



SERBIA

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Introduction

1. The application of transitional justice mechanisms, such as war crimes trials and reparations, has significant flaws in Serbia. Lack of progress may be even greater in truth-seeking and vetting of public officials. Serbia must do much more in all areas of transitional justice, for its own sake and the sake of long-term regional stability.
2. The unfavorable balance of power between moderates and nationalists on the Serbian political scene has hindered this task in recent years. After the parliamentary elections in February 2007 a majority of ministerial posts in the government, established in May, went to moderates. But the cabinet also included ethnic nationalists led by Prime Minister Vojislav Kostunica. The nationalists failed to back key transitional justice initiatives, particularly war crimes trials and vetting of public officials. After the elections in May 2008 the barely reformed Socialist Party, formerly led by Slobodan Milosevic, has participated in the new government as a junior partner. This constellation is not likely to be more favorable to efforts to provide justice to the victims of war crimes and human rights abuses of the 1990s.

Substantive Concerns

War Crimes Trials

3. Serbia has failed to arrest and surrender to the International Criminal Tribunal for the former Yugoslavia (ICTY) the remaining individuals indicted by the Tribunal's Prosecutor who are believed to be within reach of the Serbian law-enforcement agencies: Ratko Mladic, former head of the Bosnian Serb Army, accused of genocide and complicity in genocide, and Goran Hadzic, former president of the so-called Republic of Serbian Krajina, in Croatia, accused of crimes against humanity. The whereabouts of the

third fugitive, the wartime political leader of the Bosnian Serbs Radovan Karadzic, who is accused of the same crimes as Mladic, are not known.

4. Resistance by nationalist elements in the government and opposition to the domestic war crimes prosecutions have weakened the resolve and effectiveness of the three specialized institutions handling war crimes cases: the Office of the War Crimes Prosecutor (OWCP), the War Crimes Investigation Service of the Serbian police, and the War Crimes Chamber of the District Court in Belgrade (War Crimes Chamber).¹

5. The War Crimes Chamber, which has exclusive jurisdiction to try war crimes cases, has completed only eight first-instance trials since its establishment in 2003. Two judgments have become final. In addition, five first-instance trials are going on. Numerous perpetrators of crimes committed in the 1990s in Croatia, Bosnia and Herzegovina, and Kosovo have moved to Serbia and acquired citizenship in that country. They can only be tried there because Serbia prohibits the extradition of its nationals to other jurisdictions. However, with an average of three war crimes trials a year, Serbia lags far behind the two neighboring states, Croatia and Bosnia-Herzegovina, where dozens of trials take place every year.

6. Resource deficits in the OWCP and inadequate contributions by the war crimes investigation unit of the Serbian police have limited the capacity of Serbia's judicial system to bring suspected war criminals to justice. Lack of cooperation between the OWCP and the UN Mission in Kosovo has also hindered progress in the investigation of crimes committed there. Observers of the War Crimes Chamber have been concerned that the OWCP has issued some indictments against non-Serb suspects despite the absence of strong evidence, in an attempt to demonstrate to the Serbian public and political elites that the prosecutor's office does not pursue only Serb suspects. At the same time no indictments have been issued against suspects from upper echelons of the Serbian security forces. Witnesses from Serbia often feel intimidated from testifying against police officers suspected of war crimes. Public information and outreach efforts by the War Crimes Chamber and the OWCP have barely altered the Serbian public's biases or indifference about war crimes.

Truth-seeking

7. With the exception of a short-lived attempt at the beginning of the decade, Serbia has not made an effort to establish an official body to deal systematically with fact finding about past crimes. A Truth and Reconciliation Commission was formed in March 2001 in the then-Federal Republic of Yugoslavia (Serbia and Montenegro) via a decision by then-President Kostunica. Because of the body's composition and the character of the political forces behind it, civil society groups in Serbia and the region suspected that the Commission's real goal was to advance a nationalist distortion of history. At best the Commission was an attempt to placate the international community, which had been pushing Kostunica to address the legacy of the Milosevic era. Without the support of civil society the Commission disbanded in February 2003, before it had held a single public hearing or undertaken any important activity.

¹ For a comprehensive analysis of the war crimes trials in Serbia, see the ICTJ report *Against the Current—War Crimes Prosecutions in Serbia* (2007), at <http://www.ictj.org/images/content/7/8/780.pdf>.

8. Three leading human rights organizations in the Balkans region—the Humanitarian Law Center (Serbia and Kosovo), the Research and Documentation Center (Bosnia and Herzegovina), and Documenta (Croatia)—formed a regional coalition that is creating name-by-name records of all victims of the Yugoslav wars. The coalition also aims to build a regional civil-society network that includes a broad range of nongovernmental entities. Its overarching goal is to sensitize the public and the national governments of the Western Balkans about the need for a regional truth commission.

Vetting of Public Officials

9. The Law on Accountability for Violations of Human Rights, adopted by the Serbian Parliament in June 2003, has remained a dead letter. The government established in May 2007 failed to take any steps toward implementing the law. One member of the ruling coalition, the Democratic Party of Serbia (DSS), had opposed its enactment. In the past five years the DSS and the parties of the nationalist opposition (the Serbian Radical Party and the Socialist Party of Serbia) have held enough seats in Parliament to block any attempt to elect members of a commission that, according to the law, would assess whether candidates for a variety of official posts had been involved in human rights abuses since 1976.

10. Centrist politicians in Serbia seem to have resigned themselves that the time has passed for removal of abusive or corrupt public servants and officials through vetting procedures. In January 2007 Serbian President Boris Tadic told a television interviewer that “lustration is impossible after this many years.”² Although it held a majority of posts in the cabinet in 2007–08, Tadic’s Democratic Party (DS), failed to advocate the implementation of the accountability law.

Reparations

11. Serbia lacks a systematic reparations program for victims of human rights abuses and war crimes committed in the 1990s. The laws in force provide for administrative compensation for a limited group of war victims while omitting several other categories. Victims from the excluded categories can seek compensation in the courts, but a high standard of proof and the expiration of the statute of limitations prevent victims from obtaining compensation for physical or psychological harm in most cases.

12. According to the laws on military and civilian invalids, those entitled to monetary compensation and other forms of material reparation are war invalids and families of persons killed in an armed conflict or deceased as a result of injuries suffered in connection with the conflict. Consequently former camp detainees, victims of sexual violence, and victims of torture do not benefit from administrative compensation unless the abuses against them resulted in bodily infirmity above a certain threshold. In addition, only invalids injured by the activities of “enemy formations” can receive benefits. Victims whose injuries or loss of life resulted from actions of Serbian state agencies cannot benefit from administrative compensation. They include non-Serb victims from

² “Izbori” (“Elections”), television interview with Boris Tadic, Television B-92 (Belgrade), January 14, 2007, www.b92.net/info/emisije/utisak_nedelje.php?yyyy=2007&mm=01&nav_id=227853 (in Serbian).

Kosovo and other parts of the former Yugoslavia, as well as opposition activists who suffered ill-treatment by the security apparatus during the regime of Slobodan Milosevic between 1987 and 2000.

13. The legislation provides for wholly uneven treatment of military victims and members of their families on the one hand and civilian victims and members of their families on the other. Families of fallen soldiers receive generous disability allowances irrespective of their financial situation, while families of killed civilians receive modest incomes only if they are in a dire economic situation. The allowance for a spouse and two children of a fallen soldier is six times higher than the monthly income received by a civilian victim's family of the same size. Twenty percent bodily infirmity suffices for recognition as a military invalid, while the threshold for civilian victims is 50 percent.

14. Families of the missing persons—military or civilian—have been placed in a difficult position, as they must make a declaration of death of the family member to qualify for a monthly allowance or the monthly income. However, because of the pain attached to making such a declaration, most families are unwilling to take this step.

15. As a result of the failure of the administrative programs to include important categories of victims, individuals whose physical or psychological harm was caused by Serbian agencies have initiated numerous court proceedings against the state. However, trials are usually long and necessitate significant expenditures by the plaintiff; the burden of proof is on the plaintiff; and the prospect of success is diminished by the high standard of proof. Moreover, since 2004 the Serbian Supreme Court has taken the position that claims against the state must be brought within five years of the event that led to the injury or of the death. The five-year deadline has already expired for victims of abuses committed in the 1990s, leaving many potential plaintiffs with no legal avenue for pursuing claims against the state.

16. In June 2005 and March 2007 the Serbian Parliament fell short of adopting a declaration condemning the genocide committed by the Bosnian Serb army against Bosnian Muslims in Srebrenica in July 1995. The DSS and nationalist opposition parties insisted that a declaration should not single out Srebrenica and should also condemn crimes committed against ethnic Serbs throughout the former Yugoslavia. Thus Serbia has failed to make a gesture that could have impressed victims in Bosnia and Herzegovina as an important form of symbolic reparation. Their disappointment was particularly acute in 2007, after a decision of the International Court of Justice issued February 27, 2008, found that Serbia had violated its obligation to prevent genocide and transfer Ratko Mladic to the ICTY. The Court did not order Serbia to pay financial compensation to Bosnia and Herzegovina, however.

Achievements and Best Practice

17. Despite their shortcomings and problems, the War Crimes Chamber and the OWCP have the potential to provide justice to many victims of the atrocities committed during the war in the former Yugoslavia. In the past four years prosecutors of the OWCP and judges of the War Crimes Chamber have significantly developed their capacity to prosecute and try war crimes perpetrators according to international fair-trial standards.

Improved cooperation in war crimes matters among prosecutors and judges in Serbia, Croatia, and Bosnia and Herzegovina has greatly increased prospects for successful prosecutions. Evidence from the ICTY has also contributed to progress in investigations and trials in Belgrade. Concern remains that it would be difficult for the OWCP as currently constructed to succeed in a complex investigation against high-level accused. But some encouraging signs have appeared recently that the OWCP is at least progressing to the mid-level cases.

18. Unlike in other national trials in the region and the ICTY, victims of war crimes have actively participated in the war crimes trials in Serbia, usually through victims' representatives of their choice. The representatives have helped clarify important factual matters at trial.

19. As a result of the court proceedings in past years, several hundred victims of human rights violations in the 1990s have managed to obtain compensation from the state. Beneficiaries include some 700 ethnic Serb refugees from Croatia who had been illegally deprived of liberty in Serbia and forcibly sent to the war zones in Croatia and Bosnia in 1995, as well as dozens of former *Otpor* movement activists who had been arrested and ill treated by police in 1999 and 2000. The plaintiffs in these and other cases were usually represented by nongovernmental organizations such as the Belgrade-based Humanitarian Law Center (HLC).

Recommendations

- 20. Serbia should arrest and surrender, and/or assist in the arrest of, Ratko Mladic and other individuals indicted at the International Criminal Tribunal for the former Yugoslavia who are still at large;
- 21. The Office of the War Crimes Prosecutor and the relevant police agency must demonstrate the will and ability to prepare a far greater number of war crimes cases;
- 22. Prosecutors should increase their scrutiny of individuals who held significant positions in the army and police;
- 23. The Serbian government should support credible initiatives by victims and civil society in Serbia and the region to establish a regional truth commission or, alternately or complementarily, a national truth commission;
- 24. Serbia should implement the 2003 law on accountability for human rights violations;
- 25. The government should establish a reparations program that will include former camp detainees, victims of sexual violence, victims of torture, and other categories of victims of Serbian state agencies that harmed citizens of Serbia or other states in the territory of the former Yugoslavia;
- 26. The legislation on civilian and military victims of war should be amended to establish balance in assistance to families of military and civilian victims;
- 27. The Serbian Parliament should adopt a declaration condemning the genocide the Bosnian Serb army committed against Bosnian Muslims in Srebrenica in July 1995.