] represent an important step towards aligning Serbia's judicial system with European standards on judicial independence and the rule of law.

The constitutional amendments, which underwent a referendum in January 2022, introduce substantial changes to the appointment and management of judges and prosecutors. Key improvements include removing the National Assembly's role in electing judges and most prosecutors (with the exception of the Supreme Public Prosecutor),[8] introducing functional immunity for judges and prosecutors, and abolishing probationary periods for judicial and prosecutorial appointments. With the amendments to the Law on Public Prosecutor's Office, the former Public Prosecutors on all levels are now the Chief Public Prosecutors, and the former Deputy Prosecutors are

5 Decision on promulgation of the Act on Amending the Constitution of the Republic of Serbia, adopted by the National Assembly of the Republic of Serbia on 30 November 2021, and confirmed at the national referendum held on 16 January 2022.

6 Constitutional Law on the Implementation of the Constitution Amendment Act, Law on the High Judicial Council, Law on the High Prosecutorial Council, Law on Public Prosecutor's Office, Law on Judges and Law on the Organisation of Courts, Law on Organisation and Competences of Government Authorities in War Crimes Proceedings (Law on War Crimes), Law on Organisation and Competences of Government Authorities in Combatting Organised Crime, Terrorism and Corruption.

7 Law on the Judicial Academy, Law on Seats and Territorial Jurisdiction of Courts.

8 Constitution of the Republic of Serbia, Art. 99, para. 2, subpara. 3, and 158.

now Public Prosecutors.[9] These changes are designed to reduce political influence over the judiciary and prosecution service, addressing a key criticism that had been levelled against the Serbian justice system for many years.

One of the most significant changes is the removal of the National Assembly's role in electing first-time judges and prosecutors. Previously, the National Assembly had the authority to elect all judges and prosecutors for their initial terms,[10] a practice that was widely seen as enabling political interference in judicial appointments. Under the new constitutional framework, this power is transferred to the High Judicial Council[11] for judges and the High Prosecutorial Council for prosecutors.[12] This change aims to depoliticize the appointment process and strengthen the independence of these judicial bodies.

The National Assembly was also previously responsible for both the initial election and any re-election of the War Crimes Prosecutor (WCP), based on nominations from the government. This system was criticised for potentially subjecting the WCP to political pressures. These changes address key concerns raised by the OSCE Mission to Serbia in its 2014 and 2019 Reports, which characterised the independence of Serbia's judicial institutions as "fragile" due to the lack of robust legal safeguards ensuring that judges and prosecutors answer only to the law and shielded from undue political pressure. The OSCE Mission to Serbia had particularly criticised the involvement of the National Assembly in judicial appointments and the selection of the WCP as potential vectors for political influence. The constitutional amendments modify the process for electing and re-electing the WCP: the High Prosecutorial Council now elects all prosecutors except the Supreme Public Prosecutor, who continues to be elected by the National Assembly.[13]

In addition to changing appointment procedures, the constitutional amendments also modify the composition and functioning of the High Judicial Council and High Prosecutorial Council. These bodies play a crucial role in managing the careers of judges and prosecutors, including appointments, promotions, transfers, and disciplinary proceedings. The amendments aim to enhance their independence and effectiveness.[14]

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9 With the amendents to the Law, the former War Crimes Prosecutor's Office changed its name to the Public Prosecutor's Office for War Crimes. For reasons of consistency in terminology, the name War Crimes Prosecutor's Office (WCPO) will be used throughout this report.

10 Constitution of the Republic of Serbia, Art. 105, para. 1, repealed subparas. 12 and 13.

11 Constitution, Art. 150.

12 Constitution, Art. 162.

13 Constitution, Art. 162; Law on Public Prosecutor's Office, Art. 80.

14 For the High Judicial Council, the amendments stipulate that it will be composed of 11 members: six judges elected by their peers and five prominent lawyers elected by the National Assembly (See Constitution, Art. 151). This composition is designed to ensure that judges have a majority on the council while still allowing for some involvement of the legislative branch. The requirement for a qualified majority in the parliamentary vote for the non-judicial members is intended to promote consensus and reduce partisan influence. Similarly, the High Prosecutorial Council has been reconstituted to include a greater proportion of prosecutors elected by their peers, alongside members elected by the National Assembly and ex officio members. These changes aim to increase the professional autonomy of the prosecution service while maintaining a degree of democratic oversight.

The constitutional reforms also introduce provisions aimed at strengthening the overall independence of the judiciary. These include explicit guarantees of judicial independence, immovability of judges, and incompatibility of judicial office with political activities.[15]

For prosecutors, the reforms have aimed to increase autonomy while maintaining the hierarchical structure of the prosecution service. This change reduces direct political influence over prosecutorial appointments. The constitutional amendments also introduce the concept of functional immunity for prosecutors, protecting them from liability for opinions expressed or decisions made in the performance of their duties.

However, despite these positive changes, some areas of concern persist, particularly regarding prosecutorial autonomy. The Venice Commission, in its opinion on the constitutional amendments and draft implementing laws, highlighted several problematic aspects.[16] In particular, the hierarchical structure of the prosecution service continues to pose challenges for individual prosecutorial autonomy.[17] While the reforms introduce some safeguards, such as the right to appeal against mandatory instructions from superior prosecutors, the overall hierarchical model remains intact, including the power for the Chief Public Prosecutor to issue mandatory instructions to lower prosecutors.[18] This structure can potentially lead to undue influence on individual prosecutors' decision-making, including the WCP's.

The new Law on Public Prosecution introduces some positive changes to address these concerns. For instance, it establishes a mechanism for appealing against unfounded or unlawful mandatory instructions from superior prosecutors, with a commission now in charge of deciding on such instructions.[19] This system aims to safeguard against potential abuses of hierarchical power. The law also limits the practice of temporary assignments to other prosecution offices, which had previously been used as a means of control over prosecutors. Under the new provisions, such assignments can only be made within the same level or to a lower level, and only with the consent of the prosecutor in question, with a maximum duration of three years.[20]

The implementation of these reforms represents a significant step forward in addressing long-standing concerns about the independence of Serbia's judiciary and the au-

15 Constitution, Arts. 144-148; Law on Judges, Arts. 13-33.

16 Venice Commission, "Follow-up Opinion on three revised draft Laws implementing the constitutional amendments on the Judiciary of Serbia", doc. CDL-AD(2022)043-e, December 2022, https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2022)043-e.

17 Venice Commission, Opinion on the draft constitutional amendments on the judiciary and the draft constitutional law for the implementation of the constitutional amendments, doc. CDL-AD(2021)032, October 2021, https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2021)032-e; Urgent opinion on the revised draft constitutional amendments on the judiciary, doc. CDL-AD(2021)048, December 2021, https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2021)048-e.

18 Constitution, Art. 157.

19 Law on Public Prosecutor's Office, Art. 18.

20 Law on Public Prosecutor's Office, Art. 69.

tonomy of its prosecution service. However, it is important to note that legislative changes alone are not sufficient to guarantee judicial independence and prosecutorial autonomy in practice: the effectiveness of these reforms will depend on their practical implementation and the development of a culture of independence within the judicial and prosecutorial bodies.

2. Practices for appointment and removal of judges

In its 2014 and 2019 Reports, the OSCE Mission to Serbia also noted that the assignment of judges to the WCDs lacked full transparency. The Law on War Crimes foresaw that WCD judges are chosen by the presidents of the Court of Appeals and High Court in Belgrade among judges who are already assigned to those courts. Each assignment to the WCD lasted 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.

During the reporting period, a concerning pattern of judicial instability continued to unfold at the Belgrade High Court's WCD. This practice, which began in 2014,[22] and continued also between 2015 and 2019,[23] involves the premature replacement of WCD judges before their six-year mandates expire.[24] The latest instance of this trend centered around Judge Dejan Terzić, whose one-year mandate in the Specialised Department for War Crimes and Organised Crime expired on 30 April 2023. Judge Terzić, a judge of the Court of Appeals in Novi Sad, had been serving in this capacity since 2014, initially temporarily assigned by the High Judicial Council (HJC) for a six-year term, which was subsequently extended since 2020 but only on an annual basis.[25]

Despite a formal request from the High Court President to the HJC for Judge Terzić's reassignment, the HJC failed to act and on May 11, 2023, the High Court President amended the Annual Calendar of tasks, replacing Judge Terzić with Judge Bojan Mišić. The failure of the HJC to issue a decision in the case had both implications for the judge involved and far-reaching implications for ongoing war crimes proceedings. Nine cases in which Judge Terzić was involved had to start anew, including the high-

21 These provisions were included in the Law on War Crimes, Article 10(4) and 10a(4), prior to its amendment in 2023.
22 See 2014 Report, pages 22-23.
23 In the annual assignments for 2015, for instance, the High Court President reassigned a judge from the WCD to the Criminal Department, only two years after his appointment and with no further explanation. See 2019 Report, page 20.
24 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 Organisation of Courts, Art. 34 (Annual Calendar of Activities); and Law on Judges, Art. 23 (Immutability of Annual Tasks)
25 Law on Judges, Art. 20, Law on War Crimes, Art. 10. The OSCE Mission to Serbia has previously criticised the practice whereby judges of both WCDs sign a document assigning them to the WCD for a period of up to six years, which was a plain violation of Articles 10 and 10a of the Law on War Crimes, prior to its amendments in 2023.

ly complex "Srebrenica" case which has already been in progress for over six years without a first-instance verdict,[26] and the "Rudice" case where the defendant has been in pre-trial detention for a prolonged period of time.

Despite these legal guidelines on selection criteria,[27] the Presidents of both courts have maximum discretion in assigning judges to the WCDs, which also has considerable financial implications for the judge in question.[28] Such practice interferes with the independence of individual judges: since reassignment away from the WCD effectively constitutes a reduction in status and remuneration, it provides the High Court and Appeals Court Presidents with significant influence over WCD judges. Therefore, the power to choose and remove WCD judges constitutes an indirect - yet poignant - control over WCD judges' work.

Since the recent amendments to the Law on War Crimes have eliminated the previously established six-year term for WCD judges, the Court Presidents now officially have the discretion to add or remove judges from the WCD anytime, with a decision that directly impacts their salaries. While there have been no reported instances of abuse of this power since the amendments came into force in February 2023, the concentration of such significant authority in a single judicial figure raises concerns. This arrangement stands in contrast to the general practice of having judicial appointments overseen by the HJC. The new structure potentially compromises the transparency and stability that the original six-year mandate aimed to ensure, and may inadvertently create vulnerabilities in the judicial process for war crimes cases.

In the 2023 Recommendations on Judicial Independence and Accountability ("Warsaw Recommendations"),[29] OSCE/ODIHR recommended that "While court presidents should have the flexibility to transfer judges internally to another judicial office of equivalent status and with equivalent tenure, they must do so lawfully, fairly and transparently. Any such transfer should only be made with the full written consent of the judge being transferred."

It also noted that "A perceived or actual lack of fairness and transparency in practices related to judicial transfers may weaken the internal independence of judges and may undermine the guarantees of their security of tenure and irremovability."[30] The European Charter on the Statute of Judges recommends that "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 agree-

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26 Compounding these issues, the court had already experienced significant disruptions due to the illness of Judge Zorana Trajković between December 2021 and June 2022. Her temporary replacement and subsequent return necessitated multiple restarts of proceedings, further delaying justice and potentially retraumatising victims.

27 Law on War Crimes, Articles 10(4) and 10a(5).

28 *Ibid.*, Articles 17 and 18.

29 OSCE/ODIHR Recommendations on Judicial Independence and Accountability ("Warsaw Recommendations"), 27 October 2023, https://www.osce.org/odihr/552718, para. 36.

30 *Ibid.*, para. 32.

ment 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]

The law provisions attributing to the Court Presidents the power to *de facto* promote or demote judges by assigning them to or removing them from the WCDs still represent a powerful leverage tool for the High Court/Court of Appeals president, especially in the lack of a guarantee (formally at least), that their assignment will last for at least six years.

In line with the international standards outlined above, the assignment of judges to the WCDs should not be left to the discretionary decision of the Court Presidents, as is currently the case, but be made by the HJC after a competitive selection process in which all judges in Serbia, who satisfy other criteria prescribed by the Law on War Crimes, can participate.[33]

3. Delays in the appointment of the new War Crimes Prosecutor

Similarly to what the OSCE Mission to Serbia observed in the previous reporting period, the selection process for the new Chief War Crimes Prosecutor has again been marked by significant delays and procedural complexities. The mandate of Prosecutor Snežana Stanojković as Chief WCP was set to expire in May 2023, mirroring the challenges faced in the appointment of her predecessor.[34]

The process began in November 2022 when the then-State Prosecutorial Council published a call for applications. On 7 March 2023, the two candidates who applied, including the incumbent WCP, presented their programs before the Commission ap-

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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, para. 25.

33 The OSCE Mission to Serbia has raised the same concerns in its "Comments to the Law on Organisation and Jurisdiction of Government Authorities in Suppression of Organised Crime, Terrorism and Corruption".

34 After Mr. Vladimir Vukčević's term ended on 31 December 2015 Ms. Snežana Stanojković was elected, finally taking office as WCP on 31 May 2017. See Ministry of Justice, "Report Two on Implementation of the National Strategy for the 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, https://www.tuzilastvorz.org.rs/sr/%D0%B2%D0%B5%D1%81%D1%82%D0%B8/%D1%81%D0%BD%D0%B5%D0%B6%D0%B0%D0%BD%D0%B0-%D1%81%D1%82%D0%B0%D0%BD%D0%BE%D1%98%D0%BA%D0%BE%D0%B2%D0%B8%D1%9B-%D1%81%D1%82%D1%83%D0%BF%D0%B8%D0%BB%D0%B0-%D0%BD%D0%B0-%D1%84%D1%83%D0%BD%D0%BA%D1%86%D0%B8%D1%98%D1%83-%D1%82%D1%83%D0%B6%D0%B8%D0%BE%D1%86%D0%B0-%D0%B7%D0%B0-%D1%80%D0%B0%D1%82%D0%BD%D0%B5-%D0%B7%D0%BB%D0%BE%D1%87%D0%B8%D0%BD%D0%B5-%D1%80%D0%B5%D0%BF%D1%83%D0%B1%D0%BB%D0%B8%D0%BA%D0%B5-%D1%81%D1%80%D0%B1%D0%B8%D1%98%D0%B5 (in Serbian).

pointed by the State Prosecutorial Council/High Prosecutorial Council.[35] However, more than a year passed without a decision on the new WCP.

To address the leadership vacuum, on 13 May 2023, the High Prosecutorial Council (HPC) designated Snežana Stanojković as acting head of the WCPO for up to one year, the maximum allowed by the Law on the Public Prosecutor's Office.[36] As of the time of writing, another prosecutor was appointed as acting and the process remains incomplete, leaving the crucial position of Chief War Crimes Prosecutor in a state of prolonged interim leadership.

4. Incidents of political interference

Contrary to previous reports, the OSCE Mission to Serbia did not note instances of direct interference with the work of the WCPO or the WCDs during the 2020-2023 timeframe.

However, the period was characterised by troubling public statements by high-ranking government officials regarding war crimes cases and convictions.

At an official military ceremony held on 14 October 2020, the then-Minister of Defence Aleksandar Vulin stated that the Serbian Armed Forces would never again "be ashamed of Lazarević or Pavković or any of those who defended this country",[37] referring to Nebojša Pavković and Vladimir Lazarević, two retired generals of the Yugoslav Army sentenced by the ICTY in 2014 for crimes against the Albanian population in Kosovo.[38]

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35 With the amendments to the Constitution, the State Prosecutorial Council changed its name into High Prosecutorial Council. The High Prosecutorial Council officially commenced its work under the new name in May 2023 with the election of its members in accordance with the amended legislation and by-laws in accordance with the Constitution.

36 The Law on Public Prosecutor's Office stipulates that if the term of office of a chief public prosecutor is terminated, the HPC is to appoint an acting public prosecutor until a new public prosecutor takes office, for a period not exceeding one year (Art. 41(1)). The Law stipulates that the same person cannot be reappointed in an acting capacity for the same office. Consequently, on 14 May 2024, the HPC appointed Dušan Knežević, a public prosecutor from the WCPO, as the new Acting Chief War Crimes Prosecutor, also for a period of up to one year. At the same online session on 14 May 2024, the HPC cancelled all previous calls for applications for chief prosecutors, including the WCP position. This decision was based on the adoption of new by-laws and the need to align the recruitment process with these new regulations. A new public call was published in the Official Gazette on 31 May 2024, with applications to be accepted 15 days after publication. This series of events has effectively restarted the entire selection process for the new WCP.

37 https://www.mod.gov.rs/eng/16614/ministar-vulin-63-padobranska-uvek-brigada-nikad-bataljon-16614.

38 Cfr. ICTY, Convictions for Kosovo crimes upheld for four senior Serbian officials, 23 January 2014, https://www.icty.org/en/sid/11443. See ICTY, Appeals Chamber, Prosecutor v. Nikola Šainović, Nebojša Pavković, Vladimir Lazarević and Sreten Lukić, judgement, 23 January 2015, https://ucr.irmct.org/LegalRef/CMSDocStore/Public/English/Judgement/NotIndexable/IT-05-87-A/JUD263R0000406689.pdf.

When Ratko Mladić was sentenced to life imprisonment on 8 June 2021 for crimes including the Srebrenica genocide, Aleksandar Vulin, the Serbian Minister of Interior at the time, called the judgement "an act of revenge", claiming the Hague Tribunal had been "set up not to seek justice and contribute to reconciliation but to put Serbs on trial".[39] Serbian Prime Minister Ana Brnabić described the ICTY as a "political" institution hampering reconciliation.[40] A former Minister of Justice and governing party member Nela Kuburović wrote that the judgement was "directed against Serbia and the Serbian people".[41]

Similar reactions occurred when Jovica Stanišić and Franko Simatović were sentenced to 12 years imprisonment each on 30 June 2021 for crimes against non-Serbs in Bosanski Šamac in 1992. Serbian President Aleksandar Vučić called the judgement "a revenge upon us" while the Minister of Interior Aleksandar Vulin described it as "an attempt at putting the Serbian State and the Serbian people on trial".[42]

In late December 2021, the Chief of the Serbian Armed Forces General Staff conferred a commemorative military medal on retired General Vinko Pandurević, who was sentenced by the ICTY to 13 years imprisonment for crimes committed in Srebrenica and Žepa in July 1995.[43]

While these incidents do not constitute direct political interference with the Serbian judiciary, the OSCE Mission to Serbia notes with concern that such public statements by high-ranking officials undermine efforts to promote accountability for past atrocities, risks creating an environment that discourages witnesses from coming forward, and hinders reconciliation and co-operation in the region. Therefore, the OSCE Mission to Serbia urges Serbian officials to refrain from commentary that could be perceived as calling into question the integrity of war crimes proceedings or verdicts.

5. Recommendations

To the Legislature:

- It is recommended to amend the Law on War Crimes to establish that judges of the WCDs are appointed by the High Judicial Council after a regu-

39 https://www.slobodnaevropa.org/a/vulin-presuda-mladicu/31296916.html.
40 https://www.b92.net/o/info/vesti/index?yyyy=2021&mm=06&dd=08&nav_id=1871585.
41 https://www.novosti.rs/vesti/kolumne/1005820/autorski-tekst-nele-kuburovic-tribunal-srusio-svoj-statut.
42 https://www.b92.net/o/info/vesti/index?yyyy=2021&mm=07&dd=01&nav_category=11&nav_id=1884324. See also https://www.rts.rs/lat/vesti/drustvo/4426843/presuda-simatovic-stanisic-reakcije.html.
43 ICTY, Appeals Chamber, Prosecutor v. Vujadin Popović, Ljubiša Beara, Drago Nikolić, Radivoje Miletić and Vinko Pandurević, judgement, 30 January 2015, https://ucr.irmct.org/LegalRef/CMSDocStore/Public/English/Judgement/NotIndexable/IT-05-88-A/JUD266R0000442436.pdf.

lar competition among all judges in Serbia who satisfy other criteria prescribed by the Law.

- It is advisable to reinstate the provision that each appointment of judges to the WCD lasts six years and this cannot be derogated.

To the High Judicial Council:

- It is recommended to ensure timely decisions on the reassignment of WCD judges to avoid disruptions to ongoing cases.

To the High Prosecutorial Council:

- It is urged to ensure timely completion of the selection process for the Chief War Crimes Prosecutor to avoid prolonged interim leadership.

To Serbian public officials:

- To condemn all instances of glorification of crimes committed, as well as glorification of persons convicted for such crimes.
- It is strongly recommended to continue to refrain from making public statements that could be perceived as calling into question the integrity of war crimes proceedings or verdicts.

CHAPTER TWO - International co-operation

As the OSCE Mission to Serbia observed in its previous reports, 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 locations that are not within Serbian authorities' reach: in fact, all cases prosecuted in Serbia so far, except one, have involved crimes committed on the territory of BiH, Croatia or Kosovo. This circumstance heavily restricts WCIS's 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 Serbian territory 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 nearly impossible to prosecute such cases in Serbia.

Moreover, the ICTY's closure at the end of 2017 emphasised 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 its last address to the UN Security Council,[44] the ICTY Prosecutor emphasised 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. The 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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44 https://www.icty.org/en/press/prosecutor-serge-brammertz-addresses-the-united-nations-security-council-1.

1. Co-operation with the International Residual Mechanism for Criminal Tribunals

a. The IRMCT's assistance to Serbia

In the reporting period, co-operation between the IRMCT and the WCPO has shown signs of improvement.

The IRMCT provided investigative materials to the WCPO in four cases involving four persons,[45] resuming a practice that had been beneficial in 2003 and 2004.[46] This transfer of materials has the potential to assist the WCPO in focusing on viable, large-scale prosecutions.

The IRMCT's Prosecutor's Office has handed over extensive investigative materials to the WCPO on several occasions. This co-operation yielded results, with several procedures initiated based on the provided documentation, particularly in 2020, and an indictment against a high-ranking perpetrator in 2021.[47] In 2022, the IRMCT reportedly handed over to the WCPO an investigative dossier regarding two individuals suspected of crimes against humanity and war crimes.[48] Although it is not yet known if any additional indictments will stem from the transferred material, these developments indicate a positive trend in collaboration between the two bodies.

However, challenges persist. The WCPO no longer has a liaison officer physically present in The Hague, a change implemented after the pandemic. Access to ICTY databases is still possible, but now from the WCPO seat in Belgrade, which may impact the efficiency of information retrieval. The IRMCT continues to keep certain sensitive information secret, including witness names, limiting the full utility of the materials. This practice remains a significant obstacle to comprehensive case development by the WCPO, but it also impacts the efficiency of the proceedings after indictments have been raised, as shown in the "Srebrenica II" case.

Some progress has been made in addressing these limitations. In 2021, the IRMCT accepted WCPO requests to amend or cancel protective measures for certain witness-

45 WCPO Response to the OSCE Mission to Serbia's query, 19 April 2024.

46 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).

47 "Srebrenica II" case.

48 Eleventh annual report of the International Residual Mechanism for Criminal Tribunals, A/78/257-S/2023/566, 28 July 2023, https://www.irmct.org/sites/default/files/documents/2023-07-28-11th-Annual-Report-EN.pdf.

es in two criminal cases.[49] This allowed for the delivery of integral statements and transcripts, enhancing the value of the shared information.

There is room for improvement to lift protective measures or seek witness consent for disclosure to Serbian prosecutors by the IRMCT.

b. Serbia's assistance to the IRMCT

The OSCE's 2014 Report noted Serbia's compliance with ICTY obligations, including executing arrest warrants against high-profile fugitives and adopting legislation to comply with ICTY requests. However, the 2019 follow-up report highlighted a deterioration in relations due to Serbia's failure to execute arrest warrants against three defendants charged with contempt of court in the Vojislav Šešelj case,[50] one of whom already passed away in 2017.

Despite the pending INTERPOL warrants against the two, as of the time of reporting, the arrest warrants for contempt of court charges against the remaining two defendants remain unexecuted. In May 2021, the IRMCT's President escalated this issue to the UN Security Council, urging measures to ensure Serbia's compliance with its obligations.[51]

The WCD has continued to refuse execution of IRMCT's arrest warrants for contempt of court cases, maintaining that Serbian law does not permit extradition for non-core crimes.[52] This outcome conflicts with Serbia's obligations under the UN Charter, though amendments to the domestic legal framework may be required to resolve the impasse. Such amendments are crucial to fulfil Serbia's obligation to assist the IRMCT in carrying out its mandate, which includes not only the prosecution of core international crimes but also the maintenance of judicial integrity through contempt proceedings.

On 11 August 2023, the IRMCT confirmed another contempt indictment; this time, the case and the supporting evidence were referred to Serbian authorities for pros-

49 Report on the implementation of the Prosecutorial Strategy for War Crimes Investigation and Prosecution, Q3 and Q4 of 2021.

50 Petar Jojić, Jovo Ostojić and Vjerica Radeta.

51 Letter dated 11 May 2021 from the President of the International Residual Mechanism for Criminal Tribunals addressed to the President of the Security Council, https://documents.un.org/doc/undoc/gen/n21/117/75/pdf/n2111775.pdf.

52 Decision of the High Court of Belgrade, 18 May 2016, available at https://www.hlc-rdc.org/wp-content/uploads/2016/05/2st_presuda_Jojic,_Radeta_i_Ostojic.pdf. This was confirmed by WCD judges at a meeting with OSCE Mission to Serbia held on 10 July 2024.

ecution.[53] The outcome remains to be seen.[54] Failure to address this issue promptly would continue to strain Serbia's relations with the IRMCT, despite recent positive developments in other areas of co-operation.

2. Regional co-operation

As the OSCE Mission to Serbia noted in its previous reports, judicial co-operation among jurisdictions in the former Yugoslavia remains crucial for holding those responsible for 1990s atrocities accountable.

In November 2022, the WCPO and the Prosecutor's Office of BiH signed an agreement on co-operation in the area of support for witnesses and victims in criminal proceedings.

Moreover, the September 2023 Regional Conference of Prosecutors in Sarajevo marked significant progress in enhancing this co-operation. Participants agreed to exchange data on unanswered international legal assistance requests, focusing on suspect questioning and criminal prosecution transfers. They also committed to seeking prompter action on processing these requests, especially in delayed cases.[55]

The WCPO reported ongoing challenges with Croatia, primarily due to Croatia's 2011 law nullifying certain legal acts related to the Homeland War, which restricts co-operation on cases involving Croatian citizens suspected of war crimes.

To improve co-operation, conference participants agreed to designate contact points for direct daily communication. In 2023, contact persons were established between BiH's Prosecutor's Office and the WCPO. Representatives from BiH, Serbia, Montenegro, and the IRMCT agreed to appoint similar contact persons. The War Crimes Public Prosecutor has initiated efforts to improve co-operation with Montenegro's Supreme State Prosecutor's Office, including plans for direct communication channels.

During the reporting period, three types of co-operation were observed: transfer of indictments (from BiH to WCPO only), transfer of investigative files (from BiH to WCPO only), and assistance in evidence collection (between WCPO and BiH, Croatia, and Montenegro).

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53 Prosecutor v. Vojislav Šešelj, Miljan Damjanović, Miroljub Ignjatović, Ljiljana Mihajlović and Ognjen Mihajlović, Decision on referral of the case to the Republic of Serbia, case no. MICT-23-129-I, 29 February 2024, https://www.irmct.org/sites/default/files/case_documents/DECISION-ON-REFERRAL-OF-THE-CASE-TO-THE-REPUBLIC-OF-SERBIA.pdf.

54 WCD judges confirmed that as of 10 July 2024 they had not received any request to this end.

55 Conclusions of the regional conference of prosecutors on co-operation in war crimes prosecution, 18-19 September 2023, https://www.tuzilastvorz.org.rs/public/news/documents/2023-11/Zakljucci_-_finalno_16.10.2023._godine_bos_f.pdf (in Serbian).

These developments represent progress in regional war crimes prosecution efforts. However, challenges remain, particularly in light of Croatia's legal framework, requiring further diplomatic and legal efforts to overcome.

a. Transfer of criminal proceedings

In its previous reports, the OSCE Mission to Serbia highlighted that transfer of criminal proceedings from other jurisdictions in the region had been a major source of new cases indicted by the WCPO and tried before the WCDs.

Although the WCPO has agreements with all neighbouring countries, transfer of criminal proceedings had occurred exclusively from BiH. This trend continued in the current reporting period of 2020-2023, during which the number of cases transferred from BiH again outnumbered those that originated from WCPO's own investigations.

Between 2020 and 2023, Serbian courts have taken over 15 indictments from BiH courts under this procedure. All of the transferred cases involve Bosniak victims and Serbian defendants. A significant positive development in this reporting period is the transfer of four Category II cases involving high-ranking Serbian defendants not available to Bosnian authorities. This marks the first time such high-profile cases have been transferred, representing a substantial improvement in regional co-operation and a commendable focus on prosecuting higher-level perpetrators. The OSCE Mission to Serbia praises this enhanced co-operation, as it contributes to more comprehensive accountability for war crimes. The abovementioned transfers of high-profile cases – facilitated by the IRMCT's Office of the Prosecutor – materialised into four ongoing prosecutions. Regrettably, one of these high-ranking defendants passed away after the initiation of proceedings, while another mid-ranking defendant was declared permanently incapable of following the proceedings due to their health issues and old age.

During the reporting period, the WCPO also indicated that it based three investigations against three persons on investigative materials received from BiH.[56] It also stated that between 2020 and 2023, 23 cases against 29 persons were transferred from BiH.[57] Conversely, the WCPO also claims to have transferred evidentiary materials in 24 cases at the pre-investigation phase to BiH authorities in 2021.

On a different note, transfers continued to occur on a piecemeal, *ad hoc* basis rather than a planned, organised one. However, in its Revised Prosecutorial Strategy and Action Plan for the period 2022-2026, the WCPO implemented a key recommendation from the OSCE's previous report and foresaw as a new activity to communicate with regional prosecutors' offices on the approximate number of cases that could potentially be transferred to Serbia, and to determine a timeline for such transfers. The

56 WCPO Response to the OSCE Mission to Serbia, 19 April 2024. See below, Chapter three.
57 WCPO Response to the OSCE Mission to Serbia, 19 April 2024.

OSCE Mission to Serbia commends this commitment, which will enable the WCPO to properly estimate upcoming workload and timely allocate its resources on processing both transferred cases and cases stemming from their own investigations.

Although inconsistencies and lack of planning in case transfers remained, these developments represent significant progress in bilateral efforts to prosecute war crimes effectively, particularly in addressing high-level perpetrators.

Transfer of criminal proceedings to and from other regional offices differed significantly from the progress observed with BiH.

Concerning Croatia in particular, the Revised Prosecutorial Strategy of the WCPO evaluates bilateral co-operation with the State Attorney's Office of Croatia as "insufficiently efficient." The WCPO highlights the proceedings conducted *in absentia* in Croatia as a concern, while not addressing concerns with regard to similar proceedings initiated in its domestic jurisdiction. The WCPO also points to the 2011 Croatian Law on Annulment as a significant barrier to co-operation.[58] While this assessment is largely accurate, the OSCE Mission to Serbia did not observe proactiveness by the authorities concerned to address these impediments through a bilateral agreement between Serbia and Croatia.[59]

Despite the described barriers, according to the information provided to the WCPO, there has been transfer of certain evidence from the Croatian authorities in the investigation phase in two cases where indictments have been raised.[60]

There were initial signs of progress in 2019 when the Justice Ministers of both countries met to discuss these issues. Following this meeting, the ministries formed a working group tasked with drafting a bilateral agreement to address the impediments and obstacles in co-operation regarding war crimes cases. However, progress on this front appears to have stalled. It is suggested that this specific issue should be resumed and addressed bilaterally to overcome the longstanding obstacles to effective co-operation between Serbia and Croatia in war crimes cases.

b. Extradition and transfer of cases

The WCPO's efforts to transfer cases to BiH represent a notable improvement over previous reporting periods. This development aligns with the OSCE's earlier observa-

58 Law on the Annulment of Certain Legal Acts of Judicial Bodies of the former Yugoslav National Army, the former SFRY and the Republic of Serbia; in The People's Newspaper of the Republic of Croatia no. 124/11, 21 October 2011. The law declares null and void all legal acts of the JNA, the SFRY and the Republic of Serbia relating to the war in Croatia in the 1990s in proceedings where Croatian citizens are defendants.

59 The Mission recommended this within its comments on the draft 2021-2026 National Strategy for the Prosecution of War Crimes and in its 2020-2021 Update on monitoring of war crimes proceedings, p. 2.

60 "Lovas II" (case no. K-Po2 9/22) and "Vukovar" (case no. K-Po2 1/23).

tion that transferring criminal proceedings abroad could be an efficient way to bring to justice defendants who are not available to Serbian authorities, including perpetrators of crimes against Serbian victims, after being investigated by the WCIS and the WCPO.The "Vranj" case exemplifies a successful transfer: after an indictment was raised and the defendant arrested in Serbia, he was subsequently transferred to BiH. In contrast, the earlier "Mujanović" and "Osmanović" cases demonstrated the opposite outcome. Despite involving citizens of BiH, their respective extradition requests were rejected, resulting in both of the defendants being tried in Serbia.

Serbia's demonstrated willingness to transfer cases, which was announced in a press release from a meeting of representatives of the highest state authorities[61] ahead of a bilateral meeting between the prosecutors of BiH and Serbia[62] represents a step in the right direction. The OSCE Mission to Serbia expects a continuation of such practice with regard to other nationals of BiH against which criminal proceedings are underway.[63]

On a different note, bilateral relations between BiH and Serbia continued to be affected by the non-execution of the judgement against Novak Đukić, sentenced to 20 years imprisonment for war crimes against civilians in Tuzla in 1995. The defendant travelled to Serbia after his release following a constitutional appeal in BiH and, when he failed to return to serve his sentence, BiH requested Serbia to execute the judgement under mutual legal assistance provisions. Proceedings before the WCDs have been facing persistent delays since October 2015, primarily due to Đukić's repeated non-appearances citing health issues. Since September 2020, medical experts have consistently found Đukić incapable of standing trial, with each assessment extending this incapacity for 12-month periods. There is a risk that such cases may become indefinitely suspended, effectively circumventing the execution of BiH court's judgement, which may strain bilateral relations between Serbia and BiH, potentially undermining the principle of mutual recognition of judicial decisions crucial for effective regional co-operation in prosecuting war crimes.

61 https://www.predsednik.rs/pres-centar/saopstenja/sastanak-sa-ministrom-unutrasnjih-poslova-drzavnim-sekretarom-ministarstva-pravde-republickim-javnim-tuziocem-i-tuziocem-za-ratne-zlocine

62 https://www.tuzilastvorz.org.rs/sr/%D0%B2%D0%B5%D1%81%D1%82%D0%B8/%D1%81%D0%B0%D1%81%D1%82%D0%B0%D0%BD%D0%B0%D0%BA-%D1%80%D0%B5%D0%BF%D1%83%D0%B1%D0%BB%D0%B8%D1%87%D0%BA%D0%BE%D0%B3-%D1%98%D0%B0%D0%B2%D0%BD%D0%BE%D0%B3-%D1%82%D1%83%D0%B6%D0%B8%D0%BE%D1%86%D0%B0-%D0%B7%D0%B0%D0%B3%D0%BE%D1%80%D0%BA%D0%B5-%D0%B4%D0%BE%D0%BB%D0%BE%D0%B2%D0%B0%D1%86-%D1%82%D1%83%D0%B6%D0%B8%D0%BE%D1%86%D0%B0-%D0%B7%D0%B0-%D1%80%D0%B0%D1%82%D0%BD%D0%B5-%D0%B7%D0%BB%D0%BE%D1%87%D0%B8%D0%BD%D0%B5-%D1%81%D0%BD%D0%B5%D0%B6%D0%B0%D0%BD%D0%B5

63 According to the statement of the then-Minister of Interior Aleksandar Vulin, there are 26 such persons. https://n1info.ba/vijesti/vulin-spremni-smo-ustupiti-predmete-protiv-26-drzavljana-bih/

c. *In absentia* trials

In a significant shift from previous practices, the WCPO has begun indicting *in absentia* defendants who are unavailable to Serbian authorities. This new approach was initiated under the former WCP, who had explicitly stated her intention to do so in her program, as one of the possible responses to problems in co-operation with Croatia. It is to be noted that Croatian courts have repeatedly indicted and continued to indict and try *in absentia* Serbian defendants for war crimes. The CPC allows for trials *in absentia* under certain circumstances, stipulating that a defendant may be tried in absentia only if particularly justified reasons exist and if the accused is at large or not accessible to state authorities.[64] A ruling on a trial *in absentia* must be issued by the panel upon a motion from the prosecutor.[65]

This change in strategy has led to notable developments in several cases.

> In the "Zagreb" case, the WCPO filed an indictment against Branko Tunić, a former member of the Croatian National Guard, for war crimes committed against prisoners of war in 1991. The WCPO also filed a motion for a trial *in absentia*, as Tunić was unavailable to Serbian authorities. Initially, the High Court rejected this motion, stating that the procedural conditions were not met because the defendant's address abroad was known. However, the Court of Appeals overturned this decision, citing particularly justified reasons for proceeding with an *in absentia* trial, including the nature of the charges and the protection of victims' interests.

Another significant case is the "Petrovačka cesta" case[66], where the WCPO indicted four high-ranking Croatian Air Force officers for war crimes against civilians allegedly committed during *Operation Storm* in August 1995. To date, the WCD has not decided on the WCPO's motion to initiate *in absentia* proceedings. The High Court postponed the start of the main hearing, scheduled for December 2022, finding that there was insufficient evidence whether the defendants had received the summons or not.[67]

These cases further exemplify the WCPO's new approach to prosecuting war crimes cases where defendants are beyond the reach of Serbian authorities.

The OSCE Mission to Serbia notes that while trials *in absentia* may allow for the prosecution of otherwise unreachable defendants, they also present challenges in terms of due process and the rights of the accused. Moreover, conducting such trials would contravene the National Strategy for the Prosecution of War Crimes 2021-2026, which explicitly states the government's commitment to avoiding trials *in absentia*.

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64 CPC, Article 381, para. 1.
65 *Ibid*., para. 2.
66 Kpo2 3/22.
67 In August 2024, after one year and nine months, the non-trial panel of the High Court accepted the WCPO motion for a trial *in absentia*.

The OSCE Mission to Serbia continues to monitor these cases closely to assess their impact on overall war crimes prosecution efforts and regional co-operation.

d. Assistance in the collection of evidence and other international legal assistance

Regional co-operation in war crimes cases extends beyond case transfers to include assistance with evidence collection and other forms of legal assistance.

This co-operation has been particularly evident with BiH, whose authorities, following the transfer of criminal proceedings to Serbia, have provided substantial assistance to the WCD during trial proceedings. This assistance includes providing documents and facilitating witness testimony. Notably, most witness testimonies were conducted via video-link from BiH, as most witnesses were unwilling to travel to Serbia to give evidence in person. To facilitate this process, BiH authorities provided comprehensive mutual legal assistance. This included summoning witnesses in a timely manner for trial hearings, establishing necessary technical arrangements for video-link testimony, and ensuring witnesses' presence at the designated locations in BiH.

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.[68] In the "Bratunac" case, it took the Bosnian authorities seven months to provide a simple document such as a death certificate, with a substantial impact on the duration of the trial.

The Revised Prosecutorial Strategy 2022-2026 anticipates the initiation of direct co-operation between the Serbian Information and Support Service and similar services in the region to streamline this process. An Agreement on co-operation in the area of protection, support and assistance to victims and witnesses was concluded between the WCPO and the Prosecutor's Office of BiH in November 2022. While this activity was not fully implemented as planned, it has been incorporated into the National Strategy for the Prosecution of War Crimes.

A positive development in this area is the focus on signing and implementing agreements between the Information and Support Service of the WCPO and similar services in regional prosecutor's offices. These agreements aim to define procedures for contact, travel organisation, and other crucial issues such as providing protection during proceedings.

68 See below, Chapter five.

WCPO forwarded requests for international assistance to both BiH and Croatia, usually obtaining replies within a reasonable time.[69] Co-operation with 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.[70]

Regarding the **volume of legal assistance requests**, the data provided by the WCPO shows a significant imbalance. In the reporting period, the WCPO consistently sent more requests to other jurisdictions than it received. For instance, in the reporting period the WCPO requested approximately five times as many assistance measures from BiH compared to requests received (1009 vs. 209). Similarly, requests sent to Croatian authorities were more than four times as many as those received (447 vs. 98). According to the WCPO this imbalance is inevitable, considering that crime scenes, witnesses and injured parties in most cases it prosecutes are located abroad.[71]

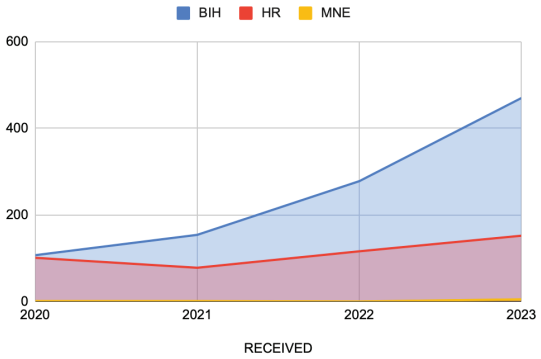
While the high volume of requests sent by the WCPO is commendable, indicating proactive investigative efforts, these trends underscore the need for a more balanced approach to regional co-operation. Efforts should focus on enhancing reciprocity, streamlining procedures, and ensuring effective provision and receipt of assistance across all jurisdictions involved in war crimes cases.

Another concerning trend is the increasing number of requests rejected or not complied with by the WCPO in recent years. Simultaneously, the percentage of assistance requests actually provided to the WCPO has been increasing. This divergence in co-operation patterns may not be conducive to maintaining good mutual relations among regional prosecutor's offices.

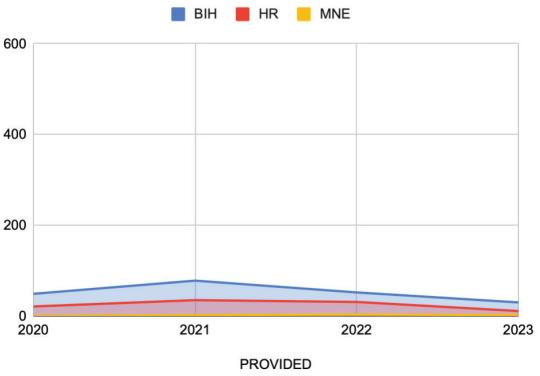
It's worth noting that some requests for assistance submitted by Croatia based on the existing Memorandum and Agreement were not granted due to formal deficiencies. The WCPO cited that these requests were not submitted in accordance with the prescribed content requirements of the Memorandum/Agreement. This suggests a need for better alignment of procedural requirements or improved communication between offices to ensure requests meet all necessary criteria.

69 With regard to replies from Croatia, the WCPO claims that they did not provide a substantive response to the request, but were mainly sent for the purpose of filling out a form.
70 Interview with WCPO officials, 9 July 2024.
71 Interview with WCPO officials, 9 July 2024.

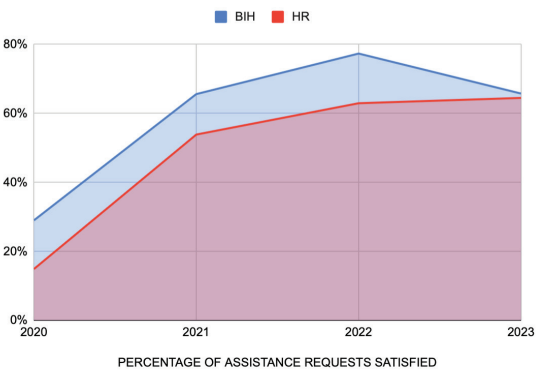
Number of requests sent to other jurisdictions (2020-2023)



Number of assistance requests received from other jurisdictions (2020-2023)

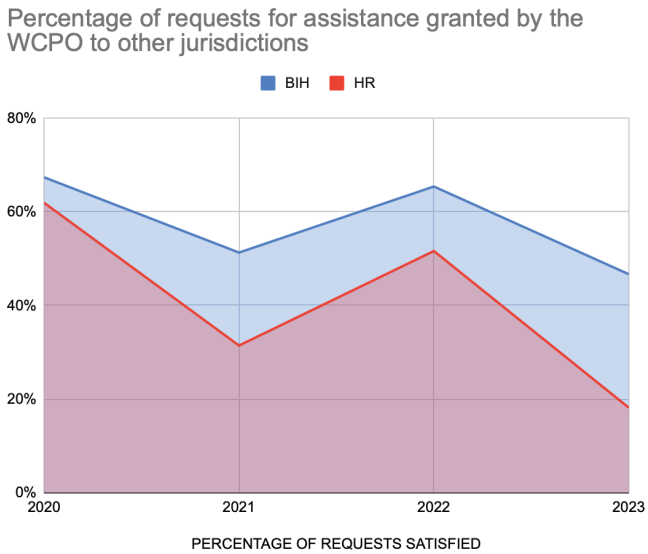


Percentage of requests for assistance granted to WCPO by other jurisdictions



3. Co-operation with EULEX and Kosovo institutions

The co-operation between Serbian authorities and international rule of law institutions in Kosovo on war crimes cases, including missing persons issues, has undergone significant changes since 2014. Up until June 2018, when EULEX ceased its executive functions, co-operation was productive. The WCPO held operational meetings with EULEX prosecutors from the Special Prosecution Office (SPRK) in Pristina. Although no formal protocol existed for transferring criminal proceedings or evidence, Serbian prosecutors informally exchanged considerable evidence and information with their EULEX peers. The WCPO assisted EULEX by facilitating contact with witnesses in Serbia, while EULEX police aided Serbian prosecutors in locating and interviewing witnesses in Kosovo, including ensuring Kosovo Albanian witnesses' presence at trials before the WCDs.



The War Crimes Investigation Service (WCIS) co-operated with EULEX's war crimes investigation unit based on a 2009 Protocol on Co-operation. However, this co-operation dramatically changed after June 2018. The WCPO has not held meetings with non-EULEX representatives of the SPRK. While the WCPO still channels assistance requests through EULEX, Pristina-based institutions in recent years have not responded.

More precisely, between 2020 and 2022, the WCPO consistently sent between 25 and 28 requests per year to EULEX, which was later supposed to forward the requests to the SPRK in Pristina. However, the response rate was extremely low, with only three requests granted in 2020 (out of 28 sent), and none in 2021 and 2022. In 2023, the WCPO reduced its requests to 17, none of which received a response. Throughout this period, the SPRK in Pristina sent no requests to the WCPO. This pattern represents a

significant decline in effective co-operation, with communication becoming increasingly one-sided and unproductive. It remains unclear whether the lack of responses stems from EULEX, which now acts solely as an intermediary having ceased its executive functions, or from Kosovo institutions.

The WCIS considers the 2009 police co-operation protocol implicitly revoked and has no direct contact with Kosovo counterparts.

This lack of co-operation has had a significant and concrete impact on cases before the WCDs.

> The "Ćuška" case serves as a stark example of these challenges. After a 2014 first-instance judgement was quashed on appeal in 2015, the retrial dragged on beyond the reporting period,[72] primarily due to the aforementioned breakdown in co-operation between Belgrade and Pristina institutions. Progress in the retrial was severely hampered, particularly due to the failure of witnesses from Kosovo to appear - a direct consequence of the poor co-operation between jurisdictions. From 2015 to 2019, only 31 witnesses were questioned, with the situation deteriorating further as no hearings were held in 2020 and 2021 and only six in 2019. The resumption of the trial in March 2022 was marked by additional setbacks, including changes in the panel composition that necessitated restarting the proceedings. Limited progress was made also in 2022 and 2023, with only three hearings held in 2022 and four in 2023. The protracted nature of the proceedings has had serious consequences: three defendants died during the course of the trial, proceedings against one defendant were suspended due to his incapacity to follow the proceedings because of illness,[73] and one defendant fled from the authorities. Because of these significant obstacles, the retrial was still on-going during the reporting period,[74] underscoring the urgent need for improved inter-jurisdictional co-operation in war crimes cases.

The WCPO's Revised Prosecutorial Strategy acknowledges these challenges, stating an intention to "work on discovering the most efficient way to improve this type of co-operation." The WCPO plans to initiate consultations with the Supreme Prosecutor's Office and Ministry of Justice to find the best way to co-operate in cases related to events from Kosovo. These developments underscore the urgent need for a new framework of co-operation to ensure effective prosecution of war crimes cases involving Kosovo, since only a political-level agreement could restore functional judicial co-operation.

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72 The judgement upon retrial was delivered in April 2024.
73 In 2024, proceedings against a second defendant were suspended because of his incapacity to stand trial.
74 The retrial proceedings were concluded in April 2024.

4. Recommendations

To the Legislature:

- It is recommended to amend legislation to allow extradition to the IRMCT of defendants accused of contempt of court, in order to fulfil Serbia's international obligations.

To the Serbian Government:

- It is strongly advised to undertake concrete steps to re-establish channels of judicial co-operation with the authorities in Pristina, particularly with the Special Prosecution Office of Kosovo, to enable effective prosecution of war crimes cases, especially those committed in Kosovo.
- It is recommended to resume and prioritise efforts to draft a bilateral agreement with Croatia to address long standing obstacles to mutual co-operation in war crimes cases.

To the WCPO:

- It is urged to ensure prompt prosecution of cases transferred by the IRMCT involving defendants charged for contempt of court.
- It is advised to obtain from BiH and Croatian authorities an estimated number of cases likely to be transferred to Serbia and devise a clear timeline for their transfer.
- It is recommended to initiate procedures under existing international treaties for transferring viable cases to jurisdictions where defendants reside, when such defendants are not available to Serbian authorities.
- It is advised to pursue further attempts to obtain from the IRMCT the lifting of witness protective measures, especially for witnesses who did not testify at trial and/or agree to have their statements revealed.
- It is suggested to resume informal contacts with the Special Prosecution Office in Pristina to improve co-operation.
- It is recommended to develop clear, consistent criteria for decisions on extradition and case transfers to ensure uniformity in practice.
- It is advised to establish a mechanism for regular review and follow-up of unanswered requests for legal assistance to regional counterparts.

To the Ministry of Interior:

- It is recommended to sign memoranda of understanding between the WCIS and counterparts in Croatia and BiH to ensure prompt exchange of intelligence and evidence.
- It is advised to explore possibilities for renewing the protocol on police co-operation regarding war crimes investigations with relevant authorities in Kosovo.

To the Ministry of Justice:

- It is recommended to prioritise the resolution of longstanding cases involving execution of foreign judgments, such as the "Đukić" case, to prevent strains on bilateral relations.
- It is recommended to work with Croatian authorities on signing an agreement aimed at overcoming the legal obstacles to co-operation.

CHAPTER THREE - Investigations

1. Strategic approach

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 take.

The adoption of a new National Strategy for the Prosecution of War Crimes (2021-2026)[75] and a revised Prosecutorial Strategy (2022-2026)[76] by the WCPO marks a significant development in Serbia's approach to addressing war crimes cases. These documents reflect a renewed commitment to enhancing the efficiency and effectiveness of war crimes prosecutions while aligning with international standards and regional co-operation objectives.

The National Strategy, adopted by the Serbian government on 14 October 2021, provides a comprehensive framework for addressing war crimes. It outlines specific goals aimed at improving the legal and institutional mechanisms for war crimes prosecutions, enhancing victim and witness protection, strengthening regional co-operation, and addressing the issue of missing persons. The Strategy is structured around key themes including the efficiency of proceedings, institutional capacity building, victim and witness support, regional judicial co-operation, and transparency in the WCPO's work.[77] Importantly, the National Strategy emphasises the need for continuity in public policy responses to challenges stemming from armed conflicts in the former Yugoslavia.

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75 Nacionalna strategija za procesuiranje ratnih zločina za period od 2021. do 2026. godine, available at https://www.tuzilastvorz.org.rs/public/documents/2021-10/Nacionalna%20strategija%20za%20procesuiranje%20ratnih%20zlocina%20od%202021.%20do%202026.%20godine.pdf.

76 Revidirana tužilačka strategija za istragu i gonjenje ratnih zločina u Republici Srbiji (2022-2026), https://www.tuzilastvorz.org.rs/public/documents/2023-11/revidirana%20strategija.pdf.

77 According to the Supreme Public Prosecutor's Office report for 2023, the acting War Crimes Prosecutor sent an initiative to the Ministry of Justice proposing changes to the jurisdiction of the WCPO. The initiative aimed to expand the WCPO's substantive jurisdiction and suggested changes to its functioning, working methods, and internal organisation, to enhance the office's efficiency and overall performance.

Building upon this national framework, the WCPO's Revised Prosecutorial Strategy, adopted on 27 December 2022, represents a more focused and operational approach to war crimes prosecutions. This Revised Strategy demonstrates several improvements over its predecessor, particularly in terms of case prioritisation and efficiency measures.

It is important to note that the WCPO's first Prosecutorial Strategy (2018-2023) faced criticism on several fronts, including deficiencies in the precision of criteria for case selection and prioritisation, a lack of timelines and deadlines for implementing activities, and failure to address outstanding legal issues such as the application of customary international law, including the principle of command responsibility or responsibility based on omission as set out in the Serbian Criminal Code. While the Revised Strategy has addressed some of these concerns, particularly in terms of case prioritisation, it appears that certain issues, such as the application of customary international law and command responsibility, remain inadequately addressed.

One of the most notable advancements in the Revised Prosecutorial Strategy is the introduction of clearer and more detailed prioritisation criteria for case selection. The WCPO has outlined specific factors to be considered when prioritising cases, including:

1. Cases related to crimes with serious consequences, including those involving a large number of victims and multiple acts of commission
2. Cases with elements of sexual violence
3. Cases where perpetrators held high or senior ranks in the military, police, or civil authorities at the time of the offence
4. Cases transferred from regional prosecutor's offices
5. Cases where the availability of evidence, suspects, witnesses, and victims supports prosecution
6. Category II cases and those where evidence was forwarded by the ICTY/IRMCT

The Revised Prosecutorial Strategy presents a more comprehensive and refined set of prioritisation criteria, marking a significant improvement over its predecessor. The OSCE Mission to Serbia particularly welcomes the inclusion of cases with elements of sexual violence as a priority. This long-overdue recognition addresses a crucial aspect of war crimes that has often been overlooked, potentially providing justice for a group of victims who have historically been underserved.

The Strategy's refinement is also evident in the exclusion of previously vague criteria such as "particularly cruel" crimes and those with "impact on the community". These terms, lacking precise definition, were prone to subjective interpretation and poten-

tial inconsistency in application. Their removal enhances the clarity and objectivity of the prioritisation process.

Furthermore, the prioritisation of cases transferred from the International Criminal Tribunal for the former Yugoslavia (ICTY) and regional prosecutor's offices is a positive step. This approach not only facilitates the processing of well-documented cases but also promotes positive international relations and regional co-operation in addressing war crimes. It demonstrates Serbia's commitment to engaging with international justice mechanisms and neighbouring countries in the pursuit of accountability for war crimes.

The WCPO's recognition of the need to further specify existing criteria for determining priorities is a positive step towards a more systematic and coherent approach to case management.

The WCPO's establishment of a Working Group in 2022 for case prioritisation represents a structured approach to addressing the substantial backlog of war crimes cases. This group is tasked with analysing all cases in the pre-investigation and investigation phases, categorising them into three priority levels.[78] Among these cases are 1,180 cases taken over from general jurisdiction.[79] The scale of this task is significant, compounded by a continuous inflow of cases referred from BiH authorities. WCPO representatives confirmed that the reviewing process is on-going and that as of July 2024 an internal report with prioritised cases is in the making.

This systematic approach to case selection and prioritisation is crucial given the magnitude of the backlog. The Strategy's requirement for prosecutors to prepare quarterly reports on case status and planned actions should, in theory, enhance the WCPO's ability to manage its caseload more effectively and focus resources on the most significant cases.

However, it is important to note that this process is inherently time-consuming and bureaucratic. The detailed analysis of such a large number of cases, their categorisation, and the preparation of regular reports represent a substantial administrative burden. While this structured approach is necessary for effective case management, there is a risk that it could divert significant time and resources from actual investigative and prosecutorial work.

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78 Annual report on the implementation of the planned activities of the revised National Strategy for the Prosecution of War Crimes, 2023, according to which "After several months of work, the working group drafted a report, and a list of cases will be formed in the following period."

79 According to the WCPO, the majority of those cases are not active cases involving known perpetrators, but rather records of criminal events from the area of Kosovo, after the withdrawal of military and police forces of Serbia in June 1999. WCPO claims that its hands are tied, since all possible procedural actions have been taken, however, the perpetrators are still unknown, the evidence is still unavailable, and the institutions in Kosovo are uninterested in those cases.

The OSCE Mission to Serbia recognizes the potential benefits of this system in improving case management and resource allocation. However, it also cautions against the risk of creating an overly bureaucratic process that could potentially slow down the actual prosecution of cases. More generally, there is a risk that the proliferation of strategic documents and reporting commitments may lead to excessive bureaucracy.[80] While the OSCE Mission to Serbia is not in possession of the document elaborating the criteria in detail, it appears that the WCPO has introduced the criteria for case prioritisation with clarity and in a coherent manner. The Revised Prosecutorial Strategy sets out the instruments for implementing this task and a clear sequence of steps to result in a list of priority war crimes cases to be prosecuted, with a clear set of actions to be undertaken in each case.[81]

Another innovative aspect of the Revised Strategy is the emphasis on financial investigations in war crimes cases.[82] This approach could potentially serve multiple purposes: it may act as an additional deterrent, provide a means of compensation for victims, and deprive perpetrators of ill-gotten gains. However, the effectiveness of this measure will depend on the WCPO's capacity to conduct complex financial investigations alongside criminal proceedings, which may require additional resources and expertise. WCPO representatives stated that this has not been used because of the Law requiring material gain of at least 1.5 million RSD, which is not the case with most war crimes cases investigated by the WCPO.[83]

The Strategy's focus on increasing efficiency in criminal proceedings is a welcome development, particularly in light of the modest outputs observed in recent years. The WCPO's intention to consider plea agreements in each case could potentially expedite some proceedings. However, during the period in question (2020-2023) only one plea agreement was concluded and confirmed. Finally, it is crucial that the pursuit of efficiency does not come at the expense of thorough investigations and prosecutions, especially in cases involving serious crimes.

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80 More generally, the existence of a National Strategy, a Prosecutorial Strategy, an accompanying Action Plan, and the requirement for regular implementation reports such as quarterly reports on the implementation of the National Strategy (see Ministry of Justice of the Republic of Serbia, Izveštaj o sprovođenju nacionalne strategije za procesuiranje ratnih zločina, https://www.mpravde.gov.rs/sr/tekst/17978/izvestaj-o-sprovodjenju-nacionalne-strategije-za-procesuiranje-ratnih-zlocina.php, and reports on the implementation of the Prosecutorial Strategy) creates a complex web of planning and reporting obligations. This intricate framework, while well-intentioned, may inadvertently divert valuable time and resources from the actual implementation of prosecutorial activities. There is a danger that the WCPO and other relevant institutions might become overly focused on fulfilling reporting requirements and adhering to multiple strategic documents, potentially at the expense of conducting investigations and prosecutions efficiently.

81 Case prioritisation is scheduled to be conducted in the first two quarters of 2023, as per Activity 1.1.1 of the Action Plan.

82 Law on seizure and confiscation of the proceeds from crime, Official Gazette of the RS, No. 97/08, foresees as one of the base crimes "Crimes against humanity and other goods protected by international law" (Article 372 paragraph 1, Article 377, Article 378 paragraph 3, Article 379 paragraph 3, Articles 388 through 390, and Article 393 of the Criminal Code).

83 Interview with WCPO representatives, 9 July 2024.

One aspect of the prosecutorial Strategy that raises concern is the inclusion of "increased convictions" as a criterion for success. While the desire for accountability is understandable, this approach could potentially compromise the fundamental principle that trials should aim to ascertain responsibility rather than predetermine guilt. The focus should remain on conducting fair and impartial proceedings, regardless of the outcome.

The revised Strategy also addresses important aspects such as witness and victim protection, regional co-operation, and transparency in the WCPO's work. These elements are crucial for ensuring the overall effectiveness and credibility of war crimes prosecutions in Serbia.

In conclusion, the new National Strategy and Revised Prosecutorial Strategy represent significant steps towards a more structured, efficient, and comprehensive approach to war crimes prosecutions in Serbia. The effectiveness of these strategies will ultimately depend on their practical implementation, the allocation of necessary resources, and the WCPO's ability to balance efficiency with the principles of fair justice. It will be crucial, particularly for the WCPO to strike a balance between thorough case analysis and prioritisation, and the need for expeditious action on priority cases.

The OSCE Mission to Serbia will continue to monitor the implementation of these strategies closely, with particular attention to how they impact the quality and quantity of war crimes prosecutions, the treatment of victims and witnesses, and Serbia's broader efforts to address its wartime legacy.

2. Investigative resources

The WCPO has seen significant changes in its staffing and structure since 2018. After a period of understaffing from 2015 to 2018, the office's capacity was strengthened with the appointment of five new prosecutors between September and December 2018, and three more subsequently, bringing the total number of deputy prosecutors to 12.

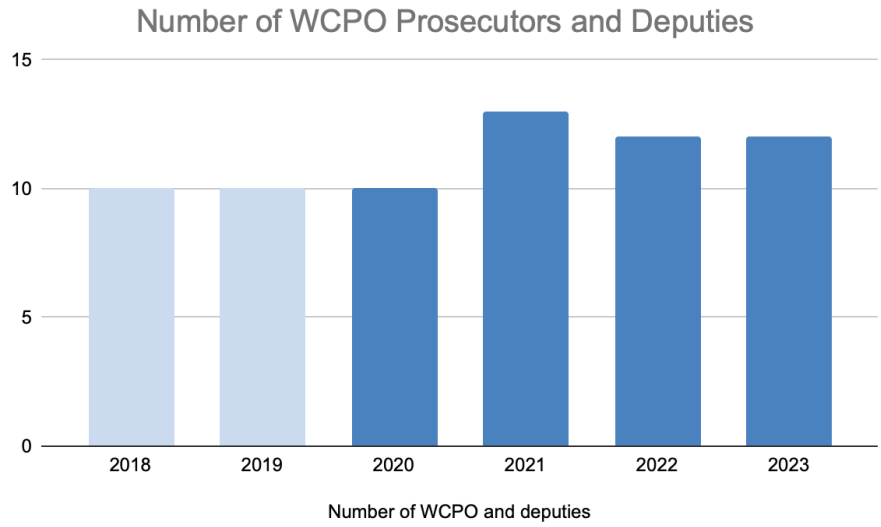
According to the HPC's decision,[84] the WCPO now comprises the Chief Public Prosecutor for War Crimes and eleven public prosecutors. Currently, the office is staffed by an acting Chief Public Prosecutor, eight WCPO public prosecutors, and three seconded public prosecutors from other offices. Additional staff includes two administrative workers, nine assistant prosecutors, a secretary, and a psychologist.[85] In line with

84 Official Gazette of the RS, no. 97/23.
85 WCPO response to the OSCE Mission to Serbia, 19 April 2024.

the Action Plan for Chapter 23 of the EU accession process, a military expert and an advisor were also hired.

The WCPO has organised its work into teams based on territorial principles, connecting cases with the locations where crimes were committed (BiH, Croatia, as well as Kosovo). A Normative and Practice Group was established to monitor judicial and prosecutorial practices at domestic, regional, and international levels.

Despite these improvements in staffing and structure, the expected increase in new cases investigated or indicted has not (yet) materialised. The WCPO's ability to increase its output of investigations and prosecutions, particularly from its own initiatives rather than transferred cases, remains a key area for improvement. The office is still reported to lack sufficient administrative staff and material resources, including up-to-date IT equipment and vehicles.



While the Strategy proposes increased use of plea agreements to enhance efficiency, this approach is unlikely to significantly increase the number of indictments filed without a corresponding increase in new investigations.

The ongoing selection process for a new Chief War Crimes Prosecutor, with the current leadership in an acting capacity, may be impacting the office's performance, though the exact effect is unclear.

The WCIS has exclusive jurisdiction over war crimes cases. In the reporting period, the WCIS maintained its organisational structure, with staff organised into four sections focusing on active investigations, operational analytics, missing persons, and co-operation with the judiciary. The four sections have now been reorganised into

two departments, each with two sections. A new Chief has managed the Service since 2023.

In the overall structure of the Ministry of Interior (MoI), the WCIS is placed under the Criminal Police Directorate (CPD) which forms part of the MoI's General Police Directorate. There continue to be no plan to move the WCIS directly under the Police Directorate, as previously suggested in order to decrease layers of supervision on the WCIS's work.[86]

Recent developments in staffing at the WCIS present a mixed picture. While concerns persist about the motivation of some staff members who did not voluntarily choose their positions, there are positive signs of improvement. The WCIS has reportedly conducted internal competitions to fill some positions, resulting in the hiring of personnel who actively sought these roles. This approach suggests a growing interest in war crimes investigations among certain police officers and potentially indicates an improvement in the unit's overall motivation and expertise. However, the coexistence of both voluntary and involuntary assignments within the WCIS underscores the ongoing challenges in ensuring a fully committed and specialized workforce for war crimes investigations.

In terms of technological advancements, aside from the previously used Geographical Information System (GIS), since 2009 the WCIS uses Zylab, a more powerful IT tool. This upgrade is likely to enhance their investigative capabilities and data analysis. The WCIS had been allocated more adequate premises and received high-performance analytical software also in the previous reporting period, but apparently it failed to produce new, viable cases.

Regarding co-ordination with the Prosecution, the WCIS receives specific instructions from the WCPO to conduct investigations and reports compliance with the deadlines set by prosecutors. This suggests a well-established workflow between the two bodies.[87] All formal communication continues to be channelled through the chain of command within the CPD. The WCIS reportedly receives and timely processes several hundred WCPO requests per year.[88]

The new Prosecutorial Strategy outlines plans to continue and potentially intensify co-operation between WCPO and the WCIS. While it suggests joint meetings, team efforts, and shared training to expedite procedures and resolve issues, the Strategy lacks specific, actionable plans for improvement in this area. However, both the WCPO and the WCIS report that they already maintain daily working relations, effectively forming *de facto* joint investigative teams. Thus, collaboration between the two bodies appears to be more extensive in practice than what is formally outlined in the Strategy.

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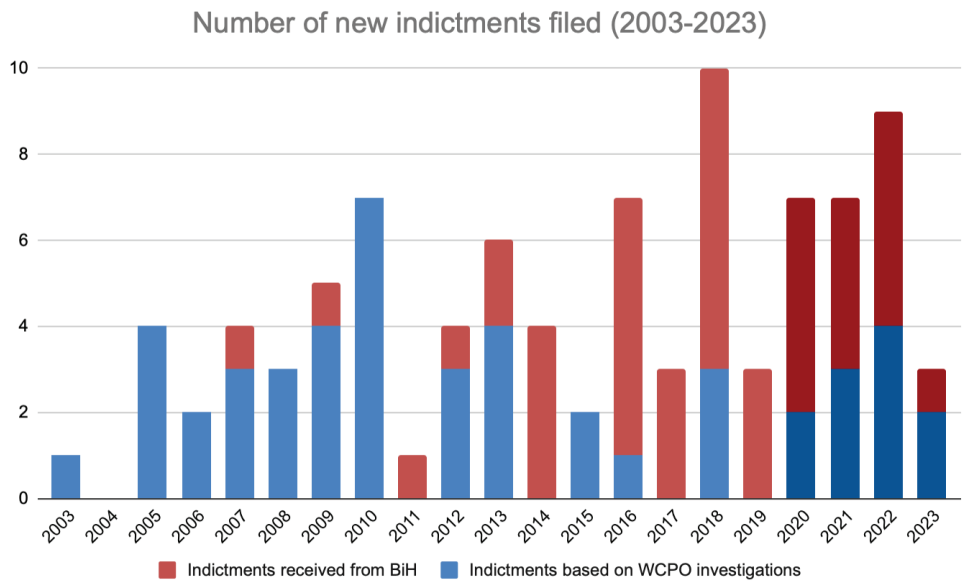
86 2014 Report, p. 52.
87 Meeting with WCIS officials, 9 July 2024.
88 Meeting with WCIS officials, 9 July 2024.

Regarding priorities, the WCIS operates on a dual approach. They partly follow directives from the WCPO, but also allow the natural course of investigations to dictate priorities. This flexible approach enables them to respond to new developments effectively. The WCIS reported that the issue of missing persons is a top priority, underscoring the importance of resolving cases of disappearances related to past conflicts.

The WCIS does not have an organizational unit responsible for international co-operation; instead, these actions are taken through the Department for International Operational Police Cooperation, which is part of the CPD. It is noteworthy that there is currently no co-operation between the WCIS and Kosovo authorities, which represents a significant setback compared to previous reporting periods, when a protocol between the two was in place.[89] This may also explain, at least in part, the lack of new indictments in relation to crimes committed during the conflict in Kosovo.[90]

3. Number of new indictments

Between 2020 and 2023, the WCPO generated a total of 26 new indictments, averaging 6.5 per year. This represents a slight increase from the 2015-2019 period, which saw an average of 5.2 indictments annually. However, a closer examination reveals that progress in the WCPO's independent investigative capacity remains limited.



89 2019 Report, p. 32.
90 See below.

Of the 26 indictments filed in this reporting period, only 11 originated from the WCPO's own investigations, while 15 were based on criminal proceedings transferred from BiH. This means that in almost 60% of new indictments, the WCPO and WCIS did not conduct the primary investigation. While this represents a marginal improvement from the 2015-2019 period, where over 75% of indictments were based on transferred cases, it still indicates a significant reliance on external investigative materials.

On average, the WCPO filed less than three indictments per year based on its own investigations during 2020-2023, compared to just over one per year in the 2015-2019 period. This increase suggests some progress in the WCPO's investigative capacity, but the improvement is less substantial when considering the Office's increased staffing and resources. Concerningly, the number of new indictments has been decreasing since 2021; the year 2023 was particularly unproductive, with only three indictments filed.

Productivity of individual prosecutors remains very modest: considering that in the past four years the WCPO was on average staffed with at least eleven prosecutors, on average it took each Prosecutor between a year and a half and two years to file an indictment, including those based on cases fully investigated by BiH authorities. When considering only the eleven indictments based on WCPO investigations, it took on average four years for a prosecutor to file a single indictment. Moreover, while some of the WCPO's own cases are complex (e.g., "Miomir Jasikovac" or "Petrovčka Cesta" cases), at least two others are small-scale cases involving one or two victims (e.g., "Vranj", "Đakovica II" cases).

These statistics highlight a significant discrepancy between the increased resources allocated to the WCPO and its output in terms of new indictments, particularly those resulting from its own investigations.

It is worth noting that the number of WCPO-generated indictments fluctuated year by year, with a peak of four in 2022 but dropping back to two in 2023.[91] This inconsistency raises questions about the sustainability of any improvements in the WCPO's investigative output.

Despite the slight overall increase in indictments, the figures still fall short of expectations, particularly considering the augmented prosecutorial staff. While some new indictments did focus on high-ranking defendants and/or on large-scale crimes,[92] the WCPO's continued heavy reliance on cases transferred from BiH underscores persistent challenges in initiating and completing complex war crimes investigations independently.

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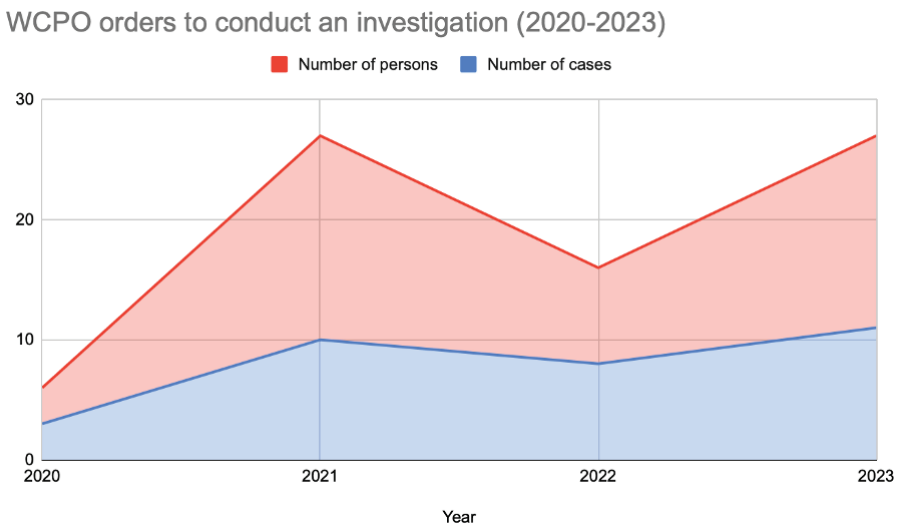
91 The WCPO informed the OSCE Mission to Serbia of a third indictment that has been raised in 2023 based on WCPO investigations.

92 See paragraphs "Defendants' hierarchical level" and "Number of victims".

A slightly increasing trend in investigation orders[93] may signal additional investigative efforts in recent years that may lead to a higher number of indictments in the coming years.



While the modest improvements are noteworthy, they indicate that enhancing the WCPO's investigative capacity remains an ongoing challenge that requires further attention and resources.

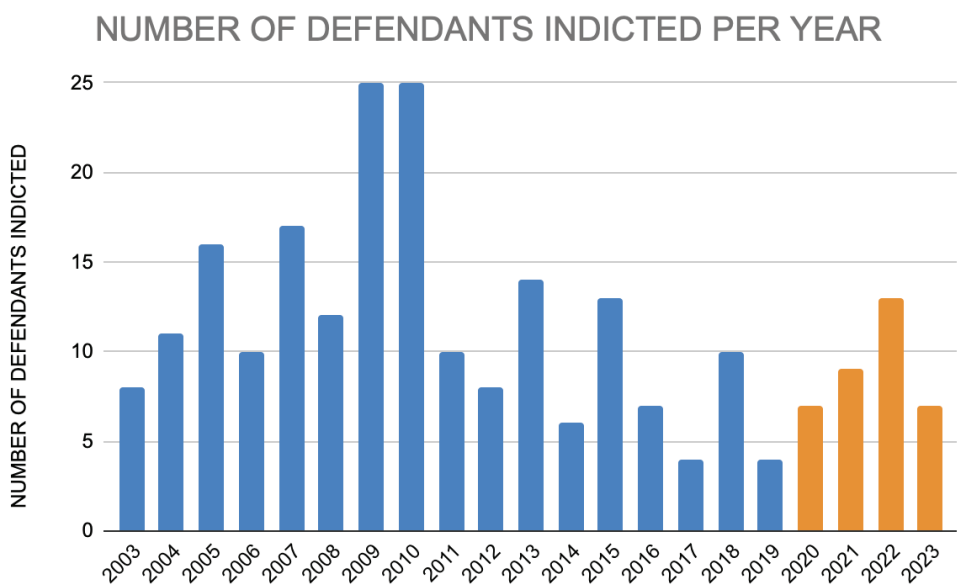
As the OSCE Mission to Serbia reported in its 2014 Report, EULEX has also delivered to the WCPO several complete investigative files involving suspects residing in Serbia. Over ten years later, the WCPO still has not issued any indictments in these cases.

4. Number of defendants indicted

In its previous reports, the OSCE Mission to Serbia had noted a declining trend in the number of defendants indicted per case, from an average of over four defendants per case in 2009 to just one defendant per case in 2014 and subsequent years. The 2020-2023 reporting period shows a partial stabilisation of this trend, albeit with some fluctuations.

93 Data provided by the WCPO to the OSCE Mission to Serbia, April 2024.

The WCPO indicted 7 defendants in 2020, 9 in 2021, 13 in 2022, and 7 in 2023, for a total of 36 defendants charged in 26 separate indictments.[94] This averages approximately 1,4 defendants per indictment, which represents a slight increase from the previous reporting period but remains significantly lower than the figures observed in the early 2010s.



The slight increase in the number of defendants indicted in 2022 (thirteen) stands out within the reporting period, but it does not necessarily indicate a sustained reversal of the previously observed trend. In fact, the figure dropped back to seven in 2023, reinforcing the overall pattern of few defendants indicted per year.

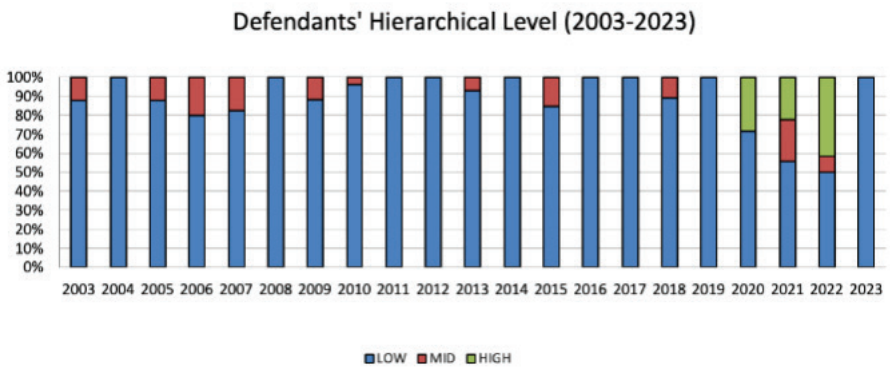
It is crucial to note that only fourteen of the 36 defendants were indicted as a result of investigations conducted by the WCPO itself. The majority of indictments stemmed from criminal proceedings transferred from BiH, continuing the pattern observed in previous years.

Moreover, the distribution of 36 defendants across 26 indictments further illustrates that new cases still tend to focus on individual perpetrators or small groups rather than large, organised criminal enterprises. Most indictments involved just one defendant, with only three cases encompassing two defendants, and only two cases involving more than two.

94 In 2022 an additional indictment was filed against a defendant who had already been charged in 2020 in a separate indictment.

Cases originating from WCPO investigations continued to involve fewer defendants on average compared to previous years. In fact, all eleven indictments filed by the WCPO based on its own investigation in the reporting period involved one defendant, except one indictment involving four defendants.[95] This continues to reflect the WCPO's apparent strategy of prosecuting isolated perpetrators rather than pursuing larger cases involving multiple accused. This trend raises concerns about the WCPO's ability or willingness to tackle more expansive criminal networks, which may not fully capture the scale and organised nature of many war crimes committed during the conflicts in the former Yugoslavia.

The OSCE Mission to Serbia continues to monitor this situation closely, as the focus on smaller cases could potentially limit the overall impact of war crimes prosecutions in Serbia.

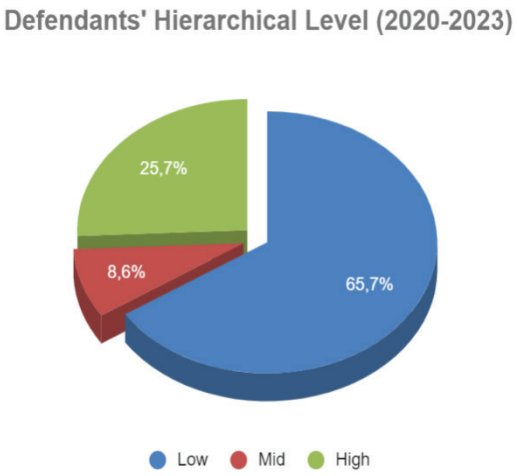


5. Defendants' hierarchical level

The hierarchical level of defendants indicted by the WCPO has shown a significant shift in the 2020-2023 reporting period, marking a notable departure from previous trends. While the majority of defendants continue to be individuals who held low-level positions during the conflicts, there has been a remarkable increase in indictments against high-ranking officials.

In the 2003-2014 period, the vast majority of defendants (149 out of 162) were low-ranking, with only thirteen mid-ranking defendants and no high-ranking officials indicted. This pattern largely continued in the 2015-2019 period, with 35 low-ranking and 3 mid-ranking defendants, and still no high-ranking officials prosecuted.

95 One indictment ("Petrovačka cesta") involved four defendants.



However, the 2020-2023 period has seen a significant change. The WCPO indicted 23 low-ranking defendants[96] and three mid-ranking defendants.[97] Most importantly, for the first time, the WCPO has indicted nine high-ranking officials (over 27% of the total number of new defendants indicted) across six new indictments. This development represents a major step forward in addressing command responsibility and targeting those potentially most responsible for serious war crimes.

Three of these cases against high-ranking officials originate from the WCPO's own investigations[98] and three were transferred from BiH. One of these high-profile cases has already concluded due to the death of the defendant. Progress in the other proceedings will be closely monitored to assess the effectiveness of prosecutions against high-ranking officials.

The OSCE Mission to Serbia commends this shift towards prosecuting high-ranking officials as it aligns with longstanding recommendations to focus on those bearing the greatest responsibility for war crimes. This approach has the potential to significantly impact the landscape of war crimes prosecutions in Serbia, addressing not only direct perpetrators but also those who may have ordered or facilitated large-scale crimes. The continued low number of mid-ranking defendants is also noteworthy and warrants further observation to ensure a comprehensive approach to accountability at all levels of command.

96 For this purpose, the OSCE Mission to Serbia double counted the two indictments raised in 2020 and 2022 against the same, low-level perpetrator.

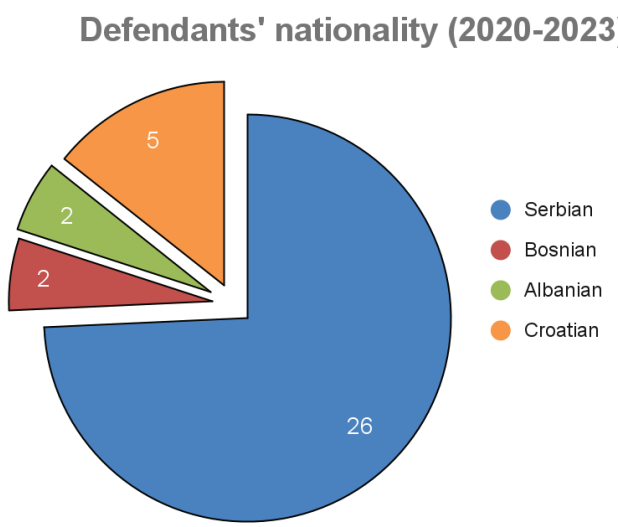
97 The statistics do not include one defendant, whose identity was unknown at the time of writing, since the indictment was not yet confirmed.

98 This number includes one case based on evidence transferred to the WCPO by the IRMCT.

Overall, this new trend in indicting high-ranking officials represents a positive development in Serbia's efforts to address war crimes comprehensively and hold accountable those at the highest levels of responsibility. The OSCE Mission to Serbia encourages the WCPO to continue this approach while maintaining a balanced prosecution strategy that addresses crimes at all levels of the command structure.

6. Defendants' nationality[99]

The majority of defendants in new indictments continued to be of Serbian nationality, though to a lesser extent compared to previous reporting periods. Of the 36 defendants indicted by the WCPO between 2020 and 2023, 26[100] were of Serbian nationality. However, there was a notable increase in the number of non-Serbian defendants indicted: five Croatian, two Bosniak, and two Albanian defendants were also charged during this period.[101] This represents a more diverse range of defendants compared to the 2015-2019 period, where only two non-Serbian defendants were indicted.

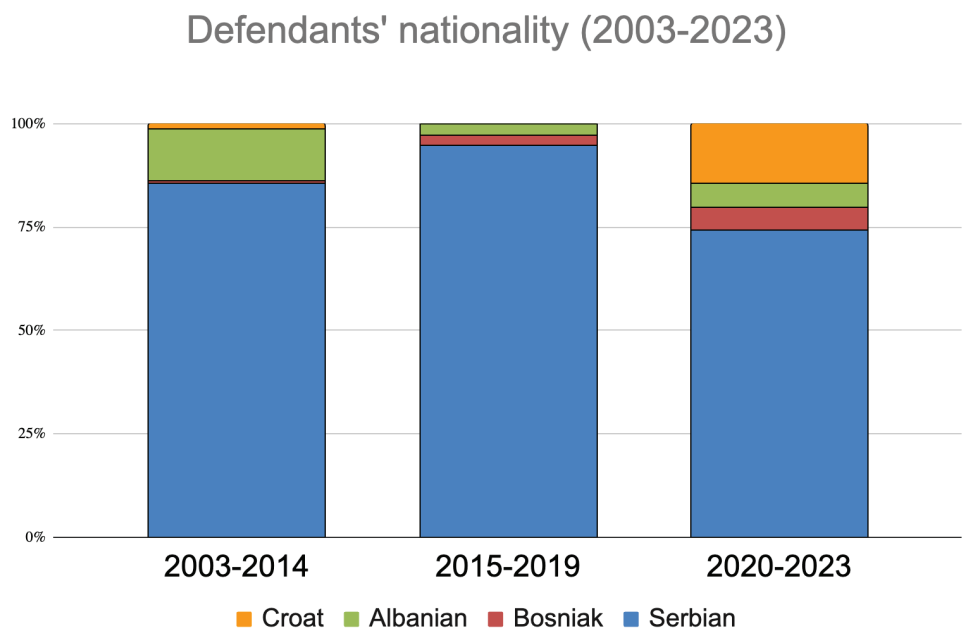


99 While the OSCE Mission to Serbia recorded the nationality of defendants, it focused on the defendants' affiliation with the belligerent forces of one side or the other, rather than their nationality per se. However, in the monitored cases, nationality and affiliation generally coincided, making the distinction largely irrelevant for the purposes of this analysis.

100 For this purpose, the OSCE Mission to Serbia double counted the two indictments raised in 2020 and 2022 against the same perpetrator, of Serbian nationality.

101 As of the time of writing, the nationality of one additional defendant indicted in 2023 remains unknown.

This shift can be attributed in part to the WCPO's new practice of instituting trials *in absentia* against defendants residing in other jurisdictions, who were previously considered unavailable to Serbian authorities. The indictment of Croatian defendants, in particular, marks a significant change from past practices. However, the continued predominance of Serbian defendants among new indictments is still influenced by the cases received from BiH, which primarily involve Serbian suspects.

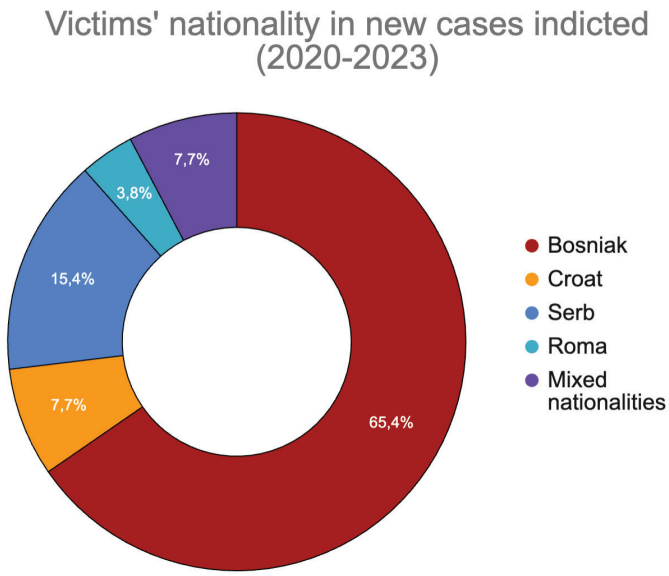


The OSCE Mission to Serbia welcomes the WCPO's apparent willingness to pursue cases against defendants of various nationalities, as it suggests that ethnicity does not impact decisions on whether to indict. This approach contrasts positively with some regional counterparts who have been criticised for neglecting prosecutions against defendants of their own ethnicity. Nevertheless, the OSCE Mission to Serbia continues to monitor these developments closely to ensure that all cases are pursued based on the strength of evidence and severity of alleged crimes, rather than nationality considerations.

7. Victims' nationality

In the majority of new cases indicted during the 2020-2023 reporting period, victims were of Bosniak nationality, continuing the trend observed in previous years. Out of the total number of indictments, 17 involved Bosniak victims. However, there was a notable increase in the diversity of victim nationalities compared to the 2015-2019 period. Four cases involved Serbian victims, two cases involved Croatian victims, and

one case involved one Roma victim. Moreover, two additional cases featured victims of mixed nationalities, including Bosniak, Egyptian, Macedonian, Roma, and Serbian victims.



This diversification in victim nationalities is a positive development, indicating a more comprehensive approach to addressing war crimes across different affected communities. However, the continued predominance of cases involving Bosniak victims is still largely attributable to the transfer of cases from BiH, which primarily concern crimes against Bosniak civilians.

It is noteworthy that, unlike in the previous reporting period, there was one case involving a Roma victim, addressing a gap identified in earlier reports. However, the absence of cases specifically involving Kosovo Albanian victims persists, which may warrant further attention.

The OSCE Mission to Serbia notes that this more diverse representation of victim nationalities suggests an effort by the WCPO to address a wider range of war crimes cases. Nevertheless, it is important to ensure that this diversity is a result of impartial case selection based on the gravity of crimes and strength of evidence, rather than any consideration of victims' ethnicity. The OSCE Mission to Serbia will continue to monitor this aspect closely to assess the overall balance and fairness in the prosecution of war crimes cases in Serbia.

8. Number of victims

In its 2014 report, the OSCE Mission to Serbia noted a decreasing trend in the average number of victims per case from 2010 to 2015, with the lowest point reached in 2014 when new indictments averaged just over two victims per case. The 2015-2019 period saw a substantial increase in the average number of victims per case, primarily due to two large-scale Srebrenica-related cases. However, it was also noted that 10 out of 17 new cases in that period still involved five or fewer victims.

The 2020-2023 reporting period demonstrates a significant and commendable shift towards prosecuting cases involving larger numbers of victims. Most notably, one case related to events in Srebrenica involves thousands of victims, representing a major step in addressing large-scale crimes. Another significant case, concerning crimes committed in Bratunac near Srebrenica, involves approximately 300 victims.

Several other cases in this period also involve hundreds of victims, with crime locations primarily in various parts of BiH, including Rogatica, Ključ, Sanski Most, and Zvornik. This focus on larger-scale cases is a positive development in Serbia's war crimes prosecution efforts, potentially allowing for a more comprehensive addressing of systematic crimes and higher-ranking officials. This approach has the potential to increase the impact of war crimes prosecutions and more comprehensively address the scale of atrocities committed.

It is important to note, however, that of these larger cases, two - the "Jasikovac" case, involving around 300 victims, and the "Srebrenica II" case, involving thousands - are the result of the WCPO's own investigation. The other high-victim-count cases have been transferred from BiH. This underscores the continued importance of regional co-operation in prosecuting war crimes, while also highlighting the need for the WCPO to enhance its capacity to independently investigate and prosecute large-scale cases.

Despite this shift towards larger cases, the range of victim numbers remains broad. The WCPO continued to mainly pursue cases involving smaller numbers of victims, with several indictments concerning fewer than ten victims. This diversity in case size suggests that the WCPO is maintaining a balanced approach, addressing both isolated incidents and large-scale atrocities.

Despite the positive trend towards prosecuting larger-scale cases, it is concerning that significant atrocities committed during the Kosovo conflict remain unaddressed. As highlighted in the OSCE's 2014 Report, several large-scale massacres in Kosovo have yet to be the subject of prosecution by either Serbian authorities or UNMIK/EULEX. These include the massacres in Meja and Korenica villages (around 300 people killed), Izbica village (over 100 people killed), and Pusto Selo village (over 100 people killed), all occurring in March-April 1999.

Although this may be partly attributable to the already mentioned deteriorating co-operation with authorities in Kosovo, the lack of progress on these cases is particularly troubling given that 25 years have passed from the events. Despite repeated assurances from the WCPO that these cases are under investigation, there has been no tangible progress or visible results in bringing these serious crimes to justice. This continued inaction raises questions about the WCPO's capacity or willingness to address all aspects of Serbia's war crimes legacy, particularly those committed in Kosovo.

The OSCE Mission to Serbia reiterates its concern that without a clearer strategy for prioritising and addressing these large-scale atrocities, there is a real risk that they may never be prosecuted. This not only denies justice to hundreds of victims and their families but also leaves a significant gap in Serbia's efforts to comprehensively address its wartime past. The OSCE Mission to Serbia urges the WCPO to reconsider its approach to case prioritisation and to devote specific attention and resources to these long-standing, large-scale cases from the Kosovo conflict.

9. Recommendations

To the WCPO:

- It is suggested to refine case prioritisation criteria to ensure they effectively guide resource allocation and case selection.
- It is strongly recommended to increase efforts to independently investigate and prosecute large-scale war crimes cases, particularly those related to the Kosovo conflict that have remained unaddressed for decades.
- It is advised to continue and enhance the focus on indicting high-ranking officials while maintaining a balanced approach to prosecutions at all levels.
- It is recommended to develop and implement strategies to improve the efficiency of investigations, aiming to increase the number of indictments resulting from the WCPO's own investigations.

To the Serbian Government:

- It is recommended to ensure continued adequate resourcing of the WCPO and WCIS, particularly in terms of administrative staff, IT equipment, and specialized expertise for complex investigations.
- It is advised to support efforts to enhance co-operation mechanisms with Kosovo institutions to facilitate investigations into unaddressed large-scale atrocities.

To the High Prosecutorial Council:

- It is urged to expedite the process of appointing a Chief War Crimes Prosecutor to ensure stable leadership and strategic direction for the WCPO.

To the WCIS:

- It is recommended to continue efforts to enhance staff motivation and specialisation in war crimes investigations, potentially through targeted training programs and incentives.
- It is advised to fully utilise new technological tools like Zylab to support more efficient and comprehensive investigations.

CHAPTER FOUR - Modes of liability and superior responsibility

1. Co-perpetration

In the reporting period, co-perpetration remained the most frequently charged form of complicity in war crimes cases involving multiple defendants. The Criminal Code of the Federal Republic of Yugoslavia (CCFRY) broadly defines co-perpetration as "several persons jointly commit[ting] a criminal act by participating in the act of commission or in some other way", encompassing both material and mental elements.

The OSCE Mission to Serbia's 2014 and 2019 Reports noted that WCPO indictments and WCD first instance judgements often failed to clearly detail each co-defendant's conduct and mode of liability in cases involving multiple perpetrators. This issue persisted in the current reporting period, with some indictments still failing to describe the exact contribution of defendants to the commission of criminal offences, failing to provide a clear picture of each defendant's role in the alleged crimes.

Indictments often discussed the responsibility of defendants as a collective group, rather than delineating the specific actions of each individual. In some cases, indictments described the actions of certain co-perpetrators in detail, while treating others as an undifferentiated group.

The WCD Court of Appeals has emphasised that unclear charges or enacting clauses hinder defendants' ability to mount an effective defence, as they must be aware of the factual and legal charges against them at all stages of the proceedings.

The OSCE Mission to Serbia reiterates that when formulating charges, the prosecution must clearly set out the mode of participation in the crime for each accused. Indictments should specify the relevant actions sufficient to establish criminal responsibility, enabling defendants to understand the charges and prepare an adequate defence. If this threshold cannot be met, the Prosecutor should consider gathering additional evidence or potentially dismissing the charges.

In the "Ključ - Rejzovići" case, the Court of Appeals confirmed the first-instance (retrial) conviction, stating that the High Court correctly concluded that for the existence of co-perpetration, it is necessary to undertake some specific action that would indicate the role of the defendant as one of the participants in the murders.

The second-instance court concluded, among other things, that in the specific case, from the evidence presented during the proceedings, it was not possible to determine which actions the defendant took which enable the participation in the crime or in some way contribute to the criminal offences.[102] The Court of Appeals judgment shows that the prosecution failed to substantiate the facts supporting the defendants' co-perpetration.

The practice of unclear establishment of individual criminal responsibility in judgments also continued during this reporting period.[103] The long-lasting adverse procedural effects of such unclear determinations were evident, with cases sent for retrial after the Court of Appeals quashed first instance judgments. The Court of Appeals stated that judgments must clearly indicate the established facts relating to individual criminal conduct and the supporting evidence to enable the exercise of the right to appeal.

The OSCE Mission to Serbia emphasises that judgments should clearly explain each individual's contribution to the criminal offence, particularly the factual circumstances giving rise to criminal responsibility for each person found to be co-responsible. While this does not require an exhaustive description of all actions by the accused, charges and judgments should clearly articulate at least the minimum elements that meet the threshold for criminal responsibility. If this threshold is not met, the defendant should be acquitted.

2. Responsibility of superiors

In its 2014 and 2019 reports, the OSCE Mission to Serbia highlighted the lack of a clear position on the legal basis for superior responsibility in war crimes cases. The reports noted that neither the WCPO nor the WCDs had definitively embraced or discarded the applicability of command responsibility within the Serbian domestic legal system, nor had they consistently applied other modes of liability for superiors.

In the current reporting period (2020-2023), the OSCE Mission to Serbia observed notable developments in this area. Contrary to previous practices, there have been cases

102 Court of Appeals in Belgrade, judgment Kž1 Po2 3/2021, p. 15.

103 In the "Lovas" case, the Court of Appeals overturned the retrial conviction of one defendant into an acquittal, stating, among other things, that the WCPO failed to specify and individualize the defendant's acts in the indictment.

brought against high-ranking officials,[104] including charges for ordering crimes. This marks a significant shift from the previous reluctance to indict or try high-level defendants, which was often attributed to the absence of relevant provisions in the CCFRY.

While the WCPO has not formally indicted any defendants with command responsibility per se, citing its inapplicability to offences committed during the 1990s, there has been a discernible move towards addressing superior responsibility through other legal mechanisms.

First, the use of 'ordering' as a mode of liability in recent cases against high-ranking officials demonstrates a willingness to tackle the issue of superior responsibility, albeit through established provisions in domestic law.

Second, in a significant departure from previous practices, the WCPO has for the first time raised an indictment charging one mid-ranking and a high-ranking defendant with responsibility for crimes committed by their subordinates in the "Sanski Most II" case. This development marks a notable shift from the OSCE's findings in previous reports, which highlighted the absence of such charges against higher-ranking officials.

The indictment alleges that two members of the Bosnian Serb armed forces were aware of war crimes being committed by their subordinates and "acquiesced" to their commission. This formulation represents a nuanced approach that falls between two established modes of liability: "ordering", which is expressly foreseen in Serbian domestic law, and "failing to prevent", which would constitute command responsibility under international law.

The WCPO's choice of language in this indictment suggests an attempt to navigate the complexities of superior responsibility within the constraints of the Serbian legal framework. This approach may be seen as a cautious step towards addressing the long-standing issue of prosecuting higher-ranking officials for the actions of their subordinates, a concern repeatedly raised in previous OSCE reports.

As the case is ongoing, it remains to be seen how the WCD will interpret and rule on this novel formulation of superior responsibility. The court's decision will likely have significant implications for future prosecutions of mid and high-ranking officials in war crimes cases in Serbia.

Third, the "Trnje" case, concluded in December 2019, had raised important questions about the potential application of commission by omission theory and the interpretation of Yugoslav military directives as a basis for superior responsibility. However, the Court of Appeals' decision[105] to uphold the first-instance judgement without addressing these issues left the matter unresolved.

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104 See above, Chapter three.
105 Judgment Kž1 Po2 5/19, 12 December 2019

Finally, in 2020 the Constitutional Court declared its opinion on the legal basis for prosecuting individuals for command responsibility:

> In 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. The investigation was terminated by the WCPO in March 2017, for alleged lack of evidence. After unsuccessfully objecting to the Republic Public Prosecutor's Office, the relatives of the victims launched a constitutional appeal. In October 2020, the Constitutional Court (CC) rejected the appeal, finding that the WCPO investigation had been expeditious and efficient.[106] However, the CC also ventured into examining whether Živanović could be prosecuted for command responsibility at all. The CC also took the view of command responsibility as a standalone offence (rather than a mode of liability), concluding that as such it cannot be applied to crimes committed before 2006, i.e., before its introduction as a separate criminal offence in Serbian law.[107]

The OSCE Mission to Serbia notes that while progress has been made, a comprehensive and consistent approach to superior responsibility remains to be fully developed.

While the focus on 'ordering' has allowed for some progress, it leaves unaddressed the broader spectrum of superior responsibility, particularly in cases where direct orders may be difficult to prove. The continued ambiguity in the legal treatment of co-perpetration and the unresolved approach to command responsibility or commission by omission create significant gaps in the prosecution of complex war crimes cases.

To fully realise the aims of the National Strategy and ensure comprehensive accountability, the WCPO and WCDs should explore and develop a more diverse approach to modes of liability for high-ranking officials. The OSCE Mission to Serbia encourages Serbian judicial institutions to build on their current progress by addressing these legal challenges, thereby enhancing the effectiveness and reach of war crimes proceedings against senior officials and against larger groups.

106 Constitutional Court decision Už 11470/2017.
107 2014 Report, p. 61.

3. Recommendations

To the WCPO:

- It is strongly recommended to clearly specify in indictments the material contribution of each accused to each crime charged, qualifying it under the proper mode of liability.
- It is advised to continue developing and refining approaches to charging superior responsibility, exploring various modes of liability applicable to high-ranking officials.

To the WCDs:

- 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 provide clear legal reasoning on the application of different modes of liability, particularly in cases involving superior responsibility.

Chapter FIVE - Delays in war crime trials

1. COVID-19 pandemic

On 15 March 2020, the 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, the War Crimes cases as such were not considered as non-delayed.[108] After the lifting of the state of emergency in May 2020, the trials in war crimes cases resumed.[109] Overall, this postponement of trials did not have significant effect on war crimes proceedings.

2. Persistence of systemic issues

In its 2014 and 2019 Reports, the OSCE Mission to Serbia highlighted several factors contributing to delays in war crimes proceedings. These included the belated election of the WCP, impromptu removal of WCD judges from their assignments, defendants' absence at trial hearings, witnesses' failure to appear. The previous reports emphasised that these delays adversely impacted the rights of all parties involved, including the accused's right to a trial within a reasonable time and victims' right to timely redress. Delays also inevitably lead to potential loss of evidence as witnesses may become unavailable or their memories may fade over time.

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108 Non-delayed cases were the cases in which custody had been ordered, the cases including minors, the cases of domestic violence, the cases for criminal offences committed during the state of emergency or in connection with the state of emergency, the cases where there is a risk of expiring of statute of limitations, the cases in regard to decision on distribution of press and dissemination of information in the media and the cases for crimes of Causing Bankruptcy, Failure to Act Pursuant to Health Regulations During Epidemic and Transmitting Contagious Disease.

109 Namely, the National Assembly lifted the state of emergency on 6 May 2020.

Although both the National Strategy and the Revised Prosecutorial Strategy mention "Enhancing the efficiency of war crimes proceedings" as the first and foremost priority, the current reporting period has seen a continuation of many of these issues, with some war crimes trials experiencing significant delays.

The "Lovas" case, for instance, concluded in January 2021 after an extraordinary duration of 14 years, and the "Ćuška" case, where retrial proceedings are still on-going in the reporting period after entering its 14th year of duration,[110] exemplify the persistent challenge of excessively lengthy trials.

The following paragraphs discuss the factors contributing to the current situation.

3. Changes in judicial and prosecutorial staff

A first factor contributing, albeit limitedly, to delays has been the numerous changes in judicial personnel.

On 1 March 2022, Judge Snežana Nikolić Garotić was assigned to the WCD to replace the retiring Judge Vera Vukotić. This change, coupled with the replacement of Judge Zorana Trajković due to extended sick leave in February 2022, resulted in all war crimes proceedings before the High Court having to start anew within a very short period.[111] Moreover, as already mentioned in Chapter 1, the failure of the HJC to decide on Judge Terzić's mandate prolongation in the WCD led to his transfer back to his original court (Court of Appeals in Novi Sad) and subsequent replacement. This administrative oversight caused disruptions in ongoing war crimes trials, as the newly assigned judge needed to familiarise himself with complex case materials, resulting in delays in proceedings. This situation exemplifies how administrative failures can directly impact the timely progression of war crimes cases.

The practical impact of judicial replacements on the duration of ongoing war crimes trials was, however, limited. This was due to both prosecution and defence agreeing to accept all evidentiary actions already carried out, so that the court plainly decided to have all previously collected evidence read into the minutes. Although this approach prevented significant delays that could have occurred if the trials had to restart from the beginning, it is worth noting that had the defence adopted an obstructionist strategy, refusing to accept the previously collected evidence, the court might have reached a different conclusion, potentially leading to more substantial delays in the proceedings.

110 A first-instance decision upon retrial in the case was reached only in April 2024, still subject to appeal.

111 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.

The OSCE Mission to Serbia reiterates its concerns over the prolonged appointment process of the WCP as mentioned in Chapter 1. While the prolonged transition period after the expiry of the previous WCP's mandate has not led to such dramatic legal repercussions as in the previous reporting period,[112] the OSCE Mission to Serbia emphasises that any delay in the appointment inevitably impacts the effective management of the WCPO and the efficient processing of war crimes trials which is a key objective of both the National Strategy for the Prosecution of War Crimes and the Revised Prosecutorial Strategy.

4. Absence of defendants

The **absence of defendants** remained a recurring issue which impacted duration of criminal proceedings.

> For example, in the "Srebrenica" case, multiple hearings were postponed due to defendants not attending. For example, the hearings scheduled for 13 April and 24 July 2023 were postponed because one or more defendants were absent. These repeated postponements significantly impeded the progress of what is already a complex and high-profile case.

The OSCE Mission to Serbia notes that courts must ensure a party's absence or uncooperative behaviour does not impede the swift progress of criminal proceedings.

The CPC foresees that the defendant is obliged to attend trial hearings and that a failure to do so may result in a Court order for coercive measures in order to secure his/her attendance.[113] Despite the recurring failure of defendants to attend hearings in some of the most prominent war crimes cases tried by the WCDs, the Court resorted to such measures in only two instances. During the reporting period, WCDs implemented a practice of separating criminal proceedings for defendants whose health conditions prevented them from continuing to participate in or attend their trials. This procedural approach was used when a defendant's medical state was deemed incompatible with ongoing trial participation.[114]

Where necessary, courts should utilise available legal measures to secure parties' attendance at trial and continue to separate proceedings against defendants whose health conditions render them unable to regularly attend trial sessions for extend-

112 In the previous reporting period, the 17-month delay in appointing the WCPO resulted in significant legal complications, including challenges to validity of some indictments raised during the interim timeframe. Several indictments filed between January 2016 and May 2017 were dismissed by the Court of Appeals on the grounds that they were not filed by an "authorised prosecutor", leading to procedural setbacks in high-profile cases such as "Srebrenica" and "Štrpci".

113 CPC, Art. 380.

114 The approach was applied in the "Sanski Most II", "Srebrenica" and "Ćuška" cases.

ed periods. This approach would help ensure prompt adjudication of cases for other defendants.

5. Failure of witnesses to appear

The most prevalent cause of postponements continued to be the failure of witnesses to appear, especially when summoned to testify via video link from BiH.

Regularly summoned witnesses have an obligation to show up at the hearing and give testimony.[115] In case of unjustified absence, the court may compel witnesses to appear and impose a fine of up to 100,000 RSD.[116]

As already noted in previous reports, the OSCE Mission to Serbia continued to observe a number of cases where witnesses repeatedly failed to appear to testify, especially when they resided abroad and were supposed to either travel to Serbia to testify, or appear at a video-link location in a foreign jurisdiction. This caused a considerable number of trial sessions to be cancelled and thus substantially contributed to delays in such cases.

> The "Sanski Most II" case presents a particularly concerning example of trial delays. Between June 2021 and the end of 2023, only five witnesses were heard, despite numerous scheduled hearings. While the OSCE Mission to Serbia does not have official records of the reasons for these cancellations, interviews with lawyers involved in the case suggest that the primary cause was witnesses' unwillingness to appear before the court in BiH for video link testimony. This situation highlights the ongoing challenges in securing witness co-operation, especially in cases relying on cross-border video testimony, and underscores the need for more effective mechanisms to ensure witness participation in war crimes trials.
>
> The case of "Bihać-Ripač" illustrates the impact of witness-related delays. The main hearing began on 9 March 2021, but over the course of more than a year, the WCD managed to hold only four hearings during which just eight witnesses were questioned.
>
> The "Rudice" case exemplifies inefficient case management and unnecessary delays. A key protected witness, reportedly in Germany, was repeatedly summoned despite clear indications that the witness refused further co-operation

115 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."

116 CPC, Article 108(1): "Where witnesses duly summoned fail to appear and fail to justify their absence, or without authorisation 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."

and was unwilling to testify. The WCPO failed to renounce this witness for over two years, while the court continued futile attempts to secure video link testimony.[117] This belated decision significantly prolonged the trial, a particularly serious issue given that the defendant was in pre-trial detention. The case highlights the need for more prompt decision-making by both the WCPO and the court in managing unco-operative witnesses to prevent unnecessary delays in war crimes proceedings.

Other cases where the OSCE Mission to Serbia noted unjustified delays include the "Brod" and the "Zvornik-Karakaj" cases, where issues were recorded in obtaining witness testimonies from BiH and Germany respectively. The "Jajce" and "Bratunac-Suha" also were subjected to considerable delays.

In cases involving witnesses testifying from other jurisdictions, the WCDs lacked jurisdiction and powers to compel them to appear. However, even in these cases 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.

While the Court verifies whether summonses have been served correctly on the witnesses due to appear, it could in some instances make additional effort to also check 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. 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. All the abovementioned checks should help the Court to take remedial action where necessary, including, where it is established that witnesses will not attend, cancelling the hearing in advance; where the prosecutor has established that the failure to appear is permanent, they should renounce the witness.

The OSCE Mission to Serbia remains concerned that witness attendance issues, highlighted in previous reports, continue to be a major obstacle to efficient proceedings in war crimes cases. In interviews, WCD judges indicated they feel constrained by the WCPO's witness calling schedules. They also noted that video link arrangements can only be made when a witness's physical attendance is impossible. They explained that they feel obliged to first summon witnesses to appear in person at least once. Only after a witness fails to appear in person can video link arrangements be considered, and even then, only if physical attendance is deemed impossible. It is apparent that the described practice is governed by the principle of immediacy. However, this rigid approach contributes to unnecessary delays in trials.

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117 While during this two-year period the court collected other evidence, it also postponed several trial hearings solely because that witness did not appear. The WCPO did not renounce this witness despite their prolonged absence. It was only in April 2024 that the court finally decided to have the witness's previous statement read into the minutes, as permitted by Article 406, para. 1, no. 4), CPC.

WCD judges informed the OSCE Mission to Serbia that, as a coping strategy, they now summon a higher number of witnesses for each hearing, anticipating that some may not appear. However, despite this measure, too many witnesses still fail to attend, resulting in frequent postponements of hearings.

The OSCE Mission to Serbia observes that significant time has passed since the events and the desire to avoid secondary traumatisation of witnesses are major factors contributing to non-attendance. Nevertheless, in war crimes cases witness testimonies constitute the principal, if not often the only evidence in the proceedings. This fact should oblige both the Prosecutor's Office and the Court to put more effort into maintaining the balance between obtaining the necessary testimonies and not excessively prolonging the trials.

6. Recommendations

To the Belgrade High Court management:

- It is strongly recommended to ensure that reassigned WCD judges are able to complete cases in advanced stage of trial, in which they are panel members.

To the WCDs:

- It is crucial to ensure efficient management of trials, including verifying arrangements for the presence of defendants and witnesses before trial sessions.
- It is advised to use legal measures under the CPC to compel the appearance of absent defendants without justification.
- It is recommended to consider postponing hearings in advance when it is clear summoned witnesses cannot appear.
- It is advisable, when necessary, to make additional effort in managing witness schedules, including easier arrangement of video link testimony.

To the WCPO:

- It is strongly recommended to avoid proposing witnesses whose testimony does not add value to the case. It is advised to critically evaluate witness lists to ensure only those with direct and relevant knowledge are called to testify.
- It is crucial to implement a thorough pre-hearing verification process for witnesses, especially those testifying via video link from abroad.

To the Ministry of Justice:

- It is suggested to consider implementing case management technologies to streamline scheduling and reduce administrative delays.
- It is recommended to explore legislative changes that would allow for more flexible and efficient trial management in war crimes cases.

CHAPTER SIX - Application of IHL provisions

1. War crimes in Serbian criminal law

In the reporting period, the WCPO continued to charge all the defendants with war crimes against the civilian population and war crimes against prisoners of war under the Criminal Code of the Socialist Federal Republic of Yugoslavia (CCSFRY).[118]

As already mentioned in previous reports, the CCFRY requires that an act be in violation of international law in order to be qualified as a war crime.[119] 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

118 The CCFRY was the law in force during the 1990's and is unanimously recognized as more favourable to the defendant. 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.

119 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 [...]." 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. 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.

victim must belong to a protected category. An additional principle is that (e) the official capacity of the perpetrator is irrelevant.

In its previous reports, the OSCE Mission to Serbia noted cases of misinterpretations of the requirements (a), (c) and (e) above.[120] In the reporting period, the OSCE Mission to Serbia did not notice any examples of misinterpretations of the requirements related to the "nexus" and the capacity of the perpetrator, in a manner that would have influenced the wrong decision. For this reason, unlike in previous reports, the OSCE Mission to Serbia did not specifically deal with these topics.

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 vaguely, in the Geneva Conventions and their 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 organised armed groups or between such groups within a State".[121]

IHL differentiates between international armed conflicts and non-international armed conflicts,[122] with protected persons enjoying more statutory guarantees in international armed conflicts than in non-international ones.[123]

In the reporting period, WCD judges continued to correctly apply the appropriate body of IHL rules in relation to the conflicts in BiH and Croatia.

For the crimes committed during the Kosovo conflict, two new cases were ongoing before the WCDs in the reporting period.[124] The qualification of the 1998-1999 conflict

120 See 2014 Report, pp. 67-72; 2019 Report, pp. 61-68.
121 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.
122 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.*
123 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.
124 One case was finally concluded in the reporting period ("Đakovica II"), while the other case is in the appeal phase ("Rudice").

in Kosovo was designated as problematic in the previous OSCE reports, both in terms of its nature[125] and its end date.

Regarding the nature of the conflict, following its 2019 judgment in one case[126], the High Court WCD continued to qualify the conflict as non-international. In only one case adjudicated during the reporting period ("Đakovica II" case), involving crimes allegedly committed by a member of the Kosovo Liberation Army (KLA) against a civilian, WCD judges correctly decided that the crimes were committed in the context of a non-international armed conflict.[127] [128]

In its previous reports, 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, which also has implications on the end the application of IHL provisions and the related qualification of the charged crimes as war crimes.[129]

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 finalised (i.e., 20 June 1999, when Serbian forces completed their withdrawal from the territory of Kosovo and NATO officially terminated the air campaign),[130] Serbian courts have been divided on this point. The stance

125 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 all Kosovo-related cases before the WCDs, it was an undisputed fact 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.

126 "Ramadan Maljoku" case, judgement SPK Po2 1/19 of 19 March 2019.

127 "Đakovica II" case, judgement K Po2 7/22 of 8 November 2022.

128 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. 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.

129 The Geneva Conventions, save for some limited exceptions, 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" (ICTY, Tadić interlocutory appeal, supra, para. 70). 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.

130 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.

previously held in several cases by the High Court was that both armed conflicts in Kosovo ended on 20 June 1999. The Court of Appeals, on the other hand, 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 then-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. [131]

In the current reporting period, in the "Đakovica II" case refered to above, the WCDs trial panel aligned itself with the SCC legal opinion of 2013, finding that the armed conflict had existed even after 20 June 1999. The appeal panel later overturned the conviction in the said case, acquitting the defendant of all charges after having found that the prosecution failed to prove the defendant committed the crimes as alleged. The Court of Appeals, however, did not deal with the issue of duration of the armed conflict in its judgment.

In the other ongoing case over the reporting period, the WCPO indicted the defendant for crimes committed in late June and in July of 1999.[132] While the trial has not been concluded yet, it may be expected that the High Court's stance on the duration of the Kosovo conflict will not be changed.

3. Recommendations

To the WCPO and the WCDs:

- Continue the good practice of stating whether war crimes charged were committed in the context of armed conflicts of an international or a non-international nature and apply the correct body of IHL depending on the nature of the armed conflict in question.
- It is recommended to take a uniform stance between the High Court and the Court of Appeals on the issue of the end date of the Kosovo conflict, based exclusively on a factual reconstruction of the events.
- Continue the good practice of not considering the capacity of the defendant as one of the elements necessary for war crimes.

131 See 2014 Report, pp. 69–70.
132 "Rudice" case, indictment Kto 2/20 of 16 December 2020.

To the Judicial Academy:

- It is strongly recommended to enhance IHL training for judges and prosecutors, focusing on the consistent application of international law principles in domestic war crimes cases.
- It is suggested to develop specialised courses on the complexities of determining armed conflict classification and duration, particularly for cases related to the Kosovo conflict.

To the Supreme Court:

- It is advised to consider establishing a mechanism for sharing best practices and ensuring consistency in IHL application across different WCD panels.

To the Ministry of Justice:

- It is recommended to explore the possibility of legislative clarifications on the application of IHL in domestic war crimes cases, particularly regarding the determination of armed conflict end dates.

CHAPTER SEVEN - Sentencing

1. Recent practices

In the reporting period, inconsistencies in sentencing practices continued to be a notable concern in war crimes proceedings.

In its previous reports, the OSCE Mission to Serbia had 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 have nothing to do with 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. Lastly, the OSCE Mission to Serbia noted that courts inconsistently considered the time elapsed between the crime and the judgement both as a mitigating and an aggravating circumstance.

In November 2022, a regional meeting on sentencing policies in war crimes proceedings was held, organised by the OSCE Mission to Serbia at the initiative of the WCPO.[133] Participants included representatives from regional prosecutor's offices, courts, and defence lawyers, from Bosnia and Herzegovina, Croatia, Montenegro and Serbia. The meeting covered topics such as legal frameworks, court practices, prosecutorial perspectives, and defence viewpoints, with a focus on sentencing proportionality.[134]

The regional meeting highlighted several key issues regarding sentencing practices in Serbia. Participants noted that the WCDs have faced criticism for their sentencing policy, particularly in relation to the consideration of mitigating circumstances. According to the WCD, the court is required by law to consider various factors, including

133 This meeting fulfilled an obligation from the revised Action Plan for Chapter 23.

134 Discussions also addressed plea agreements in war crimes cases, recognition and enforcement of foreign court decisions, and standards of proof and evidence disclosure to the defence.

personal and family circumstances of the accused, which some argue gives undue weight to elements unrelated to the crime. The passage of time since the commission of the offence remains a contentious issue, with divergent views on whether it should be considered a mitigating factor. The WCPO representatives stated that their role in sentencing is limited to proposing sentences in closing arguments and appeals, focusing primarily on securing convictions rather than influencing sentencing policy. However, they do highlight aggravating circumstances such as ethnic motives for committing war crimes. Participants agreed that addressing these issues and establishing a more consistent approach to sentencing remains a challenge for the Serbian judiciary in war crimes cases.

As this activity was included in the Revised Prosecutorial Strategy, the WCPO plans to initiate another international meeting on the topic of proportionality in sentencing for war crimes cases.

2. Sentencing under the legal minimum

In the reporting period, the OSCE Mission to Serbia continued to observe that WCD panels imposed sentences under the legal minimum of five years when convicting defendants for war crimes, without explaining what "particularly mitigating" circumstances apply to the case.

> A striking example of this trend was observed in the "Rasadnik camp" case, where the WCD sentenced the defendant to 3.5 years imprisonment, a term below the legal minimum for the charges brought. These charges included serious offences such as inhumane treatment, inflicting bodily injury, unlawful detention, and applying intimidation and terror measures against four victims. Despite the gravity of these crimes, the court failed to provide sufficient justification for the imposition of such a lenient sentence, falling short of the statutory minimum.
>
> Notably, in cases involving similar charges, sentences varied significantly, further highlighting the lack of consistency in sentencing practices. For instance, in the "Željko Maričić" case, which involved comparable allegations of mistreatment and abuse of detainees, the court imposed a sentence of merely 2 years. In contrast, the "Sarajevo-Hrasnica" case, featuring analogous charges, resulted in a sentence of 4.5 years. These marked disparities in sentencing for comparable offences raise serious concerns about the consistency and proportionality in the application of penalties for war crimes.

The lack of uniformity in sentencing practices not only undermines the principle of legal certainty but also potentially erodes public confidence in the justice system's ability to address war crimes effectively and fairly. It underscores the need for clearer sentencing guidelines and a more standardised approach to considering mitigating

and aggravating factors in war crimes cases. The OSCE Mission to Serbia reiterates that when courts deviate from statutory minimums, it is imperative that they provide comprehensive and well-reasoned justifications for such decisions to ensure transparency and maintain the integrity of the judicial process.

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 aggravating ones, where present.

3. Inconsistent application of mitigating circumstances

The OSCE Mission to Serbia continued to note that the lapse of time between the commission of the crime and the trial was not uniformly applied as a mitigating factor across cases.

As already noted in previous report,[135] in instances where similar amounts of time had elapsed since the alleged offences, courts sometimes considered this as a mitigating circumstance warranting a reduced sentence, whilst in other cases they did not factor it into their sentencing considerations. This inconsistent approach to temporal factors in sentencing raises questions about the equitable administration of justice across war crimes cases.

4. Recommendations

To the WCDs:

- It is crucial to ensure consistent application of mitigating circumstances and consequent reduction of punishment across all cases.

135 2019 Report, p. 70.

- It is strongly recommended to limit the use of "particularly mitigating circumstances" to cases featuring truly exceptional situations, avoiding their application in cases with ordinary features.
- When applying "particularly mitigating circumstances", it is essential to always provide adequate reasoning, especially when aggravating circumstances are also present.
- It is advised to avoid standard formulations when assessing mitigating circumstances, ensuring each case is evaluated on its unique merits.
- It is recommended to take a consistent stance on whether the lapse of time should be considered a mitigating circumstance, ensuring its application is coherent across all cases if invoked.

To the WCPO:

- It is recommended to develop and consistently apply clear guidelines for proposing sentence recommendations in war crimes cases, ensuring proportionality and consistency in prosecutorial positions on sentencing.

CHAPTER EIGHT - Protection of witnesses

1. Out of court protection

Serbia has a specialised 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, organised crime and other serious cases.[136] The Unit's focus is on the so-called "insider" witnesses who have represented the key evidence against higher-ranking perpetrators.[137]

According to the information it provided to the OSCE Mission to Serbia,[138] the WPU has undergone significant changes and improvements during the reporting period, aimed to address previous concerns about the unit's effectiveness and reliability, particularly in high-profile war crimes cases.

First, a restructuring of the WPU's staffing has resulted in the addition of 20 new operatives. This expansion of personnel is a crucial step towards enhancing the unit's capacity to protect witnesses effectively. Moreover, the WPU has diversified its staff profile, incorporating specialists such as psychologists, social workers, and IT experts. This multidisciplinary approach reflects a more comprehensive understanding of witness protection, addressing not only physical security but also the psychological and social needs of protected individuals. The inclusion of mental health professionals is particularly significant, given the traumatic experiences many witnesses in war crimes cases have endured. These specialists can provide crucial support to help witnesses cope with the stress of testifying and the challenges of being in a protection

136 Law on the Protection Programme for Participants in Criminal Proceedings, Official Gazette of the RS, no. 85/2005, Article 5.

137 See convictions in a number of the most significant WCD cases, such as the "Ovčara" case, the "Podujevo" case, the "Suva Reka" case, the "Skočić" case, the "Scorpions I" case.

138 Meeting with WPU officials, 9 July 2024.

program. Similarly, the addition of IT experts acknowledges the growing importance of digital security in witness protection.

Second, the WPU has also seen a further upgrade in its material resources, which had already increased in the previous reporting period.[139] The Unit has been equipped with more weapons, enhancing its capacity to provide physical protection when necessary. Additionally, there has been an increase in the number of safe houses available to the WPU, and these facilities have been technically improved. This expansion of secure locations provides the unit with greater flexibility in housing and relocating protected witnesses, a critical factor in ensuring their safety.

Third, the WPU also reportedly built on the progress made in the previous reporting period and established excellent working relations with the WCPO.[140] This represents a significant step towards a more integrated approach to witness protection, allowing for better co-ordination in assessing risks, planning protection measures, and addressing the specific needs of witnesses in war crimes cases.

Fourth, in the realm of international co-operation the WPU has successfully negotiated new agreements with many countries, substantially expanding its capacity for witness relocation. This development is crucial, as effective relocation is often a key component of witness protection, especially in high-profile war crimes cases where threats may persist over long periods. The ability to relocate witnesses effectively not only enhances the safety of witnesses but also potentially increases their willingness to testify, knowing that robust international protection options are available.

The WPU continued to operate with four primary types of witness protection measures: physical protection of persons and property, relocation, concealment of identity and ownership information, and change of identity.[141] During the reporting period, the WPU successfully continued to implement the first three measures, demonstrating its ability to provide comprehensive protection to witnesses in war crimes cases. However, the application of the fourth measure - change of identity - remains problematic. This measure, which could offer the highest level of protection for witnesses in the most sensitive cases, has yet to be fully implemented. The primary obstacle lies in the legislative sphere, as its application requires the adoption of several specific by-laws.

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139 See 2019 Report, pp. 77-78.

140 In July 2017, the MoI and the WCPO signed a protocol intended to promote co-operation between the WCPO and the WPU. 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 at https://www.tuzilastvorz.org.rs/public/files/pages/2021-06/%D0%9F%D1%80%D0%BE%D1%82%D0%BE%D0%BA%D0%BE%D0%BB%20%D0%BE%20%D1%81%D0%B0%D1%80%D0%B0%D0%B4%D1%9A%D0%B8%20%D0%B8%D0%B7%D0%BC%D0%B5%D1%92%D1%83%20%D0%9C%D0%A3%D0%9F-%D0%B0%20%D0%BE%20%D0%A2%D0%A0%D0%97.PDF.

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

Despite the critical nature of this measure, the competent Ministries have continued to fail in adopting these necessary by-laws throughout the reporting period.[142]

The co-operation between the WPU and the WCPO related to witness protection is being assessed as satisfactory by both parties, and no problems were reported by either side.

The OSCE Mission to Serbia re-iterates the importance of effective protection of witnesses in war crimes cases. At the same time, it continued to observe concerns of protected witnesses. Namely, in the "Srebrenica" case, a protected witness again notified the High Court that he does not want to testify for concerns for his safety and identity being revealed.[143]

2. Recommendations

To the Ministry of Interior:

- It is recommended to continue enhancing the WPU's capacity through regular training and resource allocation, particularly in areas of psychological support and digital security for witnesses.

To the Government of Serbia:

- It is strongly advised to prioritise the adoption of by-laws necessary for the full implementation of identity change measures for protected witnesses.

To the Ministry of Justice:

- It is recommended to propose amendments to the legislative framework governing witness protection to address any gaps or inefficiencies identified during the implementation of protection measures.

142 The WPU states that it has nevertheless applied the change of identity measure in several cases since 2015. The WPU also launched an initiative to form a working group and adopt the aforementioned regulation, in order to define the manner in which the competent authorities should act, and to eliminate any ambiguities that could lead to legal uncertainty in the implementation of the aforementioned measure.

143 See: 2019 Report, p. 78.

To the WCPO:

- It is suggested to further strengthen collaboration with the WPU, ensuring seamless co-ordination in risk assessment and protection planning for witnesses in war crimes cases.

CHAPTER NINE - Victims' rights

1. Victim support

Since 2020, significant systemic improvements have been made in supporting victims and witnesses in war crimes proceedings in Serbia. The National Strategy on the Rights of Victims and Witnesses of Crime for 2020-2025 (National Victims' Rights Strategy), approved in August 2020, marks a crucial development, since it recognizes war crimes victims as an extremely vulnerable category and outlines comprehensive measures for enhancing support services. The Strategy paves the way for legislative amendments and the institutionalisation of support mechanisms.[144]

On an operational level, a key outcome has been the strengthening of the Service for Information and Support to Injured Parties and Witnesses at the WCPO. Established in April 2017, this service is now staffed by 9 employees including prosecutors, assistant public prosecutors, a secretary and a psychologist. It works in tandem with the existing Service for Assistance and Support at the High Court in Belgrade. Together, these units provide continuous support to victims and witnesses throughout all stages of proceedings. The service aims to provide victims with comprehensive assistance, including information about their rights, advice on accessing compensation mechanisms, emotional and psychological support, and guidance on preventing secondary victimisation. The service also provides technical assistance in terms of transportation and accomodation for witnesses and victims, and their family members and accompanying persons, when providing testimony. This holistic approach represents a significant enhancement in the support available to victims of war crimes in Serbia.

144 The OSCE Mission to Serbia provided crucial assistance in developing the National Strategy. The Mission, through its IPA 2016 Project "Support to Victims and Witnesses in the Republic of Serbia", conducted comprehensive analyses of Serbian legislation's alignment with EU Directive 2012/029/EU and comparative studies of European victim support models. These efforts, building on earlier pilot projects with the Republic Public Prosecutor's Office, have significantly contributed to the current framework for victim and witness support in war crimes cases.

2. Compensation for damages

Similarly to what the OSCE Mission to Serbia observed in previous reporting periods, when entering a guilty verdict, the WCDs continued to refer victims to civil proceedings for damage compensation claims rather than issuing decisions on compensation within criminal proceedings, thus placing additional burdens on victims seeking redress.

This practice is particularly problematic for victims for several reasons. Firstly, in civil proceedings, victims must pursue claims without prosecutorial support, leaving them to navigate complex legal procedures alone or bear the costs of legal representation. Secondly, victims face the onus of proving claims in accordance with civil torts law, a potentially daunting task that requires gathering and presenting evidence beyond what was established in the criminal trial. Although final convicting judgments may be used as evidence, they do not automatically guarantee success in civil claims. Thirdly, protected witnesses or victims face a difficult choice between pursuing compensation and maintaining anonymity, as civil proceedings may require them to reveal their identity, potentially jeopardising their safety or well-being. Finally, civil proceedings entail further delays in obtaining redress, prolonging the victims' wait for justice and closure. These additional hurdles may discourage some victims from pursuing compensation altogether, effectively denying them full reparation for the harms suffered.

To remedy these shortcomings, in 2019 the then-Supreme Court of Cassation of Serbia adopted Guidelines for improving court practice regarding procedures for compensation to victims of serious crime in criminal proceedings. The Guidelines acknowledge that current court practice has often failed to adequately respect victims' rights to compensation in criminal proceedings, treating victims primarily as sources of information about the case, with their rights and status overlooked. The Guidelines acknowledge that this approach has resulted in most compensation claims being referred to civil litigation, contrary to the principle of efficiency and international standards on victims' rights.[145] To address these issues, the Guidelines provide several recommendations, emphasising that competent authorities, particularly prosecutors and courts, have an obligation to resolve compensation matters within criminal proceedings, with civil litigation being the exception rather than the rule. Prosecutors are encouraged to protect victims' interests during plea bargaining, especially when victims lack legal representation. The Guidelines also stress the importance of informing victims about their rights and providing assistance with filing restitution claims. For courts, the Guidelines provide guidance on determining damage amounts,

145 Particularly problematic is the victims' position in plea agreement processes. The Guidelines reveal that victims do not participate in these negotiations and cannot appeal against such agreements, potentially leaving their interests unprotected. Additionally, the settlement between perpetrator and victim, which could expedite compensation, is rarely applied in practice despite its potential benefits.

types of non-material damage, and monetary compensation for both non-material and material damage.

By encouraging a more victim-centred approach from both prosecutors and courts, the Guidelines seek to create a more supportive environment for victims seeking compensation within the criminal justice system.

However, despite the adoption of the Guidelines, the OSCE Mission to Serbia did not notice any change in WCD practice, with no decisions on civil compensation issued in the reporting period.

One of the primary reasons the WCD provides for not adjudicating civil claims within criminal proceedings is the challenge of quantifying damages. This issue is multifaceted and presents several complications.

Firstly, victims rarely specify the amount they claim when asked by the court if they seek compensation. The court fails to provide clear instructions that victims need to specify an amount, leaving claims vague and difficult to adjudicate.

Second, the WCD argues that it does not have sufficient evidentiary materials to issue a decision on compensation at the end of the criminal trial, alleging that the WCPO should be the driving force in preparing expert assessments on damage quantification during the investigation phase, especially in cases involving numerous victims.

The WCPO, as the prosecuting authority, is obliged to investigate the accused's assets and property for potential compensation, even before a victim files a request. This obligation under CPC Article 256, which also stems from the 2012 EU Victims' Rights Directive,[146] stipulates that the proceeding authority shall question the accused about facts related to the property claim and verify circumstances relevant to its determination.[147] Importantly, the authority is duty-bound to collect evidence for deciding on the claim even before it is submitted. However, if gathering such evidence would significantly prolong the proceedings, the authority may limit itself to collecting data that would be impossible or significantly more difficult to establish later.

Despite this long-standing provision, its application remains inconsistent. Prosecutors are expected to collect information on damage compensation, but their efforts often fall short. While the WCPO claims to engage in this process, citing instances of sending requests to foreign countries to ascertain an accused's financial status, the

146 Directive 2012/29/EU of the European Parliament and of the Council, establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, 25 October 2012.

147 CPC, Article 256.

approach is generally not proactive or prioritised.[148] This lack of enthusiasm stems partly from the prosecutors' awareness that courts are unlikely to accept civil claims within criminal proceedings. This creates a vicious circle: prosecutors are demotivated to collect comprehensive evidence for compensation claims because they anticipate the court's rejection, while courts cite insufficient evidence as a reason for not adjudicating these claims. This systemic issue continues to hinder victims' access to timely and efficient compensation through criminal proceedings.

The WCPO's Revised Strategy acknowledges the importance of collecting evidence for civil claims during criminal investigations, aiming to enhance the consistency and effectiveness of compensation awards. To further support victims, the WCPO is pursuing co-operation agreements with regional prosecutors' offices and courts, focusing on protection, support, and assistance to injured parties. These agreements are expected to be finalised in the near future, potentially improving cross-border support for victims.[149] Moreover, the Prosecutorial Strategy states that "Injured persons will be provided with assistance in filling out the form for submitting a property-legal claim in criminal proceedings as part of the primary support program of the Information and Support Service for Injured Persons and witnesses." However, implementation of this measure has stalled, as the template for such claims has not yet been prepared. The Supreme Court was expected to develop this template but at the time of writing still has not done so, further complicating the process of submitting and adjudicating compensation claims within criminal proceedings.

A related sub-issue is the complexity of quantifying non-material damages, such as fear and suffering, as prescribed by the Law on Contracts and Torts. While the court acknowledges that quantifying moral damages can be challenging, this does not preclude partial adjudication of claims based on what has been proven.

> The passing of years makes it difficult and sometimes impossible to ascertain the link between the physical and psychological effects and the particular offence, because the health condition of the victim today may well be caused by the overall effect of the war years and different trauma. Efforts to bring vic-

148 The collection of data relevant to the fulfilment of a property claim will be facilitated between the WCPO and the Prosecutor's Office of BiH, as this is one of the points of the agreement signed between the heads of these prosecutors' offices on 3 November 2022. The WCPO has initiated agreements on co-operation for protection, support, and assistance to injured parties with other regional prosecutor's offices and courts. These agreements are expected to be concluded in the near future. The Strategy includes organising joint training sessions for judges, prosecutors, and victim and witness support service staff. These trainings aim to effectively implement co-operation agreements and improve procedural protection. Additionally, regional meetings will be organised for judges, prosecutors, and victim and witness support service staff. The purpose of these meetings is to exchange experiences, overcome problems, and enhance procedural protection in war crimes cases across the region.

149 The Strategy includes plans for joint trainings involving judges, prosecutors, and victim and witness support service staff. These trainings are designed to effectively implement the co-operation agreements and enhance procedural protection for victims. Additionally, regional meetings will be organised to facilitate the exchange of experiences, address common challenges, and improve procedural protection in war crimes cases across the region. This collaborative approach aims to harmonise practices and raise standards of victim support throughout the former Yugoslavia.

tims to hearings, or perform a new medical examination are frequently hampered when the victim now lives in another country, or even another continent. The above reasons all come into play in the recently decided "Kalinovik" case, where the High Court in its judgment gave the most elaborate reasoning to date on why it did not have enough basis to decide on compensation, but instead referred the injured party, a female victim of rape, to seek her claim before a civil court.[150] In its reasoning, the Court stated that the evidence gathered in the proceedings was not sufficient even for partial granting of the claim.

Judges interviewed by the OSCE Mission to Serbia also asserted that adjudicating civil claims within criminal proceedings may impact the presumption of innocence. This reasoning appears puzzling, particularly when considering that civil claims are only addressed after a guilty verdict has been rendered. The collection of evidence concerning damages suffered by injured parties in no way impinges upon the presumption of innocence or predetermines the outcome of the trial. Such evidence relates solely to potential reparations and must be considered entirely separately from any determination of the accused's criminal liability. The presumption of innocence, a fundamental principle of criminal law, ceases to apply once a defendant has been found guilty beyond reasonable doubt. At this stage, the court has already established the defendant's culpability for the criminal acts in question. Therefore, considering civil claims when a conviction is entered does not logically infringe upon the presumption of innocence.

By still hesitating to adjudicate civil claims within criminal proceedings on these grounds, the WCD may be unnecessarily complicating the process for victims and potentially contradicting the principles of judicial economy and comprehensive justice. This approach fails to recognise that addressing civil claims alongside criminal convictions can provide a more holistic form of justice, offering victims both retributive and restorative outcomes in a single, efficient process.

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In 2023, Serbia adopted a new Action Plan for the implementation of the National Victims' Rights Strategy. This Action Plan is set to guide efforts from 2023 to 2025, demonstrating a renewed commitment to improving support for victims and witnesses in criminal proceedings. The adoption of this plan signifies an ongoing effort to align Serbian practices with international standards and to address persistent challenges in victim and witness protection. The National Victims' Rights Strategy foresees the establishment of a National Network of Support Services, which will include support services to be established in all High Courts in Serbia. At the High Court in Belgrade, such support service has been providing services to witnesses and victims appearing before the WCD since 2006, and will continue its work as an integral part of the Network.

150 High Court in Belgrade, judgment K-Po2 3/2019 of 13 May 2021.

In the latter half of 2023, WCPO prosecutors received detailed guidance aimed at enhancing victims' positions in criminal proceedings and efficiently addressing property claims. This guidance emphasises the consistent application of CPC provisions that outline the prosecutor's role in gathering evidence during pre-investigation and investigation stages, including evidence relevant to compensation claims. This approach aims to better prepare for the potential adjudication of civil claims during the main trial stage of criminal proceedings. However, this still has not become current practice, leaving the court without a solid basis for determining compensation amounts.

3. Recommendations

To the WCDs:

- It is strongly recommended to implement the Supreme Court Guidelines and adjudicate compensation claims within criminal proceedings wherever possible.
- It is advised to provide clear instructions to victims on specifying compensation amounts during criminal proceedings.
- It is suggested to consider partial adjudication of claims based on available evidence, particularly for material damages.

To the WCPO:

- It is crucial to proactively collect and present evidence relevant to compensation claims during the investigation phase, as mandated by the CPC.
- It is recommended to prioritise the implementation of measures outlined in the Revised Prosecutorial Strategy, particularly assistance in filing compensation claims.
- It is advised to enhance co-operation with regional prosecutors' offices to improve cross-border support for victims.

To the Supreme Court:

- It is urged to expedite the development of a template for compensation claims in criminal proceedings to facilitate the process for victims and courts.

To the Ministry of Justice:

- It is recommended to use the experience of the High Court in Belgrade Support Service as a model for further developing support services in other High Courts.
- It is advised to allocate additional resources for training judges and prosecutors on effectively handling compensation claims in war crimes cases.

To the Government of Serbia:

- It is suggested to ensure full implementation of the National Victims' Rights Strategy and Action Plan, with particular focus on war crimes victims.
- It is recommended to establish a state fund for compensation of war crimes victims to address cases where perpetrators lack sufficient assets.

Glossary

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)
EULEX (European Union Rule of Law Mission in Kosovo)
HJC (High Judicial Council)
HPC (High Prosecutorial 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)
KLA (Kosovo Liberation Army)
MoI (Ministry of Interior)
OSCE (Organization for Security and Co-operation in Europe)
SPRK (Special Prosecution Office of Kosovo)
UN (United Nations)
UNMIK (United Nations Interim Administration Mission in Kosovo)
WCD (War Crimes Department)
WCIS (War Crimes Investigation Service)
WCP (War Crimes Prosecutor)
WCPO (War Crimes Prosecutor's Office)
WPU (Witness Protection Unit)

Annex I

Summary of the OSCE Mission to Serbia's monitoring results in 2024

The appointment of the new Chief War Crimes Prosecutor has not been completed in 2024. On 25 March 2024, the Collegium of the WCPO[151] submitted a negative opinion on the candidacy of Snežana Stanojković for Chief WCP. The letter sent to the HPC[152] and signed by seven public prosecutors elaborates the reasons for the negative opinion, citing that Ms. Stanojković does not fulfil the conditions of professionalism, worthiness and competence to be elected.

On 14 May 2024, the HPC appointed Dušan Knežević, a public prosecutor from the WCPO, as the new Acting Chief War Crimes Prosecutor, also for a period of up to one year. At the same online session on 14 May 2024, the HPC cancelled all previous calls for applications for chief prosecutors, including the WCP position. This decision was based on the adoption of new by-laws and the need to align the recruitment process with these new regulations. A new public call was published in the Official Gazette on 31 May 2024. This series of events has effectively restarted the entire selection process for the new WCP.

The HPC scheduled the presentations of the candidates' programs for 25 November 2024. The same two candidates applied in the repeated procedure – Ms. Snežana Stanojković and Mr. Svetislav Rabrenović. The HPC, however, later postponed the presentations without citing reasons for the postponement.

According to the information obtained from the WCPO, the IRMCT transferred one case against several individuals to the WCPO, in accordance with the provisions of the current Statute of the IRMCT and the Rules of Procedure and Evidence of the IRMCT.

In the period 1 January – 31 December 2024, the WCPO charged a total of 10 defendants in 8 indictments. One defendant was accused of committing the criminal offense of organizing and inciting the committing of genocide and war crimes, while in other indictments the defendants were accused of war crimes against civilians. One of these cases, encompassing two defendants, had been fully investigated by the BiH authorities and formally transferred to the Serbian courts for trial, whereas seven indictments derived from WCPO's own investigative work. In all these seven indictments originating from the investigation conducted by the WCPO, eight defendants are charged with crimes committed on the territory of Kosovo. One defendant of Albanian nationality concluded a plea agreement with the WCPO, whereby he pleaded guilty to committing war crimes against civilian population by taking part in the abduction of two persons of Serbian nationality, in the municipality of Prizren (Kosovo) in June 1999.

151 The Collegium of a public prosecutor's office consists of all public prosecutors from that public prosecutor's office (Law on Public Prosecution, Article 125).

152 The Collegium of a public prosecutor's office provides an opinion to the HPC on candidates for chief public prosecutor (Law on Public Prosecution, Article 128 point 3).

In all indictments during the reporting period which refer to the territory of Kosovo[153], the victims were of Serbian nationality. The case that was transferred from BiH includes more than 120 victims of Bosniak nationality. An increase can be noted in the number of cases involving victims of Serbian nationality, when compared to the period 2003-2023. Over the previous 20 years, the WCPO filed a total of seven indictments for crimes committed against non-Albanian victims on the territory of Kosovo. An equal number of seven indictments has been raised in the last year alone.[154] In 2024, the WCPO initiated 11 investigations against 13 suspects.

During 2024, a total of 46 defendants were tried in the course of 21 first and second instance trials and retrials.[155] In 2024, the High Court rendered eight first-instance judgements, resulting in the conviction of more than 85 per cent of the accused (15 convicted and two acquitted). One plea agreement was concluded and confirmed by the High Court. One trial had been completed with final decision (conviction), and one case has been sent back to retrial by the Court of Appeals. As of 31 December 2024, 20 trials were still ongoing at different procedural stages: 12 on first instance, two on retrial and six on appeal.

Sentences imposed during the reporting period were in line with the statutory punishment foreseen for war crimes (five to 15, or 20 years inprisonment). In the first instance, one defendant was sentenced to 20 years imprisonment, four defendants were sentenced to prison terms ranging from 12 to 15 years, while six defendants were sentenced to ten years or less. The first-instance court also sentenced four defendants to punishments below the statutory minimum of five years. One defendant was sentenced to one year in prison based on a plea agreement. In the final instance, one defendant was sentenced to four years in prison.

153 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.

154 Only two indictments from 2024 have been published in more detail on the WCPO website. As for the other indictments, in which only basic information is stated, two have not yet been confirmed, and the main hearing has not yet opened in the other cases. A more detailed analysis of the indictments will be provided by the OSCE Mission to Serbia following the publication of all the indictments.

155 Proceedings against one defendant were terminated due to his death (the "Štrpci" case), and proceedings against two other defendants were severed from the main trial due to their illnesses preventing them to stand trial (one defendant each in the "Ćuška" case and the "Prijedor" case).

Annex II

Facts and figures of war crimes proceedings before the WCDs (2020-2023)

Case name	**"Bihać - Hrgar"**	**"Bihać - Ripač"**	**"Bogdanovci"**
Case number	KTO 3/21	K Po2 9/20	Kž1 Po2 1/21
Number of defendants	1 (Nenad Bubalo)	1 (Dragan Dopuđa)	1 (Boško Soldatović)
Number of victims	5	11	9
Hierarchy level of defendants	Mid military rank	Low military rank	Low military rank
Indictment filed	11/05/2021	15/12/2020	21/12/2018
Stage of the proceeding	Proceedings discontinued	Proceedings discontinued	Final
Duration of the proceeding since start of first trial	/	1 year and 2 months	1 and 6 months
Number of witnesses heard at trial	/	8	5
First instance judgement date and outcome	*Defendant died before the start of the trial*	*Defendant died before the end of the trial*	**8 December 2020** Conviction: 15 years
Appeals decision date and outcome	/	/	**11 June 2021** Confirmed
Retrial judgement date and outcome	/	/	/
Second appeal date and outcome	/	/	/

Case name	**“Bihać - Hrgar”**	**“Bihać - Ripač”**	**“Bogdanovci”**
Factual background	According to the indictment, during the summer of 1992, the defendant Nenad Bubalo, a former deputy commander of the military police of the 15th Bihać Brigade of the VRS, ordered and carried out the murders of at least five Bosniak civilians in Hrgar, Bihać municipality, BiH. Namely, the defendant ordered three members of the 15th Bihać Brigade to take at least five Bosniak civilians detained at the IMT Tractor Service Ripač detention camp in the village of Ripač, Bihać municipality. The soldiers transported the civilians to the natural pit, where they were killed on the order of the defendant. The dead bodies were thrown into the pit, where they were discovered in 1997, together with 83 other people.	The indictment states that during the summer of 1992, the defendant Dragan Dopuđa, a former member of the 15th Bihać Brigade of the Bosnian Serb Army (later the VRS), together with other members of the VRS, entered a former tractor repair shop in the village of Ripač, Bihać municipality (BiH), where Bosniak civilians were being detained. According to the indictment, the soldiers selected 11 civilians from the detention facility, tied them up and transported them to a natural pit, where they killed them. According to the indictment, the defendant has reportedly killed four of them. The dead bodies were thrown into the pit, where they were discovered in 1997, together with 72 bodies of other people.	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.
Procedural notes	The authorities of Bosnia and BiH had initiated criminal proceedings against the defendant in 2017, 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.	The indictment against the defendant Soldatović in the “Bogdanovci” case was initially filed by the WCPO in 2014. Before it was finally confirmed in 2018, the indictment in this case had been amended since the investigation had been supplemented.

Case name	**"Bosanska Krupa II"**	**"Bosanski Novi"**	**"Bosanski Petrovac Gaj"**
Case number	Kž1 Po2 5/21	K Po2 10/21	Kž1 Po2 5/20
Number of defendants	2 (Joja Plavanjac, Zdravko Narančić)	2 (Milenko Karlica, Željko Novaković)	1 (Milan Dragišić)
Number of victims	11	27	6
Hierarchy level of defendants	Low military rank	No rank	Low military rank
Indictment filed	26/12/2017	30/12/2021	10/10/2014
Stage of the proceeding	Final	Trial ongoing	Final
Duration of the proceeding since start of first trial	3 years and 9 months	1 year and 3 months	5 years and 8 months
Number of witnesses heard at trial	25 and 2 expert witnesses	6	25 and 4 expert witnesses
First instance judegment date and outcome	**15 November 2019** Joja Plavanjac: 15 years Zdravko Narančić: 7 years	/	**24 April 2019** Conviction: 4 years
Appeals decision date and outcome	**22 September 2020** Annulled and retrial	/	**25 November 2019** Annulled and retrial
Retrial judgement date and outcome	**14 June 2021** Joja Plavanjac: 15 years Zdravko Narančić: 7 years	/	**1 July 2020** Conviction: 4 years
Second appeal date and outcome	**17 March 2022** Joja Plavanjac: 14 years Zdravko Narančić: 5 years	/	**1 February 2021** Sentence modified: 5 years

Case name	"Bosanska Krupa II"	"Bosanski Novi"	"Bosanski Petrovac Gaj"
Factual background	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.	The indictment states that the defendant Milenko Karlica ordered and carried out the killing of Bosniak civilians and their displacement. Namely, according to the indictment, the defendant Željko Novaković, following the orders of the defendant Milenko Karlica, committed murders of 27 Bosniak civilians and displacement of the Bosniak civilian population from the villages in the territory of the municipality of Bosanski Novi/ Novi Grad (BiH), in June 1992.	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.
Procedural notes	As the defendants were unavailable to the BiH authorities, the Serbian WCPO took over the criminal prosecution of the case upon referral from BiH.	The BiH authorities had initiated criminal proceedings against the defendants, but due to their unavailability, transferred the case to the Serbian WCPO. The Court of BiH rendered the judgment against ten other individuals for the same crime, sentencing them to prison terms ranging from nine to 18 years.	As the defendant was unavailable to the BiH authorities, the Serbian WCPO took over criminal prosecution of the case upon referral from BiH.

Case name	**"Brčko"**	**"Brčko II"**	**"Brod"**
Case number	Kž1 Po2 7/19	Kž1 Po2 4/21	K Po2 3/23
Number of defendants	1 (Nikola Vida Lujić)	1 (Miloš Čajević)	1 (Danko Vladičić)
Number of victims	1	14	2
Hierarchy level of defendants	Low military rank	Low military rank	No rank
Indictment filed	12/09/2018	22/10/2018	02/02/2021
Stage of the proceeding	Final	Final	Retrial
Duration of the proceeding since start of first trial	1 year and 1 month	2 years and 6 months	2 years and 6 months
Number of witnesses heard at trial	12	11	13
First instance judgement date and outcome	**19 September 2019** Conviction: 8 years	**26 April 2021** Conviction: 7 years and 6 months	**16 November 2022** Conviction: 9 years
Appeals decision date and outcome	**31 January 2020** Confirmed	**4 November 2021** Sentence modified: 5 years	**2 June 2023** Annulled and retrial
Retrial judgement date and outcome	/	/	/
Second appeal date and outcome	/	/	/

Case name	**“Brčko”**	**“Brčko II”**	**“Brod”**
Factual background	The indictment alleges that in June 1992, the defendant Vida-Lujić, as a member of the so-called “Red Berets” unit – part of the Serbian armed force – raped a Bosniak woman in Brčko, BiH.	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 indictment in the “Brod” case states that in August 1992 the defendant Danko Vladičić murdered two Bosniak civilians in Brod, Foča municipality, (BiH).
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.	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 BiH authorities had initiated criminal proceedings against the defendant, but due to his unavailability, transferred the case to the WCPO of Serbia.

Case name	**"Ćuška"**	**"Đakovica II"**
Case number	K Po2 4/15	Kž1 Po2 1/23
Number of defendants	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)	1 (Dula Petrit)
Number of victims	138	1
Hierarchy level of defendants	Mid military rank (Miladinović); low military rank (all others)	Low military rank
Indictment filed	10/09/2010; 01/04/2011; 27/04/2011; 31/05/2011; 07/11/2011; 26/09/2012; 07/04/2014; 03/07/2019.	28/06/2022
Stage of the proceeding	Retrial ongoing	Final
Duration of the proceeding since start of first trial	13 years	7 months
Number of witnesses heard at trial	more than 120	4

Case name	**“Ćuška”**	**“Đakovica II”**
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*	**8 November 2022** Conviction: 2 years
Appeals decision date and outcome	**26 February 2015** Annulled and retrial	**7 April 2023** Acquittal
Retrial judgement date and outcome	/	/
Second appeal date and outcome	/	/

Case name	**"Ćuška"**	**"Đakovica II"**
Factual background	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.	The indictment states that the defendant Dula Petrit, a former member of the Kosovo3 Liberation Army (KLA), together with other KLA members, committed acts of inhuman treatment and violation of bodily integrity against one non-Albanian in Đakovica (Kosovo) in June 1999.
Procedural notes	In June 2015, for reasons of procedural efficiency, the High 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, three defendants died (Radoslav Brnović, Milojko Nikolić, Srećko Popović), and accordingly criminal proceedings against them were discontinued. The proceedings against the defendant Ranko Momić, who is at large, are severed from the case.	In June 2022, the defendant was arrested at the Merdare administrative boundary line crossing (ABL).

Case name	**“Drago Samardžija”**	**“Edin Vranj”**	**“Goražde”**
Case number	K Po2 10/20	KTO 5/21	K Po2 12/22
Number of defendants	1 (Drago Samardžija)	1 (Edin Vranj)	1 (Lazar Mutlak)
Number of victims	300	2	1
Hierarchy level of defendants	High military rank	Low military rank	Low military rank
Indictment filed	23/12/2020	18/10/2021	21/12/2022
Stage of the proceeding	Proceedings discontinued	Transferred to BiH	Trial ongoing
Duration of the proceeding since start of first trial	/	/	9 months
Number of witnesses heard at trial	/	/	1
First instance judgement date and outcome	Defendant died before the start of the trial	/	/
Appeals decision date and outcome	/	/	/
Retrial judgement date and outcome	/	/	/
Second appeal date and outcome	/	/	/

Case name	**"Drago Samardžija"**	**"Edin Vranj"**	**"Goražde"**
Factual background	The indictment in the "Drago Samardžija" case related to the attacks carried out against the civilian population from the municipality of Ključ (BiH) in the period between June and July 1992. Namely, the defendant Drago Samardžija, as a former commander of the 17th Ključ Light Infantry Brigade of the VRS and member of the Ključ Municipality War Presidency, was accused of ordering the attacks in which more than 300 Bosniak civilians were murdered, inhumanly treated, forcibly relocated, tortured and unlawfully detained.	The indictment alleges that the defendant Vranj, as a member of the Army of BiH, inhumanly treated, inflicted bodily injuries, intimidated and violeted personal dignity against two members of the VRS.	The indictment alleges that in May 1992, the defendant Lazar Mutlak, as a member of the Staff of the Territorial Defence of Srpsko Goražde, raped a Bosniak woman in Goražde, 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 indictment against the defendant Vranj was initially filed by the WCPO in 2021. Before it was finally confirmed in 2023, the indictment in this case had been amended since the investigation had been supplemented.	The BiH authorities had initiated criminal proceedings against the defendant, but, due to his unavailability, transferred the case to the WCPO.

Case name	**“Jajce”**	**“Kalinovik”**	**“Ključ - Rejzovići”**
Case number	K Po2 5/22	Kž1 Po2 3/23	Kž1 Po2 3/21
Number of defendants	2 (Jovo Jandrić, Slobodan Pekez)	1 (Dalibor Krstović)	1 (Željko Budimir)
Number of victims	28	1	3
Hierarchy level of defendants	Low military rank	Low military rank	Low military rank
Indictment filed	28/3/2022	26/9/2019	01/02/2018
Stage of the proceeding	Trial ongoing	Final	Final
Duration of the proceeding since start of first trial	1 year and 2 months	3 years and 11 months	3 years and 6 months
Number of witnesses heard at trial	8	20	10
First instance judgement date and outcome	/	**13 May 2021** Conviction: 9 years	**24 September 2019** Conviction: 2 years
Appeals decision date and outcome	/	**17 December 2021** Annulled and retrial	**3 March 2020** Annulled and retrial
Retrial judgement date and outcome	/	**7 February 2023** Conviction: 9 years	**23 February 2021** Conviction: 2 years
Second appeal date and outcome	/	**15 December 2023** Sentence modified: 5 years	**7 October 2021** Confirmed

Case name	"Jajce"	"Kalinovik"	"Ključ - Rejzovići"
Factual background	The indictment alleges that after the funeral of a fallen soldier of the VRS, the defendant Jovo Jandrić organized a group of ten members of the VRS and reserve police forces, including the defendant Slobodan Pekez, in the municipality of Jajce (BiH), in September 1992. The group, as alleged, after a jointly agreed plan, gathered the Bosniak civilian population from two villages in the territory of the municipality of Jajce. According to the indictment, after the soldiers insulted and physically abused the civilians, beating them with their hands, feet and guns and plundering their valuables, the soldiers took them to the edge of a precipice, where they killed 23 Bosniak civilians. Four civilians survived the shooting, suffering physical injuries, and one remained unharmed.	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 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 defendants, but due to their unavailability, transferred the case to the WCPO of the Republic of Serbia. The courts of BiH rendered the final judgments against four former members of VRS in 2009, 2013 and 2014 for the same crime, sentencing them to prison terms ranging from ten to 20 years.	The BiH authorities had initiated criminal proceedings against the defendant, but due to his unavailability, transferred the case to the Serbian WCPO.	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 – Velagići”**	**“Kožuhe”**	**“Lovas”**
Case number	K Po2 2/23	Kž1 Po2 8/20	Kž1 Po2 2/20
Number of defendants	5 (Ilija Krčmar, Željko Bajić, Svetislav Račić, Nikola N. Ćuk, Nikola D. Ćuk)	1 (Nebojša Stojanović)	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)
Number of victims	78	1	70
Hierarchy level of defendants	Low military rank	Low military rank	Mid military rank (Dimitrijević), low military/police rank (all others)
Indictment filed	18/04/2023	13/7/2018	28/11/2007
Stage of the proceeding	Trial ongoing	Final	Final
Duration of the proceeding since start of first trial	2 months	2 years and 1 month	12 years and 7 months
Number of witnesses heard at trial	/	11 and 2 expert witnesses	195

Case name	**"Ključ – Velagići"**	**"Kožuhe"**	**"Lovas"**
First instance judgement date and outcome	/	**15 October 2020** Conviction: 8 years	**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
Appeals decision date and outcome	/	**22 March 2021** Confirmed	**9 December 2013** Annulled and retrial

Case name	**"Ključ – Velagići"**	**"Kožuhe"**	**"Lovas"**
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*
Second appeal date and outcome	/	/	**20 November 2020** Saša Stojanović: 6 years Darko Perić, Radovan Vlajković: 4 years Radisav Josipović, Zoran Kosijer, Jovan Dimitrijević: 3 years Milan Devčić, Željko Krnjajić: Acquittal

Case name	**"Ključ – Velagići"**	**"Kožuhe"**	**"Lovas"**
Factual background	The indictment states that in June 1992, eight former members of the VRS, as co-perpetrators, murdered 78 Bosniak civilians in Velagići, Ključ municipality, BiH. Proceedings against the three co-perpetrators of this criminal offence are underway before the Court of 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.	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).
Procedural notes	The BiH authorities had initiated criminal proceedings against the other five defendants, but due to their 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.	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.

Case name	**“Lovas II”**	**“Miomir Jasikovac“**	**“Omarska Camp”**
Case number	K Po2 9/22	Spk Po2 1/22	K Po2 10/22
Number of defendants	1 (Dušan Lončar)	1 (Miomir Jasikovac)	1 (Milorad Kotur)
Number of victims	7	300	51
Hierarchy level of defendants	High military rank	Mid military rank	Low police rank
Indictment filed	12/09/2022	05/12/2022	14/11/2022
Stage of the proceeding	Trial ongoing	Final	Trial ongoing
Duration of the proceeding since start of first trial	11 months	/	10 months
Number of witnesses heard at trial	1	/	14
First instance judgement date and outcome	/	**13 January 2023** Conviction: 5 years	/
Appeals decision date and outcome	/	/	/
Retrial judgement date and outcome	/	/	/
Second appeal date and outcome	/	/	/

Case name	**"Lovas II"**	**"Miomir Jasikovac"**	**"Omarska Camp"**
Factual background	The indictment states that on 9 October 1991, the defendant Dušan Lončar, a former commander of the 2nd Proletarian Guards Motorized Brigade of the Yugoslav National Army (JNA) in the rank of lieutenant colonel, with the exclusive right to command all units of the brigade as well as subordinate units, ordered an attack on the village of Lovas (Croatia) and its population, in which seven civilans were murdered.	The High Court, accepted a plea agreement concluded between the WCPO and the defendant Miomir Jasikovac whereby the defendant pleaded guilty to committing war crimes against civilian population by taking part in the killings of 300 Bosniak men, in the municipality of Zvornik, BiH, in July 1995. The defendant, as a former commander of the military police company of the Zvornik Brigade of the VRS, together with other members of the military police company subordinate to him, took part in the detention, transportation to the shooting sites, as well as the killings of more than 300 prisoners of war of the Army of BiH and Bosniak civilians.	The indictment states that in July 1992, the defendant Milorad Kotur, a former member of the reserve police force at the Bosanska Krupa Public Security Station, together with his colleagues Dušan Ćulibrk and Božo Došen went to Omarska Camp, Prijedor municipality (BiH), and took away 44 Bosniak and Croat inmates for an alleged exchange. By the order of the defendant, the detainees were taken out of the minibus in Donji Dubovik, municipality of Bosanska Krupa (BiH), tied up with wire and shot dead. The indictment also alleges that in August 1992, the defendant, together with Dušan Ćulibrk, participated in the shooting of seven Bosniak civilians in the village of Donji Dubovik. The 51 dead bodies were thrown into the pit, where they were discovered in 2000.

Case name	**“Lovas II”**	**“Miomir Jasikovac“**	**“Omarska Camp”**
Procedural notes	This case relies on the “Lovas” case, one of the most complex and lengthy cases ever tried before the WCD. The defendant Dušan Lončar testified in the “Lovas” case as a witness.	In November 2022, the Prosecutor's Office of BiH indicted the defendant for similar crimes. However, the defendant is charged with having committed the criminal offense of Genocide. According to the BiH indictment, the defendant, as well as members of the Military Police subordinate to him, took part in the detention, transportation to the shooting sites, as well as the killings of more than 2300 Bosniak men and boys from the area of Srebrenica in July 1995. The indictment was confirmed by the Court of BiH in December 2022.	The courts of BiH rendered the final judgments against Dušan Ćulibrk in January 2023 for the same crime, sentencing him to 20 years in prison. Božo Došen passed away in the meantime. The BiH authorities had initiated criminal proceedings against the defendant, but due to his unavailability, transferred the case to the WCPO of the Republic of Serbia.

Case name	**"Petrovačka cesta"**	**"Rasadnik Camp"**	**"Rogatica"**
Case number	K Po2 3/22	Kž1 Po2 2/22	K Po2 8/20
Number of defendants	4 (Vladimir Mikac, Zdenko Radulj, Željko Jelenić, Danijel Borović)	1 (Osman Osmanović)	1 (Rajko Kušić)
Number of victims	37	4	More than 250
Hierarchy level of defendants	High military rank	Low military rank	High military rank
Indictment filed	18/02/2022	21/02/2020	09/10/2020
Stage of the proceeding	Pending trial start	Final	Trial ongoing
Duration of the proceeding since start of first trial	/	2 years and 7 months	2 years and 10 months
Number of witnesses heard at trial	/	20 and 1 expert witness	11
First instance judgement date and outcome	/	**18 March 2022** Conviction: 5 years	/
Appeals decision date and outcome	/	**26 January 2023** Sentence modified: 3 years and 6 months	/
Retrial judgement date and outcome	/	/	/
Second appeal date and outcome	/	/	/

Case name	**“Petrovačka cesta”**	**“Rasadnik Camp”**	**“Rogatica”**
Factual background	In February 2022, the WCPO filed an indictment against four high-ranking Croatian Air Force officers, Vladimir Mikac, Zdenko Radulj, Željko Jelenić and Danijel Borović, for war crimes against civilians allegedly committed during the operation “Storm” in August 1995. The WCPO charged the abovementioned for ordering a missile attack on a convoy of Serb refugees on the Petrovačka cesta road, outside of Bosanski Petrovac, BiH. As per the WCPO’s allegations, the missiles fired by the combat aircraft killed 13 civilians, including six children, and wounded 24.	The indictment alleges that the defendant Osmanović, as a member of the Army of BiH, along with several members of his unit, inflicted bodily injuries, tortured, abused and intimidated four civilians and captured members of the Army of the VRS in the Rasadnik Camp in Gornji Rahić, Brčko (BiH) in the period between May and June 1992.	The indictment in the “Rogatica” case relates to attacks carried out against the civilian population from the municipality of Rogatica, BiH, between May 1992 and July 1995. Namely, the defendant Rajko Kušić, as a former commander of the Territorial Defence Unit of the municipality of Rogatica, and later the commander of the Rogatica Brigade and of the 1st Podrinje Light Infantry Brigade of the VRS, has been accused of commanding and participating in attacks in which more than 250 victims were murdered, forcibly displaced and relocated, tortured, treated inhumanely, unlawfully detained, and raped. He is also accused of participating in an attack on the town of Žepa, BiH, and destroying the mosques in the municipalty of Rogatica.

Case name	**"Petrovačka cesta"**	**"Rasadnik Camp"**	**"Rogatica"**
Procedural notes	Since all the defendants were unavailable to the Serbian authorities, the WCPO filed a motion to the High Court to initiate a trial in absentia against the defendants. In November 2022, the pre-trial hearing was commenced and concluded in this case. The main hearing in this case was supposed to begin in December 2022. However, the hearing was postponed since the High Court did not decide on the WCPO's motion to initiate a trial in absentia. By the end of the reporting period, the High Court had not made a decision on this proposal.	In November 2019, the defendant was arrested on the Serbia - BiH border. Osmanović, being a citizen of BiH, asked for his extradition. The Court of Appeals in Belgrade rejected the extradition request in January 2020, and Osmanović remained in custody in Serbia eversince.	The BiH authorities had initiated criminal proceedings against the defendant, but transferred the case to the WCPO due to the defendant's unavailability.

Case name	**“Rudice”**	**“Sanski Most – Lušci Palanka”**	**“Sanski Most II”**
Case number	K Po2 3/20	Kž1 Po2 1/22	K Po2 4/21
Number of defendants	1 (Nezir Mehmetaj)	1 (Milorad Jovanović)	2 (Branko Basara, Nedeljko Aničić)
Number of victims	9	15	More than 250
Hierarchy level of defendants	Low military rank	Low police rank	High military rank (Basara); mid military rank (Aničić)
Indictment filed	16/12/2020	3/4/2017	25/03/2021
Stage of the proceeding	Trial ongoing	Final	Trial ongoing
Duration of the proceeding since start of first trial	2 years and 8 months	5 years and 6 months	2 years and 6 months
Number of witnesses heard at trial	7, 2 expert witnesses and 1 professional consultant	22	5 and 1 expert witness
First instance judgement date and outcome	/	**2 February 2021** Conviction: 9 years	/
Appeals decision date and outcome	/	**29 October 2021** Annulled and retrial	/
Retrial judgement date and outcome	/	**8 April 2022** Conviction: 9 years	/
Second appeal date and outcome	/	**31 January 2023** Sentence modified: 3 years	/

Case name	**"Rudice"**	**"Sanski Most – Lušci Palanka"**	**"Sanski Most II"**
Factual background	The indictment alleges that the defendant Nezir Mehmetaj, a former member of the KLA, in June and July 1999, in the village of Rudice (Klina municipality in Kosovo), together with other KLA members, killed seven people. He is also accused of participating in the burning and looting of houses in Rudice, of dislocation and inflicting bodily injuries against non-Albanians (members of the Roma and Egyptian communities in Rudice)	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 15 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).	The indictment in this case relates to attacks carried out against the civilian population from the municipality of Sanski Most, BiH, during the spring and summer of 1992. Namely, the defendant Branko Basara, as former commander of the Sana Brigade of the VRS, and the defendant Nedeljko Aničić, as former commander of the Sanski Most Territorial Defence force, both members of the Sanski Most Crisis Staff, have been accused of bearing responsibility for the killings of more than 250 non-Serb civilians, and attacking the civilian population in several settlements in the Sanski Most area, committed by the units under their command. They are also accused of committing acts of unlawful arrest, dislocation and violation of bodily integrity against non-Serb civilians.

Case name	**“Rudice”**	**“Sanski Most – Lušci Palanka”**	**“Sanski Most II”**
Procedural notes	In January 2020, the defendant was arrested at the Merdare ABL. He is still in custody.	The BiH authorities had initiated criminal proceedings against the defendant, but transferred the case to the WCPO due to the defendant’s unavailability.	In 2014, the BiH authorities initiated criminal proceedings against the defendants, but, due to their unavailability, in 2020 transferred the case to the WCPO. In June 2021, the court dismissed the indictment against the defendant Nedeljko Aničić, since medical experts stated that he was permanently incapable of following the proceedings due to his health issues.

Case name	**"Sarajevo - Hrasnica"**	**"Srebrenica"**	**"Srebrenica II"**
Case number	Kž1 Po2 3/22	K Po2 3/17	K Po2 9/21
Number of defendants	1 (Husein Mujanović)	8 (Nedeljko Milidragović, Milivoje Batinica, Aleksandar Dačević, Boro Miletić, Jovan Petrović, Dragomir Parović, Aleksa Golijanin, Vidosav Vasić)	1 (Milenko Živanović)
Number of victims	30	1313	Thousands
Hierarchy level of defendants	Mid military rank	Low police rank	High military rank
Indictment filed	24/12/2018	21/1/2016	29/12/2021
Stage of the proceeding	Final	Trial ongoing	Trial ongoing
Duration of the proceeding since start of first trial	3 years and 9 months	6 years and 9 months	1 year and 3 months
Number of witnesses heard at trial	17	31	11
First instance judgement date and outcome	**6 July 2020** Conviction: 10 years	/	/
Appeals decision date and outcome	**3 February 2021** Annulled and retrial	/	/
Retrial judgement date and outcome	**9 May 2022** Conviction: 10 years	/	/
Second appeal date and outcome	**22 December 2022** Sentence modified: 4 years and 6 months	/	/

Case name	**“Sarajevo - Hrasnica”**	**“Srebrenica”**	**“Srebrenica II”**
Factual background	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.	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.	According to the indictment, the defendant Milenko Živanović, as a former commander of the Drina Corps, which was part of the VRS, ordered forced relocation of Bosniak civilians from certain areas under the Drina Corps area of responsibility and, with his orders and actions, participated in the forced relocation of thousands of Bosniak civilians from the Srebrenica United Nations (UN) protected zone in 1995.
Procedural notes	In July 2018, members of the Serbian Ministry of the Interior arrested Mujanović on the border between Serbia and BiH.	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. In February 2021, the trial panel dismissed the indictment against Dragomir Parović, since he was unfit to stand trial owing to ill health.	In December 2021, the defendant was indicted in both BiH and Serbia almost simultaneously for similar crimes in Srebrenica in 1995. However, the Prosecutor's Office of BiH qualified the actions of the defendant as a crime against humanity.

Case name	**"Štrpci"**	**"Teslić"**
Case number	K Po2 5/23	Kž1 Po2 4/23
Number of defendants	5 (Gojko Lukić, Ljubiša Vasiljević, Duško Vasiljević, Jovan Lipovac, Dragana Đekić)	1 (Nebojša Mirović)
Number of victims	20	39
Hierarchy level of defendants	Low military rank	Low police rank
Indictment filed	10/05/2018 ***(see Procedural notes)***	30/12/2019
Stage of the proceeding	Retrial	Final
Duration of the proceeding since start of first trial	4 years and 9 months	3 years and 2 months
Number of witnesses heard at trial	36 witnesses and 7 expert witnesses	12
First instance judgement date and outcome	**7 February 2023** Gojko Lukić, Duško Vasiljević, Jovan Lipovac: 10 years Dragana Đekić: 5 years *Ljubiša Vasiljević died before the end of the trial*	**6 March 2023** Acquittal
Appeals decision date and outcome	**30 October 2023** Annulled and retrial	**10 November 2023** Confirmed
Retrial judgement date and outcome	/	/
Second appeal date and outcome	/	/

Case name	**“Štrpci”**	**“Teslić”**
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.	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 39 Bosniak civilians, in Teslić, BiH. The bodily injuries resulted in the death of one person (as a result of severe beatings).

Case name	**"Štrpci"**	**"Teslić"**
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 were completed before the Court of BiH. In a co-ordinated operation launched by judicial and police authorities of Serbia and BiH, all of the 15 suspects were deprived of liberty on 5 December 2014. However, all five defendants prosecuted in Serbia were released from custody during the investigation. In August 2023, the Court of BiH rendered the final judgment sentencing seven defendants to 13 years in prison each, while one defendant was acquitted. In October 2023, in separate proceedings against one defendant, the Court of BiH rendered the final judgment sentencing him to 15 years in prison. The proceedings were terminated in respect of one defendant, who died in the meantime. One defendant reached a plea bargain with the BiH prosecution, admitted his guilt and was sentenced to five years in prison. The High Court in Bijelo Polje (Montenegro) sentenced one defendant to 15 years in prison in 2004, for the same crime. Milan Lukic, the leader of the "Avengers" unit was sentenced to life imprisonment by the Hague Tribunal in 2012 for war crimes in the Bosnian town of Višegrad, but not for the Štrpci deaths.	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	**“Višegrad”**	**“Vlasenica”**	**“Vukovar”**
Case number	K Po2 4/22	K Po2 5/20	K Po2 1/23
Number of defendants	1 (Slađan Tasić)	1 (Višnja Aćimović)	1 (Jovan Radan)
Number of victims	5	37	1
Hierarchy level of defendants	Low police rank	Low military rank	Low military rank
Indictment filed	29/03/2022	17/09/2020	15/12/2023
Stage of the proceeding	Trial ongoing	Trial ongoing	Pending trial start
Duration of the proceeding since start of first trial	1 year and 1 month	3 years	/
Number of witnesses heard at trial	9	8	/
First instance judgement date and outcome	/	/	/
Appeals decision date and outcome	/	/	/
Retrial judgement date and outcome	/	/	/
Second appeal date and outcome	/	/	/

Case name	**"Višegrad"**	**"Vlasenica"**	**"Vukovar"**
Factual background	The indictment alleges that the defendant Slađan Tasić, a former member of the Republika Srpska police forces in Višegrad (BiH), together with several other members of the the VRS and police forces, participated in the unlawful arrest of five Bosniak civilians, in the municipality of Višegrad (BiH), in June 1992. As alleged in the indictment, the group arrested five Bosniaks and drove them away, forcibly and under threat, in the direction of Užice (Serbia). Five Bosniaks disappeared and are still listed as missing.	The indictment states that in June 1992, the defendant Višnja Aćimović, as a co-perpetrator, murdered 37 Bosniak civilians in Vlasenica, BiH.	The indictment alleges that during October and November 1991, the defendant Jovan Radan, as a member of the Territorial Defense, raped a woman three times in Vukovar, Croatia.
Procedural notes	The BiH authorities had initiated criminal proceedings against the defendant, but due to his unavailability, transferred the case to the WCPO of Serbia. The BiH courts rendered the final judgments against three former members of VRS and police forces in 2018 and 2019 for the same crime, sentencing two of them to 14, and five years in prison, while acquitting one.	The BiH authorities had initiated criminal proceedings against the defendant, but due to her unavailability, transferred the case to the Serbian WCPO.	/

Case name	**“Zagreb”**	**“Željko Maričić”**	**“Zvornik - Karakaj”**
Case number	K Po2 6/21	Kž1 Po2 6/20	K Po2 1/19
Number of defendants	1 (Branko Tunić)	1 (Željko Maričić)	1 (Dalibor Maksimović)
Number of victims	14	6	4
Hierarchy level of defendants	Low military rank	Low military rank	Low military rank
Indictment filed	07/06/2021	27/11/2018	10/05/2019
Stage of the proceeding	Trial ongoing	Final	Final
Duration of the proceeding since start of first trial	1 year and 2 months	1 year and 11 months	4 years and 1 month
Number of witnesses heard at trial	16 and 2 expert witnesses	8 and 1 expert witness	16 and 1 expert witness
First instance judgement date and outcome	/	**7 July 2020** Conviction: 2 years	**6 October 2023** Conviction: 15 years
Appeals decision date and outcome	/	**5 February 2021** Confirmed	/
Retrial judgement date and outcome	/	/	/
Second appeal date and outcome	/	/	/

Case name	**"Zagreb"**	**"Željko Maričić"**	**"Zvornik - Karakaj"**
Factual background	According to the indictment, the defendant Branko Tunić, a former member of the Croatian National Guard, murdered one prisoner and inflicted bodily injuries to 13 prisoners - soldiers serving their regular military service in the JNA, in Zagreb, Croatia in September and October 1991.	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 Kazanbaša near Zvornik in 2003, and subsequently exhumed and identified.

Case name	**“Zagreb”**	**“Željko Maričić”**	**“Zvornik - Karakaj”**
Procedural notes	Since the defendant was unavailable to the authorities of the Republic of Serbia, the WCPO of the Republic of Serbia initiated the trial in absentia.	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 finaly convicted by the High Court for war crimes against civilians in the “Bratunac” case. Namely, in September 2019, the High Court found the defendant Maksimović guilty of murdering four Bosniak civilian and raping one Bosniak woman, and sentenced him to 15 years in prison. The BiH authorities had initiated criminal proceedings against the defendant, but due to his unavailability, transferred the case to the Serbian WCPO.

CIP - Каталогизација у публикацији
Народна библиотека Србије, Београд

341.322.5:343.11(497.11)”2020/2023”

WAR crimes proceedings in Serbia : (2020-2023) : an analysis of the OSCE Mission to Serbia’s monitoring results. - Belgrade : OSCE Mission to Serbia, 2025 (Belgrade : Jovšić Printing Centar). - 139 str. : graf. prikazi, tabele ; 24 cm

Izv. stv.nasl.: Postupci za ratne zločine u Srbiji : (2020-2023). - Tiraž

100. - Napomene i bibliografske reference uz tekst.

ISBN 978-86-6383-125-4

a) Ратни злочини -- Судски процеси -- Србија -- 2020-2023

COBISS.SR-ID 169306889