Transitional Justice Report
Serbia, Montenegro and Kosovo, 1999-2005

Summary

1. Introduction

The report deals with state and civil initiatives to establish and tell the truth; with domestic and international war crimes trials, and with reparations and other endeavours by society in Serbia and Montenegro to come to terms with the massive crimes committed in the recent past. As to Kosovo, the report discusses only trials for war crimes and ethnically motivated crimes, above all because this mechanism of international justice is most noticeable in that region.

With regard to the concept of *transitional justice*, we are here using the definition given by the United Nations (UN) Secretary-General in his report of 23 August 2004: "The notion of transitional justice...comprises the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. These may include both judicial and non-judicial mechanisms, with differing levels of international involvement (or none at all) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof".[1]

2. The truth-finding initiatives

The first official truth-telling initiative in Serbia was launched as a result of growing pressure by the international community on the new government in Serbia and in the Federal Republic of Yugoslavia (FRY) to cooperate with International Criminal Tribunal for the former Yugoslavia (ICTY). Faced with such a situation, the then FRY president, Vojislav Kostunica, decided to set up a truth and reconciliation commission, a body presented to the public as a model of coming to terms with the past that had the potential to yield better results than trials by the ICTY. It soon emerged, however, that the commission represented an attempt on the part of a segment of the political elite to convince the international community that the ICTY was unnecessary and that instead one should focus on investigating the causes of the break-up of the former Yugoslavia. The commission lingered on for a year or so, endorsed neither by the critical public at home nor by any other country of the former Yugoslavia.

[1] The rule of law and transitional justice in conflict and post-conflict societies: Report of the Secretary-General, United Nations Security Council S/2004/616, 23 August 2004, p. 4.

The unwillingness of the domestic political elites to confront the legacy of the past was borne out by the failure of the Serbian Parliament to adopt a declaration on Srebrenica, and by the belated or excessively slow reaction on the part of Montenegro's top authorities regarding several domestic initiatives. The Serbian government instead adopted a declaration condemning the all crimes committed in these regions in the past, a document completely defeating, by its universality and total relativism, the concept of dealing with crime. The announcement on Srebrenica by the Council of Ministers of Serbia and Montenegro signified a measure of progress as far as institutional attitudes towards Serb crimes are concerned, though its main purpose was to shield the institutions in Serbia and Montenegro by putting forward the thesis that the crimes had been committed by individuals who represented neither Serbia nor Montenegro.

The Serbian parliamentary debates held during 1999-2005 paint a rather gloomy picture of how the minds of some members of the Serbian political elite work, with deputies of the Serbian Radical Party (SRS) and the Socialist Party of Serbia (SPS) openly supporting the policy that led to Serbia's international isolation, sanctions and devastation of its economy and society. These deputies even rule out any possibility of any citizen of Serbia being responsible for any crime committed in Croatia, Bosnia and Herzegovina, and Kosovo. Occasionally, however, one notices an inconsistency on their part in acknowledging that crimes were committed after all; but these are justified as a "response" to perceived or real violent acts and actions by the "other side". For example: "So who are the people you're going to try, and who are the people who will charge our combatants or members of the police with war crimes? The question is, are [Kosovo Albanian leaders] Hashim Thaqi, [Ramush] Haradinaj, Bajram Rexhepi also going to be made to account under this law?"[2]

The period 1999-2005 saw a great many panel discussions, conferences, seminars and other meetings devoted to coming to terms with the past. Some of these – notably the debates on Srebrenica and the broadcasting of a video recording of the execution of six Bosniaks in July 1995[3] – had a seismic effect on public opinion particularly in Serbia.

In spite of resistance by the nationalist media and political circles (and by individuals who argue that "one should not talk about crimes because those things are water under the bridge"), nongovernmental organisations (NGOs) kept trying to put coming to terms with the past and a critical reassessment of the recent past on the agenda. While their efforts to clarify the past were directed at various segments of the highly traumatised society, the victims of crime were their principal concern. In this respect, these organisations have over recent years been networking regionally, reflecting the growing realisation that the recent past must be addressed within a wider, regional, framework. Similarly, these organisations insist that the culture of impunity should be done away

[2] Serbian parliament shorthand notes, deputy Gordana Pop-Lazić (SRS), 24 June 2003.

[3] The HLC showed the video recording to the Serbian War Crimes Prosecutor's Office on 23 May 2005; also, on the same day that the ICTY prosecution showed excerpts at the Milošević trial, the HLC made copies available to local TV stations that evening. The footage was broadcast immediately by B92 and later by other local channels. The broadcast set into motion an avalanche of public reactions in Serbia: the scenes of the cold-blooded murder made it much more difficult to deny the Srebrenica crime publicly and even representatives of some extreme political groups in Serbia expressed their 'regrets'. What is more, the public showing of the footage started the '[korpioni case', raising some very embarrassing questions as to the part played by the Serbian state in establishing, equipping and maintaining the unit.

According to a survey conducted by the Ebert Foundation, whereas between 1 January 2003 and 2 June 2004 18 print media in Serbia published 816 texts on Srebrenica, they published as many as 676 immediately shortly the showing, from 2 to 24 June 2005.

with and that the state should meet its obligation to disclose the whole truth about the crimes committed, because this is a precondition for developing democratic institutions and transcending the grave traumas from the recent past.

3. Establishing accountability to the law

The reforms set into motion in the judiciary sphere, including the establishment of the Serbian War Crimes Prosecutor's Office, as well as the (long overdue) adoption of legislation designed to protect parties in criminal proceedings, are yielding results. A great many citizens who are aware of the existence of the War Crimes Prosecutor's Office hold that trials of individuals before "our" courts is good news. This is especially true of the war crimes trials which allow members of the public to hear and see for the first time what individuals did "in our name". On the other hand, however, the domestic indictments have been conspicuously free from facts and evidence indicating the real organisers and inspirers of these crimes, especially as far as top state leaders of the Republic of Serbia are concerned. The Ovcara trial is the only trial completed by the war crimes trial chamber so far. Irrespective of the flaws of the indictment regarding the classification of the crime, and in spite of the fact that no charges were brought against some of the officers that testified, it should be pointed out that the trial chamber presided over by judge Vesko Krstajic handled the proceedings in a professional and conscientious manner. The trial chamber not only tried to establish the facts in order to find out the truth about the crimes, but also introduced a very important and positive innovation in the domestic jurisprudence, namely examination of the context of the crime.

Significantly, compared to its predecessors, the Ovcara trial marked progress in regional cooperation in the prosecution of war crimes perpetrators. Six witnesses from Croatia were first examined before the County Court in Zagreb in the presence of an investigating judge and a prosecutor from Serbia. Three of them went on to testify before the War Crimes Chamber in Belgrade.

In Kosovo, a commander of the Kosovo Liberation Army (UCK) was convicted by international judges on grounds of command responsibility but as of the end of 2005 the case had not been completed.[4] There were a number of omissions on the part of the international and mixed criminal chambers, most of them being of a technical nature, including failures in organising the examination of protected witnesses.[5] However, international criminal chambers were also guilty of serious breaches of the law.[6] . All things considered, however, the international judges working in Kosovo exhibited a high level of professionalism in the conduct of judicial proceedings. The difficulty of finding witnesses willing to testify in connection with the gravest offences in Kosovo is an obstacle to the establish-

[4] The trial of Rustem Mustafa *et al*. The Criminal Chamber chaired by Timothy Clayson sought to ensure absolute equality of defence and prosecution. The International Criminal Chamber of the Priština/Prishtina District Court brought justice to both the defendants and their victims, imposing on the former long prison sentences. The defence appealed and the Supreme Court quashed the sentences and ordered a retrial at a session on 7-8 July 2005. The convicts were set free and as of the end of 2005 no retrial had started.

[5] The problems are due primarily to the different judiciary systems from which the international judges come, as well as to the considerable complexity of conducting proceedings in two or three languages.

[6] These problems concern a backlog of cases waiting to be decided by the international judges, a backlog of appeal and retrial cases, omissions regarding the examination of witnesses and their security. Also, in the case of Kiqin *et al*., the court granted the prosecutor's request that a witness be arrested in the courtroom although information in respect of this witness had already been delivered to the prosecutor and the criminal chamber by the defence. Although no law prohibits making an arrest in a courtroom, this act was nevertheless contrary to the notion that the courtroom is first and foremost a place where justice is administered rather than a place where arrests are made.

ment of an independent and efficient judiciary system. The pre-trial proceedings, which are mostly conducted by the police, are still full of flaws particularly regarding the collection of material evidence to reinforce investigative work.[7]

As to other legislation, the lustration law is not being applied and there are still no mechanisms such as vetting.[8] As a result of the failure to enforce the law on access to information and the lack of coherent legislation on media (to prevent putting off the invitation of tenders for frequencies and the continual postponement of the transformation of RTS into a public broadcasting service) the media scene in Serbia is fragmented and susceptible to influence and manipulation by everyday politics. What is more, in a situation like this, the highest state officials feel neither desire nor need to render the operation of their institutions and their personal work more transparent and understandable by the wider public.

One cannot understand the attitude of a large segment of the Serbian public to the prosecutions before the ICTY if one is not familiar with the role the media play in Serbia. Ever since its establishment, the ICTY has been painted in an extremely bad light by Serbian media outlets. Although TV B92 began providing live coverage of its proceedings in 2001, the broadcasts have had no appreciable impact on the attitudes of a large number of people. This state of affairs is largely due to the editorial policy of most other media outlets, whose guests are invited primarily to discredit the ICTY and to praise the defence tactics of the indictees charged with the most serious crimes (including genocide), rather than to discuss the issues that matter and the incriminating evidence.

The media polemics culminated in texts and commentaries published in the Belgrade weekly *Vreme* between 1 August and 21 November 2002.[9] Although the polemic only partially dealt with attitudes towards the ICTY, i.e. regarding the coverage of the proceedings, the weekly's editor took the position that his paper should not take sides and "root" either for Milosevic or for the prosecution. The historian Olivera Milosavljevic, on the other hand, pointed out in her commentary that "*Vreme*'s coverage from The Hague is a loose account in which much is made of Milosevic's ability to portray witnesses as liars...the *Vreme* reporter lends weight to the style and content of Milosevic's defence by reducing the courtroom incidents to the level of anecdotes...the former DB [State Security] chief had the reporters spellbound by his loyalty to Milosevic...the *Vreme* reporter has committed a criminal offence by accusing the tribunal witness [in advance], whereas with regard to Milosevic he is waiting to hear what the court has to say, he is guilty of double standards'.[10]

Another worthy attempt to counterbalance the disparagement of the war crimes trials and the fundamentally false reporting by a great many media outlets was the column in the daily *Danas* entitled *Hag medju nama* (The Hague in our midst). The column was launched by independent intellectuals and human rights and civil society activists resolved to publicly oppose the continuing deception of the public in Serbia. Jointly edited with the HLC, the column was published on Fridays from 9 April 2004 until 9 June 2005, comprising some 120

[7] Owing to omissions of this kind made in a number of trials, the subject matter of the indictments has not fully been clarified in spite of clear evidence that the indictments were sound.

[8] Cf. Magarditsch Hatschikjan, Dušan Reljić and Nenad Šebek, *Disclosing Hidden History*: *Lustration in the Western Balkans*, p. 10.

[9] The polemic texts were published by the Helsinki Committee for Human Rights in Serbia in Vol. 16: *Tačka razlaza – povodom polemike vođene na stranicama lista* Vreme *od 1. avgusta do 21. novembra 2002. godine*, Belgrade, Helsinki Committee for Human Rights in Serbia, 2003

[10] *Tačka razlaza*, p. 11.

contributions (author edited and approved texts, testimonies and documents) dealing with both public attitudes towards the tribunal and those towards crime and criminals in general, as well as the need to serve justice for the victims.[11]

4. Reparations

Since the democratic changes at the end of 2000, authorities in Serbia and Montenegro have demonstrated no political will to provide systemic reparation to the victims of the previous regime, who are mostly persons belonging to minority ethnic communities. Worse still, political elites in Serbia and Montenegro have not even acknowledged the human rights violations that have taken place in their territories and their victims. A victim seeking material reparation has civil action as his or her only recourse, but such a course of action is out of character with the nature and essence of the right to reparation.

Cases involving massive human rights violations in the territory of Serbia and Montenegro in connection with the armed conflict in the former Yugoslavia (Sandzak, Vojvodina, Bukovica) are the best indicator of the unwillingness of the authorities to take responsibility for the victims. More than 13 years on, victims from these regions are yet to obtain just compensation for the terror they suffered at the hands of members of the army and police.

Other than ethnically motivated human rights violations, human rights violations have taken place in Serbia and Montenegro on a massive scale against ethnic Serbs too (e.g. the forced enlistment of Serb refugees from Croatia),[12] besides politically motivated violations of human rights (e.g. unlawful deprivation of liberty of some 200 members of the People's Movement OTPOR).

In a landmark case concerning the violation of Roma human rights, the government of the Republic of Montenegro agreed on 19 June 2003 to pay EUR 985,000 to 74 Roma victims of a pogrom that took place in Danilovgrad in 1995. The decision to pay up followed from the 21 November 2002 finding by the UN Committee Against Torture that the Republic of Montenegro was in breach of several provisions of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The committee ordered the Montenegrin authorities to pay adequate reparation to the victims.[13]

5. Concluding notes

Transitional justice mechanisms cannot be transplanted from one part of the world to another or from one cultural-historical situation to another. One must always bear in mind the specific societal, historical, economic, cultural and political circumstances of the post-conflict[14] and/or "transition" society in question. In a democratic society,

[11] Texts from this column were published in the book *Hag među nama*, HLC, 2005.

[12] During the summer of 1995 the Serbian MUP forcibly enlisted between 6,000 and 10,000 Serb refugees from Croatia. Having been deprived of their liberty on the streets, in public transport conveyances, in collective accommodation facilities, they were transferred to the territory of the Republics of Croatia and Bosnia and Herzegovina and forced to fight, in the process of which many lost their lives

[13] After two Roma raped a non-Roma girl in the town, several hundred residents assembled on 14-15 April 1995 and razed the Roma settlement Božova Glavica near Danilovgrad with the connivance of the municipal authorities and the police. Police were present during the pogrom but took no action to prevent it. The Roma residents managed to escape with their lives but their homes and property were burned or destroyed by other means.

[14] The rule of law and transitional justice in conflict and post-conflict societies: Report of the Secretary-General, United Nations Security Council S/2004/616, p. 7

reforms designed to help establish the rule of law and the development of appropriate institutions make sense only if they are implemented and acted upon by the various segments of society and institutions of the state. From this it follows that every society must reach a consensus on the direction in which it and its institutions should develop. Although it seemed for a brief period of time that such a general consensus of opinion had been reached in Serbia - especially after the October 2000 change of regime - Serbia's society has come up against serious problems.

These problems are first and foremost a consequence of a lack of political will to confront the past in earnest. In spite of the efforts being made by NGOs, large parts of society (particularly the political elites in power in Serbia) still do not understand that Serbia's political system, like that of any post-conflict society in the former Yugoslavia, can invigorate its democratic culture only in so far as it has created room for memory of "that past". Consequently, the policy of effective non-cooperation with the ICTY, and the infantile dragging of feet over the fulfilment of all the conditions which the representatives of the international community place before the Belgrade government, have a direct negative effect on the democratisation of Serbia, its economy and society. Nowhere is the political resistance to change in such evidence as in Serbian parliamentary debates. What is more, the deputies who decry those who advocate the democratisation of society and the adoption of European values are well liked by the public, and are given considerable attention by the tabloids and certain TV establishments.

Most progress has been made in letting the voice of the victims be heard. This started with the Srebrenica conference in Belgrade on 11 June 2005 and has continued through the presence of victims at war crimes trials, to the first dialogue between the families of missing Albanians and Serbs from Kosovo. These events gave the public an opportunity to see the monstrosity of the crimes from the angle of an ordinary human being; as a result, members of the public were able to sympathise with the fate of the survivors and the victims by realising that those people, though "different", are the same as us - and that their suffering and pain are as real as ours. The realisation that criminals are above all criminals - rather than the valiant champions of a national cause - is gradually permeating the public, raising hopes that it will counterbalance any attempts to revise history.

Viewed as a whole, transitional justice in Serbia and Montenegro is still in its infancy. The active promotion of the construction of institutions designed to help the democratisation of society and its eventual confrontation with the past remains a priority. But in order to achieve this, a far more serious commitment by wider segments of society as well as greater assistance by the international community are imperative. As much as NGOs have achieved in this respect, they cannot and must not take on the obligations either of the institutions or of society as a whole.

Transitional Justice Report Serbia, Montenegro and Kosovo, 1999-2005

1. Introduction

The main purpose of this report is to point out the measures taken by institutions and civil society in Serbia and Montenegro, as well as by the international administration and civil society in Kosovo, with a view to establishing justice in connection with grave human rights violations committed during and immediately after the armed conflict in the former Yugoslavia. This report also aims to highlight the problems and obstacles encountered in coming to terms with grave injustices dating from the rule of Slobodan Milosevic.

The report is the product of an analysis of material collected between 2000 and 2005 concerning new laws and their implementation; NGOs' programmes and initiatives regarding coming to terms with the past; official initiatives to establish the truth and responsibility; debates on past events in the Serbian Assembly; war crimes trials; media war crimes reporting, and other information relevant to monitoring the justice establishment process.

The report deals with the political context, truth-telling initiatives, justice and accountability mechanisms, and reparations. When it comes to Kosovo, the report addresses only trials of war crimes and ethnically motivated crimes, as this transitional justice mechanism is most noticeable in that region.

1.1. Basic concept of transitional justice

With regard to the concept of *transitional justice*, we are here using the definition given by the United Nations (UN) Secretary-General in his report of 23 August 2004: "The notion of transitional justice (...) comprises the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. These may include both judicial and non-judicial mechanisms, with differing levels of international involvement (or none at all) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof."[1]

A similar definition is given by the International Centre for Transitional Justice (ICTJ): "As a politi-

[1] "The rule of law and transitional justice in conflict and post-conflict societies: report of the Secretary-General," United Nations Security Council S/2004/616, 23 August 2004, p. 4. Cf. also Louis Bickford, "Transitional Justice," The Encyclopedia of Genocide and Crimes Against Humanity, Vol. 3, pp. 1045-1047, New York, Macmillan.

cal transition unfolds after a period of violence or repression, a society is often confronted with a difficult legacy of human rights abuse... In order to promote justice, peace and reconciliation, government officials and nongovernmental advocates are likely to consider both judicial and non-judicial responses to human rights crimes. These may include:

- Prosecuting individual perpetrators
- Offering reparations to victims of state-sponsored violence
- Establishing truth-seeking initiatives to address past abuse
- Reforming institutions like the police and the courts
- Removing human rights abusers from positions of power.

Increasingly, these approaches are used together in order to achieve a more comprehensive and far-reaching sense of justice."[2]

1.2. The political context in Serbia

1.2.1. Transitional justice policy

Soon after the 5 October 2000 change of government in Serbia, it became clear that a pauperised society - politically divided and burdened with years-long moral and social destruction and exposed to constant political violence - must not only pursue a policy of progress and reforms, but must also come to terms with its own past.[3]

Following the September 2000 elections, the Democratic Opposition of Serbia (DOS) took power at two levels, in both cases through political compromise and cohabitation with the previous regime. At the federal level (Federal Republic of Yugoslavia - FRY), Vojislav Kostunica was elected president. The Federal Assembly comprised both DOS and Slobodan Milosevic's former political partners typified by the Social Democratic Party (SDP) of Momir Bulatovic from Montenegro. At the level of the Republic of Serbia, a transitional solution was adopted where each ministry was run by three co-ministers appointed by three political parties or groupings (Socialist Party of Serbia [SPS], Serbian Renewal Movement [SPO], and DOS). This arrangement remained in force until the new Serbian government was constituted in January 2001 and Zoran Djindjic was elected prime minister. However, Milan Milutinovic – who had been indicted by the International Criminal Tribunal for the former Yugoslavia (ICTY) in The Hague - remained Serbia's president, and did not turn himself in until January 2003 following a deal with the government. A political rift broke out within DOS soon after the government was constituted and, in September 2002, the Democratic Party of Serbia (DSS) left DOS, thus initiating a long parliamentary crisis which culminated in extraordinary parliamentary elections at the end of December 2003.

The presidential election held in the meantime revealed deep antagonisms between the members of the former DOS. Prime Minister Zoran Djindjic was assassinated on 12 March 2003, and the Assembly Speaker - that is, acting president of the Republic of Serbia - Natasa Micic, immediately declared a state of emergency in parts of Serbia, launching a sweeping and systematic action to suppress organised criminal groups (the so-called "Operation Sabre"). A new Serbian government was elected with Zoran Zivkovic at its head. Following parliamentary elections in December 2003, DSS leader Vojislav Kostunica became prime minister, depending on minority SPS support in the Serbian Assembly.

In June 2004 Boris Tadic of the Democratic Party (DS) won the decisive runoff poll to become the Serbian president, thanks to wide backing he received from the democratic and civil society groups.

[2] ICTJ 2002-2003 Annual Report, p. 1 http://www.ictj.org

[3] Cf. Mark Freeman October 2004 report: "Serbia and Montenegro: Selected Developments in Transitional Justice." http://www.ictj.org

1.2.2. Cooperation with the ICTY

Serbia's first democratically elected government soon encountered obstruction to cooperation with the ICTY. As it turned out, the parties participating in the government were clearly not of one mind regarding the insistence of the international community that Serbia cooperate with the ICTY and make a clean break with the previous regime.

As a result, a revelation by the Djindjic government - that Serbian forces had transported to Serbia more than 800 bodies of Kosovo Albanians they had killed during the NATO bombing - failed to provoke any reaction from the Serbian and federal Assemblies. This was a clear sign that the institutions were still under the control of groups close to the previous regime, who were more interested in maintaining the status quo than creating responsible institutions. In practice, this meant that the Serbian prime minister had no power to carry out changes in the army and police. On the other hand, the critically-minded public in Serbia appeared both confused by the lack of political will to address the question of responsibility for war crimes, and keen to make the issue Serbia's national priority. The confused state of political affairs encouraged the defenders of the previous regime and participants in war crimes to reorganise and to let it be known that they were prepared to use arms should the government hand over "Serb heroes" to the ICTY. The special police unit known as the Red Berets mutinied in November 2001 and forced Djindjic to make concessions. Although the Red Berets were formally disbanded after Djindjic's assassination, some of its members were assigned to the Gendarmerie and to other special units of the Serbian Ministry of Internal Affairs (MUP). The imposition of a six-week state of emergency in Serbia stopped the "anti-Hague lobby" from seizing power, but failed to bring the democratic forces together on the issue of war crimes.

Unlike the Djindjic government, which did cooperate with The Hague (albeit with great difficulty), the government of Zoran Zivkovic was too preoccupied with itself and the crises it had to deal with. As a result, there was a serious standstill, although Zivkovic's government continued to pay lip service to full cooperation with the ICTY throughout its mandate. The illusion that the ICTY was also in some way to blame for Djindjic's death was floated around even by some media in favour of the democratisation of the state, the development of relevant institutions and Euro-Atlantic integration for Serbia.

Following the December 2003 elections and the formation of Vojislav Kostunica's government the following March, cooperation with the ICTY intensified. This development should be attributed both to pressure from the international community and to the prime minister's pragmatic change of heart. However, while Kostunica acknowledged the necessity of cooperation with the ICTY, he only agreed to play along on terms which would not jeopardise his position of national authority. He therefore inaugurated cooperation in the form of so-called "voluntary" surrenders by indictees, who would be given reception by the prime minister and other top state as well as church officials before being seen off on their way to The Hague as "heroes".[4] The principle of "voluntary surrender" involved considerable material compensation for the families of the indictees, a practice further strengthening the public's notion of an "unjust" tribunal. A spell of particularly intensive cooperation towards the end of 2004 was followed by a virtual standstill during 2005 as a result of renewed insistence on the extradition of the former commander of the Republika Srpska army, Ratko Mladic. According to public disclosures by former senior Serbian MUP officials, Mladic had lived openly in his Belgrade house until June 2002 and drew his pension regularly until December 2005. The standstill coincided with the start of negotiations

[4] Admittedly, in a number of cases (e.g. the extradition of the police general Sreten Lukic) indictees appear to have been *arrested*, although this was subsequently presented as *voluntary surrender*.

between the Serbian government and European Union representatives on a Stabilisation and Association Agreement with the EU.

2. Truth-telling initiatives

2.1. Introduction

Truth-telling is a key transitional justice mechanism throughout the former Socialist Federal Republic of Yugoslavia (SFRY), all the more so in view of the abundance of historical interpretations and attempts at historical revision. As a rule, this boils down to the denial that anyone from "our" people could ever have done a bad thing. Though a number of initiatives were made during the report period by the state and its bodies (both at State Union and individual state levels), they were overshadowed by those made by NGOs in terms of both scope and significance. Lastly, some attention should be paid to the supreme legislative body of the Republic of Serbia - that is, to its Assembly - given that the debates conducted under its roof are remarkably illustrative of the general traumatic social climate and of the political attitudes that have found resonance in society.

2.2. The state initiatives

Among the state initiatives, we should mention the Montenegrin parliamentary debate on the 1992 deportation of Bosniaks from Montenegro; the Montenegrin parliamentary commission collecting evidence about the kidnapping at Strpci in 1993, the truth and reconciliation commission set up by the FRY president in 2001, and to the public statements by the Council of Ministers and the Serbian government in 2005.

2.2.1. The reply to a Montenegrin parliamentary question about the deportation of Bosniaks

The examination of facts in connection with the deportation of Bosniaks from Montenegro in 1992 was started, albeit unwillingly, in response to questions asked by a group of Montenegrin parliamentary deputies in March 1993, and to writings by journalists.[5] In the spring of 1992, Montenegrin police arrested 83 Bosniaks that fled to Montenegro from war in Bosnia and Herzegovina, deported them, and handed them over to the army and police of Republika Srpska. Most of the Bosniaks were later killed.[6]

2.2.2. The parliamentary commission collecting evidence about the kidnapping of 19 passengers at Strpci station

On 19 October 1993, the Montenegrin parliament set up a commission to gather evidence about the Strpci kidnapping on 27 February 1993. Despite the insistence of many parliamentary deputies, the commission was not granted investigative powers, and was therefore powerless to obtain requested information from Serbian and Montenegrin state authorities and the Yugoslav Army. On 14 June 1996, the commission submitted a report to the Montenegrin parliament pointing out that, on account of its limited power, it had been unable to ascertain the fate of those kidnapped and the identity of the organisers and kidnappers. The president of the commission, Dragisa Burzan, requested that the next parliament form a commission with the same task but with wider powers, including access to the archives of all services and authority to make state services comply with its requests. However, no new commission was set

[5] For details, see Seki Radoncic's book *Kobna sloboda*, Belgrade, HLC, 2005.

[6] Drawing on his data, Radoncic writes that "removed from the territory of Montenegro (...) were 143 Bosnians (105 Bosniaks, 33 Serbs and five Croats). Besides, two three-member refugee families – the Klapuhs and the Avdagics from Foca – were murdered on the Montenegrin territory" (*Kobna sloboda*, p. 145).

up and only one direct perpetrator of the crime was eventually convicted and sentenced.[7]

2.2.3. The truth and reconciliation commission of the Federal Republic of Yugoslavia

Serbia and Montenegro was the only country in the region to establish an official body tasked with establishing the truth about the past. The decision to set up the truth and reconciliation commission was made by FRY president Vojislav Kostunica on 29 March 2001, after which it was published in the *FRY Official Gazette* No. 15/01, 59/02 of 30 March 2001. The commission had the task of "organising research work to unveil the records concerning the social, inter-communal and political conflicts which led to war and to throw light on the chain of these events; to keep the domestic and foreign public informed of its work and results; to establish cooperation with related commissions and bodies in neighbouring countries and abroad for the purpose of exchanging their work experience." The commission ceased to exist, without publishing a single report, following the adoption on 4 February 2003 of the Constitutional Charter of the State Union of Serbia and Montenegro and the law on its implementation.

The commission failed for a number of reasons. To begin with, the FRY president set it up without consultation with state institutions and civil society on the mandates of commission members and the mode of their election. Several prominent members left the commission before it even began to operate, because they had not even been asked in advance whether they wished to be members, as well as because they found it politically and morally unacceptable to belong to a body consisting of persons close to the previous regime. The commission was given a broad mandate - to study the causes of the Yugoslav conflicts, the human rights violations and breaches of humanitarian law and the laws of war, the socio-psychological factors of the conflict, and the role of religion, media and the external factor in the conflicts. Human rights NGOs saw the formation of the commission as an attempt by the then FRY president to ensure an interpretation of history from a Serb point of view, and to assure the international community that priority should be given to a truth and reconciliation commission, rather than to trials before the ICTY.

Furthermore, given that a victim-centred approach is a regular feature of truth and reconciliation commissions, doubts were raised as to whether the commission could fulfil this role at all, considering its composition.[8] The 19-member commission had no Montenegrins and only one national minority representative. Also, of the different religious denominations, only the Serbian Orthodox Church (SPC) was represented.

Having no authority in the former Yugoslav republics and among victims from other ethnic groups and NGOs, the commission was doomed to failure even before it began its work. It was never accepted in Montenegro, or in any other post-Yugoslav state.

2.2.4. The statement by the Council of Ministers of the State Union of Serbia and Montenegro

As a result of the public showing of footage of the 1995 execution of six Srebrenica Bosniaks by members of the "Skorpioni" ("Scorpios") unit,[9]

[7] On 9 September 2002, the Higher Court in Bijelo Polje imposed a 15-year prison sentence on Nebojsa Ranisavljevic for taking part in the kidnapping and liquidation of the 19 passengers – 18 Muslims and a Croat.

[8] Cf. "The rule of law and transitional justice in conflict and post-conflict societies," report of the UN Secretary-General, p. 17.

[9] Thanks to the HLC, the footage was broadcast on 1 June 2005 by B92 and other domestic TV stations, while the state RTS showed only extracts lasting 18 seconds. In a direct conversation with the Humanitarian Law Centre (HLC) executive director, RTS editor-in-chief and managing editor Aleksandar Tijanic said that RTS would not broadcast the rest of the recording, because it showed only one side of the story.

pressure from NGOs, and the commemoration of the tenth anniversary of the massacre, the **Serbia and Montenegro Council of Ministers** on 15 June 2005 condemned the crime in Srebrenica. The Council of Ministers said in an announcement that it "fully shares the grief of the victims' families and pleads with them to differentiate in their hearts between the criminals on the one hand and the people of Serbia and Montenegro on the other. Those who killed in Srebrenica and those who ordered and organised that massacre represented neither Serbia nor Montenegro, but an undemocratic regime of terror and death to which an overwhelming majority of citizens of Serbia and Montenegro offered the most vigorous resistance." The Council of Ministers not only condemned the direct perpetrators but insisted on the criminal responsibility of all who had carried out, organised or ordered war crimes elsewhere. It also emphasised that "criminals are not heroes. Any apology of crime, under any pretext, is a crime too." In its denouncement of the Srebrenica crime, the Council of Ministers urged that no crime should be forgotten irrespective of who is the criminal and who the victim.

2.2.5. The statement by the government of the Republic of Serbia

On 7 July 2005, the **Government of the Republic of Serbia** issued a statement that strongly condemned "all the war crimes committed in the territory of the former Yugoslavia". The announcement states that the government "on the eve of the commemoration of the war crimes committed on 11 July in Srebrenica and on 12 July in Bratunac most resolutely condemns all the war crimes and stresses that in denouncing them it is essential not to differentiate between the innocent victims on account of their nationality or religion." The government stressed that each crime was committed by a perpetrator with a name, who must be brought to justice, just as every innocent victim has his or her name, which must not be forgotten. "The perpetrators of war crimes are individuals, so they must answer for them as individuals; and in order that there should be no repetition of crimes, none must be justified, or covered up, or remain unpunished." The government denounced all the crimes committed during the "civil war in the territory of the former Yugoslavia and emphasises that on account of the human costs they suffered, the Serb people have a special interest that all the war crimes be clarified and unequivocally condemned".

2.2.6. Concluding remarks

Although the aforementioned initiatives represent a step forward compared to the total silence about war crimes during the 1990s, there is no doubt that political resistance to establishing responsibility for the war crimes committed remains very strong. The failure of the Serbian Assembly to adopt a declaration on Srebrenica and the belated or excessively slow reaction of Montenegro's top authorities to local initiatives are cases in point. Since the declaration adopted by the Serbian government condemns all crimes committed in these parts in the past, it has succeeded in defeating - through its generalisation and complete relativism - the very concept of dealing with crimes. Although the Serbia and Montenegro Council of Ministers' declaration on the crime in Srebrenica signified progress in institutional attitudes towards Serb crimes, its purpose above all was to shield the institutions in Serbia and Montenegro by arguing that the crimes had been committed by individuals representing neither Serbia nor Montenegro.

The way these cases have been dealt with in Serbia leaves no doubt that the present Assembly cannot be expected to encourage discussion of "that" past. At the same time, however, there is no doubt that in connection with the tenth anniversary of the massacre of the Srebrenica Bosniaks, human rights NGOs have succeeded in seriously unnerving the Serbian Assembly - particularly the deputies of the Serbian Radical Party (SRS), Socialist Party of Serbia (SPS) and DSS.

2.3. Debates in the Serbian Assembly

A chronology of Serbian Assembly debates shows that recalling the past in terms of responsibility has never been on its agenda. However, in connection with certain events - such as the demand of the international community that the Serbian government fulfil its obligations to the ICTY, the visit by the tribunal's chief prosecutor, the mass graves in Serbia, domestic war crimes trials or the insistence of nongovernmental organisation representatives on coming to terms with the past - SRS and SPS deputies have often, irrespective of what was the agenda, denounced the ICTY, criticised the government for extraditing indictees, or accused certain NGO representatives of being paid to implicate Serbs. Also, with regard to war crimes, their main counter-arguments have been the alleged defence of the people, crimes against Serbs and an international conspiracy against the Serb people.

The parliamentary debates paint a rather gloomy picture of how the minds of members of the Serbian political elite work. Occasional attempts by deputies from democratic political parties to initiate a debate on the need to take a position on war crimes in order to promote a democratic culture within the political system have not enjoyed wider support.

2.3.1. The attitude to the ICTY and war crimes trials

As to the attitude to the ICTY, the basic premise is that "the Hague [tribunal] is a make-believe, it's not a court, it's a dungeon for Serbs,"[10] that it is a "great evil for the Serbs,"[11] a "political monster"[12] trying "supposed war crimes".[13] According to the deputies, the people indicted by the tribunal are nothing but heroes whereas the Serbs as a nation have been condemned merely for defending themselves.[14] Accordingly, the bodies found in refrigerator trucks were said to be a "special plant, serving to demonise the whole Serb people"[15] and every reference to the Srebrenica crime was brushed off as a "pure fabrication".[16]

The following statement is illustrative of such attitudes: "Let this thing start at the ICTY after all, but if the Serbs are found guilty, then the other side must be found guilty too. But during a judicial proceeding, honoured ladies and gentlemen, the defendant, the injured party and the witnesses must all be present in the courtroom. Who is the defendant, who the injured party and who the witnesses in this case, given that five Serbs – Radovan Karadzic, Biljana Plavsic, Ratko Mladic, [Momcilo] Krajisnik and Slobodan Milosevic – have been declared guilty and feature on the ICTY list? This means that the Serb people are collectively guilty, because they [the indictees] have been elected by the Serbs over a number of years. So let the ICTY wait a little. We do support cooperation with the ICTY, but on condition that the Serbs be placed in the same situation as the other nations."[17]

At first the government was criticised for trying to establish cooperation with the ICTY without first passing relevant "official" provisions - in spite of the insistence of government representatives that cooperation was an international obligation the ful-

[10] Serbian Assembly Shorthand Notes, deputy Branislav Blazic (SRS), 24 May 2001.

[11] *Ibid.*, deputy Dragan Pavlovic (SRS), 1 July 2003.

[12] *Ibid.*, deputy Zoran Krasic (SRS), 13 December 2004.

[13] *Ibid.*, deputy Vojislav Seselj (SRS), 17 July 2002.

[14] *Ibid.*, deputy Tomislav Nikolic (SRS), 13 February 2001. In the same speech, he said that he was "proud for being...a fascist."

[15] *Ibid.*, deputy Aleksandar Vucic (SRS), 28 May 2001.

[16] *Ibid.*, deputy Milorad Vucelic (SPS), 18 February 2005.

[17] *Ibid.*, deputy Dragan Markovic (SRS), 4 May 2005.

filment of which would help society see the light and undergo catharsis[18]:

“As you may well know, ladies and gentlemen, national deputies, the Serb people weren’t angry with [19th century Serbian prince] Milos Obrenovic for killing Karadjordje as much as they were angry with him for delivering Karadjordje’s head to the sultan. The same is going to happen to you, gentlemen from DOS, because you do not abide by the constitution and because you cooperate with the ICTY contrary to the constitution and law.”[19]

However, when the law on cooperation with the ICTY was at last put on the agenda, the SRS deputies were again adamantly against it: “One wonders how many more war criminals you think there are out there, given that you’re sponsoring this law and demanding that a court should be established to try war criminals, a special public prosecutor for war crimes, and all the other organs and organisations provided for in this law to take part in investigative proceedings and trials themselves.”[20] In an earlier address, however, the same deputy was somewhat more to the point: “The object of the draft law is to set into motion a process which might be termed de-Serbification, seeing that this lustration has been likened to and justified by de-Nazification.”[21]

Also: “How come our courts are all of a sudden capable of trying things they weren’t capable of trying only a while ago? How come our courts and our judiciary have now become competent? How come there is no more reference to international law, no mention of the ICTY in the text of this law, and none in the statement of reasons for it either? How come we’re all of a sudden capable of judging cases, now that Sljivancanin, Simatovic, Stanisic and other interesting persons have been extradited? You know, this is becoming a political issue. It cannot be regarded as a purely personal matter, in terms of who is going to be tried here. The only explanation for the attitude to these questions is that The Hague [tribunal] is no longer interested because it got what it wanted.”[22]

“In the wake of the law on lustration, the law on education, we have yet another law imposed from abroad, though the minister has denied this. Are we going to have to try each other according to the dictates of the West while it watches and delights in seeing Serbian citizens chop off each other’s heads, as if the ICTY weren’t a great enough calamity for the Serbs? Is the object of this law to portray Serbs as war criminals in the eyes of the world; who are the people you are going to try and how many are they? Are you going to try members of the UCK [Kosovo Liberation Army] for their crimes? Why did you let them out of jail after they’d landed in the hand of the law?”[23]

In the addresses of a number of deputies, however, criticism gave way to open threats: “But let me tell you something: you may threaten the SRS deputies with arrest, with threats of arrest, with the Hague [tribunal], which is a crying shame for Serbia, to threaten Serbs with the ICTY, it’s ridiculous, it’s deplorable, you poor sods (...) it’s deplorable not funny, you’re threatening people with the Hague [tribunal], you coward, you pathetic creature; … you want to chase all Serbs to The Hague; but let me tell you one thing – the Serb people are going to try you for the things you’re

[18] *Ibid.*, “Now that a refrigerator truck [full of bodies] has been discovered in the Danube river near Tekija, and another refrigerator truck has been found in the lake near Kokin Brod – or so the newspapers report – we must pass through a moral catharsis, and we must divest ourselves of this anathema and this [horrible] legacy.” Vladan Batic, Serbian minister of justice, 24 May 2001.

[19] *Ibid.*, deputy Petar Jojic (SRS), 6 December 2001.

[20] *Ibid.*, deputy Gordana Pop-Lazic (SRS), 24 June 2003.

[21] *Ibid.*, 29 May 2003.

[22] *Ibid.*, deputy Hranislav Peric (SRS), 24 June 2003.

[23] *Ibid.*, deputy Dragan Pavlovic (SRS), 1 July 2003.

doing to them. Rest assured that you won't be able to avoid that punishment."[24]

2.3.2. Attitudes towards war crimes

This is one of the sore points on the Serbian political stage. On the one hand, there is insistence on specific responsibility, as articulated by the first democratically elected Serbian prime minister, Zoran Djindjic:

"Also before the bar of justice - our justice, domestic justice - will also have to be brought those who sought to live out their false patriotism by committing grave criminal offences against humanity, against civilians, by murdering children and women. They have besmirched the name of the Serb people. We do not want to bear collective responsibility because of that. Provided there is evidence of individual personal responsibility, all those cases will be brought before our judiciary and will be penalised."[25]

On the other hand, however, the basic argument of far-right deputies is that no war crimes could have been committed because the Serb people were only defending themselves: "These people, the Serbs, did not attack anyone in all those wars, they only defended themselves."[26] The following statement is in a similar vein: "As to those who say that all those who led the country to war are responsible for this, those who led the country to war with the citizens of Bosnia, those who display an elementary ignorance of politics, who do not know that the Serb people fought for their freedom west of the Drina and the Danube and nothing else, who would today like to blame everything on the Serb people, without having the slightest idea what else to blame on them, those who will say all kinds of things in order to harm the Serb people, who will talk about alleged Serb crimes because they think that by doing so they will become greater democrats and greater cosmopolitans."[27] So, in a world so conceived, there is no need to talk about crimes at all: "What has Serbia got to do with any crime committed in Srebrenica? I don't want to feel any blame for that. We don't need to watch those things on TV news."[28]

The spokesmen for the Milosevic regime and its political legacy insist that the war crimes charges are unjust and that the government is seeking to carry out its obligations to the ICTY only because it needs money: "If you sell Slobodan Milosevic, you will have pocketed 100 million dollars."[29] Also: "You know what this country has been through in the past ten years – watertight sanctions, for it seems that the all-powerful world is performing on our state and on ourselves tests as if we were guinea pigs."[30]

A number of deputies pointedly reminded the SRS deputies of their inconsistencies and of their direct involvement of the Serbian state in the war in Bosnia and Herzegovina, e.g.: "Further," said Seselj, "the fact is that the orders came from Belgrade. [General Ratko] Mladic and the other Bosnian Serb officers carried out the plans made by the General Staff in Belgrade." (23 May 1996) In other words, a man who was with those in power as well as was in power himself directly furnished the grounds, the foundations for the Bosnian suit against Serbia and Montenegro. Further..."I'm not denying the massacre, I'm not denying the acts everybody did, I'm saying there's no evidence against my people, there's no point in

[24] *Ibid.*, deputy Aleksandar Vucic (SRS), 27 February 2002.
[25] *Ibid.*, address to the Assembly deputies, 25 January 2001.
[26] *Ibid.*, deputy Tomislav Nikolic (SRS), 13 February 2001.
[27] *Ibid.*, deputy Aleksandar Vucic (SRS), 14 June 2001.
[28] *Ibid.*, deputy Tomislav Nikolic (SRS), 18 February 2005.
[29] Ibid., deputy Branislav Ivkovic (SPS), 12 April 2001.
[30] *Ibid.*, deputy Rade Bajic (SPS), 12 April 2001.

accusing Karadzic, for Milosevic is the true culprit." So, the man said what he said...I quoted Vojislav Seselj's statement of 23 May 1996 to the journalist Massimo Navi. But whether it's true or not, whether Mladic or Karadzic received orders from this person or other, who did or carry out what, that's another subject and another story. I merely quoted that which was said in the interview eight years ago. That was said by the SRS president Vojislav Seselj, those are not my words."[31]

On the whole, however, the representatives of the far-right proved far more resourceful, their own inconsistencies did not trouble them as long as they could score political points, and they used the parliamentary rostrum to pour abuse on, as well as make death threats to, the then justice minister, Vladan Batic: "That utility worker calls all living and dead Serb patriots dogs of war. But let me tell that kleptomaniac that dogs of war die heroes' deaths from bullets. Or else the bandits of Vladan Batic take them to The Hague. A dog-catcher's wire noose awaits him, because he isn't worth a bullet."[32]

2.3.3. Attitudes towards human rights organisations and human rights defenders

Representatives of human rights NGOs, besides those representing the governing coalition, are the principal scapegoats for all evil. This is somewhat of a paradox because the leaders of the "patriotic bloc" in the Serbian Assembly are in the habit of dismissing these organisations as marginal and unpopular. For instance, "... since obviously we in Serbia must split up into those who are fans of the ICTY, that is, a whole complex of NGOs which exist in order to, among other things, collect material for a competition, how best to spit at Serbia and Serbs...So, the ICTY should not exist. The ICTY ought to be destroyed like Carthage, because it is a dangerous precedent."[33]

Commenting on the state of the media, a top SRS leader said: "There are no Serb Radicals there [in the studios as media guests], one can't see any of them there at all, but on the other hand you invite Sonja Biserko, Natasa Kandic, every living anti-Serb to tell Serbs that they should not and can't be Serbs, to say anything that crosses their minds, in any manner they may think fit, so that you can say – that's democracy, that's what we strive for."[34]

Over the years, NGOs as well as HLC executive director Natasa Kandic; Sonja Biserko, the president of the Helsinki Committee for Human Rights in Serbia, and Biljana Kovacevic-Vuco, the president of the Lawyers Committee for Human Rights (YUCOM), have become regular targets of SRS, SPS and, occasionally, DSS parliamentary deputies. The SRS deputies demand a ban on the organisations led by these persons, the imprisonment of Kandic, a referendum on her, disclosure of the sources of financing of these organisations, etc. Speakers in the Serbian Assembly have accused Kandic, Biserko and Kovacevic-Vuco of having a "destructive impact on the consciousness of young people," [35] and of being "anti-Serb",[36] without ever have been interrupted or cautioned by the Assembly speaker. He also failed to react adequately when deputies Natasa Micic and Zarko Korac were subjected to coarse insults.[37]

[31] *Ibid.*, deputy Slobodan Zivkucanin (SPO), 25 August 2004.
[32] *Ibid.*, deputy Slobodan Janjic (SRS), 29 March 2001.
[33] *Ibid.*, deputy Zoran Krasic (SRS), 13 December 2004.
[34] Ibid., deputy Aleksandar Vucic (SRS), 28 January 2002.
[35] *Ibid.*, deputy Miroljub Veljkovic (SRS), 22 May 2001.
[36] *Ibid.*, deputy Aleksandar Vucic (SRS), 28 January 2002.
[37] On 24 June 2005, in a debate on the draft Declaration on Srebrenica, deputy Aleksandar Vucic (SRS) announced that "Zarko Korac and Natasa Micic (...) happened to be together in the WC." Assembly Speaker Predrag Markovic (G17 Plus) calmly responded that the "men's and women's toilets are separated."

A close reading of the Serbian Assembly transcripts shows that the SRS and SPS deputies were all but silent immediately after the change of power in Serbia. In 2001 their main target in Assembly was the Soros Foundation, an organisation invariably condemned as hostile to Serbia and undermining Serbia's interests. One notes that from the beginning of 2002 onwards the SRS and SPS deputies have been presenting an increasingly bold front reflecting a confidence that the new government had neither the strength nor political will to address the question of responsibility for war crimes. Among the commentaries and questions uttered in Assembly that year was, "...when are you going to stop Sonja Biserko and Natasa Kandic, the open enemies of this people? Why, in every [other] state their place would be you know where. [A hubbub of voices] You know where."[38]

In 2005, following the broadcasting of a video recording of the execution of six Srebrenica Bosniaks and the motion of NGOs to adopt a declaration acknowledging the war crimes committed in Srebrenica, the SRS deputies stepped up their attacks on the aforementioned organisations and certain media outlets. Typically, an SRS deputy proposed holding a "referendum on what Serbian citizens think of the anti-Serbs": "I'd like to say one more thing to you: if you were to put to a referendum or ask the citizens of Serbia what they think of Natasa Kandic and of those who support her, and also of the occupying media which take her side, you'd find out that, if possible, they'd be declared personae non grate everywhere. There is no municipality in Serbia that has a kind word for such anti-Serbs, such psychopaths."[39]

The Serbian Assembly also failed to react to an SRS demand that the media outlets that carry statements by the aforementioned human rights defenders should not be inscribed in the public media register.[40] SRS attacks intensified as the War Crimes Chamber of the Belgrade District Court ended its first trial,[41] handed down a final judgement in the Sasa Cvjetan case[42] and announced that more indictments would be brought.[43]

In their reaction to images from Srebrenica displayed on billboards, the SRS deputies insisted that the massacre photographs were an insult to the human dignity of the Serb people: "This time I'm going to accentuate the NGOs. As you know, thanks to funding above all from the Soros Foundation and from all kinds of secret services from the West, they make their voice heard all over Serbian towns, at every place, by means of billboards, which are the most expensive, in the busiest locations, putting across false messages and using advertising methods most insulting to the human dignity of us members of the Serb peo-

[38] *Ibid.*, deputy Toma Busetic (SRS), 4 April 2002.

[39] *Ibid.*, deputy Aleksandar Vucic (SRS), 24 June 2005.

[40] Ibid., deputy Vjerica Radeta (SRS), 14 July 2005: "I have introduced an amendment to Article 1, the new Article 14 (a), which would insert after the second paragraph a new paragraph stipulating: "A public media outlet which carries the notorious lies of the pathological liar Natasa Kandic shall not be inscribed in the register of public media outlets." In my reasons for this amendment I have written that the pathological lies of Natasa Kandic are injurious to the reputation and law of Serbia and must be penalised..."

[41] The judgement in the "Ovcara case" was pronounced amidst great media attention. Most of the convicts are SRS members.

[42] On 22 December 2005 the Supreme Court of Serbia, following several omissions on its part, confirmed the 20-year prison sentence against Sasa Cvjetan passed by the Belgrade District Court on 17 June 2005.

[43] Serbian Parliament notes, deputy Aleksandar Vucic (SRS), 24 June 2005: "Who is Natasa Kandic? What is she? Natasa Kandic is a common bandit who turns up outside the Palace of Justice to say whether or not she is pleased with a judgement. The bandits are going to end up behind bars as they do all over the world, so I'd like to tell you in advance that Natasa Kandic will be away on business for a long time and to congratulate Serbia on that. If things are kept fair and square, and if you don't step in to protect the leader of the gang in Serbia, Natasa Kandic, she'll have to go on a long trip by the end of the year. May that bring luck to the citizens of Serbia."

ple and of all other citizens of Serbia. I wish to remind you of all those billboards pasted over in Belgrade on the eve of the commemoration of the Srebrenica events."[44]

In spite of the fact that the SRS and SPS deputies are totally unopposed in the Serbian Assembly, one notices their concern because society has definitely begun to deal with the past for which they themselves are largely responsible. Hence their rather transparent "defence of the people" rhetoric and critique of the Special War Crimes Court: "What is the purpose of work of...the NGOs existing in the territory of the Republic of Serbia? It is to instil in the Serb people a sense of collective guilt and to declare as victims the real war criminals, those who did those things in an organised manner. There's no other purpose of the work of such NGOs – those of Sonja Biserko and Natasa Kandic."[45]

"...I notice that a glorification of this special court for war crimes is under way. A bunch of bandits have got together with the political assignment to condemn anyone they like; they will draw support for this from certain embassies and their work will be commended by Natasa Kandic. I wonder whether you have noticed, respected people's deputies, that each judgement and any other development is followed by the question to the president of the Humanitarian Law Centre, "Are you pleased with the judgement?" I am asking mister minister – but it looks as if he has better fish to fry – I am asking the representatives of the ruling majority, What is Natasa Kandic to you? What do those people mean to you? Who are those people? What do they stand for in this country in order for you to ask them whether they are pleased with a judgement or not?"[46]

In November 2005 Amnesty International published a report documenting the campaign of intimidation and threats directed against some human rights defenders and the failure of the Serbian authorities to provide them with adequate remedies.[47]

2.3.4. Concluding remarks

Throughout this period the discussions of the SRS and SPS deputies amounted to an open apology of the policy leading to the international isolation of Serbia, the sanctions and the total destruction of its economy and society. What is more, they dismiss the mere possibility of any Serbian citizen being responsible for crimes committed in Croatia, Bosnia and Herzegovina, and Kosovo. One notes, however, a certain inconsistency on their part in acknowledging that crimes have occurred after all; but these are defended as a "response" to perceived or real violent acts and actions by the "other side": "So who are the people you are going to try, and who are the people who will charge our combatants or members of the police with war crimes? The question is, are [Kosovo Liberation Army commanders] Hashim Thaqi, [Ramush] Haradinaj, Bajram Rexhepi also going to be made to account under this law?"[48]

Hate speech clearly predominates in the Serbian Assembly, and the open threats being made to political dissentients are not encouraging signs that the institution will become a place of democratic culture and a promoter of coming to terms with the past.

One is especially concerned about the fact that a great many deputies are distinguished by an appalling lack of political awareness, culture and

[44] *Ibid.*, deputy Natasa Jovanovic (SRS), 7 September 2005.
[45] *Ibid.*, deputy Veroljub Arsic (SRS), 8 November 2005.
[46] *Ibid.*, deputy Aleksandar Vucic (SRS), 16 December 2005.
[47] report AI: Serbia and Montenegro, The Writing on the Wall: Serbian Human Rights Defenders at Risk.
[48] *Ibid.*, deputy Gordana Pop-Lazic (SRS), 24 June 2003.

manners. What is more, according to polls conducted while this report was being written (March 2006), the SRS enjoys the support of most citizens, who claim they will vote for the party at the next parliamentary elections.

Disturbing though the climate in the Serbian Assembly is, there is no denying that thanks mostly to the efforts of human rights organisations it is now possible in Serbia to discuss the past and that there is no going back in this regard. This process has finally been set into motion and is historically open.

2.4. The NGO initiatives

2.4.1. The Mackatica factory fact-finding commission

When it comes to the NGO initiatives,[49] the HLC on 23 December 2004 raised the issue of responsibility for the destruction of evidence of crimes committed in Kosovo. Witness evidence obtained by the HLC indicates that bodies of Kosovo Albanians, including children, were incinerated at the Mackatica factory in Surdulica on two occasions in May 1999. The HLC informed the Serbian state authorities and public that members of State Security (DB), the Serbian MUP and Red Berets unit had been involved with the knowledge of top state officials of the regime of Slobodan Milosevic.

The following day, the HLC asked Serbian Assembly speaker Predrag Markovic to set up a fact-finding commission on mass graves in Serbia and on the destruction of evidence on Kosovo crimes. In its written request, the HLC pointed out that the Serbian government had acknowledged the existence of the eight mass graves on Serbian territory exhumed by the end of 2002. In spite of its acknowledgement, the Serbian government had not officially disclosed the identity of the victims, the cause of their death, and the identity of the persons who organised the transfer of their bodies from Kosovo. The HLC also informed the Serbian government and competent authorities that it had information that bodies of Kosovo Albanians had been incinerated in factories and mines equipped with blast furnaces, namely at the Bor smelting works, the Smederevo iron works, the Trepca mine, the Obilic coal-fired power station in Kosovo, and the Mackatica factory in Surdulica. It asked the Serbian Assembly speaker to get the Republic of Serbia to carry out its obligation to inform the families of the missing Albanians about the fate of their next of kin and to take responsibility for the suffering and injustice experienced by the Kosovo Albanians during 1998-99.

In his reply, Markovic wrote on 10 February 2005 that although he was taking every legal action within the scope of his powers, the Serbian Assembly could not set up a commission to check the allegations regarding the incineration of the bodies and the destruction of evidence. He also wrote that he had personally demanded and obtained from the Office of the MUP Inspector-General information on the course of the investigation. Markovic wrote that he hoped that the reports in connection with the proceedings would "prove that the institutions of the system are capable, within their jurisdiction laid down by the constitution, to make their maximum contribution to the creation of a well-regulated system to protect the rights of all citizens."

On 14 March 2005, Markovic met with representatives of eight NGOs who asked him to support their initiative for the establishment of a board of inquiry for the following purposes:

1. Establishing the facts and circumstances regarding the incineration of the Kosovo Albanian bodies at the Mackatica factory in Surdulica and at other locations in Serbia during the NATO bombing.

[49] The initiative of the eight NGOs for a declaration on Srebrenica is discussed under "state initiatives".

2. Establishing the facts regarding the participation of Serbian MUP, DB and special unit members in the transfer of bodies from Kosovo and their incineration in Serbia.

The members of the MUP and Security-Intelligence Agency (BIA) named as accomplices in the destruction of evidence began carrying out their own checks and making threats to persons they believed had been in touch with NGOs and media. One of their victims is Anita Nikolic, a woman customs officer from Vladicin Han, who was threatened in front of witnesses by Bratislav Milenkovic, the BIA chief for Vladicin Han, Surdulica and Bosiljgrad, and whose car was set on fire a few days later. In connection with her transfer from work, she has taken legal action with the help of HLC lawyers.

Although the HLC had initially made public the names of the local MUP and BIA members suspected of helping to destroy the evidence, an investigation of the Mackatica case was prevented by prominent state officials - namely internal affairs minister Dragan Jocic and BIA chief Rade Bulatovic. In this connection, on 3 February 2005, the HLC announced that it was in possession of information that Jocic was shielding the MUP officers named and that local service chiefs continued to intimidate any person who may know anything about the burning of the Albanian bodies at the factory. The HLC also announced that Inspector-General Vladimir Bozovic had suspended inspector Dragan Stocic over his alleged involvement in the Mackatica affair. However, Stosic was later promoted to the rank of a Gendarmerie intelligence officer. The HLC recalled that Bozovic had suspended the Mackatica investigation in spite of his public assurances that he would vigorously pursue the HLC's charges against local police. At that time the HLC gave the names of three other suspects, former public security chief Sreten Lukic, former Gendarmerie commander Goran "Guri" Radosavljevic, and Serbian MUP adviser Colonel Novica Zdravkovic.

At the time of the writing of this report, this initiative had no effect.

2.4.2. The video recording of the execution of six Srebrenica Bosniaks

Finally, mention must by all means be made of the public showing of the video footage featuring the July 1995 execution by members of the Serb Skorpioni unit of six Bosniak prisoners from Srebrenica. The footage was made available to the HLC in November 2004 by the owner of the original recording on condition that it be publicly shown and used in evidence at war crimes trials after the witness had left Serbia. The HLC showed the footage to the Serbian War Crimes Prosecutor's Office on 23 May 2005 and made copies available to local TV stations on the evening of 1 June - the day the ICTY prosecution showed parts of it at the Milosevic trial. The footage was broadcast immediately by B92 and later by other local channels. The showing set into motion an avalanche of public reactions in Serbia. The scenes of the cold-blooded murder made it much harder to publicly deny the Srebrenica crime, and even representatives of some extreme political groups in Serbia expressed their "regrets". Furthermore, the public release of the footage started the "Skorpioni case",[50] raising some very embarrassing questions about the part played by the Serbian state in establishing, equipping and maintaining the unit. In view of this, the HLC asked Prosecutor Vladimir Vukcevic to include in the indictment against the Skorpioni members the facts cited by the ICTY prosecutor in the indict-

[50] Proceedings against five members of the unit before the War Crimes Chamber of the Belgrade District Court are under way. At the end of 2005, another member of the unit, Slobodan Davidovic, was sentenced to 15 years by the Zagreb County Court in connection with this crime and the abuse of civilians in 1991.

ment against the former Republic of Serbia State Security service (RDB) officials Jovica Stanisic and Franko Simatovic - because these facts leave no doubt that the Skorpioni were directly subordinated to RDB.[51]

The broadcast caused the Serbian public to raise a whole range of issues about Srebrenica. For example, a survey conducted by the Ebert Foundation showed that 18 print media in Serbia published 816 texts on Srebrenica between 1 January 2003 and 2 June 2004, compared to as many as 676 published immediately after the showing from 2-24 June 2005.[52]

2.4.3. The draft declaration on Srebrenica

Following consultations by the parliamentary groups, the initiative was favoured by the opposition DS as well as by two members of the ruling coalition: the SDP and the Serbian Renewal Movement (SPO). However, it was opposed by the leading ruling party DSS, the largest opposition party SRS, and the SPS.

There being no consensus of opinion, Serbian Assembly speaker Predrag Markovic refused to put the NGO draft declaration to the vote, explaining that a matter of such great importance as the denunciation of a crime could not possibly be settled by outvoting. As a result of this rationale, no draft declaration has been put on the agenda of the Serbian Assembly so far, let alone adopted.

2.5. Debates, conferences, exhibitions, billboards

NGO truth-telling activities have gained momentum since 2000. These activities include brainstorming sessions and panel discussions, conferences and seminars, and NGO projects or initiatives, including the use of various visual media (theatre, film, posters, billboards, etc.).

2.5.1. Conscientious objection and antimilitarism

Since the end of 1999, the Women in Black have stepped up their activities within the Network for Conscientious Objection, holding meetings in Studenica near Kraljevo in May 2000, on Mt Vucje in Montenegro in August 2000 and at the Srebrno jezero lake in eastern Serbia in May 2001. The network also organised several campaigns in support of recognising the right to conscientious objection in more than 20 towns in Serbia and Montenegro in May 2000 and again in more than 30 towns in Serbia in December 2000 and January 2001.

From December 2000 until May 2001, signatures were collected in favour of shortening the length of military service and to recognize the right to conscientious objection. The action, conducted in concert with other organisations in scores of places across Serbia, had a significant impact on the demilitarisation of consciousness, confrontation with the past and, above all, raising public awareness of conscientious objection.

The Women in Black continued their work on demilitarising consciousness and deconstructing patriarchal behaviour patterns during 2003 through a series of workshops, mostly for young people, in various parts of Serbia. They also continue their cooperation with other organisations concerned with legislative aspects of this matter.

[51] HLC press release No. 019-298-1 of 12 January 2006. The HLC also asked the Serbian War Crimes Prosecutor's Office to amend the indictment against the Skorpioni to substitute "armed conflict" for "civil war in BiH" in keeping with the rules of the ICTY. It also requested expunging from the indictment event interpretations giving rise to historical revision and crime relativization.

[52] Ebert Consulting, *Mediji o Srebrenici, januar 2003-jun 2005*, Belgrade, 2005.

2.5.2. Responses and reactions

Most of the forums and panel meetings dealt with coming to terms with the past. For instance, in December 2001 the HLC held a round table called "Responses and Reactions" to analyse a column of the same name in the daily *Politika*. In the late 1980s, the column was used to disseminate and popularise the nationalist policy then sweeping into power in Serbia, a policy that was going to produce disastrous consequences.

2.5.3. The HLC public debate on the human rights situation in Kosovo

In April 2002 the HLC organised a public debate in connection with reports by the Organisation for Security and Cooperation in Europe (OSCE) on the human rights situation in Kosovo during the mandate of the Verification Mission and the NATO intervention in 1999, and following the establishment of the international protectorate there. The reports contain accounts by Albanian witnesses about murders, expulsions and plunder of Albanian property in Kosovo by the Serbian army and police. The incidents came to public notice as a result of being referred to at the Milosevic trial before the ICTY.

Participants in the debate included representatives of the Serbian government, NGOs and Kosovo Serbs and Albanians. The debate was interrupted by members of the Association of Families of Kidnapped and Abducted Serbs from Kosovo, objecting to the fact that crimes against Albanians rather than those against Serbs were on the agenda in Serbia.

2.5.4. The legacy of Hannah Arendt: Beyond Totalitarianism and Terror

In July 2002, the Belgrade Women's Studies and Gender Research Centre and the Belgrade Circle organised an international conference called "The Legacy of Hannah Arendt: Beyond Totalitarianism and Terror". The object of the conference was to encourage and commit the institutions of society and actors to speed the process of transcending the current conditions in the Balkan region.

The main topics of the conference were radical evil and the banality of evil, individual and collective responsibility, totalitarianism and terror, nationalism, institutional responsibility, relations between civil and human rights, NGOs, and civil society and responsibility.

2.5.5. Four views. From the past: How I found myself in war. Towards the future: How to reach a sustainable future

In 2002-2004 the Centre for Nonviolent Action organised forums under the title **Four Views**, which were attended by speakers involved in the wars in Bosnia and Herzegovina, Croatia, Serbia and Montenegro. The speakers talked about their own reasons and motivations for taking part in the war, their views of the future, and ways of overcoming the war past which still burdens relations between young people from various sides and ethnic backgrounds.

The purpose of the action was to hear the testimony of "ordinary people" who did not represent their respective nations by their actions but only themselves. They found motivation for their present peace commitments precisely in their war past, whereby they shouldered their share of responsibility for the past rather than simply blaming others for what they did.

2.5.6. Transitional justice strategies

Following the conference "Strategy for Transitional Justice in the Former Yugoslavia,"[53] organised by the HLC on 1 October 2004, the subject of transitional justice has been treated at several more conferences and seminars, e.g. by the Helsinki Committee for Human Rights in Serbia (Pristina, 14 April 2005) and by the Belgrade Circle and the Centre for Cultural Decontamination (Belgrade, end of 2004). This bears out the importance being

attached in Serbia to this subject though differences exist in the approaches and strategies.

2.5.7. The debates on Srebrenica

A number of forums have been organised by the Women in Black, who have been very active in initiating anti-war and anti-nationalistic protests; also, the Youth Initiative for Human Rights has also distinguished itself lately by organising discussions on related subjects. There were, however, also efforts to deny the Srebrenica crime, notably the forum organised by the political-church NGO Nomokanon. Held at the Faculty of Law in Belgrade on 17 May 2005, the event brought together members of the “anti-Hague lobby” composed of local intellectuals and so-called “patriots” who maintain that the Srebrenica crime, or any other crime blamed on the Serbs for that matter, never actually occurred.

In response to this, the HLC held its own “Srebrenica - Beyond Any Doubt” conference in Belgrade on 11 June 2005. The conference asked the Serbian government to stop sheltering the ICTY indictee Ratko Mladic and to take responsibility for the crimes committed in the name of the state and the Serbian citizens. The conference also presented evidence on the basis of which General Radoslav Krstic was convicted of genocide by the ICTY. Also, Srebrenica mothers spoke about events that took place in and around Srebrenica between 10 and 19 July 1995.

The audience was shown a video recording of the most brutal execution by six young Bosniaks by the Serb unit Skorpioni. *For the first time in Serbia, a minute of silence was observed in honour of the victims of the Srebrenica crime*.

2.5.8. “From Ethnic Violence to Civic Normalcy” conference

Between 7 and 9 October 2005 in Pristina, the Youth Initiative for Human Rights and the Heinrich Böll Foundation held a conference called “**From Ethnic Violence to Civic Normalcy - Messages from Everyday Life**”. The object of the conference was to offer alternative ways of establishing new relations between Kosovo and Serbia and to contribute, through discussion of major issues in Kosovo and Serbia, to civil normalcy as a counterbalance to the violent and the retrograde in the societies. Many nongovernmental organisation activities, students, professors, lawyers and artists attended the conference.

2.5.9. The fate of missing in Kosovo

Two HLC conferences ‘The Fate of Missing in Kosovo’ were held in Pristina on 26-27 November 2005, and in Belgrade on 3 December 2005. The conferences were entirely devoted to victims of forced disappearances, the unlawful deprivation of liberty and kidnappings before, during and after the end of the armed conflict in Kosovo. For the first time in Serbia Serb and Albanian relatives from Kosovo testify to their ordeals, in an atmosphere honouring the dignity of the victims and fostering collective memory.

At the conferences the HLC presented reports on the fate of the 632 Kosovo Albanians whose remains had been found in mass graves in Serbia and of the157 non-Albanian victims whose bodies had been dug up in Kosovo. These numbers relate to the identified victims found in mass graves in Serbia and Kosovo from 2000 until November 2005. As of 15 November 2005, the fate of 2,488 victims - including 1,785 Albanians, 538 Serbs and 165 others - remains unknown.

[53] See Slobodan Kostic (ed), Strategy for Transitional Justice in the Former Yugoslavia/Strategije za tranzicionu pravdu u drzavama bivse Jugoslavije, Belgrade: HLC, 2004.

2.5.10. Video letters

This significant initiative originating in the Netherlands has been kept alive since 1996, when two documentary film authors, Katarina Rejger and Eric van den Broek, noticed that people from all over the former Yugoslavia wanted to know what had happened to their colleagues and friends. Although this interest is purely personal rather than institutional, it has been of considerable help in the process of psychological healing of wounds inflicted by war. Using video tapes, they started to record personal accounts and messages by people from various ethnic groups to their former neighbours and friends.

Between 1999 and 2005 Rejger and van den Broek also produced a TV serial of 20 instalments lasting 25 minutes each. From 7 April 2005 onwards, the serial was broadcast across the former Yugoslavia.[54]

2.5.11. The *People in War* edition

This edition was conceived as a compilation of war stories comprising accounts of fighters, of refugees, expelled persons and civilians, and of secondary witnesses. The edition is prepared and published by the Wars 1991-99 Documentation Centre which does not seek primarily victim and extreme experience testimony, but rather strives to represent this epoch of destruction through accounts of various participants and witnesses and stories which might be characterised as commonplace."[55]

2.6. The Documentation and Humanitarian Law Research Centre

As part of the institutional and programmatic transformation of the HLC, the Documentation and Research Centre became operative in December 2005, representing the focus of the organisation's activities in the domain of transitional justice. The Centre comprises a War Crimes Database, an HLC Primary Documentations Archive, a Video Archive of the ICTY trials, and an Archive for Hague trials transcripts and evidence in the Bosniak, Croatian and Serbian (BCS) languages. By the end of 2005, a total of 3,812 electronic documents had been entered in the database, of which 2,696 relate to Kosovo war crimes, 552 to Bosnia and Herzegovina, 381 to Croatia and 198 to Serbia and Montenegro. There are also five documents representing transcripts of video records of the International Criminal Tribunal for Rwanda (ICTR) trial chamber conferences dealing with procedural matters. Most of the documents entered (2,859) are witness statements originally taken by the HLC. By the end of 2005, the HLC had copied and entered video recordings of 1,122 ICTY trial days relating to 38 cases. At present, the Documentation and Research Centre has 5,531 electronic documents representing witness evidence, expert reports and other evidence, including 3,407 documents in English, 1,909 in the BCS languages and 30 in Albanian, relating to the Milosevic case presentation of evidence, as well as 185 documents relating to the Mitar Vasiljevic case, including 146 in English and 39 in the BCS languages.

The HLC aims to leave a historical record for the succeeding generations as well as to provide strong informational support to the domestic prosecuting authorities, media and public with a view to ascertaining the truth and ensuring justice regarding past crimes.

2.7. Concluding remarks

Although most of these initiatives still stem from Belgrade, one notes that more and more of them are coming from other towns in Serbia and Vojvodina. This is the result of the activities of NGOs such as the Committee for Civil Initiatives in

[54] See http:///www.videoletters.net/

[55] *Ratovanja I*, Edicija Ljudi u ratu, Dokumentacioni centar 1991-99, Belgrade, 2003.

Nis, as well as of highly successful public campaigns such as "Face It" (Belgrade Media Development Centre, 2002)[56] or "Enough of Crime" (more than a hundred NGOs, 2003).[57] Also, in a somewhat wider context, the spreading of the belief that human rights abuses cannot and must not be passed over in silence is made easier by the increasingly frequent public screenings of films dealing with the subject. In December 2003, the Rex culture centre in Belgrade started projections of internationally renowned films on the subject of human rights that gradually developed into a festival called the Free Zone. On 7-11 December 2005, interest in the films showing at the festival was so great that all the seats had been sold out in advance and the films were later projected in around ten Serbian towns.

For all the resistance coming from the nationalist media and political circles (as well as from individuals who argue that "one should not talk about crimes because those things are water under the bridge"[58]), NGOs persisted in trying to put facing the past and a critical reassessment of the recent past on the agenda. While their endeavours to ascertain the past were focused on various segments of the traumatised society, the victims of crime were their principal object of interest. In this respect, one notices that these organisations have been networking regionally, reflecting the growing realisation that the recent past must be discussed in a wider, regional, framework. Likewise, the NGOs insist that the culture of impunity should be done away with and that the state should fulfil its obligation to disclose the full truth about the crimes committed, a condition for the development of democratic institutions and transcending the grave traumas from the recent past.

3. Justice and Accountability

3.1. Legislation regulating war crimes trials in Serbia

Before the adoption of the Law on the Organisation and Jurisdiction of State Organs in Proceedings Against Perpetrators of War Crimes of 1 July 2003, the only pieces of legislation regulating prosecutions for war crimes and other criminal offences were the Criminal Procedure Code and the Criminal Code of the FRY.

3.1.1. The law on war crimes trials

The Law on the Organisation and Jurisdiction of State Organs in Proceedings Against Perpetrators of War Crimes[59] was adopted by the Serbian Assembly on 1 July 2003 and amended on 21 December 2004. In conformity with its provisions, special judiciary organs were set up to prosecute war crimes committed in the territory of the former Yugoslavia: the War Crimes Prosecutor's Office of the Republic of Serbia and the War Crimes Chamber of the District Court in Belgrade. Also, the law envisages the establishment of a war crimes detection service of the Serbian MUP.

3.1.2. The War Crimes Prosecutor's Office

The War Crimes Prosecutor's Office is made up of the prosecutor and his deputies. The war crimes prosecutor is elected by the Assembly; he in turn appoints his deputies for a term of four years, on

[56] The organisers used billboards, posters, TV spots on B92, jingles on Radio B92 and held round tables in eight Serbian towns.

[57] This campaign was the direct consequence of the assassination of Prime Minister Djindjic on 12 March 2003. The organisers used posters and leaflets and distributed badges and stickers.

[58] The response of the minister of education of sports, Slobodan Vuksanovic, was a case in point: when asked by reporters to comment on the June 2005 debate on the Srebrenica draft declaration, he told them "not to bother him" with such questions.

[59] This law is implemented to detect and prosecute perpetrators of criminal offences laid down in Chapter XVI of the Basic Criminal Law (criminal offences against humanity and international law) and of criminal offences laid down in Article 5 of the ICTY Statute (crimes against humanity).

the expiry of which they may be reappointed.[60] The War Crimes Prosecutor's Office was established in the autumn of 2003, after Vladimir Vukcevic had been elected war crimes prosecutor by the Serbian Assembly in July 2003. After that, the prosecutor appointed his deputies, there being five of them at present. Unfortunately, the method of selecting the prosecutor does not guarantee his independence,[61] a major prerequisite for instituting proceedings against all perpetrators of crimes being prosecuted. The executive obviously exerts an influence on the War Crimes Prosecutor's Office, given that no army officer or officer of the Serbian MUP who occupied a position of superior authority at the time the crimes were committed figures in any of the six indictments brought by the Office so far. This is also borne out by the fact that the armed conflicts in Croatia and Bosnia and Herzegovina are referred to in these indictments as "civil war,"[62] rather than as "armed conflict," as they are referred to in ICTY indictments and judgements.

It ought to be pointed out that the law imposes the obligation on all the organs and organisations of the state to render full assistance to the office in identifying the perpetrators of war crimes. However, the effect of this provision is reduced by the fact that the law provides no penalty for a failure to comply.

3.1.3. The War Crimes Detection Service

The establishment of the MUP War Crimes Detection Service, which must comply with the war crimes prosecutor's requests pursuant to law, is provided for by the law. The minister of internal affairs appoints and relieves of office the head of the service after obtaining the opinion of the war crimes prosecutor.[63] In spite of the fact that the law obligates the service to act according to the prosecutor's instructions, this rarely occurs in practice and representatives of the War Crimes Prosecutor's Office have complained repeatedly that they had no means of influencing the work of the service. On the other hand, however, the office has clearly not shown enough initiative to change this state of affairs. A special problem in the operation of the service is the fact that many members of the Serbian MUP have taken part in the commission of war crimes during the armed conflicts in the former Yugoslavia; it is therefore unrealistic to expect that MUP members will investigate impartially and professionally crimes committed by their colleagues or perhaps even by themselves.

3.1.4. The War Crimes Chamber of the Belgrade District Court

Under the provisions of Chapter 29a of the Criminal Procedure Code[64] invoked by the Law, war crimes are tried by a trial chamber consisting of three professional judges. The War Crimes Chamber of the Belgrade District Court, set up at the end of 2003, comprises six professional judges, its president also being the current president of the Belgrade District Court. The hearing of the Ovcara case – the only one completed by the War Crimes Chamber so far – and the hearings in progress have borne out the advisability of this arrangement: the judges have so far manifested a high level of professionalism and considerably improved the quality of war crimes prosecutions compared with the previous period.

[60] See Article 5 of the law on the Organisation and Jurisdiction of State Organs in Proceedings Against Perpetrators of War Crimes.

[61] The war crimes prosecutor is selected in the same way as other public prosecutors.

[62] See the indictments for the Zvornik and Skorpioni cases.

[63] See Article 8 of the Law on the Organisation and Jurisdiction of State Organs in Proceedings Against Perpetrators of War Crimes.

[64] Chapter 29 a of the Criminal Procedure Code, which is incorporated in the amendments of 19 December 2002, applies to prosecutions of criminal offences of organised crime and prosecutions of war crimes.

3.1.5. The law's procedural innovations

The law provides for two very important procedural innovations. The first is the possibility of examining witnesses and victims by way of conference links or international criminal law assistance, if their presence in the courtroom cannot be ensured. The War Crimes Chamber has so far used this feature once: in an Ovcara case hearing, a witness by name Frano Kozul testified by means of a video conference link established with the County Court in Zagreb.

Another helpful innovation is that the whole proceedings are recorded, after which transcriptions are made of the audio recordings by a service of the court. Since everything said in the courtroom is recorded, there is no longer any need for the court president, as in trials for other criminal offences, to dictate to the recording clerk the words of the witnesses, victims and defendants.

3.1.6. Provisions on the protected witness

Given that the Law on the Organisation and Jurisdiction of State Organs in Proceedings Against Perpetrators of War Crimes provides that the special provisions of Chapter 29 a of the Criminal Procedure Code apply to war crimes trials, the possibility has been created to use a new institute in domestic criminal law, that of the cooperating witness. These provisions namely make it possible, in prosecuting war crimes and organised crime, to grant the status of cooperating witness on the recommendation of the state prosecutor to a person against whom a criminal complaint has been made, or is being prosecuted in connection with a criminal offence of this kind. The requirement is that the person may be acquitted on the basis of extenuating circumstances or that his punishment may be mitigated, and that the significance of his evidence relevant to the detection, proof or prevention of other criminal offences of the criminal organisation concerned outweighs the harm caused by the criminal offence he himself committed.[65] The prosecutor can make the recommendation to this effect until the very close of the trial. Unlike an "ordinary" witness, however, a cooperating witness may not refuse to testify and to answer particular questions.[66] Also, after he has given evidence, the cooperating witness may not be prosecuted in connection with the criminal offence in question.[67]

Although cooperating witnesses may help establish the truth and facts about the crimes being tried, this legal provision is unacceptable because it may lead to persons who have taken part in the commission of heinous crimes being fully relieved of any criminal responsibility. A better solution would have been to follow the example of comparative law and impose on the cooperating witness a custodial sentence envisaged for such criminal offences reduced by one-half or two-thirds. This possibility is vindicated by the practice of the War Crimes Chamber so far: at the Ovcara trial, the indictment counts were confirmed by two cooperating witnesses in testimony given "in camera"; but although the judgement is largely based on their evidence, one cannot help feeling that their exoneration from criminal responsibility was no way to serve justice as far as the victims were concerned.

3.1.7. Protection of parties to criminal proceedings

Serbia had no legislation on witness protection until 1 January 2006, when the Law on the Programme to Protect Parties to Criminal Proceedings was adopted. Before that, the HLC

[65] See Article 504 d of the Criminal Procedure Code.

[66] *Ibid.*

[67] *Ibid.*

had succeeded in ensuring the presence of victim-witnesses in connection with the Podujevo and Ovcara cases by means of arrangements made with the court and the Serbian MUP.

Regarding the Podujevo trial, thanks to its reputation and prestige in Kosovo, the HLC succeeded in persuading the survivors to come to Serbia and tell before a Serbian court the truth about the crime committed against their nearest relatives – parents, mothers, children – by members of a special Serbian MUP unit. Next, in consultation with the witnesses, the HLC suggested physical protection and psychological support measures carried out with professionalism by a MUP unit specially formed for the task. However, having heard the evidence of the ethnic Albanian witnesses, an insider witness whose fellow fighters had committed the Podujevo crime contacted the HLC. Shaken by the testimony, he resolved to speak out before the court and identify the members of his unit who had taken part in the crime. Judge Biljana Sinanovic decided to put the witness under police protection, but the MUP unit detailed to protect him physically did not behave professionally this time because, in their eyes, he was a "traitor of Serbs and the Serbian police".

The trial chamber conducting the Ovcara trial faced the problem of Croat witnesses refusing to appear before a Serbian court. But again, thanks to the reputation of the HLC and to support from the Mothers of Vukovar association, the victims were persuaded to come over and testify. Also in this case, the victim-witnesses were provided with very good protection by the Serbian MUP witness protection unit in collaboration with the HLC.

The Law on the Programme to Protect Parties to Criminal Proceedings, entering into force at the start of 2006, provides for a set of measures to protect the life, health, physical integrity, liberty or property of a person before and during a trial and after its finally binding termination. The protected person may be a suspect, defendant, cooperating witness, witness, injured party, expert witness or another expert, or a person related to any of these. The law will apply to war crimes trials as well as to trials of organised crime and of criminal offences against the constitutional order and security.

3.1.8. Amendments to the war crimes trials law

The 21 December 2004 amendments to the Law on the Organisation and Jurisdiction of State Organs in Proceedings Against Perpetrators of War Crimes make it possible to use before the War Crimes Chamber of the Belgrade District Court evidence collected or presented by the ICTY, should the tribunal decide to entrust a case to the domestic judiciary under Rule 11 *bis* of its Rules of Procedure and Evidence.[68] Where a case has been deferred, the war crimes prosecutor will continue with the prosecution on the basis of the facts set out in the ICTY indictment.[69] On the other hand, the prosecutor may undertake prosecution on the basis of information and evidence submitted by the ICTY even though the case was not deferred under Rule 11 bis of its Rules of Procedure and Evidence.

Other than this, any measure imposed by the ICTY to protect a witness or an injured party must remain in force; also tribunal representatives have the right to attend any criminal proceedings stage before a domestic court.

Although the ICTY cannot be expected to defer a substantial number of cases to the domestic judi-

[68] Under Rule 11 *bis*, once an indictment by the ICTY prosecutor has been confirmed, the tribunal may defer the case to the judiciary of the country (i) on whose territory the crime was committed; (ii) on whose territory the defendant was arrested; or (iii) which has jurisdiction to try such a case, and is also willing and adequately prepared to take over the case.

[69] See Article 14a of the Law on Amendments of the Law on the Organisation and Jurisdiction of State Organs in Proceedings Against Perpetrators of War Crimes.

ciary under Rule 11 *bis*,[70] these provisions will nevertheless be of considerable importance for any case the tribunal prosecutor may decide to defer in the investigative stage. The first case before the War Crimes Chamber deferred in the investigation stage concerns Zvornik,[71] the trial having started in November 2005.

3.2. The war crimes trials before the ICTY

3.2.1. Public attitudes in Serbia to war crimes and the ICTY

Surveys conducted by the Strategic Marketing agency and the Belgrade Centre for Human Rights during 2004 and 2005[72] leave no doubt that a large majority of Serbian citizens (72 per cent) even do not know what the ICTY does.[73] What is more, a great many respondents (74 per cent) were unable to name a domestic judicial authority concerned with war crimes trials. A comparison of the survey results for the two years indicates that a majority of citizens consider that the public ought to be better informed about the course of the war crimes trials (64 per cent in 2004 and 59 per cent in 2005). A study of data relating to the most dramatic events in the former Yugoslavia wars shows that since 2001 events from the recent past are simply being forgotten as if the population were suffering from a collective amnesia. Thus in 2001, 92 per cent of respondents knew that many civilians had been killed in Sarajevo by snipers, but four years later only 67 per cent recollected this fact. Also since 2001, the percentage of those who *believe* that an event of which they have heard really occurred has been declining steadily.[74]

A large majority of citizens (73 per cent) hold that war criminals are criminals regardless of their nationality. *But the fact that this percentage has significantly declined from the 84 per cent in 2004 gives rise to special concern*. As to the Republika Srpska government's report on the Srebrenica crime, less than one-third of the citizens of Serbia have heard of it, and most of these believe that it corresponds to the truth "only partially".

With regard to attitudes to the cooperation with the ICTY, the percentage of those who support the cooperation increased slightly in 2005 though it was still less than in 2003. As many as two-thirds of respondents said that one should cooperate with the tribunal on purely utilitarian grounds – to meet the conditions for Serbia's European and international reintegration and to avoid sanctions. Although most respondents (59 per cent) "consider that the main reason the Hague indictees are turning themselves in voluntarily is the pressure of the Serbian government arising from its obligations, only every fifth citizen considers that those who refuse to surrender themselves should be arrested and transferred to The Hague."[75] Most respondents (73 per cent) believe that those who

[70] Tribunal representatives have made clear repeatedly that Serbia and Montenegro may expect to be entrusted one or two cases under the rule.

[71] On trial are Branko Grujic (prime minister of the provisional government and president of the war staff of the Municipality of Zvornik), Branko Popovic (commander of the Zvornik Territorial Defence) and four others on charges of committing crimes in the municipality between the beginning of May and mid-July 1992.

[72] The survey *Javno mnjenje u Srbiji*, Stavovi prema domacem pravosudju za ratne zlocine i Haskom tribunalu, Belgrade: Belgrade Centre for Human Rights and Strategic Marketing. The sample consisted of 1,205 adult citizens of Serbia (minus Kosovo), with a trustworthiness level of 95 per cent.

[73] Only six per cent of respondents said they knew "much" about the work of the tribunal.

[74] The Srebrenica massacre is an important exception, largely on account of the public screening of the footage of the 1995 execution by the Skorpioni unit and of the discussions that have since taken place.

[75] *Javno mnjenje*, p. 18.

are turning themselves in are doing so in expectation of milder punishment rather than because they repent their wrongdoing. Over the years as many as 69 per cent have maintained that the ICTY is partial against the Serbs, seeing proof for this in the fact that proportionally the majority of the indictees are Serbs. When asked whether the proceedings before the ICTY are giving the victims and their families a sense of justice, more respondents (40 versus 36) say that this is not the case because the majority of perpetrators are not on trial and that those who are convicted are given mild punishment.

3.2.2. Debates in the media

The attitude of a large segment of the Serbian public to the prosecutions before the ICTY cannot be understood if one is not familiar with the role media play in Serbia. Ever since its establishment, the tribunal has been given extremely bad publicity by Serbian media. Although TV B92 began providing live coverage of proceedings at The Hague in 2001, they have had no appreciable impact on the attitudes of a large number of people. This state of affairs is largely due to the editorial policy of most other outlets: they invite to their studios people whose principal role is to discredit the ICTY and to commend the defence of indictees charged with the most serious crimes (including genocide), rather than discussing issues that matter and incriminating evidence.

A polemic, which only partially related to the attitude towards the ICTY, came to a climax as a result of articles and commentaries published by the Belgrade weekly *Vreme* between 1 August and 21 November 2002.[76] The editor of *Vreme* took the position that in its coverage of proceedings his paper should not take sides and "root" either for Milosevic or for the prosecution. On the other hand, the historian Olivera Milosavljevic pointed out in her commentary that "*Vreme*'s reporting from The Hague is a loose account in which much is made of Milosevic's ability to portray witnesses as liars...the *Vreme* reporter lends weight to the style and content of Milosevic's defence by reducing the courtroom incidents to the level of anecdotes...the former DB chief had the reporters spellbound with his loyalty to Milosevic...the *Vreme* reporter has committed a criminal offence by accusing the Tribunal witness [in advance], whereas with regard to Milosevic he is waiting to hear what the court has to say, he is guilty of double standards."[77]

The critics of the ICTY (led by the *Vreme* editor-in-chief and managing editor Dragoljub Zarkovic and editors Stojan Cerovic and Nenad Lj. Stefanovic) maintained that the tribunal was above all "political" creation; on the other hand, their opponents from human rights organisations (including prominent lawyers like Srja Popovic, a founder of *Vreme*) insisted that the ICTY trials were strict, fair and impartial proceedings aimed at ascertaining the well-foundedness of the charges.[78]

The column in the daily *Danas* entitled *Hag medju nama* (The Hague Among Us) was another important attempt to counterbalance the disparagement of the war crimes trials and the fundamentally false reporting on the part of a great many media outlets. The column was launched as a concerted effort by independent intellectuals and human rights and civil society activists to publicly oppose the continuing deception of the public in Serbia.

[76] The polemic texts were published by the Helsinki Committee for Human Rights in Serbia in Vol. 16: *Tacka razlaza – povodom polemike vodjene na stranicama lista* Vreme *od 1. avgusta do 21. novembra 2002. godine*, Belgrade, Helsinki Committee for Human Rights in Serbia, 2003.

[77] *Tacka razlaza*, p. 11.

[78] Regarding the polemic, of key importance were two very specific letters from Bogdan Ivanisevic, the former Yugoslavia researcher for Human Rights Watch, in connection with the *Vreme* reporting from The Hague published in *Tacka razlaza*, pp. 33-34 and 72-73. Natasa Kandic herself wrote that the journalists had entered into an "infernal pact" with Milosevic (*Tacka razlaza*, p. 36).

The column, which the daily edited jointly with the HLC, appeared every Friday from 9 April 2004 until 9 June 2005. It included around 120 contributions (author edited and approved texts, testimonies and documents) dealing not only with public attitudes toward the tribunal, but also with attitudes towards crime and criminals in general and the need to serve justice for the victims.[79]

3.3. The war crimes trials in Serbia

By the end of 2005, eight war crimes trials had been held before courts in Serbia, with final judgements having been rendered in six of these cases. These trials could be divided into three categories by virtue of their specific features.

1. The trial of Dusan Vuckovic and Vojin Vuckovic before the District Court in Sabac was the only trial before a domestic court ending in a final judgement before the change of government in December 2000.[80] Also, two other trials had been started: those of Ivan Nikolic before the District Court in Prokuplje and of Boban Petkovic and Djordje Simic before the District Court in Poxarevac.[81] These trials showed that crimes committed against members of other ethnic groups could not be tried in a professional and an impartial manner in Serbia at the time. Thus the brothers Vuckovic and their counsel had both the trial chamber and the prosecutor on their side while no one represented the victims. In such circumstances the trial very quickly degenerated into a farce and most reporters stopped covering it. An idea of how the trial went can be obtained from the grounds for decision, citing as an extenuating circumstance the fact that Dusan Vuckovic "was a participant in the fighting to liberate the territory of Zvornik municipality, thus voluntarily risking his life in order to help the just liberation struggle of a part of his people." The atmosphere at the trials of Ivan Nikolic before the District Court in Prokuplje and Boban Petkovic and Djordje Simic before the District Court in Pozarevac did not differ much.[82] Although all these trials ended in judgements of conviction, the sentences were extremely light and disproportionate to the crimes.

2. The trials commenced after the change of government indicate some progress. This is especially true of two trials before the Belgrade District Court regarding the Sjeverin[83] and Podujevo[84] cases. These were the first war crime trials in Serbia at which victims and members of their fam-

[79] Texts from the column are published in the book *Hag medju nama*, HLC, 2005.

[80] The trial of Dusan Vuckovic and Vojin Vuckovic, better known as the "Yellow Wasps Case" before the District Court in sabac. Dusan Vuckovic, a member of the Yellow Wasps volunteer unit, was charged with the killing of 16 and wounding of 20 persons of Muslim nationality at the Culture Centre in Celopek in the Municipality of Zvornik as well as with rape; his brother Vojin Vuckovic, the commander of the Yellow Wasps unit, was charged with false impersonation and illegal possession of arms. The trial lasted from 22 November 1994 until 8 July 1996, with Dusan Vuckovic receiving a seven-year prison sentence and Vojin Vuckovic a suspended prison sentence of one year. On 8 October 1998 the Supreme Court of Serbia revised the sentences and imposed a 10-year prison sentence on Dusan and a four-month prison sentence on Vojin.

[81] The trial of Ivan Nikolic, a reservist of the Army of Yugoslavia, on charges of killing two Albanian civilians in Penduh village in Kosovo in April 1999 began before the District Court in Prokuplje on 13 September 1999. The trial ended on 8 July 2002 with Nikolic receiving an eight-year prison sentence. Boban Petkovic and Djordje Simic, reservists of the Serbian MUP, were charged with killing three Albanian civilians in Orahovac on 9 May 1999. There was a retrial, also before the District Court in Pozarevac, at the end of which, on 21 August 2003, Petkovic was sentenced to five years in prison and Simic was acquitted.

[82] Ivan Nikolic was tried amid cheers that he was a hero and that he had fought in Kosovo for Serbia and for the Serb people. What is more, *the prosecutor insisted that the court make allowances for the defendant's youth and his courageous conduct during the war in Kosovo*. Petkovic and Simic were tried in like circumstances.

[83] The trial of Milan Lukic, Oliver Krsmanovic (both tried *in absentia*), Dragutin Dragicevic and Djordje Sevic started on 20 January 2003 before the Trial Chamber of the Belgrade District Court presided over by judge Nata Mesarovic. According to the indictment the defendants - members of the paramilitary group Osvetnici (Avengers) commanded by Lukic - on 22 October 1992 kidnapped at Mioce

ilies gave evidence and were represented. Their representatives were the HLC executive director Natasa Kandic and the HLC attorney Dragoljub Todorovic. The judges who conducted the trials - especially judge Biljana Sinanovic, who was in charge of the Podujevo trial - displayed a high level of professionalism and a determination to have the facts about the crimes fully established. Also, these were the first war crimes trials in Serbia that ended in the imposition of maximum sentences. On the other hand, the trials showed that there was still no will in Serbia to prosecute superiors for war crimes. It was namely clear that in both these cases there was enough evidence to institute proceedings against the defendants' superiors, but the prosecutors took no action in this connection whatever. Their failure to act showed clearly that the desire was still strong to portray the crimes being tried as isolated incidents committed by members of paramilitary formations, armed groups and individuals in order to shield the state - that is, the army and police. Of special importance was the fact that the Supreme Court of Serbia quashed the sentences in both the Sjeverin and Podujevo cases. Considering that the Supreme Court's grounds for doing this were rather illogical, one may conclude that the decisions were based on political rather than legal considerations.[85]

3. After the UN Security Council passed its resolutions 1503 and 1534 in 2003, laying down a strategy for terminating the work of the ICTY, the notion was created that trials of war crimes before domestic courts will become the principal tool for prosecuting perpetrators of war crimes in the territory of the former Yugoslavia. Following this, the War Crimes Prosecutor's Office and the War Crimes Chamber of the Belgrade District Court were established in Serbia (see above). As mentioned before, the Ovcara trial has been the only one completed before the War Crimes Chamber so far.[86] Regardless of the flaw of the indictment regarding the classification of the offence[87] and that fact that none of the officers who gave evidence was indicted, the trial chamber presided over by judge Vesko Krstajic handled the proceedings in a professional and conscientious manner. The chamber sought to ascertain all the facts in order to establish the truth about the crimes, as well as introduced a very important and positive innovation in the domestic jurisprudence, namely the examination of the context of the crime.

16 citizens of Muslim nationality from Sjeverin, transferred them to Visegrad where they tortured and killed them. On 29 September 2003 the Trial Chamber gave Lukic, Krsmanovic and Dragicevic the maximum prison sentence of 20 years each and sentenced Sevic to 15 years. The Supreme Court quashed the sentences and ordered a retrial. At the end of the retrial on 15 July 2005, the defendants were given identical sentences.

[84] Sasa Cvjetan, a former member of the Serbian MUP reserve Skorpioni unit, was tried for taking part in killing 14 Albanian civilians and severely wounding five Albanian children in Podujevo in Kosovo on 28 March 1999.

[85] See Dragoljub Todorovic's texts "Vanpravni, nesudijski i neprofesionalni razlozi" in *Hag medju nama*, pp. 231-233 and "Nebulozna odluka Vrhovnog suda," *ibid.*, pp. 279-281.

[86] The trial of 17 members of the Vukovar Territorial Defence (TO) and the Leva Supoderica volunteer unit for war crimes against prisoners of war (torture and execution of 192 Croat prisoners of war at the Ovcara farm on 20 November 1991) opened before the War Crimes Chamber of the Belgrade District Court on 9 March 2004. According to the indictment, between the afternoon of 20 November and the early morning hours of 21 November the members of these units, which fought as part of the former JNA, organised, ordered and carried out inhuman treatment and shooting of the 192 Croat prisoners of war collected at the Vukovar hospital. On 12 December 2005, the Trial Chamber convicted the TO commander Vujovic, his deputy Vujanovic, the Leva Supoderica commander Lancuzanin, Peric, Atanisijevic, Madzarac, Vojnovic, Milojevic, Dragovic, Sosic, Zankovic, Zlatar, Mugosa and Kalaba and acquitted Ljuboja and Katic. Vujovic, Vujanovic, Lancuzanin, Atanasijevic, Milojevic, Dragovic, Sosic and Zankovic were given the maximum 20-year sentence, Peric, Vojnovic and Zlatar were sentenced to 15 years each, Madzarac (an adolescent at the time of the crime) was given 12 years, Kalaba nine years and Mugosa five years.

[87] The indictment charged the defendants with a war crime against prisoners of war although the victims included civilians and wounded persons.

Compared with earlier proceedings, the Ovcara trial achieved progress in regional cooperation against war crimes perpetrators: six persons from Croatia first gave evidence before the County Court in Zagreb in the presence of an investigating judge and a prosecutor from Serbia, then three of them testified before the War Crimes Chamber.

Significantly, the Serbian Republic Public Prosecutor's Office and the War Crimes Prosecutor's Office on one hand, and the Croatian General Attorney's Office on the other on 5 February 2005, concluded a memorandum of agreement in order to establish and promote cooperation in combating all forms of serious crime. An identical memorandum was concluded with the Prosecutor's Office of Bosnia and Herzegovina on 1 April 2005. These documents lay the foundations for cooperation among the prosecutor's offices in the region with a view to prosecuting war crimes. Furthermore, all three states (Serbia and Montenegro, Croatia, and Bosnia and Herzegovina) have acceded to the Council of Europe conventions on the provision of international criminal-law assistance and extradition.

3.4. The trials of Kosovo war crimes

The establishment of the international administration in Kosovo (UNMIK) in 1999 started the development of a new judicial system there. Soon after the Serbian courts ceased operating, Albanian prosecutors instituted criminal proceedings against the remaining Serbs in connection with the gravest offences. Although the local prosecutors have brought several genocide indictments,[88] none of the cases has ended in a judgement of conviction because as early as October 1999 UNMIK appointed international prosecutors and judges and mandated them to prosecute war crimes and ethnically motivated criminal offences.[89]

Owing to suspicions of ethnic prejudice regarding the launching of investigations, bringing of charges and conduct of judicial proceedings, especially against persons belonging to ethnic minorities (mostly Serbs),[90] UNMIK passed Regulation 2000/64 giving wider powers to international judges and prosecutors. Under the Regulation, at any stage in the criminal proceedings, the competent prosecutor, the accused or the defence counsel may submit to the Department of Judicial Affairs a petition for an

[88] These cases include Vucevac/Bisevac, Jokic, the Serb juvenile Z. Simic, etc.

[89] In the case of the Serb juvenile named Z., the international prosecutor changed the genocide charge to causing a public danger and grave offences against public security. With regard to Igor Simic, the international prosecutor dropped the charge of genocide owing to lack of evidence.

[90] For instance, the case against Cedomir Jovanovic and Andjelko Kolasinac, indictment No. 83/99, brought before the Prizren District Court in connection with a war crime. In the opinion of the HLC observers, "...the trial of the two Serbs was not just, the judgement compromising the efforts of the international community to establish the rule of law in Kosovo. That massive crimes against the ethnic Albanian population in the area of Orahovac (Rahovec) were committed is not in doubt. There is abundant evidence that members of Serbian regular and paramilitary armed formations killed and evicted Albanians, destroyed and looted their property. The judicial proceedings against Cedomir Jovanovic and Andjelko Kolasinac, however, were not compatible with the standards of a fair hearing. The right of the defendants to use their native language was grossly violated. Having been tried in Albanian and English, they were deprived of any opportunity to follow the hearings, challenge the evidence or invoke evidence. The defendants were unable to follow the testimony and examination of the witnesses because no interpretation was provided. The only part of the proceedings translated into Serbian was that which was entered in the records, so the defendants had no way of knowing what the judge chose not to enter in the records which could be useful for their defence...Statements given to the police were read out in the courtroom, which the law specifically forbids. The president of the chamber, judge Ingo Risch, put leading questions to the witnesses in order to suggest desired replies. At the same time, he made indecorous and cynical remarks betraying his open malice towards the defendants, in particular towards Andjelko Kolasinac."

assignment of international judges/prosecutors and/or a change of venue "where this is considered necessary to ensure the independence and impartiality of the judiciary or the proper administration of justice."[91] Since the regulation went into force, all the war crime cases have been prosecuted by international prosecutors and tried by chambers composed mostly of international judges. The criminal offences committed on 17 March 2004 (during the ethnically motivated violence in Kosovo) are completely prosecuted and tried by international prosecutors and judges.

Between 1999 and 2005 only one proceeding was instituted to ascertain criminal responsibility on the basis of command responsibility: the case of Rustem Mustafa *et al*. The criminal chamber under president Timothy Clayson took care to ensure absolute equality of defence and prosecution. Throughout the trial, the Criminal Chamber remained strictly impartial towards the parties, stimulating and encouraging them to convince the court that their version of the event was the correct one. The parties ware given opportunity to fully exercise their rights under the Criminal Procedure Code. In spite of the enormous pressure of a part of the Kosovo public, which holds that the fact that the UCK fought against the Milosevic regime exonerates any violation of the laws and customs of war on its part, the International Criminal Chamber of the Pristina/Prishtina District Court brought justice to both the defendants and their victims and sentenced the first to long prison sentences. The defence appealed and the Supreme Court at a session on 7-8 July 2005 quashed the sentences and ordered a retrial, freeing the convicts. No retrial had started by the end of 2005.

In the majority of cases, the international judges have exhibited a high level of professionalism and objectivity. Most of the omissions that have occurred have been caused by matters of a technical nature and organisational omissions regarding the examination of protected witnesses. This is mainly due to problems arising from the different judicial systems from which the international judges come, but also to problems caused by the highly complicated procedure involving proceedings in two or three languages. Nevertheless, the international criminal chambers have also been guilty of some rather serious breaches of the law such as undue delay in judgement preparations: regarding the case of Rasim Bajramit *et al*., although the first-instance judgement was rendered on 30 November 2004, it has still not been delivered to the parties in writing.[92] With regard to the case of Sadri Shabani the first-instance judgement was rendered on 19 May 2005 but not delivered in writing to the parties by the end of 2005.[93] Other problems concern a backlog of cases to be decided by the international judges, a backlog of appeals and retrial orders, omissions regarding the examination of witnesses and their security. Also, in the case of Kiqin et al. the court allowed a witness in respect of whom information had already been delivered to the prosecutor and the criminal chamber by the defence to be arrested in the courtroom at the insistence of the prosecutor; although no law prohibits a courtroom arrest, this act was nevertheless incompatible with the notion of the courtroom being a place where justice is done rather than arrests made. All things considered, however, the international judges working in Kosovo exhibited a high level of professionalism in the conduct of judicial proceedings during 2005.

[91] UNMIK Regulation 2000/64.

[92] Indictment Kt. No. 43/2003 brought before the Gnjilane/Gjilan District Court on 29 October 2003 and modified on 14 October 2004. The defendants were charged with the following criminal offences: terrorism, smuggling of arms, ammunition and explosive into or out of Kosovo, illegal possession of arms or explosives, manufacture and procurement of arms and weapons.

[93] Indictment Kt. No. 70/04 brought before the Gnjilane/Gjilan District Court on 27 September 2004 and modified on 11 May 2005. The defendants are charged with the following criminal offences: aggravated murder, causing a public danger, belonging to a group inciting violence, illegal possession of arms, and obstructing the presentation of evidence.

Difficulties regarding protection of witnesses giving evidence about the gravest offences are still an obstacle to the establishment of an independent and effective judicial system. The gravity of the problem is borne out by the case of Runjeva et al., with many witnesses giving evidence at the trial contrary to that given during the police investigation, the investigative proceedings before the court, in the presence of the investigating judge and the prosecutor. Also, regarding the case of Selim Krasniqi, a protected witness was killed and another seriously wounded at the start of the hearing - as a result of which the remaining witnesses made their statements through an interpreter and their voices could not be heard at all. During the pre-trial proceedings, which are usually handled by the police, a great many omissions are still detected especially regarding the collection of material evidence in support of the investigative proceedings. Owing to such omissions, in a number of cases the subject matter of the indictments has not fully been clarified in spite of clear evidence as to the justifiability of the indictments.

3.5. Other legislation related to the establishment of transitional justice

3.5.1. The situation of the injured party in war crimes proceedings

The restrictions on the rights of the injured party under the Criminal Procedure Code (ZKP)[94] work against the party's situation in proceedings involving war crimes on a mass scale and where the party cannot learn of the termination of the proceedings because he or she lives abroad. In this way the injured party cannot exercise his or her right to proceed in the capacity of private prosecutor. The same goes for proceedings before courts of second instance and representation before the Supreme Court. The rights that are denied the injured party are nevertheless enjoyed by the prosecutor and the defendant.

However, in practice some judges bypass restrictions by allowing the injured party's attorney to take a stand on the motions of the defendant and prosecutor.[95]

3.5.2. The lustration law

In April 2003 the Serbian Assembly adopted the Law on Accountability for Human Rights Violations known as the "law on lustration."[96] The law was sponsored by the Civic Alliance of Serbia (GSS) parliamentary group. Under this law, lustration signifies the start of investigation and determination of accountability for violations of human rights (enumerated in the law), determination of individual accountability and imposition of penalties for the violations established.

The lustration measures disqualify and/or prevent persons found to have violated human rights from performing the public functions laid down by the Law which, in the opinion of the legislator, rank among the functions of public interest and importance for the security of the state. *This means that*

[94] Neither the injured party nor his or her attorney may be present at the examination of the accused during the investigation stage; the injured party may not pronounce himself of herself on the motions of the parties (prosecutor and defendant), nor does he or she have the right of appeal other than in matters of legal costs. Exceptionally, the injured party is entitled to appeal if he or she has initiated a proceeding later taken over by the prosecutor. The court and the prosecutor bear no liability for omitting to notify the injured party in the event of the state prosecutor dropping the prosecution in respect to particular acts. This may lead to the injured party missing the preclusive deadlines for proceeding in the capacity of private prosecutor. See Articles 60, 61 and 364 (4) of the ZKP.

[95] The trial chamber president Biljana Sinanovic who conducted the Podujevo trial and the presiding judge in the Ovcara case, Vesko Krstajic, permitted the attorneys of the injured parties to pronounce themselves on the trial motions of the prosecutors and defence counsel.

[96] For a regional framework overview see Margaditsch Hatschikjan, Dusan Reljic and Nenad Sebek (ed), *Disclosing Hidden History: Lustration in the Western Balkans*, Thessaloniki: CDRSEE, 2005.

persons found to have violated any of the human rights laid down by this law should be prevented from performing a specific public office or, if they are already performing such an office, they would have to resign.

This law is still not being implemented in practice, despite having been in force for more than two and a half years.

3.5.3. The Law on Free Access to Information of Public Importance

The Republic of Serbia set about creating the conditions for the enforcement of this law with a lack of seriousness in that it appointed a commissioner by law without providing for budgetary resources for this purpose. The 15 million dinars needed to set up this authority was provided only after the Serbian government decided to activate current budgetary reserves and revise the budget.

A thorough analysis of the application of this law has been made by two NGOs (the Youth Initiative for Human Rights and Transparency Serbia).[97] They established numerous violations of the law as well as a lack of interest on the part of most institutions in Serbia to abide by it because the violators face more than symbolic fines.[98] This widespread practice is also referred to in the HLC critique of the draft law on police, which was adopted by the Serbian Assembly before the end of 2005. The HLC found that some of its provisions[99] are incompatible with the Law on Free Access to Information (ZOSPI), with certain provisions giving the minister discretionary powers which may result in his arbitrary interpretation or abuse of the law and thus place him above the ZOSPI.

Another major problem in the application of this law is the ignorance of both members of the public and those charged with its application,[100] since only a few authorities have appointed persons solely to answer questions by members of the public.

The principal weakness of the ZOSPI is the fact that it regulates procedure of organs of government only in respect of such information of public importance "as the public are justifiably interested in knowing."[101] This qualification made it possible to include in the law on police a provision that a member of the public applying for information concerning him of her personally must have a "well-founded interest" for doing so as well as prove it.[102] There is also a provision stating that a person may have to wait up to 60 days for information of a personal nature, although the ZOSPI lays down a 40-day deadline, admittedly in respect of

[97] Between 5 December 2004 and 19 September 2005 the Youth Initiative for Human Rights sent 645 requests to 212 relevant institutions in the country for various information or to be granted access to specific documents. Only 318 requests were met or 49.3 per cent. The organisation's researchers point out that most of those who sent in replies overstepped the 15-day statutory timeframe and often failed to give the information requested. Source: *Primena tranzicionih zakona* (transition laws application), Izvestaj Inicijative mladih za ljudska prava, No. 15, Belgrade, 2005.

[98] See article by Dragana Peric and Gorislav Papic, "Treniranje legalizma," in *NIN*, 2 March 2006. The authors write that of the 18 organs of government they contacted four completely disregarded the law and that they could not possibly be penalised for this under the law.

[99] Article 5 of the law on police.

[100] "The law is at odds with our mentality: neither is the taxpayer in the habit of asking where his money has gone, nor is the officer in the habit of answering this question. This is borne out by the fact that most officials who refuse to provide information at a person's request do this later following my intervention. If they did not unnecessarily drag their feet over this, they would be dealing with satisfied members of the public and have more of their trust," says the commissioner for information of public importance, Rodoljub Sabic, in the article "Treniranje legalizma."

[101] Article 2 (1) of the Law on Free Access to Information of Public Interest.

[102] "Therefore, there is no restriction on the already regulated rights to access to information of public interest "which pertains to any thing the public has a legitimate interest to know."' The Serbian MUP's reply to the HLC of 12 December 2005.

information of public importance.[103] For this reason it is imperative to amend this law with a view to an equal treatment of all information, both public and personal, that is in possession of the authorities because the law provides good mechanisms to protect procedures of certain organs of government.[104]

3.5.4. The Law on Assumption of Jurisdiction of Military Courts, Military Prosecutor and Judge Advocate General

The Law on Assumption of Jurisdiction of Military Courts, Military Prosecutor and Judge Advocate General was passed on 27 December 2004[105] and finally entered into force on 1 January 2005.[106] The law regulates the transfer of jurisdiction from the military courts, military prosecutor and judge advocate general to regular judicial organs of the Republic of Serbia. The newly established organ has inherited a huge backlog of cases from the defunct military judiciary.[107] Only a minimum number of cases were processed in 2005.[108] This state of affairs indicates that the newly established organs are inefficient and raises public doubts as to the functioning of the legal system in Serbia. The law does not lay down the conditions under which a person previously employed in the military judiciary may be appointed to a military division of the regular judiciary to deal with cases inherited from the defunct military judiciary. This opens the possibility of appointing to these posts persons who have in the past violated human rights and taken part in abuses by the military authorities.

3.6. Human rights organisations' support to war crimes trials

Other than taking an active part in witness protection (see above), the HLC has since the Sjeverin trial played an important role in representing victims before the court, providing victim-witnesses, enabling victims' relatives to attend trials, initiating regional cooperation and providing psychological support to victims and their relatives. Making documentation relating to current investigations available to the War Crimes Prosecutor's Office of the Republic of Serbia and to the Prosecutor's Office of Bosnia and Herzegovina is another, special aspect of this support.[109]

To begin with, the HLC executive director and attorney have represented victims before the court in every trial held since the Sjeverin trial.[110] Also since the Sjeverin trial, the HLC has made it possible for victims' families to attend trials, thus enabling them to talk to reporters and testify before cameras about the crimes committed against their closest relatives. Since the Ovcara trial, the HLC has engaged the services of a psy-

[103] Article 78 of the law on police.

[104] Article 9 of the Law on Free Access to Information of Public Importance.

[105] The *Official Gazette* No. 137/04.

[106] However, given that the Law on the Implementation of the Constitutional Charter provides that this law must be adopted within six months of the adoption of the Constitutional Charter, the deadline was August 2003.

[107] The military division of the District Public Prosecutor's Office has appointed six prosecutors who have inherited 2,242 cases from the defunct military judiciary and another 627 cases from the military division in Belgrade. K. Preradovic, "Otpusteni bez sudske zastite," *Blic*, 18 April 2005. Further, the military division in Belgrade has received 158 indictments, 469 cases being investigated, 856 suspended cases, 523 cases being enforced or having been terminated by final judgement, and 650 archived cases. Source: A. Savic, "Vojna sudjenja u maju," *Blic*, 25 March 2005.

[108] The special military division of the Belgrade District Court scheduled 17 trials of military cases for the beginning of October 2005: *Primena tranzicionih zakona*, Izvestaj inicijative mladih, Number 15, 5 December 2005.

[109] On two separate occasions, the HLC has placed at the disposal of the Serbian War Crimes Prosecutor's Office copies of 58 witness statements about Kosovo war crimes, the HLC being their primary source.

[110] The Podujevo, Ovcara, Zvornik and Skorpioni cases.

chologist who sits with the families in the courtroom and cares for them during their stay in Belgrade. The presence of the victims' families is of exceptional importance in that it lends moral weight to the war crimes trials, and helps restore the confidence of the public and the victims in the judicial authorities.

The HLC has also played a prominent part in establishing cooperation between the judicial authorities of Serbia and Croatia in the Ovcara case. Regarding the Zvornik case, it initiated meetings between the War Crimes Prosecutor's Office and the Cantonal Prosecutor's Office in Tuzla (Bosnia and Herzegovina), leading to the establishment of fruitful cooperation in providing witnesses and initiating an investigation into the killing of 700 Bosniaks at the Technical School Centre in Zvornik. At the time, first defendant Grujic and second defendant Popovic were assuming positions of command in Zvornik municipality.

4. Reparations

Each state in the post-conflict period has an obligation to establish the truth and ascertain the facts about crimes committed in the past, to prosecute the alleged perpetrators of these crimes, and to acknowledge and accept responsibility for the crimes. Also, after the end of a conflict or the transition from an authoritarian regime to a period of democratic government, states must guarantee victims the right to reparation for the suffering they endured or for the damage inflicted on them in the past. Generally speaking, through reparations the state compensates for the damage inflicted on victims of human rights and international humanitarian law violations. Reparations can be material and symbolic, as well as individual and collective.

4.1. Material reparations

The reparation programmes adopted and implemented by a state invariably reflect the attitude of that state towards past human rights violations for which it is responsible. A state willing to compensate the victims by means of reparation effectively recognises its responsibility for the victims. Since the democratic takeover in 2000, state authorities in Serbia and Montenegro have not manifested political will to provide systemic reparation to the victims of the previous regime, who are mostly persons belonging to minority ethnic communities. What is more, the political elites in Serbia and Montenegro have not even acknowledged the human rights violations in their territories and the victims they produced. Regular judicial proceedings (civil action) are the only recourse left to a victim seeking material reparation, which is out of character with the nature and essence of the right to reparation.

The unwillingness of the state authorities to take responsibility for the victims is best exemplified by the cases of massive human rights violations in the territory of Serbia and Montenegro in connection with the armed conflict in the former Yugoslavia (Sandzak, Vojvodina, Bukovica). The victims from these regions have not obtained just compensation for the terror they suffered at the hands of members of the army and police more than 13 years ago.

Besides the ethnically motivated human rights violations, massive human rights violations have taken place in Serbia and Montenegro with respect to members of the Serb ethnic community (the forced enlistment of Serb refugees from Croatia)[111] as well as politically motivated human rights violations (the illegal deprivation of liberty of

[111] During the summer of 1995 the Serbian MUP forcibly enlisted between 6,000 and 10,000 Serb refugees from Croatia. Having been deprived of their liberty on the streets, in public transport conveyances, in collective accommodation facilities, they were transferred to the territory of the Republics of Croatia and Bosnia and Herzegovina and forced to fight, in the process of which many lost their lives.

some 2,000 members of the Popular Movement OTPOR).[112]

Having been ignored by the institutions of the state for too long, many victims have filed civil lawsuits for damages against the state with the help of non-governmental human rights organisations. In this way, more than 700 forcibly enlisted refugees have received compensation in money for violation of their rights of person.[113] The HLC has also represented 86 OTPOR members in court. Most of the cases concluded so far have ended in judgements requiring the state to pay compensation in money for the illegal deprivation of liberty of the plaintiffs. The HLC has also instituted proceedings against the Republic of Serbia on behalf of 14 unlawfully detained ethnic Albanians.[114] So far a court has ordered the Republic of Serbia to pay nonmaterial compensation to three ethnic Albanians for their unlawful arrest.

In a landmark case concerning the realisation of Roma human rights, the government of the Republic of Montenegro on 19 June 2003 agreed to pay EUR 985,000 to 74 Roma victims of a pogrom in Danilovgrad in 1995. The decision was in pursuance of the 21 November 2002 finding by the UN Committee Against Torture that the Republic of Montenegro was in breach of several provisions of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The committee ordered the Montenegrin authorities to pay adequate reparation to the victims.[115]

4.2. Apologies

During the first official visit to Serbia and Montenegro by a Croatian president, on 10 September 2003, the presidents of Serbia and Montenegro and the Republic of Croatia, Svetozar Marovic and Stjepan Mesic, exchanged apologies for the crimes the citizens of the two states had committed against each other in the past. President Marovic said: “We neither wish nor agree to live in the past, but in a joint European future. We all of us carry lots of emotions and prejudices which sometimes interfere with our rational judgement. As president of the state union, in the name of a past which we cannot forget, I wish to apologise for any evil perpetrated on anyone in Croatia by any citizen of Montenegro and Serbia. I wish to apologise not because I believe that peoples are to blame or that peoples ought to make apologies, but because we must agree and work jointly to ensure that all who are individually guilty are brought up and held accountable to law, in respect of which cooperation with the Hague [tribunal] is one of our major obligations.” President Mesic said: “I for my part wish to say that I apologise to anyone who has been caused anguish or damage by Croatian citizens ever, at any time in the past by abusing or proceeding contrary to the law and by abusing his or her official position. I repeat: ever, at any time.”[116]

During his first visit to Bosnia and Herzegovina on 13 November 2003, following a meeting with the

[112] The OTPOR movement was founded in 1998 as a student organisation. Soon afterwards it developed into a massive youth movement opposed to the regime of Slobodan Milosevic.

[113] Most of the forcibly enlisted refugees were represented by attorneys of the HLC.

[114] Before and during the NATO intervention, Serbian police carried out unlawful arrests of ethnic Albanians in Kosovo. They were arrested on the streets, in their homes and in public places on “suspicion of being terrorists.” Some of them were minors. No criminal proceeding were ever instituted against these people, some of whom were unlawfully kept in prison for over a year, just on the basis of a police detention order.

[115] After two Roma raped a non-Roma girl in Danilovgrad, several hundred residents assembled on 14-15 April 1995 and razed the Roma settlement Bozova Glavica near Danilovgrad with the tacit approval of the municipal authorities and the police. The police present took no action to prevent this. The Roma residents managed to escape, but their homes and property were burned or destroyed by other means.

[116] Nezavisne novine, http://www.novine.ca/ARHIVA/2003/12_09_03/sr_cg.html

then Presidency president Dragan Cavic, the president of the State Union of Serbia and Montenegro, Svetozar Marovic, made an apology to the citizens of Bosnia and Herzegovina: "I wish to avail myself of this opportunity to apologize for any harm or distress suffered by anyone in Bosnia and Herzegovina at the hands of anyone from Serbia and Montenegro, and to say that peoples have no right to and must not suffer guilt and anguish caused by individuals." Marovic said that "peoples must not be made to suffer guilt for evils perpetrated by individuals; rather, the individuals themselves ought to be held accountable for that." Marovic also said that he believed in the region's common future and that "our appeal to forgive and my appeal to reach out a hand will mean a sincere and genuine step forward in the development of a European and prosperous future for both the citizens of Bosnia and Herzegovina and the citizens of Serbia and Montenegro."[117]

President Marovic did not apologize only to the citizens of the neighbouring states against which Serbia and Montenegro fought. He also made an apology to the Montenegrin citizens who opposed the war in the former Yugoslavia as well as those who had worn uniform: "I am ready and willing to apologise to those who opposed the war, to those who did not put on uniform, and to those who like them were against the war but did put on uniform, not to kill, burn, cause grief to others, but who deeply believed that it was their duty to respond to the call to defend the country in which they had been born and which they believed to be theirs."

Boris Tadic, the first Serbian president to visit Bosnia and Herzegovina, apologised for the crimes committed by Serbian formations. During the visit to Sarajevo on 6 December 2004, Tadic said: "That was not done by the Serb people because the criminals are individuals. A people cannot possibly be accused because the same kinds of crimes were committed against the Serb people as well. I think that we all owe an apology to each other because in a relatively short time we were all both victims and witnesses to crime...I'm going to be the one to lead off, so I apologise to all against whom crimes were committed in the name of the Serb people. I wish to point out that those crimes were not perpetrated by the Serb people, but by individuals with a name and a surname who ought to be held to account before the tribunal in The Hague."[118]

Belgrade and Sarajevo reacted to Serbian President Boris Tadic's apology negatively for different reasons. In Sarajevo, Tadic's appeal for mutual apologies was looked upon as an apology for crime, because he took the opportunity to explain that he himself was a "...child of war orphans. My grandfather was killed in the Second World War only because he was a Serb." The vice-president of the Party of Democratic Action (SDA), Seada Palavric, welcomed Tadic's gesture, but also pointed out that no one from Bosnia went to Serbia to wage war. Although the international community applauded Tadic's apology, the critical public in Serbia saw it as a personal gesture of a politician who had received no approval for it from neither Serbian citizens nor institutions, and the nationalist circles condemned his act as unbecoming of the office of the president of Serbia.

4.3. Monuments

The Assembly of the Municipality of Prijepolje on 6 May 2005 set up a committee to erect a monument to the passengers kidnapped from a train at Strpce station in 1992. The idea was unanimously approved by all the parties making up the coalition majority in the local assembly. The committee has 17 members representing the municipal assembly, local administration and institutions of the state. The initiative was made by the victims' families who have for the past 13 years been searching for the bodies of their relatives; as the brother of one

[117] See, "Marovic se u Sarajevu izvinio za zla pocinjena u BiH," http://www.b92.net 13 November 2003.

[118] "Tadic: Svi dugujemo izvinjenje," http://www.b92.net 6 December 2004.

of the victims put it, the purpose of the monument would be to "remind, to keep the crime from being forgotten". The first location proposed for the monument in the centre of Prijepolje was voted down by the SRS and DSS deputies; as a result, a site was accepted on the approaches to the town, near the bridge in the part of the town called Sarampov. There was a competition for the text to be inscribed on the monument; 141 entries were received and three were short-listed. The winner was Slavenko Pesic from Smederevo, his text reading, "Those in this country who forget Strpce station and 27 February 1993 will have given up the future." The committee decided to inscribe on the monument the names of all the 19 kidnapped passengers, in contrast to the original suggestion by the DSS municipal government representatives that the monument bear only the names of the nine Prijepolje residents.

An initiative has been made in Priboj municipality to erect a monument to the victims of the Sjeverin crime. A location is yet to be decided upon.

4.4. Commemorations

Remembrance Day in Sandzak: 11 July

The president of the Executive Board of the Bosniak National Council in Serbia and Montenegro, Esad Dzudzevic, proposed on 5 July 2005 that the 11 July anniversary of the Srebrenica massacre be declared Remembrance Day in Sandzak. The reaction of the representatives of religious and political life in Sandzak differed. The representatives of Sulejman Ugljanin's List for Sandzak greeted the proposal saying that they considered Srebrenica a warning to succeeding generations.

The proposal was carried on 10 July 2005 at an extraordinary meeting of the Bosniak National Council for Serbia and Montenegro in Novi Pazar. It was decided to commemorate 11 July as Remembrance Day in honour of the Bosniak victims of the crime in Srebrenica and the kidnappings in Sjeverin, Bukovica and Strpce in Sandzak.

Remembrance Day of Montenegro: 30 May

On 30 May 2005, the HLC from Belgrade and the Group for Changes from Podgorica organised in Podgorica the first public commemoration of the anniversary of the deportation of Bosnian refugees from Montenegro. The refugees were handed over to the police forces of Republika Srpska who killed most of them. With the agreement of the victims' families and participants in the event, the Montenegrin government and Parliament were asked to declare 30 May a day of remembrance in Montenegro of the April and May 1992 deportations of the Bosnian refugees who were later killed in Republika Srpska.

Marking the 10th anniversary of the Srebrenica crime – commemoration of killed Bosniaks

The commemoration of the slain Bosniaks - victims of the Srebrenica genocide in 1995 - was attended by Serb president Boris Tadic, Montenegrin speaker Ranko Krivivokapic, Serbia and Montenegro Minister for Human and Minority Rights Rasim Ljajic, and Vojvodina Assembly speaker Bojan Kostres. Before leaving for Srebrenica, Tadic explained publicly the reasons for attending the commemoration: "I am going to show as president of Serbia how Serbia relates to the war crimes committed against the Bosniak people...Another reason are the citizens of Serbia. We did not stand behind the crime. We must show a distance between the citizens and the crime...I am going to Srebrenica with regional cooperation and responsibility for all that happened in the territory of the former Yugoslavia on my mind." He did not omit mentioning that many crimes had been committed against the Serb people and that condemnation of those crimes goes without saying. "However, it takes virtue and strength to condemn a crime committed against another people in our name."[119]

[119] "Tadic: Vrlina i snaga osuditi zlocin pocinjen u nase ime," *Danas*, 11 July 2005, p. 1.

President Tadic's visit to Srebrenica was a symbolic gesture towards the Bosniak victims, the first time a Serbian president had gone to pay respects to the victims of another ethnic group. As he said himself, his "place was there". On the other hand, it is important to note that *not a single one institution in Serbia* supported his visit.

On the 11 July anniversary of the Srebrenica genocide, the Serbian Assembly opened a regular session by observing a minute's silence in honour of all the victims in Srebrenica, Bratunac and Skelane. After ascertaining the existence of a quorum, Speaker Predrag Markovic asked the deputies to pay a tribute to the victims of these crimes. During the observance of the minute's silence, the SRS deputies were absent from the room.

On the occasion of the commemorations of the Bosniaks killed in Srebrenica and Serbs killed in Bratunac, the SPC expressed its deepest condolences over the terrible ordeal of the people in the Srebrenica region. "A great popular calamity is being publicly commemorated at two places, Potocari and Bratunac. Both these commemorations have the same character and a single function – to serve as a tribute and as a warning." The SPC and Patriarch Pavle read a "prayer and appealed that no more pernicious political walls built upon this calamity that give rise to further conflicts and retribution should be erected. That death and suffering on 'this' and 'that' side should not be separated off in this fiery manner. On the occasion of the tenth anniversary of the Srebrenica tragedy the Patriarch expressed condolences to the families of the victims in the name of the SPC and prayed that calamities of war should never occur in these parts again."[120]

On 11 July 2005, a group of residents of Cacak paid tribute to the Srebrenica victims in front of the monument at Cacak cemetery which commemorates the victims of all nations and religions from the 1912-18 wars and has the religious symbols of all faiths engraved on it. The residents, numbering several score, laid flowers and a wreath with an inscription "To the victims from Srebrenica" and lit candles. A public announcement of which copies were made available to the media said that a "group of residents of Cacak pays their most sincere and genuine tribute to the souls of the innocent victims from Srebrenica and express their deepest sympathy for the grief of their mothers, fathers, brothers, sisters, and children." In their announcement, the citizens also said: "We ask the politicians to do what is best for Serbia. We demand that we should all confront the hard truths perpetrated by members of our people in our name without our either wanting or knowing them, that all the crimes against the Serb people be investigated in the most responsible manner and be presented to the world, rather than merely serving to cause rifts between ourselves."

The Vojvodina Assembly held a meeting dedicated to the commemoration of the anniversary of the Srebrenica crime under the title "Srebrenica, from denial to confession," the only institution of state in Serbia to do so. The meeting was held under the auspices of Speaker Bojan Kostres. He said on the occasion: "The things I have seen at Potocari today have only fortified my determination and intention that we must persevere in the fight to have all the war criminals convicted and to have all the organisers, inciters and executors brought to justice."

The commemoration of Serbs killed in Bratunac: 12 July

On 12 July 2005, speeches were delivered and a memorial mass held at the military cemetery in Bratunac in honour of the Serbs killed in the area of Srebrenica, Bratunac and Skelane in the last war. The commemoration was attended by top political leaders from Republika Srpska, Serb representatives on the joint organs of Bosnia and

[120] http://www.b92.net 11 July 2005.

Herzegovina, the Serbian president's envoy Jovan Simic, representatives of the Serbian government, DSS and SPS. Vice-president and general secretary of the SRS, Tomislav Nikolic and Aleksandar Vucic, were also present.

5. Final remarks

As already suggested, the transition justice mechanisms cannot be "transplanted" from one part of the world to another, as one must always take into account the particular social, historical, economic, cultural and political circumstances of a post-conflict society.[121] Reforms designed to help establish the rule of law and the development of appropriate institutions in a democratic society make sense only if they are implemented and acted upon by the various and wide segments of society and state institutions. The conclusion to be drawn is that each and every society must have a measure of consensus regarding the direction in which it and its institutions are developed. Although it seemed that such a general consensus had been reached in Serbia - especially immediately following the October 2000 change of government - Serbia's society has come up against serious obstacles.

The problems identified are primarily a direct consequence of the lack of political will to embark upon a serious confrontation with the past. For all the efforts being made, notably by representatives of NGOs, a large segment of society (primarily the political elites in power in Serbia) still does not realise that the political system of Serbia - like that of any post-conflict society of the former Yugoslavia - may strengthen its democratic culture only in so far as it has created room for memory of "that past". Therefore, the policy of effective non-cooperation with the ICTY, and the infantile dragging of feet over the fulfilment of all the conditions which the representatives of the international community place before the Belgrade government, all have a direct negative effect on the democratisation of Serbia, its economy and society. The political resistance to change is best represented through the debates in the Serbian Assembly. It is quite worrying to see that the "people's representatives" who most persistently insult all who advocate the democratisation of society and the adoption of European values, are very popular with the general public - not to mention the fact that a segment of the media (above all the "tabloids", as well as certain TV stations) give them considerable attention at all times.

The reforms launched in the domain of the judiciary, including the establishment of the War Crimes Prosecutor's Office, and the long-delayed adoption of legislation protecting parties to criminal proceedings, are yielding some results. The majority of the public aware of the existence of the War Crimes Prosecutor's Office are of the opinion that trying individuals before "our" courts is a good thing. This is true above all of the war crimes trials enabling the public to hear and see for the first time what individuals did "in our name," although the indictments have so far been conspicuously free from facts and evidence pointing to the real organizers and inspirers of these crimes, especially as far as the state leadership of the Republic of Serbia is concerned. On the other hand, the law on lustration is not being applied at all, and there are still no mechanisms in place like the vetting.[122] The non-implementation of the Law on Access to Information and the lack of coherent media legislation (to prevent putting off the invitation of tenders for frequencies and the continual postponement of the transformation of RTS into a public broadcasting service)[123] have fragmented the media scene in Serbia and made it susceptible to the influence

[121] "The rule of law and transitional justice in conflict and post-conflict societies: report of the Secretary-General," United Nations Security Council S/2004/616, p. 7.
[122] Cf. Magarditsch Hatschikjan, Dusan Reljic and Nenad Sebek, *Disclosing Hidden History: Lustration in the Western Balkans*, p. 10.
[123] This in spite of the introduction of obligatory TV subscription on 1 November 2005.

and manipulation of everyday politics. Moreover, in a situation like this, highest representatives of the state have neither desire nor need to render the operation of their institutions and their personal work more transparent and understandable for the wider segments of the population.

The apologies of some state officials - especially those of the president of the State Union, Svetozar Marovic, as well as the attempt of an apology by the Serbian president, Boris Tadic and his presence at the commemoration of the tenth anniversary of the Srebrenica massacre - indicate that at least some politicians are changing their attitudes towards the others' victims. Of course, these are above all symbolic steps, directed primarily towards the "domestic" public opinion. The state still appears unwilling to take responsibility for the crimes committed in its name and with its material resources and logistical support; hence the absence of any move whatever to compensate the victims.

Substantial progress has been achieved in the truth-telling initiatives. In this connection, one must emphasise the video footage showing the execution of six unarmed men from Srebrenica by the members of the Skorpioni unit, and the strong public reaction it provoked. The public screening of this crime exposed the futility of persistent denials of what actually took place in Srebrenica, through confronting a large segment of society with the inhuman behaviour of members of the police unit. At the same time, numerous panel discussions and conferences served to identify the specific responsibility of the state institutions for the specific crimes, as well as to point out their obligation to begin discussing the consequences of these crimes.

However, most progress has been made in letting the voice of the victims themselves be heard, starting with the Srebrenica conference in Belgrade, held on 11 June 2005, through the presence of victims at war crimes trials, to the first dialogue between the families of missing Albanians and Serbs from Kosovo. These events provided the Serbian public with an opportunity to see the monstrosity of the crimes from the angle of ordinary human beings. People were able to relate to the fate of the survivors and victims by realising that those people (although apparently "different") were in fact the same as "us" - so "their" suffering and pain were as real as "ours". The realisation that criminals are just criminals - rather than valiant champions of a "national cause" - is gradually entering the minds of the Serbian public, raising hopes that it will counterbalance the attempts to revise history.

Generally speaking, transitional justice in Serbia and Montenegro is still in its infancy. The active promotion of the construction of institutions which will help the democratisation of society and its eventual confrontation with the past remains a priority. But in order to achieve this, a far more serious engagement by wider segments of society as well as greater assistance by the international community are necessary. As much as the NGOs have done in this respect, they cannot and must not take upon themselves the obligations either of the state institutions, nor of the society as a whole.

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