



Bosnia and Herzegovina

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Summary

1. Although there have been some important achievements in Bosnia and Herzegovina in terms of transitional justice, a number of substantive concerns remain. Most efforts by authorities have focused on the processing of war crimes trials before the State Court, while paying less attention to other transitional justice initiatives.
2. The National Strategy for processing of war crimes cases, adopted by the Council of Ministers in late 2008, does not fully remedy the problem of inequality of citizens before the law in war crimes prosecutions. Moreover, the Strategy does not deal sufficiently with the issue of dual citizenship and prohibition of extradition of nationals, which could remain highly problematic. While the National Strategy as a whole represents a considerable achievement, steps to ensure its implementation have been slow to come.
3. The role of international judges and prosecutors within the state judiciary has increasingly become a cause of discord between the authorities of *Republika Srpska* and Bosnian politicians of other ethnicities. Some victims' groups and policymakers, especially in the *Republika Srpska*, continued to criticize the Special Department for War Crimes for lack of evenhandedness and clarity in the prioritization of cases.
4. There have been no efforts at the State level to establish a truth commission, after the unsuccessful attempts of 2000 and 2005-06. The potentially valuable effort in the town of Bijeljina to establish facts about war crimes committed in the area has been derailed by lack of expertise, funding and genuine political support.
5. A state law to provide redress to victims of torture and civilian victims of war has yet to be enacted. Laws for civilian war victims do exist at the entity level but are more advantageous to war veterans than to civilians.

Introduction

6. The continuing political turmoil in Bosnia and Herzegovina (BiH) has hampered the capacity and willingness of local actors and policymakers to deal adequately and

comprehensively with the legacy of the conflict of the nineties. Moreover, the forthcoming 2010 general elections constitute an unfortunate excuse for policymakers not to tackle the sensitive issues of the past. Additionally, the Prime Minister of the *Republika Srpska* has opposed the strengthening of state institutions in an effort to consolidate the powers of his entity. Most of the efforts by the authorities have focused on the processing of war crimes trials before the State Court, leaving aside other transitional justice initiatives.

Substantive Issues and Concerns

War Crimes Trials

National strategy for processing war crimes cases

7. The National Strategy for processing of war crimes cases, adopted by the Council of Ministers of Bosnia and Herzegovina on 29 December 2008, does not fully remedy the problem of inequality of citizens before the law in war crimes prosecutions. It is a matter of concern that the Criminal Code of the Former Yugoslavia can still be applied at the entity level, for cases initiated before 1 March 2003. This code, unlike the Criminal Code of BiH applied before the State Court, does not include jurisdiction over crimes against humanity or command responsibility. Moreover, for similar crimes, the maximum punishment envisaged is less onerous than the punishment envisaged by the state-level code. The current practice is contrary to the ruling of the Constitutional Court of BiH in the *Maktouf* case (30 March 2007) recommending harmonization of the application of the law.

8. Regional cooperation in war crimes proceedings has greatly improved with the ratification of cooperation agreements among states in the region. However, the issue of dual citizenship and prohibition of extradition of nationals is not sufficiently dealt with in the National Strategy and could therefore allow a number of perpetrators to escape prosecutions using porous borders.

9. While the National Strategy represents a considerable achievement, steps to ensure its implementation have been slow to come. The President of the State Court listed several implementation problems, including the failure to amend the Criminal Procedure Act of BiH, the failure to adjust budgets at state and entity levels, and the failure to create a network of support for witnesses and victims throughout BiH.¹

War crimes trials developments

10. The role of international judges and prosecutors within the state judiciary has increasingly become a cause of discord between the authorities of *Republika Srpska* and Bosnian politicians of other ethnicities. The presence of internationals to share their experience and knowledge with their national counterparts has proven to be of crucial importance. Although their mandate is to expire by the end of 2009, a fixed deadline will not take into account actual developments and needs. On 25 February 2009, the High Judicial and Prosecutorial Council (HJPC) adopted a formal opinion supporting the continued presence of the international judges and prosecutors, in a reduced form (up to six international judges and only in the Appeals Divisions of the War Crimes Chamber;

¹ See op-ed for the Balkans Investigative and Reporting Network on <http://www.bim.ba/en/173/10/20794/>.

no specifics about the number of international prosecutors). However, the authorities in *Republika Srpska* have announced opposition to renewal of the mandate of the internationals after 2009.

11. Some victims' groups and policymakers continued to criticize the Special Department for War Crimes for lack of evenhandedness and clarity in the prioritization of cases. In particular, victims and politicians in the *Republika Srpska* complained that the Department has neglected crimes against ethnic Serbs. However, the ratio of prosecuted crimes against ethnic Serbs does not appear disproportionate when measured against the overall numbers of civilian and military casualties of the Bosnian conflict. Of the sixty trials up to July 2009, nine concerned crimes committed against ethnic Serbs; six of those trials resulted in convictions, and three in acquittal. In the closing months of 2008, the Department completed the mapping of the crimes committed in BiH, which should ensure that the most important crimes, committed against members of all three constituent peoples are given due consideration by the Department in the coming years.

12. The court continued frequent use of witness protective measures that do not always appear warranted and arguably impinge on the legitimate interest of the public to follow the proceedings, in particular when the public is excluded from the entire session

13. There have been some improvements in the outreach activities of the War Crimes Chamber. Journalists have now greater access to Court's outreach officials, but no regular press briefings are held, in spite of long-time requests by the local media.

Truth-seeking

14. There have been no efforts at the State level to establish a truth commission, after the unsuccessful attempts in 2000 and 2005-06. A potentially valuable effort at the local level to establish facts about the war crimes committed in the area has been derailed by lack of expertise, funding and genuine political support. A truth commission, with a four-year mandate, was set up in the town of Bijeljina in 2007 by a decision of the municipality. Two public hearings were held, both in 2008. However, in March 2009 the commission effectively ceased to work due to resignation of most of its members, without being formally disbanded. Problems leading to the demise of the commission included lack of statute, presence in the commission of the commander of the notorious detention camp Batković, lack of funding, and disagreement among the members of the commission about the scope of its work.

Reparations

15. Laws to provide reparations for civilian war victims do exist at the entity level. The law of the Federation of Bosnia and Herzegovina provides that a civilian must have a disability rate of 60% to receive benefits (against 20% for a disabled war veteran), as does the law of the *Republika Srpska*. A civilian victim in the Federation receives monthly compensation amounting to 70% of the compensation for a disabled war veteran with identical injuries, while the amount for a civilian in *Republika Srpska* is even lower (approximately 60%). In *Republika Srpska*, the original deadline for submission of reparation claims expired in 2001. In July 2007, the law was amended to allow for submission of claims within a five-month period. As of June 2009, the relevant ministry

had still not passed decisions on these applications submitted in 2007. The attempts in 2006 to enact a state law to provide redress to victims of torture and civilian victims of war failed, and there has been no progress so far by the Ministry for Human Rights and Refugees to renew the efforts. Such a law would harmonize the categories of victims, lay out the procedures and criteria for establishing their victim status and define their rights.

Achievements and Best Practice

War Crimes Prosecutions

16. War crimes trials in BiH continued to unfold before the State Court and the jurisdictions of the entities. The present submission addresses only the former.² Both the War Crimes Chamber of the Court of BiH (War Crimes Chamber) and the Special Department for War Crimes of the Prosecutor's Office of BiH operated with efficiency. Between 2005 and July 2009, the court has issued 48 judgments, of which 30 have become final. Twelve first-instance trials were ongoing before the Court at the time of this writing (end of July 2009). The staff in both institutions displayed competence and professionalism in fulfilling their duties.

17. The National Strategy for processing of war crimes cases, adopted in late 2008, aims to deal effectively and consistently with the enormous backlog of war crimes cases awaiting investigations in BiH. The Strategy provides a systematic approach to solving the problem of the large number of war crimes cases in the courts and prosecutors' offices. The Strategy refers to an estimated 10,000 suspects, of whom about 6,000 are under active investigation. It sets 7 years as the time needed to prosecute the most complex and highest priority cases, and 15 years the time required for the other cases. Priority is thus given to the most responsible perpetrators for the most serious crimes.

18. The approach to all war crimes cases will be standardized according to harmonized and defined 'complexity criteria'. In order to face the large number of cases, the strategy relies heavily on entity jurisdictions, to which the state judiciary can transfer cases of lesser complexity. In such cases, entity jurisdiction may be obliged to apply the national criminal code to ensure consistency. The state judiciary can also request the entity jurisdictions to transfer a case to the state level if the case is highly complex. Otherwise, the jurisdiction of the entity will prosecute war crimes cases applying the Criminal Code of the Former Yugoslavia, applicable at the time of the crime.

19. The War Crimes Chamber continued its transformation from a hybrid jurisdiction into a court entirely run by nationals. By the end of 2008, all trial chambers consisted of two Bosnian judges and one international, a reversal of ratio from the previous years. The sizing down of the number of international prosecutors proceeded at a slower pace.

Regional Initiative

20. In October 2008, more than 100 non-governmental organizations and victims' groups from all parts of the former Yugoslavia formed a Coalition for a Regional Commission

² See ICTJ report *The War Crimes Chamber in Bosnia and Herzegovina: From Hybrid to Domestic Court* (October 2008) at <http://www.ictj.org/images/content/1/0/1088.pdf>.

for Establishing the Facts about War Crimes and other Serious Human Rights Violations in former Yugoslavia (Coalition for RECOM). The founding of the Coalition crowned a two-year long process of consultations at the civil society level about mechanisms for addressing the legacy of the armed conflicts in the nineties.

21. While promoted at the non-governmental level, the initiative is based on the participants' understanding that the regional commission should be jointly established by the governments in the region. It would have powers of an official body, and the governments would take responsibility for its functioning and the implementation of its recommendations. The Coalition for RECOM has announced that it plans to approach the governments in the second half of 2010 with a formal request to set up the commission.

22. Proponents of the establishment of RECOM have stated that a commission's principal goals include: creating an accurate record of the past abuses; debunking the prevailing myths and exaggerations in the interpretation of the past in the region; helping to resolve the fate of the missing persons; assisting efforts of the judiciaries to bring justice to victims; providing a public platform for victims to be heard and to be acknowledged by others; and promoting tolerance and building solidarity with the victims, irrespective of their ethnic affiliation.

23. While the five public forum events that took place in Sarajevo, Zagreb, Belgrade, Pristina, and Budva since 2006 were particularly visible, most activities of the Coalition for RECOM have taken the form of smaller consultative events throughout the region with specific groups such as the media, youth, war veterans, or victims' associations. By mid-July 2009, the number of the Coalition members had increased to 226 organizations and victims' groups across the region.

Recommendations

24. More effort will be required by the BiH authorities with the support of the international community to implement measures already taken and to take additional steps to fully address the legacies of the massive abuses in the 1990s. Specifically:

- Continue support for the work of the War Crimes Chamber.
- Support the implementation of the National War Crimes Strategy by encouraging the application of harmonized legislation all over the BiH territory and the establishment of an effective witness support and protection programme.
- Support the strengthening of local capacities for war crimes prosecutions at the entity level.
- Support regional talks on the issue of cooperation and extradition of nationals enjoying dual citizenship.
- Support the continued presence of international staff within the state judiciary, for as long as needed.
- Emphasize the need to improve the status of civilian victims of war in the relevant legislation and to implement reparation laws in a non-discriminatory manner.
- Support the initiative for RECOM as a unique regional process designed to create a dialogue about the legacy of the past in the whole of the former Yugoslavia.